

You're barred!

A look at the High Court decision on when a café is a bar for the purposes of VAT

28 March 2025  Craig Thomas

The recent High Court judgment in the case of *Anglia Ruskin Students' Union v HMRC [2025] EWHC 296 (Admin)* provides a significant clarification to the application of VAT on alcohol sales by student unions.

The decision will be of particular importance to student unions across the UK.

Background

The case concerned an establishment known as '92' operated by Anglia Ruskin Students' Union beneath its office at the Anglia Ruskin University. The dispute centred on whether or not '92' was a 'bar' for the purposes of VAT Notice 709/1. If '92' was a 'bar' for these purposes supplies of food and drinks made by it would be subject to VAT (if not VAT Notice 709/1 would treat the supplies as exempt).

High Court decision

The High Court decided that '92' was a "bar" for the purposes of VAT Notice 709/1 and therefore that supplies of food and drinks made by it were subject to VAT.

VAT notice 709/1 specifically provides for an extra-statutory concession for a student union which is supplying catering to students both on behalf, and with the agreement, of the parent institution. The resulting treatment is that such supplies can be treated in the same way as the parent institution itself (i.e. exempt for the purposes of VAT). However, the exemption does not extend to:

"food and drink sold from campus shops, bars, tuck shops, other similar outlets and certain vending machines"

In determining this issue, the High Court decided that the term 'bar' should be ascribed its ordinary meaning, in other words, somewhere one can purchase both food and alcoholic and non-alcoholic drinks. The argument that a 'bar' was somewhere that did not provide catering or only provided catering as a small percentage of its supplies, was rejected. The High Court in reaching its decision also noted that '92' was described and marketed as a 'bar' in its own advertising literature and on the facts (i.e. its physical features) fell within the ordinary definition of the term 'bar'.

Implications

The High Court's judgment may have significant implications for student unions across the UK (particularly those who have previously relied on the exemption in VAT Notice 709/1). Student unions should:

1. ensure that they correctly account for standard VAT rates in their budgeting and financial planning for activities involving alcohol sales (and obtain advice if this is not the case);
2. consider adjusting prices to mitigate the impact of VAT (if supplies are subject to VAT because of this decision); and
3. seek advice and ensure compliance with VAT regulations to avoid potential disputes and penalties from HMRC.

Conclusion

The Anglia Ruskin Students' Union v HMRC case serves as a reminder of the complexities involved in VAT legislation especially in scenarios where different activities undertaken by different organisations might have different VAT treatments.

It also highlights the importance of ascribing terms in legislation their ordinary meaning (as opposed to relying on a narrower more restrictive definition in order to fall within a particular tax treatment).

Browne Jacobson has a team dedicated to advising universities and private sector providers in the food and drink sector and can help with the issues stated above.

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