

# ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



## United Grand Lodge of England v Commissioners for His Majesty's Revenue and Customs [2023] UKUT 307 (TCC)

Upper Tribunal (Tax and Chancery Chamber), P Ramshaw & K Poole JJ, 19 December 2023

An appeal concerning VAT payable on membership subscription fees.

**Key words:** Tax, United Kingdom, Appeal, Freemasons, Value Added Tax, Membership Subscriptions, Philanthropic, Member Benefit

1. United Grand Lodge of England (UGLE) is an unincorporated association founded in 1717 with about 175,000 members belonging to some 6,500 local lodges. It is the largest secular fraternal and charitable organisation in the UK.
2. UGLE has an annual income of around £13m, including £9m from membership dues, fees and room rentals, and some £3m investment income. It has net assets of £70m and about 90 employees.
3. UGLE made two claims for repayment of Value Added Tax (VAT) accounted for in VAT periods 06/10–03/18 for £2.83m on membership subscription fees. The basis of the claim for repayment of VAT on its supplies to members was that they were exempt under art 132(1)(l) of the [Council Directive 2006/112/VAT](#) (PVD), an EU Directive on the common VAT system in the EU, and Item 1(e) of Group 9 of Sch 9 to the [Value Added Tax Act 1994](#) (VATA) because its main aims were of a philosophical, philanthropic or civic nature.
4. Article 132(1) PVD provides:

Exemptions for certain activities in the public interest

Article 132

Member States shall exempt the following transactions:

...

(l) the supply of services, and the supply of goods closely linked thereto, to their members in their common interest in return for a subscription fixed in accordance with their rules by non-profit-making organisations with aims of a political, trade-union, religious, patriotic, philosophical, philanthropic or civic nature provided that this exemption is not likely to cause distortion of competition;

...

(o) the supply of services and goods, by organisations whose activities are exempt pursuant to points ... (l), ... in connection with fund-raising events organised exclusively for their own benefit, provided that exemption is not likely to cause distortion of competition;

...

5. Section 31 and Item 1(e) of Group 9 of Schedule 9 to VATA. Group 9 is headed “Subscriptions to trade unions, professional and other public interest bodies” and exempts:

The supply to its members of such services and, in connection with those services, of such goods as are both referable only to its aims and available without payment other than a membership subscription by any of the following non-profit making organisations –

...

(e) a body which has objects which are in the public domain and are of a political, religious, patriotic, philosophical, philanthropic or civic nature.

6. The First Tier Tribunal (Tax Chamber) (the primary Tribunal) [dismissed](#) UGLE’s appeal against HMRC’s decision to reject two claims for repayment of VAT in 2021.

7. The primary Tribunal held that if an organisation had more than one aim, its eligibility for relief would depend on its main (or primary) aim, and if it had multiple main aims, it would only qualify for relief if all its main aims fell within the list in Article 132(1)(l) of the PVD. If it had several aims that were all equally important (i.e. if it had no main aim), then all those aims would have to fall within the list to enable the organisation to qualify for exemption.

8. The primary Tribunal decided that UGLE had a philosophical aim that was a central or main aim, but that it also had another main aim of at least equal importance to the philosophical aim, namely the provision of “Relief” in two forms: donations to good causes unconnected with Freemasonry (which it regarded as philanthropic) and supporting Freemasons and their dependents in distress (which it regarded as “self-insurance” rather than philanthropic in nature). It considered that each of these two elements was, in its own right, a main aim, but the support of Freemasons and their dependents in distress was the more important of the two elements during the relevant period.

9. The primary Tribunal found that the services were not exempt from VAT.

10. UGLE appealed the decision.

11. The grounds of appeal were:

- The primary Tribunal failed to address or give reasons for rejecting UGLE’s case that it had one main philosophical aim and that its activities in support of Masonic charities were in service of the philosophy of Freemasonry; and
- Even if its activities related to UGLE’s charities could be treated as an aim that was not in service of its main philosophical aim, the activities of UGLE in support of the Masonic charities fell within the ordinary meaning of the word “philanthropic”. The primary Tribunal misdirected itself in law by failing to apply the word's ordinary meaning and instead adopted a meaning of “philanthropic” which was too narrow.

#### **Failure to give reasons for rejecting one main philosophical aim**

12. UGLE argued that its essential case before the primary Tribunal was that its philosophical aim was its main aim, and that all of its activities should be understood as being in service of that aim. It claimed that there was no finding by

the primary Tribunal that the charitable activities were separate from the philosophy of Freemasonry, and pursued independently of that philosophy.

13. HMRC argued that this ground of appeal was actually a new argument that was not advanced before the primary Tribunal, intertwined with a challenge to its evaluation of the facts.
14. The Upper Tribunal found that the arguments presented to the primary Tribunal were not as described by the parties in the appeal. The task of the primary Tribunal, which it correctly identified, was to identify UGLE's aims and determine which of them were its primary or main aim/s.
15. The Upper Tribunal agreed with the primary Tribunal that (at [49]):

...the practical provision of Relief is not, ... just part and parcel of the philosophy of Freemasonry so that it must be regarded as being in service of that philosophical aim and incapable of being regarded as a main aim in its own right. In principle, charitable activity is certainly an activity that is capable of being a subsidiary aim in service of a main aim but can also be a separate main aim. It follows that we reject the argument that had the [primary Tribunal] properly addressed [UGLE]'s case it was bound to conclude that the provision of Relief was subsumed in the philosophical aim.

