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# VAT & Tax update

for the Arts & Culture sector

## Agenda

- The temporary 5% VAT rate – admission, hospitality and accommodation
- The cultural exemption – when it applies, how to break it and continuous monitoring
- Deduction of VAT on costs – The Royal Opera House Covent Garden Foundation case
- VAT updates – COVID-19, e-publications and digital advertising
- Gift Aid and other tax considerations

# The temporary 5% VAT rate

admission, hospitality and accommodation

## The announcement

On 8 July 2020, the Chancellor announced a temporary reduction in the VAT rate from 20% to 5% from 15 July 2020 to 12 January 2021, for:

- Admission to attractions
- Holiday accommodation
- Sales of food and non-alcoholic drinks

## Admission

The 5% rate will apply to admission charges to:

- Shows
- Theatres
- Circuses
- Fairs
- Amusement parks
- Concerts
- Museums
- Zoos
- Cinemas
- Exhibitions
- Other cultural events and attractions such as planetariums, botanical gardens, studio tours and factory tours

It does not apply to admission to sporting events.

Where an organisation currently applies the cultural exemption, the admission fees continue to be exempt.

## Tickets sold in advance

- Tickets sold before 15 July 2020 for an event that takes place during the reduced rate period (15 July 2020 to 12 January 2021) are liable to VAT at 20%
- HMRC view the sale of a ticket as a 'right to attend' – normal tax point rules applies
- However, any tickets sold during the reduced rate period (15 July 2020 to 12 January 2021), for events taking place after 12 January 2021 will be liable to VAT at 5%
- There are no anti-forstalling provisions to prevent this
- Where goods are supplied as part of the admission fee and are incidental, 5% VAT rate applies e.g a pint of beer for admission to a brewery tour

## Membership

- Where membership includes admission together with other benefits, and it could be argued that the primary benefit is admission, the subscription could be subject to 5% VAT
- However, this is fact specific and may need ruling from HMRC to have certainty

## Hospitality

The 5% VAT rate applies to:

- All on-site food and non-alcoholic drinks / catering (alcoholic drinks remain at 20%)
- Take away sales of hot food and hot non-alcoholic drinks (cold takeaway items remain at 0%)
- Food and non-alcoholic drinks sold as part of any catered events such as weddings and conferences

## Eat Out to Help Out scheme

- Entitles diners to a 50% discount on food and non-alcoholic drinks, of up to £10 per head, at any participating restaurant café or food service establishment on Mondays to Wednesdays from 3 - 31 August 2020
- Cultural and heritage venues and charities can register if they sell food on the premises in their own dining areas
- Registration became available on 13 July 2020 and will close on 31 August 2020
- If your venue registers for the scheme, the government will reimburse the full discount provided, but you are required to account for VAT on the full value of the meal

## Accommodation

- The 5% VAT rate applies to hotels, bed and breakfasts (B&Bs), similar establishments, holiday cottages, campsites and caravan parks
- If you have received deposits for accommodation or catering (e.g. for a wedding) before 15 July 2020, where the stay or the catering will be provided during the temporary rate reduction period (15 July 2020 to 12 January 2021), the change of rate rules allow you to treat the whole charge as 5% rated
- If you have issued a VAT invoice (B2B) for 20% on the deposit, you are required to issue a credit note for the 20% VAT and refund the customer within 45 days - the HMRC guidance on this is in [VAT guide 700 section 30](#)

## Administrative issues

- Changes to EPOS till systems, online booking engines and back-office functions need to be made
- Changes to information on sales invoices/VAT till receipts
- Pricing decisions – to pass on the reduction to customers or not – there is no legal obligation to do so
- Reverting back to 20% VAT on 12 January 2021 – the impact on VAT reporting for return periods that may have both 5% and 20% rate supplies
- Some businesses that currently only account for 20% VAT may have to change their retail and VAT accounting scheme

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# The cultural exemption

when it applies, how to break it and continuous monitoring

## The cultural exemption

- Exemption applies to admission charges by a 'public body' or an 'eligible body' to museums, galleries, art exhibitions and zoos, and theatrical, musical or choreographic performances of a cultural nature
- An eligible body must:
  - Be a non-profit making organisation
  - Apply any profits made from exempt admission fees to the continuance or improvement of the facilities
  - Be managed and administered on an essentially voluntary basis, and by people who have no direct or indirect financial interest in the activities of the body

## Breaking exemption

- Making exempt supplies means little or no input tax recovery, hence why some organisations choose to 'break' the exemption
- Ways to do this:
  - Appoint a member of salaried executive to the Board of Trustees
  - Use the services of a company where a trustee is a major shareholder
  - Demonstrate that surpluses are made from the cultural activities and use them to fund other activities
  - Structure such that the trading subsidiary is granting admission

## Breaking exemption – continuous monitoring

- Very important that any structure used to break exemption is continuously monitored – common problem areas:
  - Salaried chief exec on Board resigns and the organisation uses interims for a lengthy period of time
  - Services of the trustee's company are no longer used or changes to the Board are made
  - Surpluses no longer achieved and hence cannot be used to fund something else
  - Affects not only VAT recovery of costs as admission now exempt, but also capital goods scheme adjustments
  - Easy to overlook – suggest to review annually

