

# Case Alert

## *CJEU rules against UK in VAT on sports services case*

### *Summary*

The supply of services that are closely related to sport are mandatorily exempt from VAT if those services are provided by a non-profit making body. However, Member States may make the granting of the exemption subject to a number of conditions including a condition that the exemption must not be likely to cause distortion of competition to the disadvantage of commercial entities who are required to charge and account for VAT.

UK VAT law makes a distinction between non-profit making bodies (such as a charity) and bodies governed by public law. The taxpayer in this case was a Local Authority which was required to account for VAT on its supply of sports services.

### Court of Justice Judgment

UK VAT law is required to implement the provisions of the VAT Directive but this is not always achieved. This case is such an example.

The London Borough of Ealing (Ealing) is a Local Authority which provides services that are closely related to sport (sports services). As such, it argued that the requirement under UK VAT law for it to charge and account for VAT in relation to those supplies was contrary to EU VAT law. It argued that its supplies should also benefit from VAT exemption and, consequently, it submitted a claim for repayment of the VAT it considered it had overpaid. HMRC refused to make the refund claiming that UK VAT law was compliant with EU VAT law.

As the issues raised in the case rested on the interpretation of EU law, the matter was referred to the Court of Justice by the First-tier Tax Tribunal. In essence, the question to be resolved was a simple one. Under EU law, Member States may impose a number of conditions before allowing non-profit making bodies to exempt their supplies of sports services. One such condition is that the exemption should not be likely to lead to a distortion of competition between non-profit making bodies and entities that are commercial suppliers of sports services. UK VAT law makes a distinction between non-profit making bodies and public bodies (such as Ealing) and prevents the exemption from applying to the supply of sports services provided by public bodies. Ealing argued, in effect, that, as the distortion of competition condition does not apply to non-public bodies (such as charities and other not-for-profit bodies), it should not apply to the supply of sports services provided by public bodies.

According to the Court's judgment, the UK's legislation is incompatible with EU law. This is on the basis that compliance with the distortion of competition condition can only be a pre-requisite for the VAT exemption to apply to public bodies only if it also applies that condition to non-public body non-profit making organisations. The UK's law fails to do this and so the different treatment is ultra-vires.

***Comment – The CJEU has found that the UK's distinction between public bodies and other not-for profit organisations is not compatible with the VAT Directive. This should mean that HMRC must now accept that the supply of sports services by Local Authorities should benefit from VAT exemption and that such Authorities will have overpaid output VAT as a result.***

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