VAT on Doctors Fees

There is a potential issue where some PCTs have started to charge VAT on the costs of a consultant (doctor) who was employed by the PCT but worked part time at the hospice.

The key point from a VAT perspective is which party is responsible for directing and controlling the consultant. If the consultant remains under the direction and control of the PCT then the PCT is supplying medical services to the hospice and that supply will normally be VAT exempt. If the consultant comes under the direction and control of the hospice, then the PCT is making a supply of staff to the hospice. That supply will normally be VAT standard-rated.

There are however several possible ways of avoiding a VAT charge where the supplied staff do come under the direction and control of the hospice:

- If the person is under a joint contract of employment between the supplier and hospice, then there is no supply for VAT purposes where one joint employer is reimbursed by the other. This means the supplier must not add VAT to its charge

- If the supplier provides nurses or nursing auxiliaries then HMRC, by concession, allows such supplies to be treated as VAT exempt. See Revenue & Customs Brief 12/10 for details of the concession

- By concession HMRC accept that the supply of staff between the non-business activities of two charities or voluntary organisations (but not between a public body and a charity) is itself non-business (see VAT Notice 701/1 Charities paragraph 5.17)

- By concession HMRC accept that payments for staff seconded between two organisations are not subject to VAT. The supplier must not be an employment business within the meaning of the Employment Agencies Act 1973. See section 4 of VAT Notice 700/34 Staff for details of the concession

- The recent Tax Tribunal case Reed Employment Ltd v Revenue & Customs (2011, UKFTT 200) offers some hope that, at least for temporary staff supplied by employment agencies, VAT should only be charged on the agency commission and not on the salary component. However HMRC are likely to reject or challenge this decision. Speak to your temp agency for their position on this case.
European Court of Justice case law suggests that a supply of staff between medical institutions may be VAT exempt in specific situations. However you will need to take professional advice before attempting to argue along these lines.

Hospices who use consultants whose salary is paid by another organisation and then recharged may wish to consult with their professional advisors to see if they can lessen the risk of a VAT recharge. The most straightforward solution would appear to be to ensure the consultants are jointly employed by both parties.

Further details about staff recharges and joint contracts of employment can be found on the HMRC website:

Revenue & Customs Brief 12/10 VAT – provision of health professionals, nursing auxiliaries, care assistants and support workers by employment businesses – clarification of policy: [http://www.hmrc.gov.uk/briefs/vat/brief1210.htm](http://www.hmrc.gov.uk/briefs/vat/brief1210.htm)
