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**Royal Troon – Briefing Paper**

**Background:**

Royal Troon Golf Club lodged an appeal with HMRC for the repayment of VAT
on sales of food and drink to members. The claim was submitted on the basis that its sales of food and drink to its members are non-trading and thus fall outside the scope of VAT as a non-business activity.

The questions under consideration are:

1. Whether the supply by an unincorporated association to its members is a taxable supply by a taxable person.

2. Whether an unincorporated association cam be distinguishable from its members when making such supplies.

3. Whether such supplies are non-taxable when consumed by members of an unincorporated association in a private capacity.

**Overview of legal position:**

By virtue of VATA 1994 s.94(2)(a) and HMRC's published guidance (VAT Notice 701/45 para 3.4.2 and 701/5 para 7.1), where members clubs/unincorporated associations supply food and drink to its members, VAT must be accounted for at the standard rate.

However, as per article 2(1) of the VAT Directive (2006/112/EC), for a particular supply to be chargeable to VAT, the supply is required to be made by a taxable person acting as such. When the Club purchases food and drink and then supplies these to its members it is not acting as a taxable person within the meaning of this act.

By the very essence of a Members Club, the club is formed by its members and is governed by rules as set out and agreed between the Club and its members in a Clubs constitution. As such, can the Club really be held out to be a taxable person when it supplies its members as the Club itself cannot be distinguished separately from that of its members.

The members club is unincorporated, there is no distinct personality between the Club and its members, therefore it should be held that the Club would be unable to supply itself with food and drink for the purposes of carrying on an economic activity.

As such, in respect of the supplies made to its members the supplies are in fact non-trading and fall outside the scope of VAT as a non-business activity.

The question in point is whether the UK law (VATA 1994 s.94(2)(a)) is incompatible with EU law. The argument put forward to the tribunal is that this treatment is not the correct application of article 2(1) of the VAT Directive and therefore ultra vires

**<u>Outcome at First Tier Tribunal ("FTT"):</u>**

The Clubs initial hearing with the First Tier Tribunal ("FTT") took place on 26 January 2015, with the decision of the tribunal judge, Ruthven Gemmell, being released on the 17 March 2015.

Unfortunately, although not unsurprisingly, the FTT ruled in favour of HMRC and held that the Club was acting as a taxable person in respect of the supplies in question at that they would fall within the scope of VAT.

Given that the question of law in this case is whether or not the UK interpretation is compatible with EU law, the outcome at FTT was as we expected. It is highly likely that in such an appeal, in order to get a favourable ruling, the case would need to go to the ECJ for consideration.

The Club intends to appeal the decision of the FTT and on the basis that Counsel has provided steering guidance that the case has merit, if necessary and subject to obtaining appropriate funding, would be happy to take the case all the way to the ECJ.

**<u>What does this mean for your Club?</u>**

In the event that any appeal is successful, any members club, or unincorporated association whose constitution is set up in such a way that the club/association is undistinguishable from its members would be entitled to submit a claim in respect of overpaid output VAT on sales of food and drink to its members. We understand that for most Clubs (subject to any applicable capping provisions) this claim could be significant.

However, the likelihood of any appeal being successful will almost certainly require a referral to the ECJ.

Given the costs involved with such an endeavour and on the basis that any claim submitted by other members clubs/unincorporated association could be stood over behind the lead case of Royal Troon Golf Club. Our proposed approach is to unite the members clubs , so that Royal Troon Golf Club are not in a position where they fund the appeal in its entirety.

Royal Troon is not in a position to fund the whole appeal and in our view no members Clubs would be in a position to fund this alone. As such, we are recommending that each Club who are likely to be affected by the current appeal and would benefit from a positive outcome make a small contribution (£1000, plus VAT) to a fighting fund which can be used to cover the costs associated with taking the lead case to Upper Tier tribunal and beyond if necessary.

Your "fighting fund" deposit would also cover the costs associated with our assistance in helping your Club calculate its likely claim value and submit a Voluntary Disclosure to HMRC on your behalf.

In order to cover the costs associated with our on-going assistance and negotiations with HMRC on behalf of the Club, as well as submitting an appeal to tribunal which we will ask to be stood over behind the current lead case, we would agree an additional fee on a contingent basis as an element of the amount recovered by the Club from HMRC.