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Clerk to the Upper Tribunal
Upper Tribunal (Tax and Chancery Chamber)
45 Bedford Square
London
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Your ref **FTC/74/2011**
Our ref **Vc/Bridport**
Contact **Victor Cramer**
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14 March 2013

Dear Sirs

The Bridport & West Dorset Golf Club Ltd v HMRC
FTC/74/2011

We refer to your letter of 28 February 2013, enclosing copies of an application made by The Association of Golf Club Owners (“AGCO”) and Cambridge Meridian Golf Club (“CMGC”) and asking for our response within 14 days.

We object to the application.

The Upper Tribunal’s jurisdiction

It is our view that neither the Upper Tribunal nor the CJEU has jurisdiction to permit AGCO to intervene in the CJEU proceedings; however, the Upper Tribunal would have the discretion to permit the AGCO and CMGC to make submissions to the Upper Tribunal (Rule 5(3)(d)) or to be joined as a party (Rule 9(1)) to the present litigation before it which, of course, is currently the subject of the reference to the CJEU . If the Upper Tribunal were to exercise its discretion under Rule 9(1) then although the procedure for written submissions is closed, the applicant would still be able to make submissions at any oral hearing.

Once the Tribunal has carefully considered the basis, purpose and timing of the application we believe it will be clear that the application must be dismissed.

The basis of the application

CMGC’s interest in the case is because its position as a commercial club will be affected by any finding which maintains or extends the difference in tax treatment between a commercial and a not-for-profit golf club. This is an indirect financial interest. Allowing an indirect financial interest of this nature to form the basis for joining a party to an appeal would open floodgates which the Upper Tribunal should not open. It would potentially allow commercial entities to intervene in their competitors businesses and tax affairs.

AGCO “...seeks to intervene in the public interest on behalf of the UK taxpayer to substantiate the sums of VAT at stake in the current proceedings.” The sums of VAT at stake are irrelevant to the correct answer at law. Furthermore, there is no need to intervene on behalf of the UK taxpayer, whose position is adequately represented by the Treasury and HMRC.

The purpose of the application

The issues which the applicant suggests it will raise are primarily issues of evidence. The applicant says that “...the European Court can only make a decision based on the distortion by having before it detailed evidence and Observations as to the impact of the current distortion.” In an appeal on a point of law from the First Tier Tribunal, the Upper Tribunal does not have jurisdiction to hear new evidence. In a reference to the Court of Justice for a preliminary ruling, the Court of Justice does not have jurisdiction to hear evidence. Although the Upper Tribunal may have discretion to join the applicant as a party, it does not have discretion to allow the applicant to make any of the submissions for which it wishes to join the case. Allowing the application would therefore serve no purpose.

The timing of the application

The procedure for written submissions to the ECJ has closed. Article 97(2) of the Rules of Procedure of the Court of Justice states that where a party is joined to a case, it must take that case as it finds it at the time when the Court is informed. Neither the Upper Tribunal nor the Court of Justice has the power to re-open the written procedure, so by having waited until this time to make the application, the effect of the application, if successful, will be that both Bridport and HMRC will have to deal with new arguments which they will not hear in full until inside the chamber of the Court of Justice, and to which they will have at most 20 minutes to respond. It cannot be within the over-riding objectives of the Upper Tribunal for its discretion to be exercised to such a result.

Finally, the applicant could have made its application at an earlier date. Miss Saunders, of AGCO, gave evidence in the case of *Chipping Sodbury & Others* [2012] UKFTT 557 (TC) (*‘Chipping Sodbury’*), heard in May 2012. A copy of the *Chipping Sodbury* decision is enclosed with this letter. Chipping Sodbury is itself a not-for-profit members’ club which has made a claim in respect of the VAT liability of the green fees charged to non-members. That aspect of the *Chipping Sodbury* case is stayed pending the ultimate outcome of the Bridport case. Other appellants in that case were arguing, based on distortion of competition, that members’ subscriptions of proprietary clubs ought to be exempt. The appellants in the *Chipping Sodbury* case have chosen not to appeal that aspect of that case to the Upper Tribunal.

It is also clear from paragraph 31 of the *Chipping Sodbury* decision that the applicant must have known about the *Bridport* case for some time.

Given that all procedures for the written submissions are now closed, this late application which would effectively allow the applicant to ambush the parties on the steps of the chamber of the Court of Justice with new arguments and as yet unseen evidence should not be allowed.

Third parties have no independent right to join, or be joined into Tribunal proceedings, and any such application is a matter of discretion for the Tribunal. It is undesirable for obvious reasons



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to allow third parties to join cases against the wishes of the taxpayer when the third party has no more than an indirect interest in the outcome of the case.

Yours faithfully

A handwritten signature in black ink, appearing to read 'VM Cramer', with a stylized flourish at the end.

Victor Cramer
Tax Legal Services