



## Tax Insights

# VAT news – January 2018

### Free events held by charity not economic activities – input tax recovery denied

Charities and not-for-profit bodies that hold free events may need to review their input tax recovery on such events, to ensure that they are entitled to reclaim this VAT.

The case involving *Yorkshire Agricultural Society* (the Society) considered whether two events run by the Society, 'Countryside Days' and 'Careers in Focus', were non-business activities of the Society and whether HMRC were correct to refuse input tax recovery on costs related to the events. Both events were free to attend, and the Society contracted with third parties to provide catering and ice-cream at the events. The income the Society received under the contract with the caterers was estimated to be in the hundreds of pounds. The purpose of the 'Countryside Days' event was to provide school children and teachers with hands-on experience of agricultural and rural activities, whilst the aim of the latter event was to showcase careers in agriculture, rural and allied industries for secondary school children.

The First Tier Tribunal (FTT) determined that the holding of the two events, and the supply of admission to these events was not an economic activity; there was no direct link between those services and the Society's share of the catering income. Moreover, the FTT stated that the two events fell within the charitable objectives of the Society – i.e. to support and promote agriculture, rural and allied industries, and to champion the role of farmers. The FTT also expounded that the two events were gratuitous in nature, as

...Continued overleaf

opposed to a supply of services for a consideration. The link to the catering income was either indirect, or if there was a direct link, the Tribunal expressed the view that the income received from the events would be considered de minimis.

The FTT also considered whether the two events formed part of the Society's economic activities as a whole; it ruled that there was no direct and immediate link between the costs of the events and the taxable income generated by the Society. It had been contended by the Society that the Great Yorkshire Show (the Show), which was an event which generated business income was promoted at the two events, (this was essentially their flagship event), but the FTT failed to see evidence supporting this. On this basis, the costs associated with the two events could not be regarded as a cost component of the Show or the economic activities of the Society, and the corresponding input VAT could not be recovered.

This decision may have implications for charities and not-for-profit bodies recovering input VAT on certain free events. Our Indirect Tax Team can assist if you have any concerns in this area.

### Supplies by a for-profit entity not covered by the VAT welfare exemption

For-profit bodies that provide welfare services may be affected by a recent court decision involving the VAT treatment of such services.

The Upper Tribunal (UT) has overturned the FTT's judgment in the *LIFE Services Ltd* (LIFE) case, stating that the welfare services provided were not covered by the VAT exemption. However, a key part of the appeal concerning fiscal neutrality was not heard, and must await further argument with the appeal in *The Learning Centre (Romford)* (TLC).

UK VAT law allows welfare services to be exempt where they are supplied by either a state-regulated body, a charity or a public body. LIFE, as a for-profit body, argued it was state regulated because it was monitored by Gloucestershire County Council. The UT found that the supplies made by LIFE were not 'state regulated', as such, as the 'regulation' was merely ensuring the service was properly carried out. The exemption, therefore, did not apply on this point alone.

LIFE also contended that as the VAT exemption for welfare services was permitted in Scotland, where they would be considered 'state-regulated', this created an uneven playing field thereby breaching the principle of fiscal neutrality. This point will be heard in the upcoming appeal in the TLC case and may result in the current LIFE judgment being overturned.

For-profit businesses providing welfare services should continue to monitor the result of the TLC case. Please contact our Indirect Tax Team if you have any concerns following this decision.

### HMRC publishes updated guidance on grants and contracts

The long-awaited [guidance](#) will be helpful to taxpayers who regularly deal with the old question 'is this a grant or a contract for services?'. The guidance covers a number of VAT case law decisions over the past three decades; however, the

...Continued overleaf

length of the guidance also points to the complexity of this area within VAT and taxpayers should also bear in mind the commercial reality of an agreement, as opposed to just considering the contractual terms.

Our Indirect Tax Team can assist in this area, if required.

## Harley-Davidson Europe – multiple supply of membership with range of benefits

Businesses that provide membership/subscription services to consumers giving subscribers the right to receive a variety of benefits may wish to review the VAT treatment of their subscriptions in light of this recent case.

