

Belly dancing and bridge

Julie Butler looks at two recent cases testing the definition of what constitutes an exempt VAT supply

KEY POINTS

● What is the issue?

That HMRC allow the teaching of sport that is ordinarily taught in schools to be a VAT-exempt supply. This is a huge advantage to many small businesses. However, two recent tribunals have defeated claims relating to the teaching of belly dancing because there was no evidence it is taught in schools. Likewise there was a dispute regarding the game of bridge and whether it qualified as a 'sport' rather than a game. The bridge case involved the non-profitable English Bridge Union and the charging of VAT on membership fees. Both VAT tribunals were won by HMRC

● What does it mean to me?

That this is an example of the misinterpretation of VAT rules and VAT exemptions by both small businesses and non-profit making organisations. This indicates that there are lots of clients and potential clients who need professional help in understanding the treatment of the VAT exemption. The importance of evidence to support the claiming of VAT exemption was highlighted

● What can I take away?

The need to check clients are maximising the benefits of the VAT exemption and keeping evidence to support their claims while ensuring that incorrect usage of the VAT exemption is identified. The exemption can be used to help clients for example, the provision of riding lessons is an exempt supply because there is evidence it is ordinarily taught in schools and accepted by HMRC as exempt



PROFILE



Name Julie Butler FCA

Position Managing Partner

Company Butler & Co Chartered Accountants

Tel 01962 735544

Email j.butler@butler-co.co.uk

Profile Julie Butler is a farm and equine tax specialist. Her articles are published in the national accountancy and tax press and she is the author of *Tax Planning for Farm and Land Diversification*, *Equine Tax Planning* and *Stanley: Taxation of Farmers and Landowners*.

There have been two recent cases testing the definition of what constitutes an exempt VAT supply under VATA 1994 Sch 9 – each of them looking at a different classification group of the schedule. Both cases failed to achieve the VAT exemption that they both sought.

Sch 9 provides an exemption from VAT for those making supplies of education services, as long as these subjects are ordinarily taught in school. There are, at the moment, many self-employed teachers claiming a VAT exemption on the strength of this ruling without evidence.

Belly dancing as an exempt supply of education

To qualify for the exemption there must be evidence that the subject is taught regularly in at least some UK schools or universities.

A recent 'belly dancing' tribunal case failed to achieve exemption because it could not be proved it was taught in school – *Audrey Cheruvier Trading as Fleur Estelle Dance School* [2014] UKFTT 007 (TC). Ms Cheruvier has a dancing school and six self-employed staff teaching belly dancing.



The exemption was claimed under VATA 1994 Sch 9 grp 6 item 2:

‘The supply of private tuition in a subject ordinarily taught in a school or university by an individual teacher acting independently of an employer.’

The taxpayer argued that she offered a serious course of study in a particular dance form (belly dancing) and this was equivalent to dance taught in school and universities. However, belly dancing failed to qualify as a supply of education.

Evidence of qualification of the exemption

HMRC argued that there was no evidence that belly dancing was taught as required by VATA 1994. The taxpayer could not show that belly dancing formed a component of any course taught at either school or university. The conclusion of the First-tier Tribunal (FTT) was that belly dancing did not form part of any course taught at either type of educational

establishment and thus dismissed the application for exemption from VAT. There would appear to have been not enough preparation for the claim to the exemption. An example of a subject that is ordinarily taught in schools and also taught by a large number of businesses is riding lessons. The VAT exemption has been maximised in recent years by the riding school industry. Many riding schools have been trading as LLPs and, by making staff employee members, do not charge VAT.

Bridge is not a sport

VAT exemption can also be obtained by non-profit making sporting organisations on competition entry fees – as detailed on of VATA 1994 Sch 9 grp 10. The key word here is sport. A tax tribunal dealt a losing hand to the English Bridge Union (EBU), which had wanted the game to be recognised as a sport so that members would not have to pay VAT on their competition entry fees. These amounted to £631,000 in 2012/13. Although bridge is seen as a sport by other countries together with the Charity Commission, the voluntary sector’s watchdog, and even the International Olympic Committee, the Tax Chamber of the FTT ruled that the game of bridge does not involve enough physical activity to make it a sport in the eyes of VAT law.

The EBU had argued that bridge is a healthy pursuit, pointing to studies showing that regular contests may benefit the immune system and reduce the risk of dementia. It also insisted that if activities such as croquet, darts and billiards qualify as sports, the 50,000 members of the union should also be seen as sportsmen and women and therefore entitled to the VAT exemption.

The dictionary definition of a sport

HMRC’s barrister turned to the *Oxford English Dictionary* backed by the Council for Europe’s sport charter, which explains that sport ‘aims at expressing or improving physical fitness and mental well being, forming social relationships or obtaining results in competition at all levels’. This was the definition HMRC had adopted and it had previously confirmed at a VAT tribunal in the *Royal Pigeon Racing Association* case [VDT 14006]. HMRC considered a key objective of the VAT directive to encourage physical activities in the public interest, when provided by non-profit making objectives – VAT reference notice 701/45. The tribunal interpreted the European Court of Justice’s (CJEU) ruling that the directive was designed *not* to promote wider health benefits, but to make sporting activities more accessible to a wider section of the population. The key difference is that when VAT exemption is

applied, sporting activities become more accessible.

The EBU’s barrister, David Ewart QC, asked whether it was ‘really possible to draw a distinction between the mental skill needed in planning a snooker shot or a croquet stroke and the physical skill used in executing it.’ Judge Charles Hellier explained: ‘To our minds, sport normally connotes a game with an athletic element, rather than simply a game.’ In passing judgment, Judge Hellier admitted qualms that failing to recognise bridge as a sport might discriminate against older people, who form the majority of players. This is considered to be a case that might run and run like the ‘Jaffa Cakes’ case, or it might just play and play...

There are strong arguments for the benefits of the game of bridge and the benefits of making the game more readily accessible, a cause that many will support. The national press coverage of the bridge case showed both the popularity of the game and the strength of support for VAT exemption.

Concern over VAT exemptions under Sch 9

These cases show the ‘grey’ interpretation of exempt or ‘VAT-free’ supplies under s 9. There are some taxpayers not using the exemption and some claiming it when they ought not. Examples here include riding lessons, which can qualify as an exempt supply because evidence that this subject is taught in schools has already been obtained and yet certain yards still charge VAT on their services when they need not; and other services such as belly dancing; which cannot apply the exemption due to lack of evidence as qualifying as taught in schools, and yet services are still provided free of VAT.

The VAT exemption is to make the sports more accessible and it is in everyone’s interest to do this – but are all the various sports taking advantage?

Action plan

The key to the successful claiming of the VAT exemption by the professional adviser is to obtain evidence of qualification of the supply, ie providing proof that the subject is ordinarily taught in schools and that the subject is a sport. The guide is that such evidence would survive scrutiny in a tribunal.

There is much scope for advisers to promote real exemptions to the VAT charge to the public. The ‘bridge’ case has attracted a lot of public interest (even more than the VAT status of the ‘Jaffa Cakes’ case, some would argue) and now is the time to engage the public and actively advertise the genuine VAT advantages available to them.