



TC01504

Appeal number: TC/2009/14060

EXEMPTION – Trade Association – Primary purpose – Whether association’s primary purpose was making representations to the government on legislation and other public matters – No – Whether association restricted membership wholly or mainly to members whose business interests were directly connected with the purposes of the association – No – VATA 1994 Schedule 9 para 9 item 1 and Note 5(d)
UNJUST ENRICHMENT – Exemption – Claim for repayment of VAT overpaid – Whether unjust enrichment provisions apply – VATA 1994 s80(3)

FIRST-TIER TRIBUNAL

TAX

**THE BRITISH ASSOCIATION OF LEISURE PARKS,
PIERS & ATTRACTIONS LIMITED**

Appellants

- and -

**THE COMMISSIONERS FOR HER MAJESTY’S
REVENUE AND CUSTOMS**

Respondents

TRIBUNAL: SIR STEPHEN OLIVER QC

Sitting in public in London on 25 and 26 August 2011

Tim Brown, counsel, for the Appellants

Sarabjit Singh, counsel, instructed by the general counsel to HMRC, for the Respondents

DECISION

1. This appeal concerns decisions of HMRC, upheld on review on 17 August 2009, to refuse two claims for allegedly overpaid output tax in respect of memberships' subscriptions received by the British Association of Leisure Parks, Piers and Attractions ("the Association") on which output tax had been charged and accounted for. The claims had been made on the basis that the members' subscriptions should have been exempt from VAT. The claims in issue were for:

- 10 (i) repayment of VAT of £419,354 for the periods from registration of the Association on 1 January 1982 until 31 March 2005 and
(ii) repayment of VAT of £65,891.47 for the periods from 1 October 2005 until 31 March 2008.

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2. The issues raised in the appeal are:

- 20 (i) whether as regards all or any of the periods covered by the claims the Association was an organisation falling within Schedule 9 Group 9 item 1(d) of VAT Act 1994 and/or Article 132(1) of Directive 2006/112/EC and
(ii) if and to the extent that the Association was such an organisation, whether the exemption has been disapplied by Note 5 to Group 9 and
25 (iii) if not, whether the Association would be unjustly enriched if it received repayment from HMRC.

The principle issue :exemption under item 1d

30 3. Article 132(1) of Directive 2006/112/EC provides that:

35 "Member States shall exempt the following transactions:
... (l) the supply of services, and the supply of goods closely link thereto, to their members in their common interest in return for a subscription fixed in accordance with their rules by non-profit-making organisations with aims of a political, trade-union, religious, patriotic, philosophical, philanthropic or civic nature, provided that this exemption is not likely to cause distortion of competition ..."

40 4. Item No.1 of Group 9 of Part II of Schedule 9 to VATA exempts:

45 "The supply to its members of such services and, in connection with those services, of such goods as are referable only to claims and available without payment other than a membership subscription by any of the following non-profit-making organisations –

... (d) an association, the primary purpose of which is to make representations to the Government on legislation and other public matters which affect the business or professional interests of its members.”

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5. The Association does not claim that the UK’s implementation of the exemption is in anyway incorrect. Accordingly the question is whether, under item 1(d) of Group 9, the Association had the “primary purpose” of making “representations to the Government on legislation and other public matters” affecting “the business or professional interests of its members” in part or all of the relevant period.

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6. HMRC say, consistently with Notice 701/5, that a “primary purpose” is not necessarily the sole purpose of the society but is the main or principal purpose. And for present purposes an association can only have one primary purpose. I do not understand this to be challenged, as a matter of principle, by the Association.

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7. HMRC do not dispute that a purpose of the Association in the relevant period was to make representations of the kind referred to in item 1(d). However, HMRC do not accept that this was the Association’s primary purpose.

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Evidence

8. In this Decision I use the term “lobbying” as a shorthand expression to cover the functions referred to in item 1 of Group 9. Thus, to determine whether lobbying has been the Association’s primary purpose or a main or principal purpose (see above) for all or any of the periods covered by the claim, I need to examine the facts as they existed in each of the periods. I then have to decide, on the basis of that fact-finding exercise, whether the Association has satisfied me (as regards all or any of the periods) that its primary purpose was lobbying. The evidence provided by the Association included documentation relating to its structure, its registration (including visit reports), the facilities offered to its members, some letters from the Association relating to legislation proposed and extracts from management committee minutes for 2002 onwards. The chief executive of the Association from 2001 to 2010, Mr Colin Dawson OBE, gave oral evidence. I shall summarise the evidence as far as possible in chronological order.

