This case concerned the value-added tax (VAT), a consumption tax levied in the UK. It was an appeal by Longridge on the Thames (the appellant), against a decision of The Commissioners for Her Majesty’s Revenue and Customs (HMRC) that the supplies made to the appellant in relation to the construction of a building on its premises were not zero-rated supplies.

The appellant is a company limited by guarantee and a registered charity, whose objects are:

1. To safeguard and promote Longridge as a centre of excellence for the advancement of education in water, outdoor and indoor activities for young people generally, and for purposes related thereto such as coaching, leadership and training in water and other activities; and
2. To promote the development of young people in achieving their full physical, intellectual, social and spiritual potential as individuals, as responsible citizens and as members of their local, national and international communities

The appellant carries out its charitable purposes by the provision of boating and other water-based courses, activities and facilities for young people at its premises on the banks of the River Thames. Certain of those courses, activities and facilities are also provided to adults.

During 2010, in order to improve its facilities, the appellant engaged a contractor to build a Training Centre on its site. This had toilet, changing and shower facilities on the ground floor, and an area to be used primarily for training courses and meetings on the upper floor. The appellant’s contention was that the supplies made by the contractor in constructing the Training Centre should be zero-rated (in terms of VAT) under Items 2 and 4 of Group 5 of Schedule 8 to the Value Added Tax Act 1994 (VATA), on the grounds that the building was intended for use solely for relevant charitable purposes within the meaning of Note (6) to Group 5, and asked HMRC for confirmation of this, to enable the appellant to issue the necessary zero-rating certificate to the contractor.

HRMC took the view that the nature of the appellant’s activities are such as to amount, in whole or in part, to business activities, and that accordingly the Training Centre was not intended for use solely for relevant charitable purposes (that is, it was not intended to be used otherwise than in the course or furtherance of a business).

The grounds of appeal were that the Training Centre is used in the fulfilment of the charity’s core objects, and that although it charges fees for the courses and other facilities it provides in pursuing those objects, such courses and facilities are substantially subsidised by donation income received by the appellant and also by the time and skills provided to the appellant by its large body of volunteers.

The issue before the Tribunal was whether, at the time the relevant supplies were made in the course of the construction of the Training Centre, the building was intended for use solely for a relevant charitable purpose, and thus could be zero-rated for VAT purposes. The disputed amount of VAT involved was about £135,000. The Tribunal reviewed the relevant legislation, which enacted a European Directive (European Community Council Directive 2006/112/EC), on the issue. Section 94(1) VATA provides that: ‘In this Act “business” includes any trade profession or vocation’. Section 30 VATA provides that certain supplies (specified in Schedule 8) by a taxable person are to be taxable at the zero rate. Group 5 of Schedule 8, headed Construction of Buildings, etc was relevant for this appeal. Items 2 and 4 of that part of Schedule 8 include as zero-rated:

2 The supply in the course of the construction of—
   (a) a building ... intended for use solely for ... a relevant charitable purpose; or
   (b) ...,
of any services related to the construction other than the services of an architect, surveyor or any person acting as a consultant or in a supervisory capacity.

4 The supply of building materials to a person to whom the supplier is supplying services within item 2 ... of this Group which include the incorporation of the materials into the building (or its site) in question.

The Notes to Group 5 of Schedule 8 include Note 6:

(6) 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.

The evidence showed that the trustees’ intention in relation to the upper floor of the new building was to provide a training space for the young people who took part in its boating activities. However, the space had also been advertised on the appellant’s website as a space for corporate events following a single booking for such an event in 2011. Few other bookings had been received, and the space was almost fully utilised for the appellant’s charitable activities. Some adults, however, undertook activities as ‘corporate teams’.

The cost of the new building (£760,000) was entirely met by donations and grants, since the trustees were clear that they did not want to increase any fees for the activities provided by the charity. Amongst its many activities, the appellant offers fee-paying courses, packages of courses, and training for adults as coaches. The fees charged are similar to, or slightly lower than, those charged by local authorities and commercial organisations.

A substantial number of volunteers contribute their time and skills to the appellant for the purposes of the courses and activities it provides. The volunteers mainly act as instructors (there also paid full-time instructors), but there are also volunteers who assist with maintenance of premises and equipment and in administration and financial accounting.

The appellant’s financial statements showed that for each year from 2006–07 year onwards, it had shown a deficit on its operating activities, ranging from £95,400 in 2007–08 to £16,630 in 2010–11 (in some years depreciation of capital assets and the costs of redundancies had increased further the deficit on all activities). In each year donated income for ongoing activities (that is, disregarding donations for capital projects) had at least equalled the deficit accruing on activities.

