



VAT | trade associations - VAT development

the team



Graham Elliott
VAT partner
020 7969 5610
gelliott@haysmacintyre.com



Phil Salmon
director of VAT services
020 7969 5611
psalmon@haysmacintyre.com



Stephen Patey
VAT consultant
020 7969 5684
spatey@haysmacintyre.com

who needs to know?

Anyone responsible for VAT affairs of a Trade Association.

in a nutshell

A key VAT tribunal decision may have an impact on various kinds of trade association, particularly as regards whether or not their membership subscriptions are exempt from VAT.

detail

The case concerned the British Association of Leisure Parks, Piers & Attractions Ltd (BALP). BALP had charged VAT on subscriptions over many years, but formed the view that it ought to qualify for exemption from VAT on its subscriptions. It claimed back the VAT that had been charged, but the claim was refused. BALP's argument was that:

1. Its principal purpose was making representations to the government on behalf of its members.
2. That most of its members were actively involved in "the trade".
3. The fact that certain of its members may have reclaimed VAT charged to them in the past was irrelevant and that, as a non-profit body, they could not be regarded as being "unjustly enriched" by the windfall of a tax rebate.

The tribunal decided to dismiss all three of these arguments, even though dismissing only one would have been sufficient.

Although it appears that BALP had, in more recent times, begun to focus on lobbying government, it was unclear that that was constitutionally the principal aim. The membership appeared to derive broader benefits. This emphasises that associations relying upon the "government lobbying" definition for their exempt status need to ensure that the benefits to members are heavily focused on that aspect, and do not go much wider.

In our experience, associations which have a history of being focused on such activities can tend to broaden their appeal and offering to their members through a range of other activities. This carries the danger of removing the exemption for the subscriptions.

The tribunal then considered the make-up of the membership as to whether a sufficiently large proportion was involved in “the trade”. In the case of BALP, over 60% were directly involved in the trade, but over 30% were businesses which only had links with the trade, being service providers to the trade.

Whilst BALP argued that it was sufficient that a bare majority of members were involved in the trade for this particular exemption, the tribunal thought that the percentage should be 100% or nearly 100%.

This is a drastic difference.

We understand that HMRC currently applies a rule of thumb to the effect that 75% is sufficient. This tribunal decision may cause them to ratchet that percentage higher, effectively precluding the exemption to a body which encourages related businesses to become members. In our experience, trade associations often wish to encourage membership of such “affiliates” and this could be a significant disincentive to doing so.

Unsurprisingly, the tribunal rejected the idea that simply because BALP was a non-profit body it was incapable of being unjustly enriched. HMRC’s defence of unjust enrichment was valid. The fact that many (even if not all) of the members would have been able to reclaim VAT on the original charge is likely to have exacerbated this issue for BALP. If the VAT charged gave rise to input tax recovery, but now the VAT to be refunded to BALP did not involve any claw back of the VAT reclaimed by members, the effect of this would be to allow a double reimbursement.

Whilst there may have been legal arguments in favour of such a “double dip”, it is unsurprising if it caused the tribunal to feel uncomfortable with giving any benefit of the doubt to the appellant. This is a reminder that, in many cases, it is actually favourable to be taxable rather than exempt. Getting the best of both worlds is very difficult to achieve, and many associations will believe that it is not strictly legitimate.

The opposite trap is in charging VAT on subscriptions, since members can reclaim the VAT, where, inadvertently, the association has slipped into making exempt supplies under the exemption criteria for trade associations. Such exemption is not voluntary. Trade associations which wish to charge VAT need to consider whether they have inadvertently put themselves within the exemption.

what to do next

In light of all of the above it is extremely important to carry out a review of your current position and your VAT procedures. The classic problem with trade associations is that they continue with a traditional approach to their VAT affairs whilst their business model changes rapidly in a modernising world. Frequent reviews of the relationship between the VAT accounting and the activities are advisable. If you would like to carry out such a review we are very well placed to carry it out for you.

about haysmacintyre

haysmacintyre, Chartered Accountants and business advisers, works with over 550 charities and not for profit organisations in the UK and overseas. Our services include the full range of audit, tax, VAT and comprehensive advisory services. Our multi-disciplinary specialist team has extensive sector experience working for a diverse range of charities. We are based in one location which ensures an integrated and comprehensive approach to our clients' requirements.

haysmacintyre is a founding member of MSI Global Alliance (MSI), an international alliance of independent legal and accounting firms, with 250 members in 100 countries.

haysmacintyre

haysmacintyre
Fairfax House
15 Fulwood Place
London
WC1V 6AY

t 020 7969 5500
f 020 7969 5600
e marketing@haysmacintyre.com
w www.haysmacintyre.com
 @haysmacintyre



Disclaimer: This datasheet has been produced by the partners of haysmacintyre and is for private circulation only. Whilst every care has been taken in preparation of this document, it may contain errors for which we cannot be held responsible. In the case of a specific problem, it is recommended that professional advice be sought. The material contained in this datasheet may not be reproduced in whole or in part by any means, without prior permission from haysmacintyre.

