RFU

A GUIDE TO VAT FOR COMMUNITY (NOT FOR PROFIT) RUGBY CLUBS

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1.0 INTRODUCTION

VAT DOES NOT SIT COMFORTABLY WITH MEMBER CLUBS AND OTHER NOT-FOR-PROFIT ORGANISATIONS ESTABLISHED FOR PARTICIPATION IN SPORTING ACTIVITIES. RUGBY CLUBS ARE NO EXCEPTION TO THIS POSITION.

VAT is a tax on business transactions and although most rugby clubs are not-for-profit organisations and may be either a Community Amateur Sports Club (CASC) or charity, they invariably are involved in certain business activities. These could include the provision of facilities to members for a subscription, operation of bar and catering facilities, letting of the clubhouse or the letting of sports facilities.

The principal activity for most clubs will be the organisation and participation of its rugby playing activities. Although this will be the main objective of the club, it is invariably treated as a business activity for VAT purposes where players are required to pay a membership subscription. However, although the subscription is classed as a business income, it is not liable to VAT as it falls within a specific VAT relief which exempts from VAT the participation in sporting activities provided by a not-for-profit organisation. The VAT exemption relief is also applied to the letting of certain sporting facilities by not-for-profit clubs for the direct benefit of individuals and groups of individuals.

Whereas the ability to receive income exempt from VAT from these sports related activities is advantageous for clubs it is also the cause of the VAT recovery problem faced by many rugby clubs. This is because VAT incurred on costs relating to exempt activities can only be recovered in certain circumstances.

This restriction on VAT recovery is particularly problematic when clubs embark on facility improvement projects such as the construction of new changing rooms and clubhouses or improvements and additions to floodlights, pitches etc.

The RFU has engaged the services of Russell Moore, an independent VAT consultant, to provide a VAT helpline service to clubs. The first 30 minutes of advice is free to clubs with any additional services provided at greaty reduced rates.

Clubs can contact the helpline either by calling Russell on 07710 329317 or by emailing their enquiry to russellmoore@sportsvat.co.uk

THIS GUIDE IS INTENDED TO SET OUT THE RULES AND REGULATIONS OF THE VAT SYSTEM AS IT AFFECTS RUGBY CLUBS. IN PARTICULAR, IT SETS OUT THE MATTERS FOR CLUBS TO CONSIDER WHEN PLANNING A CAPITAL PROJECT AND COMMENTS ON HOW THE VAT COST CAN IN CERTAIN CIRCUMSTANCES BE KEPT TO A MINIMUM. THE PURPOSE OF THIS GUIDE IS TO PROVIDE GENERAL GUIDANCE ONLY. IT IS NOT INTENDED THAT IT IS USED BY CLUBS TO ESTABLISH THE VAT POSITION OF SPECIFIC TRANSACTIONS AND IT IS STRONGLY RECOMMENDED THAT PROFESSIONAL ADVICE IS TAKEN ON ALL MATTERS.

2.0 OVERVIEW OF VAT

VAT CAN BE A SUBSTANTIAL COST FOR MANY RUGBY CLUBS. THE COST IS INCURRED PRINCIPALLY THROUGH A SUPPLIER CHARGING VAT ON A SUPPLY TO THE CLUB AND THIS VAT BEING EITHER PARTIALLY OR WHOLLY IRRECOVERABLE.

The impact of VAT can increase significantly when a club undertakes facility improvement works such as the construction or extension of a clubhouse or changing rooms or improvements or additions to playing facilities such as floodlighting or drainage works.

The VAT recovery problem faced by clubs derives from certain activities being exempt from VAT. The exemption applies to activities relating to participation in sport so includes incomes from playing subscriptions, match fees and facility letting. Although this exempt status is beneficial in that no VAT needs to be declared on, or extracted from, such incomes, clubs suffer a potential disadvantage that VAT incurred on costs and expenses attributable to these exempt activities, either directly or indirectly, may not be fully recoverable.

The reason for this potential problem is that it is a basic principal of VAT accounting that VAT incurred on costs and expenses can only be recovered when it is attributable to what is termed as a 'taxable' supply. These are supplies made at the standard (20%), reduced (5%) or zero (0%) rate. This being so, VAT incurred on costs relating to exempt activities can only be recovered when it falls below certain prescribed de-minimis limits (these are explained in more detail in Section 5). Considering all not- for-profit clubs will be involved in exempt sports participation activities, it is likely that some clubs will be unable to recover a proportion of the VAT they incur.

However, with careful planning and an understanding of how the VAT recovery rules can work to a club's advantage it is possible for many clubs to enjoy a full VAT recovery. It is of course necessary for a club to be registered for VAT before it can seek to recover any VAT it incurs. This in itself can be a big step to take for clubs and should only be made with the appropriate advice. All clubs with an annual turnover of taxable income in excess of £85k per annum are compulsorily required to register for VAT. Clubs with a taxable income of less than this level can voluntarily register where there is a financial advantage in recovering VAT on a major project. The downside is, however, that VAT will be due on taxable incomes such as bar sales and most catering supplies, so it is not a step to be taken without careful consideration.

3.0 VAT LIABILITY OF INCOMES

3.1 GENERAL

In order to work out whether VAT needs to be charged and declared on an income and consequently whether VAT incurred on related costs can be recovered, clubs are required to establish the correct VAT liability of all incomes and activities. Similarly, if any activities are undertaken by a trading company, the VAT status of each activity will need to be established to ensure VAT is correctly accounted for. Particular care may need to be taken where activities are undertaken by a trading company as this may change the VAT liability of the income generated.

The basic question is whether the activity is taxable, for VAT purposes, or whether it is exempt from VAT under the sports participation relief or other exempt category. In this context, the term 'taxable' means subject to VAT at either the standard (20%), reduced (5%) or zero (0%) rate. As a rule of thumb, all taxable activities undertaken by a rugby club will be subject to standard rate VAT with very few exceptions (see below).

3.2 OVERVIEW OF VAT LIABILITY OF TYPICAL INCOMES AND ACTIVITIES

Taxable at standard rate:

- Bar sales
- Catering
- Merchandise/kits, clothing
- Social membership subscriptions
- Kiosk food sales (except cold takeaway)
- Clubhouse letting – functions with bar/catering supplies
- Certain sports facility hires
- Perimeter/post protector advertising (mobile or opted)
- International ticket income
- Commercial sponsorship
- Spectator gate admissions
- Car parking

Taxable at zero rate:

- Programmes/books
- Kiosk food sales – cold takeaway
- Children's size clothing/kits (up to age 14)
- Charity advertising

Exempt:

- Playing membership subscriptions
- Match fees
- Clubhouse letting – room hire only
- Some sports facility hires
- Perimeter advertising (fixed site)
- Bank interest

Outside the scope of VAT:

- Grants
- Donations

3.3 CHILDREN'S SIZE CLOTHING/KITS

The sale of clothing, including kits, hats, baseball caps etc., is subject to standard rate VAT unless it is 'designed' for young children up to the age of 14, when it is zero-rated. It is recommended that clubs follow the VAT liability given by their supplier and where there is any doubt, to seek advice.

3.4 MEMBERSHIP SUBSCRIPTIONS

Where a subscription entitles the member to participate in playing rugby it is exempt from VAT. In all other cases, such as a vice president or social subscriptions, it is subject to VAT.

3.5 KIOSK FOOD SALES

Sales of hot food from kiosks are standard rate. Sales of cold food are also standard-rate unless they are to be consumed 'off the premises.

When a kiosk is situated in a sport ground the term 'off the premises' is interpreted as meaning in the kiosk itself, plus any adjacent facilities provided for use of customers.

Items such as alcohol, confectionery and crisps are always standard rated.

Food sold within the clubhouse is standard rated unless it is cold food intended to be taken off the premises, such as sandwiches.

3.6 CLUBHOUSE LETTING

Function hire – The VAT position of clubhouse letting is determined by the purpose for which it is let. Where the principal purpose is the use of the facilities, such as the bar and catering services for a wedding, wake, or party, then the hire charge is standard rate.

Room only hire – Where, however, the principal purpose is merely to use the room for a meeting, then provided no more than light refreshments are supplied, (i.e., tea, coffee and biscuits) the hire is exempt from VAT (see option to tax page 9).

3.7 SPORTS FACILITY HIRE BY NOT-FOR-PROFIT CLUBS

The letting of sports facilities by a club is normally liable to VAT, there are however two exceptions to this as follows:

3.7.1 HIRE TO INDIVIDUALS

The letting of sports facilities for the direct benefit of an individual or group of individuals by a not - for - profit organisation is exempt from VAT. The exemption cannot be overridden by the option to tax (see below) and therefore applies to all qualifying supplies of sports facilities made directly to individuals.

However, this exemption only applies in very limited circumstances where the hire is made directly to the individual participating in the sporting activity. It does not apply to the hire of facilities made to structured clubs and associations where the players pay a membership subscription. This being so, it is likely that it will only apply to community 'pay and play' sessions.

