

# Indirect Tax Update

## *Bridge – It's a sport!*

### *Summary*

The Advocate General of the Court of Justice has issued a surprise opinion in the UK referred case involving the English Bridge Union. The question to resolve was fairly simple. Is the playing of Bridge (a card game) a sport for VAT purposes? According to the Advocate General, it is a sport and should qualify for VAT exemption.

The Upper Tribunal has also released an interesting decision this week in the case of National Car Parks. NCP tried to argue that overpayments by customers should not be subject to VAT.

Finally, the First-tier Tax Tribunal has issued a decision in the case of The Learning Centre (Romford) Ltd which rules that the UK's VAT law on the exemption of welfare services does not comply with EU law and that, as a consequence, EU law prevails.

### *The English Bridge Union*

Bridge is a card game that is played by millions of players around the world. In the UK the game is organised and controlled by the English Bridge Union (EBU). The EBU organises competitions and charges entry fees to participants and that income is currently subject to VAT at the standard rate.

The EBU considers that UK law does not reflect the requirements of EU VAT law which provides a mandatory exemption from VAT for the supply of certain services closely linked to sport or physical education by non-profit making organisations to persons who take part in such sport or physical education. In essence, the EBU considers that the playing of Bridge is a sport for VAT purposes and that UK law should implement the VAT exemption.

HMRC take the view that Bridge is not a sport. It takes this view on the basis that there is an absence of physical effort which one more commonly associates with the expression 'sport or physical education'. HMRC refused to repay a claim for overpaid VAT that was submitted by the EBU arguing that, as Bridge was, merely, a 'game', the exemption from VAT required by the VAT Directive was not applicable. The EBU appealed but the case was dismissed by the First-tier Tribunal. EBU appealed to the Upper Tribunal which concluded that, as the issue was a matter of interpretation of EU VAT law, it required assistance from the Court of Justice with that task.

The Advocate General has published his opinion. He is recommending to the full Court of Justice that Bridge ought to be classified as a sport for VAT purposes. He considers that the UK's stance - that there has to be physical effort - to be wrong. He notes that the International Olympic Committee includes the game of Chess in its list of Olympic sports and infers from that an activity does not need to have a physical element for it to be accepted as a sport. Moreover, he argues that taking into account the context and purpose of the VAT exemption for sports services, the playing of Bridge 'yield benefits for the physical and mental wellbeing' of participants. As such, that meets the 'cultural' purpose of the exemption.

***Comment – at first blush, it is difficult to accept that playing a card game could be classified as the playing of a sport. But, when the context and purpose of the VAT exemptions is to encourage participation in such activities, one can understand the Advocate General's view. We shall see whether the full court follows his logic!***



## National Car Parks Ltd

### Upper Tribunal

This was a fairly straightforward case! The issue was whether overpayments of car parking charges were subject to UK VAT (as claimed by HMRC) or whether they were outside the scope of VAT (as claimed by NCP).

Essentially, when a customer arrives at an NCP car park, he is entitled to park for a permitted amount of time on payment of a fixed amount. The pay machine does not give any change and, on some occasions, the customer will not have the exact amount. At that point, the customer has a choice, he can insert a higher amount into the pay machine knowing full well that he will not receive any change or, he can leave the car park without parking his car. NCP argued that a voluntary overpayment is not consideration for the supply of the right to park a car – the car park charges are clearly indicated on the signage in the car park so the consideration is the price per hour.

HMRC consider that the consideration for the supply is whatever amount the customer actually pays (including the voluntary overpayment) and the Upper Tribunal agreed with HMRC. The taxable amount for VAT purposes is the actual consideration paid by the customer. He accepts at the point of overpayment that the inflated price is the price he is required to pay if he is to park his car. NCP sought to rely on a similar case (King's Lynn Council) but the Upper Tribunal distinguished that case on the basis that the Council's car park charges were set by statute.

## The Learning Centre (Romford) Ltd

### First-tier Tax Tribunal

This is an interesting decision of the First-tier Tax Tribunal (FTT) relating to the VAT exemption for the supply of 'welfare services'. In the UK, private suppliers of welfare services can only exempt their supplies if they are a 'state-regulated' body (as defined). Here, the taxpayer tried to argue that it was 'state-regulated' on the basis that its staff were all subject to CRB (or equivalent) checks and the welfare services it provided were largely public funded. The FTT dismissed this ground of appeal. The taxpayer was not state-regulated.

The taxpayer then argued that by using the condition of 'state-regulation' as the criteria for recognising whether or not a body providing welfare services could benefit from the VAT exemption was contrary to the terms of the VAT Directive. The taxpayer argued that providers of welfare services established in England and Scotland for example were subject to different levels of state-regulation. In Scotland, a similar provider to the taxpayer would be considered as a state-regulated body whereas in England, it would not. This, according to the taxpayer infringed the principle of fiscal neutrality as different providers of the same service are treated differently for VAT purposes.

The FTT agreed with the taxpayer. The breach of fiscal neutrality arising from the application of the UK VAT law renders the UK law invalid and the taxpayer is entitled to rely on the directly effective provisions of the VAT Directive.

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### Comment

Given the ruling in the King's Lynn Council case, one can understand why NCP took this case. Unfortunately, the Tribunal distinguished that case and ruled that voluntary overpayments for the right to park a car in an NCP car park are to be regarded as consideration even though the price paid was greater than the price stipulated on the car park signs.

### Comment

This is an FTT decision which is not binding (except between the parties). The Tribunal Judge was clear that, in the UK, there were differing levels of regulation which led (or could lead) to different providers accounting for VAT differently on identical supplies.

It is anticipated that HMRC will appeal this decision to the Upper Tribunal. If the Upper Tribunal agrees with the FTT, it is likely that UK VAT law will need to be changed.

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