

Survey on the VAT treatment of sports clubs within the EU.



Content

- 1. Introduction 1
- 2. Summary3
- 3. Summary of country views4
- 4. Austria6
- 5. Bulgaria10
- 6. Denmark..... 12
- 7. Italy..... 15
- 8. United Kingdom.....18

1. Introduction

Background

Within the European Union (EU) the VAT¹ legislation is harmonized; i.e. the internal legislation of the member states must be in accordance with the EU VAT Directive² (Directive) governing this area of taxation.

Under the Directive every person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity, is deemed to be a taxable person for VAT purposes. A person recognized as a taxable person is covered by the scope of the Directive and is hence obliged to report VAT on output transactions. Non-profit associations, identified by the respective member state, can however enjoy reliefs for VAT purposes as certain supplies made by such associations are exempted from VAT. For example, certain supplies closely linked to sports and physical education is exempted. The exemption is however granted on a transaction basis and not for the entity as such.

The Swedish VAT Act³ has not transposed the term taxable person, as it instead refers to “commercial” activity. When determining whether an activity is commercial reference is made to the provisions in the income tax law. Non-profit organizations have, under certain circumstances, a limited liability for income tax and are under the VAT Act therefore not deemed to perform any commercial activity, meaning that they are exempt from VAT. The Directive has no corresponding provision relieving a group of entities from VAT.

In June 2008 the European Commission alerted the Swedish Government that the current treatment of non-profit associations is not compliant with the Directive. The Swedish Government therefore initiated a commission to review the current legislation. This has led to an official report⁴ suggesting, in short, that non-profit associations should be deemed as carrying out economic activity on the same grounds as for other entities⁵. In addition, the report suggests a general annual threshold of SEK 250.000 of taxable turnover in order to fall within the scope of VAT. The report also suggests implementing a wide interpretation of the exemptions, provided for in the Directive, for activities normally carried out by non-profit associations.

¹ Value Added Tax (Sw. "mervärdesskatt")

² Council Directive 2006/112/EC of 28 November 2006 on the common system for value added tax

³ Mervärdesskattelag (1994:200), ML

⁴ DS 2009:58

⁵ Similar proposals have been introduced previously without any amendments of the legislation, see for example SOU 2002:74

The Swedish sports movement involves more than 3.000.000 individuals, out of a total population of about 9.000.000, organized in approximately 20.000 non-profit organizations (clubs). The vast majority of these clubs are very small with a low turnover and is almost exclusively run on voluntary basis. Also a large part of the clubs at elite level is more or less run on a voluntary basis.

The proposed amendment of the Swedish VAT Act has caused an extensive debate in Sweden. The proposal is feared to considerably weaken the non-profit sector in Sweden, leading to increased costs as well as a substantial increase of the administrative burden that must be managed by non-professionals.

The Swedish Sports Confederation (Riksidrottsförbundet), SSC, is one of the organizations that have put forward concerns in relation to the proposal. The SSC has, amongst other, pointed out that the Swedish report lacks an international survey of the VAT treatment of non-profit organizations within the EU. The SSC has therefore commissioned Deloitte to conduct such a survey.

Deloitte has gathered information regarding the treatment of non-profit organizations within the EU. With respect to the information received, member states with national VAT legislation that deviates from the Directive has been identified. These countries have been asked to provide a more detailed memo on their rules and how they deviate from the Directive. The result is presented in this report; note that the survey has been limited to comment on the non-profit organizations involved in sports and that Finland, which is one country with deviations intentionally has been left out.⁶

⁶ According to instructions from the SSC

2. Summary

An initial observation is that Sweden is not unique in having legislation that deviates from the Directive with regards to the VAT treatment of sports clubs. It should be noted that also Austria, Denmark and Finland have been notified by the Commission that the local rules are not compliant with the Directive. Moreover, based on this survey, it is our conclusion that also Bulgaria and Italy to some extent have provisions in its legislation that benefits the sports movement. The UK VAT legislation and its interpretation also seems to deviate from the Directive, in a way which may not be of benefit to some not for profit associations providing services. Based on the information received we can conclude that deviation from the Directive can occur in two different ways, alternatively through a combination of these.

