Guidance

Revenue and Customs Brief 5 (2017): final judgment in Littlewoods

Published 8 December 2017

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1. Purpose of the brief

This brief explains the position of HM Revenue and Customs (HMRC) following the Supreme Court judgment in Littlewoods Limited and others handed down on 1 November 2017.

This withdraws previous Revenue and Customs Briefs 9/2015 and 20/2014 issued about this litigation.

The Supreme Court found in favour of HMRC, ruling that the statutory interest paid to the claimants is adequate and it isn't necessary for compound interest to be paid.

The case is now final.

HMRC will invite claimants to withdraw their claims and any related appeals to the Tribunal.

2. Background

Littlewoods Limited and others claimed a refund of overpaid VAT for commissions on mail order sales. This VAT was repaid together with simple interest due under VAT Act 1994. They then argued that the interest already paid to them was inadequate and that they were entitled to compound interest both as a matter of EU law and also as a matter of English domestic law.

HMRC's view has always been that there's no community law right or domestic law right to compound interest and that section 78 of VAT Act

1994 provides an exhaustive statutory scheme by which only simple interest is payable.

The Supreme Court heard the case in July 2017 and released its unanimous judgment in HMRC's favour on 1 November 2017. This means that statutory interest is sufficient to comply with EU law.

The Court confirmed that the statutory VAT regime provides an exhaustive remedy for overpaid VAT and is compatible with principles of EU law.

The Court determined that simple interest at statutory rates is sufficient to vindicate the EU law right to an adequate indemnity.

3. HMRC's position

This litigation is now final.

Claims for compound interest on overpaid VAT or for any compensatory amounts other than simple interest under the provisions of the VAT Act 1994 will not be paid. HMRC will invite claimants to withdraw their claims and any related appeals to the Tribunal.

There are a number of claims where the underlying tax litigation is not yet final. Those underlying issues should now proceed.

Guidance

Revenue and Customs Brief 6 (2017): VAT – treatment of sports facilities by local councils

Published 29 December 2017

Contents

Purpose of this brief

This brief provides information on how HM Revenue and Customs (HMRC) will treat claims for VAT refunds by local authorities following the Court of Justice judgment in London Borough of Ealing which was handed down on 13 July 2017.

Who should read this brief

Local authorities providing members of the public with sports facilities and their advisers.

Explanation of change

The effect of the judgment is that councils can opt to make a claim for exemption on the sporting services that they supply to members of the public under the European VAT directive. This means that related VAT on inputs will be restricted where it isn't treated as insignificant under paragraph 8.2 of VAT Notice 749: local authorities and similar bodies. The alternative is that they can continue to tax those supplies on the basis of UK law. This means that VAT on inputs will continue to be recoverable where it relates to taxable supplies.

HMRC expects councils to account for VAT on a consistent basis. This means that where councils have opted to make a claim for exemption in respect of past periods, they'll be expected to continue to exempt supplies in subsequent periods. Claims won't be accepted where councils have proceeded on an inconsistent basis.

Background

The Court of Justice of the European Union found, in the case of the London Borough of Ealing (Case C 633/15), that the UK had incorrectly excluded local authorities from the exemption for the provision of sporting facilities. Local authorities had been excluded from the exemption to ensure that there was no distortion of competition. However, the court decided that any restriction on those grounds had to be applied to both public bodies as well as private non-profit-making bodies providing sporting facilities. It followed that the local authorities were entitled to claim direct effect and therefore to treat those supplies as exempt from

VAT provided that they did so on a consistent basis. HMRC has accepted the decision.

This means that local authorities are entitled to recover any net over-declarations they have made as a result of having treated the supplies as taxable rather than exempt. The net over-declarations are calculated after deducting from the over-declared output tax any input tax wrongly claimed by prescribed accounting period (VAT return) on the assumption that the supplies in question were taxable and not exempt, unless that input tax is treated as insignificant read paragraph 8.2 of VAT Notice 749: local authorities and similar bodies.

Outstanding appeals to the First-tier VAT Tribunal

HMRC now intends to process outstanding claims made by local authorities making supplies of services closely related to sport where:

- the local authorities concerned have asserted their right to direct effect of the sporting exemption on the basis of London Borough of Ealing (Case C 633/15) on a consistent basis
- subject to satisfactory verification of the amounts claimed

This won't include any amounts claimed on other grounds. Where that amount results in an interim net payment to the local authority, then that amount will be credited.

