

CORPORATE HOBBIES ATTRACT VAT PENALTIES: By Jonathan Hore

Most of us probably think that it is only natural persons who engage in hobbies such as hunting, football and golf. Well, to be honest, that is not surprising; hobbies are for natural persons. One online dictionary defines a hobby as, 'an activity done regularly in one's leisure time for pleasure.' Two things are critical in that definition and these are that the activity is done in one's leisure time and for pleasure. Technically, it's not a business but just a pastime. But for VAT, businesses can also be regarded as conducting a hobby and I want to analyse how that works. In this article, words importing the masculine shall be deemed to include the feminine.

VAT BUSINESSES

You may know that corporates are set up to do business or engage in some activity which is of some economic or social importance. It is rare to have a corporate which is simply set up to while up time and not generate profits for its shareholders. From a VAT perspective, what we are referring to as business is called a 'taxable activity.' So, a retail chain enterprise is in the business of selling merchandise and this is its taxable activity. Likewise, a tax firm's taxable activity is to provide tax services. Only persons conducting taxable activities or businesses are registered for VAT purposes. This also means that after they register for VAT, they can then charge VAT on their sales (output tax) and claim VAT on their purchases (input tax).

Let me be clear that input tax claims may pose a risk for a corporate, especially if they relate to hobbies as I will expand on below. The reason is that the corporate hobbies do not generate VAT which BURS collects and yet the entity claims VAT on such activity. By the way, BURS charges penalties of up to 200% if they discover any underpayment of tax and VAT claims usually result in reduction of taxes due to BURS. In addition, the taxman charges annual interest of 19.56% on underpaid tax. As stated above, VAT cannot be claimed on an activity which is conducted as a hobby, regardless of the fact that the person may be registered for VAT. But now, we need to focus on what is considered as a hobby, for VAT purposes.

CORPORATE HOBBIES & VAT

I established above that VAT claims can only be made when someone is conducting a taxable activity. In other words, a retail chain store can claim VAT on stock purchases, building acquisitions etc, which in the end yields VAT charges payable to BURS. However, notice that the VAT Act recognises that corporates may engage in certain activities and conduct them more on the terms of hobbies. The Act states that a taxable activity or a VAT business shall not include, 'an activity carried on by a person other than a natural person which would, if carried on by a natural person, be carried on essentially as a private recreational pursuit or hobby.' So, the Act basically likens a corporate hobby to a hobby carried on by a natural person. You may know that hobbies are usually conducted for free, i.e. no consideration is charged.

Below are some examples of corporate hobbies and as stated above, no VAT can be claimed on corporate hobbies as they are usually not conducted for profit:

- **Donations:** Most companies engage in some corporate activities where they offer goods or services to the underprivileged for free. These activities may include the purchase and distribution of clothing, building materials, etc. Some corporates also build houses for the unfortunate in society. The simple fact that the corporate does

not charge for the services/goods means that they won't be advancing a taxable activity and cannot claim input VAT directly allocable to such activities.

- **Game reserves:** Some corporates, especially mining and exploration entities, may keep animals as part of their conservation initiatives. The animals are not sold at market value and are at times given away for free to employees or members of the community. That alone means that the corporate will simply be engaging in a hobby and not a business, hence the VAT incurred cannot be claimed.
- **Adopt a school/child:** Some corporates also adopt children, schools or engage in such similar activities. This usually comes with associated donations of both goods and cash. Notice again here that the corporate will not charge for the services but may incur VAT on purchases of goods earmarked for the donation. Again, such corporates cannot claim VAT incurred on such activities.

CONCLUSION

In conclusion, any activity which is provided for free or at a charge which barely recovers the cost of the service or goods may technically be regarded as a hobby, for VAT purposes. Corporates should therefore analyse which activities they conduct as hobbies in order not to claim VAT directly attributable to such hobbies. Claiming such VAT may result in massive VAT exposures, which could be worsened by penalties and interest.

Well folks, I hope that was insightful. As Yours Truly says goodbye, remember to pay to Caesar what belongs to him. If you want to join our Tax Whatsapp group, send me a text on the cell number below.