The Charity Law & Practice Review

VILLAGE HALLS, COMMUNITY CENTRES AND VALUE ADDED TAX

Jean Warburton[1]

In 1996, the National Playing Fields Association received £4 million from the Millennium Commission for "Millennium Centres" which are described as village halls in the town. Money has also been granted for community centres in rural areas and village halls are being supported by grants from the National Lotteries Charities Board.[2] Any such grant received will obviously go further if the cost of building a new hall or centre or renovating an old building is zero-rated for VAT purposes.

Unfortunately, zero-rating is not automatic. It is not sufficient for the body building and operating the hall or centre to be a charity; the operation must fit within the parameters laid down in Schedule 5 to the Value Added Tax Act 1994. The good news for charities is that those parameters have been given a liberal interpretation in the High Court.[3]

If the charity running the particular hall or centre is registered for VAT, any VAT on building costs will be recoverable in the usual way; the lack of zero-rating merely causing a cash flow problem. The charity may not, however, be registered either because it is not carrying on a business, being funded by grants and donations rather than payments for services,[4] or because its turnover is below the

---

1 Jean Warburton, Reader in Law, Charity Law Unit, University of Liverpool, Liverpool L69 3BX. Tel: (0151) 794 3088 Fax: (0151) 794 2829.

The author is also a part-time Charity Commissioner. The article should not be considered in any way to reflect the views of the Charity Commission.

2 See, "Charity" [1996] December p.7. Bennachie Leisure Centre Association (see below the text at fn. 13) received a promise of a grant from the Millennium Fund.

3 See, *Jubilee Hall Recreation Centre Ltd v Customs and Excise Commissioners* [1997] STC 414, discussed below.

4 See, Warburton, 'Charities, Value Added Tax and Business', (1995) 3 CLPR 37.

limit for registration. If the charity is providing sports facilities such supplies will be exempt from VAT,[5]. In the second and third situations the zero-rating of building costs will be crucial.

The legislation

Schedule 8 to the Value Added Tax Act 1994 sets out those supplies which are zero-rated. Group 5 deals with the construction of buildings and Item 2 provides:

> "The supply in the course of the construction of -
>
> (a) a building designed as a dwelling or number of dwellings or intended for use solely for a relevant residential or a relevant charitable purpose."

Note 6 thereto provides:

> "Use for a relevant charitable purpose means use by a charity in either or both the following ways namely -
>
> (a) otherwise than in the course or furtherance of a business;
>
> (b) as a village hall or similarly in providing social or recreational facilities for a local community."

Group 6 deals with protected buildings and Items 2 and 3 provide:

> "2. The supply, in the course of an approved alteration of a protected building, of any services other than the services of an architect, surveyor or any person acting as consultant or in a supervisory capacity.
>
> 3. The supply of building materials to a person to whom the supplier is supplying services within Item 2 of this Group which includes the incorporation of the materials into the building (or its site) in question."

By Note 3, Note 6 of Group 5 is made to apply to Group 6.

A charity providing a hall or centre is unlikely to be able to bring itself within Note 6(a) as it will normally be hiring out the hall or centre or charging for events at the hall or centre and thus making supplies for a consideration. The construction of a new village hall or major refurbishment of a listed building as a village hall will be zero-rated within Note 6(b). The problem arises in relation to

---

5 Value Added Tax Act 1994, Sched 9 Group 10 Item 3.

the cost of constructing a new or renovating a listed one which provides social or recreational facilities for a local community but which is not a village hall, for example, a sports centre.

The second part of Note 6(b) raises two questions. How does the word 'similarly' restrict the facilities which can be provided or the way in which they can be supplied if zero-rating is to be obtained on building costs and what is 'local community'. There is an additional problem in that a supply may only be zero-rated under EU law if the supply is for the benefit of the final consumer.[6] The zero-rating provisions were considered in three separate tribunal cases before the matter came before the High Court. The three cases illustrate the type of building and facilities involved, but more importantly, show the difficulties faced by charities when trying to assess their liability to VAT.

The tribunal cases

The first of the three cases[7] involved the Ormiston Charitable Trust which had built the New Ormiston Centre in Colchester. The Centre consisted of meeting rooms, offices, a covered playing area and changing rooms. There were also outside playing areas. There were a number of sports activities for all ages but the main activity for the Centre was encouraging children to take part in sport. Although some local children used the Centre, the majority of the children came from three miles away.

