

“Kingscrest: Commercial Residential Homes for Children and Adults with Learning Disabilities not Exempt as Providers of Activities Closely Related to Hospital and Medical Care”

By Peter Mantle
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The High Court (Pumfrey J.) has upheld the decision of the VAT & Duties Tribunal that the supplies made by 2 commercial residential homes were not exempt under item 4, Group 7, Schedule 9 of VATA, which exempts certain health services. The operators were entitled to be registered and to recover input tax. This was commercially advantageous to the particular homes. They made supplies almost exclusively to local authorities, which can recover any VAT that they are charged (even VAT incurred for non-business purposes). The decision could, however, be less welcome to equivalent homes that make supplies to private individuals. The high proportion of labour costs would make output tax payable far in excess of any input tax deductible over the long term.

The case was somewhat unusual in that it was the Commissioners who contended that the supplies were exempt. Although the Commissioners appeal was unsuccessful, its result should be reassuring to most recipients of residential care services previously treated as exempt. Not only did the High Court endorse the President's view that the exemption under item 4 is apt to cover nursing homes and convalescent homes, but it added clinics to that list. Pumfrey J. accepted the Commissioners' contention, there could be overlap between the various exemptions in Group 7 (Health & Welfare) and the paragraphs of Article 13A (1) of the Sixth Directive which it implements, a position which had been left in doubt by the tribunal. It is now established that the fact that a service provided by a charity would be exempt under item 9, as a welfare service, does not prevent that same service being exempt under item 4 if supplied commercially. Despite the substantial adverse media comment, which followed the tribunal's decision, the appeal judgment demonstrates that this case turned largely on its own facts. Exactly equivalent commercial homes are

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likely to be few. It is understood that the Commissioners will not appeal.

A final thought:

- the evidence as it emerged at the tribunal hearing suggested a much lower level of care of a very basic kind was provided by the 2 homes than had at first appeared. It may be that certain residential homes, such as children's homes, would not be obliged or entitled to register as makers of single supplies of services exempt under group 1 of Schedule 9, if accommodation predominates. That issue remains to be explored.

[The Commissioners were represented by Nicholas Paines QC and Peter Mantle]