The first alternative reflects the Swedish deviation, i.e. a specified group of entities enjoys a more beneficiary treatment than entities in whole; in this category we find Austria and Italy.

Even if the member state has introduced provisions in accordance with the taxable person concept, member states may have exemptions from VAT that extends beyond the exemptions provided for in the Directive. In this category, for example, Denmark is found.

Although it is correct that the member states must comply with the VAT legislation as set forth by the Directive, it could be noted that there seem to be a non-insignificant deviation with respect to non-profit organizations within the EU. The reason for this is most likely a reflection of the member states view on the importance of said organizations for the society as a whole, both from a democratic and health point of view. Based on this there might be political foundation for a broader discussion at EU level reaching a common consensus of the facilitating of this sector.

Further, it is our opinion that it cannot be ruled out that also other member states in reality treats non-profit organizations more beneficiary than other entities. Even if the legislation formally meets the requirements set forth by the Directive a more in-depth review of practice might uncover a factual favorable situation for these organizations.

3. Summary of country views

Austria

Non-profit organizations are deemed as non-entrepreneurs provided they only carry out non-profit activities. This apply to membership fees, donations and similar.

A sports club can however have other sources of income, which differ in VAT treatment based on the category.

Income in close connection to the core activity of the club, for example entrance fees, renting of sports facilities and transfer fees are;

- deemed as non-entrepreneurial income and out of the scope of VAT. However, it is under certain conditions optional to treat this income as entrepreneurial income, in this case the income could be exempted from VAT.

Income taxable for income tax purposes, such as fund-raisers, cafeterias etc. are;

- deemed as entrepreneurial income and VATable (if the taxable revenue is modest the income is however seen as non-entrepreneurial)

It should however be noted that a sports club with respect to the non-entrepreneurial income can opt to be treated as a VAT payer pending certain conditions.

The Austrian VAT Act consequently seems to deviate from the Directive as non-profit sports clubs can be deemed as non-entrepreneurs. Even if such clubs are considered entrepreneurs the exemptions from VAT seem wider compared to the Directive.

Bulgaria

Bulgarian sports clubs are deemed as taxable persons in accordance with the Directive. The exemptions from VAT for activities closely linked to sports or physical education is however given a wider interpretation compared to the Directive.

Denmark

Denmark has introduced the concept of taxable person in its national legislation. The exemption for activities performed by non-profit organizations is however given a wide application as it covers basically all activities typically performed by sports clubs.

The supply of goods or services is however not exempted if the supplies are considered commercial activities.

Italy

The Italian VAT legislation formally differs from the Directive with regards to the definition of taxable persons by taking into account not only the activity performed by the entity, but also formal aspects of the entity in question. Moreover, the exemptions for sports activities in the Directive have not been introduced in the Italian legislation.

Even though the exemptions from VAT have not been introduced in Italy amateur sports clubs registered with CONI (the Italian Olympic Committee) can, under certain conditions, benefit from a special tax regime. Clubs that can apply this beneficiary scheme enjoys administrative reliefs as well as a reduced tax burden since the output VAT is calculated on reduced taxable base.

United Kingdom

UK sport clubs are under the UK VAT legislation deemed to be taxable persons provided they undertake taxable economic activities. The UK legislation seems to deviate from the Directive in respect of how the exemptions from VAT have been transposed and interpreted. For example, the exemption for non-profit organizations, which operate a membership scheme (meeting certain conditions), only extends to the supply of 's services closely linked and essential to sports to its members, making supplies of these services to non-members taxable. The UK's past interpretation of its exemption, in this area shows that local interpretations of the exemptions can be successfully challenged by the European Court of Justice⁷.

⁷ Canterbury Hockey Club and another v HM Revenue and Customs Commissioners (Case C-253/07)

4. Austria

The sports movement in Austria

In Austria more than 107.000 clubs are registered. This means that approximately 40% of the Austrian men and nearly 30% of the Austrian women are members of clubs in Austria. The major part of these clubs is non-profit organizations. In Austria there are non-profit organizations in all possible kinds and sizes. About more than 20% of the Austrian clubs are sport clubs.

