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UK Indirect Tax Conference 2015

Public Sector

Mark Dyer

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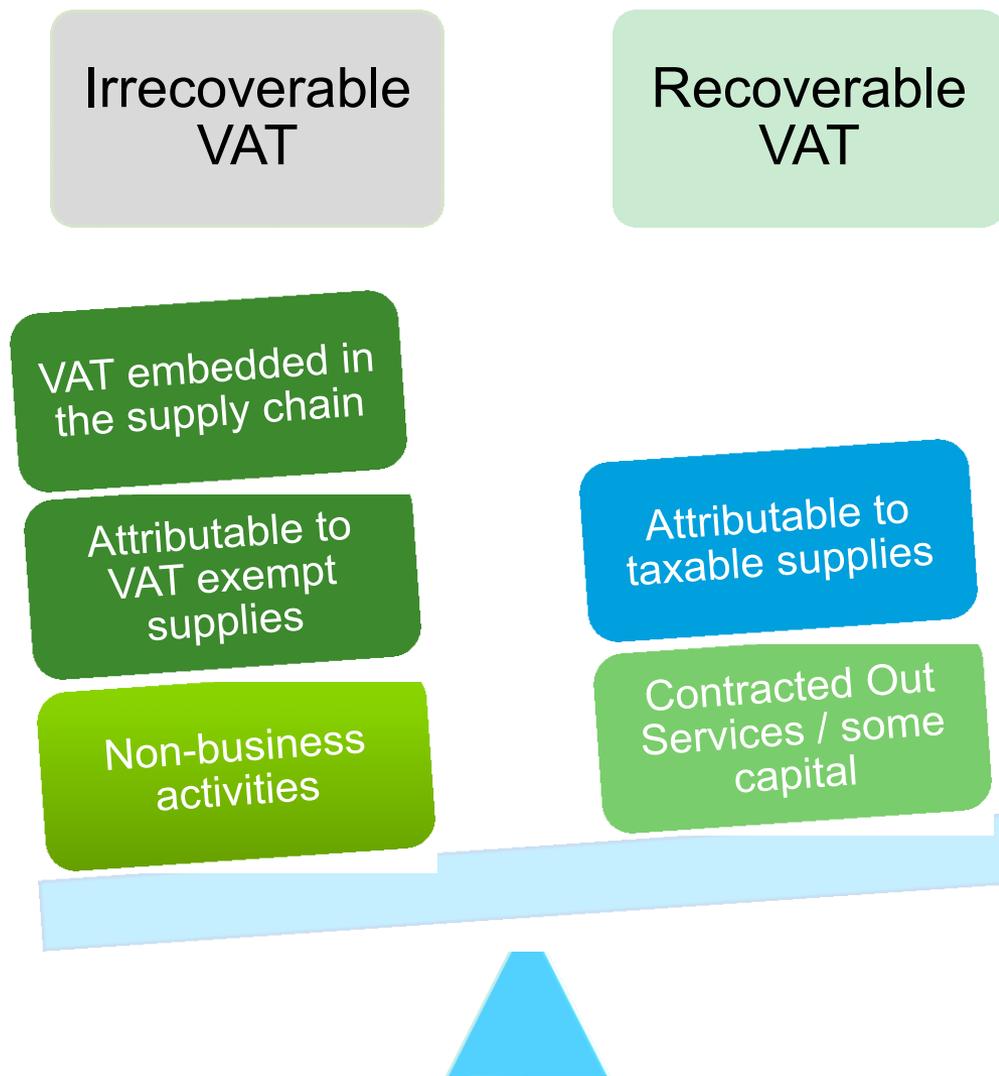
Agenda

- Health & Social Care Integration
 - Better Care Fund
- Alternative Delivery Models and Tax Consequences
 - Taxable Adult Social Care, HMRC Approval?
 - Children's Social Care, VAT Consequences
 - Housing Developments, Affordable and Private Rental Sector
- Case Law Update
 - Saudacor
 - Sveda

