



Neutral Citation: [2025] UKFTT 00462 (TC)

Case Number: TC09499

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Location: Taylor House, London

Appeal reference: TC/2024/01608
TC/2024/02229
TC/2024/02344

*VAT — exemption – whether Aligners are dental prostheses- items 2 and 2A, Group 7,
Schedule 9 to the Value Added Tax Act 1994– meaning of prosthesis - appeal allowed*

Heard on: 27 - 29 January 2025

Judgment date: 24 April 2025

Before

**TRIBUNAL JUDGE GREG SINFIELD
TRIBUNAL MEMBER SHAMEEM AKHTAR**

Between

**ALIGN TECHNOLOGY SWITZERLAND GMBH
ALIGN TECHNOLOGY BV**

Appellants

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Valentina Sloane KC and Ben Elliott, counsel, instructed by Ernst & Young LLP

For the Respondents: Michael Ripley, counsel, instructed by the General Counsel and Solicitor to His Majesty’s Revenue and Customs

DECISION

INTRODUCTION

1. This appeal concerns the VAT liability of supplies of Invisalign clear aligners ('the Aligners') made by Align Technology Switzerland GmbH ('Align GmbH') and Align Technology BV ('Align BV'), referred to together simply as 'Align'.
2. Aligners are removable orthodontic appliances used by dentists to reposition a patient's teeth to correct misaligned teeth (also called malocclusion) thereby improving the functionality of the patient's bite. Each Aligner is bespoke and is specially designed by Align for an individual patient, based on a scan of the patient's mouth and in accordance with the treatment plan prescribed by the dentist. Treatment plans may last six months or longer. Although the Aligners are removable, patients are typically advised to wear them for between 20 and 22 hours a day and only to remove them for eating and physical activity.
3. In brief, Align treated the supplies of the Aligners as exempt supplies of dental prostheses within items 2 and 2A in Group 7 of Schedule 9 to the Value Added Tax Act 1994 ('VATA94'). The Respondents ('HMRC') issued decisions that supplies of the Aligners were chargeable to VAT at the standard rate. Align appealed to the First-tier Tribunal ('FTT') under section 83(1)(b) VATA94. The only issue in the appeal is whether the Aligners are dental prostheses within Items 2 and 2A of Group 7 of Schedule 9 VATA94.
4. Although the appeal only concerned a single issue, that made it no less difficult to resolve. At the hearing, Ms Sloane KC and Mr Elliott appeared for Align, and HMRC were represented by Mr Ripley. We are grateful to all counsel for their detailed and helpful submissions both written and oral.
5. For the reasons set out below, we have decided that the Aligners are dental prostheses for the purposes of VAT and, accordingly, Align's appeals are allowed.

LEGISLATION

6. Section 31(2) VATA94 provides that the goods or services of a description for the time being specified in Schedule 9 are exempt. Group 7 of Schedule 9 to VATA94 provides that the following are exempt from VAT:

“Item no. 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;

Item no 2A.

The supply of any services or dental prostheses by a dental technician.”

7. Items 2 and 2A of Group 7 of Schedule 9 VATA94 implemented Article 132(1)(e) of Directive 2006/112/EC ('the Principal VAT Directive' or 'PVD') provides:

“Exemptions for certain activities in the public interest

1. Member States shall exempt the following transactions:

...

(e) the supply of services by dental technicians in their professional capacity and the supply of dental prostheses by dentists and dental technicians...”

8. The legislation requires the dental prostheses to be supplied by a person registered in the dentists' register or the dental care professionals register or by a dental technician. Align are not dentists or dental technicians but they do employ dental professionals registered in the UK. HMRC confirmed before the hearing that they did not intend to argue that the supplies of Aligners were not exempt because they were not made by a dentist or by a dental technician but they reserved their right to raise the issue in any subsequent proceedings. Align did not accept that it would necessarily be possible for HMRC to raise this issue in other proceedings. However, it is not necessary to resolve that question in this decision.

BACKGROUND

9. The procedural background to this appeal is set out at [6] – [45] of an earlier decision of the FTT, [2024] UKFTT 1100 (TC), dealing with case management matters. The background has no bearing on the issue to be determined and need not be set out again for the purposes of this decision.

EVIDENCE AND FINDINGS OF FACT

10. Align served four witness statements which we read before the hearing. The witnesses were as follows.

- (1) Mr Zelko Relic, Executive Vice President and Chief Technology Officer for Align, based in San Jose, California, USA;
- (2) Mr Matthew Clover, dentist and specialist orthodontist, Director of Clinical Practice at the British Orthodontic Society and member of the General Dental Practice Committee at the British Dental Association;
- (3) Mr Roshan Patel, Finance Director of Align Technology UK Ltd; and
- (4) Mr James Tandy, Senior Director of Finance for Europe, the Middle East and Africa for Align GmbH.