Furthermore non-profit organizations represent a not underestimated part in the Austrian employment market. It is estimated, that sport clubs pay app. MEUR 315,5 of wages a year. Statistics show that the Austrian sport clubs yields income from public sources of app. MEUR 200,5 and app. MEUR 366,2 from private sources. Hence, non-profit associations have a significant impact on the Austrian market/way of life.

The foundation of a non-profit organization is easy and cheap in comparison to other organization forms. Austrian non-profit organizations have wider possibilities to individually create their articles of association compared to other organization forms.

National legislation

Austria has implemented a special tax regime for non-profit organizations with many tax exemptions (not only for corporate income tax and VAT purposes). In addition to the Austrian Tax Codes, special guidelines for non-profit organizations have been published by the Ministry of Finance.

Non-profit organizations benefit from the special tax regime if the following preconditions are fulfilled:

- the organization has no profit motives and serves the general public,
- the non-profit organization pursues non-commercial, humanitarian or churchy activities (sport is seen as non-commercial activity),
- the only/main ambition of the organization is that the organization pursues the above mentioned activities (not only as a secondary objective),
- the organization itself has to support its members directly (not indirect through other organizations),
- the articles of association and the actual management of the organization serve the above mentioned activities.

Under the Austrian VAT legislation non-profit associations are regularly deemed to render no economic activity and are thus regularly seen as non-

entrepreneurs as long as they only carry out the non-profit work (e.g. sport activities financed by "real" membership fees, donations, etc.).

"Real" membership fees are contributions from members without any consideration. The organization does not provide individual services to the members, but the fees are levied for the pursuance of the non-commercial activity of the non-profit organization as a whole. "Real" membership fees do generally not trigger VAT in Austria. A "real" membership fee is for example paying a fixed amount for using sport facilities at any time (irrespective of the extent of usage).

In contrast to "real" membership fees, so-called "unreal" membership fees stand for contributions for a certain consideration. The organization provides a concrete service and the member has to pay for this. For example; the organization provides sportswear to its members or holds seminars for members against contribution etc. Such fees are generally within the scope of Austrian VAT. The VAT treatment of "unreal" membership fees will therefore depend on how the respective income is classified in accordance with the below section.

However, non-profit organizations can provide also other activities than the original non-profit work. For example, a sports club has a cafeteria for its members; the sports club organizes its annual event (fancy-dress ball, summer festival etc.). For tax purposes these additional activities are classified into three groups:

- essential assisting business unit
- unnecessary assisting business unit
- business unit in sense of Income Tax Code

Essential assisting business units and unnecessary assisting business units are normally in close connection with the original activity (sport) of the non-profit organization. Examples for these units are: transfer fee for a sportsman, entrance fee to sport events, fees for renting the sports field, entry fees for sport contests, fee for physical education etc.

The guidelines generally define these activities as non-economic activities, so they are generally outside the scope of VAT (Liebhaberei). However, the organization can refute this assumption (optional), if the non-profit organization renders sales over EUR 2.900 p.a. and;

- can show that their work covers its costs, or
- shows that 90% of the losses are covered through subsidies.

Thus, the non-profit organizations can more or less opt in such cases to be treated as a business or not.

If the organization opts for VAT it has to charge its services with VAT (ideally 10%) and can deduct input VAT (normally 20%), except where there is a

special VAT exemption (e.g. see in the following section VAT exemption for certain sport clubs).

If the non-profit organization is an entrepreneur (because it refutes the assumption of being a non-business activity), a special VAT exemption for non-profit sports club may apply, with the consequence that input VAT cannot be claimed. A precondition for this is that it is a preferred non-profit organization (see above). The VAT exemption only applies to activities of physical sport. The term physical sport covers a wide range of sport types, e.g. gymnastics, boxing, swimming, riding etc. Not included are types of sports comprised of mental exercise (chess, bridge, etc).

The special VAT exemption only refers to non-profit organizations, the statutory purpose of which is the execution or the support of body sport. That regularly requires the body sport club to organize or enter contests or matches and pursues not only social purposes.

The privileges do not distinguish between non-profit organizations organized by professionals or volunteers. Important is mainly the fact that the sport club is a non-profit organization. However, in practice sport clubs, which are organized by professionals, may gain profits and thus regularly do not meet the conditions to benefit from the special tax regime.

