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# Indirect tax update

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## Summary

Welcome to this week's Indirect Tax Update. The Court of Justice is on judicial vacation so there is nothing to report form there. Similarly, there have been no judgments issued by the UK's higher courts this week so we are left with reviewing a number of First-tier Tax Tribunal decisions.

The highlight of those cases concerns a company advised by Grant Thornton. Melford Capital General Partner Ltd appealed against a decision of HMRC to disallow the recovery of input VAT on both set-up and ongoing costs incurred in running an investment fund. The company was the general partner of a Limited Partnership and was in a VAT Group. HMRC focused on the activities of the company in isolation instead of the activities of the VAT group.

As the VAT group was to be regarded as the single taxable person and made only taxable supplies, the Tribunal found that HMRC was wrong and allowed Melford's appeal.

In a separate case, the Tribunal has issued a ruling in relation to the issue and redemption of 'platinum chips'. In the cases of Romima Ltd and Ors, the taxpayer operated entertainment clubs and issued 'chips' to customers as a form of currency with which customers could pay dancers and tip staff.

The taxpayer argued that when it issued the chips to the customer, the payment received was consideration for an exempt supply of a security for money or, alternatively, that only the excess over the face value of the chips was liable to VAT.

The Tribunal dismissed the appeal. The issue of the chips was not a security for money but simply entitled the customer to avail himself of the entertainment on offer in the club. As such, the chips were actually a single purpose voucher and VAT was due when the chips were issued to the customer and on the full amount received.

Finally, is Kickboxing a subject that is taught commonly in schools or universities in the EU? The appellant in our final case report argued that the teaching of Kickboxing should be exempt from VAT under the private tuition provisions of the VAT Directive.

The Tribunal dismissed the appeal.


## First-tier Tax Tribunal (FTT) – Melford Capital General Partner Ltd (MCGP)

*Recovery of input VAT by a VAT Group*

MCGP is the General Partner of a Limited Partnership. The Limited Partner is Melford Special Situations LP (MSS). The Limited Partnership (the LP), acting through MCGP as the General Partner established and ran an investment fund. The LP also owned a holding company and subsidiaries (the SPVs) through which the investments were made. MCGP provided investment capital and in return received both dividends and any investment gains achieved by the SPVs by way of a priority profit share.

Melford Capital Partners LLP (MCP) provided management and administrative services to both MCGP and to the SPVs (under the terms of a deed of adherence) and was VAT grouped with MCGP. The investment holding company and the SPVs were also members of a separate VAT group. MCGP incurred VAT on the costs relating to the setting up of the fund and on ongoing costs relating to the operation of the fund and claim this VAT in full. This was on the basis that the VAT group (of which it was a member) only made taxable supplies of management and administrative services to the 2nd VAT group. However, HMRC took the view that, taken in isolation, (ie ignoring the existence of the VAT group), the investment activities of MCGP should be regarded as 'non-economic' or non-business activities. As such, according to HMRC, there was, therefore, no right of deduction for the related input VAT. HMRC argued that the existence of the VAT group could not override that general principle. HMRC also argued that if it was wrong on that point, then the VAT group should be required to apportion its input VAT between its taxable activities (the management and administrative services) and its non-economic investment activities.

Advised by the Grant Thornton UK LLP VAT team, MCGP appealed to the FTT. Firstly, it argued that it was not open to HMRC to look at the activities of MCGP in isolation. The Court of Justice ruled in the Skandia case in 2014 that individual members of a VAT group lose their identity for VAT purposes and that it is the VAT group that is to be regarded as the taxable person. MCGP argued that when the activities of the VAT group were examined, it only made taxable supplies of management and administrative services to the 2nd VAT group. This was an economic activity giving a right of deduction of related input tax.

The Tribunal agreed. HMRC was wrong to simply isolate the activities of MCGP. Following Skandia, it was required to look at the activities of the VAT group as a whole.

On the second point, MCGP argued that there was no requirement for the VAT group to apportion the costs. The Court of Justice ruled in the Larentia & Minerva case in 2015 that a holding company which actively managed its subsidiaries did not need to apportion VAT incurred on its general overheads between its non-economic activity (of holding shares) and its taxable economic activity (of managing its subsidiaries). MCGP argued that, whilst it was not a holding company, the same principle should apply to the activities of the VAT group. In other words, there was no requirement to apportion the input VAT.

