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Fighting for fair VAT and tax in golf for 22 years

All Members of Parliament - URGENT

The Adjournment debate: the Value of golf to the Economy: Karl McCartney: April 13th

On behalf of all proprietary golf clubs we ask that you attend the debate and put forward the following information on the collapse of the golf industry for proprietary golf clubs. An excellent summary of the issues is contained in Antony Seely's SN01052 from the Commons Library.

There are two kinds of golf clubs – those owned by its members and always treated as non-profit making (however commercially they act) and those owned by proprietors and considered as profit-making (however much they struggle financially).

It is simple; non-profit making members' clubs can take anything up to £1.5 million per annum in visitors' fees from the public. More often it is between £80,000 and £200,000. Why do it? That's simple. It's to make a profit and subsidise the members' fees. A recent VAT case with Berkshire Golf Club, TC04774, agreed. But these clubs are still [absurdly] considered 'non-profit making'. That means they don't charge VAT on membership fees and don't now charge VAT on those visitors' fees.

The £750 million golfing VAT heist

You may not be aware, but should be aware, that 457 member-owned golf clubs joined behind Bridport and West Dorset Golf Club and got a ruling from Europe that all these visitors' fees are VAT exempt. HMRC has disclosed that these 458 clubs are claiming back £115.4 million. Between about 1,500 of the United Kingdom's member-owned golf clubs they are claiming back some £350 million of VAT previously charged to visitors.

The Berkshire Club case won the point that these clubs need not repay the £350 million of VAT to their customers but can keep it for their members. Some of the clubs, including the Berkshire, are claiming well over £1 million. To make matters worse, KPMG, acting for many clubs and advising others are putting in claims for compound interest that could more than double this greedy claim to £750 million – yes enough to keep TATA steel going for two years.

The simple question is this. Are the Chancellor, HMRC and The Treasury now prepared to challenge the non-profit making status of these clubs to get their VAT exempt status removed? European case law allows this?

But that's not where the tax scandal of British golf ends. A club like the Berkshire is always routinely forgiven any corporation tax on its visitors' income. The Berkshire has taken some £16 million of visitors' fees since 1990. They always claim to make such a loss on visitors' fees that they haven't paid tax on these fees in any year since 1990. And the supposed loss on visitors' fees even offsets any rent and interest they receive. But in the VAT case they suddenly say that the profit margin on green fees is 96%, because that suits the VAT argument. This is typical of large clubs.

Swinley Forest Golf Club in Ascot took £609,000 in visitors' fees in 2014. Like the Berkshire, Swinley is a tenant of the Crown Estate Commissioners with its link to the Treasury. As usual their chairman, Sir Hugh Stevenson, former Deputy Chairman of the Financial Services Authority, signed off the Swinley accounts with not a penny of tax paid. And that's the norm. Members' clubs are simply forgiven their tax and accountants fail to disclose their activities. Our evidence is that member-owned golf clubs have taken some £3.5 billion of green fees in the last 20 years on which there has been systematic failure to pay corporation tax. We have asked Margaret Hodge and Andrew Tyrie to get it investigated by HMRC just fobs them off!

The court judgment in the Berkshire case made a finding of fact that across the 'industry' the profit margin for visitors' green fees at members' clubs is 90%. Proprietary clubs have been telling the tax authorities this for years and delving for information, always refused under the Freedom of Information Act. We can't get the answers. Parliament should.

Of the 457 members' clubs joined in the Bridport case what was the total green fee income earned in 2014 and how much corporation tax (other than on investments) did these clubs pay? We believe the answer will be over £75 million of visitors' fees and the tax all fiddled and/or forgiven.

And, like most of these members' clubs, Swinley Forest, has no liquor licence to allow them to serve alcohol to their visitors. But of course they do. In the main, they simply operate with a club certificate. That doesn't allow them to serve alcohol to the public, hold weddings and conferences, hire out rooms and trade commercially at an unfair advantage to premises with proper licences. But that is just what they do. There are clubs with judges as club captain or president doing it. It's rife.

It's simple. If you are a members' club and have a club certificate, behave yourselves and keep that VAT exemption. Shut your doors. If you need a full premises certificate to comply with the law then own up to being a business and charge VAT. So let's ask. Many MPs enjoy membership of Walton Heath Golf Club in Surrey. That club doesn't bother with a proper liquor license although it has a large trade for visitors. The Prime Minister is an honorary member of Ellesborough. That club also welcomes casual visitors without a licence.