The exemption only applies to supplies made by eligible not for profit organisations *ie not by Trading Companies*. To meet this criterion the body must be constituted so that it:

- cannot distribute any profit it makes otherwise than to another non-profit making body or its own members on winding up or dissolution.
- (except on winding up or dissolution) applies any profits it makes from supplies exempted by these provisions either to maintain or improve the sports facilities made available in connection with those supplies or for the purposes of a non-profit making body; and
- Is not subject to 'commercial influence'.
- What constitutes commercial influence is a complex matter. Broadly, HMRC can prevent the application of the VAT sporting exemption where a club receives a supply of land or services from a connected person or makes a payment to a connected person which is determined at least in part by reference to the club's profit or gross income.

3.7.2 10 LETS / 24 HOURS EXEMPTION

24-hour rule

Where facilities are provided for a continuous period of use exceeding 24 hours, the person to whom the facilities are let must have exclusive use of them throughout the period of letting.

Series of 10 or more lets

Where facilities are let for a series of 10 or more periods to a school, club, association, or an organisation representing affiliated clubs or constituent associations where:

a. Each period is in respect of the same activity carried out at the same place.

b. The interval between each period is not less than a day and not more than fourteen days.

c. Consideration is payable by reference to the whole series and is evidenced by a written agreement.

d. The grantee has exclusive use of the facilities.

However, even where one of these possible two exceptions apply the exemption can be overridden by an option to tax (see 3.9 below)

Care must also be taken where facilities are let by a trading subsidiary and not the club itself. Where there is no lease or licence in place between the club and its trading subsidiary, HMRC may deem that the facilities are being let by the club which may restrict the ability to charge VAT on such income.

3.8 OPTION TO TAX

The VAT exemption over certain land and property transactions can be waived by the making of a specific election to waive the exemption in favour of it becoming a taxable supply. This action is commonly termed 'opting to tax'.

Once the election is made, all income generated by the elector from the land or property that would otherwise be exempt from VAT is 'converted' to be liable to VAT at the standard rate. Once the election is made it must remain in place for a period of at least 20 years and thus any income generated from the land or property, including any freehold sale, is subject to VAT at the standard rate.

The incentive to opt to tax is to attribute VAT incurred in relation to the relevant land or property (eg construction, refurbishment, extension, etc) to a taxable rather than exempt activity (see section 7 regarding VAT recovery).

It is important to note that an option to tax has no effect upon the exemption for the provision of sporting facilities supplied by a not-for-profit club directly to an individual or group of individuals (see section 3.7).

It would however apply to sporting facilities where these are provided by a club or trading company and the supply is exempt under the 24 hrs/10 let rule.

3.9 ADVERTISING HOARDINGS

The VAT status of income received from pitch side boards and post protector advertising is dependent upon whether they remain in a fixed position or are moved to different sites throughout the season.

If the advertisement is positioned on a fixed location it is exempt from VAT. If, however, the advertisement is on a portable hoarding, or is exchanged between goalposts throughout the season, it is standard rate for VAT purposes.

Where the advertisement is exempt, it can be 'converted' to be taxable through the use of the option to tax (see section 3.9).

3.10 CLUB TOURS

Where a club buys in a package of travel, accommodation, catering and sports facilities to resell to club members as a tour package, either as principal or as an undisclosed agent (ie acting in the club's name), special VAT rules apply termed the 'Tour Operators' Margin Scheme' (TOMS).

Under TOMS, VAT cannot be claimed by the club on tour package costs. Equally however, the club does not need to account for VAT on the total income it generates from the sale of tour packages. VAT need only be declared at 20 percent on the profit margin generated. If no profit margin is generated, no VAT is required to be declared.

Where a tour takes place outside the territory of the European Union, (eg Channel Islands), no VAT is due on the margin generated. This is because the VAT status of the margin is zero-rated.

Where a tour takes place both inside and outside the European Union an apportionment is required to treat a reasonable proportion of the margin as standard rated, with the remainder being zero rated.

3.11 INTERNATIONAL/REPRESENTATIVE MATCH TICKET SALES

When a club sells tickets either for international matches, or other representative games not being staged at their own ground, the VAT status of this activity can be treated in one or two ways. Either the club can buy the tickets from the entity staging the match and recover VAT charged to it. VAT will be due on the full selling price of the tickets sold. This is how international tickets are administered for VAT purposes by the RFU.

Alternatively, the club can merely sell the tickets as agent on behalf of the entity staging the event. In this instance, no VAT can be recovered on the tickets supplied to the club. Equally, however, no VAT is due on the sale of the tickets by the club. VAT is due, at the standard rate on any administrative charge levied by the club to the supplier or the purchaser of the tickets.

It can be very advantageous for a club to treat the sale of international tickets as its own taxable income as this may increase the overall ability of the club to recover VAT on extra costs (see section 5).

4.0 VAT REGISTRATION

Many clubs are registered for VAT due to the level of taxable income generated from bar and catering supplies together with other taxable supplies exceeding the compulsory VAT registration threshold.

It is an important point that all of the activities of the club (be it a charity, CASC, members association or limited company) must be taken into account when assessing its position in relation to VAT registration. Many clubs structure their activities between senior, junior, and social sections with each operating and managing its own income and expenditure, own bank accounts etc. However, where these activities are all undertaken within the one legal entity, all of that entity's activities must be taken into account.

There may be subsidiary trading companies where VAT registration is not compulsory, as the level of taxable income does not exceed the threshold but could be advantageous in that VAT incurred on costs may be recoverable in certain circumstances.

4.1 COMPULSORY VAT REGISTRATION

The VAT regulations require that at the end of any month, if the taxable income received by the club in the previous 12 months is greater than the compulsory VAT registration threshold (currently at £85k per annum), the club is required to notify HMRC within the next 30 days of its requirement to register for VAT purposes. Registration will then be effective from the first day of the month following this 30-day period.

For this purpose, taxable income is cash received for any supplies of goods or services which are liable to VAT at the standard rate, reduced rate or zero rate (see Section 3).

There is a second test for compulsory registration. This requires that HMRC is notified of a requirement to register when, at any time (not just at the end of the month), there is a reasonable expectation that the taxable income of the club in the next 30 days will exceed the compulsory registration threshold (currently £85k per annum). This situation may arise, for example, if a sponsorship agreement or similar contract is signed.

4.2 VOLUNTARY VAT REGISTRATION

Where the taxable income of the club does not exceed the compulsory registration limit, a voluntary registration can be sought, providing taxable income is generated by the club.

Clearly the motive (and perhaps the only) incentive for this will be a financial benefit where it is projected that a material level of VAT could be recovered. However, considering the VAT recovery procedures (see section 7), where taxable income is absolutely minimal, it is unlikely that a reasonable level of VAT recovery will be achieved, thus making a voluntary registration unattractive unless an increase in taxable income can be projected.

A voluntary VAT registration may be particularly effective where material levels of VAT have been incurred on a facility improvement project.

4.3 INTENDING VAT REGISTRATION

VAT registration can also be sought where no taxable income is currently generated, but it is intended that income will be generated at some point in the future. The benefit of seeking an 'intending registration' is the ability to commence recovery of VAT incurred on related costs, rather than waiting until after taxable income is received.

For example, if a club were planning to construct a new clubhouse building, an intending VAT registration could be sought as soon as expenditure is incurred.

This could be several months before the facility actually opens, thus enabling an earlier recovery of VAT incurred on construction costs, etc.

4.4 EXEMPTION FROM VAT REGISTRATION

HMRC has the discretion to permit an entity to be exempt from the need to register for VAT purposes even where the value of taxable (standard, zero and reduced rate supplies) income exceeds the compulsory registration threshold.

The exemption from VAT registration can be sought where the value of a small proportion of the taxable supplies are standard rate, providing that the value of (if VAT registered) input tax to be claimed would normally exceed output tax due year on year. This is a very unlikely scenario for a rugby club.

4.5 VAT GROUP REGISTRATION

Where a club is incorporated, e.g., limited by guarantee, shares, or CIO, it is able to jointly register for VAT purposes with its subsidiary trading company or companies under what is termed as a *'VAT group registration'*.

Although there are some administrative advantages of completing and submitting only one VAT return, the principal benefits of a VAT group registration are:

a. An ability to join the activities of the two entities together in order to improve the overall level of VAT recovery for the club (particularly where trading activities such as bar and catering have been moved to a subsidiary); and

b. An ability to treat supplies between the Club and trading subsidiaries as internal (i.e., VAT free) recharges for VAT purposes, to prevent the charging of irrecoverable VAT between the two entities.

The use of a VAT group registration is particularly important where a club transfers all or part of its bar and catering activities to a subsidiary company. Without a VAT group it is unlikely that VAT incurred on the club's direct playing expenses will be recoverable.

