
The Charity Law & Practice Review

CHARITIES, SPONSORSHIP AND VALUE ADDED TAX

Jean Warburton¹

Sponsorship is a well established and accepted fundraising method for charities. Individuals and companies are encouraged to contribute to particular charitable events and projects in return for publicity and other benefits. Names of those giving financial support appear on programmes, Rolls of Honour, backs of theatre seats and on boards at sporting events. Contributors receive reduced price tickets, entry to previews, hospitality - the variations are endless. Sponsorship, however, cannot just be seen as another form of fundraising; it must also be regarded as involving potential liability to value added tax.

The Basic Law

Section 4(1) of the Value Added Tax Act 1994 provides:

"VAT shall be charged on any supply of goods or services made in the United Kingdom, where it is a taxable supply made by a taxable person in the course or furtherance of any business carried on by him."

Thus, when trying to determine the VAT position of a particular sponsorship arrangement it is helpful to consider, first, if there has been a supply and, secondly, whether that supply has been made in the course or furtherance of a business.² Finally, it is necessary to consider the value of the supply as that will determine the amount of VAT payable.

¹ Jean Warburton LLB, Solicitor, Reader in Law Charity Law Unit, University of Liverpool, PO Box 147, L69 3BX Tel (0151) 794 3088. Fax (0151) 794 2829.

The author is also a part-time Charity Commissioner. The article should not be considered in any way to reflect the views of the Charity Commission.

² See the approach taken by The President, Stephen Oliver QC, in *The City of Norwich v Customs & Excise Commissioners* (1994) unreported Decision No 11822.

Supply

There will only be a supply for the purposes of VAT if there is consideration.³ Further, there must be a direct link between the funds received by the charity and the benefits received by the funder before there can be a charge to VAT.⁴ It follows that even if the word 'sponsorship' is used, if nothing is actually received by the funder in return for his contribution to the charity the payment will be regarded as a donation and there will be no liability to VAT.⁵ The Commissioners of Customs & Excise do not consider that a simple acknowledgment of a payment turns it into a supply.⁶ Giving a flag or a sticker in return for a donation will not create liability to VAT, neither will placing the name of a supporter on a programme, or notice or on the back of a seat in a theatre. Similarly, a building or university chair may be named after a donor without raising the spectre of VAT. If there is a direct link between the payment from the supporter and the benefits received by the supporter then there will be liability for VAT. For example, if money is received by a charity on condition that a particular event carries the sponsor's name, there will be a supply for VAT purposes.⁷

A recent illustration of a sponsorship arrangement giving rise to liability to VAT is the 'Name-a-Seat Scheme' operated by the Opera House, Buxton.⁸ Buxton Opera House issued leaflets offering a range of benefits in return for specific sums of money; different sums were specified for seats in the Dress Circle, Stalls or Upper Circle. The benefits included the name of the sponsor being inscribed on a seat and on a Roll of Honour and the receipt of a "Matcham card" which gave priority booking, 10% discount and special ticket prices for selected shows. The

³ Value Added Tax Act 1994 s.5(2).

⁴ *Staatssecretaris van Financien v Co-operative Aardappelenbewaarpplaats GA* [1981] 3 CMLR 337; *Apple and Pear Development Council v Customs & Excise Commissioners* [1988] STC 221.

⁵ See *Tolsma v Inspecteur der Orizetbelasting Leeuwarden* [1994] STC 509.

⁶ VAT Notice 701/41/95 para 4.

⁷ See, for example, *Oxford Film Foundation v Customs & Excise Commissioners* (1991) unreported Decision No 5031.

⁸ *High Peak Theatre Trust v Customs & Excise Commissioners* [1995] STI 202.

tribunal's approach to the arrangement can be seen from the following extract from the decision:⁹

"The payments made by contributors related entirely to the benefits provided for by the Scheme, and to nothing else. The trust's leaflet was in effect an offer which was accepted by contributors on payment of the relevant sums of money; and whilst the amount paid might not represent value for money and contributors to the Scheme might act through philanthropic motives, the motives of persons receiving supplies were irrelevant to what was being supplied."

