

# VAT and Golf

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# Introduction

- The local VAT acts in the EU are based on the EU VAT directive.
- This means that the EU VAT directive has to be implemented in the national VAT act.
- Please notice that exceptions are possible due to specific regulations in the EU directive (exercise option).
- Exemption for VAT in principle means that it is not allowed to charge VAT and that deduction is not possible.
- Taxed with VAT means that is obliged to charge VAT (and of course pay to the Tax Authorities).
- In case of an exemption for VAT this will mean that no deduction of VAT is possible.

## Exemptions EU directive

Member States shall exempt the following transactions:

- 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;
- The supply of services and goods, by organisations whose activities are exempt pursuant to sport, in connection with fund-raising events organised exclusively for their own benefit, provided that exemption is not likely to cause distortion of competition;

# Exemptions EU directive

Member States may make the granting to bodies other than those governed by public law of each exemption provided for sports subject in each individual case to one or more of the following conditions:

(a) the bodies in question must not systematically aim to make a profit;

(b) those bodies must be managed and administered on an essentially voluntary basis by persons who have no direct or indirect interest;

(c) those bodies must charge prices which are approved by the public authorities or which do not exceed such approved prices or, in respect of those services not subject to approval, prices lower than those charged for similar services by commercial enterprises subject to VAT;

(d) the exemptions must not be likely to cause distortion of competition to the disadvantage of commercial enterprises subject to VAT.

## Exemptions in the EU directive

- Do you meet all the requirements of the EU directive/National legislation?
- Congratulations no VAT is due and no VAT is deductible for your incoming (external) expenses which are taxed with (local) VAT.
- Is this in favour for your organisation?
- Please determine how much VAT is paid on incoming costs (investments included) and set this out to the next slide.

## Taxed with VAT

- In case the requirements of the exemption are not met, VAT is due.
- Important question is what VAT rate is applicable (Dutch VAT act 6%/19%).
- Deduction of VAT is possible which can be attributed to VAT taxed activities.
- The taxed activities are normally seen as commercial organisations for the practice of sport.
- Is this in favour for your organisation?
- Compare the deduction of VAT on costs with the VAT which has to be charged to the customers.

## Deduction of VAT (exempt from VAT)

- Example based on the Dutch VAT act:

Incoming costs  $100 + 19 \text{ VAT} = 119$

No deduction of VAT in this case = 19

At the end of the day total costs of 119.

Turnover exempt from VAT

The total turnover is 119 (exempt)

## Deduction of VAT (taxed with VAT)

- Example based on the Dutch VAT act:

Incoming costs  $100 + 19 \text{ VAT} = 119$

Deduction of VAT in this case = 19

At the end of the day total costs of 100.

Turnover taxed with 6% VAT

The total turnover is 110 inclusive 6% VAT

6% VAT has to be paid to the TA  $(6/106 * 110) = 6,22$

VAT return: 19 deductible -/- 6,22 VAT to be paid = 12,78 (refund)

## EU case law regarding Golf

- Stockholm Lindopark

Implementation of a general VAT exemption from VAT for the supply of premises and other facilities or other arrangements for the purpose of sport or physical education constitutes a serious breach of Community law.

The activities are taxed with VAT.

- Kennemer Golf & Country Club

Categorisation of an organisation as non profit making must be based on all the organisation activities/can be categorised as non profit making even if it systematically seeks to achieve surpluses which it then uses for the purposes of the provision of its services.

## National cases of the Dutch High Court

- Cases regarding the applicable VAT rate. According to the Dutch VAT act for running a golf course on a commercial basis this is taxed with VAT.
- Kennemer Golf & Country Club.
- No specific court cases regarding abuse of VAT law regarding structuring models for VAT.

