Medico-Legal VAT Liabilities

Indirect Tax | Tax voice



20 December 2016

John Barnes provides a note on the details needed to explore the correct VAT liability

The VAT liability of services supplied by doctors has been subject to much confusion since the rules changed in 2007, and even though nearly ten years has passed since the changes were introduced, most doctors and their advisers are still unsure about when VAT applies to their services and when they are exempt from VAT .

The VAT liabilities of various “non-therapeutic” services supplied by doctors was changed from 1st May 2007, due to the European Court decision in the Dr D’Ambrumenil case. The court had ruled that the exemption from VAT for supplies by medical practitioners could only apply to services where the principal purpose was to protect, maintain or restore the health of the individual.

Since 2007 then, the medical VAT exemption no longer applies to certain “non-therapeutic” reports, whose principal purpose is to enable a third party to make a decision, for example in respect of claims for compensation, benefits, or expert

witness reports for the court (even if the case concerns the well-being of an individual), because the principal purpose of the report is to enable the court to take a decision. Such services are subject to VAT and if a medical practitioner has VATable income in excess of £83,000 they will need to become registered for VAT and charge VAT on such supplies .

Certain services have given rise to confusion about their correct VAT liabilities, and these are covered below.

VAT on copies of medical records

HMRC initially regarded this as a standard rated photocopying service. However, after further consideration they concluded that the copying of patients' notes is a "subject access request", which is a statutory requirement under the Data Protection Act 1998 and the Access to Medical Reports Act 1988. Therefore, as it is a statutory requirement, the service is deemed to be non-business and consequently any charge made is outside the scope of VAT. Full details are published by HMRC in VAT Notice 701/57, Paragraph 4.1

Medical Certificates and Reports

Supplies of certificates and reports are liable to VAT if they allow a third party to make a decision and contain no element of therapeutic care. For example, VAT is applicable to reports leading to claims for compensation, benefits or entitlement to special services (e.g. disability services). VAT also applies to fitness certificates that relate to a person being able to take up a particular profession (e.g. to join a professional register or a pre-employment medical) or fitness to undertake a sporting activity, or fitness to drive or fly.

However, where the principal purpose of the certificate or report is to protect, maintain or restore the health of an individual, then they are exempt from VAT, such examples being sick notes reports to an employer explaining that certain tasks should not be undertaken by an employee in order to protect their health certain adoption reports which relate to health care plans.

Insurance services

Medicals and reports for insurance companies are covered by a different VAT exemption (Group 2 to Schedule 9 of the VAT Act). So although they do not qualify as exempt medical services, HMRC consider that they can qualify for exemption under the rules relating to the exemption of insurance services. Therefore, reports that are provided to insurance companies concerning the setting up of an insurance policy by a patient, or the handling of insurance claims, are exempt from VAT, as confirmed in Para 4.8 of VAT Notice 701/57.

Medico-Legal Reports in connection with medical negligence claims

The fees for such services are subject to VAT. Those firms that specialise in making medical negligence claims are all likely to be registered for VAT. However they may obtain medical reports from GPs who are not VAT registered in connection with such claims. GPs who provide such reports do not have to charge VAT if they are not VAT registered and their income from such taxable services is below £83,000 per year. Many queries have arisen about whether the cost of the GP reports needs to form part of the onward taxable charge to the claimant by the medical negligence firm. Under normal VAT rules, if the medical negligence firm has contracted with a doctor to provide it (the firm) with a report that it will use in its services on behalf of the claimant, then the doctor's fee becomes a cost component of the medical negligence firm's supply of services to their client and VAT must apply to the whole charge.

Some medical negligence firms have set up a procedure whereby the claimant has a choice of GPs to provide reports, and the contract for such reports is between the GP and the claimant. In these circumstances, even if the medical negligence firm pays the GP on behalf of the claimant, the GP's fee can be treated as a non-vatable "disbursement" when it is eventually recharged to the claimant. The normal "disbursement" rules must apply, i.e. the recharge must be separately identified, it must be for the exact amount of the cost and the client must have received the service directly from the GP and must have been obliged to have met that cost.

Expert Witness Reports

The services of providing expert medical evidence for use by the courts is subject to VAT as the principal purpose is to enable a third party (i.e. the court) to make a decision. VAT is applicable to such fees even if the court case concerns the health or well-being of a patient.

Education and Training

Education and Training is exempt from VAT when supplied by an individual doctor or a member of a partnership. The exemption is based on the rules for education and training which specify that exemption applies to educational tuition in a subject ordinarily taught in schools or universities (which includes medicine) by an individual or partner who is acting independently of an employer.

The VAT liabilities described in this article relate to the position current at the time of writing (October 2016). As VAT liabilities may change due to new legislation (and the possible re-drafting of VAT rules if the UK leaves the EU), care should be taken to ensure that changes have not occurred when following this guidance