

JUDGMENT OF THE COURT (Fourth Chamber)

16 October 2008\*

In Case C-253/07,

REFERENCE for a preliminary ruling under Article 234 EC from the High Court of Justice of England and Wales, Chancery Division (United Kingdom), made by decision of 1 February 2007, received at the Court on 29 May 2007, in the proceedings

**Canterbury Hockey Club,**

**Canterbury Ladies Hockey Club**

v

**The Commissioners for Her Majesty's Revenue and Customs,**

\* Language of the case: English.

THE COURT (Fourth Chamber),

composed of K. Lenaerts, President of the Chamber, T. von Danwitz (Rapporteur),  
E. Juhász, G. Arestis, and J. Malenovský, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,  
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 3 July 2008,

after considering the observations submitted on behalf of:

- Canterbury Hockey Club and Canterbury Ladies Hockey Club, by M.G. MacDonald, Advocate,
  
- the United Kingdom Government, by T. Harris and L. Seeboruth, acting as Agents, and by I. Hutton, Barrister,
  
- the Greek Government, by K. Georgiadis, I. Bakopoulos and K. Boskovits, acting as Agents,

— the Commission of the European Communities, by M. Afonso and R. Lyal, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

### **Judgment**

- <sup>1</sup> This reference for a preliminary ruling relates to the interpretation of Article 13A(1)(m) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1; ‘the Sixth Directive’).
- <sup>2</sup> The reference was made in the course of proceedings between Canterbury Hockey Club and Canterbury Ladies Hockey Club (‘the Hockey Clubs’) and the Commissioners for Her Majesty’s Revenue and Customs (‘the Commissioners’) concerning the application of value added tax (‘VAT’) to affiliation fees charged by England Hockey Limited (‘England Hockey’) in consideration for which it supplies services

to the Hockey Clubs whereas they claim that those services should be exempt from VAT.

## **Legal context**

### *Community legislation*

3 Article 2(1) of the Sixth Directive subjects to VAT the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such.

4 Article 13A of the Sixth Directive, entitled 'Exemptions for certain activities in the public interest', provides, in particular:

'1. Without prejudice to other Community provisions, Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any possible evasion, avoidance or abuse:

...

(m) certain services closely linked to sport or physical education supplied by non-profit-making organisations to persons taking part in sport or physical education;

...

2. ...

(b) The supply of services or goods shall not be granted exemption as provided for in (1)(b), (g), (h), (i), (l), (m) and (n) above if:

- it is not essential to the transactions exempted,
  
- its basic purpose is to obtain additional income for the organisation by carrying out transactions which are in direct competition with those of commercial enterprises liable for [VAT].'

*National legislation*

5 Item 3 of Group 10 in Schedule 9 to the Value Added Tax Act 1994 provides for the exemption from VAT of:

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‘The supply by an eligible body to an individual, except, where the body operates a membership scheme, an individual who is not a member, of services closely linked with and essential to sport or physical education in which the individual is taking part.’

### **The dispute in the main proceedings and the questions referred for a preliminary ruling**

- 6 The Hockey Clubs are members-only sports clubs which field a number of hockey teams. Their members pay an annual subscription in consideration for their membership rights. They are unincorporated associations without legal personality.
  
- 7 The Hockey Clubs are themselves members of England Hockey, a non-profit-making organisation for the encouragement and development of the playing of hockey in England. They pay it affiliation fees on which England Hockey charges VAT.
  
- 8 In consideration for the affiliation fees which it receives, England Hockey supplies to its members certain services, including a club accreditation scheme, courses for coaches, umpires, teachers and young persons, a network of hockey development offices, facilities for accessing government and lottery funding, advice on marketing and obtaining sponsorship, club management services and insurance, and competitions for teams.

