[2017] UKFTT 0868 (TC)

TC06263

Appeal number:TC/2016/03179

VALUE ADDED TAX – recovery of input tax by charity – certain events provided free of charge – whether economic activities – whether part of the appellant's economic activities as a whole – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

YORKSHIRE AGRICULTURAL SOCIETY **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS **Respondents**

TRIBUNAL: JUDGE JONATHAN CANNAN
MS ANN CHRISTIAN

Sitting in public in Leeds on 12 September 2017

Mr Noel Tyler of VAT Angles VAT Consultancy appeared for the Appellant

Mr Bernard Haley of HM Revenue & Customs appeared for the Respondents

DECISION

Background

1. The Yorkshire Agricultural Society ("the Society") is a charitable company limited by guarantee. Its charitable objects are broadly to support and promote agriculture, rural and allied industries and to champion the role of farmers. We set out its charitable objects in more detail below. In the pursuit of those charitable objects it undertakes the Great Yorkshire Show ("the Show") at the Yorkshire Showground near Harrogate ("the Showground"). The Society also carries out a range of other activities including other events and providing venues for third party events, conferences and exhibitions. The Show and the Society's other activities generate in excess of £9m gross income for the Society annually.

2. This appeal is concerned with two events run by the Society, called "Countryside Days" and "Careers in Focus". These activities have in common the fact that no admission fee is charged by the Society. Countryside Days is an annual event over 2 days where some 6,000 primary school children and their teachers attend the Showground. The focus is educational and includes numerous workshops and activities where participants get a hands-on experience of various agricultural and rural activities. Careers in Focus is an annual one day event attended by some 1,500 secondary school children. The focus involves showcasing careers in agriculture, rural and allied industries.

3. HMRC consider that the two events mentioned above are non-business activities of the Society. They contend that the Society is not entitled to claim credit for input VAT incurred in connection with the events. As a result, HMRC gave notice to the Society of a VAT assessment on 14 December 2015 ("the Assessment") to recover input tax credit claimed by the Society. The Assessment was in the sum of £24,405 and covered VAT periods 03/12 to 09/15. It related principally to the input tax claimed in relation to the two events. The sum in dispute on this appeal is £23,385. The appeal may also affect claims for input tax credit in relation to periods after 09/15.

4. The evidence before us included a witness statement from Mr Nigel Pulling, who is a chartered accountant and chief executive of the Society. He also gave oral evidence and was cross-examined by Mr Haley for the respondents. We also had a witness statement from Ms Briony Coggill, an HMRC Officer setting out the circumstances in which the Assessment came to be made. Her evidence was not challenged and she did not give oral evidence.

5. Before dealing with the evidence and our findings of fact it is convenient to set out the legal basis on which input tax may be credited to a trader, and to consider various authorities relied on by the parties as to what amount to non-business activities.

Legal Framework

6. There was no dispute as to the underlying basis on which the Society was entitled to claim credit for input tax. The domestic legislation is contained in sections 24-26 Value Added Tax Act 1994. Input tax is defined by section 24(1) as VAT on

the supply to a taxable person of any goods or services "used or to be used for the purpose of any business carried on or to be carried on by him". Section 24 then makes provision for an apportionment of VAT incurred partly in relation to non-business activities as follows:

> " (5) Where goods or services supplied to a taxable person … are used or to be used partly for the purposes of a business carried on or to be carried on by him and partly for other purposes—
>
> > (a) VAT on supplies… shall be apportioned so that so much as is referable to the taxable person's business purposes is counted as that person's input tax, and
> >
> > (b) the remainder of that VAT ("the non-business VAT") shall count as that person's input tax only to the extent (if any) provided for by regulations under subsection (6)(e)."

7. The effect of section 24(5) is to deem a proportion of VAT incurred partly for business purposes and partly for non-business purposes to be input tax, recoverable as such. The only provision dealing with the basis of that apportionment is regulation 102ZA referred to below.

8. Section 26 provides for the recovery of input tax by way of credit against output tax liabilities as follows:

> " 26(1) The amount of input tax for which a taxable person is entitled to credit at the end of any period shall be so much of the input tax for the period (that is input tax on supplies…) as is allowable by or under regulations as being attributable to supplies within subsection (2) below.
>
> (2) The supplies within this subsection are the following supplies made or to be made by the taxable person in the course or furtherance of his business--
>
> > (a) taxable supplies;
> >
> > …
>
> (3) The Commissioners shall make regulations for securing a fair and reasonable attribution of input tax to supplies within subsection (2) above, and any such regulations may provide for—
>
> > (a) determining a proportion by reference to which input tax for any prescribed accounting period is to be provisionally attributed to those supplies;
> >
> > (b) adjusting, in accordance with a proportion determined in like manner for any longer period comprising two or more prescribed accounting periods or parts thereof, the provisional attribution for any of those periods; …"

9. The VAT Regulations 1995 SI 1995/2518 make provision for the attribution of input tax to taxable supplies. In particular, regulation 101 provides as follows:

> " 101(1) Subject to regulation 102, the amount of input tax which a taxable person shall be entitled to deduct provisionally shall be that amount which is attributable to taxable supplies in accordance with this regulation."

10. Regulation 101 then goes on to set out what is known as the standard method of attributing input tax to taxable supplies where a taxpayer also makes exempt supplies. Regulation 102 makes provision for what are known as partial exemption special methods of attributing input tax to taxable supplies.

11. Regulation 102ZA was introduced in 2011 and provides as follows:

> " 102ZA (1) A taxable person who is required to make an apportionment under section 24(5) of the Act in relation to goods or services which are used or are to be used partly for business purposes and partly for other purposes may effect that apportionment using a method provided for in regulation 102(1)."

