[2015] UKFTT 0354 (TC)

TC04538

Appeal number: TC/2013/4119

VAT – exemptions – land – Group 1 sch 9 VATA 1994 – fees charged to exhibitors at antiques and collectors fairs

FIRST-TIER TRIBUNAL
TAX CHAMBER

INTERNATIONAL ANTIQUES AND COLLECTORS FAIRS LIMITED **Appellant**

- and -

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

TRIBUNAL: Judge Peter Kempster
Mr John Coles

Sitting in public at Priory Courts, Birmingham on 10 – 12 February 2015

Mrs Penny Hamilton of counsel, instructed by Baker Tilly, for the Appellant

Mr Sarabjit Singh of counsel, instructed by the General Counsel and Solicitor to HM Revenue & Customs, for the Respondents

DECISION

1. By a notice of appeal dated 12 June 2013 the Appellant ("the Company") appealed to the Tribunal against a decision of the Respondents ("HMRC") dated 17 May 2013 ("the Disputed Decision") which concluded:

> "[The Company is] making supplies of access to a marketplace/exhibition along with advertising and other accompanying services and this supply is not considered to be an exempt supply of a licence to occupy land. As such, these services are standard rated for VAT."

Facts

2. As well as a bundle of documents we took oral evidence from three witnesses for the Company: Mr Keith Harris (chairman), Mrs Rachel Everett (operations manager) and Mr David Burns (Burns & Co, Certified Accountants), all of whom had submitted formal witness statements. In cross-examination by Mr Singh for HMRC Mr Harris clarified certain points made in his witness statement; with those clarifications, we accept all the evidence of all the witnesses, which greatly assisted the Tribunal in understanding the business operations of the Company. We make the following findings of fact.

The Company's business

3. The Company organises antiques and collectors fairs at a number of locations in England:

(1) the Newark and Nottingham Showground ("Newark") – 6 fairs each year

(2) the South of England Showground, Ardingly ("Ardingly") – 7 fairs each year

(3) the Royal Bath and West of England Showground at Shepton Mallet ("Bath and West") – 6 fairs each year

(4) Newbury racecourse ("Newbury") – 5 fairs each year

(5) RAF Swinderby ("Swinderby") – 6 fairs each year.

4. The Disputed Decision before the Tribunal concerns fees charged to exhibitors who book spaces at the fairs run by the Company ("Exhibitors"). The Company has a number of other streams of income from the fairs the VAT treatment of which is not in dispute, it being accepted that these are all standard rated supplies: admission fees charged to visitors to the fairs (both trade buyers and members of the public) ("Visitors"); specific services to individual Exhibitors (such as hire of chairs and tables); grants of trading concessions (eg catering and foreign currency exchange); and (at some sites) access to third parties who provide shipping services to Visitors. Approximately 76% of the Company's revenues came from Exhibitors' booking fees.

5. Although there are variations between the locations, the following types of pitches are available to Exhibitors:

(1) Outside Pitches – These measure approximately 4 x 8 metres and are marked out and numbered in paint. They are allocated before or on the day of the fair. No power is supplied.

(2) Inside Stalls – Two types:

(a) Standard Stall - These measure approximately 8 x 6 feet and are marked out and numbered in chalk or tape. One electrical power socket is supplied, to be used only for lighting and limited to 300W; background lighting is provided by the lights in the building. One standard size trestle table is supplied; this is a means of controlling the amount of stock that an exhibitor can display; stewards ensure Exhibitors remain within their designated area and may direct Exhibitors to remove excess items.

(b) Furniture Pitch - These measure approximately 14 x 10 feet and do not include a trestle table, although tables are available for separate hire (when VAT is charged). Electricity supply is as for a Standard Stall.

(3) Marquees – These are covered outside pitches. To ensure compliance with health & safety regulations the marquees are erected by an approved supplier and have overhead lighting fitted by an approved contractor. The Company orders the marquees and organises erection. A power point is supplied.

(4) Shopping Arcades – These are long, thin marquees divided internally by canvas walls into units measuring approximately 3 x 6 metres. Again, the Company orders the marquees and organises erection. A power point (for lighting) and two standard size trestle tables are supplied for each pitch.

6. The mix of pitches varies between locations but is approximately 38% Outside Pitches and the remainder being the other types. The Company had approximately 20,000 Exhibitors each year.

7. Exhibitors are sent a Booking Pack for the coming year with details of all forthcoming fairs, which sets out the Company's standard terms and conditions. Many Exhibitors like to rebook the same stand each fair, and there is a deadline for so doing. It was permissible to book adjacent pitches. Some Exhibitors turn up on the day of the fair (other than at Bath and West) and are allocated a "casual pitch" according (and subject) to availability. Prices vary according to venue, facilities and position - eg a corner pitch would attract a premium, being akin to a larger shop frontage, as would a pitch fronting the main avenue or close to the main site entrance (which would both attract greater footfall). At Bath and West most Exhibitors would stay for the full three days of the fairs but at Newark, which are predominantly trade fairs, only half would stay after the first day.

8. Before the event Exhibitors receive a vehicle pass (admitting one vehicle and two people) and an information pack including a stallholder's letter which details timings, rules to be observed, and identifies the specific pitch allocated to that Exhibitor. Exhibitor parking is on designated areas and if an Exhibitor required additional space (eg for an especially large vehicle) then they would be expected to pay extra. Exhibitors are allowed to stay on site overnight; there are toilet facilities and some food outlets may remain open.

9. The Company contracts for security for each fair with external contactors, who must be Security Industry Authority approved. Security supervises all entry to fairs, which is ticket-only. Newark are the largest fairs and would require twenty security staff. No other security is supplied and it is made clear to Exhibitors in the terms and conditions that they bear responsibility for their stock. The Company arranges and pays for uniformed Police presence at Newark only. The Company employs parking marshalls (for traffic and car parks) and general marshalls (who guide Exhibitors to their pitches, ensure they occupy only their designated spaces, and deal with any queries and disputes). A cleaning contractor would clean and tidy the site after the fair, in conjunction with the Company's facilities team. Newark (the largest fairs) would require total staff (including contractors) of 80-85; Ardingly about 40 staff; Bath and West about 30; and Newbury and Swinderby about ten at each.

10. The Company provides first aid facilities and toilets (at most locations these are existing buildings). Any special electrical requirements of Exhibitors must be communicated to the Company, who make the necessary arrangements using approved contractors; occasionally an Exhibitor would provide a diesel generator. Catering is through on site restaurant facilities at some locations, or is supplied by outside contractors who pay the Company for an operating concession (on which VAT is charged).

11. The Company advertises fairs in the trade press, in other specialised publications, in local publications, on the Company's own website, and on trade websites (national and international). The Company used two paid bloggers, and used some social media. Advertising expenditure is approximately equal between trade and public customers, but is comparatively modest – being only around £0.1 million each year compared to £3.5 million turnover, which was significantly below the industry norm of 10% of turnover. Around 62% of Visitors were public customers, but the remaining trade buyers probably accounted for around 90% of Exhibitor sales.

12. The Company employed approximately 17 permanent staff. It also employed casual staff for much of the setting up of the fairs – for example, at Newark it took six staff approximately one and a half weeks to mark out all the pitches according to the site plan.

