



EU VAT news – February 2018

Ireland - Charities VAT Refund Scheme

Charities are generally exempt from VAT under Irish and EU VAT law. This means that they do not charge VAT on the services they provide and cannot recover VAT incurred on goods and services that they purchase. Only VAT registered charities which charge VAT are able to recover VAT, with the exception of exported goods and donations of certain medical research equipment. This places a significant VAT cost burden on charities and as a result, this announcement from the Minister is a breakthrough for charities and the sector who have been campaigning for it for decades.



A working group was formed in 2015 to examine proposals to reduce the VAT burden on charities and on the basis of these deliberations, the Minister for Finance announced a VAT Compensation Refund Scheme (the “Scheme”) as part of Budget 2018 to compensate charities for the VAT they occur on their inputs, in recognition of the work undertaken by the charities sector.

The Charities VAT compensation scheme will take effect from 1 January 2018 but will be paid one year in arrears i.e. in 2019 charities will be able to reclaim some element of the VAT costs arising in 2018. Charities will be entitled to a refund of a proportion of their VAT costs based on the level of non-public funding they receive. For example, where a charity’s gross income for 2018 involves 30% funding from State/EU/international organisations and 70% privately sourced income including fundraising, subscriptions and donations, they may claim 70% of their VAT input costs for the year.

There are a number of exclusions to the scheme including:

- VAT incurred on private non-charity related expenses will not be eligible for relief;
- VAT incurred that is subject to an existing VAT refund order will not be eligible for relief;
- VAT incurred that is otherwise deductible will not be eligible for relief.

A capped fund of €5 million will be available to the scheme in 2019. The scheme, including the amount provided in the fund, will be subject to review after three years.

Where the total amount of claims in a given year exceeds the €5 million capped amount, charities will be paid on a pro-rata basis, e.g. where the total value of claims by all charities in 2019 amounts to €10 million, each charity will receive 50% of their claim.

Claims under the scheme cannot be made until 2019 as it will take some time for the Irish Revenue to establish IT and administrative systems. Qualifying charities must be registered with the Charities Regulator, have tax clearance, and provide a set of audited accounts for the year in which the claim is being submitted. For administrative purposes, claims valued below €500 will not qualify.

The detail for the Scheme has not been included to date in the Finance Bill 2017 but it is hoped that further detail will be included as the Bill makes its way through the legislative process.

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Finland – Import VAT

From 1 January 2018, Finland implemented new rules for the payment of value added tax on the importation of goods from outside the European Union. Under the new rules, Finnish VAT-registered businesses will no longer pay VAT at importation; instead, the import VAT due on imported goods will be self-assessed and recovered by VAT registered businesses using their periodic VAT returns. This procedure is known as “postponed accounting.” Postponed accounting will improve cash flow for Finnish importers that recover VAT in full, as they will no longer actually pay the VAT due on their imports and then recover it. These new rules will put goods imported from outside the EU on the same footing as goods acquired from other EU Member States. The changes will not affect how VAT will apply to goods imported by private persons or by businesses that are not registered for VAT in Finland.



Businesses in the UK will be interested to see whether similar measures are implemented in the UK. HMRC announced in the 2017 Autumn Budget that it would consider such measures as part of the UK's Brexit arrangements.

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UK - HMRC publishes updated guidance on grants and contracts

The long-awaited [guidance](#) will be helpful to taxpayers who regularly deal with the old question ‘is this a grant or a contract for services?’. The guidance covers a number of VAT case law decisions over the past three decades; however, the length of the guidance also points to the complexity of this area within VAT and taxpayers should also bear in mind the commercial reality of an agreement, as opposed to just considering the contractual terms.



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Italy - Web Tax introduction

From 2019, Web Tax comes into effect and is intended to raise tax from large tech companies. Web Tax is an Indirect Tax charged to Italian and foreign economic operators carrying out more than three thousand digital services per year, including the downloading of software, images, screensavers, books, subscription to newspapers or online magazines, the provision of advertising space, the use of search engines on internet, music or games downloads, search engine brokerage to sell objects, or "automated" services that involve minimal human presence, carried out between B2B economic operators. Traditional B2C e-commerce is excluded.



For confirmation of the services subject to this taxation, we will need to wait for the implementing decree which should be adopted by 30 April 2018.