12. The position of taxpayers incurring VAT within section 24(5) is that they must make an apportionment of VAT incurred, identifying VAT referable to business purposes and VAT referable to non-business purposes. It is accepted that the method of apportionment must be fair and reasonable, but there is no generally applicable method. Regulation 102ZA does not lay down any particular method of apportionment. It simply has the effect that HMRC may approve a method of apportionment pursuant to regulation 102(1) including a "combined method" which also covers a taxpayer's partial exemption special method. The method of apportionment under section 24(5) will depend on the circumstances of the taxpayer.

13. The UK VAT legislation gives rise to a distinction between business purposes and non-business purposes. In terms of the EU Directives which are implemented by the UK legislation the language generally distinguishes economic activities and non-economic activities. Nothing turns on the different language for present purposes. In this decision we shall use the language of economic and non-economic activities save where the context otherwise requires. The scheme of the legislation whereby VAT directly attributable to non-economic activities is not recoverable, and the need to apportion VAT incurred between economic activities and non-economic activities for the purposes of recovery was discussed by the Upper Tribunal in *Revenue and Customs Commissioners v Imperial College Of Science, Technology And Medicine [2016] UKUT 278 (TCC)*. That case was concerned with the validity of a combined method used by a university which was partially exempt and also engaged in non-economic activities. The Upper Tribunal set out the legal background to the recovery of input tax, and VAT incurred partly for business purposes and partly for non-business purposes at [13]-[23]. We have regard to that analysis, but there is no need for us to set it out in full here. The Upper Tribunal referred to a decision of the CJEU in *Securenta Göttinger Immobilienanlagen v Finanzamt Göttingen Case C-437/06*. We were not referred to *Securenta* but it is worth setting out the following paragraphs from that decision:

> " 31. To the extent that input VAT relating to expenditure incurred by a taxpayer is connected with activities which, in view of their non-economic nature, do not fall within the scope of the Sixth Directive, it cannot give rise to a right to deduct.
>
> 32. ... where a taxpayer simultaneously carries out economic activities, taxed or exempt, and non-economic activities outside the scope of the Sixth Directive, deduction of the VAT relating to expenditure connected with the issue of shares and atypical silent partnerships is allowed only to the extent that that expenditure is attributable to the taxpayer's economic activity within the meaning of Article 2(1) of that directive.

…

> 33. … [I]t should be noted that the provisions of the Sixth Directive do not include rules relating to the methods or criteria which the Member States are required to apply when adopting provisions permitting the apportionment of input VAT paid according to whether the relevant expenditure relates to economic activities or to non-economic activities. As the Commission has noted, the rules set out in Articles 17(5) and 19 of the Sixth Directive relate to input VAT on expenditure connected exclusively with economic activities, and distinguish between economic activities which are taxed and give rise to the right to deduct and those which are exempt and do not give rise to such a right.
>
> 34. In those circumstances, and so that taxpayers can make the necessary calculations, it is for the Member States to establish methods and criteria appropriate to that aim and consistent with the principles underlying the common system of VAT."

14. In the context of the present appeal the Society invites us to find that the Countryside Days and Careers in Focus events were part of the Society's economic activities as a whole. HMRC do not accept that argument. It is helpful to consider at this stage what is an economic activity for the purposes of VAT and how the extent of that economic activity is defined. The issue was recently considered in the context of charitable bodies by the Court of Appeal in *Longridge on the Thames v Commissioners for HM Revenue & Customs [2016] EWCA Civ 930*. The following principles can in our view be derived from the judgments in that case:

> (1) There are no special rules for charities. Liability to VAT will depend on whether the charity's activities are economic activities. However, a profit motive is not required. A person can be engaged in economic activity even if not making a profit (see [70] and [72]).
>
> (2) The concept of economic activity is objective in nature. The objective character of the transaction is relevant. The intention of the taxable person and the purpose or result of the transaction is irrelevant. (see [73]).
>
> (3) An activity is generally categorised as economic where it is permanent and carried out in return for remuneration received by the person carrying out the activity. There must be a direct link between the service and the money received by the service provider (see [75] and [76]).
>
> (4) The fact that a charity is predominantly concerned with furthering its charitable objectives does not convert what would otherwise be an economic activity into a non-economic activity (see [94]).

15. The decision in *Longridge on Thames* was not concerned with identifying the extent of an economic activity. It does however include reference to the decision of the CJEU in *Wellcome Trust Ltd v Commissioners of Customs & Excise Case C-155/94*. The taxpayer was a charitable trust which held shares. It sold large blocks of shares and wanted to recover the VAT incurred on fees to professional advisers involved in the sale. The trust was not a dealer in shares and it would only be able to recover the VAT as input tax if the share sales were an economic activity for the purposes of the Sixth Directive. Morgan J considered one aspect of the case which is relevant for present purposes. He stated as follows:

> " 114. …The activity in that case, which involved the purchase and sale of securities in the course of management of a charitable trust, was held not to be an economic activity.

