Sports Clubs – unjust enrichment

Technical Indirect Tax

01 February 2015

Key Points

We wrote to HMRC on 14 October They responded on 6 November They agree in part with what the CIOT submitted

Background

We wrote to HMRC about their approach to refunds to sports clubs as outlined in Revenue and Customs Brief 25/14. This was in response to a specific request by a member that we look into the issue.

Our submission

Our submission focused on a principle of EU law known as the unjust enrichment concept. This permits members to deny a refund to a person who has paid taxes or other levies contrary to EU law if by doing so they would be unjustly enriched – ie where the burden of the wrongly charged tax has been passed on and borne by someone else.
We noted in particular that the burden of proof is on HMRC to demonstrate that the taxpayer would be unjustly enriched and not for the taxpayer to prove that he is not. Further, EU law also prohibits any process that made it impossible or excessively difficult for a person to obtain a refund of monies collected in contravention of EU law.

HMRC’s response

HMRC accept that ‘the onus is on HMRC to prove their case’ but contend that ‘golf clubs must be prepared to cooperate and respond to reasonable enquiries into the matter’. We would note here that it is not necessarily only golf clubs involved, although we have been advised that it is mainly golf clubs that are involved.

They say they have initiated enquiries with a number of ‘representative golf clubs’ with a view to reducing any burdens but are not in a position to disclose details as yet. They have also commented that there is other relevant information. This includes RCB 20/14 on whether compound interest is payable and Notice 700/45 on the possibility of adjusting a current return to recover a repayment due in some circumstances.

Further action

We do not propose responding specifically to HMRC’s response but set out details for those involved. However, we would point out, as we alluded to in our original submission, that the process may be excessively burdensome for small clubs that are forced to spend time and cost providing information not to support their VAT declarations, but to assist HMRC in preparing their case against the club itself. That does not to us seem equitable. How, for example, does it rebut a contention by HMRC that its particular business falls into the same class as HMRC’s representative sample, or how does it respond when HMRC argue that it is the club’s own information that supports HMRC’s unjust enrichment defence?

Members who wish to raise further points on this subject should email indirecttax@ciot.org.uk

In case you want to review what we said, the non-public link to the submission and response can be found at www.tinyurl.com/ok5tlw3