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## Trust me, I'm a Doctor

HMRC have shown a great interest in the aesthetics sector for a number of years. Their policy remains that cosmetic treatments are taxable (20%), whereas medical treatments can be exempt from VAT.

There are some who are undoubtedly providing taxable cosmetic services. If the supplier is not medically qualified then their services are automatically taxable. There are however a large number of practitioners who are listed on a medical register and operate clinics. This therefore boils down to the fact that these medically qualified practitioners believe their services have medical and health benefits, whereas HMRC do not.

The position taken by many clinics is that their services treat and improve the recipients mental health. This was the argument made in the case of *Illuminate Skin Clinics Ltd*, released earlier this month. However the First Tier Tribunal found in favour of HMRC that this was not the primary reason.

The tribunal stated “...the catalyst for use of the ... services is not “diagnosis”, but is something else ... Although we perhaps do not need to go further, the evidence is that people ... use the Appellant's services because they want to - not because they are encouraged to do so by a medical practitioner.”

“...people are going to the clinic intending to have a cosmetic procedure done there. Even if they are unhappy with their appearance, they are not going ... to see ... a psychiatrist, a counsellor or a therapist. The service being provided is and remains a cosmetic procedure even if ... it is being done by a person who is a good listener, or has the training and/or experience to engage with people's psychological or emotional needs.”

This case demonstrate the importance that evidence is retained showing that medical conditions are being considered and any diagnosis made. Detailed case notes must be retained. Where possible they should refer to ICD codes (International Classification of Diseases) which have recently been released by the WHO.

Finally I note that there are similar cases underway, and their outcome should be released soon. It will be interesting to see if these offer a different opinion, or whether these cases will move to the Upper Tribunal which would have a binding effect of the sector.

## Deal or No Deal

VAT on deal fees remains a hot topic and we now have yet another interesting case to consider. Hotel La Tour Ltd is a holding company of a group that operates a chain of luxury hotels, each owned and run by a subsidiary company. It decided to build a new hotel with the project to be financed by selling an existing subsidiary company owning a hotel in Birmingham.

HMRC raised an assessment of £76,000 for VAT incurred on various professional services, stating that these related to the sale of exempt shares. Hotel La Tour appealed, successfully arguing at both the First Tier and Upper Tribunals that the fees were in fact the costs of raising funds to create the new hotel, which would be a taxable business and that the VAT was recoverable. It will be interesting to see if HMRC choose to appeal, as I personally view this as a surprise outcome...

Please note that there is already a ‘blueprint’ of structures that HMRC will accept, and this case appears to add another string to the bow. Get in touch if you have any corporate deals and would like to discuss the VAT recovery position.



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