> Four questions had been referred to the Court. The first three related to different features of the circumstances of that case. The fourth question was:
>
> > '… is it relevant to consider whether the sale of shares and securities is the predominant concern of the activity in the course of which the sales take place; and, if so, how should such activity and its extent be defined?'
>
> 115. …
>
> 116. In *Wellcome*, the Court held that the relevant activity was not an economic activity and it dealt with the fourth question briefly at [40] in this way:
>
> > '40 Finally, in view of the foregoing, whether or not the sale of shares and other securities is the predominant concern of the activity in the course of which the sales in question took place cannot affect the classification, for the purposes of Article 4 of the Directive, of the investment activity of the claimant in this case.'
>
> 117. The decision in *Wellcome* shows that the use of a test of "predominant concern", in accordance with the approach of Lord Emslie in *Morrison's Academy*, may be unhelpful. It may be misleading to look at a range of activities and settle on a single classification for all of them by reference to their predominant concern or predominant subject matter. Instead, it may be appropriate to look at a range of activities and identify some which amount to an economic activity (for example, the sale of books in *Wellcome*) and others which do not (for example, the dealing in shares in *Wellcome*)."

16. The Society relied on *National Water Council v Customs & Excise Commissioners [1979] STC 157*, a relatively old authority as to the extent of an activity which must be considered in the light of subsequent authorities. The National Water Council was required to perform certain administrative, advisory and other services for various public bodies and outside organisations. Customs & Excise accepted that some of its activities amounted to business activities, but argued that they were not business activities when carried out pursuant to statutory obligations. The VAT Tribunal upheld the decision of Customs & Excise but on appeal Neill J held that the mere fact that services were supplied pursuant to a statutory obligation did not prevent them from being supplied in the course of a business. He did not accept that all services supplied by the Council were supplied in the course of business and he formulated the following test in considering any particular service :

> "… Accordingly, I consider that once a business activity has been established in relation to a particular service, all supplies of that service should be treated as made in the course of that business unless there is a clear distinction between the circumstances in which the supply is made to outside organisations and those in which the supply is made to the water authorities and similar bodies. In other words, once a relevant business has been shown to exist in relation to a particular service, there is a presumption that all supplies of that service are made in the course of that business."

17. The Society also relied on a decision of the F-tT in *British Dental Association v Revenue & Customs Commissioners [2010] UKFTT 176 (TC)*. The decision is not binding on us but it is helpful. It concerned whether supplies of free membership by the BDA to university dental students was a non-business activity so that attributable VAT was not recoverable. The F-tT recorded an acceptance by HMRC that "it was commercial for membership to be provided for no consideration in this way". This reflected uncontested evidence that the provision of free membership attracted to

membership students who would otherwise not join the association if there was a fee and who might then be difficult to recruit once they had qualified. The F-tT said at [5]:

> " Our decision is simple. We have absolutely no hesitation in saying that the provision of free membership to dental students is a provision within the compass of the Appellant's one business. We also conclude that there is no VAT principle, either in the Directives or in UK law, that requires a provision of free services, inherently made in the course of the undertaking of the one business, and given on very sensible commercial grounds, as requiring any disallowance of input tax. Accordingly this Appeal is allowed."

18. The findings which supported the F-tT's decision were set out at [19] as follows:

> " 19. We agree with counsel for the Appellant that this case is no different from that where banks give free banking services to students, or where many suppliers of services might give free introductory offers to new customers. All of those provisions of service are made in the course of the conduct of the one business. The Respondents might have found it easier to accept the point if matters had been expressed along the lines that new members would have three years of free membership, and would thereafter pay if they remained members. That nevertheless is the reality, and so our findings of fact, or mixed fact and law, are that:
>
> - the Appellant conducted only one business;
>
> - it did not, in the normal usage of the phrase, conduct any distinct activity that might be a non-business activity; and
>
> - the provision of free membership was a commercially sensible introductory offer made entirely for business purposes, and made to foster the Appellant's one and only business, and thus made in the course of that business."

19. The F-tT in *British Dental Association* adopted the reasoning and conclusion of the VAT Tribunal in *Imperial War Museum v Commissioners of Customs & Excise (Decision 9097)*. In that case Customs & Excise restricted the museum's input tax credit on the costs associated with public exhibition areas by reference to the proportion of visitors admitted free of charge. The exhibition areas were open to the public every day of the year (except Christmas Day and Boxing Day). Admission fees were charged, but certain categories of visitors such as school parties were admitted free of charge and all visitors were admitted free of charge on Fridays.

20. It was common ground in that case that the activities of the museum amounted to business activities, which included the "main activity" of admitting paying visitors together with the related activities of exploiting the merchandising and catering opportunities and providing sponsorship facilities. The Tribunal found that free admission attracted visitors who would not otherwise come to the museum thereby increasing sales of food and merchandise and increasing publicity for sponsors. The Tribunal referred to the quote above from Neill J in *National Water Council*, and continued as follows:

> " This gives some support to the conclusion that where, as here, there is, to use the Judge's expression a 'business activity' which involves the making of taxable supplies (ie admitting the paying public on six days a week), then an extension of that activity to

> the making of free admissions which are indistinguishable in all respects save from the absence of charge, will be part of that same business activity …"

21. The Society also relied on the opinion of Advocate General Kokott in *UAB 'Sveda' v Lithuania Case C-126/14*. In that case the taxpayer created a Baltic mythology recreational path. The path was free to use for a period of 5 years, but it led to outlets from which the taxpayer sold food, drinks, souvenirs and other services. The issue concerned input tax recovery on the cost of building the path. Entitlement to recovery depended on the intended use of the path, in particular whether there was a direct and immediate link between the cost of building the path and the taxable services offered to visitors. In the Advocate General's opinion there was in principle a direct and immediate link. The primary use of the path was to make it available to visitors free of charge and the secondary use was for making taxable supplies. She went on to consider whether the right of deduction was excluded and identified at [48]-[53] two cases where there may be a "break" in a direct and immediate link to taxable supplies from a secondary use as follows:

> (1) If the primary use of the inputs is for exempt supplies provided for a consideration (which was not the case), and
>
> (2) If the primary use of the inputs represented a non-economic activity of the taxpayer.

