

Charity focus

IMPORTANT OPPORTUNITY

Charity fundraising

A recent High Court Decision may have an important impact for charities involved in fundraising activities. The High Court found in favour of The Church of England Children's Society which, since 2002, had been challenging Customs' denial of their claim to recover a portion of VAT incurred on costs of fundraising for their unrestricted funds and VAT on the costs of their newsletter.

Subject to a successful appeal by Customs, numerous Charities may now be able to recover VAT on costs which could amount to millions of pounds on past and present costs incurred for the purpose of their fund raising activities.

Charities should consider whether they can also make a claim and, if so, when they should do so.

Summary

Between the original Tribunal hearing and the appeal to the High Court the European case of Kretztechnik was decided by The European Court of Justice (ECJ). In kretztechnik, the ECJ decided that raising capital was not a supply and was for the business generally, and that therefore the VAT on the costs was recoverable as a business overhead. As a result of Kretztechnik, the Society appealed on the basis that the costs of obtaining the donations such as the professional fundraisers' fees, should be classed as overheads. In this case, the VAT was recoverable based on a fair apportionment to reflect the percentage of taxable supplies to total supplies.

The High Court held that the costs of fundraising for unrestricted funds were incurred for the general business activities and that a proportion of the VAT on those fundraising costs was recoverable.

Who may be affected?

VAT registered charities that make taxable supplies and incur VAT on costs of fundraising for unrestricted funds will probably find that they can recover more VAT than they have done in the past.

Charities that are not VAT registered but are making some taxable supplies should consider whether a VAT registration would improve its financial position by recovering the VAT on fundraising costs.

Way forward

Charities that are VAT registered and affected should speak to their VAT advisor and consider making protective claims now. If you wait to see if there is an appeal to The Court of Appeal and then submit a claim after that decision you will only be able to claim for VAT covering the three years preceding the date of your claim, so by delaying the making of a claim you will reduce the amount that you recover. You can register a claim very simply and with minimal information.

If you wish to contact 4 Eyes Ltd about a claim, please email Phillip Henwood at phenwood@4eyesltd.co.uk.

Exempt Welfare Services?

In a recent Tribunal case, Customs alleged that supplies of qualified nursery nurses, nursery assistants and carers to private day nurseries, pre-schools and local education authority schools were not exempt but standard rated. Customs backed up their claim by the fact that although the nurseries and schools were involved in the care/protection of children as identified within the welfare exemption, the staff were predominantly not medically registered.

The Tribunal ruled that as the company relied on the extensive degree of Government control that exists in the day care sector for young children, it should be regarded as state regulated.

As the nurseries and schools were regulated and the care supplied by the private welfare agency was also controlled, the supplies satisfied the criteria for exemption.

Mail Pack Liability

Partially exempt companies such as charities, insurance and finance sector companies have traditionally been able to benefit from the facility to zero rate a package of mixed VAT liability printed items, as opposed to apportioning the price and paying VAT on standard rated items.

Customs have for many years allowed a concession known as the "package test" which allows a zero rated concession if the zero rated articles constitute either the majority of the contents of the package; or the most significant of the items in the package.

A recent Tribunal case concerned whether the mail packs were zero rated in their entirety as contended by the appellant, or whether they should be standard rated which according to Customs was the liability of the predominant supply.

The Tribunal concluded that neither the leaflets in any of the mail packs nor any of the letters within them could be regarded as a principal supply. Although the letter may be the focal point, it was not the major element of the supply. They concluded that all of the elements within the pack were important to both the supplier and the recipient of the pack and said that the letters should be standard rated, whereas the supply of the leaflets should be zero rated.

Clients may wish to review the content of their mail packs to ensure that they do not fall foul of standard rating.

Cultural exemption

Bournemouth Symphony Orchestra (BSO) was a non profit making body with a Board that took the principal strategic decisions and oversaw the activities of those who carried out the general administration. The membership of the Board included a number of people, many of whom clearly operated on a wholly voluntary basis. One member of the Board (the MD) was however remunerated and the question that arose in this case was whether the fact that he was on the Board and that he was remunerated had the effect that BSO was not "managed and administered on an essentially voluntary basis by persons who have no direct or indirect interest... in the results of the activities of the BSO" or is not "managed and administered on a voluntary basis by persons who have no direct or indirect financial interest in its activities".

This VAT update is published for the general information of 4 Eyes Ltd personnel, clients and contacts. It provides only an overview of the rules and regulations in force at the date of publication, and no action should be taken without consulting the detailed legislation or seeking professional advice. Therefore no responsibility for loss occasioned by any person acting or refraining from action as a result of the material contained in this e-mail will be accepted by the authors or the firm.

The High Court held that the MD's membership of the Board was not incidental to another function and was part of his overall function. He "performed a significant role in the central decision making of BSO". Therefore the appeal was dismissed as the judge considered the board to be "largely voluntary" rather than "essentially voluntary". BSO could not therefore benefit from claiming cultural exemption.

Charities wishing to make use of cultural exemption must review their management and administration to avoid falling foul of this very strict test. 4 Eyes Ltd can advise further if required.