

Funding the Future

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Heather Self of Pinsent Masons, solicitors, has sent me the [linked note on tax and procurement](#) that her firm has produced. This is [in response to my blog earlier today on whether an NHS Clinical Commissioning Group can consider taxation and tax avoidance activity in its bidding process](#).

Pinsent Masons' document is useful, so I am more than happy to link to it, but it does refer to the very lame scheme on this issue that was produced by the government when it realised that its initial proposal was almost certainly contrary to EU law. I am also cognisant of that law, and wary of its consequences, as I note in my blog.

As for the government scheme, I think it almost meaningless: it refers to the GAAR when there have been no cases as yet, and to packaged tax avoidance schemes when these are relatively rarely undertaken by companies, most being targeted at individuals. There are also generous opt out clauses.

In that case the proposal that I have made is quite different, but I think almost certainly legal, because it asks for the disclosure of information relevant to the decision to be made on the contract to be undertaken, and that must be appropriate under EU law.

By making the focus of disclosure the durability of any structure that is tax driven my criteria means that a decision to accept or reject a proposal can be appropriately made upon the basis of the tax planning inherent within the contract bid and the assessment of the risks that it poses to the durability of the benefit to be provided. This, I think, makes my proposed criteria considerably more powerful than those that the government suggests.