The Disputed Decision

13. In 2009 Mr Harris had been informed by the finance director of the Company's parent that Exhibitors' fees were VAT exempt. That accorded with Mr Harris' recollection that the VAT exempt treatment of Exhibitors' fees had been confirmed with HMRC by one of the Company's predecessor businesses in the early 1990s. The Company wrote to HMRC in June 2009 stating, "… we will not be charging VAT on the stall spaces but will charge VAT on visitor tickets. We understand that this results in a variable rate of input VAT being reclaimable …". No reply could be traced but that had not surprised Mr Harris as the Company was merely reporting what was the common practice across the antiques fairs industry. The Company had not received any VAT inspection visit (prior to the current dispute).

14. In late 2012 the Company received a letter from another fair organiser (Nelson Events) stating that it had received a ruling from HMRC that pitch rental income was standard rated, and asking other fair organisers to join in fighting this decision. Mr Harris was also a director of another company involved in international trade shows,

where the VAT treatment of stand fees had been a matter of debate with HMRC (both at a company level and with the industry representative association); he was aware of Revenue & Customs Brief 22/12 ("RCB 22/12") and considered it was designed to deal with the issue faced by organisers of international trade shows and events, where it was standard practice for the fees to cover a "package deal" comprising construction of stands, provision of graphics and furniture, production of promotional material in appropriate languages, sourcing local staff etc. The Company felt its position was different and had taken comfort from the passage in RCB 22/12: "Currently, HMRC regards the supply of specific stand space at an exhibition or conference as a supply of land. This policy will continue where the service is restricted to the mere supply of space without any accompanying services."

15. In early 2013, following another letter from Nelson Events, Mr Harris consulted Mr Burns, as the Company's accountant, who advised that RCB 22/12 appeared to concern the place of supply rules and be directed at international supplies of services, whereas the Company's business was entirely UK based, but that clarification should be sought from HMRC. The outcome was the Disputed Decision ([1] above). Since November 2012 the Company had been charging VAT on Exhibitor fees on a protective basis but without admission that this was the correct position. Many Exhibitors were not VAT registered and so the VAT was a cost to them, and in recognition of that the Company had borne some of the VAT cost by passing on only part of the gross price increase.

Contracts between the Company and the site owners

16. Relevant provisions of the contracts between the Company and the owners of the five fair locations are as follows.

17. **Ardingly** – The site owners (South of England Centre Limited and The South of England Agricultural Society) granted a five year licence to the Company, granting (clause 2.1) "the right to use the Premises … for the Use exclusively during the User Periods within the Term in common with the Licensor except insofar as such use may be inconsistent with the proper enjoyment of the rights hereby granted to the Licensee." The defined Use was (clause 1.1.6) "the exclusive right of the Licensee to hold antiques and collectors fairs". The defined User Periods were scheduled for 2013 and then to be agreed periodically between the parties (clause 1.1.7). Clause 5.7 stated: "Nothing herein shall be construed as creating the relationship of a landlord and tenant between the Licensor and the Licensee or as granting to the Licensee any proprietary rights in the Premises". The accompanying Conditions of Hire define the Site as the whole of the South of England Showground including specified buildings, plus adequate toilet facilities and water supply (preamble); for each fair there was then a separate "facilities sheet" detailing the particular buildings and car parks required. Electricity for general lighting is supplied without additional charge but any other power supplies will be metered and charged (condition 7). The Company is responsible for any loss or damage caused by "any person who is a guest of the [Company] or who is permitted by the [Company] to have access to the Showground" (condition 16), and is responsible for stewarding and door supervision "in connection with their occupation of the premises" (condition 18). Parking on the highway is forbidden but "the official car parks may at the discretion of the Centre [ie the owner] be made available free of charge subject to availability" (condition 21). Condition 24 stated:

"***Right to Let***

> The Centre reserves the right to refuse any hire and to hire different parts of the Showground to different hirers simultaneously. In the event of different parts of the Showground being hired simultaneously the Centre has the right to determine the use of the main entrances, the car parks and the entrances to the various events."

18. **Newark** - The site owner granted a five year licence to the Company, granting (clause 2.1.1) "the right to use exclusively … the Showground to hold" antiques fairs on agreed dates, and ancillary rights. The licence is (clause 2.1.2) "Subject to the right of the [Young Farmers' Club] to have access to the Showground at all times together with the right to park 3 cars". Clause 2.4 stated:

> "In addition to the dates upon which each Event is held, the [owner] shall permit the Licensee (a) to use the Showground for reasonable periods of time up to 7 calendar days prior to each Event on a non-exclusive basis for the preparation of each Event (b) to use the Showground for a reasonable period of time up to 5 calendar days after each Event on a non-exclusive basis for the clearing and the cleaning up of the Showground"

Clause 2.6 stated: "The Licence is granted subject to the right of the [owner] and all others authorised by the [owner] to use the roads and pathways and other services at the Showground and accommodating the buildings thereon". Clause 8.2 stated: "The Licensee acknowledges that the rights granted by this Licence do not confer any security of tenure in respect of the Showground upon the Licensee".

19. **Bath and West** – The owner granted to the Company a "licence to occupy" for specified dates in the year following grant, stating (clause 1.2) "The Licensee shall be entitled to occupy the Permitted Areas during the Licence Period". Clause 4.1 stated: "The Licence is not intended to and does not create any tenancy nor give the Licensee any estate or interest in the Showground or any part of it or any of its buildings". Clause 6 stated:

"***Reserved Right of Access***

> The [owner] reserves a right of access to all parts of the Showground at all times and for all purposes for themselves, their agents and their employees (unless otherwise agreed in writing)"

The Company is liable for any breaches by "its employees servants and agents or by any person attending the Event" (clause 13); is responsible for ensuring that the site is "properly secured against illegal entry" (clause 19); and is responsible for proper stewarding of events (schedule). Clause 14 stated:

"***Use of the Showground and the Common Parts***

> The [owner] reserves the right in the event of different parts of the Showground being the subject of one or more licences simultaneously with this Licence to regulate the use of the Showground the Common Parts and the entrances and exits thereof"

20. **Newbury** – The contract was an "event agreement" between the parties. Most of the terms and terminology were designed for hospitality functions at the venue. The charge is for "Room hire of the Grandstand" on stipulated dates.

21. **Swinderby** – The owner granted a licence to the Company whereby (clause 2(1)) "The Licensee shall be entitled to occupy and administer the land located at the former Swinderby Airfield" for four stipulated periods in the year after grant, together with ancillary rights. The Company agrees (clause 4(13)) "to permit the [owner] and its agents servants and contractors to enter the Land at any time during an Event … in order to inspect the Land or for any other purposes". Clause 6(2) stated: "this licence does not create a tenancy or lease to which the Landlord and Tenant Act 1954 applies".

Contracts between the Company and Exhibitors

22. Booking forms completed by Exhibitors were expressly stated to be subject to the Company's standard terms and conditions, which were printed in the Booking Pack. The terms and conditions included the following:

(1) "The Contract constitutes a licence and not a tenancy" (clause 3.2)

(2) "***Right of entry*** – The organiser [ie the Company] and the Owner and those authorised by them respectively have the right to enter the Fair Venue and Pitch at any time to carry out inspections, execute works, repairs and alterations and for all other purposes. No compensation will be payable for any damage, loss or inconvenience caused by the reasonable exercise of this power." (clause 8)

Legislation

23. Article 135 Council Directive 2006/112/EC provides (so far as relevant):

> "1. Member States shall exempt the following transactions:
>
> …
>
> (l) the leasing or letting of immovable property."

