

Lack of accuracy costs charity dear

Les Howard explains why clear communication and keeping concise records are of paramount importance

A combination of complex VAT matters and less-than-accurate documentation is a recipe for a disaster. The Bletchingley Church House Charity (BCHC) Tax Tribunal decision concerns such a situation. The FTT decision contains several matters worthy of note. File under 'pitfalls to avoid'.

The substantive case concerned a community building providing 'village hall' facilities to local organisations and also for use by businesses. A major renovation was planned, but VAT of around £87,000 was likely to be lost. BCHC entered into an arrangement to mitigate this loss. Since the property had remained in its original ownership, the suggestion was made that, after renovation, the property be supplied as the first grant of a major interest of a building to be used for 'relevant charitable purpose' (RCP), and therefore be zero-rated (Sch 8, Group 5, Item 1(a)(ii)). So far so good.

However, one theme that runs through the decision is the inconsistency and lack of clarity in BCHC's internal communications. The good start was soon undermined.

Para 14 refers to a conflict of evidence regarding the nature of work to be carried out. Different documents referred to 'construction' and 'restoration'. For VAT purposes, the difference is huge. Property transactions are generally of high value, so a VAT error is likely to be expensive. Para 37 of the decision refers to the contract for 'alterations and extensions' with a building contractor. This document decided the matter in favour of the alteration of an existing building, not the construction of a new one.

Para 17(1) refers to Minutes of a BCHC Trustee Meeting. I heartily agree that Trustees give time to substantial VAT matters. Clear decisions must be recorded carefully, with professional advice appended to the Minutes.

The commendable work in para 17(1) was soon undone! Para 17(5) comments that a Trustee signed a document which he had neither read nor understood. Further, para 17(8) refers to the lack of evidence of the status of the proposed users of the building after renovation. This is an important condition for RCP status under the 'village hall' provision.

Para 18(6) refers to the intention that the property be used as a 'village hall.' This term is explicitly referred to in Group 5. There is also guidance in HMRC Notice 708. Para 14.7.4 provides their definition of a 'village hall' for the purposes of Group 5. Until recently, the wording was incorrect, having been superseded by the Upper Tier Tribunal in *Caithness Rugby Football Club [2016] UKUT 354*. For completeness, Caithness would not have assisted BCHC.

The decision contains a long and detailed analysis of BCHC's argument concerning its use as a 'village hall.' The interposition of BCHAL, the subsidiary company, did not assist, as it was not a registered charity. The evidence from the lease was that BCHC leased the building to BCHAL, which was not for 'village hall' use. In para 113, the Tribunal concluded that BCHAL's activities were "a well organised commercial operation", going well beyond the normal activities of a village hall.

HMRC allow an RCP building to be used less than 'solely' for relevant charitable purpose. As long as qualifying use exceeds 95%, they will accept that it is 'solely' used for RCP; this is a concession. Where HMRC operate a concession, it is essential that the taxpayer understand its terms and hold suitable information.

Ahead of completion of construction works, evidence will be from email correspondence with potential user groups. Will those groups be registered charities, or other community groups, or businesses? Who will those groups serve? Local individuals or families? Para 94 of the decision indicates that there was no evidence on this point.

There is some reference to a Business Plan, but its contents on this point were vague. It did contain reference to a three-mile radius which it suggested was indicative of the building being made available for the local community (para 117). BCHC also argued that use by groups outside of the three-mile radius was very small; again, without providing evidence. Any assertion to the Tax Tribunal must be evidenced. I can understand a village hall serving persons within a certain geographic area, the “local community”. However, any specific radius (three miles) should be explained in some way. For example, for a charity operating a village hall, I would expect to see a discrete area referred to in its formal Objects. The same area can then be included in a ‘Business Plan’. (Should a village hall have a Business Plan at all? Or give it a different name altogether?)

Moving on to HMRC’s contribution. Two officers provided witness statements. In para 21, Officer Rowe confirmed he had attended a meeting with the taxpayer. But he had not liaised with the Wolverhampton Registration Unit. Advisers frequently grumble at poor internal communication at HMRC. This will not generally rescue a client in a dispute about VAT liability. As advisers, we have to more-than-compensate for HMRC’s internal lack of competency.

Turning to the lease between BCHC and its subsidiary company, the Tribunal said, “the Lease was obtained online and lightly amended resulting in inconsistent/irrelevant clauses remaining in the Lease”. Given that BCHC was spending around £1m–£2m, some budget should have been set apart for a clear agreement between the parties, especially as the VAT outcome depended on this document. Para 65 of the decision considers the effect of this document, whether it constituted a ‘management agreement’. Contracts matter. If you are spending £1m–£2m, do not download a £9.99 template!

Added to that, BCHAL, the subsidiary company, was not a charity. There might be an argument, if BCHAL were truly a managing agent, that this might not jeopardise the VAT outcome. But this must be explained clearly in advice to the Trustees. Again, the contractual position must be clear in written documents and in day-to-day practice.

It has to be said that VAT presents real problems for many charities, just as it does for small businesses. But Trustees, Directors, and other responsible persons must ensure they have access to appropriate VAT advice.

The Bletchingley Church House Charity FTT decision is here: <https://tinyurl.com/4uefyvww>

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