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# Litigation and disputes in VAT and Indirect Tax (2022)

HM Revenue & Customs  
Your details  
National Insurance  
This is very important  
benefits related

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# Litigation and disputes in VAT and Indirect Tax (2022)

The law as stated during this webinar is up to date as of **1 April 2022**

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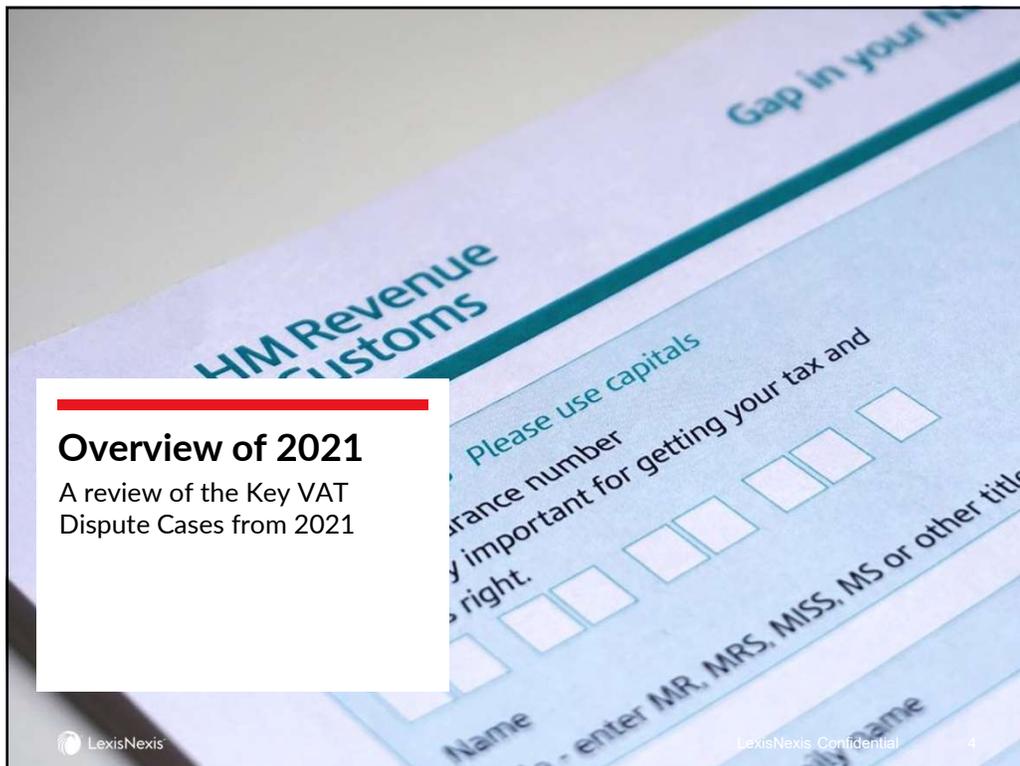
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**Overview of 2021**  
A review of the Key VAT  
Dispute Cases from 2021

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## Eynsham Cricket Club [2021] EWCA Civ 225 (CA)

- In this case an amateur Cricket Club built a new pavilion, the former structure was destroyed by a fire, the revenue decided that the supply of the construction services was not zero-rated for VAT purposes.
- This judgment provides much needed clarity on the status of Community Amateur Sports Clubs, they are not Charities.
  - It held that of [section 6](#) of the Charities Act 2011 was clear that a CASC 'cannot be a charity' as a CASC is not established for charitable purposes so it was clear that the charitable condition for zero-rating was not met.
- "...I regard the meaning of section 6 CA 2011 as clear: a CASC is for all purposes to be treated as not established for charitable purposes and accordingly, cannot satisfy the requirement in paragraph 1(1)(a) Schedule 6 FA 2010 of being established for charitable purposes only." see paragraph 64 of the judgment

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## News Corp UK & Ireland Ltd [2021] EWCA Civ 91 (CA)

