

CFG Annual Conference

# **Recent case law and VAT issues for the charity sector**

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## Areas to cover

### Recent case law

- Swanage Sea Rowing Club
- University of Southampton Students Union
- Cheshire Centre for Independent Living
- RSR Sports Ltd
- Cases awaiting further hearings

### Updates

- Digital advertising – HMRC Brief 13/20
- E-publications
- Early Termination of contracts
- Temporary reduced rate – extended to 31 March 2021
- Deferral of VAT payments extended

### Getting ready

- Brexit and MTD

## Case law

### Swanage Sea Rowing Club

- Club seeking zero rating of new building on the basis it will be used for RCP - either as a 'village hall' or for non-business purposes
- Tribunal found new building used mainly as a boathouse, storing boats – not a village hall
- Tribunal also considered whether the club was undertaking a business activity
- Interestingly it considered the 'Fisher' tests still set out in Notice 701/1 - whilst helpful these were not conclusive
- Tribunal therefore relied on the test adopted by CoA in Longridge on the Thames

## Case law

### Swanage Sea Rowing Club

- “general rule” that an activity will be an “economic activity” where it is “permanent and is carried out in return for remuneration which is received by the person carrying out the activity
- was there a “direct link” between the services supplied by SSRC and the payments which it received?
- Tribunal found yes, hence no zero rating
- HMRC issued a penalty for incorrect Z/R certificate

## Case law

### Swanage Sea Rowing Club

- Did SSRC have a reasonable excuse for issuing certificate?
- Took no professional advice
- Read Notice 708, concluded Z/R applied and contacted HMRC for guidance
- Officer advised that as long as no fees for use of boathouse by 3rd parties Z/R applied
- Tribunal accepted witness evidence – no penalty
- Will HMRC appeal?

## Case law

### University of Southampton Students Union

- Submitted retrospective claim for VAT paid on hot takeaway food and drink – argued it was exempt
- Provision of education/vocational training by an ‘eligible body’ is exempt
- There is also an exemption for any goods or services ‘closely related’ to such supplies
- USSU did not charge for most of its educational services
- It was not making a supply, hence its supply of food/drink could not be closely related

## Case law

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## Case law

### **University of Southampton Students Union**

- USSA also sought to argue it was an eligible body
- An eligible body includes a charity that applies any profits solely to the continuance or improvement of educational activity
- USSU did not ‘ring fence’ any surpluses to the activity that generated the surplus, hence was not an eligible body

## Case law

### Cheshire Centre for Independent Living

- VAT liability of charges to disabled persons for running payroll service
- Disabled person employs their own carer
- Charity manages the remuneration of carer- running payroll service as well as additional assistance
- What is VAT liability of payroll service?
- Charity successfully argued in FTT it was exempt welfare service

## Case law

### Cheshire Centre for Independent Living

- VATA 1994 - Exemption for "services which are directly connected with the provision of care"
- PVD art 132 (1)(g) exempts a "supply of services closely linked to welfare work"
- Tribunal concluded this was the case and allowed the appeal
- HMRC appealed to UT on basis that FTT had made an error
- As the carers were employees , they were not making exempt supply
- Hence payroll services could not be closely linked or ancillary to a non exempt service – HMRC Brief 16/20

## Case law

### RSR Sports Ltd

- VAT treatment of School holiday clubs
- RSR argued holiday camp services were exempt as the provision of welfare services
- Exemption applies to charities & state regulated welfare bodies – RSR was registered with OFSTED
- HMRC disagreed - services taxable as holiday camps activity based

## Case law

### RSR Sports Ltd - Facts found by FTT

- the holiday camps included both an activities element and a childcare element
- the activities element was emphasised by RSR in order to make the holiday camp attractive to potential consumers
- the activities at the holiday camps were supervised but there was no coaching or teaching of the relevant skills
- there was a much greater degree of staff qualification in the after school clubs, emphasising the difference between the two

## Case law

**RSR Sports Ltd - Key features:**

- the members of staff were merely supervising activities
- they did not hold any coaching or teaching qualifications
- there was no external standard to which the services were being provided
- the activities were merely an adjunct to the essential service which was childcare

HMRC will amend guidance to include activity based clubs in exemption displaying above points- HMRC Brief 18/20

## Case law

### Further hearings:

- Wellcome Trust – waiting for CJEU decision
- Newscorp – waiting for case to be heard in CoA
- Royal Opera House – case to be heard in CoA in March 2021
- Buzzacott client – ‘Licence to occupy’ case to be heard in March 2021

