

Sporting services exemption - Potential for retrospective claims
Canterbury Hockey Club C-253/07

Issue

The VAT Directive (Article 132, previously Article 13 A 1 of the Sixth Directive) requires Member States to exempt “certain services closely linked to sport.... supplied by non profit making bodies to persons taking part in sport....” The equivalent UK legislation speaks of exempting such supplies to individuals.

Canterbury Hockey Club had argued that affiliation fees it paid to England Hockey (a non profit making body) could be exempt under the wording of EU law because persons was not limited to natural persons, and that the UK law did not properly reflect the Directive. HMRC argued that these fees were not consideration for supplies to persons taking part in sport, but for supplies to the club, (a non incorporated association) which was not itself taking part in sport. Therefore exemption did not apply.

Background

The VAT Tribunal found for the club, on the basis that the club had no legal personality of its own hence supplies to it were supplies to its members. HMRC appealed. The club cross appealed arguing that the UK law did not reflect EU law. The High Court concluded that the transparency approach adopted by the Tribunal was not correct but that in order to determine the cross appeal a referral to the ECJ was needed.

The High Court in the UK referred questions to the ECJ around the meaning of persons in this context, and whether the use of the phrase “certain services closely linked to sport” meant the UK had the discretion to limit the exemption to individuals.

Why is this important?

The ECJ has broadly found for the taxpayer. It has concluded that the sporting services exemption can include services supplied to corporate bodies and non incorporated associations provided that the services are closely linked to and essential for sport, the supplier is a non profit making body, and the true beneficiaries of the services are persons taking part in sport. This would mean for instance that supplies which relate to the operation of a club such as advice about marketing and fund raising could not be exempt.

The UK court must now decide if the services supplied by England Hockey to the club meet the conditions for exemption. The Court may well decide that some do and some do not, but nevertheless the ECJ has clearly indicated that the UK's approach of limiting the exemption to supplies to individuals is wrong and overly restrictive. In answer to the second question the ECJ made it clear that the discretion afforded to Member States in applying the Article 13 A exemptions is limited to the conditions set out in Article 13 A 2 (now Article 133), and can not encompass any discretion about who can receive the exempt supplies. The Article 133 conditions concern the way the non profit making bodies deal with surpluses, are managed and administered, and their pricing structures.

Next steps

Any non profit making bodies that have accounted for VAT on services other than those supplied to individuals should consider making a retrospective claim. In view of the current Fleming window these claims can be made for the past three years and for the period from January 1990 to 4 December 1996. However input tax adjustments will also need to be made to reflect the additional exempt income so claims may not be beneficial for all. The ECJ decision also suggests that the UK rules which limit the exemption to supplies to individuals who are also members, in cases where the non profit making body has a membership scheme are ultra vires.

If you think you may be affected by this decision please contact 4 Eyes Ltd.

This VAT update is published for the general information of 4 Eyes Ltd personnel, clients and contacts. It provides only an overview of the rules and regulations in force at the date of publication, and no action should be taken without consulting the detailed legislation or seeking professional advice. Therefore no responsibility for loss occasioned by any person acting or refraining from action as a result of the material contained in this e-mail will be accepted by the authors or the firm.