



Care Provider Alliance Care Sector VAT Briefing – 6th June 2025
Provided in conjunction with Grant Thornton and Anthony Collins Solicitors.

HMRC has checked this briefing for accuracy and the CPA, Grant Thornton, and Anthony Collins have considered their comments and retain ownership of the briefing.

The Use of VAT Grouping within the Care Industry

On 24th April, HMRC published Revenue and Customs Brief 2 [2025] (“the Brief”) announcing its new policy on the use of VAT groups by providers of welfare services in the care sector. The Brief refers to the practice of using a VAT group structure comprising a state regulated provider of welfare services and an entity which is not state regulated (i.e. not registered with the Care Quality Commission (“CQC”) in England or equivalent bodies in Scotland, Wales and Northern Ireland), with the aim of changing the way services are provided under contracts with LAs (“LAs”) and NHS integrated care boards (“ICBs”) to improve providers’ VAT recovery position. HMRC have stated that the purpose of this Brief is to outline their views in relation to this type of restructuring.

Historical VAT Position in the Care Sector

Welfare services offered by state regulated providers are exempt from VAT under UK law. VAT exemption means that VAT incurred on costs directly related to these exempt supplies cannot be recovered, creating an absolute VAT cost for providers.

Some care providers have historically restructured their arrangements so that the entity making the supply of care to the LA/ICB is not state regulated and as such does not qualify for VAT exemption. The non-regulated entity is inserted into the supply chain between the state regulated provider and the LA/ICB to whom the supply is made. The VAT group is then able to recover VAT incurred that is directly attributable to LA/ICB contracts, as these supplies are now standard rated, as well as a proportion of VAT incurred on general costs (i.e., residual VAT).

These restructuring arrangements have been in place for a number of years and have been utilised by a number of providers.

HMRC’s Position

The Brief confirms that HMRC regards this structure as a form of tax avoidance and has announced the following actions:

- HMRC intends, with immediate effect, to refuse new group registration applications which are designed to implement this structure.
- HMRC will also launch a programme to review and investigate existing VAT groups which it believes are using this VAT grouping arrangement.

HMRC has asked VAT registered providers to review their current VAT position and, if they believe their arrangements fall within the description of the Brief, to notify HMRC via a specified email address.

Where necessary, HMRC says it may exercise its ‘protection of the revenue’ powers under Section 43C of the Value Added Tax Act 1994 (“VATA 1994”) to remove relevant parties from VAT groups and to refuse new VAT group applications in line with Section 43B(5) of the VATA 1994. This is actioned by issuing a Notice which will specify the date from which it is effective and will be no sooner than the date the Notice is issued to the provider. To confirm, there has been no wider change in VAT legislation concerning either the VAT treatment of supplies of welfare services or VAT groups generally, nor would it appear any new case law has been decided to prompt this action from HMRC.

Next Steps

While this is disappointing news for the sector which is already under extreme cost pressures, especially as the restructuring had been supported by a number of LAs/ICBs, it does provide clarity as to HMRC’s current view and allow providers to plan accordingly.

It is worth noting that this announcement from HMRC does not involve any change in law nor are they seeking to utilise powers that are not already afforded to them under statute. However, this is a clear shift in approach as previously they have accepted the use of VAT grouping structures involving a non-regulated entity and this allowed for a proportion of VAT to be recovered on their associated costs. Whilst HMRC have not outlined definitively in the Brief the reasons for its publication, HMRC’s position is clear that utilising this VAT grouping arrangement in the future will likely meet with challenge and it is also likely to be one that LAs/ICBs will not support going forward.

Where VAT grouping arrangements have been used and LAs/ICBs have contracted (directly or via novation) with a non-regulated entity, the Brief does not mean the VAT treatment changes. Supplies of welfare services by the non-regulated entity remain subject to VAT at the standard rate even if HMRC use their powers under Section 43C(1) to remove the non-state regulated entity from the VAT group.

Organisations currently using or considering the use of VAT groups as outlined in the Brief should:

- Review any existing VAT group arrangements and related contracts to determine whether they fall within the scope of the Brief.
- If you are currently operating this VAT grouping structure, notify HMRC as soon as possible via the email address set out in the Brief and review your arrangements in light of HMRC's new guidance.
- Consider further steps that may be needed, including the possibility of proactively amending any current contracts to ensure these are with a state regulated entity.
- If you are in the process of setting up a new VAT group, you should ensure this is not to utilise the structure as set out in the Brief.

