



UK Indirect Tax Client Conference

Hospitality and Leisure

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This Session

Agenda

‘But is it fair?’

‘**fair** adj 1 treating people equally. 2 just or appropriate in the circumstances’

Oxford English Dictionary

1. Fairness and Europe
2. Fiscal Neutrality (including *The Rank Group plc*)
3. State aid
4. Fairness and commercial context
5. Partial exemption and special methods
6. Other changes

Fairness in Europe

But is it fair?

Fiscal neutrality

‘similar products be taxed in the same way’

The Rank Group plc

K Oy / Infraction proceedings

AITC/JP Morgan

Manfred Bog / Sub One

State aid

‘...an advantage in any form whatsoever conferred on a selective basis to undertakings by national public authorities’

Danish decision

Commercial context

‘Every man is entitled, if he can, to order his affairs so that the tax attaching under the appropriate Acts is less than it otherwise would be’

Bookit

Secret Hotels2

Fiscal Neutrality

Recent cases

The Rank Group Plc – exempt comparator machines

Next? Online gaming v casino games v gaming machines v lottery machines

K Oy – Finnish reference – paper books and books on other physical means of support. UK challenge? Infraction proceedings?

State aid

Application to indirect taxes

Differential tax rates in betting and gaming very common

- offline pay a higher tax rate but benefit from higher barriers to entry

Is online gaming in competition with offline gaming?

What is the remedy for the provision of state aid?

European referrals on indirect tax and state aid

Commercial context

Similar supplies delivered differently

Payment processing fees;

- Charged by an independent agent (*Way Ahead Group*)
- Charged by the provider (*Everything Everywhere*)
- Charged by a related agent (*Bookit, National Exhibition Centre*)

Agents

- *Secret Hotels 2*; the changing role of an agent

Food

- *Manfred Bog*
- *Sub One*

Distance sales

Partial Exemption

Agreeing a method

- HMRC prefer the standard method
- ‘Economic use’ to which costs are put
- Standard method v other proxies

‘a calculation which uses a non income based proxy [should only be agreed if it] can be guaranteed to be more accurate than one using the default income based methodology.’

- Taxpayer to demonstrate the distortion created by the standard method and provide evidence -*BLC Baumarkt GmbH & Co. KG*
- Purpose of the ‘Fair and Reasonable’ declaration

Partial Exemption

Recent Case Law

Lok'nStore Group Plc

- Proposed floor space based method
- Upper Tribunal found in favour of Lok'nStore; the proposed floorspace method was fairer and more reasonable than the standard method
- HMRC business brief 35/14

'HMRC is not appealing the decision, but does not intend to change its policy regarding floor space PESMs. HMRC does not consider that floor space methods are usually appropriate for the retail sector.'

Other changes

A short roundup

Place of supply

- From 1 January 2015, place of supply changes from location of supplier to location of the customer.
- VAT Mini One Stop Shop (VAT MOSS)

Vouchers

- Intended change from 1 January 2016

Third party consideration

- *Airtours* decision

VAT recovery; who should make the claim?

Hospitality & Leisure

Your speakers



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