24. Section 31(1) VAT Act 1994 provides (so far as relevant):

> "A supply of goods or services is an exempt supply if it is of a description for the time being specified in Schedule 9 …"

25. Item 1 group 1 schedule 9 VAT Act 1994 provides (so far as relevant):

> "The grant of any interest in or right over land or of any licence to occupy land, …"

Revenue & Customs Brief 22/12

26. Revenue & Customs Brief 22/12 ("RCB 22/12") (see [14] above) titled "The place of supply of services connected to land" was issued on 2 August 2012 and included the following:

> "This Brief provides a statement of HM Revenue & Customs' (HMRC's) policy on the place of supply of services connected to land following discussions at EU level. It also details changes to HMRC's

published policy in respect of the treatment of exhibition stands, storage and warehousing, and access to airport lounges.

The Brief is concerned only with determining the place of supply of these services. It does not affect HMRC's guidance or policy on the rate of tax that applies to any such supplies.

Readership

This Brief is aimed at businesses that make or receive supplies of services connected to land and property. In particular it will affect businesses that:

- supply or buy in stands at exhibitions
- …

Background

The place of supply of services rules are an important concept in VAT as they are used to determine the country in which VAT is due so as to avoid either taxing the same supply twice or not taxing it at all. …

The changes to the place of supply rules from 1 January 2010 and 1 January 2011, highlighted differences in the treatment of certain supplies in various Member States. This has led to some businesses suffering double taxation. As it has not been possible to solve this issue in isolation, HMRC has been working with the Commission and EU Member States to try to agree the uniform application of Article 47 (services connected to land and property).

As a result of these discussions HMRC is changing aspects of its policy on the place of supply of:

- stands at exhibitions
- …

Further details of these changes are given below.

…

Stand space at exhibitions and conferences

Currently HMRC regards the supply of specific stand space at an exhibition or conference as a supply of land. This policy will continue where the service is restricted to the mere supply of space without any accompanying services.

However, where stand space is provided with accompanying services as a package, this package (stand and services) will no longer be seen as a supply of land with land related services but will be taxed under the general place of supply rule (customer location) when supplied to business customers.

Accompanying services provided as part of a package includes such things as the design and erection of a temporary stand, security, power, telecommunications, hire of machinery or publicity material.

…

Changes of HMRC policy

Where businesses have been treating services in accordance with HMRC's earlier policy, they may continue to apply that treatment for a transitional period of up to three months from the date of this Brief in order to make adjustments to their systems and processes. However,

> businesses that wish to adopt the new treatment may do so immediately if they wish.
>
> …"

Respondents' case

27. Mr Singh for HMRC submitted as follows.

28. HMRC's view was that the services supplied by the Company to the Exhibitors were standard rated for VAT purposes. It was common ground between the parties that the pitch fees from each Exhibitor were received by the Company as consideration for a single supply (rather than multiple supplies) of services. The Company maintained that the nature of that supply was such as to make the supply exempt, being "the leasing or letting of immovable property" (art 135(1)(l)) and "the grant of any interest in or right over land or of any licence to occupy land" (item 1 group 1 sch 9). HMRC contended that the exemption was not applicable, on two grounds:

(1) the Company did not itself hold an interest in land sufficient to enable it to be making exempt supplies of land; and

(2) even if the Company did hold such interests, the nature of its supplies to the Exhibitors did not constitute the letting of immovable property.

First HMRC contention: The Company did not itself hold an interest in land sufficient to enable it to be making exempt supplies of land

29. HMRC considered that in relation to three of the venues the Company had not been granted an interest in land by the site owner sufficient to enable the Company to make an exempt supply of land to the Exhibitors. HMRC accepted that the Company held a sufficient interest in the sites at Newark and Newbury, but disputed that situation at the other sites.

(1) *Bath & West* – The contract granted a licence which did not exclude the site owner (clause 1.1); stated that no estate or interest was created (clause 4.1); and reserved to the site owner a right of access at all times and for all purposes (clause 6). The resulting lack of exclusivity of occupation was insufficient to enable the Company to grant sufficient interests to the exhibitors.

(2) *Ardingly* – The licence was granted in common with the site owner as licensor (clause 2.1) and thus there was not exclusive occupation.

(3) *Swinderby* – The site owner reserved a right of access at all times and for all purposes (clause 4(13)) and thus again there was not exclusive occupation.

30. This point had recently been considered by the Tribunal in *Willant Trust Ltd v HMRC* [2014] UKFTT 1083 (TC):

> "171. In *Stichting 'Goed Wonen' v Staatssecretaris van Financiën* (Case-326/99) [2003] STC 1137, the CJEU said at [55] (emphasis added): "The fundamental characteristic of such a transaction, which it has in common with leasing, lies in conferring on the person concerned, for an agreed period and for payment, the right to occupy property as if that person were the owner and to exclude <u>any other person</u> from enjoyment of such a right."

172. These words were repeated in *C&E Comrs v Mirror Group* (Case C-409/98) [2001] ECR I-7175 at [31] and in *Seeling v Finanzamt Starnberg* (Case C-269/00) [2003] STC 805 and in *Sinclair Collis Ltd v C&E Comrs* (Case C-275/01) [2003] STC 898 at [25], where the principle was described as "settled."

173. However, in *Temco* [*Belgium v Temco Europe SA* (Case C- 10 284/03) [2005] STC 1451] the CJEU said that:

> "[24] …as regards the tenant's right of exclusive occupation of the property, it must be pointed out that this can be restricted in the contract concluded with the landlord and only relates to the property as it is defined in that contract. Thus, the landlord may reserve the right regularly to visit the property let. Furthermore, a contract of letting may relate to certain parts of a property which must be used in common with other occupiers.
>
> [25] The presence in the contract of such restrictions on the right to occupy the premises let does not prevent that occupation being exclusive as regards all other persons not permitted by law or by the contract to exercise a right over the property which is the subject of the contract of letting."

174. The Court in *Temco* did not appear to consider that this analysis was in conflict with the settled case law that the tenant must be able to exclude "any other person."

175. In reliance on this passage from *Temco*, Mr Southern [taxpayer's counsel] said that although Clause 15 of the T&C allows a representative or agent of WTL "to enter the premises…at any time during the Hire Period," this does not prevent the client from having an "exclusive" right. More generally, he drew our attention to the "exclusive" nature of the agreement between WTL and the client, so that no other event could take place in the Rooms once a booking has been made.

176. We accept that the client has a right to occupy the Rooms to the exclusion of other clients. However, Clause 15 gives WTL's representative the right to enter the premises without permission and without any restriction as to time. This is clearly in conflict with the "any other person" of the earlier authorities, and is also a significant extension to "the right regularly to visit the property" referred to in *Temco*. In our judgment it conflicts with the client's right to use the Rooms "as owner.""

31. The situation in the current appeal was analogous to that in *Willant Trust*. The relevant restrictions conflicted with the Company's right to use the three sites "as owner". Without such a right the Company was not in a position to be "leasing or letting immovable property" for VAT purposes.

