# Land diversification: the complexity of supply

Indirect Tax



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The case of *Netbusters Ltd literally* ‘bust the net’ on the supply of land for the playing of sport being able to qualify as an exempt supply for VAT.

## Key Points

### What is the issue?

Netbusters Ltd leases pitches to football and netball leagues. Is this a supply of an interest in land (tax exempt) or a supply of sports league services (standard rated)?

### What does it mean for me?

If the character of the supply of land is predominantly the hire of land, and the ancillary services are viewed as additional, the hire or lease of the land may stay

within the exemption of VAT.

**What can I take away?**

If there was to be a move to standard rated from being exempt, the impact on farming of short-term lets of land would be significant.

Farm diversification is, by definition, alternative land use – the supply of land for activities such as the provision of stables, the hire of riding schools and dog walking areas. The supply of land is therefore a large source of farming income. However, the VAT and inheritance treatment of such a supply is very complex for advisers. The recent Upper Tribunal case of *HMRC v Netbusters (UK) Ltd* [2022] UKUT 175 explored the VAT exemption status in some depth, and so is useful guidance moving forward.

The result of this case lies against the backdrop of the 'call for evidence' as part of simplifying VAT on the supply of land. It is, however, a review that has been sidelined.

## The hire of land within the exemption

If the character of the supply of land is predominantly the hire of land, and the ancillary services are viewed as additional, the hire or lease of the land may stay within the exemption of VAT. The Value Added Tax Act 1994 Sch 9 Group 1 exempts the grant of any interest in or right over land, or of any licence to occupy land, subject to a number of exceptions.

The importance of the *Netbusters* case for farming and equine businesses is key for diversification areas such as the supply of land for equine events, and the hire of the menage to school horses for such sports. Likewise, farmers supplying land for sports activity should achieve VAT exemption provided that the conditions are met.

## *Netbusters:* the facts of the case

Netbusters Ltd organises competitive five-a-side football and netball leagues. The company makes block bookings of pitches from third parties, such as local authorities and schools, entering into binding agreements to hire venues for set periods of time. The company then hires these pitches out to teams in the leagues

to enable them to play their league fixtures. Most of the pitches are hired either as a block booking for the season or one-off bookings. Netbusters also manages all aspects of league administration.

The question was whether this was a supply of an interest in land (which would be exempt) or a supply of sports league services (which would be standard rated)? Netbusters considered the supply to be a single exempt supply as a grant or right over land, whereas HMRC took the view that the supply was subject to VAT as the company was supplying competitive league sports management services.

Following the case of *Goals Soccer Centres* [2012] UKFTT 576, Netbusters submitted a claim for over-declared output VAT of £414,622 on the basis that its supplies were partly exempt (the supply of the pitch or court); and partly taxable (the supply of league management services). Netbusters also appealed against assessments totalling £218,542.

The hire of the facilities in the *Netbusters* case was for a defined period of time and no other party had the right to access the pitches during those times. The hire could be either a block or a one-off booking. Netbusters contended that the supplies were exempt via Value Added Tax Act 1994 Sch 9 Group 1: ‘The grant of any interest in or right over land or of any licence to occupy land…’

However, Item 1(m) excludes ‘the grant of facilities for playing any sport or participating in any physical recreation’, in which case such supply becomes standard rated. To add complexity, Item 1(16) overrides the exception for sporting facilities (so they are exempt) if the grant of the facilities is for:

a) a continuous period of use exceeding 24 hours; or

b) a series of 10 or more periods, whether or not exceeding 24 hours in total, where the following conditions are satisfied:

(i) each period is in respect of the same activity carried on at the same place;

(ii) the interval between each period is not less than one day and not more than 14 days;

(iii) consideration is payable by reference to the whole series and is evidenced by written agreement;

(iv) the grantee has exclusive use of the facilities; and

(v) the grantee is a school, a club, an association or an organisation representing affiliated clubs or constituent associations.

## The First-tier Tribunal decision

The First-tier Tribunal originally found in favour of Netbusters. The tribunals needed to establish whether or not the supply fell within the VAT exemption as 'the grant of any interest in or right over land or of any licence to occupy land'. It was agreed that:

- Netbusters made a single supply to its customers. The pitch hire provided by Netbusters went hand-in-hand with participation in one of the leagues organised.
- This differentiated it from the decision in *Goals Soccer Centres*, where two separate supplies were made.
- The nature of Netbusters' single supply was the granting of interests in rights over or licenses to occupy land: an exempt supply.