22. On the facts found by the national court the Advocate General's opinion was that there was no break in the link. She stated at [53] as follows:

> " 53. …The mere fact that a service is provided free of charge does not form the basis – contrary to the Commission's view – for a non-economic activity of a taxable person. In this respect the United Kingdom rightly referred at the hearing to the example of a shopping centre that provides customers with free parking."

23. We note that the Advocate General qualified her finding by reference to "the mere fact" a service is provided free of charge. Other circumstances must be taken into account. Clearly provision of free parking at a shopping centre or supermarket will be part of a taxpayer's economic activity because it has a direct and immediate link to that economic activity and it is not provided for altruistic reasons.

24. Sveda was concerned with the operation of Article 168 of the Principal VAT Directive which provides for entitlement to deduct input tax "in so far as goods and services are used for the purposes of the taxed transactions of a taxable person". The CJEU determined the issue consistently with the Advocate General's opinion, although it did not look to identify the "primary use" of the inputs. It stated as follows:

> " 31. The referring court nevertheless harbours doubts as to whether there is a direct and immediate link between the input transactions and Sveda's planned economic activity as a whole, owing to the fact that the capital goods concerned are directly intended for use by the public free of charge.
>
> 32. In that regard, the case-law of the Court makes it clear that, where goods or services acquired by a taxable person are used for purposes of transactions that are exempt or do not fall within the scope of VAT, no output tax can be collected or input tax deducted (judgment in *Eon Aset Menidjmunt*, C-118/11, EU:C:2012:97, paragraph 44 and the case-law cited). In both cases, the direct and immediate link between the input

> expenditure incurred and the economic activities subsequently carried out by the taxable person is severed.
>
> 33. First, in no way does it follow from the order for reference that the making available of the recreational path to the public is covered by any exemption under the VAT Directive. Second, given that the expenditure incurred by Sveda in creating that path can be linked, as is apparent from paragraph 23 of this judgment, to the economic activity planned by the taxable person, that expenditure does not relate to activities that are outside the scope of VAT.
>
> 34. Therefore, immediate use of capital goods free of charge does not, in circumstances such as those in the main proceedings, affect the existence of the direct and immediate link between input and output transactions or with the taxable person's economic activities as a whole and, consequently, that use has no effect on whether a right to deduct VAT exists.
>
> 35. Thus, there does appear to be a direct and immediate link between the expenditure incurred by Sveda and its planned economic activity as a whole, which is, however, a matter for the referring court to determine."

25. We were referred to the opinion of the Advocate General and the judgment of the CJEU in *Vereniging Noordelijke Land-en Tuinbouw Organisatie v Staatssecretaris van Financien Case C-515/07* ("VNLTO"). In that case, VNLTO was a company which promoted the interests of its members who were involved in the agriculture sector in the Netherlands. Members paid subscriptions to VNLTO most of which were applied towards activities designed to promote their general interests. It also provided a number of individual services to members and non-members for which it charged a fee. The question referred was whether VNLTO could deduct VAT incurred for the purpose of transactions other than taxable transactions as well as for the purposes of its taxable transactions. It was common ground that the activities of VNLTO directed towards promoting the general interests of its members were not within the scope of VAT because they were not effected for a consideration (see [34] of the judgement). The CJEU referred to its decision in *Securenta v Finanzamt Gottingen Case C-437/06*:

> " 37. The Court accordingly held, at paragraphs 30 and 31 of the judgment in *Securenta*, that the input VAT relating to expenditure incurred by a taxable person cannot give rise to a right to deduct in so far as it relates to activities which, in view of their non-economic nature, do not come within the scope of the directive and that, where a taxable person simultaneously carries out economic activities, whether taxed or exempt, and non-economic activities outside the scope of the directive, deduction of the input VAT relating to expenditure is allowed only to the extent to which that expenditure may be attributed as an output to the economic activity of the taxable person."

26. The last part of that paragraph recognises that deduction of input tax is only allowed to the extent that it is attributable to the outputs of an economic activity. The test for attribution is a direct and immediate link to taxable transactions or to the economic activity of the taxpayer as a whole.

Findings of Fact

27. The VAT in dispute is £23,385. This sum comprises £11,510 of VAT on costs which are said to be directly attributable to Countryside Days and Careers in Focus,

and £11,875 of "residual input tax" allocated to the two events. We shall refer to Countryside Days and Careers in Focus together as "the Events".

28. The Society is a company limited by guarantee and a registered charity. Its charitable objects are as follows:

> (1) To support and promote agriculture, rural and allied industries throughout the North of England, including championing the role of farmers as providers of high quality produce and encouraging consumers to choose healthy and local produce.
>
> (2) To advance and encourage agricultural research and greater understanding and empathy with farming and the countryside amongst the general public and particularly children.
>
> (3) To advance and encourage the protection and sustainability of the environment.
>
> (4) To hold in pursuance of its main objectives an annual agricultural show.

29. The Society is a membership organisation with more than 12,000 members. The Show is the highest profile event undertaken by the Society. It was described in evidence as England's premier agricultural show and is held annually in July each year at the Yorkshire Showground which is owned by the Society. The Showground includes two main exhibition halls and various pavilions. There is also a farm shop and a café known as 'Fodder' operated by the Society through a subsidiary company which promote Yorkshire produce on a commercial basis. The Society also puts on several annual events, in particular 'Countryside Live' each October and Springtime Live earlier in the year. Admission fees are charged for most events put on by the Society, but not for the Events.

