

## **Bridport & West Dorset Golf Club – Background on Implications for Scottish Golf Clubs**

### **Background**

The test case regarding Visitor Fee Income was heard at the First Tier Tax Tribunal on 21<sup>st</sup> and 22 February 2011. The decision of the Tribunal was released to HMRC and Bridport & West Dorset Golf Club on Wednesday 1<sup>st</sup> June. The Tribunal found in favour of Bridport (and therefore against HMRC) confirming that green fees paid by visiting non-members are exempt from VAT. HMRC had 56 days to appeal this decision and they did so 27<sup>th</sup> July 2011.

HMRC believes that the tribunal has erred in interpreting EU law and remains of the view that where clubs that run membership schemes make charges to non-members for the use of certain sporting facilities, such as green fees, the charges are standard rated. HMRC released a Revenue & Customs Brief on the day they appealed to update golf clubs with their interpretation of the VAT law and golf clubs. A link to both this Brief and the Tax Tribunal decision are attached below.

<http://www.hmrc.gov.uk/briefs/vat/brief3011.htm>

<http://www.financeandtaxtribunals.gov.uk/judgmentfiles/j5584/TC01214.doc>

**Below are a series of questions and answers prepared for us by Gary Moore of VAT Services Ltd.**

### **What next for Golf Clubs?**

In view of HMRC's appeal to the Upper Tier Tribunal there are a number of considerations for golf clubs. We have received a number of enquiries from golf clubs over the last few days with most clubs asking very similar questions. We detail below the most popular questions from clubs with our advice in connection with them.

### **Why did HMRC appeal the decision of the Tribunal?**

HMRC believe that the Tribunal erred in their interpretation of EU law and therefore they arrived at an incorrect opinion that green fees paid by visiting non-members were exempt and not standard rated.

### **What happens to the claim that we submitted to HMRC back in 2009 seeking repayment of overpaid VAT?**

HMRC rejected the claims submitted and most clubs requested in writing via the Tax Tribunal for their claim to be 'stood behind' the Bridport case. This means that their claim remains pending awaiting the final decision in the Bridport case.

### **Should clubs continue to account for VAT on green fee income or can they rely on the decision of the First Tier Tax Tribunal and not charge VAT?**

This is addressed by HMRC in the last paragraph of the Brief they released on 27 July 2011. HMRC is advising that clubs should continue to account for VAT on green fee income. However, should clubs chose to rely on the Tribunal decision and not account for VAT on green fees HMRC will assess the under declared VAT and issue assessments. It is likely that penalties will be also levied. In this instance we agree with HMRC and they should continue to account for VAT on green fee income until the case is finally decided. Our reasoning for this is that clubs will not lose out financially in the long term if HMRC lose the case and it is confirmed that green fees are exempt from VAT as clubs can submit a further claim to HMRC and can do so for any period covering up to the preceding 4 years. Therefore those clubs who submitted a claim by 31 March 2009 (which was the deadline) can therefore submit another claim in March 2013 that will cover the preceding 4 years.

### **Our club did not submit a claim back in 2009, should we do so now?**

A number of clubs did not submit claims for one of two reasons. The first and most popular reason was that a claim would have been detrimental as the amount of output VAT over paid to HMRC in respect of green fees was less than the amount of input VAT that was over paid when the VAT returns were recalculated i.e. the club would owe HMRC money rather than the other way about. The second reason was that a small number of clubs could not locate sufficient historic VAT paperwork to allow them or their advisors to pull together a claim.

We would strongly recommend that all clubs who did not submit a claim review their VAT returns for the last 4 years and recalculate them making the assumption that green fee income is exempt and not standard rated. Should the amount output VAT over paid exceed the amount of input VAT over claimed a claim (known as a voluntary disclosure) should be submitted to HMRC. In the Brief released by HMRC on 27 July 2011 it clearly states that HMRC are not inviting clubs to submit new claims and if a club decides to do so their claim would be rejected. Our reasoning for suggesting clubs submit claims is that by not submitting a claim until a later date i.e. until a final decision is arrived at, some over paid VAT will drop out of a claim period. For example, if a club submits a quarterly VAT return at the end of August, they can submit a claim from 1 September 2007 to the current date i.e. you can go back 4 years. However, if the same club waited until this time next year they can only submit a claim from 1 September 2008 i.e. a whole year has dropped out of the claim.

A claim submitted now (for the last 4 years) will be rejected by HMRC. On receiving the rejection letter the club will have 30 days to appeal and to keep their claim 'live' they must submit an appeal to the Tax Tribunal and request to be 'stood behind' the Bridport & West Dorset Golf Club case.

### **Our club submitted a claim in 2009, but what happens to VAT we have charged since then?**

As detailed above, all clubs can submit a claim for the preceding 4 years. Therefore if the case is not decided by December 2012 or it is decided against HMRC a second claim should be submitted for the period since the last claim i.e. from February 2009. This is permitted as you can submit a claim (a voluntary disclosure) for the preceding 4 years.

### **When will we know the final outcome as to whether VAT is due on green fees?**

It is difficult to estimate accurately when the Bridport case will be heard by the Upper Tier Tax Tribunal but a reasonable estimate would be 12 to 18 months. It should be borne in mind that after the decision of the Upper Tier Tax Tribunal is handed down either party may appeal the decision i.e. it is possible if HMRC lose again they will appeal again. It is this uncertainty and delay which makes it important that clubs who have not submitted a claim but are entitled to a repayment do so as soon as possible (to ensure no more time drops out of the claim) and those that have submitted a claim consider submitting another one around December 2012, again to ensure no more time drops out of the claim.

If you wish to discuss this Tribunal Case further we suggest you contact a suitably qualified professional VAT advisor such as Gary Moore of VAT Services (Scotland) Ltd on 0141 636 9353 or 07812 061582 or [gmoore@vat-services.co.uk](mailto:gmoore@vat-services.co.uk) who has helped us produce this notice. VAT Services (Scotland) is a firm of VAT Advisors who have submitted claims for 29 Golf Clubs and have advised that there would be no charge for any initial consultation.

**31 July 2011**