

Health care exemption

Two recent VAT Tribunal cases examined below have raised interesting points as to the health care exemption.

Smoking cessation therapy

TC00136 Allen Carr Easyway (International) Ltd

The VAT Tribunal has concluded that the provision of the Allen Carr method of stopping smoking can be an exempt supply of medical health care, which, although not supplied by a qualified medical practitioner, was supervised by one. HMRC argued that the sessions supplied to clients did not involve a supply of medical care provided by a medical practitioner in the exercise of his profession, nor were they directly supervised as such. The therapists were not medically trained or qualified, the work did not require medical supervision or medical expertise and the doctor did not control the delivery of the service but made sure that any medical questions asked by patients were properly dealt with so his role was purely advisory. Under the terms of HMRC's guidance VAT was due on the fees paid. The service was not the same as that offered by doctors in the NHS which focussed on will power and nicotine replacement, neither of which the Allen Carr method viewed as necessary. Two services with a common aim were not necessarily the same service and therefore could be taxed differently without breaching neutrality.

The Allen Carr service involved five hour group therapy sessions during which reasons for smoking were established and the patients would agree they were addicted to nicotine not smoking. Any medical issues and concerns around withdrawal symptoms and the impact of stopping smoking on pre existing conditions would be raised. Methods of stopping would then be discussed - will power and nicotine replacement were not viewed to be necessary as once the client knew why they smoked, accepted that nicotine is not the answer to stress or boredom but instead caused stress or boredom, and understood what smoking did to them, stopping would be easy. The final part of the session involved relaxation/hypnotherapy.

The Tribunal accepted that nicotine addiction is an illness and that the aim of the service provided at the clinic was to cure that addiction, which would result in lower costs to the Health Service. Thus the service was medical care. The therapists did not have to be qualified - the aim of the VAT law was to tax the unqualified unsupervised cowboy but the doctor had sufficient input to count as appropriate supervision for the circumstances of the case (the Moss case referred). So the service was exempt.

In the 12 years since an earlier Tribunal had concluded the services were not directly supervised by a qualified person, and were not supplied by a medical practitioner in the exercise of his profession either, the appellant had been in regular contact with HMRC and had appointed a

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doctor to work part time on its behalf (four hours a week), thereby leading to a different outcome this time.

Comment

This decision calls into question some of HMRC's guidance around the scope of the medical exemption. If HMRC do not appeal we are likely to see some changes to guidance to bring it more in line with the law, and make it more consistent.

[Click here to read the case in full.](#)

Aesthetic cosmetic treatments

TC00142 Ultralase Medical Aesthetics Ltd

This case also concerned the scope of the health exemption. As well as offering laser treatment for eyes, Ultralase operate clinics offering cosmetic beauty procedures like skin peels, removal of excess facial hair etc. The clinics are State regulated institutions but the focus of advertising etc is very much on beauty treatments designed to improve the patient's appearance and self confidence, not medical treatments to cure or treat disease or disorders.

People do not need to be referred to the clinics by a doctor and the clinics turn away anyone they think needs to see their own doctor for medical concerns such as clinical depression.

In this case, Ultralase had been accounting for VAT on the supplies of the cosmetic treatments but HMRC had concluded the supplies were exempt and assessed for £400,000 to disallow input tax claimed on equipment and set up costs (expenses significantly exceeded income in the period in question).

The basis of HMRC's argument was that as the clinics were State regulated, any procedure carried out there was exempt. However the appellant argued that in order for the exemption to apply, the service had first to be one of medical care, and aesthetic cosmetic treatments of this kind did not comprise medical care as defined in cases such as Dr Peter d'Ambrumenil (C-307/01). The reason for the health exemptions in the Directive was to ensure a VAT cost did not prevent people from seeking the medical treatment they needed, (in the event such treatment was not available free of charge). The exemption was not there so that wealthy people could avoid paying VAT on procedures that had no medical basis and were simply to make themselves feel

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more attractive. There was a clear difference between someone who needed facial surgery after an accident and someone who wanted a bump on their nose removed, for purely aesthetic reasons.

Comment

This decision gives us some useful pointers about where the dividing line between exempt health care and taxable cosmetic procedures should be drawn. It would seem the way clinics attract and screen patients, the procedures on offer, how these are described and the benefits they offer, and the referral process could all have a bearing on the VAT liability. It is possible therefore that the same procedure, carried out in the same State regulated location, by the same doctor, on two different people, could have a different VAT liability, but fiscal neutrality would not be breached because the procedures would not have the same purpose – one might be needed medically, and hence qualify for exemption, while the other was pure vanity, hence taxable.

[Click here to read the case in full.](#)

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