30. In addition to these annual events, the Society also pursues its charitable objects through various other means. For example it runs many advisory groups for farmers and it provides short courses to teachers encouraging use of the countryside as a teaching aid. These are provided free of charge and whilst there was reference to these activities in the respondents' Statement of Case the assessments under appeal relate only to Countryside Days and Careers in Focus.

31. In addition to events put on by the Society, the Showground facilities are hired out to third parties for conferences, exhibitions and other events, both large and small. There are a large number of such events, from birthday parties to antique fairs and a flower show. The vast majority of events are commercial in nature. There is at least one event at the Showground virtually every day, and often more than one event at different parts of the Showground. In all there are approximately 700 events per year.

32. The gross income of the Society in the year ended 31 December 2015 was in excess of £9m. Of this, some £400,000 came from membership subscriptions, £240,000 from investments, £20,000 from grants and donations. The bulk of the income amounting to £8,340,000 was generated by the Show and other events put on by the Society, Fodder and income from hiring out the Showground facilities. This includes income from sponsorship, advertising, trade stand income and catering income. The annual income of Fodder is approximately £3m, split 55% from the café and 45% from the shop.

33. Countryside Days is an annual event over 2 days at the beginning of June. It was first held in 2001. Some 6,000 primary school children and their teachers attend the Showground. The children are in the age group 7-11 years. The focus is educational and includes some 90 workshops and activities where participants get a hands-on experience of various agricultural and rural pursuits. Both exhibition halls are used. Workshops include, dry stone walling, horse logging and cheese making.

34. Careers in Focus is an annual one day event in October. It was first held in 2008. Some 1,500 secondary school children attend, in the age group 14-16 years. The focus involves showcasing careers in agriculture, rural and allied industries including food technology. Agricultural colleges usually have a large presence with trade stands showcasing different courses. No charge is made for those trade stands. Both exhibition halls are used and various career workshops provided.

35. The Events are put on pursuant to the Society's charitable objects and they are both free to attend. The Society is in regular contact with schools in Yorkshire and the Events are publicised by way of flyers and emails sent to schools. The Events do give rise to a small gross income measured in hundreds of pounds rather than thousands. The Society contracts with third parties to provide catering and ice-cream concessions at a number of events held at the Showground, including the Events. The exhibition halls have two cafés selling mainly food and drink. The Society receives 20% of the catering turnover, currently giving the Society an income of some £250,000 per year. Some £50-60,000 of that is generated by the Show.

36. The direct operational costs of the Events relate mainly to the cost of providing workshops, hiring partitions and providing stewards. The direct costs of Countryside Days in 2012 were approximately £75,000 net of VAT and for Careers in Focus some £34,000. The operational costs are similar to those of events such as Springtime Live and Countryside Live but for Countryside Days and Careers in Focus the costs are met by the Society from its general funds rather than through admission fees. The indirect costs are a small percentage of the Society's overheads, such as maintenance and utilities.

37. Springtime Live was set up to cater for the age range 0-7 years and is similar to Countryside Days. Springtime Live is on a weekend and the charge for admission is £5 for children and £10 for adults. It is not intended to generate a profit, but to "deliver the message" as Mr Pulling put it, pursuant to the Society's charitable objects. The gross income generated by Springtime Live is approximately £30,000. The main cost is the cost of delivering the workshops. The Society aims to cover its direct costs, namely the cost of providing the workshops and stewards for parking.

38. Mr Pulling's evidence, which was not challenged and which we accept, was that the Society promotes the Show at the Events, encouraging teachers to bring school parties to the Show and encouraging families to attend the Show. It also promotes Countryside Live and Springtime Live.

39. Countryside Days is held the month before the Show and the Society uses a DVD (Mr Pulling described it as a CD but we think it likely he meant a DVD) to promote the Society generally and the Show in particular. Over 5,000 teachers and children attend the Show each year as part of organised school groups paying a discounted admission fee. A child attending the Show with a parent would pay £11 admission whereas children in school groups pay £7. There is one free teacher/helper

place for every 10 children. The number attending the Show in school groups has increased over recent years from 2,800 to more than 5,000. There is an overlap between schools attending the Show and schools attending the Events but we had no evidence as to the extent of that overlap. In total approximately 130,000 people attend the Great Yorkshire Show each year.

Reasons

40. The Society relied on replacement grounds of appeal dated 2 March 2017 which were as follows:

> "1. **Not a Non-Economic Activity –** The events in question, albeit that they do not charge for admission are not 'non-economic' activities. Although they are not budgeted to make a surplus, the Appellant earns taxable income directly from the commercial providers who service the attenders at the events – for example caterers, ice cream salesmen etc.
>
> Any taxable or exempt income that is generated in respect of any activity is sufficient to make that a 'business activity'. Any activity has to be either 'business' or 'non-business'
>
> Alternatively, if despite Ground 1 the events are still categorised as 'non-economic' activities:
>
> 2. **Residual Input Tax – Single Income Based Calculation – No 'Non-Business Income –** If despite Ground 1 the events in question are found to constitute 'non-business' activities then the Appellant accepts that any input tax that is wholly and directly attributable to the events will be irrecoverable.
>
> However, as far as residual input tax is concerned, the Appellant has taxable and exempt income, and apportions its residual input tax using the income based standard method of apportionment.
>
> Article 174(1) Principal VAT Directive provides for a single apportionment calculation in that it states:
>
> > 'The deductible proportion shall be made up of a fraction comprising the following amounts:
> >
> > (a) as numerator, the total amount, exclusive of VAT, of turnover per year attributable to transactions in respect of which VAT is deductible pursuant to Articles 168 and 169;
> >
> > (b) as denominator, the total amount, exclusive of VAT, of turnover per year attributable to transactions included in the numerator and to transactions in respect of which VAT is not deductible.'
>
> In domestic law, any apportionment of residual input tax in respect of a 'business/non-business' split is provided for under the provisions of Section 24(5) of the Value Added Tax Act 1994.
>
> Regulation 102ZA provides as follows:
>
> > (1) A taxable person who is required to make an apportionment under section 24(5) of the Act in relation to goods or services which are used or are to be used

partly for business purposes and partly for other purposes may effect that apportionment using a method provided for in regulation 102(1)

