

1 February 2023

VAT on sporting fees

HMRC concede that charges for council sports facilities are non-business

HMRC's existing guidance is that local authority sports and leisure services can either be taxable or exempt from VAT. This has been challenged in the courts, with test cases for England, Scotland and Northern Ireland going on for several years.

In *Chelmsford City Council* [2020] UKFTT432(TC) the First Tier Tribunal determined that such services are provided under a 'special legal regime' and can be treated as 'non-business', providing that does not give rise to significant distortions of competition.

HMRC unsuccessfully appealed the first part of that decision, as they did not accept the reasoning that local authority sports services are subject to a 'special legal regime'. The Upper Tier Tribunal [2022] UKUT149(TCC) dismissed that appeal in March 2022.

On 26 January 2023, HMRC advised Chelmsford City Council that they will NOT be pursuing the 'significant distortion of competition' argument and accept that local authority sports services can be treated as non-business and outside the scope of VAT.

HMRC have yet to issue any further guidance as to the basis on which they accept no significant distortion of competition would be caused, how far the interpretation of "sport and leisure services" extends or what steps councils should take to recover VAT.

We suggest that councils consider the following steps in relation to sports facilities, bearing in mind that HMRC have not issued any guidance and might refuse claims or require them to be submitted in a particular way:

- 1) If you're VAT registered and charging VAT on your sports services, you should:
 - a. stop doing so as soon as possible and certainly before 1 April 2023,
 - b. compile and submit a claim to HMRC for a refund of such VAT declared for the past four years, and
 - c. consider whether you will refund that VAT to the bodies charged for sports.
- 2) If you're not VAT registered and have avoided reclaiming VAT on sports facilities because you thought they were taxable supplies, you should reclaim any such VAT incurred over the last 4 years.
- 3) If you treat any sports services as VAT-exempt and include VAT incurred on those activities in your partial exemption calculation, you should:
 - a. take that VAT out of the 2022/23 calculation,
 - b. if you had any irrecoverable VAT in the 2018/19 to 2021/22 calculations, review them to see if you can now reclaim some or all or of that VAT, and
 - c. if you have done a 7-year average calculation for any of those years or to forecast a future year, review it to see if you can recover any further VAT.

Please note that VAT126 reclaims must be submitted within 4 years of the end of the month in which the supply of goods or services occurred, so a council can still claim for purchases in February 2019 until the end of this month.

For VAT-registered councils, adjustments cannot be made more than 4 years after the due date of the VAT return that is being amended, so the oldest return that can be adjusted is the one for the January to March 2019 quarter, unless you submit monthly returns or have non-standard VAT quarters.

In reclaiming any VAT charged, councils must avoid “unjust enrichment”, which might occur if you reclaim the VAT and keep it, rather than refunding it to your customers. Where council facilities are subsidised and operate at a loss due to low charges, or where charges were made VAT-inclusive rather than being increased, HMRC are unlikely to consider that unjust enrichment.

Please note that the tribunal decisions only relate to charges for sporting services and should not be applied to meeting room hire, or other taxable or exempt business activities at this point. If you are in any doubt as to whether an activity is affected by this change, please consult your county association of local councils in the first instance.

Disclaimer

This bulletin is only intended as a brief guide about a developing situation and councils should ensure they follow the Regulations and guidance on www.gov.uk, read the tribunal decisions and seek professional advice if they are in any doubt.

The Parkinson Partnership LLP accepts no liability for any loss arising from situations where councils have not followed the applicable law and guidance.