5.0 VAT RECOVERY

When VAT is incurred on a supplier's invoice, in order to determine whether the VAT can be recovered, the club is required to consider whether the expense can be solely attributed to either a taxable or exempt activity. If it can, then the VAT will be either wholly recoverable (if relating to a taxable activity such as wet bar purchases) or be subject to the partial exemption de minimis regulations (if relating to an exempt activity such as benefits given to players in return for their subscription) and will either be wholly recoverable or wholly irrecoverable.

Any VAT incurred on a general overhead or other expense that does not wholly relate to a particular activity may be partially or fully recovered depending upon the club's partial exemption status in the relevant VAT year. This is explained at point 5.3 below.

5.1 TAXABLE INCOME

Any VAT incurred on costs and expenses which wholly relate to a taxable income, termed 'taxable input tax', can be recovered in full.

For example, where items are bought for resale such as wet bar purchases, the VAT charged by the supplier can be recovered in full.

For this purpose, it does not matter whether the taxable income is standard rate (20%), reduced rate (5%) or zero rate (0%).

5.2 EXEMPT INCOMES AND ACTIVITIES

VAT incurred on costs relating to an exempt activity, termed 'exempt input tax', can only be recovered when it falls below two prescribed de minimis limits, as follows:

a. The exempt input tax is no more than £7,500 per annum; and

b. The exempt input tax is no more than 50% of the total business input tax incurred in the year.

It is important to remember that the exempt element of VAT incurred on general overhead costs must initially be added to the exempt input tax total before applying these tests (see 5.3 below). The de minimis limits must be applied to each VAT quarter throughout the VAT year so that if the exempt input tax total in any given quarter is more than £1875 the exempt input tax is irrecoverable at that time. However, if, at the end of the VAT year the exempt input tax total is less than the annual limit of £7500 this VAT will be wholly recoverable as part of the annual adjustment.

Where the value of exempt input tax is over the £7,500 limit in any given VAT year, all of the exempt input tax, both above and below this limit is wholly irrecoverable.

5.3 GENERAL OVERHEAD PARTIAL RECOVERY COSTS

A proportion of costs and expenses are general overheads of the club, which cannot be said to solely relate to one specific activity. The VAT on these costs is therefore termed as being 'non-attributable' or partially recoverable VAT. This will include many central overheads such as clubhouse maintenance and utility costs. Additionally, for most clubs where there is taxable income linked to playing activities (such as spectator gate receipts and taxable pitch hire) VAT incurred on grounds maintenance and improvement costs will also be partially recoverable.

In order to determine how much of this partially recoverable VAT can be recovered, the Club is required to undertake what is termed as a partial exemption calculation so that this VAT can be apportioned between the taxable and exempt activities. This will determine how much VAT can be estimated to relate to the taxable, and how much to the exempt activities of the club.

All of the deemed taxable input tax element will be fully recoverable. The deemed exempt element (including the directly attributable exempt input tax) will be recoverable only if it falls below the partial exemption de minimis limits (see 5.2 above).

There is no statutory method by which this calculation has to be made. The only two requirements are that it is 'fair and reasonable' and, that where the income based standard method is not

used, it is approved in advance by HMRC (exception the first year of VAT registration where a projection can be used). This being so, it is a fairly subjective exercise and may be an opportunity to negotiate a favourable arrangement. The most common method is based on income.

For the vast majority of clubs, where the value of taxable income generated from bar and catering income is a high proportion of total income, it is likely that the use of an income-based method will be the most advantageous method and will enable a full recovery of overhead VAT in years, where there is no material facility improvement expenditure. This is because the value of exempt input tax will usually be sufficiently low to be within the partial exemption de minimis limits (see Section 5.2). Where a club wishes to use a method other than the standard income-based method it is recommended that advice is sought to ensure use of the alternative method is advantageous.

The following illustration is an example of the standard income based method:

	£	
Taxable income	**228,000**	
Exempt income	**52,000**	**(exclude bank interest)**
Total income	**280,000**	**(exclude grants, loans and donations)**
Therefore:	**228,000 x 100 divided by 280,000 = 81.43% (82% with permitted rounding)**	

Using the above example, the next step to establish whether the exempt VAT is recoverable is as follows:

Exempt input tax recovery:	**£**
Directly attributable exempt input tax, say	**1,500**
Partially recoverable VAT on overheads, say	**6000**
Exempt element:	**6000 x 18% = 1,080 (52,000 x 100 divided 280,000)**
Total exempt input tax: (1,500 plus 1,080)	**2,580**

As this is below the £6,000 de minimis limit the exempt input tax is fully recoverable providing it is also no more than 50 per cent of the total VAT incurred by the club in the VAT year.

6.0 NEW BUILDINGS, EXTENSIONS AND REFURBISHMENT PROJECTS

6.1 NEW BUILDINGS – GENERAL

The relief for a zero-rate construction of a new clubhouse or changing rooms building is only available where the club is a registered charity. It does not apply to a CASC. However, even where the club is a registered charity there are stringent tests to be met before the zero-rate relief can be applied and it is highly unlikely that the vast majority of clubs will qualify. This being so, VAT is likely to be incurred on the construction of most new buildings by a club. The issue is therefore ensuring that the optimum level of VAT recovery is achieved.

6.2 CHARITIES – VAT CONSTRUCTION RELIEFS

There is no blanket relief that registered charities can apply when constructing a new clubhouse or changing room building. This being so, in order to qualify for zero-rating the club must be eligible under one of only two possible reliefs available. These are as follows:

a. Non-business use

Under this relief the club is required to use the building 'otherwise than in the course or furtherance of a business' for at least 95 per cent of its use. This effectively prevents any clubhouse, housing a bar or catering function from being eligible.

Unfortunately, when considering changing rooms, this is not as straightforward as it may seem at first. The principal reason why HMRC will not consider that clubs can qualify for this relief, even where they are a registered charity, is that they consider the provision of the changing rooms to a player as a facility and advantage of membership. This being so, where the players pay a membership subscription to the club, this is a business activity and accordingly the changing rooms cannot be said to be used 'otherwise than in the course or furtherance of a business'.

b. Use as a Village Hall or similarly in providing social or recreational facilities to a local community

This alternative relief potentially available to registered charities is notoriously difficult to apply. HMRC require the relevant building to be used in a way similar to a village hall which invariably will include a high level of use by other community groups.

This may be very difficult to achieve and effectively may mean the club losing an element of control of the building which in most cases will be very unattractive and simply not viable. There are a minimal number of cases where use of this relief has been successful but this reflects the specific circumstances of each club with a pre-requisite of a high degree of genuine community use across a broad spectrum of organisations.

Where a club is eligible, both of the charity use reliefs are obtained by the club issuing a certificate to the building contractor in advance of the works being performed. There are severe financial penalties for the incorrect issue of a certificate.

Should any club consider that they may qualify for either relief it is strongly recommended that they seek advice before issuing the certificate to its building contractor.

6.3 EXTENSIONS, REFURBISHMENTS, RESTORATIONS AND ANNEXES ETC

The refurbishment or extension of an existing building will always be subject to VAT at the standard rate of 20 percent.

7.0 VAT RECOVERY ON CAPITAL PROJECTS AND IMPROVEMENT WORKS

7.1 GENERAL

As set out in section 6, it is likely that the vast majority of capital works and facility improvement projects will incur VAT at the standard rate of 20 percent. This being so, clubs need to consider how to optimise the recovery of this VAT.

The level of VAT recovery will be determined by a combination of factors specific to each club. It is of course a pre-requisite that in order to recover VAT a club, or if different the entity engaging the works contractor will need to be registered for VAT purposes (see Section 4). Where a club leases its site from a Local Authority, there may be an opportunity for the capital works to be undertaken by the LA to ensure that no irrecoverable VAT is incurred. This procedure requires the agreement of the LA and any grant funders. It is recommended that any club, in this situation, seeks professional advice before entering into such arrangements.

Considering the different types of project typically undertaken by clubs the general VAT recovery position for each is as follows:

7.2 CLUBHOUSES

In order to recover VAT charged to it, a club is required to attribute all or some of the VAT it incurs on a capital project to a 'taxable' activity it undertakes. For this purpose, a taxable activity is an activity where VAT is declared on income generated by it at either the standard rate (20%), reduced rate (5%) or zero rate (0%).

This being so, where the clubhouse is used for bar and catering activities this will enable a partial recovery of VAT incurred. HMRC will not accept a full recovery of VAT can be enjoyed by a club on the construction of a clubhouse as they take the position that the use of the clubhouse is a facility and advantage of membership of the club by its players. This being so, the clubhouse is attributable to both its taxable bar and catering activities and also to the exempt subscription income paid by players.

The clubhouse may also be let for room only hire charges (see section 3.6) which are exempt from VAT unless an option to tax has been made by the club. The receipt of this additional exempt income may reduce the level of VAT recovery achieved by a club undertaking such a project so making an option to tax should be considered (see section 3.9).

