Sport - supplies to non-members

01 SEPTEMBER 2014

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CATEGORY:
ARTICLE

In another example of HMRC procrastination, the recent issue of R&C Brief 25/14, concerning supplies of sporting services by non-profit clubs to non-members has taken a full six months to be issued in the wake of the CJEU's decision in the case of *Bridport Golf Club*. The problem faced by HMRC is that the UK legislation limits the exemption to supplies made to members of such non-profit clubs, and taxes supplies made to non-members. However, there is no sanction for this in the EU legislation, despite HMRC trying to manufacture legal tests that they thought might give sanction for it. This was all stated unequivocally in December 2013 by the CJEU. It was obvious, therefore, that charges made by such clubs to non-members should also be exempt. HMRC has finally conceded that this is the case and it will take steps to change the faulty legislation. Two further questions arise from this, namely whether clubs can reclaim the VAT overcharged, and what this means for proprietary clubs.

HMRC can defend against making repayments for overcharged VAT in cases where it would unjustly enrich the club. It has confirmed that it will reimburse overpaid VAT (subject to the four year cap) if the club agrees to hand the overpayment back to each non-member who was charged VAT. This is put forward as a serious suggestion, although it is somewhat unlikely that any club would go to the effort to recoup VAT simply to hand it over to non-members, let alone that they have kept records that enable them to do so. That is not the end of the matter, since the clubs may be able to show that there was no unjust enrichment involved in them keeping the money, since they did not pass the VAT cost to their customers, but suffered it themselves. That might be difficult to prove given that their main competitors are proprietary clubs, which charge VAT.

However, HMRC is giving consideration as to whether the unjust enrichment rules should be used against any clubs that make claims without promising to reimburse VAT to customers. They say they need to consider this and come back to us later in the year. It seems strange that they have not decided the point in the six months it has taken them to issue the Brief. It is, after all, the only controversial point that could be addressed – but it has been ducked. It seems this is another example of prevaricating for the sake of the public finances. The only response that clubs can make to this is to submit claims and prepare to fight on the issue of unjust enrichment.

For the proprietary sector things are not too good. There is no exemption within the EU legislation for profit-making sports providers. The latest development only widens the gap between non-profit making members clubs and proprietary clubs. It should be borne in mind that members clubs are not like charities, and exist for the specific benefit of members and not for society as a whole. Proprietary clubs are similar but configured on a profit-making basis. The distinction does appear somewhat unfair, although there is no reason to want to deny members clubs the benefit of their favourable status simply because someone else cannot enjoy that benefit.

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