- News Corp (the publisher of both printed and electronic newspapers, including The Sun and The Times) successfully argued in the Upper Tribunal that the supplies of its digital versions of newspapers published between 2010 and 2016 were "newspapers" and should be given the same treatment as printed newspapers within the meaning of the [Value Added Tax Act 1994 Sch.8 Group 3 Item 2](#) and therefore zero-rated for VAT purposes.
- However, HMRC appealed to the Court of Appeal who held in HMRC's favour that digital versions of newspapers should be standard rated.
  - "To expand the meaning of [Item 2 of Group 3, Schedule 8](#) to cover the digital news services would be an impermissible extension of those provisions and not merely a recognition of their existing scope." Paragraph 81 of the judgment
- As [Announced in Budget 2020](#), a zero-rate of VAT has been extended to apply to e-publications from 1 May 2020 to ensure e-newspapers are entitled to the same VAT treatment as their physical counterparts. Therefore, the judgment has limited significant to future supplies however it is likely to impact on historic claims.

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## WM Morrison Supermarkets Plc [2021] UKFTT 106 (TC)

- This matter concerned the sale of several bars under the Organix brand and several under the Nakd brand. Two key questions were considered:
  - Were the bars confectionary? If they were, they were standard rated.
  - If they were not confectionary, were they cakes? If they were, they were zero rated.
- This judgment considered a multi-factorial test as to whether something can be considered confectionary:
  1. Sugar content;
  2. Whether the bars were sweet to the taste;
  3. Whether they had been subjected to a process;
  4. Whether they were normally eaten with the fingers;
  5. Whether they were held out to be eaten as snack;
  6. When they were ordinarily consumed;
  7. Whether they were held out as treats;
  8. Whether they were held out as filling the same roles as traditional confectionery; their taste and texture;
  9. Their names;
  10. The packaging;
  11. The ingredients; and
  12. Where the bars were found within stores
- The multi-factorial test gave the clear answer that both the Organix and Nakd bars were confectionery. So were standard rated.
  - " I therefore agree with Mr Watkinson that whether or not a product is healthy rather than "junk" food is irrelevant when carrying out the multi-factorial test necessary to decide a product's VAT status, and I have not taken it into account below" see paragraph 176 of the judgment

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## WM Morrison Supermarkets Plc [2021] UKFTT 106 (TC)

- This judgment also considered if the bars were cakes, taking into account in particular the similarity between the Organix Bars and flapjacks (which HMRC accept are cakes).
- It held, they were not cakes:
  - They did not share ingredients with the majority of cakes;
  - They did not look like most cakes;
  - They were called "bars", not "cakes";
  - They were not held out for sale as cakes; and
  - They would not look in place on a plate of cakes.
- Preparation for Tribunal hearings including witness evidence.

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## **Hampton George Hewitt [2021] UKUT 231 (TCC) (UT)**

- The FTT refused an application by Mr Hewitt for permission to make a late appeal against HMRC's decision to cancel Mr Hewitt's certificate as a flat-rate farmer for VAT purposes. The issue raised on appeal to the UT was whether the EU law principle of effectiveness requires that Mr Hewitt be granted permission to appeal against the cancellation.
- The UT dismissed the appeal: CJEU and UK courts have recognized that the imposition of a reasonable time limit on claims relating to the infringement of EU law rights is not incompatible with the principle of effectiveness. Time limits are necessary to protect both the taxpayer and the tax administration. In Mr Hewitt's case a 30-day time limit was reasonable.
- This case confirms the continuing relevance of the principle of effectiveness. A time-limited period for appealing an HMRC decision cannot be deferred until it becomes clear that the HMRC decision is wrong. The right to appeal within 30 days of being notified of an HMRC decision is itself an effective remedy. A taxpayer who fails to exercise that right should not expect to be allowed to submit a late appeal.