Is the Home Office prepared to ensure that local authorities enforce club premises certificates across the world of golf? Will the Prime Minister ensure that Ellesborough complies? Will those MPs who belong to Walton Heath confirm that Walton Heath now complies?

Many member-owned golf clubs signed up to the Community Amateur Sports Club (CASC) scheme, instigated in 2002, which allows clubs that comply with certain conditions to obtain 80% relief on their business rates (non-domestic rates – NDR). The conditions for complying with CASC are that clubs should be open to the community but that food and drink must only be served as a social add-on to playing sport. The typical members' golf club claiming the 80% NDR relief has saved anything from £25,000 to £52,000 per annum, giving many a saving of £250,000 and some up to £400,000. In over 300 cases in England golf clubs have failed to comply with the CASC regulations, holding weddings and conferences, some with holiday accommodation and most just being open to the public for any bar and catering business possible. Some even have licences to hold civil ceremonies. Almost all these CASC registered golf clubs have seriously failed to comply with CASC. One only has to mention names of clubs such as Finchley, Potters Bar, Mill Hill, Saffron Walden, Huddersfield (Fixby Hall), Royal St David's, Nairn for anyone to realise the abuse of this system. HMRC has now realised the disgraceful subsidies wrongly obtained by these clubs and almost all are trying to relinquish their CASC status. HMRC previously stated that they would claw back the 80% NDR subsidies. In effect these clubs are in the same category as dole cheats. Other members' clubs took the view that applying for CASC status and the rate relief was cheating the system. CASC is not available to proprietary clubs. Business rates are huge drain on golf

courses because they are so dependent on areas of land and large buildings. Many golf clubs have a business rates bill equivalent to between 4% and very commonly 8% of total turnover.

Can the Chancellor confirm that where member-owned golf clubs have been found not to have complied with the requirements of CASC all the subsidies wrongly obtained will be clawed back, together with interest?

Will the Chancellor review the whole Non-Domestic Rate system to relieve industries like golf with large land and small turnovers, where rates can be as much as 8% of turnover?

Golf is a unique 'industry'. In any other aspect of British life a private members' club is what it says, i.e. private and for its members. If you are a non-member you have to be invited in and usually paid for by a bona fide member. Golf is different. Almost without exception the general public can pay their money and play at private members' clubs as visitors, with no link or invitation from any member. They are open for business and the business is often very substantial.

Growth in golf

So what is the problem? Golf was a game without opportunities for people who didn't belong to clubs. They invariably had to be proposed and seconded by other members and participation was limited and probably rather elitist. We can only trace 10 traditional new member-owned golf clubs being built since 1950, seven of them developed by Jewish golfers who were blackballed at other clubs. The last new traditional member-owned clubs were built in 1964. Any other 'members' golf clubs developed since then, of which there may be a handful, have been developed with an expensive debenture scheme, out of the financial each of the 'man on the Clapham omnibus'.

The calls for more golf courses

In 1973, Dr Roger Bannister, as chairman of the Sports Council, set out a strong picture for the need for 500 more golf courses in England and Wales by 1981. "Britain taught the world to play golf … we should not deny our own people the chance to play for themselves."

Dr Bannister recited that only 8% of golf courses were municipal and accessible to all. He urged the building of many new golf courses so that: "the scandalous early dawn queues at municipal courses would be cut". He called for the biggest golf expansion since the 1930's. But growth for the next 10 years was fairly limited.

In 1989 the well documented report produced by the Royal and Ancient Golf Club of St. Andrews (The R & A), entitled "The Demand for Golf", postulated that 700 more golf courses were needed in the UK to meet the demand for golf by the year 2000. The report was produced in conjunction with the Central Council for Physical Recreation (CCPR) and Sports Council.

Many golf enthusiasts responded to this call by the R and A, bought land and built new golf courses. Farmers were encouraged to diversify and they too responded to the call. And the number of golf courses increased, almost all owned by an individual, family or small business. Appendix 1 to this shows the increase in courses and golfers across the UK. We say that all the new courses built were initially viable; membership numbers increased with the building of the courses.

But then came the disaster. In 1994 Europe ruled that membership fees at member-owned golf clubs should be VAT exempt. That was almost all the old, traditional ones. Membership fees at proprietary clubs – i.e. all the new ones built following the Bannister report in 1973 and the R and A Report in 1989 – had to add VAT. And member-owned golf clubs received substantial refunds of VAT charged back to 1990.

