



TC03321

Appeal number: TC/2012/9526

*VAT – sport – whether contract bridge a sport within Art 132(1)(m) of
Principal VAT Directive*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

THE ENGLISH BRIDGE UNION LIMITED

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE & CUSTOMS**

Respondents

**TRIBUNAL: JUDGE CHARLES HELLIER
SHEILA CHEESMAN**

Sitting in public at 45 Bedford Square WC1B on 5 September 2013

David Ewart QC for the Appellant

**Amy Mannion, instructed by the General Counsel and Solicitor to HM Revenue
and Customs, for the Respondents**

DECISION

1. This appeal concerns the meaning of “sport” in the context of Art 132(1)(m) of the VAT Directive 2006/112. The issue is whether contract bridge is a sport for this purpose.

2. The appellant (the “EBU”) appeals against a decision of HMRC refusing its claim to the repayment of VAT in relation to bridge competition entry fees for the periods 30 June 2008 to 31 December 2011. HMRC refused those claims because it considered that contract bridge was not a sport for the purposes of Directive or the domestic legislation and that the entry fees were therefore for a VATable supply.

The legislation

3. Article 132(1) requires member states to exempt certain supplies listed under 17 separate headings. These headings include specified medical, welfare, educational, political, religious, and cultural supplies. Paragraph (m) specifies:

“(m) The supply of certain services closely linked to sport or physical education by non profit making organisations to persons taking part in sport or physical education.”

4. Article 134 proscribes such exemption if the supply is not essential to the exempted transaction or if the “basic purpose” of the supply is to obtain additional income from transactions in competition with commercial enterprises subject to VAT.

5. The domestic legislation describes the exempted supplies in group 10 of Schedule 9 VAT Act 1994:

“Item 1. The grant of a right to enter into a competition in sport or physical recreation [for monetary consideration which makes up the prize]

“Item 2. The grant, by an eligible body, established for the purpose of sport or physical recreation, of a right to enter a competition in such an activity.

“Item 3. The supply by an eligible body to an individual,...of services closely linked with and essential to sport or physical education in which the individual is taking part.”

6. We note the difference in the phraseology in these different items: Items 1 and 2 use “sport or physical *recreation*”, and Item 3 parallels the Directive in speaking of “sport or physical *education*”.

7. It is the EBU’s case that the supply it makes on granting the right to enter into a bridge competition falls within Item 2 and Art 132(1)(m).

The Facts

8. There was no dispute about the facts. The following summary is taken from the witness statement of Dr John Petrie, the EBU's treasurer.

5 9. Contract bridge is a trick playing card game played by four players in two competing partnerships with partners sitting opposite each other around a table. The game has four phases: dealing the cards, bidding, playing the cards, and scoring the results. Millions of people worldwide play bridge in clubs, tournaments, online and with friends.

10 10. Most club and tournament play involves "duplicate bridge" in which the cards held by each player in each deal are preserved so that each partnership successively plays the same set of cards as their counterparts at other tables with scoring based on relative performance. This form of the game is played competitively at national and international level.

15 11. The EBU's objects are to regulate and develop duplicate bridge in England. Its members are counties, clubs and individuals. There is no need for us to describe its operation and financing for it is agreed that it is an eligible body for the purposes of the domestic legislation and a non profit making organisation for the purpose of the Directive.

20 12. The EBU organises a large number of duplicate bridge competitions in which members can participate on payment of an entry fee. In 2012/13 its total entry fee income was £631,000.

25 13. Playing bridge involves the use of high level mental skills: logic, lateral thinking, planning, memory, sequencing and others. Playing bridge regularly promotes both mental and physical health and studies have shown that it may benefit the immune system and reduce the chance of developing of Alzheimer's disease and of mental deterioration.

14. The Charity Commission considered that bridge fell within the definition of "sport" in section 2(3)(d) of the Charities Act 2006:

30 "sports or games which promote health by involving physical or mental skill or exertion."

35 15. Emails to Dr Petrie from correspondent national bridge organisations in France, Holland, Belgium, Ireland and Poland indicate that they understand that no VAT is charged on their entry fees in those jurisdictions. The email from Holland carries the implication that the supply is treated as exempt because it indicates that input VAT is not recoverable (as would be the case if the supply were exempt).

