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**Subject: State aid SA.38208 (2014/NN) (ex 2014/CP) – United Kingdom
Alleged State aid to UK member-owned golf clubs**

Sir,

1. PROCEDURE

- (1) By letter dated 17 December 2013, the Commission received a complaint concerning alleged aid granted to the member-owned golf clubs in the United Kingdom (UK). The complaint was submitted by the Association of Golf Club Owners, which represents proprietary golf clubs in the UK.
- (2) The non-confidential version of the complaint was forwarded to the UK authorities, who submitted their comments on 2 May 2014.
- (3) On 1 August 2014, the Commission services wrote to the complainant, expressing a preliminary view that the measures did not involve State aid. The complainant submitted further information on 1 September 2014 and 7 February 2015.

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2. DESCRIPTION OF THE MEASURES COVERED BY THE COMPLAINT

Description of the measures covered by the complaint

- (4) In the UK, corporation tax is a 'profit tax' which is levied on the profits of incorporated business (companies) and unincorporated associations (including members' clubs, societies and associations).
- (5) However, certain exemptions from corporation tax apply to sports clubs which qualify as Community Amateur Sports Clubs, or CASCs (the terms of qualification are explained in more detail below). The complaint concerns the following provisions:
 - (i) Exemption from corporation tax on profits generated by the CASCs from trading where the turnover of the trade with non-members (i.e. visitors or non-members) is less than £30,000. This tax exemption is available only to profit applied for qualifying purposes (the UK tax legislation defines qualifying purposes as the promotion of participation and the provision of facilities for one or more eligible sport). However, where a CASC generates trade profits above the threshold amount, there is no exemption from corporation tax and the full amount of the profit becomes taxable.
 - (ii) Exemption from corporation tax on income from property. CASCs are exempt from tax on the income generated by letting property belonging to the club where the gross income is less than £20,000. However, where a CASC receives property income above the threshold amount, there is no exemption from corporation tax and the full amount of the profit becomes taxable.

Comments of the complainant

- (6) According to the complainant, the alleged beneficiaries are clubs created by members who come together for the non-commercial purpose, organised in a club-form which provides the facilities to play golf or for other recreational purposes. Some of them are registered as CASCs.
- (7) The complainant represents "proprietary" golf clubs in the UK, i.e. golf clubs which are privately owned and conduct business as commercial concerns with a view to a profit. According to the complaint, the alleged beneficiaries are allowed to trade for gain with outsiders and non-members, by registering visitors as members so that their income is not taxed, and by offering their services including the use of their golf courses, bar and catering sales, accommodation, conferences and weddings. The complainant alleges that the tax measures mentioned in Point 5 above provide a selective advantage to the qualifying golf clubs which compete with the "proprietary" golf clubs.
- (8) As regards the effect on trade, the complainant alleges that many member-owned golf clubs advertise abroad and offer overseas membership to enable visitors from other Member States to play golf at their premises at advantageous prices. According to the complainant, in some instances a golfer from another Member State may choose to join a club in the UK because it is cheaper but gives him/her the advantage of the status of a golf player. In this respect, the complainant

submits that the market of golf visitors to the UK amounted to EUR 129.5 million in 2012, alleging that much of that amount would have been paid to the alleged beneficiaries (which come to a total of at least 1057 clubs)

Comments of the UK authorities on the complaint

- (9) According to the UK authorities, member-owned golf clubs are in principle subject to the normal rules of corporation tax for all their commercial transactions, and income from outsiders such as visitors or temporary members is subject to corporate tax as trading income. With regard to the clubs qualifying as CASCs, the exceptions mentioned at Point 5 above apply, meaning that their profits from trading with non-members, i.e. visitors or temporary members, are indeed taxed normally, for property revenue exceeding £20,000 per year and trading revenue exceeding £30,000 per year. In addition, member-owned clubs are not taxable on the surplus of their members' funds, since such surplus is not a profit from trading activities but only an amount of unspent funds, which remain within the club.
- (10) Furthermore, with regard to the alleged measures' effect on trade between Member States, the UK authorities state that support for local sports facilities and amateur sport is generally not considered State aid, in line with cases such as *Leisure Pool Dorsten*.¹
- (11) In this context, the UK authorities submit that CASC are indeed organised on an amateur basis and promote local community participation in sport, by allowing individuals of all levels, skills, ages and financial abilities to become their members, have a geographically limited attraction zone and do not operate branches in other parts of the UK or the EU. In addition, according to the UK authorities, if a CASC generates a level of income which exceeds the limited corporation tax exemption based on turnover, it will no longer be entitled to that exemption. Furthermore, according to the UK authorities, in the rare occasions when those visiting the UK would attend an event at a CASC or participate as non-members, those visitors will have travelled to the UK as a holiday or business destination irrespective of the existence of a CASC. Finally, for the CASC's activity of offering their facilities for weddings or other functions, it is argued that CASC in competition with other businesses only at a local level, not at EU level.