Where a new clubhouse also houses changing room facilities this will increase the exempt use of the building.

Where costs of the improvement works are under £250k it is probable that HMRC will permit the use of the club's general partial recovery calculation in the relevant year to apportion the VAT incurred.

Where, however, the costs of the works are £250k or more, the Capital Goods Scheme applies (see Section 8). HMRC may require a special method to be applied to the project if they form the view that the level of VAT recovery achieved under the general partial recovery calculation does not properly reflect the actual use of the building.

Where there is exempt use of the clubhouse and VAT recovery is restricted, it is possible to identify certain costs that will wholly relate to taxable activities. This will include kitchen and catering equipment and bar fitting out costs for areas behind the bar and related cellar and storerooms. VAT on these specific costs can be recovered in full as it solely relates to bar and catering activity however consider exempt fundraising event.

By way of example, the following illustrations demonstrate how to establish the recoverable proportion of VAT incurred on a clubhouse construction project:

VAT recovery on clubhouse with changing room facilities

Cost of new clubhouse	**1,500,000**	**+**
VAT	**300,000**	
Total cost	**1,800,000**	

VAT relating solely to taxable activity:

Bar	**15,000**	**+**
Kitchen	**25,000**	
Shop	**1,500**	
	41,500	

Therefore partial VAT to be apportioned:

$$\frac{\textbf{Taxable income}}{\textbf{(Taxable + exempt income)}} = \frac{\textbf{75,000}}{\textbf{110,000}} \textbf{ x100 =} \quad \textbf{68.18\% taxable (69\% with rounding)}$$

Application of partial recovery percentage to capital incurred on project costs:

Partial VAT on build	**258,500**
Taxable element @ 69%	**178,365**
Exempt element @ 31%	**80,135**

VAT recovery on project:

Total VAT incurred	**300,000**
VAT on direct taxable costs	**41,500**
Taxable element of partial	**178,365**
Total value of recoverable VAT	**219,865**
Irrecoverable Exempt VAT	**80,135**

7.3 CHANGING ROOMS

The recovery of VAT incurred on the construction or refurbishment of buildings which only house changing room facilities is more problematic than clubhouse buildings. This is because the taxable use of these facilities is not so immediately evident and will invariably be less than that in the social areas of the clubhouse.

HMRC will view the use of the changing rooms to be wholly attributable to the playing activities of the club. This can be problematic as; players are required to pay a membership playing subscription. HMRC may initially view the use of the changing rooms solely as a facility and advantage of membership. This being so, as the subscription is exempt from VAT, HMRC will seek to wholly attribute the VAT incurred on the changing room expenditure to exempt playing activities.

In order to overcome this position, it will be necessary to demonstrate taxable use of the changing facilities. This can be achieved where either there is taxable use of the playing facilities through the letting of the facilities where VAT is charged, or the club charge a gate admission to spectators.

This is however also problematic. As set out in Section 3.7 the letting of sports facilities by a not-for-profit club is not automatically liable to VAT and it is likely to be necessary for an option to tax to be made to ensure letting is taxable.

Other taxable use of playing facilities which may be accepted by HMRC include spectator admission charges for some or all games, use of the facilities for nonsporting events such as fireworks evening, caravan camps or a dog show and where the changing rooms are used in some capacity.

Once it is established that the changing rooms are used, to some extent, for taxable purposes the VAT incurred on related expenditure can be treated as partially recoverable and recovered in accordance with the partial exemption recovery method calculation.

7.4 IMPROVEMENTS TO PLAYING FACILITIES: NEW PITCHES, DRAINAGE, ARTIFICIAL GRASS PITCHES ETC

The position relating to the recovery of VAT incurred on playing facilities is similar to that relating to changing rooms at 7.3 above.

In order to generate an ability to partially recover VAT on playing facility costs, it is necessary to establish a proportion of taxable use of the facilities. This could be either through the club applying spectator admission charges or the taxable letting of the playing facilities or where there is a charge for the hire of facilities for other nonsporting purposes.

Once this link is established, a partial VAT recovery can be achieved.

7.5 FLOODLIGHTING

The position relating to the recovery of VAT incurred on floodlighting is similar to that relating to changing rooms at 7.3 and playing facilities at 7.4 above.

In addition to this, where the floodlighting (and/or backlighting) purposely illuminates areas used for taxable activity such as the clubhouse access area or carpark, this may be accepted by HMRC as taxable use to enable a partial recovery of the VAT incurred.

8.0 VAT RECOVERY ON MAJOR PROJECTS – CAPITAL GOODS SCHEME

AS MATERIAL LEVELS OF VAT WILL BE INCURRED BY CLUB'S ON THE VAST MAJORITY OF CAPITAL PROJECTS, AND THE LIKELY POSITION BEING THAT THE CLUB WILL ONLY BE ABLE TO SECURE A PARTIAL RECOVERY OF THAT VAT, CLUBS NEED TO GIVE CAREFUL THOUGHT, AT THE PLANNING STAGE OF ANY MAJOR PROJECT, ON HOW IT WILL OPTIMISE THE LEVEL OF VAT RECOVERY IT WILL ULTIMATELY ACHIEVE.

8.1 PROJECTS UNDER £250K

Where the capitalised cost of a project is under £250k (excluding VAT) the recovery of the VAT incurred is determined in accordance with the normal VAT recovery rules set out in, In the year in which costs are incurred (Section 5 & 7).

It is usual for VAT incurred on most building works to fall within the club's normal partial VAT recovery procedure. However, as set out at para 7.2 above, where works relate wholly to taxable activity, such as a bar or kitchen refurbishment, the VAT incurred can be recovered in full under the normal attribution rules.

8.2 PROJECTS OVER £250K – CAPITAL GOODS SCHEME

Where a major capital project costing over £250k (excluding VAT) is undertaken, and the capitalised cost in the club's annual accounts is over £250k, the level of VAT recovery is ultimately determined using a special scheme termed the 'Capital Goods Scheme' (CGS).

Under the CGS, the VAT incurred on these works is initially recovered in the year in which it is incurred, at the club's normal partial VAT recovery rate (or full VAT recovery if appropriate) using the Partial Exemption recovery method in the usual way.

However, following this, the use of the relevant building/facilities is monitored year on year for a period of 10 years. This is so that the initial level of VAT recovered can be annually adjusted to reflect any change in the relationship between the taxable and exempt use of the building or facility.

It is usually possible for the club's normal partial VAT recovery rate to be applied to VAT incurred on CGS items. This simplifies the procedure in undertaking the annual review and should result in any adjustment being minimal. For example, if the partial recovery rate is say 65 percent taxable, but this changes to 70 percent taxable in the following year, an additional 5 percent VAT can be recovered. However, under the CGS only 10 percent of the adjustment percentage is used for the actual adjustment made to reflect the ten-year life of the scheme. This being so, the adjustment made is only 0.5 percent of the original VAT incurred.

It is recommended that clubs seek advice on calculating the annual adjustment arising where projects fall within the Capital Good Scheme.

8.3 PROJECTS BUILT IN PHASES

Where a new clubhouse is built, or where a rebuild/refurbishment is undertaken, in different phases it is important that certain steps are taken to ensure that the optimum level of VAT recovery can be achieved across the whole project.

The reason for this is that it will usually be beneficial for a club to ensure that all phases of the whole project can be treated as one project for the purposes of the Capital Goods Scheme. Where this position is established, it should be possible for the club to apply one partial rate of VAT recovery to all phases, including changing room areas.

HMRC will consider there to be one project where:

- one planning approval includes all phases of the project;
- one contractor has been engaged and is contracted for the whole project at the outset; and
- there is no significant gap between each phase being undertaken.

9.0 TRADING COMPANIES

SOME CLUBS MAKE USE OF A WHOLLY-OWNED TRADING SUBSIDIARY COMPANY IN WHICH TO UNDERTAKE VARIOUS TRADING ACTIVITIES. CARE DOES NEED TO BE TAKEN TO ENSURE THAT THE USE OF A TRADING COMPANY DOES NOT GIVE RISE TO VAT DISADVANTAGES THAT WOULD NOT OTHERWISE EXIST (EG ON SUPPLIES OF SPORTS FACILITIES ETC). EQUALLY IT MAY BE POSSIBLE TO USE A TRADING COMPANY TO SEEK VAT ADVANTAGES.

Key issues to consider include:

9.1 VAT RECOVERY

As it is usual for the trading company to undertake certain taxable trading activities, unless there is a VAT group registration, the removal of this taxable activity from the club's VAT recovery calculation can reduce its ability to recover VAT incurred on costs. This is particularly true for central overhead costs and capital projects, which will invariably be incurred directly by the club itself.

The problem can be overcome by the use of a VAT group registration (see section 6.5). The reason for this is that it is possible for the VAT recovery partial exemption calculation to combine the income and activities of the club and the Trading Company.