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9. The Association was founded in 1938. It applied for registration in November 1981. I quote from a letter to HMRC dated 6 November 1981:

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“The function of the association is to disseminate information to members by means of regular newsletters and arrange meetings and study tours. We also publish contract forms, riding inspection certificates, etc, which members purchase as required. Membership confers an obligation to have all rides inspected by independent engineers at regular intervals and certificates must be sent here in the approved form

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Income is derived from memberships' subscriptions, the sale of forms and bank interests on deposit accounts.

5 The activities of the Association are now increasing: for example we are proposing corporate advertising and the sale of ties, car badges and park membership signs to members."

10 Following its application to register for VAT, a visit from an officer of HMRC took place. The report described the main activity as – "to promote and further interests of members engaged in the business of amusement parks, piers and similar establishments". Its subsidiary business activity is described as to "organise annual dinner and ... trips overseas, arrange publicity for members ... training course ... occasionally." Under the heading structure and organisation of business, the officer
15 has entered these words:

 "One of the main activities of the association is to monitor private members' bills and examine them to ensure that they contain nothing which may set a precedent and affect the association's members."

20 The report records that the then chief executive runs the Association with the assistance of one full-time and one part-time member of staff. (That has remained the position throughout the accounting periods covered by the present claim.)

25 10. Further visits by HMRC took place in 1983, 1986, 1988 and 1992. The 1986 visit records a name change to the present name. We learn from the reports that conference trips had been organised in 1982 to Germany and Italy and in 1983 to Spain and Munich.

30 11. The 1992 Visit Report states that the "main business activity" of the Association is – "Representing members (who are engaged in the business of amusement parks, piers etc) re private members bills and promoting member interests by other activities". "Subsidiary business activities" are described as – "Arranging for members to attend exhibitions and receiving commission from exhibition holders
35 for doing same." The Report also observes that "The Association helps promote its members by producing magazines which may, for example, highlight particular rides or else provide a summary as to the location of various amusement parks. Magazines are distributed to various parties."

40 12. In 1991, Mr Dawson (who as already noted became chief executive in 2001 and gave evidence) joined the management committee of the Association. He chaired the Association in 1994/5. In 1996 the Association was incorporated as a company limited by guarantee. The objects clause of the Memorandum states:

45 "The Association's objects are to act as the Trade Association for that part of the leisure industry in the United Kingdom which comprises amusements, theme and other parks, and piers and other static or

permanent attractions and enterprises for public and/or tourist entertainment (“the Industry”) and without prejudice to the generality of the foregoing:

- 5 (1) to represent and protect the interests of the Industry in relation to all local, national and international legislative and regulatory provisions and proposals which may from time to time affect the Industry;
- 10 (2) to set and impose standards of good practice and conduct for and for the benefit of the Industry;
- (3) to act as an authoritative source of information concerning the Industry for members of the public, the media, governmental and other agencies and all other interested parties;
- 15 (4) in the interests of the Industry, to collaborate with other associations and bodies whose objects or activities are similar to or overlap those of the Association, whether in the United Kingdom or overseas;
- 20 (5) to provide services to its members and generally to represent, protect and further the interests of the organisations within the Industry represented by such members.”

13. At some stage the Association adopted rules which, in Rule 2, stated that the Objectives of the Association were:

- 25 (1) To actively promote best safe practice to its Members in particular and to the Industry in general.
- (2) To watch over, protect and further the rights and interests of members engaged in the business of a Leisure, Theme or Amusements Park, Pier, Zoo, or other qualifying attractions and to co-operate with those other associations in Great Britain and overseas having similar aims and objects;
- 30 (3) To enable its Members to act together in all matters appertaining to their trade interests;
- 35 (4) To establish and maintain a dialogue with HMG and to actively lobby through appropriate government departments, national tourist authorities and relevant executive agencies;
- (5) To monitor legislative proposals and other public matters affecting the industry and to take such action as may be deemed necessary;
- 40 (6) To initiate, coordinate and monitor appropriate training schemes for employees of the industry and to formulate and promote training generally for its own resources and those of its members;
- (7) To form a centre for obtaining and disseminating information;
- 45 (8) To seek and to improve and maintain the highest possible industry standards;

(9) To endeavour to resist all attempts to harass the business of the Members.

