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ACPNS Legal Case Notes Series: 2021-131 Cambridge University Boathouse Limited v The Commissioners for Her Majesty's Revenue & Customs.

[Working Paper]

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ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



CAMBRIDGE UNIVERSITY BOATHOUSE LIMITED v THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS [2021] UKFTT 382 (TC)

First-tier Tribunal, Tax Chamber, Judge Anne Redston, Ms Gill Hunter, 28 October 2021

A VAT decision to determine the true beneficiary of a supply.

Key words: Tax, United Kingdom, VAT, Sport, Rowing, Beneficiaries

1. The tradition of annual Boat Races between Oxford and Cambridge began in the nineteenth century.
2. Until 2016 three unincorporated clubs were responsible for fielding teams for the Boat Races from Cambridge. There was a men's clubs, a women's club and a lightweight rowing club.
3. A decision was taken by the clubs to combine to build new boathouse facilities on the basis that (at [32]):

The poor quality of the boathouses affected the standard of the rowing and so risked jeopardising Cambridge's chances of succeeding in the Boat Races, especially as Oxford had already built a new state-of-the-art boathouse. If Oxford regularly won every Boat Race, the event would become "predictable and processional" and lose the interest of the public and of sponsors.

4. A newly incorporated Cambridge University Boathouse Limited (CUBL), a company limited by guarantee, was to own the boathouse (the Boathouse). The cost of construction was around £5m and was funded by donations, together with a loan from the university.
5. The Cambridge University Women's Boat Club (CUWBC), Cambridge University Boat Club (CUBC) and Cambridge Lightweight Rowing Club (CULRC), each of which is a company limited by guarantee with similar constitutions and object clauses, were also incorporated.
6. The CUWBC and the CUBC each had a founding member. The CUWBC's founding member is the CUWBC Foundation and the CUBC's founding member is the CUBC Foundation. The endowments and assets of the unincorporated respective associations was transferred to these foundations.

7. The members of CUBL were the Foundations and the CULRC.
8. CUBL licenses the use of the Boathouse to the three Clubs. They field university crews to race against Oxford in the annual Boat Races. These are organised and staged by a separate company, the Boat Race Company Ltd (BRCL).
9. BRCL carries out a number of practical tasks to make the Boat Races run efficiently, including liaising with the police and local councils. One of its key roles is to organise and provide sponsors for the Boat Races.
10. BRCL distributes approximately the same amounts of sponsorship money to each university. The clubs are precluded by agreement from arranging their own separate sponsorship deals for the Boat Races. This is so there is no “arms race” between the two universities, with each touting in the market to obtain more generous sponsorship, which could unbalance the teams, so that one of them regularly beats the other. The outcome of the Boat Races would then become predictable, and so less interesting.
11. The issue before the Tribunal was whether the supply of the Boathouse came within the sporting exemption in the Value Added Tax Act 1994 (VATA), Schedule 9, Group 10, Item 3, which reads:

The supply by an eligible body to an individual of services closely linked with and essential to sport or physical education in which the individual is taking part.

12. HMRC’s case was that the rowers were the ultimate beneficiaries, so that the supply came within the exemption. HMRC refused CUBL’s VAT repayment claims. In [Canterbury Hockey Club v HMRC](#) [2008] STC 3351, the Court of Justice of the European Union held that a supply to a corporate body nevertheless fell within the exemption if “the true beneficiaries” of the supply were individuals taking part in sport.
13. CUBL argued that the clubs, and not the rowers, were the “ultimate beneficiaries” of the supply made by it.
14. The Tribunal decided (at [6]):

...that the Clubs were the true beneficiaries, because they have the right to use the Boathouse for their training programmes and the right to store their equipment, and they pay for those rights. In contrast, the rowers:

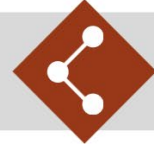
- (1) had no right to access or use the Boathouse other than at the invitation of the Clubs and at the direction of the Clubs’ employees;
- (2) did not pay, either in money or in kind, for the usage of the Boathouse; and
- (3) had no right to store their own equipment in the Boathouse.

15. Therefore, the VAT payments were prima facie recoverable. However, the Tribunal said (at [7]):

This decision does not finally determine CUBL’s appeal. HMRC’s position is that CUBL’s entitlement to recover VAT in respect of the relevant period may depend on the outcome of further issues, which the parties will now seek to agree and, in the absence of agreement, will ask the Tribunal to determine.

16. The Tribunal therefore gave relevant directions at the end of its decision in order to avoid another hearing to finally determine the issue.

IMPLICATIONS



The Tribunal spent some time examining the constitution of the newly incorporated clubs and comparing them to the unincorporated bodies to find the ‘real purpose’.

Prior to the Charity Act of 2006 sports organisations were only able to achieve charitable status through the provision of another charitable purpose (usually health or education), or through the promotion of community participation in healthy recreation. Section 2(2) of the Charity Act 2006 included a charitable purpose as the advancement of amateur sport. When drafting the formal objects for the new companies, the [Charity Commission of England and Wales material](#) appears to have influenced the choice of words.

In the spirit of the Australian High Court ([Commissioner of Taxation of the Commonwealth of Australia v Word Investments Ltd](#) [2008] HCA 55) the Tribunal explained (at [23]-[24]):

In other words, the objects of the CUWBC no longer mention the Boat Races: the focus is instead on public benefit and the participants’ health, well-being and development. However, Dr Hood said in her witness statement that CUWBC’s “primary objective is to race in, and win, the annual Boat Races against the University of Oxford”; that each Club is run in order “to win Boat Races” and “has the primary aim of fielding a rowing eight to race against Oxford in the annual Boat Races”. In oral evidence, Dr Hood confirmed that “the principles as to what the Clubs are about hasn’t changed at all” following incorporation: their primary purpose remained beating Oxford in the Boat Races. When asked by the Tribunal why, if that was the case, the objects made no mention of the Boat Races, Dr Hood said that pro-bono assistance had been received from a lawyer who had referred to the website of the Charity Commission, and had advised that the objects as drafted were broad enough to encompass the continuing focus on winning the Boat Races. We find as a fact that the primary object of the Clubs is to win the Boat Races.

VIEW THE CASE



This case may be viewed at <https://www.bailii.org/uk/cases/UKFTT/TC/2021/TC08304.pdf>

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