Second HMRC contention: The supplies from the Company to the Exhibitors did not constitute the letting of immovable property

32. The contracts between the Company and the Exhibitors did not constitute "lettings of immovable property" as required in the European context. The domestic provisions of item 1 group 1 sch 9 must be interpreted in accordance with the wording and purpose of the EU provision in art 135(1)(l): per the ECJ in *Marleasing SA v La*

Comercial Internacional del Alimentacion SA (Case C-106/89) [1990] ECR I-4135 (at [8]).

33. First, the Company retained (clause 8 of the Terms & Conditions – see [22] above) a right of access at all times and for all purposes. For the same reasons as detailed in relation to the contracts between the Company and certain site owners ([29-31] above), the resulting lack of exclusivity of occupation was insufficient to confer sole occupation of the relevant pitches on the Exhibitors. Thus the Company was not granting to the Exhibitors licences to occupy, and the Exhibitors did not have the right to use the pitches "as owner". The Company merely permitted an Exhibitor to use a pitch on a temporary basis for the specific purpose of selling his wares at an event organised by the Company. A licence to *use* a space for a specific purpose is not the same as granting a licence to *occupy* land: *Customs and Excise Commissioners v Sinclair Collis Ltd* [2001] STC 989 per Lord Nicholls (at [35]):

> "'Leasing or letting of immovable property' in art 13B(b) of EC Council Directive 77/388 (the Sixth Directive) is a Community concept. The concept has not been comprehensively defined in Community jurisprudence, but it does include what in English law is characterised as a licence to occupy land. In *Sweden v Stockholm Lindöpark AB* (Case C-150/99) [2001] STC 103 at 113, para 38, the Advocate General (Jacobs) described the salient and typical characteristics of a lease or let. He said that it necessarily involves the grant of some right to 'occupy the property as one's own and to exclude or admit others, a right which is, moreover, linked to a defined piece or area of property'. With this description in mind, I think Mr Simpson, the chairman of the Manchester Value Added Tax Tribunal, hit the nail on the head. He observed that the real subject of the agreement is the machine and not the use or enjoyment of the land on which it stands or the airspace which it occupies for the time being (see (1997) VAT Decision 14950, para 18). The parties wish to place the machine where it will maximise sales, preferably where customers will pass it. The machine will be placed where the site owner's staff can keep an eye on it and prevent vandalism and theft and the use of it by children. But subject to this, and to statutory fire and safety requirements, the position in which the machine is located does not much matter to either party. With all respect to the judge and the Court of Appeal, I agree with the chairman of the tribunal that, despite the static nature of the machines, such a licence is more naturally to be regarded as a licence to use land rather than a licence to occupy land."

34. Secondly, the contracts were not a passive supply of space related to the passage of time without the generation of any significant added value. In *Belgian State v Temco Europe SA* (Case C-10 284/03) [2005] STC 1451 the ECJ (at [20]) described the letting of immovable property as "usually a relatively passive activity linked simply to the passage of time and not generating any significant added value", as opposed to "other activities which are either industrial and commercial in nature … or have as their subject matter something which is best understood as the provision of a service rather than simply the making available of property".

35. In the recent case of *Régie communale autonome du stade Luc Varenne v Belgium* (Case C-55/14) [2015] STC 922 the ECJ stated that where a football stadium was made available for a maximum of 18 days in a year, with the owner supplying various services including maintenance, cleaning, repair and upgrading, that would not constitute a letting of immovable property but instead a supply of services. In the

current appeal, the Company made available pitches for short periods and supplied all services of organising, supervising and managing the fairs.

36. A similar conclusion had been reached by the Tribunal in connection with:

(1) Contracts for wedding receptions in *Willant Trust* (at [186]).

(2) Contracts for wedding receptions in *Drumtochty Castle Limited v HMRC* [2012] UKFTT 429 (TC):

> "60. In our view, the arrangements made between the Appellant and its clients do not constitute or include the grant of a licence to occupy land, here, the Castle and its grounds. The arrangements do not confer on the client exclusive rights of possession, occupation or control or the right to exclude others. Rather, these arrangements constitute the active commercial exploitation of the Castle as part of an overall package of supplies. The nature of the arrangements does not have the flavour of the grant of a licence of land, but is best understood as the provision of a range of commercial services part of which is making the Castle and its grounds available for use. These services include the benefits of management, superintendence and maintenance of the Castle. The provision of the Castle and the selected additional services supplied by the Appellant and third parties all go hand in hand. This is not the relatively passive activity of letting of land as contemplated by Article 13 of the Sixth Directive.
>
> 61. The arrangements and facilities provided added value to the provision of the Castle. They were not merely ancillary to the use or for the better enjoyment of the Castle. They were a substantial part of the overall package of facilities and services. These facilities and services which were provided by the Appellant, including making recommendations about the services of third parties, constitute along with the use of the Castle, a package of closely linked wedding function services."

(3) Contracts for private booths in an exotic dancing club in *Dazmonda Ltd (T/A Sugar & Spice) v HMRC* [2014] UKFTT 337 (TC):

> "87. But the composite service supplied to the dancers was different. The club was not passive in its provision. It provided advertising, music, lighting, heating, cleaning, management, security and the use, in common with others, of the upper floor and its facilities. It added value to the simple provision of land. That was to our minds a supply properly characterised as the provision of services rather than the passive supply of land.
>
> 88. As a result that composite supply did not fall to be treated as a supply of land and is standard rated."

(4) By the High Court in connection with contracts for rooms in a massage parlour in *Byrom & others (T/A Salon 24) v RCC* [2006] STC 992:

> "[70] … it is then necessary to categorise the resulting single supply viewed as a complex of elements (the provision of the licence and of the various services). In my judgment, the over-arching single supply is not to be treated as a supply of a licence to occupy land. The description which reflects economic and social reality is a supply of massage parlour services, one element of which is the provision of the room. That, in my judgment, is the correct conclusion even if, which for my part I think probably is the case, the provision of the room was,

> to the masseuse, the single most important element of the overall supply and, indeed, one predominating over the other elements taken together. This is a case where the tax treatment of the supply is self-evident once it is established that the other service elements are not ancillary to the provision of the licence."

(5) By the ECJ in connection with contracts for coin-operated vending machines in *Sinclair Collis Ltd v CEC* (Case C-274/01) [2003] STC 898:

> "30. … the occupation of an area or space at the commercial premises is, under the terms of the agreement, merely the means of effecting the supply which is the subject matter of the agreement, namely the guarantee of exercise of the exclusive right to sell cigarettes at the premises by installing and operating automatic vending machines, in return for a percentage of the profits."

37. The antiques fairs were large scale events – described by the Company in its marketing materials as some of the biggest and best attended of their kind in Europe – which clearly required extensive and expert organisation; for example, it took almost 90 staff at Newark and over 40 at Ardingly. What each Exhibitor paid for was the benefit of a fully organised fair provided by the Company. All organisation of the fair was performed by the Company, including provision of facilities such as stewards, first-aiders, cleaners, security, parking marshals, electricity, police attendance (at one venue), and availability of banking facilities (at some venues). The Company also undertook advance advertising in both trade publications and the local press; this in itself involved one full-time employee, one PR consultant, two other consultants, a graphic designer and two bloggers.

