



not for profit | sporting supplies VAT exemption

the team



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who should read this?

Anyone associated with National Governing Bodies, but also officers of other sporting organisations which do not necessarily provide the actual facilities for taking part in sport.

focus

This reports the impact of a VAT tribunal decision in a case where the issue was whether membership subscriptions were exempt for sporting reasons.

the issue

Supplies by non-profit making bodies for services which are "closely related to" and "essential" for participation in a sport are exempt from VAT (subject to certain other conditions). In practice, most NGBs use this rule to exempt part or all of the subscriptions charged to their members (which, following the Canterbury Hockey case, can include members that are clubs). This is with the agreement, and often encouragement, of HMRC.

However, the two conditions mentioned above do appear to set quite a high target to qualify for the exemption, and in particular the criterion that the services involved should be "essential" for participation in the sport. In practice, HMRC seems to have taken the view that as long as the service is "closely related to" the sport, then that is sufficient. There has been very little guidance available as to what constitutes "essential" in this context, and in any case certain organisations may feel that it is better for them to make taxable supplies rather than exempt supplies (though this will not usually be the case).

tribunal decision

In this respect, the tribunal decision in the case of British Association for Shooting & Conservation Limited (TC00562) is potentially important. The history of the case is a little complicated. A tribunal heard BASC's case in 2008, at which time BASC was running more than one argument in favour of exemption. The tribunal refused the appeal, and BASC appealed to the High Court. The High Court criticised certain aspects of the reasoning of the tribunal, and remitted the case back to the tribunal. By the time it came back to the tribunal, the only argument still being pursued was whether BASC's services were closely related to and essential for participation in the sport of shooting.

The first tribunal had decided that this was not the case largely because the taxpayer did not provide the actual facilities. It said: "it does not provide to its members the land on which they may shoot, the game they may shoot at, or the guns with which they may shoot it". At that stage, it was clear that the tribunal took a very different interpretation of "essential" to that adopted by NGBs and HMRC.

The High Court, however, took a different angle but was less prescriptive in its advice. It said: "The fact that there are alternative means of entering into an exempt transaction [i.e. the sport] is relevant in determining whether the services in question are essential to that transaction; but in considering that question the decision maker must ask not merely whether, without the service in question, it would be impossible to enter into an exempt transaction, but whether it would be impossible to enter into an exempt transaction of the same value [by which the judge probably means of the same quality]" .

This caused the tribunal, upon reconsideration of the case, to change its mind. It admitted that its earlier analysis had set the bar far too high for the exemption to apply, and that applying the High Court's general prescription, BASC provided services to members which increased the value (or quality) of the sporting involvement of those members. It said: "It is clear to me ... that it is a far from fanciful proposition that, if BASC or some equivalent did not exist, there would be significantly greater restrictions on shooting than are in fact in place, and that the available facilities would be of a poorer quality." This was enough to confirm the exempt liability of subscriptions.

general conclusions

Of course, shooting, as a sport, is in a special category. It was clear that the taxpayer in this case needed to carry out significant lobbying and other persuasive efforts in order to allow the sport to continue at all. In the case of most sports, this will not be an issue, and other points will come into play. That said, all sports have to compete for limited resources, and it could therefore be argued that all NGBs are, on a perhaps less dramatic basis, carrying out a similar role to BASC, for their own sports persons.

The relatively few organisations which treat their subscriptions as taxable, on the basis that the services are not essential to involvement in their sport, may wish to consider their position in the light of this decision.

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