The Tribunal considered the appellant’s financial statements for its year 2010–11 as an example. They showed that total income from all its subsidised activities (that is, all young people’s activities, family activities, and those adults for whom a discount on the published price was given) was £580,883, and that the cost of providing those activities (disregarding the value of volunteer time, which was not accounted for) was £655,498. The analysis also showed that the total income from activities provided to all other adults (including those participating as a ‘corporate team’) was £61,998 and that the cost of providing those activities was £53,476. This figure also disregarded the value of volunteer time – the evidence was that in the case of activities provided for adults, a higher proportion of instructor/training input would be by way of paid instructors, but that where volunteers were used, they would be the more experienced volunteers.

In looking at the range of activities and courses provided by the appellant during the period from 1 January to 25 November 2012, the Tribunal found that 27,119 individuals took part, of whom 17,895 were young people who paid no charge or a charge discounted by 20% or more; 7,786 were young
people who paid a charge discounted by up to 20%; 1,111 were adults who paid a discounted charge, and 327 (1.21%) were adults who paid a charge without any discount.

As to the specific use of the Training Centre, a schedule of users of the upper floor for the period from 16 October 2010 to 26 June 2012 showed that during that period 5,806 persons used the upper floor of whom 240 were persons comprising ‘corporate teams’ (4.13% of total users). All other users were individuals or groups whose activities were subsidised by the appellant, being youth groups, school groups, volunteers supporting the appellant, and, on five occasions, family groups. The use by volunteers ranged from use for training purposes to use for social activities. Use of the upper floor space for corporate events was limited to three events, for which the total charges were £380. Total charges for the upper floor during the period considered were £2,455, of which most were the nominal charge of £50.

Was the appellant carrying on a business? The Tribunal held that the appellant was engaged in economic activity (at [96]), saying (at [98]):

The Appellant runs its activities, and manages its financial affairs, in a professional and ‘business-like’ manner. In its trustee body and full-time employed chief executive it has an appropriate governance structure. It prepares budgets and forecasts with the aim of endeavouring to ensure continuing financial solvency and to provide a framework whereby its financial position can be monitored and its activities sustained. It has programmes for seeking grants and for raising donations to support its work, and in matters such as planning for and funding the construction of the Training Centre it is looking to continue and develop its activities over the long term. Where it charges for the courses and activities it contracts with its ‘customers’ on terms and conditions which a commercial organisation would recognise. Its turnover (including donated income) is approximately £1 million and its net assets approximately £2 million (most of which is accounted for by the value of the site it occupies). In our view its conduct of its activities, and in particular its financial management, is as one would expect – and almost certainly as charity regulation would require – of a charity of this size and nature.

However, almost all its activities were carried out in pursuit of its charitable objects. The Tribunal said in relation to the fees charged (at [99]–[100]):

...charges are set with a view to their affordability for the young people the Appellant wishes to benefit; charges are set with a view to covering operational expenses after taking account of donated income and taking account also of the contributions of volunteers; discretion is given to permit reducing or waiving charge in particular cases where pursuit of the charitable objects is especially desirable; and all capital projects (with the exception of the Appellant’s original acquisition of the site, which was partly funded by borrowing) are financed by donations and grants, so that no part of the charges is directly or indirectly expended on the acquisition or funding of capital assets. In our view these are not factors which are indicative of a business, even if certain of those factors may demonstrate a degree of financial care and prudence aimed at ensuring that the Appellant can continue to carry out its activities. It is not consistent with a business activity that charges are set to meet operational costs to the extent that donated and grant income is not available to meet such costs; nor is it consistent with a business activity that the necessary capital costs of the activity are met by donations and grants so that no part of such costs, or the funding of such costs, is met by those to whom the Appellant provides its activities. The readiness by the Appellant to reduce or waive charges, undertaken not with a view to increasing business, but to ensure that its facilities and activities are made more widely available, is not consistent with a business activity. All these matters inform as to the true nature of the activity carried on by the Appellant, not merely its purpose in carrying that activity.
The Tribunal went on to say that the ‘most significant’ aspect of the appellant’s activities was the use of volunteers (at [101]). Taking all the factors into account, it was clear that the appellant was not carrying on a business for profit (at [102]). Its ‘intrinsic nature’ was the furtherance of its charitable objects, notwithstanding that it provided some courses and activities for adults (at [104]).

As to the use of the Training Centre, its lower floor was held to be used solely for the appellant’s charitable purposes. The position in relation to the upper floor was ‘more complex’ (at [117]), but the evidence showed (see above) that on an actual use basis, and having regard to the de minimis rule (minimal use for other purposes), the upper floor had been used solely for a charitable purpose within the relevant VAT provisions (at [119]).

The appeal was therefore allowed.

The decision may be viewed at:

Implications of this case

The position is similar for charities in Australia under the GST (also a consumption tax) legislation. HMRC has recently brought several cases against charities in pursuit of VAT on construction projects. All have been unsuccessful. The HMRC takes the view that not being liable for VAT on construction is not useful for charities because then they are unable to recover VAT on their inputs, making their construction costs higher overall. The truth or otherwise of this assertion is, as yet, unproven.