Where a VAT-exempt activity is undertaken in the subsidiary, it is unlikely to be able to fully recover all the VAT it incurs on costs and expenses (see section 7). Where this is the case, the use of a VAT group registration will also prevent partially irrecoverable VAT being charged on supplies made by the club to the Trading Company.

9.2 SPORTS PLAYING FACILITIES

As set out in Section 5.3, the hire of sports facilities by a commercial entity which is not an eligible 'not for profit' body is subject to VAT at the standard rate unless it is let as follows:

24-hour rule

Where facilities are provided for a continuous period of use exceeding 24 hours, the person to whom the facilities are let must have exclusive use of them throughout the period of letting.

Series of 10 or more lets

Where facilities are let for a series of 10 or more periods to a school, club, association or an organisation representing affiliated clubs or constituent associations where:

- Each period is in respect of the same activity carried on at the same place;
- The interval between each period is not less than one day and not more than 14 days;
- Consideration is payable by reference to the whole series and is evidenced by a written agreement; and
- The grantee has exclusive use of the facilities.

However, even where these two exceptions apply the exemption can be overridden by an option to tax (see Section 5.4).

It is important to establish whether the trading company is an eligible not for profit entity in its own right. This is highly unlikely but If it is, then the letting of sports playing facilities will be exempt when supplied for the direct benefit of an individual, or group of individuals, in the same way as if made by the club itself (see section 3.7).

For this purpose a non-profit making body:

- Cannot distribute any profit except to another non-profit making body or its own members on winding up or dissolution.
- Applies any profits it makes from exempt sporting facilities either to maintain or improve the facilities or for the purposes of a non-profit making body (except on winding up or dissolution); and
- Is not subject to 'commercial influence'.

If the trading company is wholly owned by the club it will only be able to distribute any profit to that entity. However, it will need to be constituted as a non-profit making entity to be eligible for the sports facility VAT exemption. The inclusion of a non-distribution clause in its constitution is not sufficient.

Where the trading company is limited by shares, HMRC accept that the non-distribution condition is satisfied by the passing of a resolution to:

- Delete, if appropriate table A, Arts 102-108 (dividend arrangements) and Art 110 (capitalisation of profits)
- Adopt a new article preventing distributions by way of dividend, bonus and any other means; and
- Adoption of article 117 on winding up.

Care must also be taken where facilities are let by a trading subsidiary and not the club itself. Where there is no lease or licence in place between the club and its trading subsidiary, HMRC may deem that the facilities are being let by the club, with the trading company acting as an undisclosed agent. This may restrict the ability to charge VAT on such income.

We would strongly recommend that professional advice is sought on the matter of whether an entity is a non- profit-making entity for this purpose.

9.3 SUPPLIES OF STAFF

It is usual for the club to employ all staff. This being so, where staff employed by the club are engaged in activities undertaken by the subsidiary trading company, there is a supply of services or staff by the club. This supply by the club and other suppliers that may be covered by a Resource Sharing Agreement between the club and its trading company is liable to VAT at the standard rate (20%).

Where there is a VAT group registration between the club and the subsidiary, no issue arises as there is no supply for VAT purposes.

Where there is no VAT group registration, this potential problem can be overcome by ensuring the relevant staff are jointly employed by both the club and its subsidiary. Where joint employment contracts are in place, payment by the subsidiary to the club is outside the scope of VAT. Advice should be sought from employment advisor before any joint employment contracts are put in place.


FOSTER'S

RFU VAT GUIDE CASE STUDIES INDEX

RFU VAT GUIDE CASE STUDY

NO.1 – VAT REGISTRATION – ONE LEGAL ENTITY

OLDSTERS RFC IS NOT REGISTERED FOR VAT PURPOSES AS IT BELIEVES ITS VALUE OF TAXABLE INCOME IS WELL BELOW THE COMPULSORY VAT REGISTRATION THRESHOLD, CURRENTLY SET AT £85K PER ANNUM (AS AT 01.01.23). TAXABLE INCOME IS INCOME LIABLE TO VAT AT EITHER THE STANDARD RATE (20%), REDUCED RATE (5%) OR ZERO RATE (NIL).

The club is structured in two separate sections each with its own dedicated committee made up of different individuals. One section operates the senior teams and also has the responsibility of operating the bar and clubhouse functions. The other section operates from the same site and runs the mini and junior training programme and matches. Each section has its own set of accounts and bank account and operates autonomously from each other.

INCOME GENERATED BY THE SENIOR SECTION IS AS FOLLOWS:

	£	
Playing subscriptions	**20,000**	exempt
Match fees	**3,000**	exempt
Social subscriptions	**750**	taxable
Bar	**35,000**	taxable
Catering	**20,000**	taxable
Gate admissions	**4,000**	taxable
Clubhouse hire (weddings)	**1,500**	taxable
Programme	**1,500**	taxable (zero)
Corporate Sponsorship	**2,000**	taxable
Merchandise	**2,000**	taxable
Advertising Hoardings	**1,000**	exempt
Total income	**£90,750**	
Taxable income	**£66,750**	

INCOME GENERATED BY THE MINI AND JUNIORS' SECTION IS AS FOLLOWS:

	£	
Playing subscriptions	**20,000**	exempt
Catering	**15,000**	taxable
Kit/merchandise sales	**12,000**	taxable (zero)
Total income	**£47,000**	
Taxable income	**£27,000**	

The treasurer believes that as the senior section and mini/juniors section are operated autonomously they can be assessed individually for VAT registration purposes. As the taxable income generated by each section is below the compulsory VAT registration threshold, he believes that neither is liable to register.

However, this approach is incorrect. The issue is that the club is constituted and affiliated to the RFU as one legal entity even though it is structured as two sections. This being so, the club is seen as one legal person for VAT purposes and as such the income from both sections needs to be amalgamated when comparing the taxable income to the compulsory registration threshold.

This being so, the amalgamated taxable income received by the club in the last 12 months was £93,750. Consequently, the club must notify HMRC of its requirement to register for VAT.

If the two sections of the club were separate legal entities, or similarly if a club has a trading company the taxable income of each entity must be assessed individually.

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RFU VAT GUIDE CASE STUDY

NO.2 – VOLUNTARY VAT REGISTRATION TO ENABLE RECOVERY OF VAT ON CONSTRUCTION PROJECT

OLD RUBBERDUCKIANS RFC IS NOT CURRENTLY REGISTERED FOR VAT PURPOSES. IT HAS ENTERED INTO A DEAL WITH A DEVELOPER TO SELL ITS EXISTING SITE IN RETURN FOR AN ALTERNATIVE SITE AND FOR A PAYMENT OF £1M WHICH WILL ENABLE THE CONSTRUCTION OF A NEW CLUBHOUSE AND THREE NEW PITCHES.

The club wishes to project the level of VAT recovery it will be able to secure on the new clubhouse and pitches. The club has not previously had a bar and consequently the level of its taxable income has been below the VAT registration threshold of £85k pa. The recovery of a healthy proportion of the VAT on the new build is important to the club and it wishes to ensure that it optimises the money available to spend on the new facilities.

Although the build has not yet started, VAT has already been incurred on related professional fees of the solicitor and architect. The club believes it is not able to register for VAT until its taxable income exceeds the compulsory registration threshold (£85k). However, this will not be the case until the new clubhouse bar and catering facilities are up and running. This will cause major cash flow problems to the club. What is the correct position and what options are available to the club?

Although the taxable income of the club is currently very small it is still entitled to register for VAT purposes. This is termed as voluntary VAT registration and can be adopted at any time when taxable income is received, no matter how low.

This being so, the club can register for VAT immediately with the incentive of being able to recover certain amounts of VAT it incurs. However, as the club has not previously had bar or catering facilities, the level of taxable income is minimal and is only generated from non-playing membership subscriptions and international ticket sales. Additionally, the club sells merchandise and kits which are all taxable but mix of standard rate and zero- rate (under 14). The majority of the income currently received by the club is exempt from VAT by way of playing subscriptions and match fees, pitch sideboard advertising and letting of the pitch to a local community club. The club has prepared a projection of its future income over the first 3 years of the new facility as part of its business plan which is as follows::

Income	**Current-Actual**	**Year 1**	**Year 2**	**Year 3**
	£	£	£	£
Exempt:				
Members subs	**7,500**	**8,000**	**8,500**	**9,000**
Match fees	**5,000**	**5,250**	**5,500**	**5,750**
Advertising Boards	**10,000**	**11,000**	**12,000**	**13,000**
Pitch hire	**12,000**	**12,000**	**13,000**	**14,000**
Total Exempt	**34,500**	**36,250**	**39,000**	**41,750**

Taxable:				
Social subs	**2,500**	**5,000**	**7,500**	**10,000**
Bar	**NIL**	**50,000**	**75,000**	**90,000**
Catering	**NIL**	**15,000**	**25,000**	**35,000**
Function hire	**NIL**	**10,000**	**20,000**	**25,000**
Kit merchandise	**4,000**	**4,250**	**4,500**	**4,750**
Total Taxable	**6,500**	**84,250**	**132,000**	**164,750**
Total income	**41,000**	**120,500**	**171,000**	**206,500**
Taxable %	**16%**	**70%**	**78%**	**80%**

The club has been advised to seek agreement with HMRC to base the level of VAT recovery to be applied to the new facilities on the future projected incomes set out in the business plan. HMRC will invariably accept this approach providing the projections have been calculated for another credible reason (and not just VAT recovery!).