11. Mr Relic dealt with the design and use of the Aligners in some detail in his witness statement. At the hearing, he expanded on some points in the statement in response to questions from Ms Sloane, who appeared on behalf of Align, and answered questions put by Mr Ripley, who appeared for HMRC, in cross-examination.

12. In his statement, Mr Clover described the implications for the NHS funding model of the additional cost of VAT if it were to be found to be chargeable on the Aligners. However, in cross-examination at the hearing, Mr Ripley mostly asked Mr Clover about the use of the Aligners.

13. Mr Patel described the impact that changing from making exempt supplies to having to charge VAT had on Align's sales of the Aligners. Mr Patel said nothing about whether the Aligners are dental prostheses and Mr Ripley had very few questions for him at the hearing.

14. In his witness statement, Mr Tandy described the history of Align's dealings with HMRC over the years and summarised correspondence between them. Although that correspondence referred to the issue of whether the Aligners are dental prostheses, it added nothing to the other evidence and submissions. There was no challenge to the evidence of Mr Tandy and he did not give evidence in person.

15. There was not really any dispute about the nature and use of the Aligners. As stated above, the appeal turned on the meaning of 'dental prostheses' and, more specifically, whether the Aligners were prostheses. It is, however, useful to describe the Aligners and their use. On the basis of the written and oral evidence, we find the material facts about the Aligners to be as follows.

16. The Aligners are removable orthodontic appliances used by dental professionals to treat malocclusion in patients by repositioning their teeth. As part of the Invisalign system, a patented solution, dental professionals use advanced 3-D scanners and digital software to scan patients' mouths. These scans are then used to manufacture the Aligners using a proprietary and patented invisible aligner material, the SmartTrack material. The Aligners are bespoke products specially designed and produced for each individual patient. Dentists use the bespoke Aligners to treat patients as part of a sequenced treatment plan that restores occlusal (bite) functionality. The Aligners are designed to reposition teeth and to respond to each patient's unique characteristics to produce the desired clinical outcome. Depending on the needs of each patient and their clinical situation, the Aligners can have specific attachments and/or features designed to deliver more predictable teeth movements. Additional aligner features include 'Bite Ramps', 'Precision Cuts' or 'Power Ridge' which are designed to improve the efficiency of the appliance during treatment.

17. Once the Aligners have been manufactured and delivered to the dentist, the patient will arrange an appointment and the dentist will check the fitting of the Aligners and confirm the treatment plan. The treatment may take as little as six months, but it can differ depending on the complexity of the patient's condition and the average is around 18 months. During the course of treatment, the patient will visit the dentist regularly to check the progress of the re-alignment and to collect the next set of Aligners. The patient will usually change their Aligners weekly. The difference between each set of Aligners as treatment progresses is small. The patient is required to wear the Aligner for 20 to 22 hours a day, only removing the Aligner for eating and drinking (this is primarily for hygiene reasons). The Aligners do not wear out as they are changed so frequently.

18. Aligners can be used to treat a number of conditions such as: misalignment between the teeth of the upper and lower dental arches when they bite together; open bite; overbite; underbite; crossbite; crowding; narrow or asymmetrical arches; and spacing problems. When there is malocclusion, the functionality of the bite is damaged, and the Aligners are used to replace the dysfunctional bite with a more functional bite. Malocclusion can be associated with functional difficulties with chewing (mastication) and with various medical issues, for example:

- (1) Inadequate regulation of blood glucose levels;
- (2) Speech issues;
- (3) Traumatic dental injury;
- (4) Various temporomandibular disorders;
- (5) Tooth surface loss;
- (6) Periodontal disease; and
- (7) Breathing difficulties.

19. Some people may wear their Aligners because they want to improve their smile but an imperfect smile may often be a sign that their bite is not functioning properly. Equally, some patients may not realise that they have a functional problem but they do. Aligners restore the natural function of the teeth eg enabling or improving biting and chewing of food, breathing and talking.