We appreciate that some providers will be frustrated by the need to unwind such arrangements having spent time and cost implementing VAT group arrangements over the last few years. Accordingly, the Health and Social Care Team at Anthony Collins is on hand to support providers with the implementation of any necessary changes and navigation of the contractual aspects with commissioners. Initially this will involve reviewing contractual arrangements between commissioners and the non-regulated entity, and any subcontract agreement between the regulated and unregulated members of the VAT group. Following this, Anthony Collins can provide the documentation to effect the amendments of any current contracts to ensure these are between a state regulated entity and the relevant commissioner.

Potential Legal Challenge

It is understood that some stakeholders may be considering challenging the Brief, Anthony Collins has consulted with the VAT Specialist Team at Grant Thornton and is aligned with the view that HMRC has legitimately applied its powers and there is limited scope for providers to challenge HMRC by way of judicial review in this instance.

Some stakeholders and providers are considering challenging HMRC by way of judicial review because of an apparent failure by HMRC to carry out an equality impact assessment (EIA). From a purely VAT perspective, it is unlikely that (if successful) this will have any bearing on HMRC's policy or the approach they have set out in the Brief.

Judicial reviews are costly, lengthy and whilst such challenge may result in a delay in the effective date, ultimately it does not appear likely at this stage that the underlying view of HMRC on the use of VAT grouping in the care sector as set out in the Brief will change.

FAQs

Q1: Does HMRC's policy effectively prohibit VAT grouping for providers of welfare services?

No. VAT grouping remains permissible; however, HMRC will now challenge structures where non-regulated entities are inserted primarily to enable VAT recovery on supplies that would otherwise be exempt, considering these arrangements as potentially facilitating tax avoidance

Q2. Is HMRC expected to apply the revised policy retrospectively?

HMRC's current focus appears to be on preventing any further use of VAT grouping arrangements where they now consider them to be facilitating avoidance, rather than applying the revised policy retrospectively. Whilst HMRC do have separate powers to explore retrospective positions, the powers under Section 43(1) can only be used on a prospective basis

Q3. If we have formed a VAT group, should we unwind this existing structure immediately and what do we need to do?

Organisations should first review their existing arrangements in light of HMRC's updated policy before deciding on the next steps, as HMRC accept that there are perfectly reasonable reasons for forming VAT groups and not all VAT groups will be covered by the approach outlined in the Brief. If action does need to be taken, the first steps are to notify HMRC and plan on how to novate contracts back to the state regulated entity. It may be necessary to submit a new VAT registration application, disband the VAT group and notify any relevant parties of these actions (e.g., CQC).

Q4: What timescales do HMRC expect for unwinding any existing arrangements?

HMRC has not prescribed specific timescales, but the RCB explains that they are launching a project to review and investigate instances where they suspect that this VAT grouping arrangement is in place. They are encouraging taxpayers to review their arrangements and contact HMRC at the e-mail address provided in the RCB where they consider that their arrangements meet the description set out in that Brief.

Q5: Should we contact LAs and ICBs?

If your VAT group arrangements fall within the scope of HMRC's Brief, we would recommend engaging early with the relevant LAs/ICBs to agree the VAT treatment under existing contracts and, if desired, novate the contracts back to the regulated entity. Early engagement allows parties to agree on the VAT position and helps to avoid disputes.

Q6: Until the structure is unwound, can the VAT group continue to recover input tax attributable to taxable supplies under normal rules?

HMRC has confirmed that, until the structure is formally unwound, the VAT group should continue to account for and recover VAT in line with the normal rules applicable to taxable supplies.

Q7: Will HMRC provide assurance to LAs and ICBs that if they continue to pay VAT in respect of welfare services received from a non-regulated entity, they are entitled to recover it?

HMRC has indicated that until such time as the arrangements are unwound, ICBs and LAs should continue to pay and recover VAT in accordance with the normal VAT rules applicable to taxable supplies.

Q8: Will HMRC provide guidance to ICBs and LAs on how to support the unwinding process and when to do so?

No. HMRC will not issue specific guidance to ICBs or LAs, on the basis that these bodies have their own internal governance and procurement procedures. HMRC's view is that a uniform approach is not feasible, and each organisation should be guided by its own legal and financial frameworks.