OLD SQUARE
TAX CHAMBERS

Tax-free Botox?

Patrick Boch

pboch@15oldsquare.co.uk
020 7242 2744

OLD SQUARE
TAX CHAMBERS

Tax-free Botox?

The VAT Treatment of Medical & Cosmetic Procedures

Overview

- *Legislation*
- *Botox and other treatments*
- *Case law*
- *Criticism*
- *Practical guidance*

LEGISLATION

- Council directive 2006 /112/EC (the principal VAT directive), Article 132(1)(c)

  "the provision of medical care in the exercise of the medical and paramedical professions …"

- VAT Act 1994, Sch 9, Item 1

  "The supply of services consisting in the provision of medical care by a person registered or enrolled in any of the following …"

- The basis test: is the treatment "medical care" or merely cosmetic?

Botox & Other Treatments

- Headaches (migraines)
- Excessive sweating (hyperhydrosis)
- TMJ disorders
- Acne
- Scar removal
- Wrinkles
- Tattoo removal
- Lip enlargement

OLD SQUARE
TAX CHAMBERS

Case Law

- CJEU
  - *D'ambrumenil v CCE* [2005] C-307/1
  - *Skatterverket v PFC Clinic* [2013] C-91/012

- Court of Appeal
  - *Mainpay Ltd v HMRC* [2023] STC 30

OLD SQUARE
TAX CHAMBERS

Case Law contd/..

- FTT decisions
  - *Ultralase Medical Aesthetics* [2009] UKFTT 187 (TC)
  - *Skin Rich Ltd* [2019] UKFTT 514 (TC)
  - *Window to the Womb* [2020] UKFTT 201 (TC)
  - *EPEM Ltd* [2023] UKFTT 623
  - *Illuminate Skin Clinic* [2023] UKFTT 547
  - *Aesthetic-Doctor.com Ltd* [2024] UKFTT 48

Aesthetic-Doctor.com

- Judge Anne Scott
- Period 2009 onward
- Treatments:
  - *Facial fillers*
  - *Skin injectables*
  - *Fat reduction*
  - *Wrinkle relaxers*
  - *Breast enlargement*
  - *Face lifting*
  - *Tummy tuck*
  - *Pigmentation*

AESTHETIC-DOCTOR.COM CONTD/..

- At para 287 (the test)

  "Do I find that the <u>purpose</u> of the services provided by the Appellant, <u>in the round</u>, is to <u>diagnose, treat or cure health disorders</u> or to <u>protect, maintain or restore human health</u>?"

- At para 298 (argument that cosmetic treatment 'medical')

  "Dr McKeown's evidence that all cosmetic care involves psychological treatment which provides therapeutic benefit just does not assist; there is a need, a crucial need to identify both a health disorder and treatment, that for evidenced clinical reasons provide a therapeutic result. The Appellant has not done that."

- At para 303 (lack of evidence)

  "In his oral evidence Dr McKeown said that all of the patients in the clinic had "some degree of anxiety relating to their appearance". That does not assist because by definition, given that the patient's self-refer, they are dissatisfied with some aspect of their appearance and want to improve it. That does not mean that their health is affected or that they have a health disorder."

AESTHETIC-DOCTOR.COM CONTD/..

- At para 328 ("principal", "overall", "in the round")

  "I have followed the Upper Tribunal and looked at whether the principal purpose of the services provided by the Clinic is the provision of medical care within the meaning of the exemption… In any event, I find that the overall purpose is the provision of cosmetic treatments; it does not suffice that any ancillary or incidental effect of the supply of the service is therapeutic in that the patient feels more confident or happy."

EPEM LTD

- Treatments:
  - *Laser treatments*
  - *Varicose vein treatments*
  - *Medical device treatments*
  - *Botox treatments for excessive sweating, headaches and migraines, and facial dystonic movements*
  - *Chemical peels for melasma, hyper-pigmentation and photo-aging skin*

EPEM LTD CONTD/..

- At para 38 (lack of evidence)

  "Considering all of the evidence, I find therefore that the Epem clinic did make standard rated supplies of services. Whilst it may have made some VAT-exempt supplies as well, there was no evidence before me on which I could determine the extent of any such exempt supplies. Mr Shiell's estimate in the hearing is not enough to make such a determination …"

WINDOW TO THE WOMB

- Treatments/procedures:
  - *Ultra sound scans for pregnant women in the 16-40 week gestation period*
  - *"Wellbeing scan"*
  - *Heartbeat check detection of some abnormalities*
  - *Growth check*
  - *Position of baby and placenta*
  - *"Wellbeing" report*
  - *Scans carried out in addition to NHS scans and not clinically indicated*

Held: principal purpose for which a typical customer purchases a scan was diagnosis monitoring – that was the case in relation to scans which were not just reassurance, but each woman choosing to monitor her medical condition. The supplies were exempt.

OLD SQUARE
TAX CHAMBERS

Application

- Headaches (migraines)
- Excessive sweating (hyperhydrosis)
- TMJ disorders
- Acne
- Scar removal
- Wrinkles
- Tattoo removal
- Lip enlargement

Criticism

- "Purpose", "principal" or "overall";
  - difficult to apply
  - bureaucratic approach of clinics
  - medically recognised condition test better?
- Evidential burden unrealistic?

Practical Guidance

- Maintaining documentation reasonably required to establish medical purpose
- Speak with your doctors
- If enquiry, agree limitation with Revenue

Patrick Boch

Old Square Tax Chambers
15 Old Square
Lincoln's Inn
London WC2A 3UE

pboch@15oldsquare.co.uk
020 7242 2744