

## Private Client and Wealth Structuring

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### Tax Tribunal Decision: Esporta Ltd

**The decision of the First Tier Tax Tribunal in the recent case of *Esporta Ltd* [TC01475] makes it possible for clubs to recover VAT on subscription payments in certain circumstances.**

Esporta Ltd operates a chain of health and fitness clubs with a minimum membership period of twelve months. Some of its members agreed to pay monthly but failed to make all the necessary payments. They were barred from using the club and debt collection measures were taken. Esporta initially paid VAT on the amounts collected. Later, it submitted a claim for repayment of the VAT to the extent that it related to the period after the (suspended) member had been barred. The repayment was claimed on the basis that such sums were non-taxable compensation for breach of contract and not a payment for the supply of services by the club.

Esporta submitted that, since the suspended members had been denied access to the club's facilities, there was no direct link between a supply by Esporta and the payment made. The link between supply and payment was formed by the availability of its facilities for use and not by the facilities themselves. Barring the member from using them was sufficient to break the link. It was not necessary to terminate the membership contract completely.

HMRC denied the repayment, arguing that since the membership contract remained in place, the link was unbroken and the payments should be treated as membership subscriptions paid for the supply of services by Esporta to the member. These subscriptions should therefore be subject to VAT.

The amount of VAT at stake was in excess of £1.3 million. When HMRC refused to allow the repayment, Esporta appealed to the Tribunal. The terms and conditions of the membership contract and other related documentation was examined in detail and the head of Customer Services gave a comprehensive witness statement explaining how the club operates, how the membership system works and how the debt collection process is managed.

The Tribunal upheld Esporta's appeal, agreeing that the member is not concerned with the existence of the facilities but with the ability to use them. It was held that the membership subscription is made in payment for the right of access and membership itself does not carry any particular rights or services. It was therefore not necessary for membership to be terminated to sever the direct and immediate link between supplies by Esporta and payment by the member. Accordingly, the payment should be treated as compensation for breach of contract, which falls outside the scope of VAT, rather than a taxable payment for the supply of services.

This decision could be of benefit to any gym, health club, sports club or other business which offers access to its facilities in return for regular payments, for example by monthly subscription, and where a member who fails to make payments on time is barred from using those facilities and receiving other benefits. The terms of the membership contract will be key in establishing whether or not a particular organisation could rely on this case to claim a repayment.

HMRC may appeal this decision but unless it is overturned by a higher court, the *Esporta* case could lead to substantial VAT savings for many businesses.

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