14. A number of undated documents to which I will refer later summarise the membership benefits. Those appeared to have come into being from 2008 onwards. Their evidential value as regards periods to which the claim relates has to be assessed in the light of the fact that the period to 31 March 2008 was the last period covered by the claim.

15. By 2010 the membership had been over 300, being 215 “Static Attraction Operating Members” and 96 “Trade Associate Members”. Trade Associate Members were primarily suppliers to, or those having divisions which serviced, the leisure industry.

16. An undated document describes the benefits of membership as follows:

- Access to our training seminars, all provided at subsidised rates
- Access to our Best Staff Training Scheme for new staff
- Attend the various network events which are held during each year
- Attend the sector specific meetings such as the Theme/Amusement Parks Sub Group, Park Engineers Sub Group, Zoo and Animal Attractions Sub Group, Human Resources Sub Group
- A regular Members, newsletter ... to advise you of meetings, event, industry news and Association new
- Make use of our Umbrella Body Status for Criminal Record Bureau checks at special Member rates
- Access to our website Members’ section which includes free legal helpline as well as the contact details of all Association members
- Attraction Members will become part of our confidential database operated under the Amusing Device Inspection Procedure Scheme.”

The Association’s website for 2011 refers to facilities available to members as being – lobbying, legal helpline, planning helpline, training opportunities, meeting minutes, diary dates, news flash, notice board, health and safety, gallery and items for sale.

17. In every year from 1990 the Association held its annual Parliamentary Lunch. At least one-third of the attendees came from one or other of the Houses and they always included a minister or front bench spokesman.

18. The actual records of the Association’s activities make no mention of anything relevant until 2001. In 2002, according to the management committee reports, the Association took part in a Gambling Revenue Report. In 2002, the Association responded to a consultation document on low pay. It advised its members to lobby their MPs prior to a debate in July 2002. In 2003 the Association made representations on a Gambling Review; it undertook to attempt to influence other bodies (NHS and LGS) in relation to insurance issues. It supported “Rider Uniform Safety” legislation and expressed concern about prosecution of individuals by the

Health and Safety executive. In 2004 the Association agreed to produce a draft letter for its members to send to their MPs in advance of the MEP election as regards the 48 hour Working Time Direction. It expressed concern at the “compensation culture” background to the Compensation Bill.

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19. The Gambling Bill was before Parliament in early 2005 and the Association suggested at least four amendments. One of the management committee members of the Association (Angela Wright) is recorded as having written to her MP about legislation concerning the employment of children. In September 2005 the Association circulated a paper on the need for the Association to introduce minimum standards of first aid for theme, amusement and fun parks. The remarks in that paper were recorded in a report of the Westminster Hall debate on the topic.

20. Sometime in 2005 the Association engaged lobbying consultants. From 2006 onwards the minutes of the management committee records a list of matters to be added to the consultants’ brief. These covered the Compensation Bill, the Highways Agency, Double Summer Time, Grant Aid for the private sector, Industry Profile and Contact Programme and Smoking. By the end of 2006 the management committee considered proposals to set up a fighting fund to enable the Association to deal more effectively with proposals by the sponsoring department in relation to the Gambling Act. In 2007 the Association identified its strategies as including matters relating to the Gambling Act, the HLF, capital allowances for roller-coaster foundations, the impact of VAT on the tourist industry, coastal access, coach drivers’ hours and daylight saving.

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21. Mr Dawson estimated that he spent 70% of his time as chief executive on the representation of members’ interests to government and other legislative bodies. A four-drawer filing cabinet had been dedicated to Gambling Act material. He said that he saw the representation of its members to the Government at all levels as the Association’s primary aim.

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22. I heard no evidence from any of the members as to what they perceived to be the benefits of membership and the objects of their Association.