16. The Upper Tribunal said that the primary Tribunal found that the provision of Relief was a main aim of at least equal importance to the UGLE's philosophical aim and concluded that, as such, it was distinguishable from subsidiary aims, it was not subservient to the philosophical aim, and it did not simply facilitate the achievement of the philosophical aim.

17. However, the Upper Tribunal stated (at [59]):

[W]e consider that the [primary Tribunal] failed to provide adequate reasons as to why it did not accept [UGLE]'s argument that there was one main philosophical aim, and everything was done in pursuance of that aim. HMRC argue that it is implicit in the [primary Tribunal]'s decision when read as a whole, that in finding that Relief was a main aim of at least equal importance to the philosophical aim, this was a rejection of the factual assertion that the sole aim was philosophical and all other aims were in service of that aim or subservient to it.

18. The primary Tribunal had erred in law, and the Upper Tribunal exercised its discretion to remake the decision and dismiss the appeal.

### **Ordinary Meaning of Philanthropic**

19. UGLE argued that the primary Tribunal applied too narrow a meaning of "philanthropic". The distinction between benefiting people who are members of society at large and only those who have contributed to the organisation referred to by the primary Tribunal was not supported by the ordinary meaning of "philanthropy". The giving by Freemasons amounted to practical benevolence for the benefit of those in need.
20. UGLE gave the following example in support of its position (at [68]):

...that it is possible for a philanthropic organisation to meet the needs of a certain class of person (e.g., former members of the armed forces) and still be philanthropic. A beneficiary of such an organisation would only be eligible for support if they had contributed to, or served in, the armed forces. Similarly, the fact that Freemasons or former Freemasons in need have themselves previously given money to those same causes makes no

difference for the reasons identified by the [primary Tribunal] in paragraph [58], namely that “society at large benefits from such aims because its members know that others, or they themselves, may be beneficiaries of the benevolence if they are unfortunate enough to need it”.

21. The HMRC argued that:

- the Upper Tribunal in [\[2015\] UKUT 589](#) had decided that the meaning of “philanthropic” did not encompass the act of giving in the knowledge or expectation that as a donor, you will receive some benefit back;
- self-insurance does not fall within the ordinary meaning of “philanthropic”, and the element of self-insurance deprives the word “philanthropic” of the altruism at the heart of its definition: loving one’s fellow men, benevolent;
- it does not follow that once a body pursues exclusively charitable objects, it must be “philanthropic” as there is no requirement for VAT and charity law to be aligned; and
- the evidence showed that a Freemason’s duty was to prefer a fellow Freemason in need and that the charities under the appellant’s administration distributed funds in accordance with that duty.

22. The Upper Tribunal was of the view that:

- it did not accept that VAT and charity law were aligned to the extent that charity law can determine VAT treatment unless an express provision is included in the legislation that requires it;
- philanthropy is broader than charity, as held by the Court of Appeal in *Re MacDuff* [1896] 2 Ch 451, but everything that could be considered to be charitable is not automatically considered philanthropic;
- where an organisation collects (or requires the collection of) monies from its members for re-distribution in the form of Relief to members and their dependents when a need arises, that is not philanthropic as it is inward looking, lacking benevolence towards mankind at large or in general; and
- out of comity, it would follow [\[2015\] UKUT 589](#) as it involved the same organisation and very similar facts.

23. The Upper Tribunal summarised its view as (at [97]):

We accept that an aim may be considered to be philanthropic if an organisation aims to provide relief to specific categories of persons. However, we consider there is a qualitative difference between organisations which raise and distribute funds for identified groups of persons and an organisation that raises funds from within the members that constitute that organisation with the aim of essentially re-distributing a large part of the funds (by way of benefits procured by them) back to some of those members and members’ dependents. That cannot be considered to be philanthropic in the sense of benevolence to the world at large, a love of mankind etc. We therefore reject the submission that the [primary Tribunal] applied too narrow an interpretation of philanthropic.

## **Conclusion**

24. The appeal was dismissed.

## COMMENT



Following MacDuff [1896] 2 Ch 451, in Australia philanthropic purposes or objects have also been held to fall outside what the law recognises as charitable. A philanthropic purpose is ‘a purpose which indicates goodwill to mankind in general’, (Will of Forrest [1913] VLR 425), too broad to come within the legal concept of ‘charity’.

In Re the Grand Lodge of Antient Free and Accepted Masons in New Zealand [2011] 1 NZLR 277; [2010] NZHC 1723; BC201064908 it was found that the purposes of the Grand Lodge did not advance religion because Freemasonry is inward looking, its funds and organisation exist primarily for its members, and it does not proselytize. While there may ultimately be a public benefit in Masonry improving the character of its members, the Court saw it as too remote to be charitable.

## VIEW THE CASE



This case may be viewed at: <https://www.bailii.org/cgi-bin/format.cgi?doc=/uk/cases/UKUT/TCC/2023/307.html>

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