Zero-rate construction of a relevant charitable building

Caithness Rugby Football Club

Background

The taxpayer is a non-VAT registered charity. In 2012, it constructed a clubhouse on its grounds and wrote to HMRC the following year to ask if the project would qualify for zero-rating. HMRC advised that the project would not qualify for zero-rating and the charity appealed.

When a charity constructs a new building there are two different types of use that will secure zero rating. One is non-business use, which was not relevant here since the club was clearly a business generating income from members and using the clubhouse in the course of that business. The other, which was the issue under dispute, is "use as a village hall or similarly, in providing social or recreational facilities for a local community". This does not require that the use be non-business. Both of these tests give rise to many appeals, but it is fair to say the "village hall" test is perhaps the more complex, since it has several parts to it, all of which must be met and all of which are capable of different interpretation by appellant and HMRC.

About 50% of the building was changing rooms, 40% comprised a hall, kitchen/bar area and toilets with the remainder being a boiler room, storage room and an officials' room.

HMRC argued that the use stated on the taxpayer's application for funding for the project was not the use to which the building had been put since it was constructed. It is the intended use at the time of supply of the construction services that is relevant for the relief and the funding application evidenced that the intention was not to build a village hall or similar.

At the time the charity applied for funding, only some 5% use by others was envisaged and HMRC said this was not sufficient for the relief to apply. Half the building was changing rooms. Also, the clubhouse was not managed by the community and was not at the disposal of, or under the direction of the local community, as the club had the lease and could grant or deny access as it chose and only members of the club could be on the management committee. It had not been conceived as community facility similar to a village hall, run by and for the local community and was not eligible for the relief.

The taxpayer acknowledged that the extent of use by community groups was not originally foreseen however, it was always intended that the clubhouse would be available for use by other sporting clubs in the county. The club's constitution stipulated that it should provide a

community benefit and the new clubhouse would fulfil that aim. 90% of the use of the hall area was by bodies other than the appellant. The nearest community hall, now that the local town hall had closed, was 3 miles away and a car was needed to get to it. In addition, approximately 85% of the use of the clubhouse was by local Thurso residents or those from its immediate surroundings.

Held

The FTT found that the clubhouse met all of the requirements for zero rating on the premise that: a sporting facility is a "recreational" facility and even if the club house were used for rugby playing only, it would satisfy the definition of "social or recreational facilities" but in fact, the clubhouse was used for a wide variety of other community activities. About 85% of the usage of the clubhouse was by local residents and in any event minor usage of the facilities by persons from outside the local area would not of itself prevent the "local community" requirement from being met, therefore the facilities were provided to a "local community". The facility was used extensively by community groups for activities that they, and not the club, organised and the needs of all users had been accommodated despite the club's needs having priority. It was on council land that the club had leased for a peppercorn rent. It filled a gap that had been created when the town hall closed. The facility was not a commercial building let out to make a profit for the club. Rates charged to other users were modest.

The facilities were therefore used and were at the time of construction intended to be used as a village hall or similarly". Consequently, the appeal was allowed as all elements of the test were met.

Comment

The careful analysis of the Tribunal of the meaning of each part of the second relevant charitable use test for zero rating could be helpful to others seeking zero rating for a building that does not wholly comply with HMRC's view of the village hall relief, as set out in its submissions in this case.

It is interesting that the Tribunal, unlike in the case of New Deer (under appeal), did not look to apportion the construction and to limit the relief to the meeting and kitchen areas. The club's ownership of and priority use of the building was not an issue to this Tribunal since the other users in the local community had been accommodated. Nor was the management of the facility by the club's committee a barrier to the relief. Zero rates, like all exceptions to the normal rules,

have to be construed strictly but the purpose of the relief must be recognised. So we must ask if the scope of this relief is wider than HMRC envisage?