The notion of single or multiple supplies is a contentious area of VAT. In the case involving *Harley-Davidson Europe Limited* (HDE), owners and enthusiasts of Harley-Davidson motorcycles subscribed to the Harley Owners Group (HOG) and in return received many benefits including but not limited to: quarterly hardcopy magazines, patches and pins, leather folder, restaurant discounts, touring maps and event guides.

HMRC argued that these benefits together formed a single supply of membership services subject to VAT at the standard rate. HMRC argued that the benefits were supplied as a single package and at a single price, the price for which did not vary with the extent of use of the various elements. HMRC also submitted that members did not just want the individual benefits: they wanted the cachet, status or goodwill from being associated with the Harley-Davidson brand and lifestyle represented by both Harley-Davidson and the HOG. This, HMRC claimed, was clear from the emphasis the brand put on lifestyle and community when marketing the group.

HDE, on the other hand, argued that the benefits should be treated as a multiple supply each liable to their own VAT treatment. The company maintained that even if a member's overall objective is affiliation, then membership was not the mechanism by which that objective was secured. Instead, affiliation is secured by means of purchasing and acquiring the individual benefits marketed by the group. In other words, HDE argued that what was supplied was the means of achieving any desired status or cachet, rather than the status itself.

The First Tier Tribunal ruled in favour of HDE, concluding that the membership subscription consisted of multiple supplies. The individual benefits were too significant in qualitative terms to allow the supply to be characterised as a single supply of membership. The aim of the typical consumer had to be considered, and this would be to obtain the individual items rather than the status. The items allow members to better enjoy their motorcycles, not to better enjoy their membership.

This case highlights the importance in evaluating the matter from the perspective of a typical consumer where there appears to be a single transaction from the customer's perspective, but the contractual arrangements give rise to separate supplies; or conversely, where there are multiple supplies from the customer's perspective which are presented as a single supply.

Our Indirect Tax Team can offer guidance in this area, if requested.

...Continued overleaf

## HMRC publishes guidance on the sporting exemption applying to local authorities

As previously reported, not-for-profit bodies governed by public law who supply sporting services may now be able to treat such supplies as exempt, following the Court of Justice of the European Union (CJEU) decision in the *London Borough of Ealing* (LBE) case.

In the UK, sporting services supplied to individuals by not-for-profit bodies are treated as exempt from VAT. However, this exemption does not extend to sporting services supplied by a local authority, on the basis that this could cause 'distortion of competition' with commercial providers. The CJEU found that the UK domestic law was not compatible with the Principal VAT Directive and that, consequently, local authorities could benefit from the sporting exemption as any other not-for-profit body can.

HMRC has now published [guidance](#) setting out their policy with regards to paying out claims of overpaid output VAT following the judgment. HMRC have also published Information Sheet [8/17](#) providing more information on the claims process.

Please contact our Indirect Tax Team if you have any queries regarding this.

## European Commission announces proposals for simpler VAT rules for SME businesses

The European Commission has produced a [fact sheet](#) detailing their proposals to update the current VAT system. The aim of the new rules is to build trust between EC Member States, to enable them to exchange more information, and to boost cooperation between tax authorities and law enforcement authorities. It is envisaged that this will go some way towards tackling VAT fraud more swiftly and efficiently.

The proposals build on the measures referred to in our November 2017 edition, and include providing EC Member States with more flexibility to set and adjust VAT rates, and to extend VAT exemptions that currently exist for domestic companies to small companies trading cross border.

At present, small companies suffer proportionally higher VAT compliance costs than large businesses, and exemptions from VAT compliance obligations across EC Member States are not consistent, distorting the level playing field. The proposals aim to introduce simpler rules for such businesses, leading to an increase in cross-border trading. There are also plans to introduce an EU-wide revenue threshold for small businesses which may offer them relief from VAT registration, VAT filing requirements, or invoicing obligations.

Please contact our Indirect Tax Team if you have any questions on this matter.

...Continued overleaf

## Affiliation fees for sports clubs – withdrawal of VAT concession

HMRC has published a [Business Brief](#) reminding taxpayers that the concession permitting sports clubs to treat affiliation fees as exempt from VAT is to be withdrawn from 1 April 2018. This will be of importance to clubs providing standard rated sporting services.

An affiliation fee is often charged to sports clubs by a sport's governing body/similar umbrella organisation. The sports clubs then charge this on to their members. Non-profit making clubs can treat this affiliation fee as exempt from VAT. Profit-making clubs however, are required to charge standard rated VAT.

