HMRC - VATSC51960 - Grants: Edinburgh Leisure & Others

Court Reference: EDN/03/22, EDN/03/29, EDN/03/30

This was a combined appeal from three leisure operators - Edinburgh Leisure Ltd (ELL), South Lanarkshire Leisure Ltd (SLL) and Renfrewshire Leisure Ltd (RLL) – who were created as Not for Profit Leisure Trusts. They were formed in order to fulfil an obligation to operate sports centres which was incumbent upon their respective Local Authorities (LA).

The sports centres had been previously operated by the LA, but were rented to the Trusts for a nominal rent. The Trusts operated the sports centres under a service level agreement and kept all the income from the sporting activities. Some of these activities were profitable, but others were not and so each Trust received a negotiated payment from their respective LA. The payment was in recognition that the Trusts could not meet their service level agreement with the LA out of income they generated themselves alone.

Through creating Not For Profit Leisure Trusts, the LAs were able to benefit from a saving which arises in relation to non-domestic rates. The court noted the sums were substantial and in themselves would have justified setting up the arrangement irrespective of VAT considerations (although the Trusts and LAs would seek to achieve a VAT saving where possible). There were also other sources of funding in addition to the LAs, for example SLL received money from Health Boards (by way of a GP referral), the Scottish Football Association, lottery money and new opportunity funds.

The court found The Local Government and Planning (Scotland) Act 1982 imposed a ’wide ranging duty’ on LAs to ensure not only adequate provision of facilities in the sense of structures and equipment, but also that the inhabitants of their area were provided adequately with facilities. Any failure to carry out these duties would therefore be ‘capable of enforcement if the local authority failed’.The decision was that the LAs were not making a grant to the Trusts to enable them to operate for their own purposes. Rather, the payment is so the Trusts may operate in accordance with the wishes of the Councils to properly fulfil their statutory duty and so in that context the Council is the customer. The decision did not identify the statutory duty as conclusive in itself, but referred to it in order to contrast the situation with that of the councils “making a grant to the companies to enable them to operate for their own purposes”.

Other factors considered were:

the Trusts were obliged to provide the Council with audited accounts and, without need for request, true and complete quarterly financial and monitoring reports detailing its income and expenditure as well as annual reports on all aspects of the company.

there are binding obligations which are being paid for by the Council. These may be enforceable

the relationship between the Trusts and the LAs is at arms length

there is an absence of control by the Council in the Trusts’ decision-making in that they are at liberty to dispense with Council services wherever possible

there was no question of deficit funding because the Trusts were not given whatever money turned out to be needed in a particular year, instead a sum was agreed which is the consideration for the service (although it was irrelevant that the consideration was calculated in advance on the basis that the Trusts should not suffer losses)

it was relevant that the customer thinks they are receiving something

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