3. ASSESSMENT OF THE MEASURES UNDER ARTICLE 107(1) TFEU

Description of CASCs

- (12) A CASC is a community amateur sports club which should meet, among others, the following requirements: (i) it has to be open to the whole community; (ii) it has to be organized on an amateur basis; (iii) it must have as its main purpose to provide facilities for, and promote participation in one or more qualifying sports (including golf).
- (13) With regard to the first requirement of being open to the whole community, this involves that the club should be open to all with no discrimination, should set fees at a level that does not pose a significant obstacle to membership or use of the club's facilities. To register as a CASC, the club should be able to demonstrate

¹ N 258/2000 *Leisure Pool Dorsten*, C10/2003.

that membership and participation is within the financial reach of the wider community.

- (14) With regard to the second requirement according to which the club should be organized on an amateur basis, this implies that the club should be non-profit making, meaning that the constitution of the club requires any surplus income or gains to be reinvested in the club and does not permit any distribution of club assets in cash or in kind to members or third parties. Moreover, a CASC can provide for members and visitors only the ordinary benefits of an amateur sports club, such as provision of sporting facilities, provision of insurance cover, reasonable provision of post-match refreshments for players and match officials and sale or supply of food or drink as a social benefit which arises incidentally from the sporting purposes of the club. This limited activity of providing the ordinary benefits show that a CASC does not engage in competition at a professional level which could have an international dimension, nor does it aim to attract international members or visitors.
- (15) With regard to the third requirement, CASCs should not only provide facilities, but it should also promote participation in one or more sports. It should encourage all members to participate regardless of ability.
- (16) It follows from the foregoing that, given the very nature of the CASCs, the latter operate at a purely local level, since they have to remain open to the whole community by being within the financial reach of any member or visitor, they have to be non-profit making and they are limited to provide only the strict ordinary benefits. Hence, the CASCs should be regarded as amateur clubs whose only objective is to promote sport to the local community.

Existence of aid

- (17) According to Article 107 (1) of the Treaty on the Functioning of the European Union (TFEU), State aid is any aid granted by a Member State or through State resources in any form whatsoever which distorts, or threatens to distort, competition by favouring certain undertakings, in so far as it affects trade between Member States. The conditions laid down by that provision for a finding of State aid are cumulative. Only insofar as all these criteria of Article 107(1) TFEU are met could the alleged measures constitute State aid within the meaning of Article 107(1) TFEU.
- (18) With regard to the complaint, in the light of the information provided to the Commission, the alleged advantage consists in the two aforementioned tax measures, i.e. (i) exemption from corporation tax on profits generated by the CASC from trading with non-members (i.e. visitors or temporary members) where the turnover of the trade is less than £30,000; and (ii) exemption from corporation tax on income from property where the gross income is less than £20,000. The analysis of this decision is without prejudice to the assessment of any other tax measures that may apply in favour of amateur golf clubs. The Commission also notes that the above alleged tax exemptions only concern CASCs, because other member-owned clubs are subject to the general rules of corporation tax with no exemption on profits from trading with non-members and no exemption on income from property.

- (19) With regard to the two aforementioned tax advantages, the Commission has gathered information from the UK authorities. In that respect, the UK authorities have submitted facts and arguments regarding the measures' lack of effect on trade between Member States. On the basis of this information, the Commission has found as follows.

Effect on intra-Union trade

- (20) Public support to undertakings is prohibited under Article 107(1) TFEU if it "distorts or threatens to distort competition" and only insofar as it "affects trade between Member States". In that respect, the Union courts have ruled that "where State financial aid strengthens the position of an undertaking as compared with other undertakings competing in intra-[Union] trade, the latter must be regarded as affected by the aid".²
- (21) Public support can be considered capable of having an effect on intra-Union trade even if the recipient is not directly involved in cross-border trade. For instance, the aid may make it more difficult for operators in other Member States to enter the market by maintaining or increasing local supply,³ or to exercise their right of establishment.
- (22) It is settled case-law that the Commission is not required to carry out an economic analysis of the actual situation on the relevant markets, the market share of the undertakings in receipt of the aid, the position of competing undertakings or trade flows between Member States.⁴ In the case of aid granted unlawfully, the Commission is not required to demonstrate the actual effect which that aid has had on competition and on trade.
- (23) Nevertheless, an effect on intra-Union trade cannot be merely hypothetical or presumed. It must be established why the measure distorts or threatens to distort competition and it is liable to have an effect on trade between Member States, based on the foreseeable effects of the measure.⁵
- (24) In that respect, the Commission has in several cases⁶ considered that certain activities have a purely local impact and no such effect. It seems appropriate to check in particular whether the beneficiary supplies goods or services to a limited area within a Member State and it is unlikely to attract customers from other Member States, and whether it can be foreseen that the measure will have more than a marginal effect on the conditions of cross-border investments or establishment.

² Case T-288/97 *Regione autonoma Friuli-Venezia Giulia v Commission* ECLI:EU:T:1999:125, paragraph 41.

³ See for instance Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg* ECLI:EU:C:2003:415, paragraph 78; Joined Cases C-197/11 and C-203/11 *Libert and Others* EU:C:2013:288, paragraph 78; and Case C-518/13 *Eventech* ECLI:EU:C:2015:9, paragraph 67.

