



VAT guidance note - hire of swimming pools and associated facilities

Background

VAT charged on the hire of swimming pools and associated facilities is often a significant cost for many swimming clubs and regional bodies affiliated to the ASA. While the exemption from VAT of a series of 10 or more lets of sports' facilities to a club, association, etc provides some relief, in practice this exemption has limited application because either its detailed conditions are not met, or more likely, the operator has opted to tax the facility thereby overriding the exemption.

Following correspondence with HM Revenue & Customs ("HMRC"), it has agreed that the hire of swimming facilities by clubs and regional bodies will be exempt from VAT where:

- (1) the effective beneficiaries of the hire are individuals taking part in a water sport or physical education;
- (2) the operator of the facilities is an "eligible body" - essentially a non-profit making body.

A copy of the letter which the ASA has received from HMRC is at the end of this document. This note is intended to provide guidance to clubs, associations and regional bodies on the scope of the exemption.

Does the exemption extend to the hire of swimming pools and associated facilities hired by swimming teachers?

No, HMRC consider that the teacher, rather than individuals, is the material recipient or effective beneficiary of such lets

Does exemption cover swimming pools and associated facilities used for competitions, meets, etc?

Yes - where the effective beneficiaries of the hire of the facility are individuals participating in such sporting events.

Since the exemption is aimed at the provision of facilities to enable individuals to participate in water sports, are there any limits to this?

Subject to the hirer being an eligible body (this is covered later), broadly no, but exemption will not apply where the facility is to be used for pure recreation or amusement.

Exemption is limited to lets by operators which are "eligible bodies" - what organisations come within their scope?

Broadly an eligible body is a non-profit making body which:

- cannot distribute its profits otherwise than to another non-profit making body (for example, where the operator is the trading subsidiary company of a charity) or to its members on winding up or dissolution (for example, a mutual or membership body);
- (except on a winding up or dissolution) applies any profits it makes from the provision of sports' services (including the hire of sports' facilities) either to maintain or improve these services or for non-profit making purposes; and
- it is not subject to commercial influence nor part of a wider commercial undertaking - this condition will normally preclude a non-profit making body from being an eligible body where

effectively part, or all of the financial benefits from its operations will accrue to an associated profit-making entity.

A local authority is specifically excluded from the scope of an eligible body, but not a Leisure Trust, perhaps created by a local authority.

In a guidance note such as this it is impossible to advise which organisations may be eligible bodies, but in general, they include Leisure Trusts, independent schools, self governing schools such as Academies, Universities, FE Colleges, etc.

Does an eligible body have any choice on whether it should exempt the hire of swimming pools and associated facilities?

No, if all the conditions are met.

If an operator now exempts from VAT its lets, are there financial implications for it which clubs, associations, etc should be aware of?

Possibly. Where the hire charges are now exempted from VAT, the operator's ability to reclaim VAT on expenses directly associated with the facility's operation and its overhead expenses may be curtailed. Where the facility was constructed (or materially refurbished/improved) within the last ten years, the financial impact on the operator could be significant, with it having to repay to HMRC part of the VAT previously reclaimed on the capital expenditure. In these circumstances, an operator may look to recover this cost when asked to effectively reduce its hire charges by exempting them from VAT.

May an operator which is an eligible body retrospectively claim back VAT incorrectly paid over to HMRC on hire charges and reimburse the club, association, etc?

Yes. If all the conditions for exemption are met, then an operator may reclaim from HMRC VAT overpaid in the last 4 years, but its claim will have to take into account VAT previously reclaimed on its operating expenses to reflect the fact that the hire charges are exempt from VAT, rather than standard rated.

Further advice

Should you require further advice, you may contact the ASA's VAT adviser John Turnbull-Kemp on 0844 335 0304 (email: jtkassociates@btinternet.com).

Letter to Ashley Beaveridge, Chief Financial Officer from O. Olagundoye, VAT Liability Policy Team.

I thank you for your letter of 14 August 2014 concerning the hire of swimming pools. I apologise for the delay in responding.

You mention that the operators of swimming pools currently charge VAT on their hire to British Swimming the Amateur Swimming Association, swimming clubs and swimming teacher. You consider that based on recent European Court rulings the hire of these pools and associated facilities by non-profit making bodies should be exempt from VAT in accordance with item 3, Group 10, Schedule 9 of the VAT Act 1994.

The Court of Justice of the European Union (CJEU) decision in *Canterbury Hockey* (C-253/07) may offer some assistance in deciding the liability of the hire services to ASA and similar organisations including swimming teachers. The CJEU found that individuals who are participating in sport should not lose the benefit of the sporting exemption merely because they are participating in a sport with a structure managed by a club. As such, when supplies are made to such a club (as was the case in *Canterbury Hockey*), regard must be had not just to the formal, legal recipient of the supply (the club) but also its material recipient or effective beneficiary (the members). That is, it is not always necessary for the organisation concerned to make a supply directly to the individual who benefits from it in that it enables him or her to participate in a sporting activity for the exemption to apply (the “look through” approach.)

The current cases differ from *Canterbury Hockey* on the facts as the not for profit pool operators make supplies to various entities involved in the provision of sporting services that need pools to function. Access to a pool is obviously necessary for an individual to be able to participate in the sport of swimming and we accept that this is a service closely linked and essential to the sport.

On the basis that the operators are eligible bodies as defined in Group 10, Note (2A) and (s2C), and ASA and similar bodies are set up as organisations to promote swimming and hire pools so that individuals can go and swim in them, it seems reasonable in those kinds of cases to apply the “look through” approach. Therefore, we consider the eligible bodies are making supplies exempt of VAT.

The issue of the hire of a pool by a swimming teacher is different as she receives this supply in order to make onward supplies to pupils in the course of business. The onwards supplies that she makes are too remote. As such, we do not think the “look through” should apply in such cases because the swimming teacher is both the material and formal, legal recipient of the supply. The supply to her is taxable at the standard rate.

I hope this helps answer your enquiry.

END OF LETTER