38. The Company had placed reliance on the 1998 VAT Tribunal case of *Miller Freeman World-Wide plc v CCE* (15452) [1998] V&DR 435. However, that case concerned a different issue (the place of supply rules), and pre-dated the ECJ cases referred to above and thus was not informed by them (in particular there was no reference to "letting of immovable property" or the concept of "services adding value"). Thus no weight should be put on this case, which was in any event not binding on the current Tribunal.

39. The transaction between the Company and an Exhibitor must be examined from the point of view of a typical Exhibitor (see *Honourable Society of Middle Temple v HMRC* [2013] STC 1998 at [60]). The reason an Exhibitor contracts with the Company is not because the Exhibitor wants land but because he wants to participate in one of the Company's well-publicised antiques fairs at which he will have access to customers interested in buying antiques. The Company did not merely "add value" to the supply of the pitch; rather, the pitch would be of *no* value to the Exhibitor without the Company organising and marketing an antiques fair at which the Exhibitor could use a pitch. As far as the Exhibitor is concerned, the Company does not merely *add value* to the simple provision of land, but instead *gives* it value. For example, no Exhibitor would pay for a pitch at Swinderby disused airfield the week before the fair organised by the Company. The space alone would be useless (not merely less useful) without the provision of a fully organised and marketed antiques fair.

40. That was also apparently the view of the Company when it completed its accounts and tax returns. In his evidence Mr Burns had accepted that the description of the Company's principal activity in its published accounts was "organising conferences and exhibitions and antiques fairs", rather than the letting of land; and

that the Company's corporation tax returns reported trading profits rather than income from UK land.

41. As Blackburne J stated in *Holland (t/a The Studio Hair Company) & Vigdor Ltd v Revenue and Customs Commissioners* [2009] STC 150 (at [90]):

> "The essence of the matter, as it seems to me, is that, as the relevant jurisprudence has made clear, the exemption (which is to be strictly interpreted) does not extend to a licence to occupy land which is but one element of a package of supplies made by the taxpayer/lessor to his customer in consideration of a payment or payments by that customer where the supplies in question are commercial in nature or are best understood as the provision of a service and not simply as the making available of property. If that is the nature of the supply—a service rather [? than] simply the making available of property—there is no exempt licence: the licence element in the supply is standard-rated. Whether the resulting supply is properly to be regarded as a single indivisible economic supply which it would be artificial to split and, if so, how that supply is to be characterised for VAT purposes are issues that do not matter if all of its constituent elements are in any event standard-rated."

Appellant's case

42. Mrs Hamilton for the Company submitted as follows.

43. The Company considered that each contract with an individual Exhibitor for an individual pitch at a fair constituted an exempt letting of immovable property.

First HMRC contention: The Company did not itself hold an interest in land sufficient to enable it to be making exempt supplies of land

44. For every venue, looking at the contracts and the economic reality there was a letting of immovable property. As stated recently by Lord Neuberger in *Secret Hotels2 Ltd (formerly Med Hotels Ltd) v RCC* [2014] STC 937 (at [32]):

> "When interpreting an agreement, the court must have regard to the words used, to the provisions of the agreement as whole, to the surrounding circumstances in so far as they were known to both parties, and to commercial common sense."

45. In each case the relevant contract stipulated a defined area and a defined period or periods. It was clear that the Company was being granted exclusive occupation of those areas for those periods. For example, the Company was stated to be responsible for security of those areas during those periods. The rights of entry reserved by the site owners, which had been highlighted by HMRC as being somehow objectionable, were exactly the types of provisions that the ECJ in *Temco* (at [24 – 25]) had stated were acceptable and not adversely affecting the Company's right of exclusive occupation. None of the contracts contained any provisions that, viewed with "commercial common sense" and "economic reality", were inconsistent with the Company holding a licence to occupy.

Second HMRC contention: The supplies from the Company to the Exhibitors did not constitute the letting of immovable property

46. HMRC seemed to have a policy that the provision of any added services resulted in there not being an exempt letting – that was simply incorrect. The true position was derived from the ECJ caselaw, which established the following principles (and had been summarised in *Temco*):

(1) One must look at the European law interpretation of "letting of immovable property" (see *Temco* at [16], and the cases cited there).

(2) Exemptions should be interpreted strictly, but not so as to deny their intended effect (ditto at [17]).

(3) The exemption for letting of immovable property must be interpreted in the context of the Directive and having regard to the underlying purpose of the exemption (ditto at [18]).

(4) It was essentially the conferring, for an agreed period and in return for payment, of the right to occupy property as if that person were the owner and to exclude any other person from enjoyment of such a right (ditto at [19]).

(5) It was usually a relatively passive activity linked simply to the passage of time and not generating any significant added value (ditto at [20]).

(6) The actual period of the letting was not decisive (ditto at [21]).

(7) One must take into account the reality of the contractual relations (ditto at [22]).

(8) A payment which takes into account other factors did not preclude a letting of immovable property (ditto at [23]).

(9) The right of exclusive occupation can be restricted in the contract and relates only to the property as defined therein – so that it was permissible for the owner to reserve the right regularly to visit the property, or to stipulate common parts for use with other occupiers – where the occupation was exclusive as regards third parties (ditto at [24 - 25]).

47. The contract between an Exhibitor and the Company was governed by the terms & conditions in the Booking Pack. The Exhibitor was given exclusive occupation of a defined pitch for a defined period. Each pitch was carefully and clearly delineated – marking them out could take six people one-and-a-half weeks at Newark. Stewards enforced compliance by ensuring Exhibitors did not overspill their allotted pitch. The time was also carefully defined to the hour for permitted arrival and required departure. The rights of entry reserved by the Company were exactly the types of provisions that the ECJ in *Temco* (at [24 – 25]) had stated were acceptable and not adversely affecting the right of exclusive occupation of a particular Exhibitor. That was all consistent with each Exhibitor having a right of exclusive occupation and thus there being a letting of immovable property.

48. The lettings were relatively passive. Once the pitches had been marked out the Company had largely complied with its obligations. The situation was different from an exhibition, where the organiser would take a role in erecting stands and performing many other functions. The situation was closer to that of a shopping centre, where the owner had extensive involvement in the establishment of the centre but then was a mainly passive manager once the centre was up and running; each fair was like a pop-up shopping centre.

49. Although the period of occupation by the Exhibitors was relatively short, that was not decisive and HMRC had quite rightly not made anything of this point.

50. Contrary to HMRC's apparent policy, payment for other factors did *not* preclude there being a supply of a letting – that was explicit in *Temco* (at [23]). It was accepted that such other factors must be accessory or ancillary to the letting of immovable property. That was the case here.

(1) There was a limited provision of electricity (limited to 300 watts lighting and not available on Outside Pitches); trestle tables for some pitches; entrance for one vehicle and two persons for each pitch; and car parking near to the allocated pitch – these were all ancillary to the licence granted to the individual Exhibitor.

