

**Time-restricted daily letting of sports facilities is a taxable supply  
Polo Farm Sports Club (20105)**

**Summary**

The Tribunal has confirmed that, where sports facilities are licensed to the same licensee on a daily basis, but the licence restricts use of the facilities to fixed times, the supply is standard-rated. Supplies of this nature are fairly common and the decision will be of interest to businesses with similar licensing arrangements.

**Background**

The Appellant granted a licence to an association of hockey clubs to use or let a number of hockey pitches between the permitted hours of 5am and 9.30pm, seven days per week, and treated the supply as standard-rated. Planning permission prevented use of floodlights after 9.30pm and the Appellant wished to restrict the time of use of the pitches in order to avoid complaints from local residents concerning noise.

The relevant legislation was Item 1 (m), Group 1, Schedule 9 to the VAT Act 1994 which treats the letting of sports facilities as taxable except, under Note 16(a), where the letting is for a continuous period of use exceeding 24 hours or, under Note 16(b), where the letting is for a series of 10 or more periods, whether or not exceeding 24 hours in total, and the following conditions are satisfied:

- (i) each period is in respect of the same activity carried on at the same place;
- (ii) the interval between each period is not less than one day and not more than 14 days;
- (iii) consideration is payable by reference to the whole series and is evidenced by written agreement;
- (iv) the grantee has exclusive use of the facilities; and
- (v) the grantee is a school, a club, an association or an organisation representing affiliated clubs or constituent associations,

in which case the supply is exempt.

In this case, HMRC issued a ruling that the supply was exempt and the Appellant appealed, HMRC contended that the substance and reality of the licence was to grant the licensee continuous use of the facilities for many years, on the basis that:

- the facilities had never been hired outside the permitted hours;
- the licensee had control over the facilities for all practical purposes for all periods when such control mattered;
- if the Appellant was right, any agreement to let sports facilities could be drafted in such a way as to render the supply taxable;
- if the licence had granted continuous use, the effect would be identical but the supply would be exempt; and/or
- although the grant of the land was time-restricted, the grant of the use was not, in practice, restricted because the licensee had a continuous right to all available use.

Consequently, the supply was exempt under Note 16(a). Alternatively, HMRC argued that the supply was exempt under Note 16(b) because condition (ii) was not satisfied, on the basis that the interval between the periods of use was not less than one day because the 24 hours should be calculated between the beginning of the periods of use; or the intention of the legislation was to exempt a series of lettings taking place on different calendar days, irrespective of how many hours fell between the end of the use on one day and the beginning of the use on the next.

**Held**

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On the Note 16(a) arguments, the Tribunal decided:

as opposed to a very brief break in use (e.g. if use were not permitted for less than two hours per day), in this case the break, i.e. the time when the Appellant could legally prevent the licensee from using the facilities, was real and substantial and the licensee did not have continuous use for 24 hours or more;

the phrase "grant of facilities" in Item 1 (m) must mean "the grant of an interest in land which constitutes facilities for playing sport" and therefore, in Note 16(a), the test must be whether the underlying grant of the interest in land exceeds 24 hours, not the grant of the use.

On the Note 16(b) arguments, the Tribunal decided:

the "interval" was properly the period between the end of one period of use and the beginning of the next, and the language of Note 16(b)(ii) had the result that the second period of use must begin in a new day, but that was not required by the wording of the statute: the interval in this case was "less than one day".

The Tribunal therefore decided that the supply did not fall within either Note 16(a) or Note 16(b) and was standard-rated.

### **Implications**

In the Editors' opinion, HMRC put to the Tribunal a comprehensive range of arguments to support its contention that the supplies in question were exempt. Businesses involved in similar licensing arrangements should therefore derive some comfort that the Tribunal has seen fit to reject those arguments. Furthermore the case, if correctly decided, would appear to open the possibility of structuring sports centre developments in a VAT efficient manner, particularly in the educational sector. There may also be opportunities in the not-for-profit sports sector but care would need to be taken to deal with the exempt status of the end-using sports clubs and whether any arrangements put in place would prejudice their status as exempt eligible sports bodies.