Health and Social Care Integration Better Care Fund

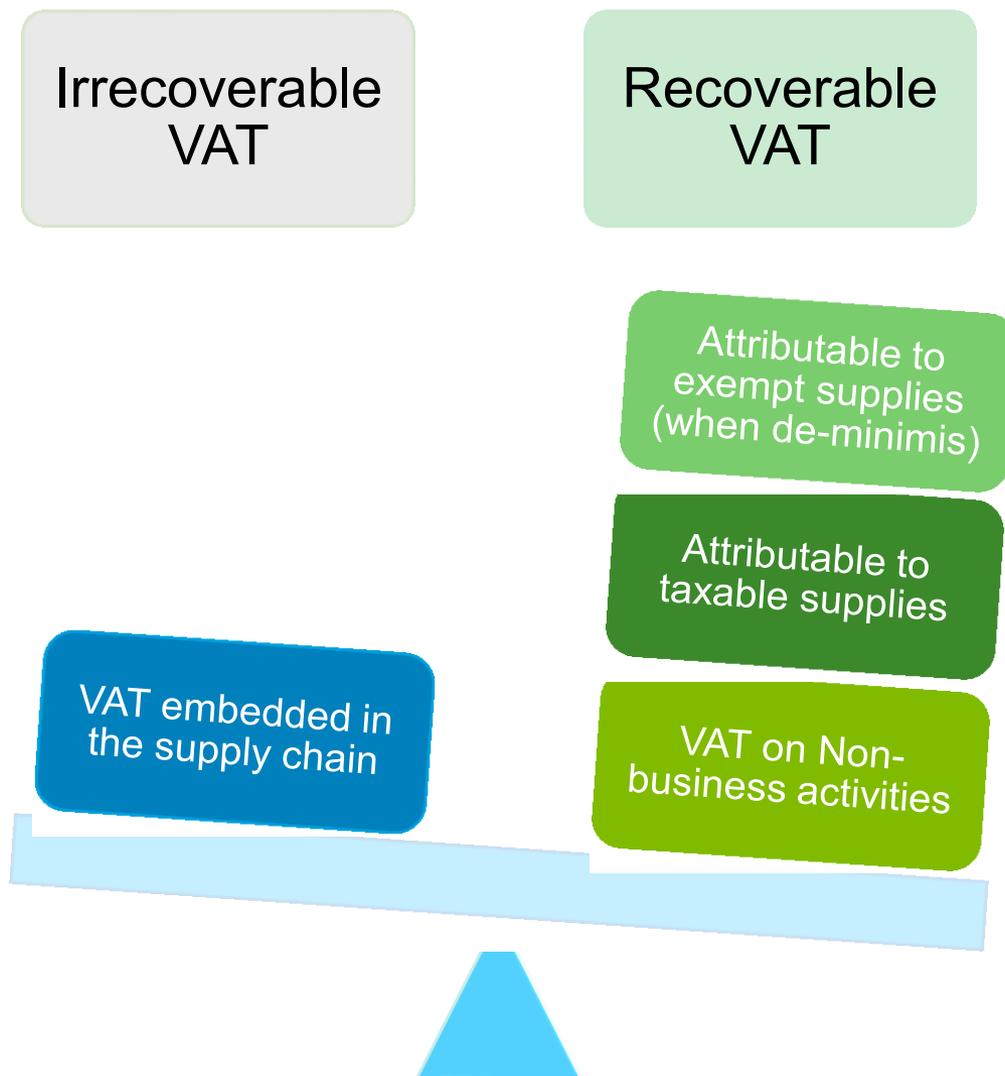
Health and Social Care Integration

Difference in the VAT Regimes – Health



Health and Social Care Integration

Difference in the VAT Regimes – Local Authority



Health and Social Care Integration Tax Guidance

Health and Social Care Integration

HMRC's Guidance

VAT Government and Public Bodies Guidance

(<http://www.hmrc.gov.uk/manuals/vatgpbmanual/index.htm>)

Old VAT Guidance V1-14 – page 71

8.9 Health Act 1999 partnerships

Health Act 1999 section 31 gives NHS bodies flexibility to enter into partnership arrangements with local authorities. Each partner makes a contribution to the budget, financially or in kind, but retains statutory responsibility for its own service. NHS bodies have scope to delegate, for efficiency reasons, some of their responsibilities to other partners.

It is unlikely that Health Act partnerships will make any supplies for VAT purposes, as they mainly exist to obtain benefits of pooled funding. VAT is recoverable according to the VAT regime of the body delivering the services. So if the partners agree that delivery is by a local authority, VAT is recoverable under section 33.



Health and Social Care Integration

HMRC / CIPFA VAT Committee Guidance

Envisages two 'partnership' arrangements:

1. The lead body (more later) carries out certain agreed activities, whilst ring-fenced for certain activities, the funding essentially becomes the property of the lead body. Referred to as Partnership Structure A (PSA); or
2. The lead body may be asked to act in an agency capacity for the other partners. Referred to as Partnership Structure B (PSB).

In PSA, the lead body's VAT regime determines VAT recovery on expenditure.

In PSB, the agency rules in s47 of VATA 1994 apply, either recover VAT on costs and charge to principal, or notify principal of VAT to be recovered.

Recommend seeking HMRC's agreement in advance of implementation.

Health and Social Care Integration

Clarity from HMRC?

CIPFA VAT Committee (05/11/15) requested HMRC provides some guidance where the local authority is the “host partner”, i.e. holds all the money, and commissions the provision of all goods and services in connection with BCF activities.