The parties' contentions.

16. Mr Ewart says that:

(1) the proper meaning of “sport” includes contract bridge as an activity which promotes mental and physical well being. The concept of “sport” did not need to be artificially widened to embrace bridge;

5 (2) HMRC seek to restrict the meaning of sport to something which involves physical activity or physical fitness;

(3) in considering the scope of a particular word in any of the exempt categories of Art 132 it is appropriate to have regard to the object of the exemption;

10 (4) the effect of paragraph (m) is to encourage sport, but the object of so doing is to promote physical and mental health;

(5) construed in the light of that aim “sport” should not be restricted to activities which involve or mainly involve physical skill or exertion.

15 17. In contending that the concept of “sport” encompasses activities depending on mental skill which deliver mental or physical health benefits Mr Ewart draws out attention:

(1) to the recognition accorded to bridge as a sport by the Olympic Committee and SportAccord (the umbrella organisation for Olympic and non Olympic sports federations); and

20 (2) to the list of sports recognised by HMRC in their Notice 701/45. These include activities in which physical skill or activity plays second fiddle to mental skill such as croquet, darts, billiard, flying and gliding. This recognition he says shows that the natural meaning of “sport” is not limited to activities which principally involve physical skill or exertion.

25 18. Mr Ewart, in reply to Miss Mannion’s argument that “sport” requires some physical skill for success, asks what physical skill is needed to fly a plane, and whether it is really possible to draw a distinction between the mental skill needed in planning a snooker shot (or, we add, a croquet stroke) and the physical skill in executing it.

30 19. Miss Mannion says that Mr Ewart is trying to squeeze what he cannot get in through the front door in through the back. She says that he is trying to extend the meaning of sport in the guise of countering a restriction. “Sport” she says is something in which physical skill is essential to success. She refers us to the definition in the Oxford English Dictionary:

35 “an activity involving physical exertion and skill in which an individual or team competes against another or others for enjoyment”,

and that adopted by the Council for Europe in its Sports Charter:

40 “ ‘Sport’ means all forms of physical activity which, though casual or organised participation, aim at expressing or improving physical fitness and mental well being, forming social relationships or obtaining results in competition at all levels.”

This definition had been adopted by HMRC and their approach had received approval from the VAT tribunal in *Royal Pigeon Racing Association* VDT 14006.

20. The acceptance of bridge as a sport by the Charity Commission did not help in construing paragraph (m): the statutory definition which had been applied by the
5 Commission included games involving mental skill; nor did the recognition by the Olympic committee: the reasons for which it accepted bridge as a sport were not evidenced.

21. Miss Mannion says that, in the absence of any CJEU decision on the question, the best guide to interpretation was to heed the warning that exemptions are to be
10 interpreted strictly, to recognise that the object Art 132(1)(m) was simply to encourage sport, to note that sport was different from rest or amusement, and that it required some physical skill or exertion.

22. Miss Mannion says that the object of paragraph (m) is simply to encourage sport. That is the public interest and there is no need to look further to the benefits
15 which participation in sport might provide. Thus the question is simply: what does “sport” mean? It is not how the word should be interpreted in the light of a supposed greater object.

Mesto

23. Both parties drew our attention to *Mesto Zamberk v Finančni reditelstvi v Hradci Kralove* [2013]EUECJ C-18/12. The case related to the supply of admission to
20 an aquatic park which included both areas for what one might call serious swimming and areas for less serious activities such as a paddling pool and water slides. There were two questions before the CJEU: first, whether non-organised and unsystematic sporting activities could be regarded as “sport”, and second, how the supply of
25 entrance to the park should be characterised when what was provided included not only sporting facilities, properly so called, but also facilities for other types of “amusement or rest”.

24. The court started its answer to the first question with the well trodden principles:

30 (1) that the exemptions in Art 132 are enacted to encourage certain activities in the public interest but are specific: a supply which carries a public interest is not exempt unless it falls in one of the headings;

(2) that the nature of each of the specified supplies is an independent concept of EU law;

35 (3) that as exemptions the headings had to be interpreted strictly but not construed in such a way as to deprive them of their intended effect.

