VAT and room hire – a tax on marriage?

Indirect Tax

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Recent case law highlights the stormy relationship between VAT and room hire, and considers the importance of exclusivity of use.

Although the VAT treatment of venue or room hires might seem rather niche, it can have an impact in many situations; conference and meeting room hire by hotels and charities, theatre hire by local authorities, and the hire of a room or venue for a wedding. Updates on this issue were provided in the May and June editions of *Tax Adviser*, but the recent First-tier Tribunal case of *Blue Chip Hotels Ltd* (2016 UKFTT0309 (TC)) has created further instability in this already rocky relationship.

Blue Chip Hotels Ltd

Blue Chip Hotels Ltd (BCH) concerned a venue in south-west England that, among other activities, hired a room for civil wedding and civil partnership ceremonies (although not mentioned in the case, BCH also hired out the venue for 'commitment' ceremonies – namely, those events that are arranged by persons who do not believe in the idea of marriage but still want to evidence their commitment to the wider public).

The tribunal in this case rejected HMRC's argument that there was a single, standard-rated supply of a 'wedding package'. However, it then considered whether the hire of the venue or room in which the ceremony took place could be exempt from VAT.

The tribunal considered this requirement against prior case law that defines the term used in EU law to describe what is exempt – 'the leasing or letting of immovable property' (Art 135(l) of the Principal VAT Directive). It also considered EU

case law, such as *Temco Europe SA*, Case C-284/03, in which the Court of Justice at para 20 described the letting of immovable property as

> *'... usually a relatively passive activity linked simply to the passage of time and not generating any significant added value ... from other activities which are either industrial and commercial in nature ... or have as their subject matter something which is best understood as the provision of a service rather than simply the making available of property, such as the right to use a golf course or the right to use a bridge on the payment of a toll.'*

The tribunal also examined regulations relating to premises that can be used for weddings in England. It noted that the Marriages (Approved Premises) Regulations 1995 require that public access to the wedding ceremony must be permitted without charge. This point is significant because a further attribute of the leasing or letting of land is exclusivity of use.

In the light of the above, the tribunal considered the significant fee charged for the room to be relevant and concluded that it was unlikely that a customer would have incurred such a cost simply for a room with furniture.

> *'... it was for the provision of access to a room which was licensed for carrying out civil weddings and which, for that reason, was open to the public.'*

An estranged position

BCH has added a further dimension to the room hire debate; that public access to the ceremony must be permitted, so a marriage ceremony in licensed premises can never be exempt from VAT.

The tribunal considered the size of the fee for the room to be relevant because it is a licensed venue. We suggest that other factors should also be taken into account, such as the desire to have an appropriate setting. People marry in stately homes and other similar venues because of the nature of the venue (its design, location, and surroundings), which itself creates the demand for functions.

The rationale applied in *BCH* can give rise to surprising results. It should be noted that a venue licensed for civil ceremonies cannot also be used for religious ceremonies. Further, the rules on venues in England and Scotland (and presumably in other devolved administrations) are different. In Scotland, for example, there is no

longer a requirement that a wedding be held in a ‘licensed premises’.

Applying *BCH* in England, the hire of a room for a civil marriage ceremony would be standard-rated. But would a commitment ceremony be exempt? Indeed, the same room could be used at different times of the same day. It would be rather strange that if you marry you are taxed, but if you don’t you are not.

In Scotland, because the provisions requiring venues to be licensed has been abolished, the arguments in *BCH* may not apply and all types of ceremony might well be exempt. Further, there is different legislation for religious ceremonies as distinct from civil ceremonies, which will undoubtedly create further nuances. And why should celebrity weddings, held behind closed doors to enable media rights to the wedding to be sold to the highest bidder, be exempt from VAT, when ‘normal’ weddings would be VATable?

But what is meant by ‘exclusive use’? Certainly the case law suggests that it should be the right to exclude others from premises, and that seems to remain HMRC’s view (see VATLP05760), but do the marriage regulations override that exclusivity? A former spouse of one of the couple may gatecrash the ceremony – could the individual be expelled from the building, both to avoid embarrassment but also to protect exemption from VAT?

Further, although a member may have access to the civil ceremony, do they really have access to the wider premises in the light of the limited access they might have?

Overall, we are not sure that *BCH* has resolved anything; rather it has added a new element to an already stormy relationship. Perhaps further (marriage) guidance is required!