35 **Conclusions on primary issue**

23. It is not in dispute that the Association has to satisfy the Tribunal that it qualifies for exemption as regards its supplies in the accounting period covered by the claim. For each such period therefore it must show that its primary purpose has been to make representations to the Government (UK and/or EC) on legislation and other public matters affecting the business of its members. To put the test colloquially, it has to be shown that lobbying has been the Association’s primary purpose in such period.

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24. The purposes of the Association as a company registered under the Companies Act are defined in its “objects clause”. Its purposes, so far as concerns its role as an association representing the interest of its members, are found in its Rules. The

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benefits of members, as explained to the public at large, are found in the passage summarised in paragraph 16 above and in the Association's website. From these and from the wide range of documentary evidence presented to the Tribunal, it is clear that the character of the Association is that of a trade association which has a set of specific purposes or, as formerly described in the Memorandum, specific "objects". The Association's character as a trade association is, I think, its over-arching purpose. That over-arching purpose is expressed in the statement at the start of the objects clause in the Association's Memorandum which states that its "objects are to act as the trade association for that part of the leisure industry ... which comprises amusement, theme and other parks, and piers and other static or permanent attractions and enterprises for the public and/or tourist entertainment". Each of the specific purposes or objects (and I do not see any significant difference between those two terms in the present context) provides the means by which the Association functions as a trade association for the leisure industry. The individual descriptions in the Memorandum of the specific objects are said to be "without prejudice to the generality of the opening words". The demands on the Association's resources will vary as between the particular specific objects and, as regards a particular object, the demands in one accounting period may be different because the particular activity or function has changed.

25. Assisting and promoting the interests of its members is a theme common to all the specific objects, i.e. both those set out in the Memorandum and in the Rules. The Association through its promotion of safe practice, dissemination of information, training, lobbying, facilitating networking, providing a CRB "umbrella", for example, is thereby functioning as a trade organisation. The evidence shows, I think, that that was what the Association was doing when registered and that is what has continued throughout the periods covered by the claim.

26. The thrust of the Association's case is that lobbying has grown into the Association's predominant or primary purpose. The evidence does not, however, bear this out. Virtually all the documentary evidence relating to lobbying has come from the three to four most recent years to which the claim relates. I accept that in these recent years, and probably from 2005/6 onwards, lobbying has made the greatest demands on the resources of management and space. I record also that until the early 2000s, no suggestion had been made and no evidence exists to show that lobbying had been making a heavy demand on the Association's resources. In that connection I mention that the statement in the 1992 Visit Report (see paragraph 11 above), which is supported by no explanation or reference to the circumstances, has not persuaded me that lobbying was then a principal purpose of the Association.

27. I accept Mr Dawson's evidence that 70 per cent of his time has come to be spent on lobbying. But a purpose or, as here, a primary purpose, will not necessarily be determined from the level of a particular claimant's activities. There was moreover, no evidence to show the views of the members, to whom the manner in which the Association has represented their interests will have been a primary concern. I cannot therefore conclude that they endorse the Association's contention that lobbying is its primary purpose.

28. Looked at overall, the Association has retained as its primary purpose its function as a trade association which has, throughout the periods covered by the claim, represented and promoted the interests of its members.

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29. For those reasons I dismiss the appeal. However, in case the matter should become relevant, I now turn to address the other issues.

Is the Association disqualified from exemption by Note 5 to Group 9?

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30. Assuming, contrary to the conclusion so far, that the Association comes within Schedule 9 Group 9 as being an association that its primary purpose is to make representations to the Government on legislation and other public matters affecting the interests of its members, exemption will be disapplied by Note 5 if the Association fails to restrict "... its membership wholly or mainly to individuals or corporate bodies whose business or professional interests are directly connected with the purpose of the Association."

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Facts relevant to Note 5

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31. There are 215 "Operating Members" of the Association. Operating Members, as defined in Heading 5 of the Rules, as comprising "proprietors and officers of companies engaged in the running of parks, piers, amusements arcades, zoo and attractions". They are all entitled to speak and vote at a general meeting. It is not in dispute that all these Operating Members have business or professional interests that are "directly connected with" the Association's purpose.

