

VAT Cultural Exemption: the strong wind of change

By Scott Craig, VAT Partner, Scott-Moncrieff



Only 5 years ago the VAT liability of admission charges and the VAT status of arts and cultural bodies were relatively simple. As most sources of income (including admissions) were liable to standard rate VAT a body had to register once the value of its income exceeded certain limits. However as most (if not all) of the VAT incurred on expenditure could be recovered in full many bodies elected to register voluntarily. This position reduced the cost of productions, general overheads and capital works. In 2002 however we received the decision of the Zoological Society of London VAT case. The decision brought the possibility of retrospective repayment of VAT from HMRC and there is no doubt that some bodies are now in a more financially beneficial VAT position. It was however recognised that a broad brush approach could not be applied to the sector and that each body had to consider its own position in detail.

The “zoo case” has brought a strong wind of VAT change to arts and cultural bodies and left behind a trail of confusion, question and uncertainty.

The VAT issues encountered by arts and cultural bodies are now a world away from 5 years ago. Many factors must now be considered before the VAT liability of income and the VAT status of an arts and cultural body can be confirmed. Even then, subsequent changes and amendments to a body’s activities and status must be considered at an early stage and the impact of VAT factored into plans and financial budgets. Any failure to do so can have significant financial implications. For example changes made to a board could affect the VAT status of income which in turn could result in too much VAT being declared or recovered.

The “Zoo case” has also increased the amount of time, effort and professional advice an arts and culture body incurs accounting and reporting for VAT. The recovery of VAT incurred on expenditure now involves special calculations and annual adjustments. Beyond this VAT recovered on certain capital works has to be monitored for 10 years and repayments made if the value of exempt activity increases in this period. Even now, after 5 years of debate and fine-tuning a number of bodies (and some advisors) are still unsure of the VAT cultural exemption rules.

HM Revenue & Customs Notice 701/47 is as good a starting point as any. It summarises HMRC’s views on when admission charges to certain cultural exhibitions and events are exempt from VAT. These notes explain that the VAT exemption applies to admission charges by an eligible body to theatrical, musical or choreographic performances of a cultural nature and museums, galleries, art exhibitions or zoos.

The term eligible body specifically means non profit making bodies that are managed and administered on a voluntary basis by persons who have no direct or indirect financial interest in its activities and that apply any surpluses or profits to the making of related cultural supplies.

It is worth remembering that if a body is not an eligible body its admission charges will not be exempt. A body is not an eligible body if it applies profits or surpluses to non-cultural activities or it is not managed on a voluntary basis.

The Zoo case confirmed that when considering whether a body is managed and administered on a voluntary basis, it is only necessary to consider whether those involved at the highest level of decision making (Board level) are voluntary and unpaid. The Bournemouth Symphony Orchestra and Longborough Festival Opera VAT cases considered and debated the term “managed and

administered on a voluntary basis by persons who have no direct or indirect financial interest". HMRC's business brief 27/07 provides HMRC's view on the meaning of direct or indirect financial interest.

In as simple terms as possible HMRC state that if one or more of the people who are identified as managing and administering a body at the highest level receives remuneration then that body will not qualify for exemption. In practice, Customs have explained that where a Chief Executive or someone involved with the financial performance of the body has a voting right on the board, their presence will prevent admissions being exempt. They have also stated that the presence of a company employee who is paid a salary to perform will not necessarily impact on the VAT status of admissions.

If the board of a body is entirely voluntary cultural exemption will not apply if any member of the board has a direct or indirect financial interest. HMRC have explained that a financial interest does not exist where a board member can only make a financial loss, e.g. underwriting or guaranteeing a production. If a board member has a right to remuneration, but opts not to take it then the right will not disqualify the body from exemption unless the person starts exercised their right to remuneration. Similarly, payments to individuals for services of managing or administering a body are not a financial interest if they are allowed by the constitution and the recipient is excluded from any decision making regarding the award of any payments are not above market rate and are not linked to profits.

I could not say that cultural exemption is a simple matter; however, with knowledge of current VAT rules and law and a clear understanding of a body's eligible status and future intentions, every arts or cultural body should be able to establish the most VAT effective position for its own circumstances.