

**VAT recovery by a culturally exempt eligible body**  
*Garsington Opera*

The *Grassington* case concerned whether in house opera production costs (the fees for director, conductor, soloists, chorus, orchestra, electrical specialists and ‘technical’s; and specific items such as the cost of making the set and props as well as of subtitles and equipment hire) have a link to taxable supplies of sponsorship, programme and libretti sales, hire of costumes and equipment, concept licensing, a semi staged production supplied to the Barbican, and CD sales of recordings of the productions, as well as having a link to the sales of tickets (which were exempt as the appellant was an eligible body).

HMRC argued that the VAT incurred on the production costs was a cost component of the exempt ticket sales only and should be blocked. The appellant contended there was a link to both taxable and exempt supplies hence the VAT should be apportioned based on the value of the exempt and taxable supplies.

This is a similar situation to the *Mayflower* case, where the appellant was also successful in demonstrating a link between production costs and taxable supplies but in *Mayflower* the costs related to bought-in complete productions rather than the costs of putting a production together ‘in house’. The Court of Appeal in *Mayflower* only found the necessary link between the production costs and the taxable sale of programmes as the production provided the editorial content of the programme. Thus the VAT incurred by *Mayflower* on the production costs was residual but the inference was that HMRC could direct that a large proportion of *Mayflower*’s taxable income should be omitted from the production costs recovery calculation.

The Tribunal in *Garsington Opera* appears to have gone much further than the Court of Appeal in finding links between the production costs and a whole range of taxable supplies by the appellant. There was a link to the sponsorship income as the sponsorship was production specific and sponsors had priority rights to tickets. Indeed the taxable sponsorship rights were granted before any exempt tickets were sold.

The Tribunal held that “when *Garsington Opera* incurs expenditure on the production of the three operas, it is buying in the supplies required to present three sponsored productions”. This was different from the *Mayflower* position where the sponsors had their name or logo put on a seat or the safety curtain or a board in the theatre, thus meaning there was an insufficient link between the costs of any one production and the taxable sponsorship income.

The Tribunal also concluded the production inputs were essential to the supply of the semi staged production. Using the same approach as in *Mayflower* there was a link between the production costs and the programmes as the production provided much of the programme content. There was

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a link between the costs and the concept licences as these exploited the productions. Similarly hiring or selling costumes and equipment used in the productions also exploited the productions. There was a link between the costs and the CD sales as without the production costs there would be no production to record on CD and sale.

***Comment***

*This seems to be a logical decision and though it does not set any binding precedent it will give comfort to any culturally exempt eligible bodies which have been told by HMRC that they cannot claim VAT on their in-house production costs. It would seem that having production specific sponsorship arrangements that include priority ticket rights is a great help in demonstrating the necessary link between the costs and taxable supplies of sponsorship.*

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