

Canterbury Hockey Club & Canterbury Ladies Hockey Club v The Commissioners for Her Majesty's Revenue and Customs

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Sixth VAT Directive – Item 3 Group 10 Schedule 9 Value Added Tax Act 1994 –Exemption – Services linked to sport – Services supplied to persons taking part in sport include services supplied to unincorporated associations and to corporate persons – incorrect national implementation - ECJ (4th Chamber)

Judgment: 16th October 2008 (Case C-253/07)

Legislation and Proceedings concerned

This was a reference for a preliminary ruling on the validity and extent of the exemption from VAT provided by Item 3 of Group 10 in Schedule 9 to the Value Added Tax Act 1994. That exemption applied to: *“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.”* (“the UK exemption provision”).

Facts and issues

England Hockey Limited (“England Hockey”) is an “eligible body” for the purposes of the UK exemption. It charges affiliation fees to local clubs (in this case the Canterbury Hockey Club; “the Club”). The Club is an unincorporated association whose members pay it a membership fee. England Hockey is a non-profit-making organisation for the encouragement and development of hockey. For its affiliation fee England Hockey provides the Club with certain services, which all parties agreed were “services closely linked to sport”. The English court also found as a fact that these services were supplied by England Hockey to the Club and not directly to the Club’s members. The Club argued that the affiliation fee should be exempt from VAT, despite the UK exemption referring to

“individuals”, on the basis that Article 13A(1)(m) of the Sixth Directive relates to *“persons taking part in sport”*. Accordingly, it was in issue whether the UK exemption provision properly implemented the Sixth Directive and the English court referred two questions to the ECJ:

- (1) Whether *“persons taking part in sport”* includes corporate persons (e.g. the Club)?
- (2) And if so: whether the exemption may nonetheless be limited to individuals taking part in sport?

Parties' submissions

The UK Government submitted that only natural persons are capable of *“participating in sport”* and therefore only services supplied directly to such persons were to be exempt.

The European Commission submitted that to ensure the effective application of the exemption, regard had to be had not only to the formal, legal recipient of that supply, but also to its effective beneficiaries (i.e. the hockey playing members of the Club).

Findings of the ECJ

(1) Although exemptions are to be interpreted strictly, they must not be interpreted so as to deprive them of their intended effect. Article 13A(1)(m) is intended to encourage sports activities. It is not a general exemption of all supplies of services linked to them: to qualify, the supplies must be by a non-profit-making organisation and they must be closely linked and essential to sport. However, Article 13A(1)(m) covers all sports, including those necessarily practised by groups of individuals and within sports clubs such as the unincorporated association in this case. In such a situation it is, first, between the sports club and the service supplier and, second, between the sports club and its members that the services are supplied. The words *“services ... supplied ... to persons taking part in sport”* in Article 13A(1)(m) should not be restricted to cases where there is a legal relationship between the service supplier and the persons taking part in sport, otherwise large numbers of services would be excluded from the benefit of the exemption, which is meant to extend to individuals taking part in sport. Thus, for the purposes of determining whether supplies of services are exempt, the identity of the material recipients and the legal form under which they benefit from them are irrelevant; what matters is that the true beneficiaries of those services are the persons taking part in sport. It follows that services supplied to corporate persons or unincorporated associations in the context of sports practised by groups of persons are, in principle, eligible to benefit from the exemption.

(2) Having found that the UK exemption excluded a certain group of potential beneficiaries, the ECJ then went on to hold that when a Member State exempts certain services closely linked to sport, it may not make that exemption subject to conditions other than those laid down in the Sixth Directive itself (Article 13A(2)), and thus may not limit that exemption so as to exclude such a group of recipients of those services from the benefit of the exemption.

It is now for the national court to determine on the facts whether the true beneficiaries of the services supplied by England Hockey to the Club are persons taking part in sport and whether the other conditions for exemption (e.g. *“closely linked and essential to sport”*) are met.

COMMENT

The immediate consequences of this case are modest, relating only to the VAT on the affiliation fees of the Canterbury Hockey Club (and on the facts referred to in the ECJ's judgment it seems likely that the Club will have its fees exempted from VAT). The wider consequences of this judgment may be considerable, however, and it is far from clear how it will affect the interpretation of similar exemptions in the future. In the first instance it would appear difficult now to interpret Item 3 of Group 10 in Schedule 9 to the Value Added Tax Act 1994 so as to give effect to what was Article 13A(1)(m) of the Sixth Directive. It seems that the UK provision will be unenforceable and require amendment. Similar sports clubs (of which there must be many) will no doubt take note and rely directly on the Directive and the judgment of the ECJ. Of even greater interest to VAT practitioners is the ECJ's recourse to the principle of the *“true beneficiaries”* of the services in question in order to justify its findings. This would seem to run counter to the generally accepted view in VAT cases that one looks at the legal relationship between the service supplier and the person receiving the supply. Intentionally or otherwise, the ECJ has gone beyond the narrow, semantic question of whether *“persons”* includes *“unincorporated associations”* and looked through the party receiving the service to what (on the facts) it considered to be the *“true”* recipients. Although the ECJ in its judgment reiterated the principle that

exemptions must be narrowly construed, the effect of its judgment appears to be the opposite. It remains to be seen whether this notion of the “real beneficiary” will find a wider application in VAT cases. Ultimately the ECJ may be asked in a future reference to revisit its dicta in *Canterbury Hockey Club* for a further clarification.

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