

# VAT on the supply of land and sporting facilities – clarification needed!

## Julie Butler discusses the implications of the *Polo Farm Sports Club* case

A recent VAT tribunal case, *Polo Farm Sports Club* VTD 20105, has highlighted the fact that the area of VAT relating to the supply of sports facilities could benefit from clarification by HMRC. Is the supply exempt or standard-rated?

Within the definition of sports facilities HMRC includes swimming pools, tennis courts and croquet lawns and areas of land that have been specifically designed or adapted for sporting activities and physical recreation (VAT Notice 742 section 5). Each court/pool/pitch etc is a separate sports facility.

### Access to recreational and sports facilities

The letting of sports facilities is normally standard-rated (Item 1(m), Group 1, Sch 9, VATA 1994).

There are circumstances where the letting of sports facilities can be exempt:

- If the sporting facilities are let for non-sporting purposes then the supply will be exempt. An example of this will be the letting of a swimming pool for a fashion shoot.
- There are special rules for the use of sports facilities where there are lets in excess of 24 hours or for the hire of facilities to the same user for a regular series of events (discussed in more detail below). The supply of sporting facilities becomes eligible for exemption in both these cases. However, the facilities can still be opted in to tax by waiving the exemption.

### The '24 hour rule' (para 16, Group 1, Sch 9, VATA 1994)

If you make a single let of sports and physical recreation facilities for a continuous period of over 24 hours to

the same person, the supply is exempt. The person to whom the facilities have been let must have exclusive control of them throughout the letting period.

If you let out sports and physical recreation facilities for a series of sessions the supply is exempt if all the following conditions are met:

1. The series consists of 10 or more sessions.
2. Each session is for the same sport or activity.
3. Each session is in the same place.
4. The interval between each session is at least one day but not more than 14 days. The duration of the sessions may be varied, however there is no exception for intervals greater than 14 days through the closure of the facility for any reason.
5. The series is to be paid for as a whole and there is written evidence to the fact.
6. The facilities are let out to a school, club, association or an organisation representing affiliated clubs or constituent associations, such as a local league.
7. The person to whom the facilities are let has exclusive use of them during the sessions.

### Exempt or standard-rated supply?

The *Polo Farm Sports Club* has some artificial hockey pitches in its land which it let to an association of local hockey clubs. It was probably advantageous to the *Polo Club* to make standard-rated supplies due to the partial exemption rules. It had not opted to tax the land in question. A dispute arose with HMRC, which said

the Club was making a series of lettings which should therefore be exempt. In this case the lettings were daily for several hours each day and there was never a whole day between each letting. HMRC argued that this was nonetheless sufficient to fulfil the exemption criteria, since there was still 'a day' between each letting. But the tribunal preferred the appellant's view, which was that there had to be at least a clear day, or 24 hour period, between each letting, in order for the rule to apply. The *Polo Club* won this case and achieved their standard-rated supply.

Many providers would prefer the supply to be exempt. Consequently, the decision creates difficulties where series of lettings arise, with less than a whole day in between, where it has been assumed they were exempt as long as there was no more than one letting per day.

It is the wording at para 16(b)(ii), Group 1, Sch 9, VATA 1994 that is creating the ambiguity, ie that: 'the interval between each period is not less than one day and not more than 14 days'.

It is considered that HMRC should clarify their position following this case as there is uncertainty in the current legislation with regard to how long the gap needs to be between lettings. Also, where there is normally one day's gap between lettings it is currently unclear as to whether the series should be looked at as a single whole, in which case a consecutive booking anywhere along the series could cause the whole series to fail to qualify for the exemption.

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