However, as the club is newly registered for VAT, it is able to use this projection-based VAT recovery method in its first VAT year without the need to seek prior approval from HMRC.

Using the projection-based recovery method the club should be able to secure a partial VAT recovery rate of 70 to 80% which is reflective of the level of taxable income the club will generate when the new clubhouse facility is fully operational. After the club's first year VAT year, this approach will require a formal agreement with HMRC and is termed as a Partial Exemption Special Method.

In addition to this, the club could opt to tax its new site to further increase its taxable income and thus its partial VAT recovery rate. Were an option to tax applied, the pitch side advertising boards would convert from being exempt to taxable which in turn could increase the partial recovery rate by 7 per cent. Similarly, the majority of pitch hire income would be taxable further increasing the recovery rate.

As the capitalised cost of the new facility is in excess of £250k the level of VAT recovery is monitored annually under the Capital Goods Scheme. This being so, if the projected level of taxable income is more or less than the actual level achieved, this will be reflected in the annual Capital Goods Scheme adjustments. However, as these adjustments are made over a period of ten years, the annual adjustment is usually relatively immaterial. This being so, securing a favourable initial rate of VAT recovery, such as that illustrated above based on usage projections, is all important.

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RFU VAT GUIDE CASE STUDY

NO.3 – VAT RECOVERY ON DRAINAGE TO MAIN PITCH

BLOGGERS RFC IS REGISTERED FOR VAT. THE TOTAL VALUE OF TAXABLE INCOME IT GENERATES FROM THE CLUBHOUSE BAR, TOGETHER WITH OTHER SOURCES OF TAXABLE INCOME RECEIVED VIA SOCIAL MEMBERSHIPS, CATERING AND INTERNATIONAL TICKET SALES IS IN EXCESS OF THE COMPULSORY VAT REGISTRATION THRESHOLD, CURRENTLY £85K PA.

The club currently recovers all VAT it incurs on costs and expenses. This is because the total value of exempt input tax incurred every VAT year is below the partial exemption de minimis limits (no more than £7,500 pa and no more than 50 per cent of total VAT incurred, (see section 5.0).

The club is planning to undertake a major drainage project on its main pitch. The cost of the work is £50,000 plus £10,000 VAT. The club is unsure whether it can recover any of this VAT?

The first question is does the VAT to be incurred on the drainage works relate wholly or partly to the exempt playing activities of the club?

The club generates exempt income from the receipt of its players, minis and juniors' subscriptions. The minis and juniors do not use the main pitch so the VAT on the drainage work cannot be said to be linked to that activity.

There is, however, a link between the pitch and the senior players' subscriptions so the work must relate to this activity.

However, the main pitch is let to the county for representative matches, which is liable to VAT and a spectator gate admission is charged which also is liable to VAT.

This being so, there is also a link between the taxable activities of pitch hire and gate admissions and the works to the pitch. Accordingly, the VAT incurred on the drainage works can be treated as partially recoverable VAT and apportioned between a deemed taxable proportion and a deemed exempt proportion under its partial exemption calculation.

As the taxable income of the club in the year the drainage work has been incurred is 80 per cent of the total income (excluding grants, loans and donations), 80 per cent of the £10,000 VAT is deemed to be taxable input tax and is automatically fully recoverable. The remaining 20 per cent is deemed to be exempt input tax and can also be fully recovered as the total value of exempt input tax in the VAT year is no more than £7,500 and also no more than 50 per cent of total input tax incurred in the VAT year.

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RFU VAT GUIDE CASE STUDY

NO.4 – VAT RECOVERY ON NEW FLOODLIGHTS TO TRAINING AREA

OLD BOYS RFC HAS A SENIOR SECTION AND MINIS AND JUNIOR SECTION ALL WITHIN THE ONE LEGAL ENTITY OF THE CLUB. THE CLUB IS REGISTERED FOR VAT AS THE VALUE OF ITS TAXABLE INCOME GENERATED FROM BAR SALES, CATERING, GATE RECEIPTS, PROGRAMME SALES, CLUBHOUSE FUNCTION HIRE, SOCIAL SUBSCRIPTIONS, AND INTERNATIONAL TICKET SALES IS IN EXCESS OF THE COMPULSORY VAT REGISTRATION THRESHOLD, CURRENTLY £85K PER ANNUM.

The club recovers all of its taxable input tax, principally VAT incurred on wet bar stock purchases. It is, however, not able to recover its exempt input tax as each year as it is in excess of the partial exemption de minimis limits (no more than £7,500 exempt input tax and no more than 50% of total VAT incurred).

Partially recoverable VAT is incurred on general overheads and costs that relate to both taxable and the exempt playing activities of the club and is recovered typically at a rate of around 60 per cent. This is because the taxable income of the club is usually about 60 per cent of the total income (excluding grants, loans and donations) of the club in a typical year.

The partial exemption calculation for the current VAT year is as follows:

$$\frac{\text{Taxable income}}{\text{(Taxable + Exempt income)}} \text{ x100 \%}$$

$$\frac{120{,}000}{200{,}000} \text{ x100 = 60\% taxable}$$

The club is to install new floodlights on its training area at a total cost of £120,000 plus VAT of £24,000, How much of this VAT can be recovered, if any?

The training area is used by all sections of the club from the first team, all senior teams and the mini and junior section. All playing members of the club pay an annual subscription which is exempt from VAT. However, the first team generate taxable income from spectator gate receipts from its matches.

Accordingly, it can quite correctly be said that the training pitch can be linked to both the exempt playing subscriptions and the taxable income generated in relation to the first team and its matches. This being so, VAT incurred on the cost of installing the floodlights can be partially recovered at the club's partial recovery rate applicable in the year the expense is incurred. i.e., 60%.

This being so, of the £24,000 VAT incurred on the new floodlights, £14,400 (i.e., 60%) can be deemed to be taxable input tax and fully recovered. The remaining £9,600 (i.e., 40%) VAT is deemed to be exempt input tax. As this amount, together with the club's other exempt input tax in the current year totals more than £7,500 it is wholly irrecoverable.

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RFU VAT GUIDE CASE STUDY

NO.5 – VAT RECOVERY ON PITCH IMPROVEMENT WORKS

SCRUMMARY RFC UNDERTOOK MAINTENANCE AND IMPROVEMENT WORKS TO ITS PITCHES IN VAT YEARS 2019/20 AND 2020/21. THE WORKS COST IN THE ORDER OF £75K WITH VAT OF £15,000 BEING INCURRED.

Following an inspection by HMRC the club were advised that as those costs related wholly to the playing facilities of the club, the VAT was wholly irrecoverable. The logic applied by HMRC was that as the playing members of the club paid an annual subscription which is exempt from VAT and a match fee which is also exempt, all VAT incurred on playing related costs must relate wholly to that exempt activity.

As the level of exempt input tax exceeded the partial exemption de minimis levels in both VAT years, all exempt input tax was irrecoverable.

However, the club treasurer decided to discuss this matter and takes advice to see if the position adopted by HMRC was in fact correct.

During these discussions, it was established that the club's pitches were also used in both of these years by another rugby club and the hire charge was liable to VAT (it would be exempt if the hire was for a block booking of 10 sessions or 24 hrs).

This was an important point. It meant that the club's playing facilities were also used for taxable activities in the VAT years during which the improvement expenditure was incurred. This being so, the VAT incurred was not wholly attributable to an exempt activity as HMRC initially ruled. It was in fact linked to both exempt and taxable use of the pitches. Accordingly, the £15k VAT incurred could be treated as a partially recoverable VAT cost and apportioned using the club's partial exemption recovery calculation so that a proportion would be deemed to be 'taxable input tax' and the remainder to be 'exempt input tax'.

The club's partial exemption recovery calculation is based upon income values and for the years in question was as follows:

2019/20

$$\frac{\text{Taxable income}}{\text{(Taxable + Exempt income)}} = \frac{85{,}000}{100{,}000} \times 100 = 78\% \text{ taxable}$$

2020/21

$$\frac{\text{Taxable income}}{\text{(Taxable + Exempt income)}} = \frac{90{,}000}{120{,}000} \times 100 = 75\% \text{ taxable}$$

This resulted in the club being under the partial exemption de minimis limit for both years (exempt input tax no more than £7,500 per year and no more than 50 per cent of total VAT incurred). Accordingly, it could quite correctly recover all VAT it incurred including the VAT incurred on the pitch works.