Business units in sense of Income Tax Code are for example: fund-raisers, income from cafeterias, sale of newspapers for the organization, catering services, etc.

Basically business units classify as entrepreneurs. However, business units are deemed to be non-businesses, if the essential assisting business units of the organization are seen as non businesses and the organization renders services of not more than EUR 7.500 through the business unit(s) in sense of Income Tax Code. The non-profit organization can also refute this assumption in order to deduct input VAT. The tax exemption for sport clubs is not applicable for these businesses units.

Further, the reduced VAT rate of 10% is not applicable to business units in sense of Income Tax Code. For the services from business units in sense of income tax code Austrian VAT of 20% applies, unless the organization is a "small" business (do not exceeded EUR 30.000 p.a.).

Non-profit organizations usually have to manage capital (interest, dividends, etc.) or assets (renting). In Austria the asset management is regularly seen as a business activity. Therefore the renting is regularly deemed to be an economic activity in a VAT point of view.

If the sales of all taxable services of the organization do not exceed EUR 30.000, a special VAT exemption (small businesses) can be applied (it is possible to opt for taxation). If the organization opts for taxation, the standard VAT rate of 20% applies.

Austrian debate

Currently we have no information on the political debate or the Austrian official view on the infringement procedure initiated by the Commission.

5. Bulgaria

The sports movement in Bulgaria

The sports movement in Bulgaria comprises of nearly 3.600 sports organizations. These organizations are structured in three different levels, in accordance with the Physical Education and Sports Act:

- Sport clubs;
- Sport federations; and
- National sport organisations.

In addition to the above organizations there are sport associations aiming to facilitate the development of sports in schools, universities and the army.

The sports club is the most common form that supports the sport movement in Bulgaria. As a legal form of organization, amateur sports clubs have to be registered as non-profit organizations while professional sport clubs could be registered either as non-profit organizations or as joint stock companies (e.g. all premier league football clubs).

Non-profit organizations are usually not entitled to carry out economic activities. However, in certain cases, they could be allowed to do so if the activities are related to the aims of the entity and the income is used for achieving those aims. The sources of funding of sports organizations are stipulated by law and include:

- membership fees;
- fees from the transfer of athletes to other clubs;
- prizes from participating in competitions;
- income from sports services performed in favor of individual citizens;
- income from advertizing, TV broadcasting right, etc.;
- donations and sponsorship;
- government subsidies and grants;
- income from exploitation of the club's property;
- grants from international sports associations;
- other income from activities related to sport and physical education.

National legislation

The exemptions provided for in Art. 132 of the VAT Directive are transposed in the Bulgarian VAT Act. However, in some cases the Bulgarian VAT rules deviates from the VAT Directive.

Under the Bulgarian VAT Act, in order to qualify as VAT exempt, the services of the sporting organization should be:

- directly linked to sports or physical education;
- provided by a sporting organization under Physical Education and Sports Act; and
- the sporting organization should be legally registered as a non-profit organization designated for pursuit of activities for the benefit of the public.

Compared to the VAT Directive, the Bulgarian VAT Act extends the exemption to services that are not provided to persons taking part in sport or physical education. This means that the VAT exemption applies to services, and the supply of goods closely linked thereto, by sporting organizations in favor of persons other than the members of the sporting organization. For example, sporting organizations could sell tickets to sporting events exempt from VAT, etc.

The VAT exempt activities do not count as turnover for mandatory VAT registration in Bulgaria. However, sporting organizations could be considered taxable persons for VAT purposes if they make taxable supplies of goods or services. The sporting organization will have to register for VAT, if the turnover from these taxable supplies is above the VAT registration threshold (approx. EUR 25.500 for 12 months period).

Legislative background

We are not aware of the specific reasoning behind this deviation from the VAT Directive. These rules were introduced with the VAT Act that came into force as from 1 January 2007 (the EU accession date of Bulgaria). The preparatory works for adopting the VAT Act, i.e. the grounds for adopting the VAT Act, relevant case-law, etc. do not provide indication for the reasons behind the deviation.