- 9 The Commissioners notified England Hockey that the affiliation fees it received in consideration for the services it supplied to hockey clubs affiliated to it should be subject to VAT at the standard rate. As the clubs were not persons taking part in sport, those supplies of services did not fall within the exemption.
- 10 The Hockey Clubs appealed against that decision to the VAT and Duties Tribunal, claiming that the services supplied by England Hockey were exempt from VAT under Article 13A(1)(m) of the Sixth Directive.
- 11 On that appeal, the VAT and Duties Tribunal held that the services provided by England Hockey could be treated as supplies made to the individual player members of the Hockey Clubs by virtue of the latter's status as unincorporated associations without legal personality. The Hockey Clubs should therefore be treated as 'transparent' and their individual members looked at through them for the purpose of ascertaining whether England Hockey supplied services closely linked to sport to 'persons taking part in sport', such services being, in that event, exempt from VAT.
- 12 The Commissioners appealed against that decision to the High Court of Justice of England and Wales, Chancery Division, submitting that the Hockey Clubs could not be treated as 'transparent' for VAT purposes. The Hockey Clubs, for their part, lodged a cross-appeal, contending that the VAT and Duties Tribunal's decision should be upheld on different grounds, namely that the requirement, in Item 3 of Group 10 in Schedule 9 to the Value Added Tax Act 1994, that the supply be made to an 'individual' did not properly implement the provisions of Article 13A(1)(m) of the Sixth Directive.

13 According to the referring court, the services supplied by England Hockey do not directly provide the Hockey Clubs' members with the means of playing hockey. It noted that it was not in issue between the parties to the main proceedings that the services supplied by England Hockey are closely linked to sport.

14 The referring court took the view that it was not legitimate to treat the Hockey Clubs as 'transparent' for VAT purposes and allowed the Commissioners' appeal. Finding that the outcome of the Hockey Clubs' cross-appeal depended on the interpretation of Community law, that court decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) For the purposes of the exemption contained in Article 13A(1)(m) of the Sixth Directive, does the term "persons" in the context of "persons taking part in sport" include corporate persons and unincorporated associations, or is it limited to individuals, in the sense of natural persons or human beings?

(2) If the term "persons" in the context of "persons taking part in sport" does include corporate persons and unincorporated associations, as well as individuals, does the expression "certain services closely linked to sport" permit a Member State to limit the exemption only to individuals taking part in sport?'



## The questions referred

### *The first question*

- 15 The Sixth Directive confers a very wide scope on VAT comprising all economic activities of producers, traders and persons supplying services (see, among others, Case 348/87 *Stichting Uitvoering Financiële Acties* [1989] ECR 1737, paragraph 10). However, Article 13 of the Sixth Directive exempts certain activities from VAT.
- 16 The exemptions provided for in that article constitute, according to the case-law of the Court, independent concepts of Community law whose purpose is to avoid divergences in the application of the VAT system from one Member State to another (see, particularly, Case C-284/03 *Temco Europe* [2004] ECR I-11237, paragraph 16; Case C-498/03 *Kingscrest Associates and Montecello* [2005] ECR I-4427, paragraph 22; and Case C-434/05 *Horizon College* [2007] ECR I-4793, paragraph 15).
- 17 The terms used to specify the exemptions under Article 13 of the Sixth Directive are to be interpreted strictly, since they constitute exceptions to the general principle that VAT is to be levied on all supplies of services for consideration. However, that requirement of strict interpretation does not mean that the terms used to specify those exemptions should be construed in such a way as to deprive them of their intended effect (*Temco Europe*, paragraph 17, and *Horizon College*, paragraph 16). They must be interpreted in the light of the context in which they are used and the

scheme of the Sixth Directive, having particular regard to the underlying purpose of the exemption in question (see, to that effect, *Temco Europe*, paragraph 18, and Case C-428/02 *Fonden Marselisborg Lystbådehavn* [2005] ECR I-1527, paragraph 28).

18 Article 13A of the Sixth Directive relates to the exemption from VAT of certain activities in the public interest. That exemption does not cover every activity performed in the public interest, but only those which are listed in that provision and described in great detail (Case C-401/05 *VDP Dental Laboratory* [2006] ECR I-12121, paragraph 24, and *Horizon College*, paragraph 14).

19 As regards sport and physical education, as activities in the public interest, the exemption under Article 13A(1)(m) of the Sixth Directive is intended to encourage those types of activities but is not a general exemption of all supplies of services linked to them (see Case C-246/04 *Turn- und Sportunion Waldburg* [2006] ECR I-589, paragraph 39).

20 The benefit of the exemption under Article 13A(1)(m) of the Sixth Directive is subject to certain conditions, which arise from that same provision.