It was a disaster for almost all the owners of the new golf clubs. Golf courses, unless very expensively built, take 20 years or more to mature. Many of the new courses simply couldn't compete with old traditional clubs where courses were more mature and fees lower. Added to that, the members' clubs now had a pool of new golfers to market to for green fees and golf societies. In effect, the owners of new golf clubs and courses developed a population of golfers that soon gravitated towards member-owned clubs. Green fee income at the members' clubs often increased dramatically, cashing in on the larger golf population. The Inland Revenue failed to charge corporation tax to the members' clubs and failed to challenge their non-profit status.

All proprietary clubs have a club of its members playing on the course. For various historic reasons golf's governing bodies see the owners of the golf courses as landlords and stipulate that the golfers must have their own club, with committees, democracy, a specified programme of competitions and a committee to run the national handicap system. Thus the experience for a golfer at a proprietary club is identical to that of a golfer at a members' club, other than the addition of VAT. Owners of the 500 or so new golf clubs had no option but to try to give their golfers VAT exempt golf to compete fairly with members' clubs. The experience for the golfer was the same; the VAT treatment was distorted.

The VAT Sports Order 1999

Several owners simply licensed their courses to the clubs of members, allowing them to enjoy VAT exempt golf memberships like the neighbouring member-owned club. HM Customs and Excise challenged two clubs – Chobham in Surrey, and Abbotsley in Cambridgeshire. In 1997 judges ruled that the club structure of the Chobham members was perfectly bona fide; it complied with the English Golf Union's requirements. The judges ruled that the license to the members' club at Abbotsley was VAT exempt. In neither case was there any tax avoidance. These golf course owners were simply ensuring their members could fairly enjoy VAT exempt golf and their businesses could be competitive and survive.

HM Customs and Excise failed to appeal these cases. Instead they simply labelled the golf course owners, who had responded to the Bannister and R and A reports, and built courses, as guilty of tax avoidance. From this emerged The Value Added Tax (Sport, Sports Competitions and Physical Education) Order 1999, usually referred to as the VAT Sports Order. For those unaware of this shocking piece of legislation it is worth referring to the Antony Seely paper, SN01052 in the Commons Library. At committee stage, Oliver Letwin and others in Opposition positively ridiculed Dawn Primarolo, the Paymaster General, for the VAT distortion caused by this order and vowed to address it. It remains on the statute books and has effectively wiped out proprietary golf in the UK.

But the stupidity of this legislation goes much further and affects the whole world of sport. It links the playing of sport to the land on which it is played – 'sports land'. Look at VAT Notice 742. Broadly speaking if you hire sports land for playing sport it attracts VAT at 20%. That's all those children's football leagues and anyone else hiring sports facilities. If you hire a sports hall for a flower show there is no VAT. The flower show is not sport. If you hire the hall for basketball then it incurs 20% VAT. It is sport in a sports facility. If you hire a general purpose hall such as village hall and it happens to be marked with a badminton court there is no VAT. The hall is not sports land. If you hire a track for equestrian carriage racing or a motor sport it incurs VAT. It's sports land and sport. If you hire it for husky and cart racing there is no VAT, because that is not a sport.

So it isn't just golf but a variety of sports that is caught by this absurd legislation. We have to get rid of sports hire charges.

Several golf course owners have been bankrupted and put out of business by trying to offer VAT exempt golf to their members. Some still face catastrophic claims.

The Association of Golf Course Owners has a petition/claim before the European Commission – Petition number 0136/2015 – asking that the Commission takes infringement proceedings against the United Kingdom over the VAT distortion in sport, and particularly golf. And at the heart of this is the VAT Sports Order 1999 which we say, supported by two opinions from leading tax barristers, breaks the terms of the European VAT directive. We also have a case progressing through the tax tribunal system – now waiting for a hearing date in the Upper Tax Tribunal – reference UT/2016/0025 – asking our courts to refer this to the European Court.

In our petition to Europe counsel Valentina Sloane referred to the way in which golf enthusiasts had responded to the call to build courses and shouldn't face VAT distortion.