# Deduction of VAT on costs

the Royal Opera House Covent Garden Foundation case

## Background

- HMRC took the view that production/exhibitions costs directly attributable to grant of admission
- Policy changed following challenges by Mayflower Theatre and Garsington Opera - HMRC issued Business Brief 62/09
- Many organisations use the 'standard' income-based partial exemption method
- HMRCs view is that production/exhibition costs have no direct link with bar/catering income
- Where difference is 'substantial', apply a method based on 'use'
- Broadly a sectorised calculation that omits income streams that are 'unrelated' to show/exhibition activity

## The Royal Opera House Covent Garden Foundation (ROH) case

- Following recent case law, ROH took the view that HMRCs position was incorrect
- ROH submitted a retrospective claim, which was rejected
- Appealed to the First Tier Tribunal, arguing that catering and bar income should be included in the partial exemption calculation – the correct test was to consider the business activities of the organisation as a whole, and the economic use of the costs
- Bar and catering income attracted customers and this ultimately funded part of the cost of productions

## The Royal Opera House Covent Garden Foundation (ROH) case

- ROH's argument was there was a direct and immediate link between production costs and bar and catering income
- Such income should be used in turnover calculations to determine the percentage of VAT recovery
- This was accepted by the First Tier Tribunal, but unfortunately for ROH, HMRC then appealed to the Upper Tribunal
- The Upper Tribunal undertook a detailed review of the case law and concluded there are two alternative bases for establishing a link to taxable supplies:
  - Where the costs concerned are general costs, i.e. overheads, there is a right to VAT recovery on the basis of a 'direct and immediate' link with a taxpayer's economic activity as a whole
  - Where the costs concerned are attributable to a particular supply or supplies, i.e. residual costs, then the expenses must form part of the cost components of specific taxable transactions, which utilise those goods or services

## The Royal Opera House Covent Garden Foundation (ROH) case

- ROH and HMRC agreed that the production costs were 'residual' and not overheads
- The Upper Tribunal concluded the production costs only had a direct and immediate link with the exempt supply of tickets (and other production-related taxable supplies), not the catering and bar income
- Production costs had an indirect link to bar and catering income and hence could not be included in apportionment calculations
- ROH has appealed to the Court of Appeal on the basis that more recent case law requires consideration of the economic link

# VAT updates

COVID-19, e-publications and digital advertising

## Optimising VAT to minimise the impact of COVID-19 – improving cashflow

- Switch to monthly VAT returns if costs are exceeding income
- Timing of sales invoices, beginning of VAT period
- Consider issuing 'requests for payment'
- Earlier input tax claim, amending accounting process – when are purchase invoices posted?
- Maximise bad debt relief claims
- Annual/cash accounting – turnover up to £1.35m
- Other:
  - VAT grouping
  - Review PE methods – reduced turnover
  - Effect on capital goods scheme
  - Attribution of costs
  - Maximise zero rate reliefs

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## Zero rating of e-publications

- Brought forward to 1 May 2020
- Group 3 of VATA 1994 amended
- Zero rate applies to digital versions of books, booklets, brochures, pamphlets, leaflets, newspapers, journals, periodicals and children's picture/painting books
- Exclusions – e-publications devoted predominantly to advertising or e-audio books
- Subscriptions – e-publication element after 1 May 2020
- Potential reduction of charity costs
- News Corp UK case – suppliers to make claims or organisations who have applied the reverse charge in respect of overseas purchases

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## Digital advertising

- HMRC have been challenging the zero rating of such services to charities
- [Letter to Charity Tax Group](#) last week confirms HMRC's latest position
- HMRC now accepts that VAT is no longer considered due on the majority of internet search browsing advertisements and the letter sets out the categories of advertisements that fall into this category
- From a practical perspective, it may become necessary to understand the suppliers processes for identifying how services are provided, but this is welcome news for the sector
- [Social media advertising](#) and subscription services, which result in an email to a persons mailbox, are subject to VAT

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# Gift Aid and tax update

## Gift Aid

### **Waived refunds for cancelled events**

- Special concession to allow Gift Aid to be claimed where person due a refund on an event cancelled due to COVID-19 decides to donate this to a charity
- Normally the donor would have to receive the refund and then make a cash donation

### **Refunding fees to view charity property**

- Payments to view charity property must not carry a right to refund in order to qualify for Gift Aid
- Risk of non-charitable expenditure if refunding these payments
- The charity should document why the refund is in the charity's interests (e.g. public reputation, goodwill gesture to incentivise future donations income)

## Gift Aid

### **Limited openings for members**

- The special Gift Aid rules for viewing charity property do not apply where entry is not available to the public
- Entry to a non-ticketed event is usually valued based on the cost of the event and the number of people in attendance
- Membership donations may be disqualified from Gift Aid unless the value of all benefits falls within the donor benefit limits

## Other tax updates

### **Business rates for museums**

- Upper Tribunal decision in January 2020 that rates for Royal Albert Memorial Museum should be measured on the Receipts and Expenditure method – request to appeal by VOA was rejected in June 2020
- The rateable value for Royal Albert Memorial Museum reduced from £445,000 to £1
- Implications for other museums and particularly historic listed buildings

### **Business rates Extended Retail Discount Scheme**

- 100% discount for 2020/21 tax year, includes museums, galleries, theatres, live music venues and cafés

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**Q&A**

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## Get in touch



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**Thank you!**