21 First, the services closely linked to sport or physical education must be supplied by an organisation covered by Article 13A(1)(m) of the Sixth Directive. Thus, for the services in question to be eligible for exemption under that provision, it is essential that those services be supplied by a non-profit-making organisation. As is clear from the order for reference, that requirement may be treated as satisfied in the main proceedings.

22 Second, the services supplied by such organisations are eligible for exemption, as transactions in the public interest, provided that they are closely linked to sport or physical education and are supplied to persons taking part in sport or physical education. Moreover, it follows from the first indent of Article 13A(2)(b) of the Sixth Directive that supplies of services covered by Article 13A(1)(m) may be exempted only if they are essential to the transaction exempted, namely sport or physical recreation.

23 Thus the exemption of a transaction is to be determined, particularly, on the basis of the nature of the service supplied and its relationship with sport or physical education.

24 In that context, it must be examined whether the argument, advanced by the United Kingdom and Greek Governments and based on the wording of Article 13A(1)(m) of the Sixth Directive, that natural persons alone are capable of participating in sport, and that, consequently, only services supplied directly to such persons may be exempted, affects the reply to be given to the first question referred for a preliminary ruling.

25 The Commission of the European Communities submits, in that regard, that the provision is to be interpreted not literally, but so as to ensure the effective application of the exemption for which it provides, on the basis of the supply of services in question and that, therefore, regard must be had not only to the formal, legal recipient of that supply, but also to its material recipient or effective beneficiary.

- 26 In that regard, whilst it is true that the term 'persons' is, on its own, wide enough to include not only natural persons, but also unincorporated associations and corporate persons, in normal linguistic usage only natural persons take part in sport even if this is done in groups of persons.
- 27 However, Article 13A(1)(m) of the Sixth Directive is not intended to confer the benefit of the exemption under that provision only on certain types of sport but covers sport in general, which also includes sports necessarily practised by individuals in groups of persons or practised within organisational and administrative structures put in place by unincorporated associations or corporate persons, such as sports clubs, provided that the requirements set forth in paragraphs 21 and 22 of the present judgment are fulfilled.
- 28 Sport within such a structure generally entails that, for practical, organisational or administrative reasons, the individual does not himself organise the services which are essential to participation in the sport, but that the sports club to which he belongs organises and puts those services in place, as, for example, the provision of a pitch or referee necessary for participation in every team sport. In such situations, it is, first, between the sports club and the service supplier and, second, between the sports club and its members that the services are supplied and the legal relationships formed.
- 29 Thus, if the words 'services ... supplied ... to persons taking part in sport' in Article 13A(1)(m) of the Sixth Directive were interpreted as meaning that they require that the services in question be directly supplied to natural persons taking part in sport within an organisational structure put in place by a sports club, the exemption provided for by that provision would depend on the existence of a legal relationship between the service supplier and the persons taking part in sport within such a structure. Such an interpretation would mean that a large number of supplies

of services essential to sport would be automatically and inevitably excluded from the benefit of that exemption, irrespective of the question whether those services were directly linked to persons taking part in sport and who was the true beneficiary of those services. Such a result would, as the Commission correctly maintains, run counter to the purpose of the exemption provided for by that provision which is to extend the benefit of that exemption to services supplied to individuals taking part in sport.

30 It follows, besides, from that interpretation that the exemption for transactions effected by undertakings or organisations mentioned in Article 13A(1)(m) of the Sixth Directive would not benefit certain persons who participate in sport solely because they participate in it within a structure managed by a club. That interpretation would not be consistent with the principle of fiscal neutrality, inherent in the common system of VAT, in compliance with which the exemptions provided for in Article 13 of the Sixth Directive must be applied (see, to that effect, *Case C-283/95 Fischer* [1998] ECR I-3369, paragraph 27). In fact, that principle precludes, in particular, economic operators who effect the same transactions being treated differently in respect of the levying of VAT (see, to that effect, *Case C-216/97 Gregg* [1999] ECR I-4947, paragraph 20). It follows that that principle would be disregarded if the possibility of invoking the benefit of the exemption under Article 13A(1)(m) of the Sixth Directive depended on the organisational structure particular to the sporting activity practised.

31 In order to ensure the effective application of the exemption under Article 13A(1)(m) of the Sixth Directive, that provision must be interpreted as meaning that services supplied in connection with, among others, sports practised in groups of persons or within organisational structures put in place by sports clubs are, generally, eligible to benefit from the exemption under that provision. It follows that, to determine whether supplies of services are exempt, the identity of the material recipients of those services and the legal form under which they benefit from them are irrelevant.