Bulgarian debate

We are not aware of current public discussions regarding this clause of the VAT Act. There have been no amendment proposals for the discussed clause.

6. Denmark

The sports movement in Denmark

The population of Denmark is approx. 5.5 million and the majority is involved in a sports club. The three largest organizations are DIF, DGI and Dansk Firmaidrætsforbund. Below please find a short description of the organizations in question.

DIF – Danmarks Idrætsforbund

DIF is an interest and knowledge organization, which aims to promote Danish sports and work for the sport spread into Danish society. The organization consists of 60 special associations and around 11.000 sports clubs with 1.6 million members. The mission of DIF is to help special federations and associations to develop and secure the prosperity of the sport. In 2008 the federation received DKK 281 million in subsidy from Danske Spil A/S. The majority (73.4%) of the subsidy is distributed to the special federations.

DGI – Danske Gymnastik og Idrætsforeninger

DGI is the main organization for 5.173 local associations, which counts 1.4 million athletes. The foundation has 16 provincial associations that concern local sports clubs as members. In 2008 the union has received DKK 214 million in subsidy from Danske Spil A/S.

Dansk Firmaidrætsforbund

The third largest sports organization in Denmark with 329.000 members divided among 8.000 local sports clubs. As with DIF and DGI the largest income is subsidy from Danske Spil A/S. In 2008 it has received DKK 36.5 million in subsidy from Danske Spil A/S. Most members are affiliated through a company sports club at their workplace, or a member of the local company gym. Company sports clubs and individual members are organized into 92 local business sports clubs. The union consists of one chairman, five board members and 92 local sports clubs.

National legislation

Definition taxable person

The Danish definition of a taxable person follows the definition in the VAT Directive as any person who independently carries out an economic activity. In relation to the non-profit sports organizations these are considered tax liable persons.

VAT Directive

According to Article 132 (1) (o) in the VAT Directive, non-profit organizations may be exempted from VAT if certain conditions are met. The supply of goods and services provided by the non-profit organizations in connection with their activities may be VAT exempted if the profits are used entirely for

charitable or for the purposes of the public interest. Furthermore, the exemption must not cause any distortion of competition.

Danish practice

Article 132 (1) (o) is implemented in Article 13 (1) (22) in the Danish VAT Act. Like the Directive the Danish VAT non-profit organizations must fulfill the above requirements in order to obtain the VAT exemption. In relation to the profits used for charitable or public-interest purposes this must be documented by upon request from the authorities.

Practice has shown that Article 13 (1) (22) in the Danish VAT Act is a general exemption and non-profit organizations subject to this article are not required to apply for the exemption, if they meet the requirements. Sports organizations with activities in relation to amateur sports are included in the definition of public interest purposes, if the width of the use of the surplus will be considered used for public-interest purposes. Activities within the purposes of the organization are covered by the exemption. It covers both the activities that directly reflect the business and related activities and activities that are typically used in connection with charity or public-interest purposes. In relation to sports organizations the primary activity of the organization is to facilitate sports. However, e.g. supply of goods or services in relation to competitions will be considered related activities and also covered by the exemption as well.

The authorities have in relation to actual cases stated whether a specific supply from a sports organization is covered by the VAT exemption as related activities. For example will the supply of cartridges and the letting of ice skates from an organization to their members be covered by the exemption, if it does not cause any distortion of competition.

Please note that if the supply of goods or services is considered supply of commercial activities, this will not be covered by the VAT exemption. In order to determine whether the supply is considered supply of commercial activities, the evaluation will among other thing be based on opening hours, sales volume, product range and customer base.

Please note that it is still possible for a non-profit organization to become registered for VAT purposes, if desired.

Deviations

From Article 132 of the VAT directive it appears that certain activities in the interest of the public are exempted from VAT. Furthermore, the Directive quotes that Member States may introduce any restrictions necessary (in particular number of events and amount of recipients) in order to grant the VAT exemption.

As described above Denmark has implemented the rules as a general rule where the organization in question does not have to apply for permission, if it fulfills the requirements of the VAT exemption in the Danish VAT Act. Consequently, the Danish Article is very wide as supplies carried out by non-profit organizations will be covered under the exemption, if the supplies are activities that directly reflect the business, related activities or activities used in connection with charity or public-interest purposes.