25. It then continued:

“[20] Accordingly, those terms must be interpreted in the light of the context in which they are used and of the aims of the scheme of the VAT Directive, having regard to the underlying purpose of the exemption in question...

5 “[21] As regards Article 132(1)(m) of the VAT Directive, it must be pointed out that, according to its wording, that provision covers taking part in sport and physical education in general. Having regard to that wording, the provision is not intended to confer the benefit of the exemption only on certain types of sport...

10 [22]. Likewise, Article 132(1)(m) of the VAT Directive does not require sport to be practised at any particular level, for example, at professional level, or that the sporting activity at issue be practised in a particular way, namely in a regular or organised manner or in order to participate in a sports competition, provided, however, that engagement in that activity is not on the context of pure rest or amusement.

15 “[23] As regards the aim of Article 132(1)(m) of the VAT Directive, it must be noted that the provision has the object of encouraging certain activities in the public interest, namely services closely linked to sport or physical education which are provided by non profit making organisations ...Accordingly the provision seeks to promote such participation by a large section of the
20 population.

“[24] An interpretation of that provision limiting the scope of the exemption ...to activities which are organised in a systematic manner or aimed at participation in sports competitions would run counter to that objective. “

26. It is notable that in [21] it is from the words of para (m) that the court draws the
25 conclusion that it is not intended to be limited to only some sporting activities. It says “sport” means sport.

27. Later, in giving guidelines to the national court in relation to the second question, the determination of the predominant element in the single complex supply made on purchasing entry to the park, the court said:

30 “[34] As regards, in particular, aquatic areas, it is necessary for the national court to take into account, inter alia, whether they lend themselves to swimming of a sporting nature, in that they are for example divided into lanes, equipped with starting blocks and of an appropriate depth or size, or whether they are on the contrary, arranged so that they lend themselves essentially to recreational
35 use.”

28. (This latter exclusion of recreational sport fits uncomfortably with the provision of Items 1 and 2 of the UK’s implementation of the exemption, but no argument was made that bridge was merely a recreational activity, and we take the Court to mean recreational in the sense in which in paragraph [22] “rest or amusement” is opposed to
40 more serious exertion).

Discussion

29. We start with the need for a strict construction of an exemption. This principle seem to us to require that the relevant exemption should be construed to that it was intended to apply and no more: it cannot for example be extended by analogy. But
5 that where the relevant words are open to one or more fair meanings or shades of meaning which are not inconsistent with the aim of the provision, strict construction does not require the meaning to be limited to that which is the narrowest. This provision is intended to apply to sport and physical education: it is not to be extended to things which are akin to sport, but anything which is fairly sport or physical
10 education is to be included.

30. The object of Article 132 as a whole is to give exemption to some supplies which are regarded as being in the public interest. That general description of the provision may operate to reduce the ambit of a particular phrase used in the subparagraphs (it might thus mean that competitive drug taking cannot be a sport), but
15 not to extend it.

31. The interpretative aim is to give the provision a meaning consistent with the objects pursued. It seems to us that the cases on Article 132, the CJEU, consistently with its approach in *Mesto*, takes the aim or object of a subparagraph of Art 132 from the words of that subparagraph. Thus the ECJ has held:

20 (1) The object of para (c), which relates to the provision of medical care, is to reduce the cost of healthcare and make it more accessible: *d'Ambrumenil* [2005] STC 650 at [59];

(2) That in relation to subparagraphs (g), which relates to welfare and old peoples' homes, and (h), which relates to the protection of children, the object
25 is "to reduce the cost of those services and make them accessible to the individuals who may benefit from them" (*Kingcrest* [2005] STC 1547 [30])

(3) The object of para (i), education, was to "ensure that access to education is not hindered by increased cost": *EC v Germany* [2002] STC 982 at [47]

30 (4) The object of (m) is of "encouraging certain activities in the public interest, namely services closely linked to sport or physical education which are provided by non profit making organisations" (see *Mesto* at [23] above).

