

Cultural Exemption - Managed on a voluntary basis

The cultural exemption applies to appropriate bodies "managed and administered on a voluntary basis by persons who have no direct or indirect financial interest in its activities".

In a recent tribunal case Customs were successful in arguing that an orchestra which operated through a guarantee company did not qualify for the cultural exemption.

The orchestra operated through a guarantee company and much of the decision making could, and often did involve the managing director who was remunerated. This was a financial interest and not voluntary management.

Any charities or similar organisations operating through guarantee companies should consider their position especially if they claim cultural exemption.

Residential units for the elderly on top of existing building – have you paid VAT needlessly?

Additional accommodation comprising individual units and a communal area was built on top of an existing care home.

Each of the new units had sufficient power points to enable them to have a refrigerator, kettle and microwave cooker.

Customs accepted that each residential unit was the home of its particular resident but argued that they were not "self contained living accommodation" not least because a dwelling should be designed for cooking and eating as well as sleeping.

The tribunal held that the new dwellings should be zero rated. **In the C21, premises with their own front door, en suite bathing and the ability to cook with a microwave cooker and a kettle are self-contained living accommodation.** In arriving at this decision, the tribunal quoted from the House of Lords decision in *Uratemp* where cooking facilities included a pizza warmer and a sandwich maker, and where take away meals were frequently consumed. In that case the Lords said " *"dwelling" in the 1988 Act was not a term of art but was used to connote where a person lived, regarding it as home. There was no legislative requirement for cooking facilities to be available and a room did not cease to be a dwelling solely because the occupant's meals were eaten elsewhere or were brought in.*

Customs have always argued that the absence of a kitchen precludes zero rating; if you were planning such a construction Customs guidance notes would not be likely to lead you to the conclusion that it was a zero rated supply. Contact 4 Eyes Ltd if you may have paid VAT incorrectly in similar circumstances.