Legislative background

It appears from the preparatory legislation that one purpose with the article was to ease the running of a club in Denmark. Overall, the government wanted to reduce the administrative burden and economic problems for the clubs.

It was the opinion of the government that voluntary work was indispensable and necessary in order to support the organizations for the benefit of the whole population of Denmark. Moreover, it was the intention to give the organizations an opportunity to concentrate on the main activities in the clubs for which reason a consecutive VAT exemption was proposed. Secondly, it appears from the preparatory legislation that the proposed article of the VAT exemption would bring the Danish legislation on level with the Swedish and Finnish rules in this specific area as these were gentler than the Danish rules in this regard at that time.

Danish debate

In relation to the query we have been investigating the public material in relation to the VAT-treatment of the non-profit organizations. As the topic has not been debated much in the media, it has been difficult to find supporting material in this regard.

However, the authorities have commented on the infringement proceedings from the Commission where they state that in their opinion the Danish VAT Act does not go beyond the VAT directive.

At present time there are no current proposals on amending the legislation.

7. Italy

The sports movement in Italy

The core of the Italian sport system lies on sports associations and clubs carrying on non-profit activities.

The system comprises roughly 70.000 sports associations and clubs for a total of approx. 4.000.000 members. The associations and clubs are affiliated to 45 National Sports Federations, divided by sport practice. These latter Federations have recently been privatized and are themselves non-profit associations with legal personality under civil law. Nonetheless, their public nature has not entirely disappeared, especially when they carry out such activities relating to the admission and affiliation of associations, sports clubs or relating to the management of public sports facilities. The Federations operate under the direction of CONI (Italian National Olympic Committee), a public non-economic body pursuing the promotion and the organization of the sports associations and the private clubs.

National legislation

The Italian VAT legislation formally differs from the EU legislation as for the determination of the taxable persons.

In this respect, while the EU legislation (namely, art. 9, Directive 2006/112/EC) refers only to the activity carried on, the Italian legislation (namely, art. 4, Presidential Decree 26 October 1972, n. 633 – the Italian VAT Act) refers also to formal aspects since the entities having some specific legal forms (i.e. stock corporations, non-stock corporations and cooperative companies) always qualify as taxable persons for VAT purposes, regardless the activity really carried on by same entities.

In addition, for those entities having an institutional main aim but carrying on as well a – secondary - commercial activity VAT, nonetheless, applies for supplies performed in the course of this latter activity (i.e. for supplies related to the commercial activity).

Therefore, based on the above, according to the Italian VAT legislation it is necessary to verify whether or not the subject carrying on the sports activity qualifies as a taxable person for VAT purposes. In case it qualifies as such its supplies are subject to VAT, contrary to the VAT exemption laid down by art. 132, par. 1, lett. m), Directive 2006/112/EC, since this rule has not been transposed into the Italian legislation.

Amateur sport activities can be exercised either in the legal form of "amateur sports association" (with or without legal personality) or in the form of "amateur sports company". This latter may be constituted in the form of non-profit corporation or cooperative.

These subjects, if affiliated to a Federation and registered with CONI (which acts as a certification body of the effectiveness sport activity carried out), can benefit of an optional tax regime aimed, among the others, to reduce the VAT burden and the related fulfillments (Law 16 December 1991, No. 398).

Such regime applies if the following conditions are met:

- the commercial activities had a turnover, in the previous fiscal year, not exceeding EUR 250.000;
- it has not to pursue a profit scope but only the sport activity and these circumstances must be expressly mentioned in the by-laws;
- the subject is affiliated to one of the National Sports Federations.

If the above conditions are met, the periodical VAT balance is determined on a reduced – forfeit - basis (e.g. 90% of output VAT for sponsorships supplies).

As for the fulfillments, the optional regime provides for the following features:

- the supplies carried out in the course of the commercial activity have to be accounted for separately from those carried out in the course of the institutional activity;
- the relief from the issuance of the invoices, apart for advertising, sponsorship and broadcasting licenses assignment supplies;
- the invoices have to be booked in the VAT ledgers within the fifteenth day of the following month to that of issuance but with reference to the previous month;
- the VAT periodical balance is determined on a quarterly basis and the related payment has to occur within the sixteenth day of the second month following the referred quarter;
- no annual VAT return has to be filed.