MEANING OF DENTAL PROSTHESES

20. As stated above, the only question is whether the Aligners are dental prostheses within Items 2 and 2A of Group 7 of Schedule 9 VATA94. There is no dispute that the Aligners are used in relation to a person's teeth and are, therefore, 'dental'. The real focus of the dispute

in this appeal is whether the Aligners are ‘prostheses’ for the purposes of Items 2 and 2A of Group 7 of Schedule 9 VATA. There is no definition of ‘dental prostheses’ in the EU or UK VAT legislation or case law. However, the meaning of that term has been considered by the EU Advisory Committee on Value Added Tax (‘the EU VAT Committee’) and we discuss their views at [36] – [44] below.

21. Where a term is undefined in VAT legislation, its meaning falls to be determined “by considering its usual meaning in everyday language, while also taking into account the context in which it occurs and the purposes of the rules of which it forms part” (see *Leisure, Independence, Friendship and Enablement Services Ltd and The Learning Centre (Romford) Ltd v HMRC* [2020] EWCA Civ 452 at [99]). The same point was also made by the CJEU in Case C-228/20 *I GmbH v Finanzamt H* (*‘I GmbH’*) at paragraphs 33 and 34 (references removed):

“33 In accordance with settled case-law, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part.

34 In that regard, it should be borne in mind that the terms used to specify the exemptions laid down in Article 132 of the VAT Directive are to be interpreted strictly, as they are a departure from the general principle that VAT is to be paid on each supply of services made for consideration by a taxable person. However, the interpretation of those terms must comply with the requirements of the principle of fiscal neutrality inherent in the common system of VAT and be consistent with the objectives underlying those exemptions. Accordingly, the requirement of strict interpretation does not mean that the terms used to specify the exemptions referred to in Article 132 must be construed in such a way as to deprive the exemptions of their intended effect.”

22. It follows that when considering the meaning of ‘prostheses’, we must consider the meaning of the word in everyday language; the context in which it occurs; and the objectives of the provision of which it forms part. As it is used to describe an exempt supply, we must interpret the word strictly but not in such a way as to deprive the exemption of its intended effect but consistently with the objectives underlying the exemption and in compliance with the principle of fiscal neutrality.

23. During the hearing, we were referred to a variety of dictionary definitions of ‘prosthesis’, including the following:

- (1) Oxford English Dictionary - “An artificial replacement for a part of the body.”
- (2) Oxford Dictionary of English - “An artificial body part such as a limb, heart, or a breast implant.”
- (3) Merriam Webster Dictionary - “an artificial device to replace or augment a missing or impaired part of the body.”
- (4) Oxford Reference – “any artificial device that is attached to the body as an aid. Prostheses include bridges, dentures, artificial parts of the face, artificial limbs, hearing aids and cochlear implants, implanted pacemakers, and many other substitutes for parts of the body that are missing or nonfunctional.”

24. We were also referred to definitions of ‘dental prosthesis’ in specialist medical dictionaries:

- (1) Taber’s Medical Dictionary - “A dental appliance used to restore soft and hard oral tissue. The prosthesis may be internal or external to the oral cavity. Examples

include dentures, partial dentures, orthodontic retainers, obturators, fixed bridges, and removable bridges.”

(2) Black’s Medical Dictionary - “any artificial replacement of teeth. There are three main types: a crown, a bridge and a denture. [The entry then goes on to describe each one.]”

(3) Oxford Dictionary of Dentistry – “An artificial appliance used as a replacement for a body part or to correct a congenital abnormality. In dentistry this includes partial and complete dentures, bridges (fixed prostheses), and orthodontic appliances.”

25. Taber’s Medical Dictionary includes ‘obturators’ in its definition of dental prosthesis. We were not shown any dictionary definition of “obturator” but Mr Clover, a witness for Align and a specialist orthodontist, explained that an obturator is something that is placed in a person’s mouth to replace the hard palate which may be missing due to congenital deformity, disease or surgery.

26. Taber’s Medical Dictionary and the Oxford Dictionary of Dentistry refer to ‘orthodontic retainers’ and ‘orthodontic appliances’ in their definitions of a ‘dental prosthesis’. The Oxford Dictionary of Dentistry defines ‘orthodontic appliance’ as “[a]n appliance to move teeth as part of orthodontic therapy” which may be fixed or removable.

27. Align also relied on an article on dental prosthesis in Wikipedia. It included ‘orthodontic appliance’ as an example of a dental prosthesis. We do not regard the Wikipedia entry as authoritative or helpful and gave it no weight in this case. This was because it is well known that anyone can edit Wikipedia entries and the examples, including “orthodontic appliance”, are unreferenced. Further, a box at the top of the article states:

“This article needs more reliable medical references for verification or relies too heavily on primary sources. Please review the contents of the article and add the appropriate references if you can. Unsourced or poorly sourced material may be challenged and removed.”

