



European Commission
Directorate-General for Taxation and Customs Union
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Subject: Response to Consultation Review of existing VAT legislation on public bodies and tax exemptions in the public interest

Consultation paper - Questionnaire

Review of existing VAT legislation on public bodies and tax exemptions in the public interest

Further to our answers to the various questions below, we also refer to our letter attached as sent on March 30, 2011 on the distortion of competition of “not for profit” golf clubs and VAT-taxable commercial golf courses.

Question 1 General evaluation of the current rules (see point 3):

In our view the current VAT regime leads to distortion of competition between VAT-exempt “not for profit” golf clubs and VAT-taxable commercial golf courses. More in particular, article 132(m) of the 6th Directive states that Member States shall exempt certain services related to sport supplied by non-profit-making organisations to persons taking part in sport. Despite this apparently straightforward article, in practice article 132 is currently being interpreted in different ways and the business of golf courses is treated very differently when it comes to VAT.

Despite the fact that VAT-exemptions rules are to be implemented very strictly, in practice VAT-exempt “not for profit” golf clubs compete with VAT-taxable commercial golf courses whilst operating in the same line of business leading to an “output side” distortion of competition.

In most EU-countries commercial courses have to charge the high VAT-rate on the services rendered on their golf courses. VAT-rates up to 20-25% are very common and result in equal increases of the respective prices. Although VAT-taxable courses can deduct the input VAT, the VAT-burden on the outgoing services is not eliminated.



Question 2 Distortion of competition clause:

Not applicable as public bodies do in principle not exploit golf courses.

Question 3 Reform measures (see point 5):

1. Full taxation of public bodies and activities in the public interest

Full taxation of activities in the public interest will eliminate the distortion of competition between “not for profit” golf clubs and commercial golf courses as the services rendered by all golf courses would be subject to VAT.

2. Full compensation of input VAT ("Refund System") at EU level (see point 5.2.)

Full compensation of input VAT will enlarge the distortion of competition, as the “not for profit” clubs would then be entitled to deduct their input VAT as well (without charging VAT on the services rendered).

3. Deletion of special rules relating to public bodies (Article 13 of the VAT Directive)

Given the fact that public bodies do in principle not exploit golf courses, the Deletion of special rules relating to public bodies will not affect the distortion of competition in the golf sector.

4. Sectorial reform (see point 5.4.)

Given the fact that public bodies do in principle not exploit golf courses, Sectorial reform will not affect the distortion of competition in the golf sector.

5. Possible (additional) selective amendments of the current rules as described under point 5.5.

Distortion of competition will be avoided if the “not for profit” clubs may not apply the VAT exemption and are obliged to also charge VAT on their services (and deduct input VAT). An amendment of the current VAT exemption for “not for profit” golf clubs could therefore create a level playing field in golf and should in our view be considered, by focussing on the character of a service instead of the character of the supplier.

Furthermore, various EU-countries have applied the reduced VAT-rate for using sporting facilities. As a result, commercial courses are able to deduct input VAT and are able to charge the reduced VAT-rate on most of the services rendered. Clearly this levels out the advantage of “not for profit” clubs compared to commercial courses, but even more if the services of “not for profit” clubs are subject to the similar set of VAT rules.



Question 4 Sectorial reform (see point 5.4):

Not applicable as public bodies do in principle not exploit golf courses.

Question 5 Option to tax (see point 5.5):

Distortion of competition will be avoided if both commercial golf courses and “not for profit” golf clubs are subject to a similar set of VAT-rules. In other words, if the “not for profit” clubs may not apply the exemption and are also obliged to charge VAT on their services (and deduct input VAT), distortion will be eliminated. An amendment of the current VAT exemption for “not for profit” clubs could create a level playing field in golf and should in our view be considered, by focussing on the character of a service instead of the character of the supplier.

With kind regards,

Lodewijk Klootwijk

Director
European Golf Course Owners Association