32 However, to be eligible for that exemption, the services must, in accordance with Article 13A(1)(m) and the first indent of Article 13A(2)(b) of the Sixth Directive, be supplied by a non-profit-making organisation and they must be closely linked and essential to sport, since the true beneficiaries of those services are the persons taking part in sport. By contrast, supplies of services which do not meet those criteria, particularly those linked to sports clubs and to their operation such as, for example, advice about marketing and obtaining sponsors, cannot benefit from that exemption.

33 Finally, it is important to point out that, under the second indent of Article 13A(2)(b) of the Sixth Directive, services are not to be granted exemption under Article 13A(1)(m) if their basic purpose is to obtain additional income for the organisation by carrying out transactions which are in direct competition with those of commercial enterprises liable for VAT.

34 In the main proceedings, it is for the national court to determine, having regard to all the circumstances in which the transaction in question takes place in order to identify its characteristic features (see Case C-231/94 *Faaborg-Gelting Linien* [1996] ECR I-2395, paragraph 12, and Case C-150/99 *Stockholm Lindöpark* [1991] ECR I-493, paragraph 26), whether the services supplied by England Hockey to the Hockey Clubs are closely linked and essential to sport, whether the true beneficiaries of those services are persons taking part in sport, and whether or not those services are intended, basically, to obtain additional income for England Hockey by carrying out transactions which are in direct competition with those of commercial enterprises liable for VAT.

35 Therefore, the reply to the first question referred must be that Article 13A(1)(m) of the Sixth Directive is to be interpreted as meaning that, in the context of persons taking part in sport, it includes services supplied to corporate persons and to

unincorporated associations, provided that — which it is for the national court to establish — those services are closely linked and essential to sport, that they are supplied by non-profit-making organisations and that their true beneficiaries are persons taking part in sport.

*The second question*

<sup>36</sup> By its second question, the national court is asking whether the Member States may limit the scheme of the exemption under Article 13A(1)(m) of the Sixth Directive to services supplied only to individuals taking part in sport.

<sup>37</sup> The United Kingdom Government submits that the Member States are free to limit the scope of the exemption to supplies of services which are provided to individuals, since Article 13A(1)(m) of the Sixth Directive requires the exemption only of ‘*certain* services closely linked to sport’.

<sup>38</sup> In that regard, the different categories of activities which are to be exempted from VAT, those which may be exempted by the Member States and those which may not, as well as the conditions to which the activities eligible for exemption may be made subject by the Member States, are specifically defined by the content of Article 13A of the Sixth Directive (Case C-144/00 *Hoffmann* [2003] ECR I-2921, paragraph 38).

39 The possible restrictions on the benefit of the exemptions provided for by Article 13A of the Sixth Directive may be imposed only in the context of the application of paragraph 2 of that provision (see *Hoffmann*, paragraph 39). Thus, when a Member State accords an exemption for certain services closely linked to sport or physical education supplied by non-profit-making organisations, it may not make that exemption subject to conditions other than those laid down in Article 13A(2) of the Sixth Directive (see Case C-124/96 *Commission v Spain* [1998] ECR I-2501, paragraph 18). Since that provision does not lay down restrictions as regards recipients of the services in question, the Member States have no power to exclude a certain group of recipients of those services from the benefit of the exemption in question.

40 Therefore, the reply to the second question referred must be that the expression ‘certain services closely linked to sport’, in Article 13A(1)(m) of the Sixth Directive, does not allow the Member States to limit the exemption under that provision by reference to the recipients of the services in question.

## Costs

41 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.



On those grounds, the Court (Fourth Chamber) hereby rules:

1. **Article 13A(1)(m) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment is to be interpreted as meaning that, in the context of persons taking part in sport, it includes services supplied to corporate persons and to unincorporated associations, provided that — which it is for the national court to establish — those services are closely linked and essential to sport, that they are supplied by non-profit-making organisations and that their true beneficiaries are persons taking part in sport.**
  
2. **The expression ‘certain services closely linked to sport’, in Article 13A(1)(m) of Sixth Directive 77/388, does not allow the Member States to limit the exemption under that provision by reference to the recipients of the services in question.**

[Signatures]