(2) Where a taxable person referred to in paragraph (1) is not a fully taxable person, the method used shall be the only method used to calculate that person's deductible input tax.

Since there is no 'non-business' income it must follow that, although there is a requirement to undertake the apportionment calculation of the residual input tax, the practical result will be that there will be no additional loss of recoverable residual input tax to reflect the activities that have been found to be 'non-business'."

41. The Respondents' statement of case set out their position in relation to the replacement grounds of appeal as follows:

" 7. … The dispute in this case is whether the VAT has been incurred for the purpose of the Appellant's business. The Respondents' view is that the services supplied are largely altruistic in that they are to inform the wider community (for example visits from schools) about agricultural matters. These activities are unconnected with the Appellant's core business activity – the Yorkshire Show. The VAT incurred does not relate to supplies made by way of business …"

42. There was no dispute about the quantum of the Assessments. If we find that the Events are non-economic activities and that the VAT incurred is not otherwise recoverable then the Society accepts the quantum of the Assessment.

43. Mr Tyler told us that the Society was not pursuing Ground 2 of the replacement grounds of appeal. We focus therefore on Ground 1. The Society's arguments on Ground 1 were in fact broader in the correspondence leading up to the appeal and in the oral argument at the hearing than is stated in the replacement grounds of appeal. There was no objection by HMRC to the widening of Ground 1 and we shall therefore deal with all the Society's arguments.

44. Mr Tyler on behalf of the Society made the following submissions in support of Ground 1:

(1) The Events generated taxable income in the form of catering income and were therefore economic activities of the Society. This is the narrow Ground stated in the replacement grounds of appeal. Mr Tyler acknowledged that the taxable income produced by the Events was "negligible", but he submitted that it was enough to treat the Events as an economic activity.

(2) Even if the Events were not economic activities in their own right, the events were part and parcel of the Society's normal business activity. The only difference between the Events and other events which were undoubtedly part of the Society's economic activities was the fact that no entry fee was charged for the events. The actual activity was otherwise identical in nature.

(3) The Events were not organised for "altruistic" reasons as alleged by HMRC in their statement of case but with a view to promoting the economic activities of the Society.

45. Mr Haley's submissions for HMRC appeared broadly to be as follows:

(1) There was no direct link between the supply of the Events to those attending and the income earned by the Society by way of commission from the caterers. As such, the Events did not generate taxable income and were not economic activities in their own right.

(2) There was no sufficient direct and immediate link between the VAT incurred in relation to the Events and the economic activities of the Society. The Events did not form part of those other economic activities.

(3) The Events were properly to be viewed as carried on in pursuance of the Society's charitable objects.

46. We shall deal with the issues raised by the submissions under separate headings. The first submission raises the issue of whether the events amounted to economic activities in their own right. The second and third submissions together raise the issue of whether the events should properly be viewed as forming part of the Society's economic activities as a whole.

Economic Activities in their Own Right?

47. The parties' submissions in relation to this issue were brief and we can deal with the issue briefly as well. It is well established that for an economic activity to exist there must be consideration for the services provided and there must be a direct link between the service provided and the payment received by the provider (see decisions of the CJEU in *Apple and Pear Development Council* and in *European Commission v Finland Case C-246/08*). In *Longridge*, Morgan J derived the following propositions which we do not consider to be controversial in the present case:

" 109. I consider that the following general propositions are established:

i) It is only supplies, of goods or services, "for consideration" which are subject to VAT: Article 2;

ii) There must be a direct link between the supply and the consideration before it is right to hold that the supply is "for consideration": *Finland* at [44]-[45];

iii) Indeed, if there is no direct link between the supply and the consideration, the question of economic activity does not strictly arise as there is no consideration to form the basis of an assessment to VAT: *Finland* at [43];

iv) VAT is charged on the amount of the consideration; it is irrelevant for the purpose of calculating the VAT payable whether the consideration for the supply is above or below the market value of the supply: *Finland* at [44] refers to "the value actually given";

v) It is irrelevant for the purpose of calculating the VAT payable whether the consideration for the supply is at a concessionary rate; whatever precisely was meant by the word "concession" in *EC v France* at [21], it cannot be taken to mean that any reduction in price by way of a concession takes the supply outside the scope of economic activity; indeed, in *EC v France* at [20], the CJEU obviously thought that lettings by local authorities at subsidised rents were an economic activity;

vi) Article 9 states that a taxable person is a person who carries on any economic activity, whatever the purpose of that activity: *Finland* at [37];

vii) If a person supplies goods or services "for consideration", i.e. satisfying the test of direct link referred to in (2) above, and the activity is "permanent", then there is a

rebuttable presumption, or a general rule subject to possible exceptions, that the supply for consideration is an economic activity: *Finland* at [37];

viii) The character of the activity (i.e. whether it is an economic activity) is to be judged objectively: *Finland* at [37];

ix) The subjective motive of the person making the supply does not influence the identification of the objective character of the supply; this follows from the proposition that the character of the activity is to be judged objectively;

x) A charitable activity can be an economic activity: see *EC v Netherlands,* discussed at paragraph 17 above;

xi) A non-profit making activity can be an economic activity: *Finland* at [40]."

