

Business activities for no consideration

[British Dental Association \[2010\] UKFTT 176 \(TC\)](#)

Summary

The First Tier Tribunal has ruled that, where an organisation's members normally pay a membership subscription, the granting of free membership to potential future members (in order to promote future paying membership) does not constitute a 'non-business' activity which would result in a restriction of input VAT recovery. This case will be of interest to all organisations which are concerned that some of their activities may not be regarded as 'business' for input VAT recovery purposes.

Background

The Appellant was a mutual association which provides a range of services to dentists and retired dentists in return for VAT-exempt subscriptions. It also provided taxable services including conferences and seminars. It was not compulsory for dentists to be members of the Appellant in order to practice, or to register with it. Therefore, as it was easy to identify prospective new members through contacts with dental faculties at universities, it sought to attract members by providing the benefits of membership to dental students free of charge in the hope that they will, once qualified, continue their membership on a subscription-paying basis. The Appellant referred to this as its "investment in the future".

There was no dispute that the Appellant's input VAT had to be attributed to and apportioned between its taxable and exempt supplies. However, as a prior step to this partial exemption calculation, HMRC sought to disallow 13% of the Appellant's input VAT on the basis that 13% of its members were students receiving free membership, on the basis that:

- provision of free membership benefits to dental students was a 'non-business' activity to which part of the input VAT should first be allocated and disallowed; and
- input VAT incurred in respect of services received that were used in part to provide services for which no consideration was charged also had to be disallowed in part, as s 24(5) VAT Act 1994 provides that there must be an apportionment of the VAT in relation to supplies received between business and non-business uses, and only so much of the total input tax as is referable to the taxpayer's business purposes is counted as his input tax.

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Held

The First Tier Tribunal found that the services provided to dental students were identical to those supplied to subscription-paying members. It referred to Imperial War Museum (VTD 9097), in which the VAT & Duties Tribunal decided that allowing free admission to school parties and, on Fridays, the general public was an act in the course or furtherance of a single business of operating a museum. Allowing free admission was not a separate non-business activity. The First Tier Tribunal therefore decided that:

- the Appellant conducted only one business;
- there is no provision in law that the provision of a service for no consideration is a non-business activity for the purposes of s 24(5) VAT Act 1994;
- the Appellant did not conduct any distinct activity that might be a non-business activity; and
- the provision of free membership was a commercially sensible introductory offer made entirely for business purposes, in order to foster the Appellant's one and only business, and thus made in the course of that business.

As regards partial exemption, the reg 101 VAT Regulations 1995 (SI 1995/2518) standard partial exemption method required residual input VAT to be apportioned between taxable and exempt supplies and, as the provision of free membership was not a supply for VAT purposes, it was excluded from the residual apportionment.

Implications

This is another in a series of cases concerning 'business' and 'non-business' activities and their impact on input VAT recovery. In this case, the First Tier Tribunal rejected the proposition that an activity which would be regarded as a 'business' activity if carried on for consideration became a 'non-business' activity if carried on for no consideration. It also rejected HMRC's analogy with the ECJ case of *Vereniging Noordelijke Land- en Tuinbouw Organisatie (C-515/07)*. The First Tier Tribunal noted that, in that case, the Dutch Regional Court had already ruled (and it was common ground) that the "activities relating to the promotion of the members' general interests did not constitute a direct, durable and necessary extension of the taxpayer company's economic activities".

Organisations which are concerned with both business and non-business activities should exercise caution when seeking to interpret the implications of these cases in their own particular circumstances. Please contact 4 Eyes Ltd if you would like to discuss these matters.

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