Another beneficial regime is provided for those associations having a yearly turnover not exceeding EUR 25.822,84. For these associations VAT due is calculated only on half of the taxable supplies. In such a case, however, input VAT cannot be deducted.

Legislative background

As for the above mentioned deviations, they substantially lay down on the inaccurate transposition of the EU rules as well as on the past custom of the Italian legislator to refer to civil law rather than to the EU Directives.

As regards mentioned regimes specifically provided for sports associations they ground on the intention of the Italian legislator for reducing the VAT burdensome for entities characterizing for their non-profit purpose.

Italian debate

Actually there are no relevant discussions on the VAT treatment provided for sports associations.

However, considering the wide diffusion of the same associations, it is likely that a change in the actual VAT treatment would not receive a positive feedback.

8. United Kingdom

The sports movement in the UK

Sport England is the government agency responsible for building the foundations of sporting success, by creating a leading community sport system of clubs, coaches, facilities and volunteers. Sport England's focus is around three outcomes – growing and sustaining the number of people taking part in sport and improving talent development to help more people excel. Sport England invests expertise, resources and both government and lottery money into community sport. £480 million is invested directly through 46 National Governing Bodies (“NGBs”) of Sport. These NGBs are responsible for effective delivery against Sport England's targets and are at the heart of its strategy as it is their networks of community clubs, coaches and volunteers that make sport happen.

The constitution of the NGBs varies, for example, England Hockey is a company limited by guarantee (not having any share capital), but generally speaking the NGBs are Not For Profit membership associations. Members of the NGBs generally comprise of sports clubs. These sports clubs either take the form of unincorporated membership associations or companies. Broadly, the member clubs pay the NGB's an annual fee (known as an affiliation fee) in return for certain services which include advice and access to certain facilities, funding etc.

In addition, to the affiliation fees received and funding from Sport England, the NGBs may also derive revenue from the private sector typically in the form of sponsorship income.

National legislation

Background

The application of UK VAT legislation to the “sports bodies” (generally Not For Profit making entities, which encompasses NGBs and their members) very much depends on the specific circumstances and will ultimately be determined on a case by case basis. However determining factors, include the type of activities undertaken, the type of funding received and the nature of the body in question.

The income of sports bodies may therefore include income which is outside the scope of VAT on the basis that it does not comprise of income from economic activities, e.g. government funding. However, activities which are carried out for a consideration are generally deemed to be carried out in the course and furtherance of a business (i.e. economic activities) for UK VAT purposes. Once it has been determined that a Not For Profit organisation undertakes business activities it is then necessary to determine whether the activities it undertakes qualify for “exemption” (see below) i.e. are not subject

to UK VAT with VAT incurred on attaching costs not recoverable or whether these are “taxable” i.e. subject to UK VAT at the applicable rate with VAT incurred on attaching costs being deductible.

For UK VAT purposes, a Not For Profit entity is acting as a taxable person for the purposes of UK VAT legislation where it undertakes “taxable business activities” (as set out above). Where it does and it registers for UK VAT voluntarily or its activities cause it to become liable to be registered for UK VAT, it will be a “taxable person” for the purposes of UK VAT legislation (section 3 of the VAT Act 1994).

Exemptions

The exemptions in UK VAT legislation specific to sporting services and activities are, as follows:

Schedule 9, Group 10, VAT Act 1994, Item Number:

1. The grant of a right to enter a competition in sport or physical recreation where the consideration for the grant consists in money which is to be allocated wholly towards the provision of a prize or prizes awarded in that competition.
2. The grant, by an eligible body established for the purposes of sport or physical recreation, of a right to enter a competition in such an activity.
3. The supply by an eligible body to an individual, except, where the body operates a membership scheme, an individual who is not a member, of services closely linked with and essential to sport or physical education in which the individual is taking part.