An approach was made to HMRC resulting in a repayment of £15k originally assessed by them as irrecoverable, together with other exempt VAT incurred in both years that was restricted resulting in a total VAT saving in the order of £30k.

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RFU VAT GUIDE CASE STUDY

NO.6 – VAT RECOVERY ON NEW CLUBHOUSE BUILDING INCORPORATING BAR, FUNCTION SUITE, CATERING AND CHANGING ROOMS

OLD CLOGGERS RFC WISHES TO DEMOLISH ITS EXISTING CLUBHOUSE AND CHANGING ROOMS AND REPLACE THEM WITH A NEW PURPOSE-BUILT FACILITY INCORPORATING A BAR, CATERING, FUNCTION SUITE AND CHANGING ROOMS.

The cost of the new building will be £3m plus VAT of £600k. The club is currently registered for VAT purposes as the value of its taxable income is £120k. Taxable income is generated from bar and catering sales, function suite hire, match day car park charges, shirt sponsorship, social subscriptions and international ticket sales. Total annual income of the club is £200k.

The club currently recovers all VAT it incurs as it is below the partial exemption de minimis limits (exempt input tax is no more than £7,500 in the year and no more than 50 per cent of total input tax in the year).

The club is making applications for grant funding and wishes to project how much of the £600k VAT on the new clubhouse building can be recovered?

As the new clubhouse building will be used for both taxable activities (bar, catering and function hire) and exempt playing activities (changing rooms) the VAT to be incurred on its construction will be partially recoverable VAT. This is VAT incurred on costs which do not wholly relate to either the taxable activity of the club or the exempt activity but rather relates to both. This being the case, the £600k VAT to be incurred on the construction costs will need to be apportioned using the club's partial recovery method.

This is based on the income values and is as follows for the current year:

$$\frac{\text{Taxable income}}{\text{(Taxable + exempt income)}} = \frac{120{,}000}{200{,}000} \times 100 = 60\% \text{ taxable}$$

Applying this outcome to the £600k VAT on construction 60 per cent is deemed to be taxable input tax, thus of the £600k, the club can automatically recover £360k. The remaining £240k is deemed to be exempt input tax and this cannot be recovered as it exceeds the partial exemption de minimis limits in the year it is incurred.

As the capitalised cost of the new clubhouse is in excess of £250k, the club is required to monitor its use for ten years under a special scheme termed the 'Capital Goods Scheme'. Under this scheme the club is required to make an annual adjustment to reflect any change in the original level of taxable use, be that up or down.

VAT incurred installing the kitchen and behind the bar can be recovered in full as it wholly relates to making taxable sales.

The high level of exempt input tax now means that 40 per cent of all partially recoverable VAT incurred by the club, (i.e., not just the clubhouse cost) is exempt input tax and is also wholly irrecoverable in the year the construction costs are incurred.

The club does receive advertising income from boards around the main pitch. This income is exempt from VAT as the boards are in a fixed position for the whole season. The club has decided to opt to tax its interest on the site so that this advertising income is converted to being liable to VAT at 20 per cent. This does not represent a cost to the club who can charge this on to advertisers who will invariably recover it.

This income is £20k per season and applying the option to tax increases the taxable proportion of income by 10 per cent up to 70 per cent for the year. This reduces the VAT lost on the construction costs from £240k to £180k.

Another potential option for the club is to seek approval from HMRC to use a projection of future incomes upon which to base the development VAT recovery. This is on the basis of the new facilities will generate additional bar and catering income and greater use from function hires. Using a projection with greater taxable income would result in a significant saving of VAT on the development project.

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RFU VAT GUIDE CASE STUDY

NO.7 – VAT RECOVERY ON NEW CHANGING ROOMS BUILDING AND CONVERTING EXISTING CHANGING ROOMS TO ADDITIONAL SOCIAL SPACE

RUCK-MAUL RFC WISHES TO BUILD NEW CHANGING ROOMS IN A PURPOSE BUILT STANDALONE NEW BUILDING. THE EXISTING CHANGING ROOMS ARE CURRENTLY LOCATED IN THE SAME EXISTING BUILDING AS THE BAR AND CATERING FACILITIES AND THE PROPOSAL IS FOR THIS AREA TO BE CONVERTED INTO ADDITIONAL SOCIAL FACILITIES.

The cost of the new changing rooms will be £500k plus £100k VAT and the cost of the conversion work on the old changing rooms will be £100k plus VAT of £20k.

The club wishes to project how much of this VAT can be recovered on each project?

The club is registered for VAT purposes as the taxable income it generates, principally from bar sales is in excess of the compulsory VAT registration threshold, currently £85k taxable income p.a. The club currently recovers all VAT it incurs as it is below the partial exemption de minimis limits (exempt input tax is no more than £7,500 in the year and no more than 50 per cent of total input tax in the year).

In order to seek to recover VAT on the new changing rooms, the club will need to demonstrate that their use is linked to making taxable supplies in addition to their principal use of a facility to players. As the players pay an annual subscription and match fees which are exempt from VAT this establishes a link between the new building and exempt activities.

However, there are also several links between the playing facilities of the club to taxable activity. The main taxable link is that the main pitch is let to another sports club. This hire is liable to VAT at the standard-rate of 20 per cent.

This use alone establishes a taxable link to the new changing rooms. However, in addition to this the club charges a spectator gate admission to first team games and hires the facility to the county RFU for representative games and cup finals.

Taking all of these sources of taxable income together, there is a clear link between the use of the new changing rooms and taxable activity. Also considering the exempt playing activity the correct position is that the cost of constructing the new changing rooms is linked to both taxable and exempt activity. This being so, the cost is a partially recoverable cost and the VAT incurred is required to be apportioned so that a proportion of it is deemed to relate to taxable activities and a proportion to exempt activities.

This apportionment is made using the club's normal partial recovery calculation which is based upon income and is as follows:

$$\frac{\text{Taxable income}}{\text{(Taxable + exempt income)}} = \frac{95{,}000}{125{,}000} \times 100 = 76\% \text{ taxable}$$

This being so, the VAT incurred on constructing the new changing rooms can be partially recovered at a rate of 76 per cent as follows:

VAT incurred on construction	**100,000**
Taxable input tax @ 76%	**76,000 recoverable**
Exempt input tax @24%	**24,000 irrecoverable**

As the capitalised of the new changing rooms is in excess of £250k the club is required to monitor the use of the building for ten years under a special scheme termed the 'Capital Goods Scheme'. Under this scheme the club is required to make an annual adjustment to reflect any change in the original level of taxable use, be that up or down.

Turning to the conversion of the existing changing rooms and additional social space, the VAT on these costs can also be recovered at the club's partial recovery rate applicable in the relevant year the expense is incurred. This is because HMRC deem the social area as a facility and advantage which members are afforded in return for their annual subscription, which in the case of playing members is exempt from VAT.

Any VAT incurred on costs relating to areas behind the bar or in the kitchen itself can be fully recovered.

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RFU VAT GUIDE CASE STUDY

NO.8 – INCORRECT ZERO RATE CERTIFICATE ISSUED TO BUILDER ON CONSTRUCTION OF NEW CHANGING ROOMS BUILDING

WINALOT RUFC PROPOSED TO CONSTRUCT A NEW STAND-ALONE BUILDING WHICH WAS SOLELY TO HOUSE NEW CHANGING ROOM FACILITIES. THE COST OF THE WORKS WAS TO BE £475K PLUS VAT OF £95K.

The advice received by the club from a local firm of accountants was that if the building was intended to be used by a registered charity for 'relevant charitable purposes' being either 'non-business' purposes or as a 'village hall or similarly' its construction could be zero-rated for VAT purposes. This would save the club the cost of the irrecoverable element of the VAT to be otherwise chargeable by the works contractor.

This being so, the club formed a registered charity and through this entity engaged its works contractor. A certificate was issued to the contractor confirming that the club was a registered charity and further that it intended to use the building for 'relevant charitable purposes'. Consequently, the building contractor did not charge VAT on the construction costs.

Following completion of the new changing rooms building the contractor was inspected by HMRC who wished to verify that the works had correctly been zero-rated. After making enquiries HMRC advised the contractor that they were not in agreement that the certificate had been correctly issued by the club as in their view the building was not being used for either 'non business' purposes or as a 'village hall or similarly'. The builder contacted the club to advise the position and requested they deal directly with HMRC to resolve the matter.

The club wrote to the VAT inspector and explained that it was a registered charity. It also explained that they were not in business and merely collected subscriptions and match fees from players together with hire fees from letting the pitches to other clubs and schools in the area. This being so, the club believed it was clearly not in business and therefore qualified for VAT relief on the grounds that it was using the new building for non-business purposes. In addition to this, players of the club came from the local community and accordingly it was using the building as a village hall in providing social or recreational activities to the local community.