The Budget Law 2018 brought several changes to the shape of the tax, especially with regards to the rate and methods of collection. The tax rate will be fixed at 3%, applied to customers fees, and assumed net of VAT. In addition, methods of collection have been modified; direct payment and withholding tax applied by banks will be replaced with a withholding tax applied by the tax withholding agents, to be paid to the Treasury by the 16th of the following month.

In the meantime, it is expected that further details and improvements on this tax will be announced in due course.

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UK - Free events held by charity not economic activities – input tax recovery denied

Charities and not-for-profit bodies that hold free events may need to review their input tax recovery on such events, to ensure that they are entitled to reclaim this VAT.



The case involving *Yorkshire Agricultural Society* (the Society) considered whether two events run by the Society, 'Countryside Days' and 'Careers in Focus', were non-business activities of the Society and whether HMRC were correct to refuse input tax recovery on costs related to the events. Both events were free to attend, and the Society contracted with third parties to provide catering and ice-cream at the events. The income the Society received under the contract with the caterers was estimated to be in the hundreds of pounds. The purpose of the 'Countryside Days' event was to provide school children and teachers with hands-on experience of agricultural and rural activities, whilst the aim of the latter event was to showcase careers in agriculture, rural and allied industries for secondary school children.

The First Tier Tribunal (FTT) determined that the holding of the two events, and the supply of admission to these events was not an economic activity; there was no direct link

between those services and the Society's share of the catering income. Moreover, the FTT stated that the two events fell within the charitable objectives of the Society – i.e. to support and promote agriculture, rural and allied industries, and to champion the role of farmers. The FTT also expounded that the two events were gratuitous in nature, as opposed to a supply of services for a consideration. The link to the catering income was either indirect, or if there was a direct link, the Tribunal expressed the view that the income received from the events would be considered de minimis.

The FTT also considered whether the two events formed part of the Society's economic activities as a whole; it ruled that there was no direct and immediate link between the costs of the events and the taxable income generated by the Society. It had been contended by the Society that the Great Yorkshire Show (the Show), which was an event which generated business income was promoted at the two events, (this was essentially their flagship event), but the FTT failed to see evidence supporting this. On this basis, the costs associated with the two events could not be regarded as a cost component of the Show or the economic activities of the Society, and the corresponding input VAT could not be recovered.

This decision may have implications for charities and not for profit bodies recovering input VAT on certain free events.

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UK - Supplies by a for-profit entity not covered by the VAT welfare exemption

For-profit bodies that provide welfare services may be affected by a recent court decision involving the VAT treatment of such services.

The Upper Tribunal (UT) has overturned the FTT's judgment in the *LIFE Services Ltd* (LIFE) case, stating that the welfare services provided were not covered by the VAT exemption. However, a key part of the appeal concerning fiscal neutrality was not heard, and must await further argument with the appeal in *The Learning Centre (Romford)* (TLC).

UK VAT law allows welfare services to be exempt where they are supplied by either a state-regulated body, a charity or a public body. LIFE, as a for-profit body, argued it was state regulated because it was monitored by Gloucestershire County Council. The UT found that the supplies made by LIFE were not 'state regulated', as such, as the 'regulation' was merely ensuring the service was properly carried out. The exemption, therefore, did not apply on this point alone.

LIFE also contended that as the VAT exemption for welfare services was permitted in Scotland, where they would be considered 'state-regulated', this created an uneven playing field thereby breaching the principle of fiscal neutrality. This point will be heard in the upcoming appeal in the TLC case and may result in the current LIFE judgment being overturned.



For-profit businesses providing welfare services should continue to monitor the result of the TLC case.

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UK - Harley-Davidson Europe – multiple supply of membership with range of benefits



Businesses that provide membership/subscription services to consumers giving subscribers the right to receive a variety of benefits may wish to review the VAT treatment of their subscriptions in light of this recent case.

The notion of single or multiple supplies is a contentious area of VAT. In the case involving *Harley-Davidson Europe Limited* (HDE), owners and enthusiasts of Harley-Davidson motorcycles subscribed to the Harley Owners Group (HOG) and in return received many benefits including but not limited to: quarterly hardcopy magazines, patches and pins, leather folder, restaurant discounts, touring maps and event guides.