The Treasury's response to Valentina Sloane's opinion is to say that those who had responded to the Bannister Report and R and A Report and built golf courses are guilty of tax avoidance in trying to offer their golfers VAT exempt golf. The Treasury:

"The Opinion sets out the practical impact of the UK restriction, giving an example of a 'golf enthusiast' who has developed land to operate a golf course. The reality is that this is a description of the case that the UK has successfully defended in the UK Courts – the entity referred to as a 'golf enthusiast' is the commercial body that owns the land and sets up the purported NPMB [non-profit making body] but wants to retain a degree of control over the club that is suggested in the Opinion, the circumstances of each case are duly considered before a decision is made as to whether or not the UK anti-avoidance provisions apply. As is evident from all the UK appeals to date, where the aim is to restructure to benefit from the exemption, the landowner cannot sever its management links with the club as it needs to be in a position to ensure that the income generated by the purported NPMB finds its way back."

Just today we have received a letter from the European Commission Petition Team, stating that in their view the VAT Sports Order 1999 is a justifiable piece of anti-avoidance legislation. See letter attached. (Appendix 2) It effectively marks the death of proprietary golf in the UK.

With this debate today, 13th April, the position is now clear. The Treasury and tax authorities in the United Kingdom will not stop until every small business, proprietary club – that's virtually every new golf facility built since 1970 – is wiped out of existence. And those running the governing bodies of golf are supporting this, because they support the old and traditional and not the new.

Non-profit making – fact and fiction

Far from golf being a boom industry it is one where there is a disaster and new golf courses face financial ruin. Put bluntly, the Berkshire Golf Club, taking nearly £1 million in visitors' fees a year to subsidise the membership subscriptions is seen as 'non-profit making', with VAT exempt membership fees and VAT exempt visitors' fees. It has taken over £16 million in visitors' fees since 1990 and never paid tax. Clubs like their neighbours, Sunningdale, charge £215 for a round of golf,

and £315 for two rounds in a day. It is all to earn profit to subsidise the members but they are considered non-profit making and it's all VAT exempt. Annual visitor fees are around £1.5 million.

90% of the owners of the proprietary golf clubs offering golf for the masses don't turn over what these clubs take in visitors' fees alone. Most cannot make a profit and many are doomed.

Northern Ireland and tourism generally

The Northern Ireland authorities are now planning various initiatives to support tourism based on the golf industry. How on earth can we support tourism based on the commercial business of supposedly private members' clubs? Royal Portrush, Royal County Down in Northern Ireland, Royal Troon and Muirfield in Scotland, Royal St. David's and Royal Porthcawl in Wales and the championship courses on the Lancashire coast are all seen as a boon to the British tourist industry. These are non-profit making members' clubs that should have closed doors, charging no VAT, mostly not paying any corporation tax, many getting relief from business rates and trading without proper liquor licences. If they want all the tax advantages of being seen as non-profit making, then shut their doors. If they want to act commercially then they should pay their way, VAT, tax, rates.

To ask the Chancellor when the VAT Sports Order 1999 will be repealed to allow almost everyone to enjoy VAT exempt sport – and not just the privileged few.

To ask the Chancellor and Treasury if they will set up a committee to review HMRC's failure to charge corporation tax to member-owned clubs on their green fee income and adopt a new policy in light of the Berkshire judgment.

To ask the Chancellor to set up a committee to review HMRC's progress in recouping the subsidies wrongly claimed by member-owned golf clubs in the CASC system.

FAR FROM BEING A BOOM IN GOLF AND THE INDUSTRY CONTRIBUTING MASSIVELY TO THE ECONOMY, GOLF HAS A DISASTER ON ITS HANDS. AND IT IS ALL AT THE HANDS OF SUCCESSIVE GOVERNMENTS, THE TREASURY AND HMRC

Our forecast is that if things don't change 75% of proprietary golf clubs and courses will be returned to farmland within the next 15 years. For most, the only hope of survival is for their clubhouses to be granted planning permission for conversion to housing. That might keep the golf courses open with modest facilities. But in reality the future is bleak. It isn't because there are too many golf courses or too few golfers, but because the UK Treasury and HMRC have turned a blind eye to all the commercial activities of private members' clubs but view course owners as tax cheats.

And it isn't just a problem for golf. Remember that the VAT Sports Order has created the nonsense of the flower show, dog show or meeting being able to hire a sports hall with no VAT; they aren't sport. Hire it for sport and there is 20% VAT. That, quite frankly, is this country's Olympic Legacy.

Look at the letter from the European Commission, today, 13th April 2016. Effectively that marks the death of proprietary golf and golf for the masses in the UK. And it was all at the hands of our Treasury!

Vivien Saunders Chairman – the Association of Golf Course Owners