28. The term ‘dental prostheses’ appears in the context of an exemption for the supply of dental prostheses by dentists and dental technicians. We consider that the relevant meaning of ‘prosthesis’ for the exemption is the one that is used in the context of dental treatment. For that reason, while bearing in mind the definitions of ‘prosthesis’ in the general dictionaries, we have particular regard to the definitions of ‘dental prosthesis’ in the specialist medical dictionaries.

29. We note that, while all the definitions of a prosthesis in the general dictionaries refer to or include examples of replacements for a missing part of the body, two of them also include devices that do not replace a body part but improve its function. The Merriam Webster Dictionary specifically defines prosthesis to include an artificial device to augment an impaired part of the body. The examples given in the Oxford Reference include hearing aids and implanted pacemakers: hearing aids and pacemakers do not replace missing ears and hearts but improve their ability to function.

30. Two of the three specialist dictionaries include orthodontic appliances in their definition of dental prosthesis. Orthodontic appliances do not replace teeth but cause them to move. Only Black’s Medical Dictionary restricts the definition of dental prosthesis to an artificial replacement of teeth. It is the oldest (first published in 1906) of the specialist dictionaries shown to us and contains the narrowest definition. It is not clear when the definition in Black’s Medical Dictionary was last reviewed but we infer that the definitions in Taber’s Medical Dictionary and the Oxford Dictionary of Dentistry are more recent. In our

view their definitions are more likely to represent the current view of doctors and dentist about the meaning of ‘dental prosthesis’ and we give them greater weight.

31. Taking into account the ordinary meaning of ‘prostheses’ and the fact that the word is used in the context of the provision of dental treatment, we conclude that ‘dental prostheses’ includes orthodontic appliances used to move a person’s teeth. HMRC accept that the Aligners are orthodontic appliances that are used by dentists to straighten a person’s teeth. However, that does not determine this appeal. We must also consider whether including the Aligners in the term ‘dental prostheses’ is consistent with the purpose of the exemption.

32. There is no doubt about the purpose of the exemption for the supply of dental prostheses. It was clearly stated by the CJEU in Case C-144/13 *VDP Dental Laboratory NV v Staatssecretaris van Financiën* (‘VDP’) at paragraph 46:

“46. The exemption of the supply of dental prostheses made by dentists and dental technicians is intended to ensure that the supply of health-related products does not become inaccessible by reason of the increased costs of those products if their supply were subject to VAT (see, concerning Article 13A(1)(b) of the Sixth Directive, now Article 132(1)(b) of the VAT Directive, judgment in *Commission v France*, C 76/99, EU:C:2001:12, paragraph 23).”

33. The Aligners are health-related products that are supplied by dentists and dental technicians to their patients in the course of treatment. The purpose of the exemption is to ensure that health-related products are affordable and accessible. We regard HMRC’s proposed interpretation of ‘dental prostheses’ to exclude orthodontic appliances such as the Aligners as unduly restrictive. We consider that such an interpretation would deprive the exemption of its intended effect which is to ensure that supplies of health-related products do not become inaccessible because the cost is increased by an amount of VAT. We consider that treating the Aligners as ‘dental prostheses’ is consistent with the objectives of the exemption in Article 132(1)(e) than HMRC’s proposed interpretation because the cost of supplies of the Aligners by dental professionals is not made more expensive by the addition of VAT.

34. In our view, considerations of fiscal neutrality do not assist in determining whether the Aligners do or do not come within the term ‘dental prostheses’ in this case. Align’s position was that excluding supplies of the Aligners by dentists and dental technicians from the exemption would not be in compliance with the principle of fiscal neutrality as it would lead to materially similar dental treatments being treated differently for VAT purposes. Align contended that the Aligners are materially identical to dental splints, which HMRC accept are dental prostheses. We consider that the issue in this case is a definitional one (see paragraphs 28 and 29 of the judgment in *VDP*). The Aligners either are dental prostheses or they are not. If they are not then it must be assumed that the EU deliberately decided to exclude them from the exemption and no question of fiscal neutrality arises. In any event, we did not have enough evidence to form a view on whether the Aligners and dental splints meet the same needs from the point of view of a typical consumer and whether any differences between them do not have a significant influence on the decision of the average consumer to have one rather than the other (see Joined Cases C-259/10 and C-260/10 *HMRC v The Rank Group plc* [2012] STC 420).

