

Can tax avoiders be stopped from getting NHS contracts?...

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I was asked yesterday whether it was possible for a local Clinical Commissioning Group (CCG) (the supposedly GP controlled commissioning bodies within the NHS) to block suppliers who either use tax havens or who tax avoid.

My reply to the enquirer was as follows:

Any CCG trying to adopt such a policy has to be very careful as it is quite possible that their actions in doing so may be contrary to EU law, which is why measures to create black lists on tax avoidance have failed at government level, so far. I therefore think some caution is needed here: much as I would like all CCGs to oppose tax abuse I would also hate to see them being fined for inappropriate contract discrimination.

In practice CCGs have to show that the choice they make to not award a contract is because the tax haven activity or the tax avoidance has direct impact on the services that the contract actually relates to and not just because the company uses such places. Try as I might I can't think of many CCG contracts where this could possibly apply, but the aim has to be to find those occasions when it might.

Tax avoidance is an easier target. There are obvious examples where this is being exploited, e.g. with regard to VAT avoidance giving outsourced pharmacies in hospitals a massive cost advantage over in-house operations. Reflection in this gives me an opportunity to suggest a statement that I think a CCG could use without risk of penalty, which pragmatically I think to be vital for the interests of local patients. This statement is as follows:

"We will require all those bidding for contracts with the CCG to disclose the impact that:

- a) the use of tax haven transactions either on their part or by other members of the group of companies of which they are a part, or*
- b) tax planning intended to take specific advantage of exemptions, allowances and reliefs in a fashion unlikely to be available to or be used by other bidders*

might have on the cost of the services that they wish to supply and the way in which they are supplied and to highlight any resulting risks that any change in tax law, regulation or practice might have on the durability of such arrangements. For the purposes of this condition a tax haven is considered to be a location with a secrecy score of more than 65 in the Tax Justice Network Financial Secrecy Index published in 2013."

I think this provides three things. The first is a requirement for self-declaration. The second is a clear link between the disclosure and the contract, which is vital. The third is a risk appraisal requirement, which is, I think, important as its disclosure will require details of the arrangement to be put on record.

I hope this helps.

Comments from those with experience on these issues would be appreciated.

38 Degrees might be interested.