Even if there appear to be benefits being supplied to sponsors, there will only be a charge to VAT if the money paid by the sponsors is consideration received by the charity in return for the supply of those benefits. If the monies received cannot be said to form part of the turnover of the charity there will be no supply on which to charge VAT. Accordingly, if a charity seeks sponsorship money for a prize or award and all the money collected from the sponsors is handed to the prize winner or award holder, there will be no supply for VAT purposes even if the sponsors receive publicity as part of the arrangement for sponsoring the prize or award.¹⁰

Business

A supply of benefits to a sponsor by a charity will not be chargeable to VAT unless the supply is made in the course or furtherance of a business carried on by the charity.¹¹ A one-off sponsorship arrangement by a charity which is not otherwise carrying on a business, for example because it is funded by grants, may not be liable to VAT. A charity which organises sponsorship deals on a fairly regular basis, albeit for different activities and projects, will probably be considered to be carrying on a business even if the sums involved are relatively modest.¹²

⁹ Quoting from (1995) unreported Decision No 13678.

¹⁰ See *EMAP MacLaren Ltd v Customs & Excise Commissioners* [1996] STI 1063, 1212, applying *HJ Glawe Spiel - und Unterhaltungsgeräte Ausstellungsgesellschaft mbH & Co KG v Finanzamt Hamburg - Barmbek - Uhlenhorst* [1994] STC 543.

¹¹ For a more detailed discussion of when a charity is carrying on a business, see (1995) 3 CL&PR 37 (Warburton).

¹² See *The City of Norwich v Customs & Excise Commissioners* (1994) unreported Decision No 11822.

The supply of goods or services by a charity in connection with a fundraising event organised for charitable purposes by the charity or jointly with other charities is exempt from VAT even if the activity would otherwise be in the course of a business.¹³ Thus a sponsorship deal in connection with a fundraising ball or gala may not attract VAT. The fundraising event, however, must not form part of a series or regular run of similar events as the exemption should not create distortion of completion.¹⁴ Whilst the repetition of the same event on consecutive nights is out with the exemption,¹⁵ a fundraising event which continues over a limited number of days can be regarded as a single event rather than a series of events.¹⁶

Value of the Supply

Section 19(2) of the Value Added Tax Act 1994 provides:

"If the supply is for a consideration in money its value shall be taken to be such amount as, with the addition of VAT chargeable, is equal to the consideration."

It is not unusual in a sponsorship arrangement for the amount of money given by the funder to greatly exceed the value of the benefits received from the charity. In many cases the value of the benefits can be regarded as nominal. Unfortunately, whilst money consideration can be apportioned between different supplies of goods and services¹⁷ there is no power to divide the consideration where there is only one supply.¹⁸ Thus money paid by a sponsor cannot be apportioned between the value of the benefits received by the sponsor and the balance, that balance being treated as a donation on which VAT is not payable: the whole amount paid is subject to VAT.

¹³ Value Added Tax Act 1994 Sched 9 Group 12 Item 1.

¹⁴ EC Council Directive 77/388 (the Sixth VAT Directive) Art 13A(1)(o).

¹⁵ *Northern Ireland Council for Voluntary Action v Customs & Excise Commissioners* [1991] VATTR (performance of one play on seven consecutive nights).

¹⁶ *Reading Cricket and Hockey Club v Customs & Excise Commissioners* [1995] STI 1979 (three day real ale and jazz festival).

¹⁷ Value Added Tax Act 1994 s.19(4).

¹⁸ *Customs & Excise Commissioners v Tron Theatre Ltd* [1994] STC 177, 182 per The Lord President (Hope).

The effect of section 19 can be seen from Buxton Opera House's 'Name-a-Seat Scheme'.¹⁹ A supporter wishing to name a seat in the Dress Circle would pay £104. The Opera House argued that the only benefit received by the supporter which had any value was the Matcham card; the other benefits were merely acknowledgements of the supporter's contribution. They further argued that the £104 should be apportioned as to £10, the normal cost of a Matcham card, being subject to VAT and as to £94, a donation, not being subject to VAT. The tribunal held that the whole of the sums paid were consideration for the benefits received under the 'Name-a-Seat Scheme' and that the total sum paid by each supporter formed the value of each supply for VAT purposes.

The whole amount paid by a sponsor will not be subject to VAT, however, if the sum is apportioned in advance and a separate donation is identified clearly.²⁰ But if the donation is, in effect, compulsory because, for example, the charity makes it apparent that the sponsor will not receive benefits unless a donation is made, the whole sum including the donation will be subject to VAT.²¹

Conclusion

Sponsorship provides yet another area in which charities must have regard to the implications of VAT before entering into arrangements if they are to avoid unwelcome demands on charity funds.

¹⁹ *High Peak Theatre Trust Ltd v Customs & Excise Commissioners* [1995] STI 202. See the text at fn 8 above for the details of the scheme.

²⁰ VAT Notice 701/41/95 para 6.

²¹ See *Glasgow Miles Better Mid Summer 5th Anniversary Ball v Customs & Excise Commissioners* (1990) unreported Decision No 4460.