35. Taking into account the ordinary meaning of ‘prostheses’, the fact that the word is used in the context of dental treatment and that the purpose of the exemption is to ensure that the supply of health-related products is not made more expensive by the addition of VAT, we conclude that ‘dental prostheses’ includes the Aligners in this case.

36. We now consider some EU VAT Committee documents which refer to dental prostheses and were relied on by HMRC and whether any views expressed in them cause us to alter our conclusion in the previous paragraph. The EU VAT Committee is a consultative body established under Article 398 of the PVD, which consists of representatives from each of the EU member states and also the European Commission. The primary role of the EU VAT Committee is to assist in the uniform application of VAT across the EU through guidelines and consultations in respect of the PVD.

37. The first document is VAT Committee Working Paper No 880 dated 23 September 2015. The paper was a response to questions submitted by the Netherlands concerning the scope of Article 132(1)(e) PVD. One of the questions concerned the meaning of ‘dental prostheses’. HMRC relied on passages from paragraph 3 of the paper which included the following:

“A prosthesis is a replacement made of exogenous, inanimate material aiming at the best possible substitution of a body part in form and/or function. 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.

...

A brace is a device by which a malposition of the jaw or of teeth is corrected. It does not substitute a body part as required by the definition mentioned above. A brace is an aliud in relation to a prostheses and cannot be covered by the literal meaning of the term dental prostheses used in Article 132(1)(e) of the VAT Directive. According to the Commission services, including the supply of a brace within the scope of the tax exemption in question would not be justified in light of the principle of strict interpretation.”

38. We understand the word ‘aliud’ in the passage above to mean ‘something else’ or ‘another thing’. We consider that it is important to recognise that the paper is a working paper, not settled guidance, and that paragraph 3 is the Commission services’ opinion, not the concluded view of the Committee. This is shown by paragraph 4 of the paper which simply requests the delegations from the member states to give their opinion on this matter.

39. The VAT Committee considered the Working Paper at its meeting on 26 October 2015 and we were provided with the minutes of that meeting. The minutes recorded that there was a discussion about dental prostheses but no concluded view and that draft guidelines would be prepared.

40. The third document is an extract from Guidelines resulting from meetings of the VAT Committee up to 10 July 2024 which included the conclusions of the meeting in 2015 that considered Working Paper No 880. It was common ground that, although they are not binding, the EU VAT Committee’s guidelines nevertheless constitute an aid to the interpretation of the PVD (see Case C-184/23 *Finanzamt T v S*). This was reflected in the footer to each page which contained the following statement:

“ATTENTION: Please bear in mind that guidelines issued by the VAT Committee are merely views of a consultative committee. They do not constitute an official interpretation of EU law and do not necessarily have the agreement of the European Commission. They do not bind the European Commission or the Member States who are free not to follow them.”

41. In relation to dental prostheses, the guidelines record (emphasis in original):

“The VAT Committee **almost unanimously** agrees that the term ‘dental prostheses’ within the meaning of Article 132(1)(e) of the VAT Directive shall be seen as broad enough to also include the supply of parts of a dental prosthesis which are typically manufactured by dentists or dental technicians. According to the **almost unanimous** view of the VAT Committee it, however, shall not encompass the supply of dental devices and of material which is used to manufacture dental prostheses.”

42. The key part of the above passage from HMRC’s point of view is that the term ‘dental prostheses’ within the meaning of Article 132(1)(e) “shall not encompass the supply of dental devices”. Paragraph 1 of the relevant part of the guidelines give “orthodontic appliances and auxiliaries such as mouthguards” as examples of dental devices. Mr Ripley submitted that the Aligners were dental devices which the EU VAT Committee considered do not fall within the term ‘dental prostheses’.

43. Mr Elliott submitted on behalf of Align that the EU VAT Committee is not a judicial or legal body. Although its guidance can be looked at as aid to interpretation, the weight to be given to it is limited and the FTT can and should form its own view based on legislation and case law if it does not agree with the VAT Committee.

44. Mr Ripley accepted that the views of the EU VAT Committee are authoritative but not binding, and that is clear from the footer in the guidelines. We have come to the conclusion that we should not follow the view expressed in the guidelines that ‘dental devices’ are not ‘dental prostheses’. We reach this view because that view was clearly not held by all of the member states and the guidelines do not contain any analysis of competing views or reasons for the ‘almost unanimous’ conclusion.

CONCLUSION

45. Having considered the parties’ submissions and the different materials presented to us, we conclude that the Aligners are dental prostheses for the purposes of VAT.

DISPOSITION

46. For the reasons set out above, the appeal is allowed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

47. 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.

Release date: 24th APRIL 2025