

## Charity property and VAT: sport and recreational facilities

In our [November 2016 update](#) we explained that certain VAT reliefs are available in connection with property that is used by a charity for a 'relevant charitable purpose'. For a re-cap of the nature of these reliefs, and the test for determining a 'relevant charitable purpose' under the Value Added Tax Act 1994, please visit our previous article [Property and VAT: another answer to a big question for charities](#).

This article focusses on two recent cases which examined the meaning of the second limb of the 'relevant charitable purpose' test (namely that a building is intended for use "*as a village hall or similarly in providing social or recreational facilities for a local community*") in the context of a building used for the provision of sports facilities.

### Use 'as a village hall or similarly'

The courts have in previous cases concluded that the second limb of this test in fact consists of two elements. Use 'as a village hall or similarly' is a separate and additional requirement to use 'in providing social or recreational facilities for a local community'.

In many cases involving sports clubs, use 'in providing social or recreational facilities for a local community' will be relatively easy to demonstrate, whereas proving intended use 'as a village hall or similarly' will be more of a challenge.

It has already been held that the word 'similarly' means that the property does not necessarily have to be used for the same mix of activities as a traditional village hall.

Buildings used primarily as sports facilities are therefore capable of qualifying for VAT zero-rating.

The required 'similarity' is that, as with village halls, the property must be run and managed for the benefit of the local community.

### The extent of community involvement

Two recent decisions of the First-Tier Tribunal (Tax) highlight the practical difficulties involved in establishing whether the extent of community use and benefit is sufficient to establish an intention to use a building 'as a village hall or similarly'.

The cases of [Witney Town Bowls Club](#) and [Caithness Rugby Football Club](#) each concerned the construction of a new clubhouse. Each Club's constitutional objects included the promotion of community participation in sport and providing sports facilities to the local community.

Each clubhouse was designed and built with a mixed user base in mind, and was in reality used by a variety of local groups in addition to the Club itself, on a not-for-profit basis. On the other hand each clubhouse was run by the Club's executive committee, with no management input from the wider community.

## How the cases were decided

Despite the clear similarities, whilst the Tribunal was satisfied that the Caithness Rugby Football Club facility was intended for use 'as a village hall or similarly', this was not the case for Witney Town Bowls Club.

Whilst it is difficult to draw clear distinctions between the two cases, the main difference appears to have been the scale and extent of the local community use.

The Witney clubhouse only had two regular bookings, for a few hours each week, from external users, with other ad hoc bookings occasionally being made. Although the Club stated that no priority was given to its members in making bookings, in reality this had never been tested.

By contrast, 90% of the regular usage of the Caithness clubhouse was by groups other than the Club itself, and the users ranged broadly from a dance school to a multiple sclerosis society. The scale of the community benefit from the clubhouse was undeniable.

Although the relevant factor was of course the *intended use* of the building as at the time of construction, the Tribunal deemed its actual use from the outset to be persuasive evidence of this intention.

Another factor considered by the Tribunal was the driving force behind the construction of each clubhouse. In Witney, whilst the local community had been consulted, the construction was a direct result of the needs of the Club. On the other hand, the Caithness clubhouse appears to have been constructed at least in part to meet the needs of the local community, and the local authority had leased the land to the Club at a peppercorn rent with this in mind.

A lack of community involvement in the actual management of the building was considered important in both cases, and was one of the reasons for the Tribunal's decision in relation to the Witney clubhouse. However it was not a deciding factor in the Caithness case when balanced with the evidence as to the overwhelming extent of the community use.

## Conclusion

Whilst these cases do not clarify any hard and fast rules for charities seeking to benefit from VAT zero-rating in relation to the construction costs of sports facilities, they are useful in highlighting the factors that will be considered by HMRC in determining whether the relief will apply, particularly in relation to the interpretation of use 'as a village hall or similarly'.

It will be a question of balance in each particular case as to whether the test is met.

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