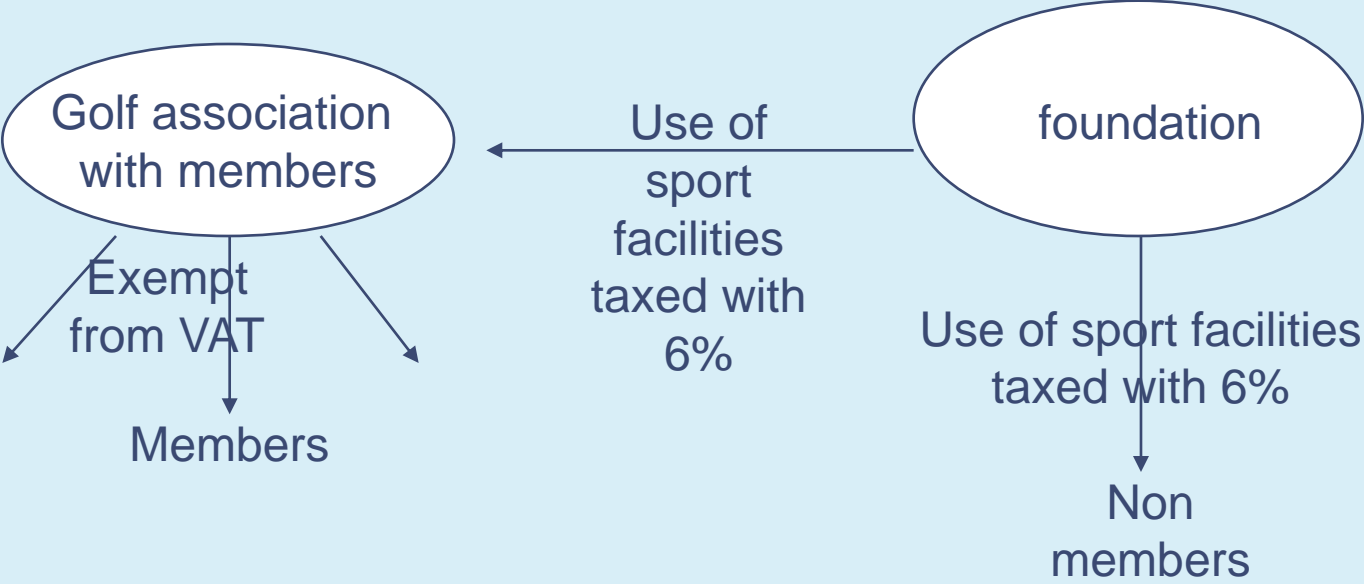
## VAT rates

- Member States may also apply either one or two reduced rates. These rates shall be fixed as a percentage of the taxable amount which may not be less than 5% and shall apply only to supplies of the categories of goods and services specified in the EU VAT directive.
- According to the Dutch VAT act the use of sporting facilities is taxed with 6%. This is based on the EU directive.
- In case a EU country did not implement the possibility for a reduced rate, than the standard rate is applicable.

## Dutch VAT saving model

- The application of an exemption for VAT leads to a burden of non deductible VAT.
- The application of the use of sport facilities (on a commercial basis) leads to payment of VAT for those services and leads to deductible VAT.
- It can be difficult to transform a foundation into a commercial organisation.
- Idea: Try to make a combination between VAT exempt and VAT taxed activities.

# Dutch VAT saving model



## Abuse of VAT law

- The model as described is under normal circumstances accepted by the Tax Authorities (TA).
- An agreement is necessary for the use of the sports facilities (between the foundation and Golf Association).
- In case the model contains aggressive VAT saving opportunities (tax evasion or avoidance) than the TA might not accept the model.
- In that case it is possible for the TA to challenge the VAT model in a court case (based on the EU directive/EU case law).

## The role of your government to stimulate golf

- Acceptance of a reduced VAT rate for the use of sport facilities and additional services.
- Implementation of a VAT model without a burden of RETT or other taxes and accept 'straight forward' VAT models in a ruling.
- Correct implementation of the EU VAT directive (exemptions).
- The Dutch Ministry of Finance has issued a decree how to deal with this issue.

## The role of the European Commission and Court of Justice

- In case of incorrect implementation of the EU VAT directive (exemptions) in your national legislation, contact the EC. The EC can start up impeachment.
- In case of incorrect implementation of the EU VAT directive (exemptions) in your national legislation, it is possible to start a court case in you own member state and ask the national court to ask questions to the Court of Jusitice for a preliminary ruling.

## Specific issues

- Please be aware of activities by the foundation which can be taxed with VAT.
- Don't forget the refreshment bar in a clubhouse. Determine whether this is taxed with VAT (in The Netherlands under certain conditions an exemption is applicable/taxed with 6%/19%).
- The supplies in the Golf Shop are taxed with VAT.
- Additional charges by the foundation (advertisement, golf balls, equipment, etc) can also be taxed with VAT.

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