What are the VAT rules regarding dental appliances in a dental lab?

By Ian Cumberland - Lab Owner and DLA Member.

This article follows on from last month's membership email regarding a potential issue VAT on bleaching trays.

Firstly, I would like to thank all the members who contacted the DLA regarding this matter; we really do appreciate your support and engagement. I have been given the task to provide members with an overview of the current VAT guidance/law, which is the purpose of this email. I must emphasise here that this is a very specialist area of tax law, and whilst the office and myself have spent a lot of time researching this matter, we are not VAT experts.

For as long as I can remember, dental labs have been exempt from VAT; we don't charge VAT on our sales, but this means we can't claim VAT back on our purchases. This is a pet hate of mine; I personally wish the suppliers would advertise the gross (or final) price, instead of charging what we think will be £100 only to find out it is £120.

Following COVID-19, the DLA were informed that HMRC could be targeting certain sectors and looking at grey areas of VAT to claw back VAT on products which have always been perceived to be exempt. There are a number of court cases taking place in the medical sector, and my best guess is that they are closely looking at the dental sector as well. For the vast majority of our members, I don't think this will be an issue, however for those members who provide dental appliances which are not defined specifically in HMRC law, we would advise you to seek VAT specialist advice.

So, what are the rules regarding VAT?

In the UK, Schedule 9 of VAT Act 1994 provides the legal framework for supplies which are exempt from VAT.

Group 7 of Schedule 9 covers Health and Welfare activities, and items 2 and 2A of Group 7 cover supplies made by dentists and dental technicians:

"These items state:

2 The supply of any services consisting in the provision of medical care, or the supply of dental prostheses, by

(a) a person registered in the dentists' register;

(b) a person registered in the dental care professionals register established under section 36B of the Dentists Act 1984;

2A The supply of any services or dental prostheses by a dental technician. To summarise the legislation above, VAT law exempts supplies of:

- *Medical care supplied by registered dentists/dental care professionals (Services)*
- *Dental prostheses supplied by registered dentists/dental care professionals (Goods)*
- **Services supplied by dental technicians (Services)**
- **Dental Prosthesis supplied by dental technicians (Goods)"**

To summarise, VAT law exempts dental prosthesises supplied by a dental technician or services supplied by dental technicians

We will look at dental prosthesis supplied by dental technicians first.

As per the Per HMRC - VATHLT2490:

"Dentists: Dental prostheses -The Oxford English Dictionary definition of a 'prosthesis' is 'an artificial replacement for a part of the body'. VAT exemption therefore applies to the supplies of dental goods which are for the dental benefit of the patient (as summarised under "exempt" below), when these are supplied by a dentist or by a dental technician. It does not however, extend to sales of toothpaste, toothbrushes, dental floss etc, nor to display, demonstration, or wholesale supplies.

Exempt items are –

- *Partial and full dentures;*
- *Fixed and removable bridges;*
- *Crowns and inlays;*
- *Orthodontic appliances;*
- *Obturators, splints and other specially designed appliances;*
- *Dental palates;*
- *Individual artificial teeth;*
- *and Gold when supplied as part of the above"*

For example, dentures are clearly defined on the list, so they are exempt; this also goes for bridges, crowns, and inlays. The grey area could be 'other specially designed appliances, orthodontic appliances'. The definitions of which could be down to HMRC interpretation .

HMRC provide another definition, provided by the EU VAT Committee Working Paper 880, section 3.2.2, which states:

"A dental prosthesis is an intraoral prosthesis used to restore (reconstruct) intraoral defects such as missing teeth, missing parts of teeth, and missing soft or hard structures of the jaw. Dental technology distinguishes, for instance, between fixed prostheses (including crowns, bridges and implants), removable prostheses (including dentures and removable partial dentures) and maxillofacial protheses"

This definition is very similar to the one mentioned earlier, but seems to be focused on less cosmetic dental appliances.

So, what happens if you provide a dental appliance that isn't included in the above definitions or is in the grey area?

The DLA would recommend contacting a VAT specialist, however for the vast majority of members we do not think VAT would apply as you would only be applicable if you provide more than the VAT threshold, which is currently £85,000, of that particular type of product. For example, if HMRC says we are now to charge VAT on bleaching trays, if you sell less than £85,000 worth of bleaching trays in the past 12 months and have never exceeded the VAT threshold previously, you don't need to do anything. Those who would be close to, or indeed over, the £85,000 would need to look back historically.

Services supplied by dental technicians (Services) are exempt from VAT.

The DLA believes that this is a grey area and I know this is one which could be debated for many hours. As lab owners, we believe we provide a service for our clients, however legally we follow the prescription of a dentist and therefore manufacture a dental appliance based on that prescription. We all know in the real world, we often change prescriptions with the dentist's permission. There is no doubt to me as a lab owner that we provide a service to dentists and therefore all our income is exempt from VAT, however following conversations with VAT experts and reading the HMRC guidance, I can understand why someone outside of our profession could perceive us as only manufacturing dental appliances; as such, we need to be very careful of dental appliances which are not specifically defined in the definitions above.

Please note that the above is only my personal opinion as Ian Cumberland, lab owner; the DLA Board and DLA office do not share the same opinion. They are more pragmatic and recognise that these areas of grey could be perceived as low hanging fruit for HMRC.

I would like to thank the member in question who is currently fighting the profession's corner on VAT; to date they have spent a considerable amount both financially and in terms of time, and I personally hope they get the outcome they want.

Finally, I would like to say a massive thank you to our membership for their loyal and continued support, especially over the past 24 months. The DLA board and office will continue to throw the kitchen sink at Covid, and together we will get through these dark times.