

SPORTS VAT ADVISORY SERVICE E-UPDATE**March 2010 (ii)**

Business Brief 15/10 has recently appeared on the HMRC website and will be of interest to all Sports Governing Bodies, Sports Clubs and Bodies that are also Eligible Bodies for the purposes of the VAT Sports Exemption....

The Brief details changes to the treatment of certain sports related services following the ECJ judgment in *Canterbury Hockey Club (C-253/07)*.

The issue

Changes to the VAT exemption for sports related services are being introduced from 1 September 2010. This will primarily affect affiliation fees charged by sports governing bodies to member clubs but the VAT treatment of other sports-related supplies may also be affected.

Background

Certain services closely linked with and essential to sport or physical education are VAT exempt when supplied by an eligible body (that is, essentially non-profit making bodies not subject to commercial influence) to an individual taking part in sport.

In respect of affiliation fees charged by sports governing bodies to their member sports clubs, HMRC have previously restricted the exemption to fees calculated on a per person basis (provided the services were closely linked to sport). Affiliation fees calculated by other methods, for example, on the basis of the club size or the number of teams fielded, were standard rated for VAT. However, the ECJ in the case of *Canterbury Hockey Club and Canterbury Ladies' Hockey Club* found that the exemption applies more widely. It has ruled that in the context of persons taking part in sport, the exemption includes services supplied to corporate persons and to unincorporated associations, provided that the supplies are closely linked and essential to sport, that they are supplied by non-profit making organisations and the true beneficiaries are individuals taking part in sport.

Implications

The ECJ ruling means that some supplies which were standard rated, for example because they were supplied to a corporate body or unincorporated association, may now be exempt from VAT if the services are closely linked and essential to sport and the true beneficiaries are individuals taking part in sport.

From 1 September 2010, eligible bodies meeting the conditions for exemption outlined in VAT Notice 701/45 Sport must exempt supplies where the true beneficiaries are persons taking part in sport, even if the supply is not made direct to an individual, and irrespective of how the fee is calculated.

Supplies made to commercial profit-making organisations do not meet the true beneficiary test and will not fall within the exemption for supplies of services closely linked and essential to sport.

Where the affiliation fee confers a number of benefits, which individually would be liable to different VAT treatment, the advice in section 4 of Notice 701/5 March 2002 will help determine whether there is a single or multiple supply. Where the conditions of Extra Statutory Concession 3.35 (apportionment of membership subscriptions to certain non-profit making bodies) are met governing bodies may continue to take advantage of the option to apportion their affiliation fees between the rates of VAT applicable to the individual elements.

The ECJ gave some examples of services that do not fall within the exemption, including advice about marketing and the obtaining of sponsors. These will be liable to the standard rate of VAT when ESC 3.35 is applied unless relief is available under another part of the VAT Act.

This policy change may also affect some other supplies closely linked and essential to sport by eligible bodies to corporate persons and unincorporated associations where the true beneficiary is a person taking part in sport. An example could be the letting of sports facilities to a club for the direct use of its members. In these circumstances, the supply is exempt if the club is non-profit making. Otherwise it will be taxable.

Making claims or adjustments

The changes described above must be implemented from 1 September 2010 and there is no requirement to make adjustments in respect of supplies made prior to this date. However, any organisations wishing to implement the judgment before

1 September 2010 (and start exempting affected fees from an earlier date) are entitled to do so.

Where a business wishes to make a claim to HMRC (under section 80 of the VAT Act 1994) for repayment of VAT incorrectly accounted for on sports related services, they may do so, subject to the conditions set out in Notice 700/45 How to correct VAT errors and make adjustments or claims.

All claims will be subject to the four-year time limit in section 80(4) of the VAT Act 1994 and to the set-off provisions in section 81 of the VAT Act and section 130 of the Finance Act 2008.

There may be direct tax implications where amounts of over-declared output tax are repaid to businesses and your attention is drawn to [Revenue & Customs Brief 14/10](#).

HMRC may reject all or part of a claim if repayment would unjustly enrich the claimant.

Please contact us should you wish to discuss this further, or should you consider that you may wish to make a claim to HMRC.

Subscribing and Unsubscribing to the VAT Planning Group Limited VAT Advisory Service

- **If you wish to subscribe or cancel your subscription to the VAT Planning Group Limited VAT Advisory Service please contact Dave Graham at the VAT Planning Group Limited 25 Castle Terrace Edinburgh. E-mail info@vat-planning.co.uk**
- **If you need to notify or change your e-mail address, please notify Dave Graham at david@vat-planning.co.uk**

Disclaimer

The material contained in this update is of the nature of general comment only and does not give advice on any particular matter. Recipients should not act on the basis of the information in this update without taking appropriate professional advice with regard to their own particular circumstances.

© VAT Planning Group Limited 2010