

SPORTS CLUBS' AFFILIATION FEES ARE EXEMPT FROM VAT

In a recent Case brought by Canterbury Hockey Club and Another against HM Revenue and Customs Commissioners (HMRC), the Fourth Chamber of the Court of Justice of the European Communities decreed that: *"Affiliation fees paid by sports clubs to an umbrella organisation in return for services supplied by that organisation were exempt from Value-Added Tax if certain conditions were satisfied"*.

The claimant sports clubs, Canterbury Hockey Club and Canterbury Ladies Hockey Club, are unincorporated associations and affiliated members of England Hockey, a not-for-profit organisation for the encouragement and development of the playing of hockey in England.

Its member clubs pay affiliation fees to England Hockey which, in return, supplies them with certain services including a club accreditation scheme; training courses for coaches, umpires, teachers and young persons; a network of hockey development offices; facilities for accessing government and lottery funding; advice on marketing and obtaining sponsorship; club management services and insurances; and competitions for teams.

The Canterbury Hockey Clubs claimed that the services were exempt from VAT under Article 13(A)(1)(m) of the Sixth Directive, but HM Commissioners had rejected this claim on the ground that the clubs were not *persons* taking part in sport.

The Claimants maintained, *inter alia*, that Item 3 of Group 10 in Schedule 9 to the Value Added Tax 1994 did not properly transpose Article 13(A)(1)(m) of the Directive. The Court was asked to rule on whether, to qualify for exemption, the services had to be supplied to individuals.

The Fourth Chamber of the Court held that:

'Although in normal linguistic usage, only natural persons took part in sport, Article 13(A)(1)(m) would not be effective for its purpose unless it was construed so as to extend to Services supplied in connection with sports necessarily practised within organisational and administrative structures put in place by unincorporated associations or corporate persons such as sports clubs.

However, it followed from Articles 13(A)(1)(m) and 13(A)(20(b) of the Directive that the Services were eligible for exemption only if various conditions were satisfied:

First, *the Services had to be supplied by a not-for-profit association.*

Second, *they had to be closely linked and essential to sport as it was the persons taking part in the sports who were the true beneficiaries. Services that did not meet these criteria, such as advice about marketing and sponsors, therefore did not qualify for exemption.*

Third, *the Services must not have the basic purpose of obtaining additional income by carrying out transactions that were in direct competition with those of commercial enterprises that were subject to VAT.*

The United Kingdom's Revenue & Customs Commissioners had argued that the provision in Article 13(A)(1)(m) that only certain Services linked to sport were to be exempt, permitted member states to limit the exemption to individuals.

However, that argument could not be accepted because the only permissible restrictions on the Article 13(A) exemptions were those specified in Article 13(A)(2) which did not lay down restrictions regarding the recipients of the Services'.

On these grounds, the Court ruled:

- 1. Article 13(A)(1)(m) of the Sixth Directive was to be interpreted as meaning that, in the context of persons taking part in sport, it included Services supplied to corporate persons and to unincorporated associations provided that - and it was for the national (UK) court to establish - those services were closely linked and essential to sport; that they were supplied by not-for-profit organisations; and that their true beneficiaries were persons taking part in sport.**
- 2. The expression 'certain Services closely linked to sport' in Article 13(A)(1)(m) did not allow the member states to limit the exemption under that provision by reference to the recipients of the Services in question.**