HMRC argued that these benefits together formed a single supply of membership services subject to VAT at the standard rate. HMRC argued that the benefits were supplied as a single package and at a single price, the price for which did not vary with the extent of use of the various elements. HMRC also submitted that members did not just want the individual benefits: they wanted the cachet, status or goodwill from being associated with the Harley-Davidson brand and lifestyle represented by both Harley-Davidson and the HOG. This, HMRC claimed, was clear from the emphasis the brand put on lifestyle and community when marketing the group.

HDE, on the other hand, argued that the benefits should be treated as a multiple supply each liable to their own VAT treatment. The company maintained that even if a member's overall objective is affiliation, then membership was not the mechanism by which that objective was secured. Instead, affiliation is secured by means of purchasing and acquiring the individual benefits marketed by the group. In other words, HDE argued that what was supplied was the means of achieving any desired status or cachet, rather than the status itself.

The First Tier Tribunal ruled in favour of HDE, concluding that the membership subscription consisted of multiple supplies. The individual benefits were too significant in qualitative terms to allow the supply to be characterised as a single supply of membership. The aim of the typical consumer had to be considered, and this would be to obtain the individual items rather than the status. The items allow members to better enjoy their motorcycles, not to better enjoy their membership.

This case highlights the importance in evaluating the matter from the perspective of a typical consumer where there appears to be a single transaction from the customer's perspective, but the contractual arrangements give rise to separate supplies; or conversely, where there are multiple supplies from the customer's perspective which are presented as a single supply.

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EU - European Commission announces new rules to tackle VAT fraud

The European Commission has produced a [fact sheet](#) detailing their proposals to update the current VAT system. The aim of the new rules is to build trust between EC Member States, to enable them to exchange more information, and to boost cooperation between tax authorities and law enforcement authorities. It is envisaged that this will go some way towards tackling VAT fraud more swiftly and efficiently.



The proposals build on the measures referred to in our November 2017 edition, and include providing EC Member States with more flexibility to set and adjust VAT rates, and to extend VAT exemptions that currently exist for domestic companies to small companies trading cross border.

At present, small companies suffer proportionally higher VAT compliance costs than large businesses, and exemptions from VAT compliance obligations across EC Member States are not consistent, distorting the level playing field. The proposals aim to introduce simpler rules for such businesses, leading to an increase in cross-border trading. There are also plans to introduce an EU-wide revenue threshold for small businesses which may offer them relief from VAT registration, VAT filing requirements, or invoicing obligations.

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UK - HMRC publishes guidance on the sporting exemption applying to local authorities

As previously reported, not-for-profit bodies governed by public law who supply sporting services may now be able to treat such supplies as exempt, following the Court of Justice of the European Union (CJEU) decision in the *London Borough of Ealing* (LBE) case.



In the UK, sporting services supplied to individuals by not-for-profit bodies are treated as exempt from VAT. However, this exemption does not extend to sporting services supplied by a local authority, on the basis that this could cause 'distortion of competition' with commercial providers. The CJEU found that the UK domestic law was not compatible with the Principal VAT Directive and that, consequently, local authorities could benefit from the sporting exemption as any other not-for-profit body can.

HMRC has now published [guidance](#) setting out their policy with regards to paying out claims of overpaid output VAT following the judgment. HMRC have also published Information Sheet [8/17](#) providing more information on the claims process.

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UK - Final judgment in the Littlewoods compound interest claims case

As mentioned in our November 2017 edition, the Supreme Court recently found in favour of HMRC in the Littlewoods Ltd (Littlewoods) case, rejecting the taxpayers claim to compound interest, and bringing this long-running saga to an end. HMRC has now released Business Brief 05/2017 confirming the conclusions.



The Court found that the statutory simple interest paid to Littlewoods on overpaid VAT was sufficient compensation, and it was not necessary for compound interest to be paid. The Court accentuated that this was compatible with the principles of EU law.

HMRC will therefore not be paying claims for compound interest on overpaid VAT, or any compensatory amounts other than simple interest.

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This newsletter is compiled from contributions from firms within PKFI. If you have a news item that you consider should be included in the next issue, please email details to Luigi Lungarella of PKF Littlejohn. Please note that news items need to be submitted by the 20th day of the month prior to the following month's issue. Luigi can be reached on lungarella@pkf-littlejohn.com or +44 20 7516 2228.

