

Guidelines for caseworkers dealing with repayment claims received from member-owned clubs

Document last reviewed September 2024

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Introduction

This guidance sets out the procedures to be followed by caseworkers in processing VAT repayment claims received from member-owned clubs in respect of VAT overpaid on visitor fee income.

The decision by the Court of Justice of the European Union (CJEU) in *Bridport & West Dorset Golf Club Ltd* (Case C-495/12) has led to Revenue receiving a number of VAT repayment claims in respect of VAT paid by member-owned clubs on visitor fee income. Such income includes green fees, competition fees, and other pay as you play income.

The CJEU found that where a supply is made by a member-owned golf club it is immaterial whether it is provided to a member or a visitor, and accordingly held that green fees received from non-members could benefit from the exemption under Article 132(1)(m) of Council Directive 112/2006/EC ('The VAT Directive'). The decision in *Bridport* gives rise to an entitlement to repayment of VAT to member-owned clubs where they had accounted for VAT on their visitor fee income. Green fees charged by member owned clubs to visitors had been liable to VAT at the [second reduced rate](#).

It is important to note that the Judgment applies to member-owned clubs **only** and does not apply to commercial or state/public body clubs.

1. Prospective application of the CJEU decision

In order to ensure that Irish VAT legislation complies with the Judgment, the VAT Consolidation Act 2010, as amended ("VAT Act") has been amended to statutorily exempt visitor fee income of member-owned clubs with effect from 1 March 2015. However, member-owned clubs may exempt visitor fee income on an administrative basis with effect from 1 January 2014. Member-owned clubs whose non-member green fees are exempt will no longer have an entitlement to a credit for VAT incurred on their inputs in relation to such fees and input credits should be adjusted accordingly.

2. Retrospective application of the CJEU decision

The decision of the CJEU, which has direct effect, may be relied on by non-profit making organisations for past VAT periods, subject to the 4-year time limit for making claims.

Unjust Enrichment

Member-owned golf clubs charged VAT on visitor fees due to a mistaken assumption in the operation of the tax as set out in the Bridport Judgment. In making refunds in such circumstances, Revenue is required to consider whether the refund would unjustly enrich the club. Section 100 of the VAT Act specifies that in such circumstances Revenue shall have regard to:

- (i) the extent to which the cost of the overpaid amount was, for practical purposes, passed on by the claimant to other persons in the price charged and
- (ii) any net loss of profits which Revenue has reason to believe based on its own analysis and on any information that may be provided to them by the claimant, was borne by the claimant.

3. VAT Repayment Claims

The following information provides guidance to caseworkers on how to deal with VAT repayment claims received from non-member clubs.

3.1 Validity of Claim

Firstly, it should be established that the claim is valid and the calculation of the claim is correct. The caseworker is required to ensure that:

- a) The claim is a valid claim in accordance with Section 99 of the VAT Act and Paragraph 36 of the VAT Regulations 2010 (SI 639/2010). The claim contains the following for each VAT period:
 - the grounds on which the refund is claimed
 - a computation of the amount of the refund claimed.
- b) The claim for refund has been received within the statutory time limits i.e. within 4 years after the end of the taxable period to which it relates
- c) The club has made adjustments for any previously claimed inputs that related to taxable golf income including capital expenditure that may require adjustment under the Capital Goods Scheme
- d) The repayment claim does not include any amounts that have been included on VAT invoices issued by the club (typically to VAT-registered customers such as tour operators, hotels etc). These VAT invoices will have formed the basis for VAT input credit entitlement by the customers.

3.2 Club undertakes to repay VAT borne by the private consumer (i.e. golfer).

Having established the claim is valid, where a club is in a position to issue a refund of the VAT borne by the private consumer, the claim to repayment should be accompanied by an undertaking that the specified amount of the refund will be repaid to those who bore the VAT burden. Given the difficulties that clubs have in identifying unregistered consumers, it is not envisaged that many claims of this nature will be received.