48. We only had a brief description of the Society's contract with its caterers, how it applied to events generally and how it applied specifically to the Events. The income received by the Society under that contract in relation to the Events was estimated to be in the hundreds of pounds. We are not satisfied that the holding of the Events and the supply of admission to the Events for thousands of school children is itself an economic activity. There is no direct link between those services and the Society's share of the catering income. The Events fall clearly within the charitable objects of the Society. Objectively, the Events were put on pursuant to the Society's charitable objects. The Events were in our view gratuitous in nature as opposed to a supply of services for a consideration. We acknowledge that the small amount of income would not arise "but for" the Events taking place, but that is not the test. In our view the link is not direct, it is merely indirect and arises from the Society's contract with the caterer. Further, the consideration paid by the caterer was in relation to a supply by the Society to the caterers it was not in relation to a supply of the events to those attending.

49. Even if we are wrong and in principle there might be said to be a direct link, we consider that the income received as a result of the Events falls within the de minimis principle. It cannot realistically be viewed as equivalent to the provision of a service at a concessionary rate. We do not accept Mr Tyler's submission that any amount of income, no matter how small, is enough to constitute the Events as an economic activity for VAT purposes.

Part of the Society's Economic Activities as a Whole?

50. The Society contends that the Events form part of the Society's economic activities as a whole, including the Show, other paid for events held by the Society and the provision of the Showground for third parties to hold events. The Society relied in particular on the decisions in *National Water Council*, *Imperial War Museum* and *British Dental Association*. Mr Tyler submitted that on the facts the events were part and parcel of the economic activities of the Society as a whole.

51. We accept that the events were similar in nature to other events held at the Showground where an admission fee was charged. It is not disputed that the other events involve services provided in the course of an economic activity. There may be a presumption therefore as described by Neill J that the services provided in the form of the Events are supplied in the course of the same economic activity. However,

Neill J himself acknowledged that it is what might be described as a rebuttable presumption, which will be rebutted where there is a clear distinction between the circumstances in which the various services are provided.

52. Mr Haley submitted that there was a clear distinction between the present case and *National Water Council*, *Imperial War Museum* and *British Dental Association*. In the present case no charge was made for admission. Mr Haley acknowledged that for present purposes charities have no special status, but he submitted that the Events were put on pursuant to the Society's charitable objects. He further submitted that there was no direct and immediate link between the VAT incurred by the Society in relation to the Events and the taxable income of the Society.

53. We have already held in relation to the first issue that there is no direct link between the Events and the small amount of catering income arising. The parties put the second issue effectively by reference to two questions:

> (1) Do the Events form part of the economic activities of the Society as a whole? Alternatively,
>
> (2) Does the VAT incurred in connection with the Events have a direct and immediate link to the taxable income of the Society generated by its economic activities?

54. Mr Tyler put the Society's case by reference to the first of those questions, based on the approach of Neill J in *National Water Council*. Similarly, the tribunals in *Imperial War Museum* and *British Dental Association* looked at the position by reference to the first question. In each tribunal decision the decisive point was that the free service was provided for commercial reasons. Whilst the service was free, it generated taxable income in the form of future subscriptions in *British Dental Association* and in the form of increased food, merchandise and sponsorship revenue in the case if *Imperial War Museum*.

55. In support of his submission that the Events were a separate activity from the Society's economic activities, Mr Haley relied on the decision of the CJEU on *VNLTO* where it was accepted that the activity of the taxpayer promoting the general interests of its members was a non-economic activity. Further, the CJEU re-iterated that deduction of input tax is only allowed to the extent that it is attributable to the outputs of an economic activity. Hence input tax attributable to promoting the general interests of member was not deductible.

56. By way of reply, Mr Tyler submitted that VNLTO was a complex case. He suggested that it was authority for a proposition that where no income is generated by an activity it may be a non-economic activity whilst still being a business activity. We do not consider that such an argument assists in the present case. Further, it seems to us that Mr Tyler's approach risks classifying all the Society's activities by reference to their predominant concern, which Morgan J cautioned against at [117] of Longridge.

57. Mr Haley primarily put HMRC's case by reference to the second question, based on the approach of the CJEU in *Sveda*. The question considered by the CJEU in *Sveda* was not whether construction of the path fell within the economic activities of the taxpayer, but whether there was a direct and immediate link to the taxpayer's economic activities as a whole. That approach involves looking to see whether there is

a direct and immediate link between the costs incurred and the outputs of the taxpayer's economic activity. It is then necessary to see whether the link is "severed" because the inputs are used for making exempt supplies or for making supplies outside the scope of VAT.

58. Whichever approach is taken the answer to each question must be the same on any particular set of facts. In *British Dental Association* the provision of free membership was commercially driven. In other words there was a direct and immediate link to the taxpayer's economic activities as a whole. Similarly, in *Imperial War Museum* there was a direct and immediate link between free admission and increased sales of food, merchandise and sponsorship.

