

A housing association is a business

Riverside Housing Association Limited [2006] EWHC 2383 (Ch)

Summary

The High Court has confirmed the VAT Tribunals' decision that a housing association is carrying on a business in letting property and, furthermore, is not a public body (despite operating under the special regime for social landlords). This case affects the potential for benefiting from 'relevant charitable purpose' relief from VAT on new buildings and, as such, will be of interest not only to housing associations but also to education, government and the charity and public sectors.

Background

The appellant, Riverside Housing Association Limited ("Riverside") lets housing to socially and economically disadvantaged tenants, and is a registered charity. It owns or manages over 22,000 properties in 31 different local authority areas and is a typical social landlord in that it holds the freehold or a long leasehold interest in its properties and lets them on assured tenancies to residential occupiers.

Riverside has two main sources of income: principally rents received from its tenants, and grants paid by the Housing Corporation. Its capital receipts are grants, borrowing, and the proceeds of sales of properties. In March 2001, Riverside sought approval from HMRC to issue a zero-rating certificate in respect of the construction of a new head office building for its Midlands division. Riverside's view was that the part of the building it occupied was to be used solely for a 'relevant charitable purpose' "otherwise than in the course or furtherance of a business".

HMRC considered that Riverside could not issue the certificate because it was carrying on a business activity.

The Tribunal held that the making of profits in the course of activity carried out by the housing association over a period of time (even though these profits were not distributed) was an "almost conclusive indication" that the activity had the characteristics of a "business".

The question for the High Court to decide was whether the Tribunal had been entitled to find that, notwithstanding that Riverside is a charity, the supply of construction services for the regional head office was not "for... a relevant charitable purpose" because it was not "otherwise than in the course or furtherance of a business" .

Riverside's case was that, on the facts, it was not carrying on a business and, in addition, its activities were those of a public authority governed by public law (as provided for under Article 4(5) of the EC Sixth Directive) and that it operated under a special legal regime. Thus, it was not a taxable person and zero-rating would be appropriate.

Held

The High Court held that on the evidence and in the light of the "trend of the decisions", notwithstanding that Riverside's activities were carried on under a special regime for housing associations, this did not alter the nature of the activity as an economic activity and a business. The Tribunal was entitled to come to the decision it did on the facts. It did not follow that a public body engaging in transactions as a public body is not carrying on an economic activity.

The Court also held that Riverside did not qualify as a public body as defined in ECJ case law.

Implications

The High Court referred to the "trend of the decisions" on this issue. It is difficult to reconcile this decision to that in the earlier case of *Cardiff Community Housing Association Ltd*, and this should no-longer be relied upon as a reliable indicator for the criteria for the business/non-business test.

Although housing associations are restricted as to the level of rents they can charge, this does not mean their activities are necessarily non-business. Furthermore, EC law holds that: 'The exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis shall also be considered an economic activity'.