Unjust enrichment

HMRC reserves the right to refuse claims on the grounds of unjust enrichment where they're able to show that the claimant passed the economic burden of the VAT charge on to their customers. The provisions are explained in sections 9 and 10 of VAT Notice 700/45: how to correct VAT errors and make adjustments or claims.

HMRC may examine the quantum of the claim, including the requirement to apply revised partial exemption and capital goods scheme calculations to ensure claims are accurate.

Making a claim

All claims must be made in writing, stating the amount of the claim and the method by which it has been calculated by reference to documentary evidence in the possession of the claimant. Claims must also be broken down by prescribed accounting period.

Only the person who accounted for the ‘VAT’ is entitled to make a claim to recover it.

All claimants must confirm that their claims:

- are accurate
- this applies only to supplies of services that are closely linked and essential to sport and on which VAT has been paid incorrectly
- have been adjusted in accordance with VAT Information Sheet 08/17: claims for over payment made by local councils

Any other supplies or claims made on a different basis must be excluded from these arrangements.

All claims must be sent to: localauthorities.pbg@hmrc.gsi.gov.uk

New claims

All claims will be subject to the 4-year time limit in section 80(4) of the VAT Act 1994.

Return adjustments

Local authorities with over declarations of output tax within certain monetary limits may wish to correct any errors on their VAT returns under regulation 34 of the VAT Regulations 1995 rather than submit a formal claim under section 80 VATA 1994 to HMRC. However, in doing so they would not receive any interest. Further information on the monetary limits and which returns may be adjusted is available in VAT Notice 700/45: How to correct VAT errors and make adjustments and claims.

Penalties

In circumstances where local authorities have not taken due care in submitting valid claims, they may be charged a penalty in relation to prescribed accounting periods starting on or after 1 April 2008, where the return due date is 1 April 2009 or later. They may therefore incur a penalty if, as a result of a failure to take reasonable care, their VAT return shows either too little tax due or a repayment that is too large.

Policy paper

Revenue and Customs Brief 1 (2018): VAT - treatment of affiliation fees for sports clubs

Published 17 January 2018

Contents

1. The purpose of this brief

The purpose of this brief is to remind taxpayers that the concession enabling clubs to treat affiliation fees as exempt from VAT will be withdrawn with effect from 1 April 2018.

2. Who should read this brief

This brief should be read by clubs who currently provide standard rated sporting services.

3. Background

A sport's governing body, or similar umbrella organisation, often charges an affiliation fee to individual clubs who make an onward charge to their members. Where the clubs are non-profit making, the supply of this affiliation fee to their individual members is exempt from VAT.

However, if the club is a profit-making commercial club, then the supply to their individual member is standard rated.

The concession aimed to put profit-making commercial clubs in a similar position to non-profit making clubs, so that they didn't need to account for output tax on the fee charged. It achieved this by allowing profit-making commercial clubs to treat these re-charges to their members as though they were disbursements.

However, as such re-charges of affiliation fees aren't legally disbursements, the concession goes beyond HMRC's discretion and is being withdrawn with effect from 1 April 2018.

The concession is currently published in paragraph 3.6.2 of VAT Notice 701/45.

HMRC consulted and called for evidence on the withdrawal of the concession in January 2017.

Since no difficulties were raised, the government has decided to announce withdrawal now so that clubs can make arrangements to charge VAT on these charges with effect from 1 April 2018.

4. Other points

Withdrawal of the concession means that the onward charge of the affiliation fee will be liable to VAT at the standard rate of 20%, unless it meets the conditions of a disbursement. A full explanation of those conditions can be found in paragraph 25.1.1 of Notice No 700.

The withdrawal of the concession has no impact on the VAT treatment of affiliation fees by non-profit making sports governing bodies, or similar umbrella organisations, and on non-profit making sports clubs to their members.

In their case, the charge they make for affiliation fees will continue to be exempt under the law. If they are partly exempt for the purposes of calculating their recoverable input tax, such bodies should ensure that they continue to include affiliation fees in their exempt and total supplies in any appropriate partial exemption calculation.

Paragraphs 3.6.1 and 3.6.2 of Notice 701/45 are being amended to reflect the changes as well as VAT manual VSPORT2020 – Affiliation Fees.

5. Get more information

Contact the VAT Helpdesk to get more information.