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32. The Association has 96 "Trade Associate Members". These form some 31% of the Association's total membership. Under the Association's Articles of Association, "Trade Associate Membership" is open to - "Any person being the proprietor of or nominated by or to represent a business connected with the manufacture, sale or supply of goods or services for or to qualifying businesses". Under the Association's Rules, a person is entitled to apply for membership as a Trade Associate Member if he is "A person representing a company or Group of Companies which provides services, manufactures or distributes equipment or rides or other supplies within the industry". An example of such a member was given as a company whose business includes the selling of fast food in an amusement venue. The business interests of the person representing that company will be connected with the purposes of the Association on the strength of Item 5 in the Association's objects clause in paragraph 3 of its Memorandum, namely by virtue of the fact that that person will receive the benefit of services provided by the Association in the form of, for example, information or networking opportunities.

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33. The Trade Associate Members are, as just noted, primarily suppliers to the leisure industry. They include two firms of solicitors, six insurance brokers, three food suppliers, one firm of architects and one provider of financial services.

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34. HMRC say that the Association is disqualified from exemption.

35. The term “purposes of the Association must, they say, be read as referring to the lobbying purpose of the association, i.e. its primary purpose; it is not enough that there may be a direct connection between the business interests of the Trade Associate Member and some other purpose of the Association, such as the provision of information or networking opportunities. As the business interests of the Trade Associate Members are not directly connected with the Association’s (assumed) primary lobbying purpose and as the Trade Associate Members comprise 31% of the membership of the Association, the membership of the Association will not have been restricted wholly or mainly to individuals and companies whose business interests are directly connected with the primary lobbying purpose of the Association.

36. The Association contends that the business interest of every Trade Associate Member is directly connected with a purpose of the Association. Further, even if the Trade Associate Members are not so connected, the fact that membership has in fact been restricted as the 69% to Operating Members (whose business interests are agreed to be directly connected with the Association’s lobbying purpose) means that the Association satisfies the requirement that membership has been restricted wholly or mainly to individuals or companies whose business interests are directly connected with the principal (lobbying purpose).

Conclusion on Note 5

37. I acknowledge that Note 5 can be read literally. It was read by the Tribunal in *European Tour Operators Association v HMRC* [2011] UK FTT 88 TC (26 January 2011) as if the expression “the purpose of an association covered any purposes albeit not the primary purpose”. See paragraphs 37 and 38 of that Decision. I do not think that that is the right meaning here. Note 5 engages once the association in question has satisfied the requirements set out in Group 9 paragraph (d). The Association will, one must assume for this purpose, be one whose primary purpose is lobbying. The question, for Note 5 purposes, will be whether an association with lobbying as its primary purpose will have restricted its membership to persons whose business or professional interests are directly connected with its purposes. Reverting to the example of the interests of the fast food outlet, these have no connection with the Association’s lobbying purpose, thus there will be insufficient connection with the Association’s purposes. Connection with one subsidiary ingredient in the objects of the Association in question cannot establish a relevant connection between the business interests of the member and “the purposes” of the “association, the primary purpose of which is” (as here) lobbying.

38. I turn now to the question whether the existence of a 31% membership, the business interests of whom are not connected with the purposes of the Association means that the Association has not restricted its membership wholly or mainly to persons whose business interests are directly connected with its purpose. The argument of the Association is that “mainly” means chief in size or extent, e.g. 51%, which is well below the 69% that comprises Operating Members in the present case.

39. The Association's reading of "mainly" is, I think, incorrect. The word cannot be read in isolation. It is part of the compound phrase "wholly or mainly". In that connection it must, I think, mean all or substantially all, e.g. 100% or a near percentage, rather than simply a bare majority.

Unjust enrichment

40. The Association's claims for repayment are claims for credits for overstated or over paid VAT made under section 80(1) of the VATA. Section 80(1) provides that:

“Where a person –

- (a) has accounted to the Commissioners for VAT for a prescribed accounting period (whenever ended), and
- (b) in doing so, has brought into account as output tax an amount that was not output due,

the Commissioners shall be liable to credit the person with that amount.”

41. Section 80(3) of VATA states that: “It shall be a defence, in relation to a claim under this section by virtue of subsection (1) ... above, that the crediting of an amount would unjustly enrich the claimant”.