In instances where such an undertaking is received the caseworker is required to:

1. Verify that the club is in a position to identify the consumers who actually bore the VAT cost.
2. Ensure the undertaking sets out that the club will repay the VAT in a timely manner.
3. Establish that the claim has been adjusted for any previously claimed inputs.

Where each of these conditions are met, the claim may be repaid. Interest is repayable by Revenue in relation to the amount repaid in accordance with Section 105 of the VAT Act.

3.3 Treatment of repayment claims where the club is not in a position to identify private consumers.

Where a club is not in a position to identify the unregistered persons and has evidence that the full VAT burden was not borne by the consumer, Revenue proposes to examine each claim on a case by case basis to determine the appropriate level of refund, if any. When dealing with claims, regard will be had to the balance to be achieved between the compliance burden on clubs in dealing with a Revenue audit and the resource cost to Revenue in auditing each case.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

In all cases, the club is required to support its repayment claim by submitting the information listed below to their local Revenue office. This information should be readily available to the clubs' Finance Committee:

- the annual accounts for each year of claim
- the annual subscription rate and joining fee, if applicable, for each year
- the total number of members together with details of whether membership is open or closed
- the visitor fee(s) charged for each year by category, for example, individual visitors, groups (societies, classics), competitions etc.
- comprehensive information of the clubs' pricing structure should be provided, including a breakdown by category of prices charged at high season, weekends, midweek etc.
- total visitor fee income by category for each year
- the method(s) of apportionment used in each year and confirmation that the method was reviewed at year-end as required by the VAT Act.

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The caseworker is required to examine the information items submitted by the club to determine if the club would be unjustly enriched if the VAT was repaid to the member-owned club.

A key consideration in identifying and quantifying unjust enrichment is the degree to which the VAT was borne by the member-owned club as opposed to the consumer, i.e. the golfer. If the burden has effectively been borne by the club there is a strong argument that a refund of the tax will not unjustly enrich the club. However, if the golfer has borne the cost, Revenue must consider the degree to which the club may be unjustly enriched by the repayment and reduce the refund amount accordingly.

Steps to be followed to establish the proportion, if any, of unjust enrichment:

The caseworker cannot assume that because VAT was charged it was passed on in full to the golfer even though VAT is a fiduciary tax. The main considerations a caseworker will have regard to when verifying the extent to which clubs passed through the VAT to the golfer are the changes in visitor fee income when prices changed (price elasticity), and the level of competitive pressure encountered by the club relative to other golf clubs in attracting visitor golfers.

In examining the information received from clubs, caseworkers should consider the factors listed below which acts as a "checklist":

- the structure and level of visitor fees and the manner in which fees were adjusted over time; variations in visitor fees payable by individuals, groups (societies, classics), VAT registered customers (tour operators, hotels) and the rationale for differences, if any, between such fees
- the level of green fee income relative to member subscription income
- the level of annual subscription rate, and joining fee, if applicable
- increase or decreases in the number of members or visitors
- demand responses to past pricing adjustments
- price adjustments to reflect changes in VAT rates
- the level of local competition
- the extent to which member owned clubs adjusted prices to reflect changes in both operational and fixed costs
- the characteristics of the club (i.e. type of course and facilities, whether membership is open or closed, if there is a waiting list to join etc).

The consideration of these factors will allow the caseworker to determine the club's visitor fee pricing structure and the extent to which prices were influenced by the level of competition facing the club. It will assist in establishing whether the club passed on the VAT in the total price charged to the golfer, or whether the club absorbed the VAT cost and if a refund is likely to unjustly enrich the club.

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Once the caseworker has established the degree of unjust enrichment, if any, the repayment claim should be restricted accordingly and the club should be advised that Revenue is invoking the unjust enrichment defence under Section 100 of the VAT Act in respect of the remainder of the claim. The club has the right to appeal Revenue's decision to refuse to pay in whole or in part the refund claimed by the club.

Interest is payable on the amounts repaid in accordance with Section 105 of the VAT Act.

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[...]