MONCKTON CHAMBERS

Upper Tribunal roundly rejects HMRC's unlawful treatment of Tourist Boards

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In a decision released today, the Upper Tribunal has held that HMRC's approach to the taxation of bodies established by statute for the purposes of promoting tourism is incorrect.

The South African Tourist Board ('SATB') is an independent legal entity established by statute and was formed for the purpose of promoting South Africa as a tourist destination. It sought a credit from HMRC for VAT charged in the UK by its suppliers. The credit was claimed on the basis that its supplies to the South African Government and other parties would have been taxable if they had been carried out in the UK. HMRC denied the repayment claim. They argued that the SATB was a statutory body carrying out its statutory duties and in those circumstances could not be engaged in economic activity. That argument was rejected by the Upper Tribunal in an authoritative and well-reasoned decision. The decision is also timely because there has been some confusion in this area for a number of years, which may have made Tourist Boards reluctant to challenge HMRC's interpretation of the law.

The Upper Tribunal held that HMRC's approach was incorrect because the promotion of a country as a tourist destination can be the subject matter of a supply which would be taxable if made in the UK, even if the Tourist Board is a statutory body.

The consequence of the Upper Tribunal's ruling is good news for all Tourist Boards, particularly those that have been established by statute to serve the Governments in the country they have been established to promote. It is now clear, after years of uncertainty, that there is no objection in principle to all such Tourist Boards with a presence in the UK seeking regular repayments from HMRC for UK VAT incurred in running their UK operations. If there is sufficient evidence that a Tourist Board has received payment from a third party, even if that third party is the Government of the country being promoted; and if that payment is in exchange for a specific level of services, then UK VAT charges are now clearly recoverable in principle from HMRC.

On the facts of the case the Upper Tribunal held that some of the SATB's supplies were taxable. It was therefore entitled to a VAT credit from HMRC in respect of goods and services it had paid for to make those supplies.

Prior to the Upper Tribunal decision there were two main – and apparently contradictory – decisions of the VAT Tribunal in respect of Tourist Boards. First, the *Netherlands Board of Tourism ('NBT')* (No. 12935), where the board in question was held to be making taxable supplies of promoting the Netherlands to the Dutch government. Second, *Turespana* (No. 14568) in which Turespana's supplies to the Spanish government were held not to be within the charge to VAT. HMRC had argued that NBT was wrongly decided and should not be followed. The Upper Tribunal disagreed. *SATB, NBT* and *Turespana* were each decided on their facts. In any given case it will be a question of examining the precise arrangements in place for promoting a country as a tourist destination. Particularly close attention needs to be paid to arrangements between a Tourist Board and a Government. Not all payments made by a Government to a Tourist Board fall within the VAT system. It depends on the facts of individual cases.

Any organisation which is involved in the promotion of tourism for a Government body, whether or not established by statute, should review their current VAT treatment to establish whether a VAT credit can be claimed from HMRC.

Melanie Hall QC and Frank Mitchell acted for The South African Tourist Board.

The comments made in this case note are wholly personal and do not reflect the views of any other members of Monckton Chambers, its tenants or clients.

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