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## **KSM Henryk Zeman Sp Z.o.o [2021] UKUT 182 (TCC) (UT)**

- KSM appealed to the FTT against an assessment to VAT on the grounds that it had a legitimate expectation, based on statements made by HMRC, that it would not be assessed to VAT on certain supplies. The FTT dismissed the appeal, finding that KSM could not rely on the principle of legitimate expectation because it had not acted reasonably in relying on HMRC's statements.
- The UT decided that the FTT does have jurisdiction to consider the question of legitimate expectation in an appeal against an assessment to VAT.
- The UT dismissed the appeal: HMRC had clearly explained in previous correspondence that if KSM was "*supplying construction services solely to business customers who belong in the UK and who are all registered for VAT in the UK*" it would not be making taxable supplies. KSM knew its supplies were not as described above, so could not have had a legitimate expectation that its supplies would not be assessable.



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## **Westow Cricket Club [2021] UKUT 23 (TCC) (UT)**

- HMRC imposed a penalty on WCC for issuing a zero-rating certificate in relation to supplies made to WCC for the construction of a new cricket pavilion. HMRC imposed the penalty on the basis that the certificate was issued incorrectly as WCC was not a registered charity. WCC argued that it relied on written advice from HMRC to the effect that the supply of the building works would be zero-rated.
- The UT found that it was reasonable for a taxpayer like WCC (run by volunteers with little expertise on indirect taxation) to rely on what was said in HMRC's letter as constituting a reasonable excuse for having completed the zero-rated certificate as it did. HMRC's statement that the pavilion appeared to meet the requirements was sufficiently clear and without qualification.
- This case follows *Perrin* [2018] UKUT 156 (TCC) and highlights the importance of considering the point at which the reasonable excuse should be assessed: at the time of the action / omission in question. The FTT should adopt a 'considerable degree of flexibility' in approaching reasonable excuse cases where taxpayers are usually unrepresented / not legally represented.

## **St George's University Ltd [2021] UKFTT 13 (FTT)**

- The university was based in Grenada offering a medical degree course. Students could opt to complete parts of the course via programmes based in the UK. HMRC determined that it was liable to be registered for VAT on the basis that it made taxable supplies of education to its students in the UK.
- The FTT found that the university did supply services for VAT purposes to the students undertaking the UK programmes: there was a contract between the students and the university for the supply of the course; the UK programmes were part of that contract; students paid all fees to the university and no one else.
- The FTT found that that the supplies were outside the scope of UK VAT: the university's services were not the performance of the UK programmes, but to provide the opportunity to do the UK programmes; the place where the university's activities actually take place is where it makes all the necessary arrangements for the provision of the UK programmes, i.e. Grenada.

## Anna Cook [2021] UKUT 15 (TCC) (UT)

- HMRC considered that supplies of Ceroc dancing classes to the public were standard rated for VAT purposes. The FTT held that the supplies were exempt on the basis that they were supplies of private tuition in a subject ordinarily taught in a school or university (i.e. the subject of dance). HMRC appealed to the UT.
- The UT granted the appeal finding that Ceroc is a distinct activity not commonly taught in schools.
- The teaching of Ceroc is controlled, Ceroc is advertised as something distinct, it has a permitted list of moves, and there are medals and championships in Ceroc
- Evidential burden where VAT exemption considered.

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## Questions?



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## VAT and Indirect Tax webinars in 2022

- VV0122 Litigation and disputes in VAT and Indirect Tax (2022) **Q2 2022**
- VV0222 VAT and property in 2022 **Q2 2022**
- VV0322 VAT and supply chains (2022) **Q3 2022**
- VV0422 VAT and Indirect Tax - End of year round-up 2022 **Q4 2022**

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### Thank you and reminders

- This webinar is designed to help solicitors meet requirements A2 (Maintain competence and legal knowledge) and A4 (Draw on detailed knowledge/understanding) of the SRA's Statement of solicitor competence. You may also use the quiz, which can be accessed via the "Take a quiz" link on the webinar details page, to reinforce your understanding of the webinar content. You should answer 7 out of 10 questions correctly and will have two attempts at the quiz.
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