



**UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER**

Appellants: Her Majesty's Revenue and Customs	Tribunal Ref: FTC/74/2011
Respondent: Bridport & West Dorset Golf Club Limited	

**DECISION NOTICE ON
THE APPLICATION OF THE ASSOCIATION OF GOLF CLUB OWNERS
TO BE JOINED AS A PARTY**

TRIBUNAL: The Hon Mrs Justice Proudman DBE

Background

1. This is an application by The Association of Golf Club Owners and Cambridge Meridian Golf Club ("AGCO") to participate in the above case. The circumstances are that questions in the case have been referred to the European Court of Justice ("ECJ") for decision and AGCO wishes to make oral submissions on that reference. The kind of submissions that they wish to make appear in their letter to the Upper Tribunal dated 29 May 2013. It seems that Cambridge Meridian Golf Club (which originally asked with AGCO to intervene in the proceedings: see below) has now decided that it does not wish to apply to be a party.
2. The original application by AGCO by letter dated 22 February 2013 was for permission to intervene in the proceedings and, further, to intervene without risk as to costs. I sent a memorandum dated 27 February 2013 to the effect that I wished to be addressed on my jurisdiction as the Tribunal (Upper Tribunal) Rules 2008 ("the Rules") appeared to make no provision for interveners. I also asked for submissions from the parties.

3. AGCO sought the advice of counsel and wrote its letter of 29 May 2013, in which it accepts that I do not have jurisdiction to permit it to intervene but instead seeks joinder as a party pursuant to rule 9 of the Rules. Again, AGCO asks for an advance ruling that it should not be subject to a costs order. Those are the matters with which I am now dealing.
4. Again I have sought submissions from the parties. HMRC adopt a neutral position on joinder. As to costs, they do not accept that it would be appropriate to grant AGCO any costs immunity. Bridport and West Dorset Golf Club ("Bridport") oppose both parts of the application.

Jurisdiction

5. I accept that I have jurisdiction to join AGCO to the proceedings as a party under rule 9 (3) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) on the basis of the arguments set out on pages 1 and 2 of the letter from AGCO of 29 May 2013. I also accept that if I exercise the discretion so given that (subject to any contrary ruling by the ECJ) this would enable AGCO to make submissions to the ECJ pursuant to Articles 96 and 97 of the ECJ Rules of procedure.

Joinder

6. HMRC have said in their letter of response that the interests of AGCO and HMRC largely coincide and this does indeed appear to be the case. I note that AGCO's letter (undated) to the General Registrar at the ECJ states "We are supporting Her Majesty's Revenue and Customs in this issue". AGCO seeks joinder "in the public interest". It originally sought to intervene "to substantiate the sums at stake in the current proceedings": see the paragraph numbered 8 of its letter of 22 February 2013. AGCO now says as follows:

"The reason why the Association is anxious to be added as a party is that it considers that it is significant that a large number of golf courses make individual associate members on payment of a nominal fee, green fees being paid every time the individual plays. The 'membership' is therefore a device that is being used to secure exemption. We would suggest that in such a case it is also appropriate that the fees being paid should also be regarded as 'additional income' for the purposes of article 134 of the Directive because the fees are being sought with a view to reducing the charges made to full members."

7. AGCO has not adequately articulated in what manner it says that its participation would add anything of substance to HMRC's case, particularly as HMRC has now received and is aware of AGCO's submissions and the case law relied on.

8. The procedure for written submissions to the ECJ has now closed (see Article 97 (2) of the Rule of Procedure for the ECJ) and there is I understand no power to reopen the written procedure. It is common ground that if joined AGCO can only make short oral submissions to the ECJ. Bridport is concerned that to permit AGCO to be joined at this late stage would be prejudicial to Bridport in that it would have to deal with any new arguments on the hoof orally in the 20 minutes allowed for response.
9. It is not understood why the application is made at this late stage (despite what is said in the letter to the Upper Tribunal dated 22 February 2013 in the paragraph numbered 4) because the appeal, including the reference to the ECJ, was mentioned in the decision released on 30 August 2012 of the First-tier Tribunal in **Chipping Sodbury & Others v. HMRC** [2012] UKFTT 557 (see especially [31]) a case in which Miss Saunders, who has written the submissions on behalf of AGCO, gave evidence and in which AGCO maintains a close interest.
10. I consider that it would be undesirable to allow joinder in a case such as the present where AGCO has only an indirect interest in the outcome of the case and where the public interest which it seeks to invoke is adequately protected by HMRC. In all the circumstances I refuse permission for joinder in the exercise of my discretion.

Costs

11. I have been referred by AGCO to the decision in **Barclays Bank v. Customs & Excise Commissioners** (1992) VAT decision 9059, decided on the basis of the VAT Tribunals Rules 1986, see especially rule 19(3). I have not been addressed on whether or not I have jurisdiction to make an advance ruling on costs in the present case.
12. However, on the assumption that I do have jurisdiction, and it is a matter of discretion only, I am not prepared in my discretion to exercise such jurisdiction.
13. AGCO's financial difficulties are to my mind irrelevant as it is the party seeking joinder. That joinder would be against Bridport's wishes and it is not within the overriding objective specified in rule 2 of the Rules for AGCO to be in a better position than Bridport, although it is possible that, as HMRC observe, in practice AGCO's limited role in the proceedings is likely to be reflected in its liability for costs. Bridport also points out that additional costs are already being incurred in responding to the applications (including the application to intervene) that have been made to date.
14. **Barclays Bank** (VAT decision 9059) was a very different case in that the First-tier Tribunal had held that it was "both necessary and expedient" to have the third party Visa joined as a party to the appeal. I have carefully noted the four reasons expressed by the Tribunal for making an advance costs order and

I do not consider that any such justification (other than the last part of the third reason) applies in the present case. On the contrary, it is possible that AGCO as a new party would cause both Bridport and HMRC to incur costs which would be irrecoverable and were not within HMRC's contemplation when it decided to appeal.

15. I therefore refuse the application on this ground also.

Release Date: 22 July 2013