32. In each of these cases the ECJ has not looked further than the words of the provision. That approach and the express finding of the object of para (m) in *Mesto* indicates to us that Miss Mannion is right and that the object by reference to which the
35 subparagraph must be interpreted is not the wider and more remote one of the promotion of public health, but simply making sporting activities more accessible to a large section of the population (see also *Canterbury Hockey Club v HMRC Case C-253/07 [2008] STC 3351 at [19]* where the court says that the exemption is intended to encourage those types of activities).

33. That impression is increased when one looks at the restrictions imposed by Art 134. If the object of the exemption was the promotion of public health it is more difficult to see why profitable supplies competing with those made by commercial operations should be excluded when many commercially provided medical supplies may be exempt under the preceding provision of the Article.

34. Thus we are left to construe “sport”. *Mesto* provides some limited help for it makes plain that “recreation” (para [34]) or “rest and amusement “ are not sport. There must therefore be some serious exertion. But the court does not address whether this should be physical or mental.

35. Although the true meaning of “sport” in the Directive is a matter of EU law, the search for that meaning starts with a consideration of the Directive in each of its languages. It thus requires an understanding of the English word.

36. We considered that, for the reasons Miss Mannion gave, that the recognition of contract bridge by the Charity Commission and the Olympic Committee did not help with understanding the meaning of sport in the directive.

37. It seems to us that the normal English meaning of “sport” requires:

- (1) the application of some significant element of physical activity;
- (2) that such physical activity is itself an aim, or that it will have a direct effect on the outcome of the activity; and
- (3) that physical skill – of which mental skill may be a part, and which includes physical endurance – is important to the outcome.

To our minds sport normally connotes a game with an athletic element rather than simply a game.

38. The juxtaposition in para (m) of “sport” and “physical education” is indicative of the same conclusion. It shows that “sport” cannot encompass everything which is physical education but indicates an intent that physical activities which, because of the reasons for their performance, are not sport are intended to benefit from the exemption. What is added to sport is not mental education but physical education – despite the fact that both sorts of education are in specified circumstance exempted by para (i). That suggests that it is the physical rather than the mental which is intended to be the subject of this exemption.

39. We harbour one concern with this construction which we have not been entirely able to dispel. It is that a person’s capacity for physical activity is generally acknowledged to reduce with age. Thus the public benefit of the exemption if it is directed as we have found principally to physical activities is skewed towards the young and the section of the population whose participation is promoted (see *Mesto*[23]) will not be as large.. But we console ourselves with the thought that although the direct beneficiaries of education are the young, the old may benefit from their labours, and from the undoubted fact that it is the older population which is more

likely to need the health care or old people's homes exempted by other subparagraphs of Art 132..

40. Thus if this were solely a question interpretation of the English language form of the Directive we would dismiss the appeal. Contract bridge involves some physical activity, but not a significant amount, the physical activity is not the aim of participation, and physical skill, as opposed to purely mental skill, is not particularly important to the outcome of participation.

A reference to the CJEU?

41. The issue we must address is what are the limits of the autonomous EU meaning of "sport". The replies Dr Petri had received to his email indicated that it was at least possible that other EU member states had taken different views from that taken by the UK legislature. This raised the question of whether we should refer to the CJEU a question of the meaning of "sport".

42. Given the lack of authority on the issue it seemed to us that little would be gained by leaving the question to a higher tribunal. But we concluded that we should make a reference only if something gave us cause to doubt that ours was the correct interpretation of the Directive.

43. In relation to the English version of the Directive we were clear in our conclusion that "sport or physical education" in Art 132(1)(m) did not include contract bridge.

44. If other language versions of the Directive indicated a wider or different meaning then there would be a relevant doubt and it would be necessary to determine from them the purpose of the exemption; in those circumstances a reference would be apposite. But the limited researches Mr Ewart had conducted did not suggest a different meaning in other versions, and our own inspection of the French version of the Directive revealed the use of the French word "sport" rather than "jeu". We saw therefore no reason to conclude that the EU meaning should be different, or to doubt our conclusion.

45. On that basis we decided not to make a reference

30 **Conclusion**

46. We dismiss the appeal.

Rights of Appeal

47. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to

“Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)”
which accompanies and forms part of this decision notice.

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CHARLES HELLIER
TRIBUNAL JUDGE

RELEASE DATE: 12 February 2014

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