## Updates

### Digital advertising

- Zero rating applies to advertising services to charities
- HMRC Brief 13/20 – sets out when zero rating applies to digital advertising
- Excludes ‘targeted advertising’
- HMRC’s view - digital advertising on social media and subscription websites is ‘targeted’ at selected individuals or groups because providers use techniques such as tracking or the individual’s subscription to reach a specific audience to receive the advert
- E.g. adverts to email addresses or social media subscription accounts won’t qualify
- If supplier overseas, reverse charge applies

## Updates

### Zero rating of e-publications

- Brought forward to 1 May 2020
- Z/R applies to digital versions of books, booklets, brochures, pamphlets, leaflets, newspapers, journals, periodicals & children's picture/painting books
- Exclusions – e-publications devoted predominantly to advertising or e-audio books
- Subscriptions – e-publication element zero rated?
- Potential reduction of charity costs
- Newsorp UK case – suppliers to submit claims or organisations who have applied the reverse charge in respect of overseas purchases

## Updates

### Early termination of contracts

- HMRC position was that in the event contract for services terminated early – any payment outside the scope if provided for in contract
- If separate agreement required – subject to VAT
- Revenue Brief 12/20, HMRC announced change in Policy – most payments for early termination subject to VAT
- Also wanted to apply retrospectively
- Following representation, HMRC say no action until issue considered further
- However, VAT manuals not updated and Brief not withdrawn

## Updates

### Temporary reduced rate

- Reduced rate introduced for admission to attractions, holiday accommodation and sales of food and non-alcoholic drinks, as a means to boost the tourism and hospitality sector
- Initially applied from 15 July 2020 to 12 Jan 2021. Now extended to 31 March 2021
- Beware some officers not aware of extended time frame!
- If payments received before 31 March for events/accommodation/catering to be provided after this date, reduced rate still applies

## Updates

### Extension of VAT deferral payment scheme

- Some business chose to defer VAT due during 20 March to 30 June 2020
- Full amount was to be paid by 31 March 2021
- Can opt to make smaller payments up to end March 2022
- Must opt into the scheme – not automatic
- Requires DD to be set up as part of digital opt in process

## Updates

### Making Tax Digital

- Soft Landing period finishes 31 March 2021
- VAT returns starting from 1 April 2021 must have digital links throughout the VAT accounting process
- A digital link is an electronic or digital transfer, or exchange of data, between software programs, products or applications.
- The use of 'cut and paste' or 'copy and paste' does not constitute a digital link - except during the soft landing period

## Getting ready

### Making Tax Digital

- A 'digital link' is one where a transfer or exchange of data is made, or can be made, electronically between software programs, products or applications - no need for manual intervention

**HMRC also accepts that the following are digital links:**

- emailing a spreadsheet containing digital records so the information can be imported into another software product
- transferring a set of digital records onto a portable device (for example, a pen drive, memory stick, flash drive) and physically giving this to someone else who then imports that data into their software
- XML, CSV import and export, and download and upload of files
- automated data transfer
- API transfer

## Getting ready

### Making Tax Digital

- Some calculations can continue to be made outside of digital software – VAT recovery calcs & CGS
- Reverse charges?
- Can apply for extension, subject to strict rules
- Details in Notice 700/22

## Getting ready

### Brexit – short checklist

- Transitional period finishes 31 December 2020
- Check you have an EORI number – will be needed to import/export goods
- Who will make out Customs Decs - Customs agents, freight forwarders etc.
- From 1 January 2021, businesses will be able to use postponed VAT accounting to account for import VAT on their VAT Return for imports.
- Budget for potential Customs Duty – added cost
- Trade classification numbers, import/export licences?

## Getting ready

### Brexit – short checklist

- Review special rules for NI and specific VAT number
- Sign up for the new Trader Support Service, if you move goods between Great Britain and Northern Ireland or bring goods into Northern Ireland from outside the UK
- Do you need a Fiscal Rep to trade with EU countries
- If VAT incurred in EU from 1 Jan 2021 will have to submit paper claims to recover VAT – 13th Directive refund process
- Digital services to consumers – POS where customer belongs, and currently use MOSS
- From 1 Jan 2021 will need to register in an EU state and submit non-EU MOSS – or register in each country

Any questions? Get in touch



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