59. We prefer the approach of looking to see if there is a direct and immediate link between the costs incurred and the economic activity. That approach is consistent with the approach of the CJEU and other domestic authorities in relation to the attribution of input tax between taxable and exempt supplies. Those domestic authorities go back to the well-known principles set out by Carnwarth LJ as he then was in *Mayflower Theatre Trust Ltd v Revenue & Customs Commissioners [2006] EWCA Civ 116* at [9]:

> " (i) input tax is directly attributable to a given output if it has a "direct and immediate link" with that output (referred to as "the BLP test") [a reference to the decision of the ECJ in Case C-4/94, BLP Group Plc v Customs and Excise Commissioners [1995] ECR I-983, [1996] 1 WLR 174];
>
> (ii) that test has been formulated in different ways over the years, for example: whether the input is a "cost component" of the output; or whether the input is "essential" to the particular output. Such formulations are the same in substance as the "direct and immediate link" test;
>
> (iii) the application of the BLP test is a matter of objective analysis as to how particular inputs are used and is not dependent upon establishing what is the ultimate aim pursued by the taxable person. It requires more than mere commercial links between transactions, or a "but for" approach;
>
> (iv) the test is not one of identifying what is the transaction with which the input has the most direct and immediate link, but whether there is a sufficiently direct and immediate link with a taxable economic activity; and
>
> (v) the test is one of mixed fact and law, and is therefore amenable to review in the higher courts, albeit the test is fact sensitive."

60. We are not concerned with the attribution of costs to taxable supplies or exempt supplies, or the apportionment of residual input tax between taxable and exempt supplies. We are concerned with the allocation of costs between economic and non-economic activities, however as appears from *Sveda* the principles are the same.

61. HMRC's policy is that the free supply of services by a charity is a non-business activity. The VAT Charities Manual states at VATCHAR 3250:

> " With certain exceptions set out in the following paragraphs, if a charity provides goods or services for a fee, charge or other consideration it is normally a business

activity. On the other hand, goods and services provided free (which may be funded from donations or grants - see VCHAR3400) are usually non-business activities.

…

1. Free supply of services

The purpose of any charity and the way that they tend to be organised means that some services will inevitably be supplied free of charge. The free supply of services is a non-business activity and is outside the scope of VAT."

62. We do not consider HMRC's policy as stated is entirely correct, in particular the latter paragraph. We accept Mr Tyler's submission that it ignores what else the charity might obtain as a result of providing a free service over and above performance of its charitable objects. The free provision of a service might also promote a charity's economic activities as well as its charitable objects. It seems to us that much will depend on the circumstances in which the services are provided free of charge. A commercial business may provide free services as part of its business activities, for example a supermarket car park. There is no reason why a charity should not do the same. *Imperial War Museum* and *British Dental Association* are good examples.

63. We have found that the provision of the Events is not an economic activity in its own right. However, Mr Tyler submitted that there was a direct and immediate link to taxable supplies made the Society at the Show. In particular, he relied on the fact that the Society promotes the Show at the Events, encouraging teachers and families to attend the Show.

64. Countryside Days is held the month before the Show and we have found that the Society uses a DVD to promote the Society in general and the Show in particular. The DVD was not in evidence before us nor was there any detailed evidence about how exactly the Society does promote the Show, either using a DVD or otherwise. For example there was no evidence as to the content of the DVD or as to when and in what context the DVD was used. In the absence of such evidence it is difficult for us to determine the nature and extent of any link between the costs of Countryside Days and the taxable supplies made by the Society.

65. There was evidence as to the number of teachers and children attending the Show as organised school groups, and how those numbers had increased over recent years. However there was no evidence as to how many schools attending Countryside Days went on to attend the Show. The evidence was simply that to some extent there was an overlap. Mr Pulling attributed the increase in school groups at the Show to both Events, but he did so only in general terms and it is not clear why he did so. We accept in general terms that Countryside Days was used to promote the Show. However, the evidence did not really establish in any detail how the Show was promoted or the way in which Countryside Days was used to promote the Show.

66. The burden is on the Appellant to establish the necessary direct and immediate link. In the light of the objective evidence before us, and our findings of fact based on that evidence, we are not satisfied that there was a sufficiently direct and immediate link between the costs of Countryside Days and the taxable income generated by the Society. We are not satisfied that those costs can be said to be a cost component of the Show or the Society's other economic activities.

67. In relation to Careers in Focus, there was no specific evidence that it was used to promote the Show or other taxable supplies made by the Society. Again, there was no detail as to the extent of the overlap between schools attending Careers in Focus and schools attending the Show. We note that Careers in Focus is held in October each year so the connection to the show is more remote than Countryside Days. There was no mention of any DVD being used to promote the Show at Careers in Focus. Again, therefore we are not satisfied that objectively there is a sufficiently direct and immediate link between the costs of Careers in Focus and the taxable income generated by the Society. We are not satisfied that those costs can be said to be a cost component of the Show or the Society's other economic activities.

68. In the circumstances the VAT incurred by the Society in relation to the Events is not input tax for which credit is available.

69. Finally, it is worth adding that at first sight the provision of free services may in principle be referable to the economic activities of a charity as well as its charitable objects. Such circumstances would engage section 24(5) VATA 1994 in that costs may be incurred partly for business purposes and partly for non-business purposes. However the Society did not seek to rely on Ground 2 of the replacement grounds of appeal which referred to section 24(5). As a result the hearing before us was not concerned with the apportionment of VAT incurred partly for business purposes and partly for non-business purposes. It was not suggested by either party that the VAT incurred on the Events fell within section 24(5). In the absence of argument we express no view on the matter.

Conclusion

70. For all the reasons given above we must dismiss the appeal.

71. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

JONATHAN CANNAN
TRIBUNAL JUDGE

RELEASE DATE: 6 DECEMBER 2017