

## **Cosmetic or medical treatment? (Lecture B1175 – 11.53 minutes)**

The aesthetics market in the UK is apparently worth nearly £4billion a year, so it is understandable that HMRC is interested in the VAT issues. It is therefore a good time to ensure that clients are getting things right and a recent First Tier Tribunal case that against the taxpayer has given some useful tips.

### *The law*

In order to qualify for VAT exemption, a medical service or treatment supplied to a patient needs to go through three different hurdles:

1. It is carried out by a registered health professional;
2. It is carried out in the field for which the professional is registered; and
3. The treatment is linked to the protection, maintenance or restoration of the patient's health.

*VATA1994, Sch 9, Group 7, Items 1 and 2.*

### *Example*

If I visit my dentist and have a filling in one of my teeth, this service is exempt from VAT because good teeth are an important part of my health. But if he has a look at my eyes during the same visit, and charges me £50, this fee would be subject to VAT because he is only registered as a dentist and not an optician.

### *Tribunal case won by taxpayer*

As a general principle, cosmetic operations and procedures are standard rated because they are not carried out in order to improve or maintain a patient's health. VAT Notice 701/57, para 4.4.

It has always been a bit of a grey area as to whether some medical supplies are carried out for medical purposes (exempt) or cosmetic reasons (standard rated), and the VAT liability of Botox and other injectable treatments was one of the two key issues considered in the case of Skin Rich Ltd (SRL) (TC7310). HMRC decided that the services were standard rated because "clients sought treatment principally for cosmetic reasons." The taxpayer argued for exemption on the basis that Botox is a "medical procedure" and treatments "enhance their self-confidence and influence their quality of life."

After a very detailed analysis, the court agreed with HMRC that the procedures were given for cosmetic reasons and were standard rated: "SRL has not satisfied us that the principal purpose of the injectable treatments is to protect, restore or maintain the health of the individual rather than for cosmetic reasons." (Author underlining).

In a historic case from 2009, Ultralase Medical Aesthetics Ltd (TC00142) claimed its services of providing facelifts, hair removal and anti-cellulite treatment were standard rated and therefore claimed input tax on its costs and accounted for output tax on its receipts. HMRC claimed that the services were exempt and disallowed the input tax, the company said its services were taxable as cosmetic treatments. The taxpayer's appeal was allowed.

### *Registered health professionals*

How could nail fungal treatment not qualify as a medical service? The answer in the SRL case is because the treatments were not carried out by a registered health professional. Miss Cleaver (director and company shareholder) carried out the treatments using a laser process that attacked the fungus but she was not a registered medical professional, even though SRL had a medical liability insurance policy. The taxpayer accepted this but the alternative argument that the premises of SRL qualified for exemption as a "hospital or state-regulated institution" (Item 4, Sch 7, Group 9, VATA1994) was also rejected by the court.

### *VAT returns*

The SRL problem was first identified because the turnover declared on the company's corporation tax return exceeded the sales recorded on VAT returns for the same period. The reason for this discrepancy was because the company had omitted all of the sales it considered to be exempt from Box 6 of its returns. This was incorrect – all supplies of goods or services need to be included in Box 6, including those that are exempt (VAT Notice 700/12, para 3.7).

### *Conclusion*

It is recommended that medical businesses that claim VAT exemption for services that might be questioned by HMRC should keep very clear and thorough client files to illustrate the medical rather than cosmetic purposes and an analysis of why VAT has not been charged. Doctors are often reluctant to divulge the information in these files but the alternative is to probably play safe and charge 20% VAT in borderline cases. It is important to be clear that exemption only applies if the 'principal purpose' of a process is to protect, maintain or restore good health.

*Contributed by Neil Warren*