

Amateur Swimming Association

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 attached. 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).