⁴ See for instance Case C-279/08 P *Commission v Netherlands* ECLI:EU:C:2011:551, paragraph 131.

⁵ See Joined Cases T-447/93, T-448/93 and T-449/93 *AITEC and others v Commission* ECLI:EU:T:1995:130, paragraph 141.

⁶ See for instance, the Commission decisions in State aid cases N 258/2000 *Leisure Pool Dorsten*, OJ C 172, 16.6.2001, p. 16; C10/2003 *Netherlands – Non-profit harbours for recreational crafts*, OJ L 34, 06.02.2004, p. 63; N 458/2004 *Editorial Andaluza Holding* OJ C 131, 28.5.2005, p. 12; SA.33243 *Jornal de Madeira*, OJ C 16, 19.1.2013, p. 1; SA.34576 *Portugal – Jean Piaget North-east Continuing Care Unit*, OJ C 73, 13.3.2013, p. 1; and N 543/2001 *Ireland – Capital allowances for hospitals*, OJ C 154, 28.6.2002, p. 4.

- (25) In the present case, as regards the geographical zone within which the alleged beneficiary's services compete, the Commission notes that the tax measures are very limited and benefit only CASCs which are engaged in minimal levels of economic activity with non-members. Indeed, if the turnover from trading exceeds £30,000 or the revenue property £20,000, the CASCs become liable to tax on the full amount of their profits, not just the income on the turnover or property revenue in excess of the limit. It follows that the CASCs benefiting from the tax exemptions will have only a very limited commercial activity targeted at non-members.
- (26) It appears therefore that the services provided cater almost exclusively to a local market. The alleged beneficiaries, are local unions of members who come together for the non-commercial purpose of providing themselves with the facilities to play golf or for other recreational purposes and cater essentially to local customers, i.e. members and visitors.
- (27) Furthermore, the Commission notes that the CASC rules only permit limited trading, meaning that any golf club which runs an operation on a scale capable of attracting visitors from an international market would be subject to the normal regime of corporation taxation, and this on the full amount of its profits. The normal rules of taxation will apply to the trading subsidiary. Therefore, a clear distinction should be made between CASCs which provide amateur sporting facilities for the local community and clubs which attract visitors from a national and international market and are subject to normal taxation.
- (28) It follows that the Commission considers that the competition for the services provided by the amateur golf clubs with CASC status occurs at a local level and is thus unlikely to attract customers from other Member States to any meaningful degree.
- (29) As regards the effect on the conditions of cross-border investments or establishment, the Commission notes, as aforementioned, that the tax exemptions apply only to small local golf clubs with very limited commercial activities and which are subject to restrictions (to qualify as CASC) which makes them unsuited to attract customers from abroad on a meaningful scale. Therefore, it is reasonably foreseeable that the measures covered by the complaint would have less than, at most, a marginal impact on other operators decisions in terms of cross-border investment or establishment.
- (30) In light of the above, in the present case, the Commission considers that the tax measures provided to the CASC are not liable to affect trade between Member States, as specifically detailed in the paragraphs above. As a result, there is no need to examine the other cumulative conditions for the existence of State aid within the meaning of Article 107(1) TFEU. The Commission therefore reaches the conclusion that the measure in question does not constitute State aid pursuant to Article 107(1) TFEU.

4. THE APPLICABILITY OF A BLOCK EXEMPTION

- (31) As explained above, the measures at stake do not qualify as State aid in the sense of Article 107 (1) TFEU.

- (32) Nevertheless, and only for the sake of completeness, the Commission decided to check the applicability of the General Block Exemption Regulation⁷ (GBER).
- (33) The measures examined constitute support for the operations of sport premises which are open to amateur users on a transparent and non-discriminatory basis and are not used by professional sport clubs or other professional users. On this basis, the alleged measures fulfil Article 55 of the GBER. In addition, the amounts of the alleged measures (corporate tax exemptions for trading income falling below £30,000 per year and for property income falling below £20,000 per year, see recital 5 above) fall below the threshold of EUR 2 million per year for operating aid of Article 4(1)(bb) of the GBER. Due to their low level as exemptions from paying a portion (tax rate) of an amount of maximum £30,000 per year, the amounts of the alleged measures also fall below the threshold of 80% of eligible operating costs of the CASC, as set in Article 55(12) of the GBER. Thus the measures examined would in any case come within the scope of the GBER, in particular Articles 4(1)(bb) and 55 thereof concerning operating aid for sport infrastructures, and thus be deemed as compatible with the internal market in application of Articles 107 and 108 of the TFEU.

5. DECISION

- (34) In light of the foregoing assessment, the Commission has accordingly decided that the measure described in the complaint does not constitute State aid pursuant to Article 107(1) TFEU.

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Your request should be sent by encrypted e-mail to stateaidgreffe@ec.europa.eu, by registered letter or by fax to:

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Yours faithfully,

For the Commission

Margrethe VESTAGER

⁷ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty; OJ L 187 of 26 June 2014.

Member of the Commission

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For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION