



# Cultural Exemption Update for the ABO.

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# Agenda

- Update on two key cases
  - Mayflower Theatre Trust Limited
  - Bournemouth Symphony Orchestra
- Partial exemption issues
- Retrospective claims update
- Other practical issues

# Mayflower Theatre Trust

- Mayflower wins at the Court of Appeal
- Production costs relate to ticket sales and taxable income
- Specifically programme sales
- Direct and immediate link
  - Now an ongoing dispute with HMRC between
    - Receiving houses
    - Touring companies

# Mayflower Theatre Trust

- Receiving venues, such as the Mayflower
  - Whole of producers costs deemed to be residual for partial exemption purposes
- Touring companies
  - If there is an intention to tour the production from the outset, costs are residual
  - If intention changes, possible claw back of originally claimed input VAT
- Producing venues – no touring
  - Input VAT on production costs may be attributable to programme sales; but
  - Only to the extent that it relates to “essential material”
  - HMRC view that this does not include stage or set costs
  - Detailed analysis of production costs required

# Bournemouth Symphony Orchestra

- Unsuccessful in claim that BSO is an “eligible body”
- Then HMRC issue Business Brief 27/07
- Guidance on what is a “direct or indirect financial interest”
- Reading this in isolation, BSO is an eligible body
- Court of Appeal applied second test being that
  - Despite the MD of BSO **not** having a financial interest by way of his salary
  - Nevertheless, the degree of influence a remunerated individual has, makes the BSO not eligible for exemption
  - More confusion as Business Brief is misleading, resulting in differing local application by HMRC
- Deloitte meeting with HMRC on 8<sup>th</sup> June to discuss a wide range of issues including the above Business Brief

# Partial exemption issues

- Application of the “Standard Method Override – SMO”
- Applies where actual use of input VAT differs from the standard method result
- Residual input VAT must be greater than £50k per annum or >50% of total input VAT
- SMO introduced on 18<sup>th</sup> April 2002
- For submitted claims, HMRC insist on applying the SMO all the way back to 2002, despite the three year cap
- Apply a new methodology such as

Value of programme sales (zero-rated)

Value of programme sales plus ticket sales (Exempt)

# Retrospective claims update

- Fleming/Conde Nast claims
- House of Lords, November 2007
- London Philharmonia
- Claim for overpaid output VAT since January 1990
- Supported by decisions in Fleming and Conde Nast so far

# Compound interest

- **Sempra Metals** – a direct tax case before the House of Lords
- Court of Appeal found that ACT infringed rights of foreign companies
- Interest should be payable on a compound basis for full commercial restitution
- Opportunity to make a claim to HMRC

# Other issues

- One-off fund raising events
- Advertising costs
- Property development and barter arrangements

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