

Lap dancers & Cultural exemption

Lap Dancers to account for VAT

A High Court judge has ruled that Lap dancers, rather than the club they work for will have to pay value added tax. The judge's decision overturned a VAT tribunal decision that had found in favour of Customs, which had been arguing that the services were being supplied by Spearmint Rhino, through the dancers, to their customers.

The judge analysed the arrangements under which the dancers worked. He said that a member of the public paid £8 for admission to an area in which he (or she) may drink, socialise, eat and watch partially-clad women dancing on a podium. At any one time (depending on the day, time and availability) there are between 20 and 140 young women available to provide the entertainment services for which visitors can pay for "private dances" or for about £250 an hour can sit and socialise with a performer.

One of the crucial facts was that the dancers paid a fixed sum to the club, allowing them to work there. The Judge also said that dancers were able to choose their own customers, and negotiated for themselves certain departures from the standard fee. "In short, I consider that the evidence of the relationships in this case does not demonstrate an agency" Therefore VAT on takings was due from the girls and not Spearmint Rhino.

Cultural Exemption Guidance Notes

Customs have issued guidelines as a result of the recent Court of Appeal judgment in the cases of Bournemouth Symphony Orchestra and Loughborough Festival Opera which looked at the interpretation of the term "direct or indirect financial interest".

One of the conditions for exemption for services provided by an eligible body is that the body "is managed and administered on a voluntary basis by persons who have no direct or indirect financial interest in its activities".

The cases referred to above gave exhaustive but sometimes confusing interpretations of the definition of whether a person had a direct or indirect financial interest within an organisation and Customs key change from existing guidance is that they confirm that any direct or indirect financial interest only affects entitlement to exemption if it is actual rather than potential. They confirm that a person who receives payments for services provided to the cultural body above the market rate, paid as routine overheads, or receives any payments which are profit related and there is a link between the payments and the persons participation in the direction of the cultural bodies' activities can be seen to have a direct or indirect financial interest in its activities. They also say that payments to individuals for services of managing and administering the body are NOT financial interests if they are allowed by the constitution, the recipient is excluded from any decision making regarding the award of any contract to themselves, the payments are not of market rate and are not linked to profit.

Customs also state it is not possible for them to give positive guidance to cover every eventuality and the Brief is only intended as general guideline.