(2) Some other services were provided to the site as a whole, rather than to individual Exhibitors – such as security and stewarding – but again those were all ancillary and were supervisory in nature. The ECJ in *Luc Varenne* stated:

> "29. In the circumstances of the main proceedings, what seems to be involved is the supply, by the corporation, of a more complicated service consisting of provision of access to sporting facilities, where the corporation takes charge of the supervision, management, maintenance and cleaning of those facilities.
>
> 30. As regards, first, supervision, namely the rights of access to the sporting facilities and the control of that access conferred on the corporation, it is true that those rights cannot, in themselves, preclude the classification of the transaction at issue in the main proceedings as a letting within the meaning of Article 13B(b) of the Sixth Directive. Such rights may be justified in order to ensure that the use of those facilities by the lessees is not disturbed by third parties. …"

(3) The Company did not provide any insurance services. Nor was there any commitment by the Company to the Exhibitors to advertise or market the fairs; publicity given to the fairs was part of the Company's general marketing on its own behalf; any benefit accruing to the Exhibitors was ancillary to the supply of the pitch and there was no direct link to the consideration for the pitch (see *Apple & Pear Development Council v CEC* [1988] STC 221 at [13 – 16]).

(4) There was a clear difference of scale and type of additional services compared to the wedding reception cases of *Willant Trust* and *Drumtochty Castle*, where extensive hotel and catering type services were being provided. Similarly, the exotic dancer and masseuse cases (*Dazmonda* and *Byrom*) involved extensive additional services that were not comparable to the situation of the Company at the fairs. Again, the facts of *Sinclair Collis*, involving the siting of cigarette machines in pubs, were far from those in the Company's appeal.

51. The economic reality was that Exhibitors paid for a pitch. The price charged varied according to the size of the pitch and the desirability of its location within the fair. There was no link to the value of the other ancillary services supplied. The motivation of an Exhibitor in taking a pitch was irrelevant: *BLP v CCE* [1995] STC 424 (at [24]), so the Tribunal should ask themselves not what the Exhibitor wanted but instead what it was that the Company supplied to the Exhibitor. The predominant supply was that of the land (the pitch) and the other services were merely incidental and for the better enjoyment of the land; the situation was analogous to the supply of

the cold water by the taxpayer to its tenants in *Middle Temple* which was held by the Upper Tribunal (at [69]) to be part of a single supply of an interest in land.

52. The correct analysis had been employed by the VAT Tribunal in *Miller Freeman*, where the facts were similar to the Company's situation. Interestingly, in *Miller Freeman* it was HMRC arguing, successfully, that the fees charged to exhibitors were consideration for a licence to occupy land (see at [2]). The VAT Tribunal stated:

> "24. I accept Mr McNab's [HMRC counsel's] submission that in considering the transaction as a whole between Blenheim and the exhibitor one has to look at the written contract which establishes the relations between them. That contract is for space and the measure of the consideration which Blenheim receives is the size of that space. An examination of the terms and conditions which I have set out bears out Mr McNab's submission that they are predominantly concerned with the exhibitor's right to occupy space at an exhibition and more especially the obligations upon him, which are specific and considerable. In substance and reality what Blenheim supplies to the exhibitor in return for the consideration which it receives is in my judgment the right to occupy space at the venue to which the exhibitor expects that the sort of customer he wants to attend will come. What he is getting, in effect, is the right to set up his stall so that his potential customers can visit him there. Where he opts for space only that is literally what he gets and he has to employ his contractors to erect and complete his stand on the area of the exhibition floor which is allotted to him. Even when he takes a shell the fitting out of the stand is done by the exhibitor by employing his own contractors. Only exceptionally does the stand come fully fitted out.
>
> 25. At some stage the specific area of the exhibition floor, the space which the exhibitor has contracted for, has to be determined and allocated. That time cannot be later than when work to erect the stand or, if it is a shell, to complete the stand commences. From then or at any rate when the exhibitor takes physical possession of the stand until the end of his clearing up of the stand after the exhibition has closed the exhibitor does have exclusive occupation of land, being that specific area of the floor of the hall which is taken up by his stand, in that he alone or by his servants has the right to and actually enjoys the use of that space. Thus in my opinion the exhibitor does, when Blenheim in accordance with its contract with him provides to the exhibitor the space which he has contracted for and for which he has already paid (the evidence was that if he had not paid before the opening he would not be allowed in), the exhibitor does, to use the words of Russell LJ in the rating case *Oswestry Corporation v. Hudd* [1966] 1 ALL ER 490; at pp 496 and 498, in highlighting this as being a significant feature of a licence to occupy land, enjoy for a measurable period of time "a privileged position of special occupancy" in relation to a specific area of land.
>
> 26. It is obvious that the selling point made by Blenheim to potential exhibitors has to be the right to attend the exhibition and the opportunities for business that will give them. I accept that the success of Blenheim's business as an organiser of exhibitions depends upon its putting on exhibitions at which exhibitors get what they want so they come. That Blenheim's efforts as part of its business activities are also directed at trying to see that the right sort of potential customers turn

> up and in sufficient numbers makes the right of an exhibitor to be at the exhibition with his own stand likely to be more sought after. It increases the value of that right but not its nature, which is the right of the exhibitor to have his stand peculiar to him inside the exhibition to which his customers can come. The position in principle is no different to that of the stallholder with his own stall for the day in Tameside. That with a long established market, as in that case with competition amongst traders for available stalls, people come there to buy out of regular habit or because its existence is well known and so no special efforts on the part of the market owner are required to advertise it, is not in my view a significant difference changing the nature of what is being provided.
>
> 27. I can understand how an exhibitor may express his satisfaction with the quality and number of customers coming to his stand rather than singing the praises of his particular stand or its position, although some positions are bound to be more favoured than others. But that in my judgment does not mean that in substance and reality the true subject matter of the agreement between the organiser and exhibitor is simply the provision of an opportunity to meet potential customers (Blenheim has a disclaimer in its contract if expected customers or other exhibitors do not turn up) to which the occupation of land is merely ancillary. Having and occupying a stand at the exhibition is, as I have said, what viewed objectively is important, although of course that occupation of the land as with all occupation of land is for a purpose and not just for its own sake.
>
> 28. On those grounds in my judgment what in substance and reality Blenheim is providing to the exhibitor in return for the consideration which it receives is a licence to occupy land. …"

53. There was nothing in that analysis that conflicted with the approach of later cases and, although the case was not strictly binding on this Tribunal, it was very persuasive; the VAT Tribunal had carefully explained why it disagreed with another VAT Tribunal decision (*International Trade and Exhibitions J/V Ltd v Commissioners of Customs and Excise* [1996] V & DR 165) that had reached a different conclusion. As the VAT Tribunal in *Miller Freeman* correctly identified, there was a number of factors that affected the *value* of what the Exhibitor was buying, but those did not affect the *nature* of what was being bought.

54. The economic reality was that there was a single supply of the letting of immovable property, and all the other services were ancillary to that predominant land supply. Thus the fees paid by the Exhibitors for the pitches were exempt for VAT purposes.

Consideration and Conclusions

55. We must determine whether the Exhibitor pitch fees received by the Company constitute consideration for exempt supplies, pursuant to item 1 group 1 sch 9 VAT Act 1994.