42. It is not in dispute that, for the Tribunal to find that repayment would unjustly enrich the Association, the Tribunal needs to be satisfied that the Association (i) has charged amounts of VAT to its customers that it ought not to have charged, (ii) has passed the economic burden of the wrongly charged VAT to its customers, (iii) has suffered no loss or damage as a result of having passed the mistaken charge to its customers and (iv) is unable or unwilling to reimburse its customers with any amounts paid to it by HMRC.

43. In the light of the decisions reached so far, this matter is academic. Nonetheless, should the point ever become relevant, I proceed to consider the unjust enrichment issue.

44. The burden is on HMRC to show that the economic burden of the wrongly charged VAT (assuming that it was wrongly charged) was passed on to the Association's customers (see *Baines & Ernst Ltd v Customs and Excise Commissioners* [2006] STC 1632 at paragraph 13). That burden, say HMRC, is discharged in the present case. That is because there is no dispute that the Association passed on the economic burden of any wrongly charged VAT to its customers by charging output tax on subscription fees to its VAT-registered numbers, which those members then recovered from HMRC as input tax.

45. I agree with HMRC that in principle the economic burden of wrongly charged VAT was passed on by the Association to its members or “customers” for these purposes. The onus shifts to the Association to show why it suffered loss or damage as a result of having passed this charge on. The Association has produced no evidence
5 on this point. I cannot see that the Association did in fact suffer any loss or damage. It passed the VAT charge on to its “customers”.

46. The Association’s principal argument in resistance to the claim that repayment would unjustly enrich it is that it is a not for profit organisation and any profits are
10 held by the Association for the benefit of the members. Therefore, it is said, although the Association may be enriched, it is not unjustly so.

47. The Association refers to the case of *Newcastle Theatre Royal Trust Ltd v Customs and Excise Commissioners* (2005) VAT Dec. 18952. However, that case is
15 no authority for the proposition that not-for-profit bodies cannot be “unjustly” enriched. In that case, ticket prices for theatrical performances in Newcastle were not fixed with VAT in mind and only about 27p of the £14 average cost of the ticket could be ascribed to VAT. Because VAT was such an incidental part of the cost of the ticket, the Tribunal found that the Theatre Trust had in no real sense “passed on”
20 the tax to its customers (see paragraph 13). The Tribunal found that even if the Theatre Trust had passed on the VAT to its customers, then on the facts any repayment to the Theatre Trust would not be “unjust”; this was because of the difficulty in identifying the Theatre Trust’s customers, who were non-VAT-registered members of the public, and because those customers would probably have been
25 content for the Theatre Trust to keep the trivial amounts of VAT owed to them (paragraphs 14 and 15).

48. HMRC contend that, on the facts of the Association’s case, repayment would in any event be “unjust”. In the *Newcastle Theatre* case VAT had, as just noted,
30 formed an incidental and trivial part of the cost of tickets supplied to members of the public, whereas in the Association’s case, the Association’s invoices show that VAT was expressly added to subscription fees and constituted a significant amount that had been charged to VAT registered businesses. If that VAT were now repaid to the Association, the Association will be in a better position than would have been the case
35 had it not accounted for the VAT; it would achieve a windfall profit. Moreover, the payment would be to the direct financial detriment of HMRC. The VAT charged by the Association was itself input tax of the VAT-registered businesses to whom it was charged.

40 49. The Association contends that HMRC cannot demonstrate that it would be unjustly enriched if it were paid the output tax. The recovery rates of its members are not known. In all probability the zoo members, for example, will have been exempt and so will have recovered nothing; others might record less than the standard rate.

45 50. The Association has pointed to no other members in positions comparable to that of the zoos.

51. So far as the point is relevant I cannot see that HMRC is required to examine the recovery rate of each member. I refer to paragraph 60 of the decision of the Advocate General Jacobs in *Weber's Wine World* [2003] ECR I-11365 where he observed that while the burden may lie with the tax authority to establish unjust enrichment, the threshold should not be unduly high. The fact is that the Association has not borne any part of the output tax that it now seeks to recover. The entirety was passed on to its members. It would, in my view, be unjustly enriched if the VAT were now to be repaid to it. I cannot therefore see that the fact that some members were exempt alters this.

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Conclusion

52. For reasons given above I dismiss the appeal.

53. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

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**SIR STEPHEN OLIVER QC
TRIBUNAL JUDGE
RELEASE DATE: 12 October 2011**