

**From:** [Anne Stewart](#)  
**To:** [Edwards David \(RNL\) North Cumbria University Hospitals](#); [Dunkley Amanda \(RNL\) North Cumbria University Hospitals](#)  
**Subject:** Recent Communications from IHPA  
**Date:** 17 May 2018 15:53:55

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Hi David, Amanda,

I have been asked by our Compliance Director to send you the message below. If you have any questions or concerns please either go direct to Matt or let me know and I can facilitate an answer.

(Also if you have an HR Director you feel should see this please forward on)

Kind regards,

Anne

“ Dear <>,

I am writing to you further to a letter which we believe was issued to all NHS Organisations on 2 May 2018 from Duncan Lewis acting on behalf of the Independent Health Professional Association (“IHPA”) regarding their concerns in relation to “purported VAT mitigation practised within the NHS” and in particular the use of “direct engagement models” to procure medical services.

Unfortunately, due to the nature of the subject matter, it needs explaining through technical analysis, and I do that below. However, I should point out immediately that:

1. The VAT saving when our Contingent Workforce Management Platform and employment modules are deployed in the NHS is realised in addition to the core benefits of the achieving greater visibility and control of the contingent workforce whilst reducing the risks on the end client regarding IR35 and Criminal Finances Act 2017;
2. we do not believe that Direct Engagement as provided by Brookson, is tax avoidance;
3. HMRC are aware of our Direct Engagement service (and have not sought to challenge it or raise any concerns) as they were present onsite at our request during the implementation of the service at our pilot trust in 2012;
4. the letter from the Duncan Lewis references the fact that he is not aware of the precise nature of the service and has made incorrect assumptions about the supplies being made, particular by assuming that the supplies made by BMCSL are supplies made by an employment business; and
5. we have had no direct contact from Duncan Lewis before he issued the letter so have been unable to provide any input into his analysis of the position

The letter will undoubtedly result in some confusion and concerns regarding how the contents of the letter relate to the Direct Engagement model offered by Brookson Healthcare Services LLP. It is however our view that the technical arguments presented in the letter are flawed and not aligned with our own analysis of the VAT position which has been validated by Ernst and Young and Tax Counsel and, as mentioned above, previously disclosed to HMRC.

As referenced in Duncan Lewis' letter, organisations are entitled to structure their affairs to obtain the best tax position providing the method used is not contrived, artificial and solely aimed at avoiding tax. In respect of direct engagement, this is not a form of tax avoidance as it does not meet the hallmarks; it is simply a new contracting model and supporting software solution for the engagement of temporary medical staff by the NHS. The model and software solution provides many benefits to the NHS which amongst other things includes the reduction or removal of the VAT cost incurred by the NHS under the traditional employment business contracting model.

The traditional contracting model (where an employment business operates in the supply chain for both the supply of temporary staff and the supply of medical services by those staff) currently requires the employment business to charge VAT. In essence this traditional supply model changes the underlying nature of the temporary medical staff's services from that of a supply of medical care services (which is exempt from VAT) to that of the provision of staff (which is standard rated for VAT purposes). The alternative contracting method (direct engagement) results in two separate and distinct supplies being received by the NHS; a supply of temporary staff procurement services by the employment business and a supply of medical care services by the doctor/AHP which is exempt from VAT. This is achieved because the doctor / AHP contracts directly (mainly through their own personal service company pre-April 2017 and now mainly via Brookson Medical Care Services post-

April 2017) with the NHS (rather than via the employment business) under a contract for the provision of medical care services and is paid directly by the NHS under this contract. As a result the direct engagement model delivers the correct VAT treatment intended by UK VAT legislation i.e. that a locum doctor or AHP providing medical care services to an NHS organisation is a VAT exempt supply. It is also true that many NHS organisations have historically directly engaged medical staff either as sole traders or via limited companies providing their medical services and received exempt medical services where no agency was involved in procuring their services, and so direct engagement is not even unique to the model offered by Brookson.

I would also like to add that, rather than expose NHS Organisations to tax risk, one of the additional benefits of the Brookson direct engagement model is that it helps NHS Organisations to manage compliance in the contracting supply chain as it provides visibility and control over the way in which temporary medical staff are engaged by the NHS. This is of particular relevance post-April 2017 where we have seen some temporary medical staff either continuing to provide service via their own PSC (and be paid without deduction of the necessary tax and NIC) or engage with dubious umbrella companies, loan schemes or offshore tax avoidance schemes designed to avoid the PAYE which should be due. Direct engagement therefore eliminates the risk of the NHS Organisation facilitating this form of tax evasion and falling foul of the Criminal Finances Act 2017.

I trust this allays any concerns you or your colleague may have regarding the recent communication from Duncan Lewis. Given the technical nature of the subject matter and the inaccuracies in the analysis we do not believe this letter should be of concern or warrant a response from you. If you have any queries regarding the contents of this letter or require any assistance with any further communications throughout your organisation or your supply chain on this matter please let me know.

We have not received any direct contact regarding this matter and if we do we will gladly and appropriately engage. We recommend that you do not engage or respond as this is not warranted. Kind regards,

Matt

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## Anne Stewart

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