Again, the Tribunal was in full agreement – the VAT Group's activities were analogous to those of a holding company which actively managed its subsidiaries and, as such, no apportionment was required between the economic and non-economic activities/ The Appeal was allowed.

***Comment – this decision follows on the heels of the Heating and Plumbing Supplies Tribunal where Grant Thornton UK LLP also advised the appellant. It seems clear that HMRC's policy in relation to VAT groups is flawed as currently, it takes no account of the CJEU's judgments in either the Skandia or the Larentia and Minerva cases. Similar investment fund structures should consider whether or not there is an opportunity to reclaim any input VAT that was previously disallowed.***

### First-tier Tax Tribunal

Romima Ltd & Ors

The appellant in this case owns and operates a number of entertainment clubs. In order to encourage customers to stay on the club's premises, it offered customers an opportunity to purchase 'platinum chips'. A customer could purchase £100 worth of chips for a price of £120 and could then use the chips to either pay for entertainment services provided by self-employed dancers or to tip staff working at the club.

Having received these chips, dancers and staff would redeem them at the club. Dancers would receive £80 for each £100 of chips and staff would receive £60 for each £100.

The appellant argued that when it issued the chips to customers, the chips were to be regarded for VAT purposes as 'dealing with a security for money' and should be exempt from VAT. The Tribunal dismissed that contention. The chips were not a security for money in the hands of the customer but were, simply a means to access and pay for entertainment services. The Tribunal found that the chips were, in essence, single purpose vouchers. Accordingly the whole of the consideration received from the customer was liable to VAT at the standard rate.

The appellant also argued that when it redeemed the chips (either from dancers or from staff), there was no taxable supply. However, the Tribunal found that, as far as dancers were concerned, the fee charged by the club must be regarded as consideration paid by the dancer for an array of services provided to her by the club. As such, the fee was also liable to VAT at the standard rate. As there were no services provided to staff, the fee charged was not consideration for a supply and was outside the scope of VAT.

#### Comment

***The issue in this case were almost an identical re-run of the arguments in the case of Wilton Park Ltd and its issue of 'Secrets' money.***

***The Tribunal made it clear in this case that the issue of the chips was not a security for money. Under the terms of the scheme, the customers were not entitled to redeem the chips. As such, the chips were not security for money but simply allowed the customer to take advantage of the entertainment services provided by the dancers.***

***The chips were, in fact, single purpose vouchers and, from May 2012, VAT was due on the full amount received at the time that payment was received. The appeal was dismissed.***

### First-tier Tax Tribunal – Premier Family Martial Arts Ltd

Whether the teaching of Kickboxing exempt from VAT.

The VAT Directive provides an exemption for 'tuition given privately by teachers and covering school or university education'.

The taxpayer in this case provides kickboxing classes to a wide range of students ranging from young children to middle-aged adults. It argued that it should be regarded as providing private tuition covering school or university education.

The Tribunal found there are no formal qualifications awarded for the teaching of Kickboxing. Similarly, there are no recognised or formal qualifications that can be awarded to students that have been taught Kickboxing. Even more importantly, the taxpayer was unable to provide any evidence that any school or university in the European Union taught Kickboxing on a regular basis.

In the UK, Kickboxing does not form part of the national curriculum and whilst other sports such as football, rugby, hockey and tennis were listed as suitable sports for students to be assessed at GCSE or AS/A level, Kickboxing was not mentioned.

On the evidence presented (or lack of it), the Tribunal could only come to the conclusion that Kickboxing is not a subject that is commonly taught in schools or universities through the EU. As a consequence, the company's income was liable to VAT at the standard rate and its appeal was dismissed.

#### Comment

***This was an understandable attempt by the appellant to have its income treated as exempt from VAT.***

***The business had not registered for VAT (it had assumed that the teaching of kickboxing was VAT exempt). However, following an investigation, HMRC issued a ruling that the supplies were liable to VAT at the standard rate and that the business should have been registered for VAT in 2011. HMRC issued an assessment to recover arrears of VAT in the sum of £411,000.***

***Unfortunately, there was insufficient evidence presented to the Tribunal to satisfy it that the sport of Kickboxing was a subject that is taught at schools or universities across the EU. In the end, the Tribunal could only dismiss the taxpayer's appeal.***

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