Summary of deviations

- (a) Arguably, the exemptions provided for under items 1 and 2 above do not appear to be specifically covered by Article 132(1)(m) 2006/112, however this has not been tested in case law.
- (b) Item 3 took effect from 1 April 1994, but should have been introduced with effect from 1 January 1990 (following expiry of the UK’s derogation). Under the transitional rules introduced, affected organisations had the option to backdate the exemption to 1 January 1990.
- (c) Item 3 was initially interpreted so that certain fees paid to eligible bodies (essentially Not For Profit organisations) by companies and unincorporated associations was not covered by the exemption. The effect of the limitation of the exemption to charges made to individuals meant that affiliation fees (calculated on a basis other than on a per person basis) paid to NGBs by member clubs were subject to UK VAT at the standard rate, with the effect that member clubs, given their activities, were generally unable to recover in full the VAT incurred on affiliation fees. However, the decision of the ECJ in *Canterbury Hockey Club & Anor v Revenue and Customs*

Commissioners (Case C-253/07), confirmed that the exemption under Article 132(m) which exempts the provision of “services closely linked to sport” by a non-profit making body to persons taking part in sport, extended to certain services supplied to a corporate body or an unincorporated association.

- (d) Under Item 3 for those eligible bodies operating a membership scheme (meeting certain conditions), charges to non-members are not caught by the exemption e.g. the supply of green fees by a golf club to its members are exempt but when the charge is levied to guests of the member it is subject to UK VAT at the standard rate. This is arguably outside of the exemption under Article 132(1)(m) 2006/112, however and again, this has not been tested in case law, although may be shortly, as a number of retrospective claims by golf clubs particularly, were submitted in 2009 following the Fleming/Conde Nast case (which allowed taxpayers to submit refund claims to HMRC for periods prior to 1997).
- (e) Finally, the definition of “eligible body” in item 3 contains an additional test so to benefit from the exemption; a Not For Profit association also has to show that it is not subject to commercial influence.

Legislative background

- (a) Items 1 and 2, according to HM Revenue & Customs (“HMRC”) guidance, took effect from 1 January 1981. The guidance explains that such fees were initially treated as being outside the scope of UK VAT on the basis that entry to a competition was not seen as consideration for a supply. However, this changed following UK case law and the exemption was introduced to lessen the effect of this development in case law on those activities that would be particularly penalised by standard-rating.
- (b) We do not have any further information as to why item 3 was not enacted on 1 January 1990, however the transitional rules, arguably compensated by allowing backdated claims for overdeclared VAT to give effect to the exemption from this date.
- (c) Again, we do not have any further information as to why Item 3 was initially interpreted in this way, however it is now clear that was incorrect and the position has been corrected prospectively by HMRC with the ability to backdate its effect (subject to the UK statutory time limits).
- (d) Again, we are unable to provide any further information as to why the UK exemption is restricted to members of those eligible bodies operating a membership scheme.
- (e) The definition of eligible body was amended in 2000 to contain the additional “commercial influence test” this was done to prevent otherwise profit making bodies manipulating their arrangements to become Not For Profit associations (and therefore benefiting from

the exemption) whilst distributing profits through the activities of other commercial entities. Such planning arrangements were widespread prior to this change.

Additional comments

As stated above, HMRC's interpretation of item 3 has now been amended in line with the ECJ judgement in Canterbury Hockey with effect from 1 September 2010 (with an option to backdate this subject to the UK statutory limitation period of four years).

UK debate

We are not aware of any proposals for further changes across items 1, 2 and 3, other than as stated above.

Deloitte is one of Sweden's leading professional services firms, employing 1 100 people in 30 offices throughout Sweden. We deliver world-class assurance and advisory, tax, and consulting services. Our clients range from global industry leaders to the many small and medium sized companies that characterize the Swedish business community. Internationally, we are a member firm of Deloitte Touche Tohmatsu with 169,000 employees in 140 countries. For more information, please visit www.deloitte.se.

Deloitte refers to Deloitte AB and its related entities. Deloitte is the Swedish national practice of Deloitte Touche Tohmatsu. Deloitte Touche Tohmatsu is a Swiss Verein, and each of its national practices is a separate and independent legal entity.

A member firm of Deloitte Touche Tohmatsu.

© 2010 Deloitte AB.