

Medical Services not exempt when provided via Limited Company

The UK Court case involving Mainpay has thrown into doubt whether the exemption for medical care, which falls within Group 7 Schedule 9 VATA 1994, extends to situations where that care is provided by medical professionals via a limited company.

The appellant, Mainpay, provides medical professionals to an intermediary agency company, which in turn had separate contracts with NHS Trusts. Mainpay treats the medical professionals as employees, taxing them under Pay-As-You-Earn (PAYE) and paying National Insurance Contributions (NICs).

Mainpay treated its services as VAT-exempt medical care on the basis that control of the medical professionals remained with Mainpay. The medical professionals exercised control over clinical decisions meaning the activities of those professionals were attributed to the economic activity of Mainpay. This meant that Mainpay did not transfer control of the medical practitioners, which would have been a supply of staff, but instead supplied clinical decision-making, which was medical care.

The Court rejected Mainpay's argument, ruling that the medical professionals were in fact under the operational control of the NHS Trusts. The NHS Trusts set the operational framework and policies the medical professionals were working. Mainpay did not play any part in the treatment given, did not supervise its medical professionals or decide who worked where or what their rate of pay was, (this was done by the agency and NHS trusts), and did not have any relationship with the patients to whom medical care was provided.

Mainpay was therefore not supplying medical care but was making a VATable supply of staff.

While there are specific circumstances to this case, the implications for other medical professionals who work via a Limited Company could be significant. If this potentially affects you then please contact Adam Lloyd at Monahans.

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