

Could your shoot lawfully claim the VAT exemption? **Julie Butler** offers expert advice

The impact of the recession

The shooting industry has suffered from the current recession and there could be bleaker times ahead. Many of the customers of the large commercial shoots were bankers and "corporate hospitality days". It is currently considered politically incorrect (not PC) for business life to work in this way. The costs of a shoot are high and such expenditure might to some seem extravagant.

Restructuring to secure the passion

However, that does not mean that the passion for game shooting has in any way abated, just that there has to be restructuring. Shooting rights are standard-rated and most of those "consuming" the sport are private individuals.

The HMRC shooting "campaign"

HMRC has looked closely at game shooting for a number of years and within the annual 2005/06 where reference is made to the "campaign" within the game shooting industry. There are many VAT inspectors continuing to look at the Members Club and all areas of farm diversification.

The problem has been in the Court of Appeal's decision in *Messenger Leisure Developments Ltd v Revenue and Customs Commissioners* [2005]. Following this case HMRC publicised in Business Brief 22/05 its view that "any company which is precluded from distributing profit, but whose function is nevertheless to create [sic] VAT exemption in the context of a wider commercial undertaking, is not a non-profit-making body for VAT purposes."



The VAT exemption for shooting clubs

“ The facts are that membership subscriptions charged by certain non-profit-making bodies that provide access to sport are exempt from VAT ”

Artificial Members Clubs need not apply

The problem, therefore, is the shooting club/syndicate functioning just to create VAT exemption. It could be argued that no one would be driven by the VAT advantage alone. Further guidance is given via Extra Statutory Concession 3.35; HMRC allows non-profit-making bodies to apportion members subscriptions between the value of standard rated, zero rated and exempt benefits and calculate VAT accordingly.

It is often the recession and not the VAT advantage that is pushing shooting syndicates towards the Members Club. The supply of sporting facilities including shooting by a non-profit-making club to its members is exempt from VAT.

The private definition of Fisher

The Members Club must be properly constituted, which will give a loss of control by the landowner. However, protection can be given to the landowner via the lease agreement. Artificial arrangements to ensure VAT-exempt status are likely to be attacked by HMRC. In order to be non-profit-making there can be no commercial element. Guidance on the private structure is given via Commissioners of Customs & Excise v Lord Fisher [1981] STC 238.

It is considered that the shooting Members Club has received a boost from two recent VAT cases that emphasise the need that subscriptions and fees to achieve exempt status must be closely linked and essential to sport. That sport can be game shooting.

The facts are that membership subscriptions charged by certain non-profit-making bodies that provide access to sport are exempt from VAT. The problem arises that the exemption is not always clear in marginal situations. Some extra degree of clarity arises from the fairly recent cases (20739) of the British Association for Shooting & Conservation Limited (the BASC).

The appellant argued that part of its subscriptions were exempt, and one of its grounds for this approach was that it was a sporting body that provided services closely linked with and essential to sport or physical education on which the individual is taking part. The Tribunal did not agree. Although the BASC

provided services in protecting the members' ability to carry out their shooting activity, there were no actual shooting facilities provided, with no land or equipment offered to members for participation in the sport. This meant that the supply was insufficiently closely related to, nor essential for, participation in the sport of shooting. Other well-argued grounds for exemption from VAT were also rejected by the Tribunal. This decision could cause difficulty for organisations that are heavily involved in sport, where a similar detachment from the specific facilities for the sport exists but helps where there is a heavy involvement in the sport.

The second case was Canterbury Hockey Club, which comprises a number of different hockey teams. The clubs pay "England Hockey" affiliation fees, and in return receive certain services from "England Hockey", e.g. courses for officials, and advice on obtaining sponsorship. HMRC said that the affiliation fees received by England Hockey should be subject to VAT. The hockey clubs were not the persons playing the sport so the supplies of the services could not be exempt.

Help from the European Court of Justice

The Canterbury Hockey Club appealed. The High Court referred the matter to the European Court of Justice (ECJ) asking whether the term 'persons', in the context of playing sport, included corporate persons and unincorporated associations or whether it only included human beings.

The ECJ ruled that the exemption applied to corporate persons and unincorporated associations, provided the organisation was "closely related to the sport". It was for the national court to decide that the services provided satisfied three conditions: they must be supplied by a non-profit-making organisation; they must be closely linked and essential to sport; and the true beneficiaries of the services

must be persons taking part in sport.

Closely linked and essential to the sport of shooting

The key for standard rated VAT to be charged has to be the detachment from the specific facilities for the sport.

The advantage is that game shooting syndicates can claim the VAT exemption status and therefore do not have to charge output VAT on shooting services provided to club members. A shooting syndicate can now restructure as a non-profit-making Members Club and be exempt from VAT where the right conditions are in place. There is generally very little input VAT involved in a shooting Members Club. Are the three conditions met for the Members Club – a non-profit-making organisation, closely linked to sport and are the true beneficiaries and the services those involved in the shooting?

Temporary members

Temporary membership means that guests can be invited. The recession is going to change the outlook of many involved in shooting and push many to consider the Members Club and the very private non-commercial structure of shooting and with that comes the ability to take advantage of VAT exemption as recently endorsed by two VAT cases.

Interesting times are ahead for all those who are passionate about the sport of game shooting and the benefits to the rural habitat that this brings.

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