The BCF activities could include activities which are:

- i. The local authority’s statutory responsibility
- ii. The CCG’s statutory responsibility
- iii. Potentially either or both parties’ statutory responsibility
- iv. Neither parties’ statutory responsibility

Local authorities seek clarity around the approach to be taken where they are “host partner” and costs incurred relate to ii, above – should PSB be adopted? Assume so.

Clarification sought on timing of output tax accounting requirements if that is the case...

Alternative Delivery Models

Tax Consequences

Adult Social Care

VAT Efficient Welfare Provision

Supplies of welfare services are exempt from VAT where the supply is made by:

- i. A charity; or
- ii. A state-regulated private welfare institution or agency; or
- iii. A public body

Whilst VAT incurred on the costs of welfare provision by a local authority may be recoverable under s.33 regime, organisations which do not benefit from s.33 will suffer irrecoverable VAT on costs which relate to their exempt supplies.

In order to reduce that irrecoverable VAT cost, an alternative approach is more frequently being adopted.

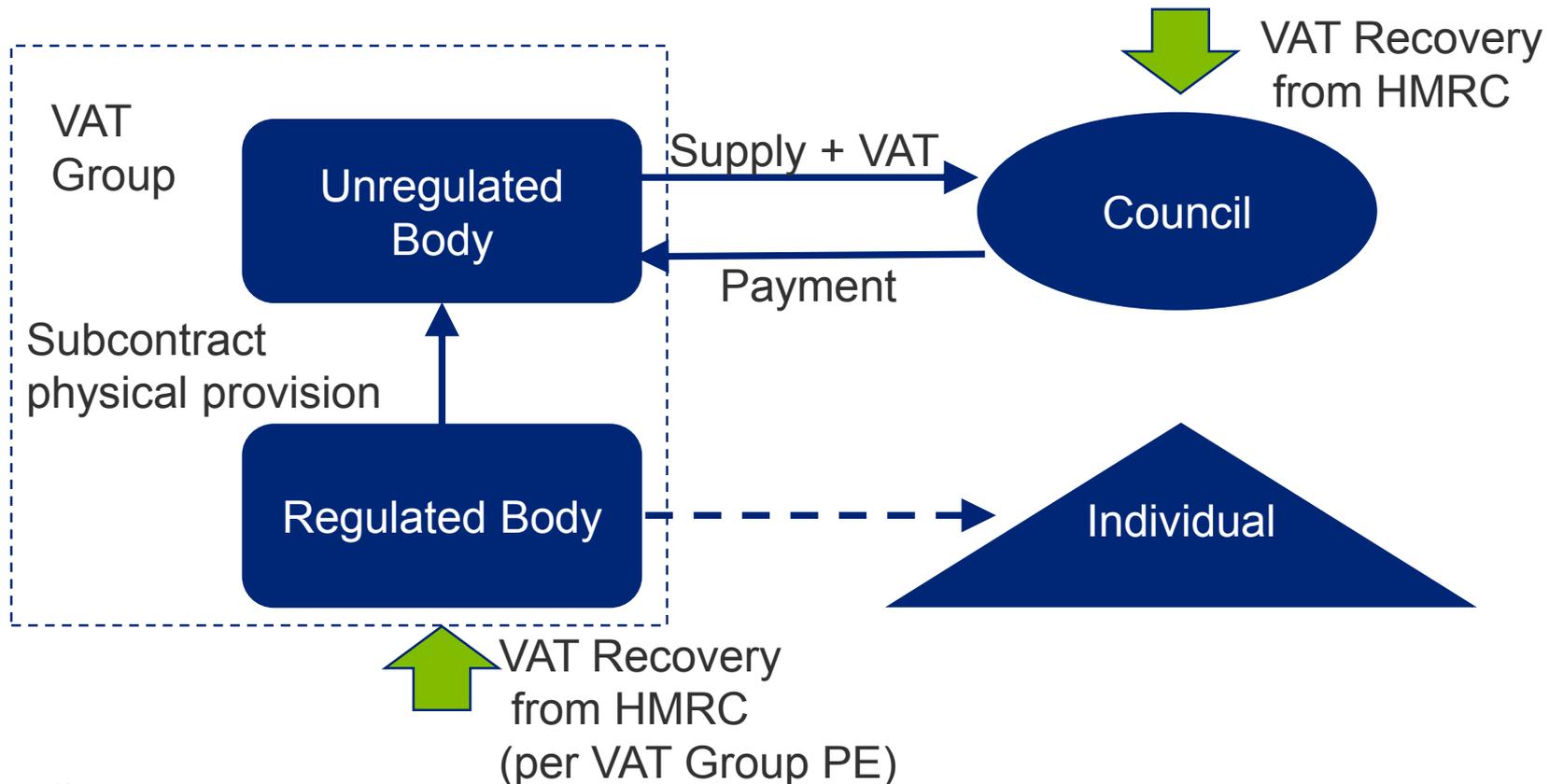
This approach relies on breaking the 'test' set out at ii) above.