## The Upper Tribunal decision

HMRC argued to the Upper Tribunal that the First-tier Tribunal had failed to consider the 'passivity principle' of the letting of land or the objective character or economic reality of Netbusters' supplies. HMRC considered this to be neither the grant of a licence to occupy land nor the hiring out of pitches, but rather the supply of league administration services.

The Upper Tribunal dismissed HMRC's appeal and found that the First-tier Tribunal had applied the correct tests in law. Based on the facts available, the Upper Tribunal was entitled to reach the conclusion that the supplies were exempt from VAT.

Should any farmer, landowner or organisation be involved in letting facilities in similar circumstances, they should consider whether this decision could impact current VAT accounting. *Netbusters* is an important case that could allow a claim of overpaid output tax to HMRC where standard rate VAT has been overcharged.

## Standard compared to exempt rates

One of the suggestions of the ‘supply of land call for evidence’ was to make all short-term lets standard rated. If there was to be a move to standard rated from being exempt, the impact on farming of short-term lets of land would be significant.

Much of farm diversification is currently exempt, and the *Netbusters* treatment favours the situation where there are private users, such as liveries, car boot sales and barns used for private purposes. Farms have become experienced at carrying out the partial exemption calculation and the negative financial impact is not too great, but the standard rate charge could be very negative for small businesses. Calculations and review of the facts should be carried out in advance of any new supply so that the businesses are prepared for change.

There are already some farm short-term lets that should be charging standard rate VAT; e.g. storage, furnished holiday accommodation, camping, schooling and breaking liveries, and event organisation with services.

Some farmers could welcome the change to standard rated status as they can reclaim input VAT. Many will also welcome the distinct advantage of clarity, as well not having to cope with the partial exemption. However, farmers also have low profits and tight margins and the change of status could have serious consequences.

## Arrangements beyond passive exploitation

When looking at the VAT status of the supply of land, it is important to consider if there is a judicial dictum now that, for a letting of land to be exempt, it must have certain characteristics. The arrangement must relate to:

1. a defined area of immovable property;

2. it must confer a right to occupy that property, to the exclusion of all others;

3. for an agreed period; and

4. for payment.

The *Netbusters* case has been a timely reminder for those who supply the interest in land to check if there has been over or underpaid VAT as a result of the decision and that the VAT is being dealt with correctly.

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## Other forms of diversification

A basic (and dare we say iconic) form of farm diversification for a number of decades has been the car boot sale and the selling of pitches to stallholders.

Understanding the VAT status of such a supply is of importance when assessing the VAT treatment of other supplies of land. It is therefore interesting that the First-tier Tribunal decision in the case of *Rufforth Park Ltd v HMRC* [2022] UKFTT 43 lends clarity to the VAT treatment of car boot pitch fees. The case was concerned with whether pitches for car boot sales were subject to VAT or were a simple licence to occupy land and therefore exempt.

Following a random inspection, HMRC concluded that Rufforth Park provided a number of services that jointly formed a standard rated supply and assessed for VAT on that basis. The appellant appealed against the decision, submitting that it supplied a single pitch rental, which was ‘a relatively passive activity linked simply to the passage of time and not generating any significant added value’.

The court found that that the nature of the supply provided in return for the pitch fees is a licence to occupy land within Value Added Tax Act 1994 Sch 9 Group 1 Item 1 and accordingly the fees were exempt. The appeal was allowed.

The VAT position on stall and pitch fees have been an area of debate by HMRC in recent years. For example, in the case of *Craft Carnival* [2016] UKUT 433, the Upper Tribunal saw the supply of stalls at craft fayres made by Craft Carnival as being payments for so much more than merely the right to occupy a pitch and therefore saw these as taxable supplies of services in that instance; i.e. with standard rate VAT.

The key is the licence to occupy. It is understood from HMRC’s call for evidence in its review of the land exemption that the possibility of making all forms of short-term letting standard rated were considered. However, it is understood that the review has been sidelined and in the meantime the need to forensically understand supply is essential.

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