The concession enabled profit-making commercial sports clubs to treat these recharges as disbursements – removing the need for them to account for the output tax. The aim was to create a level playing field for all sports clubs. However, since these recharges do not satisfy the legal definition of a disbursement, HMRC has decided to remove the concession following a recent consultation.

From 1 April 2018, the onward charge of affiliation fees by profit-making clubs will be subject to standard rated VAT, unless it meets the conditions for disbursements. The onward charge of affiliation fees by non-profit making clubs will continue to be exempt from VAT.

If you have any queries in relation to this, please contact our Indirect Tax Team.

## HMRC clarifies VAT treatment of Advanced Learner Loans

HMRC has published Business Brief [02/2018](#) clarifying the VAT treatment of Advanced Learner Loans from Student Finance England by educational bodies. This will be of importance to bodies who provide education and closely related services, and do not qualify as “eligible bodies” for VAT exemption purposes.

Essentially, Advanced Learner Loans are provided under a contract between the student and the Secretary of State for Education. The loan is repayable by the student, and is administered by Student Finance England. HMRC has confirmed that the loan is not a grant nor is it funding for the course provider, and it is subject to interest payments over time. Therefore, HMRC regards this as a loan which is ultimately funded by the student, not by the Secretary of State.

On this basis, standard rated VAT is due on the educational provider's full charge for the education provided to the student; the course cannot qualify for exempt treatment. The only exception to this is where the educational provider meets the criteria for “eligible bodies”.

This policy comes into effect immediately, so businesses affected by this that do not receive written communication from HMRC in the next few weeks should write to HMRC by 31 March 2018. Our Indirect Tax Team can offer assistance with this matter, if required.

...Continued overleaf

## Final judgment in the Littlewoods compound interest claims case

As mentioned in our November 2017 edition, the Supreme Court recently found in favour of HMRC in the *Littlewoods Ltd* (Littlewoods) case, rejecting the taxpayers claim to compound interest, and bringing this long-running saga to an end. HMRC has now released Business Brief [05/2017](#) confirming the conclusions.

The Court found that the statutory simple interest paid to Littlewoods on overpaid VAT was sufficient compensation, and it was not necessary for compound interest to be paid. The Court accentuated that this was compatible with the principles of EU law.

HMRC will therefore not be paying claims for compound interest on overpaid VAT, or any compensatory amounts other than simple interest.

Please contact our Indirect Tax Team if you have any questions in relation to this.

For more information please  
contact

**Nick McChesney**

Indirect Tax Partner

+44 (0)20 7516 2262

[nmccchesney@pkf-littlejohn.com](mailto:nmccchesney@pkf-littlejohn.com)

**Luigi Lungarella**

Indirect Tax Director

+44 (0)20 7516 2228

[lungarella@pkf-littlejohn.com](mailto:lungarella@pkf-littlejohn.com)

**Claire Gillings**

Indirect Tax Senior

+44 (0)20 7516 2448

[cgillings@pkf-littlejohn.com](mailto:cgillings@pkf-littlejohn.com)

**Jim Kocierz**

Indirect Tax Senior

+44 (0)20 7516 2460

[jkocierz@pkf-littlejohn.com](mailto:jkocierz@pkf-littlejohn.com)

PKF Littlejohn LLP, 1 Westferry Circus, Canary Wharf, London E14 4HD

Tel: +44 (0)20 7516 2200 Fax: +44 (0)20 7516 2400

[www.pkf-littlejohn.com](http://www.pkf-littlejohn.com)

This document is prepared as a general guide. No responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication can be accepted by the author or publisher.

PKF Littlejohn LLP, Chartered Accountants. A list of members' names is available at the above address. PKF Littlejohn LLP is a limited liability partnership registered in England and Wales No. 0C342572. Registered office as above. PKF Littlejohn LLP is a member firm of the PKF International Limited family of legally independent firms and does not accept any responsibility or liability for the actions or inactions of any individual member or correspondent firm or firms.

PKF International Limited administers a network of legally independent firms which carry on separate business under the PKF Name.

PKF International Limited is not responsible for the acts or omissions of individual member firms of the network.