The Chairman of the tribunal, R K Miller, held that the building supplies made in the course of construction of the Centre did not fall within Item 2 of Group 5 of Schedule 8 to the 1994 Act and were, therefore, standard rated. In his view, not all buildings providing social or recreational facilities qualified for zero-rating; the word 'similarly' after 'village hall' required there to be a model with certain characteristics against which any claimant organisation must be examined. The Chairman then approved the criteria set out in the submission made on behalf of the Commissioners. The relevant passage is as follows:[8]

> "One has, she said, to look at what a village hall does. Thus what is in contemplation in the relieving provision is something which is owned, organised and administered by the community for the benefit of the community and that, she submitted, is not this case."

---

6 See the discussion below of Article 17 of EC Council Directive 67/228.

7 *Ormiston Charitable Trust v Customs and Excise Commissioners* [1995] VATTR 180.

8 [1995] VATTR 180, 184.

The Chairman indicated that he did not consider that the facilities were provided for a local community. Although some children came from nearby, the majority came from other parts of Colchester.[9]

Jubilee Hall Recreation Centre Ltd v Customs and Excise Commissioners[10] concerned the renovation of a listed building in Covent Garden. The Appellant, a charitable company limited by guarantee, ran a sports and fitness Centre at Jubilee Hall and also let out spaces for classes to self employed instructors. The main hall of the Centre was to let to groups wanting to play sport and use of the hall was given free to local organisations. The Centre was used largely by people who lived and worked locally.

The Chairman of the tribunal R K Miller[11] held that the Centre carried on a well organised commercial operation competing with other sports centres in the area which was the antithesis of any normal conception of how a village hall operates. Accordingly, he held that the building works were standard rated as they did not come within Group 5 of Schedule 8 to the 1994 Act.

Although not strictly necessary to the decision, the Chairman made the following comment about what amounted to a 'local community' for the purposes of Note 6(b):[12]

> "But I agree...that in ordinary usage the local community means the body of persons living in a particular locality. I do have great difficulty with the notion that the daily influx on working days into an area of people to staff its offices and shops and to attend its colleges, even if they have greater attachment than its flocks of visiting tourists, are part of the local community within the contemplation of this provision."

The approach taken in those two cases clearly restricted the circumstances in which zero-rating would be available to a charity providing community facilities. In particular, the limitation to a building 'owned, organised and administered by the community' raised the spectre of a charitable unincorporated association building a community centre being able to claim zero-rating but not a charitable trust or a charitable company. In comparison the third case took a far more liberal

---

9 Cf. *Shinewater Association Football Club v Customs and Excise Commissioners* (1994) Decision No. 12938 where the facilities were provided for the community around Shinewater Lane.

10 [1996] STI 1425; (1996) Decision No 14209.

11 Not Stephen Oliver QC as stated in the report of appeal to the High Court [1997] STC 414, 416.

12 Quoting from (1996) Decision No. 14209.

approach. That case[13] involved the Bennachie Leisure Centre Association, a charity, who built a leisure centre at Insch to serve nine parishes within a six mile radius. The Centre had a central hall and ancillary rooms and offices and could be used for both social and recreational purposes. Some of the rooms were let to other organisations.

The Chairman of the tribunal, T Gordon Coutts QC, said that he encountered difficulty with the decision in the *Ormiston*[14] case with its reference to something 'owned, organised and administered by the community', the Centre in the present case being owned by a charity as are many village halls. The Chairman considered that the entitlement to zero-rating had to be decided in the circumstances of each particular case. In relation to the Bennachie Leisure Centre he said:[15]

> "Since, however, the explicit purpose of the building, its management committee and the association which is to run it is to provide facilities, social and recreational, for the stated wide local membership we have no hesitation in finding on the facts of this case that the appeal succeeds and that the building is entitled to be zero-rated."

The Chairman also considered that the question of what amounted to a local community to be a matter of degree. In the present case, bearing in mind that this was a country area, a number of parishes within a six mile radius was a 'local community'.

The European perspective

Article 28(2) of EC Council directive 77/388 (the Sixth VAT Directive) permits zero-rating in respect of supplies which satisfy the conditions laid down in Article 17 of EC Council Directive 67/228 (the Second VAT Directive) Article 17 provides:

> "Such measures may only be taken for clearly defined social reasons and for the benefit of the final consumer."

That provision, in relation to supplies zero-rated in the United Kingdom, was considered by the European Court of Justice in *EC Commission v United Kingdom*

---

13 *Bennachie Leisure Centre Association v Customs and Excise Commissioners* [1996] STI 1425; (1996) Decision No. 14276.

14 [1995] VATTR 180.

