

Membership fees and allocations to separate branches

Although branches of the NFOP were independent persons for VAT purposes, branch rebate payments made from the NFOP to the branches were not amounts received as agent by the NFOP, but consideration received by NFOP for supplies of membership benefits.

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The First Tier Tribunal (FTT) has held that the branches of the National Federation of Occupational Pensioners (NFOP) were persons independent from the NFOP for VAT purposes. However, branch rebate payments made from the NFOP to the branches were, on the facts, not amounts received as agent by the NFOP on behalf of the branches, but were part of the consideration received by NFOP for supplies of membership benefits: [NFOP v HMRC](#) [2018] UKFTT 26.

The decision shows that a clear agency relationship must be shown in order for amounts received by one person on behalf of another for those amounts not to form part of the turnover of the initial recipient. Whilst that was not the case in these particular arrangements, there may well be other circumstances in which a division of membership income between the main entity and local branches is possible and effective for VAT purposes.

Background

The NFOP is a company limited by guarantee, which represents the social interests of its members. Members pay a membership subscription to the NFOP and receive a number of benefits for their membership including free advice on legal, tax and financial matters, a free magazine, free IT assistance, discounts on goods and services and membership of a local branch.

A local branch's relationship with the NFOP was somewhat ambiguous. The creation, conduct and management of local branches was provided for in the NFOP's Regulations, however, each branch had its own rules (whether written or by longstanding practice), own funds and was run by its own branch committee.

Annual member subscription rates for NFOP were set by resolution at the NFOP's AGM. Included in that subscription was the amount of a "branch rebate" which was determined in the same way. Branch income was made up of the branch rebate plus other locally raised income from branch activities.

NFOP contended that the amount of the branch rebate was not part of its membership subscription income for VAT purposes. It contended that it simply collected the branch rebate on behalf of the branches, which were separate legal entities for VAT purposes, and passed those amounts onto the branches as their agent. HMRC disagreed, arguing that the branches were not separate persons and, even if they were, the branch rebate was subject to VAT as part of the

membership subscription received by NFOP.

FTT decision

The FTT considered that the branches in this case were separate legal entities for VAT purposes from the NFOP. The branches had their own rules, their own branch committees, their own identifiable set of members and their own funds. For English law purposes, the branches were separate unincorporated persons from NFOP within the meaning of the Interpretation Act 1978. However, it was also necessary to determine whether the branches were “independent” from NFOP for VAT purposes and this depended on whether they were economically independent in the sense that they carry on activities in their own name, on their own behalf and bear the economic risk of those activities. The FTT concluded in this case that the branches did bear their own economic risk. They had their own income and assets and were fully responsible for managing their resources.

The fact that the branches’ activities were circumscribed by the NFOP’s constitution and objects and the Executive Committee of the NFOP could suspend branch officers. However, these aspects of control over the way a branch is managed and activities it could undertake did not prevent the branches being independent from a VAT perspective. The VAT test of independence was based on control of economic resources and, in particular, economic risk. The FTT drew an analogy between the branches of the NFOP and subsidiaries of a company, which might equally have their activities and management heavily controlled by a parent company without losing their independence.

However, the FTT found that the branch rebate was not received as agent by NFOP on behalf of the branches. The full subscription, including the branch rebate, was set by the NFOP, which was not consistent with mere agency. In addition, the Regulations defined the “branch rebate” as an amount paid to branches “from the subscriptions” received by NFOP and the Branch Guide equally described the branch rebate as an amount paid to assist in the running of branches. These arrangements and descriptions were only consistent with the payments being made by NFOP from its own resources rather than agency. Equally, branch membership was described as a membership benefit provided to NFOP members and no reduction in membership fees was given to members which did not take up the opportunity of joining a branch.

As a result, although the NFOP succeeded on the argument that the branches were economically independent persons for VAT purposes, the FTT considered that the payments of branch rebates were not made as agent by NFOP to the branches and did not reduce the NFOP’s membership income.

Comment

Having succeeded in the argument that the branches were independent, this, of course, begs the question of the nature of the payment from the NFOP to those branches and whether it itself amounts to consideration for a supply of services to NFOP. However, in this case, it appears that none of the branches had sufficient turnover to be required to register for VAT and so it may be the question is academic.

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