56. The UK domestic legislative provision in item 1 group 1 sch 9 must be interpreted in accordance with the wording and purpose of the EU provision in art 135(1)(l): per the ECJ in *Marleasing* (at [8]):

> "… in applying national law, whether the provisions in question were adopted before or after the directive, the national court called upon to interpret it is required to do so, as far as possible, in the light of the wording and the purpose of the directive in order to achieve the result pursued by the latter …"

57. Similarly the Court of Appeal stated in *RCC v IDT Card Services Ireland Ltd* [2006] STC 1252 (per Arden LJ at [68]):

> "There are two different levels at which the court undertakes the task of interpretation in this case. The first level is that of the Sixth Directive, because, although that has no legal force as such in the United Kingdom, it is now well-established that the court must interpret domestic legislation in accordance with any applicable European directive. So the court has to satisfy itself as to the meaning of that underlying legislation. The second level at which the court must undertake the task of interpretation is at the level of the VATA 1994. This of course is domestic law. The former task must be carried out in accordance with the principles laid down by the Court of Justice, which is the final arbiter on what Community legislation means. The latter task, however, is conducted under the principles of domestic law but for the purpose not of interpreting the statute in the ordinary way but of fulfilling the requirement of European Union law that a national court should interpret a statute which implements a directive, so far as possible, in the light of the wording and purpose of that directive."

58. Considerable guidance on the interpretation of the wording and purpose of art 135(1)(l) was given by the ECJ in *Temco* - where the provision under consideration was the predecessor of art 135(1)(l), being art 13 of the Sixth Directive:

> "16. It should be observed at the outset that according to settled case law the exemptions provided for in art 13 of the Sixth Directive have their own independent meaning in Community law and must therefore be given a Community definition (see *EC Commission v Ireland* (Case C-358/97) [2000] ECR I-6301, para 51; *Maierhofer v Finanzamt Augsburg-Land* (Case C-315/00) [2003] STC 564, [2003] ECR I-563, para 25; and *Sinclair Collis Ltd v Customs and Excise Comrs* (Case C-275/01) [2003] STC 898, [2003] ECR I-5965, para 22).
>
> 17. Secondly, the terms used to specify the exemptions provided for by art 13 of the Sixth Directive are to be interpreted strictly since they constitute exceptions to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person (see, *inter alia*, EC Commission v Ireland (Case C-358/97) [2000] ECR I-6301, para 52; *Sweden v Stockholm Lindöpark AB* (Case C-150/99) [2001] STC 103, [2001] ECR I-493, para 25; and *Sinclair Collis Ltd v Customs and Excise Comrs* (Case C-275/01) [2003] STC 898, [2003] ECR I-5965, para 23). As the Advocate General rightly states at para 37 of his opinion, the requirement of strict interpretation does not mean, however, that the terms used to specify exemptions should be construed in such a way as to deprive the exemptions of their intended effect.
>
> 18. As regards the exemptions laid down under art 13B(b) of the Sixth Directive, it must be noted that that provision does not define 'letting', nor does it refer to relevant definitions adopted in the legal orders of the member states (see *Stichting 'Goed Wonen' v Staatssecretaris van Financien* (Case–326/99) [2003] STC 1137, [2001] ECR I-6831, para

44, and *Sinclair Collis*, para 24). That provision must therefore be interpreted in the light of the context in which it is used, and of the objectives and the scheme of the Sixth Directive, having particular regard to the underlying purpose of the exemption which it establishes (see, to that effect, *Goed Wonen*, para 50).

19. In numerous cases, the court has defined the concept of the letting of immovable property within the meaning of art 13B(b) of the Sixth Directive as essentially the conferring by a landlord on a tenant, for an agreed period and in return for payment, of the right to occupy property as if that person were the owner and to exclude any other person from enjoyment of such a right (see, to that effect, *Goed Wonen*, para 55; *Customs and Excise Comrs v Mirror Group plc* (Case C-409/98) [2001] STC 1453, [2002] QB 546, para 31; *Customs and Excise Comrs v Cantor Fitzgerald International* (Case C-108/99) [2001] STC 1453, [2002] QB 546, para 21; *Seeling v Finanzamt Starnberg* (Case C-269/00) [2003] STC 805, [2003] ECR I-4101, para 49; and *Sinclair Collis Ltd v Customs and Excise Comrs* (Case C-275/01) [2003] STC 898, [2003] ECR I-5965, para 25).

20. While the court has stressed the importance of the period of the letting in those judgments, it has done so in order to distinguish a transaction comprising the letting of immovable property, which is usually a relatively passive activity linked simply to the passage of time and not generating any significant added value (see, to that effect, *Stichting 'Goed Wonen' v Staatssecretaris van Financien* (Case–326/99) [2003] STC 1137, [2001] ECR I-6831, para 52), from other activities which are either industrial and commercial in nature, such as the exemptions [query *sic* "exceptions"?] referred to in art 13B(b)(1) to (4) of the Sixth Directive, or have as their subject matter something which is best understood as the provision of a service rather than simply the making available of property, such as the right to use a golf course (*Sweden v Stockholm Lindöpark AB* (Case C-150/99) [2001] STC 103, [2001] ECR I-493, paras 24 to 27), the right to use a bridge in consideration of payment of a toll (*EC Commission v Ireland* (Case C-358/97) [2000] ECR I-6301) or the right to install cigarette machines in commercial premises (*Sinclair Collis Ltd v Customs and Excise Comrs* (Case C-275/01) [2003] STC 898, [2003] ECR I-5965, paras 27 to 30).

21. The actual period of the letting is thus not, of itself, the decisive factor in determining whether a contract is one for the letting of immovable property under Community law, even if the fact that accommodation is provided for a brief period only may constitute an appropriate basis for distinguishing the provision of hotel accommodation from the letting of dwelling accommodation (*Blasi v Finanzamt München I* (Case C-346/95) [1998] STC 336, [1998] ECR I-481, paras 23 and 24).

22. In any event, it is not essential that that period be fixed at the time the contract is concluded. It is necessary to take into account the reality of the contractual relations (*Blasi*, para 26). The period of a letting may be shortened or extended by the mutual agreement of the parties during the performance of the contract.

23. Furthermore, while a payment to the landlord which is strictly linked to the period of occupation of the property by the tenant appears best to reflect the passive nature of a letting transaction, it is not to be inferred from that that a payment which takes into account other

> factors has the effect of precluding a 'letting of immovable property' within the meaning of art 13B(b) of the Sixth Directive, particularly where the other factors taken into account are plainly accessory in light of the part of the payment linked to the passage of time or pay for no service other than the simple making available of the property.
>
> 24. Lastly, as regards the tenant's right of exclusive occupation of the property, it must be pointed out that this can be restricted in the contract concluded with the landlord and only relates to the property as it is defined in that contract. Thus, the landlord may reserve the right regularly to visit the property let. Furthermore, a contract of letting may relate to certain parts of a property which must be used in common with other occupiers.
>
> 25. The presence in the contract of such restrictions on the right to occupy the premises let does not prevent that occupation being exclusive as regards all other persons not permitted by law or by the contract to exercise a right over the property which is the subject of the contract of letting.
>
> 26. As regards the transaction at issue in the main proceedings, it is for the national court to consider all the circumstances surrounding it in order to establish its characteristics and to assess whether it can be treated as a 'letting of immovable property' within the meaning of art 13B(b) of the Sixth Directive.
>
> 27. It is also a matter for that court to establish whether the contracts, as performed, have as their essential object the making available, in a passive manner, of premises or parts of buildings in exchange for a payment linked to the passage of time, or whether they give rise to the provision of a service capable of being categorised in a different way."

59. Having carefully studied Mrs Hamilton's useful summary of the principles to be derived from that passage in *Temco* (see [46] above), we adopt it as an accurate précis of the points restated by the ECJ from its case law up to November 2004 (when *Temco* was decided). We deal further below with the subsequent ECJ case of *Luc Varenne*.