15 Quoting from (1996) Decision No. 14276.

(Case 416/85)[16]. The ECJ took a restrictive approach to the zero-rating provisions and defined a final consumer as follows:[17]

> "Under the general scheme of VAT the final consumer is the person who acquires goods or services for personal use, as opposed to an economic activity, and thus bears the tax. It follows that having regard to the social purpose of Art. 17 the term 'final consumer' can be applied only to a person who does not use exempted goods or services in the course of an economic activity. The provision of goods or services at a stage higher in the production or distribution chain which is nevertheless sufficiently close to the consumer to be of advantage to him must be considered to be for the benefit of the final consumer as defined."

It is well accepted that provisions of UK VAT legislation should, so far as possible, be construed in such a way so as not to conflict with the provisions in the Directives.[18] Although the relevant supplies of building services in these cases were not made to final consumers, but to a charity which owned and ran the relevant hall or centre, the view taken by all tribunal Chairmen was that the relevant zero-rating provision was not inconsistent with European law. In the *Ormiston*[19] and *Jubilee Hall*[20] cases this was on the basis that the hall or centre was owned, organised and run by the community.

The High Court decision

The tribunal in the *Jubilee Hall* case was appealed to the High Court.[21] The initial question for Lightman J. was whether the zero-rating provision in Group 5 of Schedule 8 to the 1994 Act was within the conditions laid down in Article 17 of the Second VAT Directive. He took the view that 'the final consumers' of the refurbishment of Jubilee Hall were the members of the local community and that the supplies were sufficiently close to those members of the community to be an

---

16 [1989] 1 All ER 364.

17 *Ibid.*, 381.

18 See *Marleasing SA v La Comercial Internacional de Alimentacion SA (Case C-106/89)* [1990] ECR 1-4135.

19 [1995] VATTR 180.

20 (1996) Decision No. 14290.

21 [1997] STC 414.

advantage to them. Thus supplies were for the benefit of the final consumer within Article 17.[22]

Lightman J next turned his attention to the question of what 'similarly' meant in the phrase 'as a village hall or similarly in providing social or recreational facilities for a local community'. In this respect he took the wide view saying:[23]

> "There is no necessity that a village hall should be owned, organised or administered by the community; still less can it be necessary (if it is legally possible) for a building owned by a charity such as is under consideration in the legislation to be so owned, organised or administered."

From that starting point, it was a short step to finding that a building which is similar to a village hall is one to which the local community can resort for social and recreational activity. Furthermore, he took the view that the fact that goods are sold or services provided in the building did not prevent it being similar to a village hall; village halls had produce and jumble sales. Thus sales in the café in Jubilee Hall and the provision of services such as massage and training by self-employed persons did not prevent Jubilee Hall from being similar to a village hall.

Lightman J took a similarly wide view of what constituted 'a local community' recognising practicalities of life today. He said:[24]

> "It seems to me that to be a member of a local community, it is not necessary that a person reside in the locality; it is sufficient to be part of a local community that he has some degree of connection, attachment, commitment or sense of belonging to the locality. A shopkeeper with a shop in a village can surely be a member of the local community as can the local policeman or doctor though they reside elsewhere. The background to the legislation is the fact that today very many people reside in one place and work in and spend the greater part of their waking hours in another. The legislation surely must be taken to recognise the need for and the value of recreational facilities for those working in the locality of Covent Garden, as for those residing in the locality".

---

22 *Ibid.*, 420. The EC Commissioner for tax matters, Madame Scrivner, indicated in correspondence that the Commission would not raise legal objections to the zero-rating of construction of village halls. See (1989) *Hansard* Vol 156 cols 1036-1037. (Statement of Peter Lilley in the debate on the Finance Bill).

23 *Ibid.*, 421.

24 *Ibid.*, 422.

The High Court decision has already been applied[25] to zero rate the construction of a sports hall by a charity for its associated charitable college to which it made land and buildings available free of charge. The sports hall was used by organised groups recommended by the local authority as well as school pupils and was held to be used 'similarly' to a village hall.

Conclusions

The approach taken by Lightman J is to be welcomed as recognising the very different circumstances in which social and recreational facilities can be provided by charities and how the sense of what is a local community has changed over the years. The decision also recognises that the legal form taken by the charity is irrelevant for VAT purposes; the charity renovating Jubilee Hall was a charitable company. A fiscal straightjacket on the development of community facilities has been eased.

Whilst the High Court decision eases one particular set of difficulties created by VAT provisions, the history of this one provision serves to illustrate the complexities which charities face when trying to ensure that their activities do not attract additional VAT costs. The present Charity Tax Review, with the main focus on VAT, is not before time.

---

25 *St Dunstan's Educational Foundation v Customs and Excise Commissioners* [1997] STI 1173: (1997) Decision No. 14901. For a criticism of this decision see [1997] *Taxation* 517 (Peters).