Adult social care, and welfare provision is regulated by the Care Quality Commission.

Adult Social Care

VAT Efficient Welfare Provision

The alternative approach relies on establishing a 'group' structure with a regulated, and an unregulated body both being members of the same VAT group:



Adult Social Care

VAT Efficient Welfare Provision

CIPFA VAT Committee (05/11/15) requested HMRC confirms that it is “comfortable” with the arrangements.

- Some concern that HMRC have approved previously, but may be local officer decisions rather than policy.
- HMRC have powers to deny VAT Group treatment for ‘protection of the revenue’
- CQC approach to contracting with unregulated body is unclear.

Some clarity from HMRC at a policy level would be welcome!

Children's Social Care

Outside of the Section 33 Regime

Supplies of welfare services are exempt from VAT where the supply is made by:

- i. A charity; or
- ii. A state-regulated private welfare institution or agency; or
- iii. A public body.

The regulation of children's welfare provision is undertaken by Ofsted, on a fundamentally different basis, where the *activity* is regulated rather than the organisation...

Consequently, care is required to understand, and identify what taxable supplies a (non-local authority) children's care provider might be making, and what exempt supplies they might make.

Children's Social Care

Outside of the Section 33 Regime

Substantial irrecoverable VAT costs likely to be incurred on:

- Accommodation Costs
- Temporary Staff Costs
- Infrastructure and IT
- Bought-in administration services

Decisions around the extent to which the 'parent' authority will support the 'child' organisation, may have an impact on the irrecoverable VAT costs.

Housing Developments

Affordable and Private Rental Sector

Increased development of local public sector owned assets for residential purposes. Typically undertaken in partnership with developer / registered provider, using special purpose vehicle.

Significant VAT issues:

- Site assembly
- Outright Sale vs PRS income (including shared ownership)
- VAT on costs of construction, availability of zero rate relief
- Ongoing maintenance costs

In addition, direct tax consequences need to be understood.

Case law update

Sveda

Case law update

Sveda (CJEU C-126/14)

Sveda incurred costs (constructing roads, observation platforms, camp sites, spaces for fires, information booths and parking spaces) in developing a recreational trail relating to Baltic mythology – in essence an educational attraction open to the public.

- 90% of the costs were funded by the Ministry of Agriculture as ‘financial assistance’ toward providing free access to the recreational trail for the public.
- Sveda’s other income was derived from taxable supplies of food, drinks and souvenirs to the public that accessed the trail
- Sveda recovered all the VAT on the basis of the taxable supplies
- Lithuanian courts recognised that the costs were incurred for two purposes: free access to the trail and to provide taxable goods/services
- Lithuanian courts asked the CJEU whether Sveda had the right to recover VAT

Case law update

Sveda (CJEU C-126/14)

The CJEU has ruled that in this case, “there does appear to be a direct and immediate link between the expenditure incurred by Sveda and its planned economic activity as a whole”. In particular, it noted that:

- The costs were incurred on capital goods “directly intended for use” by the public free of charge but the costs were “at the same time ... part of the taxable person’s objective of carrying out subsequent taxed transactions.”
- The provision of free entry to the trail was not covered by a VAT exemption, but as the costs in creating the trail “can be linked ... to the economic activity planned by the taxable person”, the expenditure was not non-business expenditure either.
- There was thus a direct and immediate link to Sveda’s taxable activity, and the provision of free entry to the trail did not break that link.

Case law update

Saudaçon

Case law update

Saudaçor (CJEU C-174/14)

Saudaçor was set up as a limited company, exclusively funded by public capital from the Azores regional government, to provide healthcare management services in that region, i.e. infrastructure, facilities, IT and the completion of construction, conservation, rehabilitation and reconstruction work on health establishments and services. The Portuguese Public Treasury referred to the CJEU for an interpretation of:

- Article 1(9) of Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts; and
- Article 13(1) of Council Directive 2006/112/EC on the common system of value added tax.

In other words, can you be a body governed by public law, outside of the public administration, but not as a consequence of the EU procurement law?

Case law update

Saudaçor (CJEU C-174/14)

The CJEU opined that:

- The activities undertaken by Saudacor are economic activities for the purposes of Article 9(1), which defines as a “taxable person” any person who, independently, carries out an economic activity;
- The Article 13(1) concept of “other bodies governed by public law” **cannot be interpreted with reference to Article 1(9) of Directive 2004/18**; however,
- Article 13(1) must be interpreted as meaning that activities such as those at issue in Saudacor fall under the rule for treatment as a non-taxable person (for VAT purposes and where there is an economic activity) IF the domestic court finds that the body in question is one governed by public law and the exemption of those activities is not such as to lead to significant distortions of competition.

Questions?



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