



TC02985

Appeal number: TC/2012/10261

VAT – Exemption – Provision of services by private addiction therapist not registered or enrolled on register or roll of health professionals included in paragraphs (a) to (d) of Item 1 Group 7 of Schedule 9 Value Added Tax Act 1994 – Whether services supplied are directly supervised by such a health professional – No – Appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

M J FENWICK CONSULTANCY

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE & CUSTOMS**

Respondents

**TRIBUNAL: JUDGE JOHN BROOKS
HELEN MYERSCOUGH**

Sitting in public at 45 Bedford Square London WC1 on 11 October 2013

Mark Fenwick for the Appellant

Philip Rowe of HM Revenue and Customs, for the Respondents

DECISION

5 1. Under s 31 of the Value Added Tax Act 1994 (“VATA”) a supply of goods or services is an exempt supply, and therefore not subject to VAT, if it is of a description specified in schedule 9 of the Act.

2. Insofar as it applies to the present case, Item 1, Group 7 of schedule 9 VATA provides:

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

(a) the register of medical practitioners or the register of medical practitioners with limited registration;

...

15 (c) the register kept under the Health and Social Work Professions Order 2001

Note 2, Group 7 of schedule 9 provides:

20 Paragraphs (a) to (d) of Item 1 ... include supplies of services made by a person who is not registered or enrolled in any of the registers or rolls specified in those paragraphs where the services are wholly performed or directly supervised by a person who is so registered or enrolled.

3. M J Fenwick Consultancy is a partnership which, from late 2002, has offered medical services in terms of therapy for people with addictive disorders. The partners are Mr Mark Fenwick, who is an addictions therapist, and Mrs Elizabeth Fenwick, who is responsible the partnership’s administration.

25 4. As Mr Fenwick is not registered or enrolled with any of the bodies specified in Item 1, Group 7 of schedule 9 VATA, the partnership’s supplies, although consisting of the provision of medical care, are subject to VAT. Accordingly it has been registered for VAT since 1 December 2002.

30 5. Clients are referred to Mr Fenwick by their General Practitioners (“GPs”) or psychiatrists and he regularly liaises directly with the referrer on the client’s care, maintenance and restoration in addition to their specific medical needs. He described the process in his letter of 15 February 2013 to HM Revenue and Customs (“HMRC”) as follows:

35 I work closely alongside medical professionals as they refer the majority of patients to me. If necessary I will refer patients back to the referring GP or psychiatrist to assess the patient medically. If my patients approach me directly, I request the name of their doctor or GP and I will liaise with them as a matter of professional courtesy. I also oversee patients continued care should they have been referred on to
40 hospital or treatment centres.

6. In 2000, to enable Mr Fenwick to retain his licence with the United Kingdom Professional Certification Board of Alcohol and Drug Counsellors, it was necessary for him to have weekly supervision meetings to discuss patient cases and review the most appropriate therapeutic action for the patient. His supervisor since that time has
5 been Mr Richard Gill who is a member of the UK Council for Psychotherapy and Jungian Analysis and a certified UK Council for Psychotherapy Supervisor and Training Supervisor in the College of the Bowlby Centre for Attachment based Psychoanalytic Psychotherapy. It is accepted that Mr Gill, like Mr Fenwick, is not on the register or roll of any of the bodies specified in Item 1, Group 7 of schedule 9
10 VATA.

7. In addition, since 1996, Mr Fenwick has had a professional relationship with Dr Richard Wolman M.B. Ch.,B a consultant psychiatrist with whom he discusses client case loads and medical needs and who regularly refers clients to him. Although not reduced to a written agreement, from 9 July 2012 Dr Wolman “officially” agreed that
15 he would have a “supervisory role” in this professional relationship in which he and Mr Fenwick speak as often as the circumstances require.

8. As he had obtained Dr Wolman’s agreement to act in a supervisory role, on 7 July 2012 Mr Fenwick wrote to HMRC requesting that subsequent supplies of the partnership be treated as they now fell within Note 2, part 7 of schedule 9 VATA. However, HMRC did not accept that this was the case.
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9. Following further correspondence HMRC undertook a review of their decision and notified Mr Fenwick of the outcome of this review in a letter dated 17 October 2012. This was to uphold the decision that not to grant the partnership exemption from VAT registration on the grounds that it was not accepted that the arrangement with Dr Wolman was “in the true sense of the word, supervisory in nature.”
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10. On 9 November 2012 Mr Fenwick appealed to the Tribunal.

11. The issue before us is whether Mr Fenwick is directly supervised by a person who is so registered or enrolled on register or roll of health professionals included in paragraphs (a) to (d) of Item 1 Group 7 of Schedule 9 VATA.

30 12. Although “directly supervised” is not defined in the legislation it is clear from the decisions of the VAT and Duties Tribunal (the predecessor of this Tribunal in respect of VAT appeals) in *Carragh Pittam v Customs and Excise Commissioners* (1995) Decision No. 13268 and *Elder Home Care Ltd v Customs and Excise Commissioners* (1993) Decision No. 11185 that direct supervision does not involve
35 standing over the person at all times but is a matter of fact and degree having regard to the circumstances of the case.

13. In the *Elder Home Care* case the Tribunal held that it was sufficient if the supervisor checked on the employee as often as necessary in the circumstances with a system to enable the employee to contact the supervisor as required. As such, and
40 given their weekly supervision meetings, we consider that Mr Fenwick is directly supervised by Mr Richard Gill.

14. However, as Mr Gill is not registered or enrolled with any of the bodies specified in Item 1, Group 7 of schedule 9 VATA this cannot bring the partnership within the exemption and it is therefore necessary to consider the relationship between Mr Fenwick and Dr Wolman and the GPs and psychiatrists who clearly are registered or enrolled with the bodies to which the legislation refers.

15. Having heard from Mr Fenwick it seems to us that his relationship with the GPs and psychiatrists who refer their patients to him is somewhat akin to that of counsel and his or her instructing solicitor. In both cases, although there are two professionals acting and working together in the best interests of their mutual client, it cannot be said that one is under the direct supervision of the other.

16. We also consider that there is a similar relationship between Mr Fenwick and Dr Wolman. Although Dr Wolman is available to Mr Fenwick to discuss client caseloads and their medical needs, as often as the circumstances require, whether or not the clients have been referred by him we are unable to find that Mr Fenwick is acting under the direct supervision of Dr Wolman.

17. As such the supplies made by the partnership cannot fall within Group 7 of schedule 9 VATA and it is not eligible for exemption from registration under schedule 1 VATA.

18. We therefore dismiss the appeal.

19. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

JOHN BROOKS
TRIBUNAL JUDGE

RELEASE DATE: 22 October 2013