HMRC refused to accept that either of the uses qualified for the relief. Yes, the club was a charity, but the receipt of a regular subscription and match fees are a business supply for VAT purposes and so the club was acting as a business in making its new changing rooms available to its players as a 'facility and advantage' of membership and the match fee charged. Similarly, the letting of the pitches to other clubs and schools is also a business activity as a charge is made.

Upon establishing this position HMRC issued the builder with an immediate demand for payment of the £95k VAT which had not been charged to the club. Under the contract between the builder and the club, the club became wholly liable to pay the VAT to the builder. HMRC recovered the VAT amount from the builder as a penalty equal to the VAT value for failing to take all reasonable steps in verifying the authority of the zero-rate certificate issued by the club. This being so, although this amount is payable by the club to the builder it is not input tax and accordingly there is no scope to recover any proportion of this amount as VAT.

The receipt of a subscription from a member is specifically set out in the VAT legislation as a business activity. This being so, and further considering the income generated from letting and facilities to other clubs, there was never any realistic possibility of HMRC accepting that the club was using the building for non-business purposes despite it being a registered charity.

Similarly, in order to qualify under the village hall relief, HMRC have been supported by the VAT tribunal in requiring that the building is used like a village hall or similarly by a broad spectrum of local community groups. This being so, as the facilities are solely used as changing rooms, there was no prospect of this relief applying either.

Had the club been properly advised at the outset of the project it is unlikely that a charity would have been formed for this project. It would have been possible to recover a proportion of the VAT incurred on the construction of the new building using its existing partial exemption recovery calculation by ensuring that in addition to VAT exemption incomes associated with the changing rooms there was also a direct link between the playing activities of the club and the pitch letting incomes liable to VAT. In addition to this many changing rooms include bar stores or similar etc which also have a direct link to taxable activity.

The other error with this approach, where the trading activity is undertaken in a separate entity from the playing club, is that this separates the majority of the taxable income away from the playing costs. Where the two entities are not part of a VAT group registration this prevents the ability to combine the incomes to enable a partial recovery of VAT incurred on playing costs.

Using this approach, a recovery rate of 70 per cent would have been applied to VAT on the construction costs, a saving of circa £66k.

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RFU VAT GUIDE CASE STUDY

NO.9 – OPTION TO TAX FACILITIES

CLUMPERS RFC IS VOLUNTARILY REGISTERED FOR VAT AND IS ABLE TO RECOVER 72 PER CENT OF THE VAT IT INCURS ON PLAYING FACILITY EXPENDITURE. THIS IS BECAUSE THE VAT RECOVERY METHOD USED IS BASED UPON INCOME VALUES.

The club is to embark upon a major capital project and has been advised that if it elects to waive the exemption (commonly termed as the option to tax) over the club's grounds this will increase the level of VAT recovery.

Income for the last VAT year was as follows:

Income:		
Bar incl external functions	(VAT at 20%)	**40,000**
Room hire only lets of clubhouse	(exempt)	**5,000**
Playing subscriptions and match fees	(exempt)	**8,500**
Social subscriptions	(VAT at 20%)	**2,500**
Pitch hire	(VAT at 20%)	**1,500**
Pitch hire	(exempt)	**4,500**
Ground board advertising	(exempt)	**10,000**
Sponsorship	(VAT at 20%)	**15,000**
International tickets	(VAT at 20%)	**5,000**
Ground admission income	(VAT at 20%)	**8,000**
Total income		**100,000**

Partial Exemption calculations

$$\frac{\text{Taxable income}}{\text{(Taxable + exempt income)}} = \frac{72{,}000}{100{,}000} \times 100 = 72\% \text{ taxable}$$

The option to tax is a formal election made by the club over its interest in land or buildings which effectively converts exempt property income into income liable to VAT at 20 per cent. The incentive is to increase the level of taxable income so that VAT which would otherwise relate to exempt activity and be potentially irrecoverable is converted to relating to a taxable income and is wholly recoverable. There is also an additional benefit in that the increase is taxable income is also likely to increase the recovery level of partially recoverable VAT, particularly if an income based partial recovery method is used.

However, an option to tax being made by a club does not convert all exempt incomes into taxable incomes. This is because the activities of the club are covered by separate exemptions. One is for sporting services and is unaffected by an option to tax. This exemption principally applies to the receipt by not-for-profit clubs of playing subscriptions, match fees and pitch hire (when made for the direct benefit of an individual or groups of individuals).

When made over the whole site (i.e., all land and buildings) the option to tax will apply to room hire only lettings of the clubhouse, ground board advertising and pitch hire (when not made to an individual) and is for block bookings (i.e., either a series of ten or more lets or one let exceeding 24 hours.)

This being so, in the case of Clumpers RC the taxable income would increase from 72 per cent to 92 per cent as income that were previously exempt (room hire, pitch hire and pitch side advertising boards) become taxable. This being so, it is well worth considering particularly if VAT is to be incurred on a capital project.

Advice should be taken before an option to tax is considered as once an option is made it is irrecoverable for 20 years.

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RFU VAT GUIDE CASE STUDY

NO.10 – USE OF FUNDRAISING EVENT EXEMPTION TO REDUCE VAT DUE ON INCOME

OLD STUBLIANS HAS SENIOR AND JUNIOR SECTIONS TO THE CLUB AND OPERATES A SUCCESSFUL CLUBHOUSE BAR AND FUNCTION SUITE WITHIN ITS CLUBHOUSE. THE CLUB IS REGISTERED FOR VAT PURPOSES AS A LEVEL OF ITS TAXABLE INCOME, PRINCIPALLY BAR AND CATERING SALES, EXCEEDS THE COMPULSORY VAT REGISTRATION THRESHOLD OF 85K PER ANNUM. THE CLUB RUNS AN ANNUAL BEER FESTIVAL TO RAISE FUNDS FOR THE CLUB AND HAS HEARD THAT IT MAY BE ABLE TO TREAT ALL INCOME GENERATED FROM THE EVENT AS EXEMPT FROM VAT AND IS KEEN TO UNDERSTAND THIS OPPORTUNITY FURTHER.

The club is currently able to recover all VAT which it incurs as the level of its exempt input tax is below the annual de minimus allowance of £7,500(see section 5). It has been told that it can treat income from the beer festival fundraising event as exempt from VAT but does not want to exceed the exempt input tax de minimis limit as this would negate the benefit.

The VAT regulations surrounding fundraising events specifically include not-for-profit sports clubs as eligible to apply the relief. The key test is that the event is principally held to raise funds for the club. This would preclude and event such as an AGM or awards evening qualifying for exemption but does enable other events such as fireworks night, Halloween, race nights, and similar as being eligible. The exemption can not be applied to a regular evening in the bar which is not a specific 'event' to raise funds.

The ability to not declare VAT on incomes generated at such events is very beneficial and will result in a material increase in the funds raised. However, great care does need to be taken as all VAT incurred on event related costs, including wet bar purchases, marquee hire, entertainment hire etc will, be treated as exempt input tax. If the additional exempt input tax incurred increases the level of overall exempt input tax of the club to be over the de minimis threshold of £7,500 then the advantage of treating the event as an exempt fundraising event is likely to be lost.

Looking at club's VAT recovery position before and after the treatment of the beer festival as an exempt event the position is as follows-

Income

$$\frac{\text{Taxable income}}{\text{(Taxable + exempt income)}} = \frac{170{,}000}{(30{,}000 + 170{,}000)} \times 100 = 85\% \text{ taxable}$$

Input Tax Incurred:

Taxable direct	**12,000**
Exempt	**1,250**
Partial	**8,000**

Taxable proportion of partial	**8,000 x 85%**	**6,800**
Exempt proportion of partial	**8,000 x 15%**	**1,200**
Overall input tax position:		
Taxable input tax	**12,000 plus 6,800**	**18,800**
Exempt input tax	**1,250 plus 1,200**	**2,450**

Exempt input tax recoverable as with the annual de minimis limit (no more than £7,500 and no more than 50 per cent of total input tax incurred in the VAT year)

After applying the fundraising event exemption to the Beer Festival:

Income:		
Taxable income	**170,000 less beer festival income of 30,000**	**140,000**
Exempt income	**30,000 plus 30,000**	**60,000**
Taxable proportion	**140,000 x 100 divided by 200,000**	**70%**

Input tax incurred:		
Taxable direct	**12,000 less event input tax of 3,000**	**9,000**
Exempt direct	**1,250 plus event input tax of 3,000**	**4,250**
Partial	**8,000 x 70% taxable**	**5,600**
	x 30% exempt	**2,400**

Final overall position:		
Taxable input tax	**9,000 plus 5,600**	**14,600**
Exempt input tax	**4,250 plus 2,400**	**6,650**

The exempt input tax remains fully recoverable as it no more than 7,500 and no more than 50 per cent of the total input tax incurred so remains within the annual de minimis limit for the VAT year.

This being so, the VAT saving of treating the Beer Festival as an exempt fundraising event is the output tax on incomes saved of £6,000.


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