Club Journal

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Clubs may yet have the opportunity to 'resurrect' Gaming Machine VAT claims

On July 8, 2015 the Supreme Court released their decision in the long-standing dispute between HMRC and Rank plc in respect of the VAT treatment of income generated from gaming machines (*writes Chris Haley, Managing Director of Dransfields*).

The initial argument made by Rank in 2006/2007 was that takings from one gaming machine should not be treated differently, from a VAT perspective, to the takings from another machine. This was the principle established in the European Courts of Justice by the case of Edith Linneweber. Initially the UK Courts found in favour of Rank and many clubs received repayment of VAT together with interest.

More recently however, HMRC changed their argument and sought to rely upon the fact that they had been incorrect when they had treated some gaming machine income as being exempt from VAT and that in fact the law had required this income to be subject to VAT at the standard rate, thus removing the argument of fiscal neutrality.

Having won agreement from the Court of Appeal, HMRC proceeded last year to request the money back from those taxpayers (including clubs) that had received repayments, together with further interest.

The final decision on this matter was left to the Supreme Court, which somewhat surprisingly in the eyes of many, found in favour of HMRC.

HM Courts & Tribunals Service (HMCTS) has recently written to all taxpayers that had their Appeal stood behind Rank plc requesting that they now specify which Rank litigation they were referring to.

There have been two different strands of litigation which HMCTS refers to as Part 1 and Part 2.

Part 1 relates to the Appeal that has been settled by the Supreme Court and referred to above, and which resulted in the claims that had previously been paid out having to be returned to HMRC.

Dransfields Managing Director Chris Haley

Part 2 relates to ongoing Appeals by Rank relating to two separate periods 01/11/98 to 05/12/05 and 06/12/05 to 31/01/13 which have yet to be determined by the Courts. This Appeal is based on the VAT treatment of income from some gaming machines which differed to the VAT treatment of income from other gaming machines; it appears to be a replay of the fiscal neutrality arguments albeit using different comparator machines.

HMCTS has asked taxpayers that have Appeals stood behind the Rank case to respond by March 24, 2016 setting out the nature of their Appeal awaiting determination by the Courts.

This is a complex VAT matter and there are some very sizeable sums involved for taxpayers; however it looks like clubs may possibly have an opportunity to 'resurrect' their claims previously thought to have been defeated by the Supreme Court judgement.

Accountants are exploring what this means for their clients and those clubs that had a 'Linneweber Claim' are advised to seek professional advice to determine what steps they should take next.

Estimates of the amount of tax at stake as a result of these claims have been mooted at between £1 billion and £2 billion which is why this complex case is being so fiercely contested.

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Advice to clubs from the CIU's VAT Consultant Ian Spencer:

Many clubs will have submitted, or had submitted on their behalf, claims for VAT considered overpaid on gaming machine income, possibly for periods prior to December 6, 2005 as well as for periods after that date, up to and including January 31, 2013. To ensure claims were kept alive, appeals were submitted to HMCTS and stood behind the Rank litigation.

Part of the Rank litigation is now finalised – in favour of HMRC – and HMCTS is asking all clubs whether they wish to withdraw their appeal(s) – meaning any chances of recovering moneys from HMRC would be lost, or whether they wish to continue – in which instance HMCTS needs to be told by clubs the justification for this, i.e. which ongoing litigation/case do clubs wish to stand behind.

The CIU is currently taking advice regarding the specific response that clubs should make to HMCTS and this will be made available to all clubs via their Branch Secretary – but as a starting point if clubs engaged their accountant or any other advisor to submit an appeal on their behalf, the club should seek advice from that person.

All clubs should be mindful of the date by which HMCTS requires a response which we understand to be **March 24, 2016**.