First HMRC contention: The Company did not itself hold an interest in land sufficient to enable it to be making exempt supplies of land

60. HMRC contend that in relation to three of the five fair sites (Ardingly, Bath and West, and Swinderby) the Company did not itself hold an interest in land sufficient to enable it to be making exempt supplies of land. HMRC's submissions in that regard are set out at [29-31] above, and HMRC's contention is that (at each of those three sites) the Company did not enjoy exclusive occupation of the relevant land. HMRC cite this Tribunal's decision in *Willant Trust.*

61. We must characterise the relationship between the Company and the relevant site owner in the light of the contractual documentation, and consider whether that characterisation represents the economic reality of the relationship – per Lord Neuberger in *Secret Hotels2 Ltd* :

> [32] When interpreting an agreement, the court must have regard to the words used, to the provisions of the agreement as whole, to the surrounding circumstances in so far as they were known to both parties, and to commercial common sense. When deciding on the categorisation of a relationship governed by a written agreement, the

label or labels which the parties have used to describe their relationship cannot be conclusive, and may often be of little weight. As Lewison J said in *A1 Lofts Ltd v Revenue and Customs Comrs* [2009] EWHC 2694 (Ch), [2010] STC 214 at [40], in a passage cited by Morgan J:

> 'The court is often called upon to decide whether a written contract falls within a particular legal description. In so doing the court will identify the rights and obligations of the parties as a matter of construction of the written agreement; but it will then go on to consider whether those obligations fall within the relevant legal description. Thus the question may be whether those rights and obligations are properly characterised as a licence or tenancy (as in *Street v Mountford* [1985] 2 All ER 289, [1985] AC 809); or as a fixed or floating charge (as in *Agnew v IRC* [2001] UKPC 28, [2001] 2 AC 710), or as a consumer hire agreement (as in *TRM Copy Centres (UK) Ltd v Lanwall Services Ltd* [2009] UKHL 35, [2009] 4 All ER 33, [2009] 1 WLR 1375). In all these cases the starting point is to identify the legal rights and obligations of the parties as a matter of contract before going on to classify them.'

> [33] In English law it is not permissible to take into account the subsequent behaviour or statements of the parties as an aid to interpreting their written agreement—see L Schuler *AG v Wickman Machine Tool Sales Ltd* [1973] 2 All ER 39, [1974] AC 235. The subsequent behaviour or statements of the parties can, however, be relevant, for a number of other reasons. First, they may be invoked to support the contention that the written agreement was a sham—ie that it was not in fact intended to govern the parties' relationship at all. Secondly, they may be invoked in support of a claim for rectification of the written agreement. Thirdly, they may be relied on to support a claim that the written agreement was subsequently varied, or rescinded and replaced by a subsequent contract (agreed by words or conduct). Fourthly, they may be relied on to establish that the written agreement represented only part of the totality of the parties' contractual relationship.

> [34] In the present proceedings, it has never been suggested that the written agreements between Med and hoteliers, namely the Accommodation Agreements, were a sham or liable to rectification. Nor has it been suggested that the terms contained on the website ('the website terms'), which governed the relationship between Med and the customers, namely the Terms of Use and the Booking Conditions, were a sham or liable to rectification. In these circumstances, it appears to me that (i) the right starting point is to characterise the nature of the relationship between Med, the customer, and the hotel, in the light of the Accommodation Agreement and the website terms ('the contractual documentation'), (ii) one must next consider whether that characterisation can be said to represent the economic reality of the relationship in the light of any relevant facts, and (iii) if so, the final issue is the result of this characterisation so far as art 306 is concerned."

62. First, we are confident that the nature of each of the three agreements is to grant to the Company the right to occupy the relevant showground (or airfield site at Swinderby) to hold antiques fairs on the dates agreed between the respective parties. In relation to Ardingly we note that the licence granted "the right to use the Premises

… for the Use *exclusively* during the User Periods within the Term in common with the Licensor *except* insofar as such use may be inconsistent with the proper enjoyment of the rights hereby granted to the Licensee", and the defined Use was "the *exclusive* right of the Licensee to hold antiques and collectors fairs" (emphases added). In relation to Bath and West we note that the licence is expressed to be a "licence to occupy" – although the description adopted by the parties is not decisive (see *Secret Hotels2 Ltd* at [32]), it is indicative of the intentions of the parties. Both those licences contained provisions designed to cover the situation where the antiques fair occupied only part of the showground, so that the owner could licence the remainder of the showground to another event, but we find nothing to suggest that the Company's right to occupy the parts licensed to it was in any way compromised or constrained by those provisions.

63. HMRC's objection is that under the agreement relating to Ardingly the Company's use is "in common with the Licensee", and under the other two agreements the site owner retained a right of access for itself and its agents and employees at all times and for all purposes. Thus, say HMRC, the Company did not enjoy "the right to occupy property as if that person were the owner and to exclude any other person from enjoyment of such a right" (*Temco* at [19]). In relation to Ardingly, we consider this objection is groundless; the words "in common with the Licensor" are qualified by "except insofar as such use may be inconsistent with the proper enjoyment of the rights hereby granted to the Licensee", and those rights are "the right to use the Premises … for the Use *exclusively* during the User Periods within the Term", being "the *exclusive* right of the Licensee to hold antiques and collectors fairs". Accordingly, we see nothing there to detract from the Company's exclusive right of occupation at Ardingly. Turning to the reserved rights at Bath and West and Swinderby, although those rights were drafted in apparently wide terms, we have no doubt that the true commercial arrangement between the parties - and thus the economic reality - was that those rights were intended to cover only a reasonable requirement to enter a fair to attend to matters such as utilities management, or to check on public safety or other statutory requirements. If a site owner had purported to exercise those rights so as to violate the Company's right of sole occupation during a fair for any other reasons then the Company would rightly have construed that as a breach of the licence terms. We consider that position is entirely in accordance with the views of the ECJ in *Temco*:

> "[24] …as regards the tenant's right of exclusive occupation of the property, it must be pointed out that this can be restricted in the contract concluded with the landlord and only relates to the property as it is defined in that contract. Thus, the landlord may reserve the right regularly to visit the property let. …
>
> [25] The presence in the contract of such restrictions on the right to occupy the premises let does not prevent that occupation being exclusive as regards all other persons not permitted by law or by the contract to exercise a right over the property which is the subject of the contract of letting."

64. HMRC cite this Tribunal's decision in *Willant Trust*, where a similarly worded reservation of right of entry was considered. That decision is not binding on us. We note that the Tribunal in *Willant Trust* cited the passage in *Temco* at [24-25], applied it to the facts before them (which concerned wedding receptions held at a hotel), and concluded (at [176]) that in those particular circumstances the hotelier's rights were such as to go beyond the restrictions permitted by *Temco*. We have undertaken the

same process on the facts in this appeal and concluded, as stated above, that the relevant licence terms are entirely in accordance with the restrictions permitted by *Temco.*

65. For the above reasons we do not accept HMRC's first contention.

Second HMRC contention: The supplies from the Company to the Exhibitors did not constitute the letting of immovable property

Clause 8 of the Terms & Conditions

66. The first objection raised by HMRC is that because the Company retained (by clause 8 of the Terms & Conditions) a right of access at all times and for all purposes, this resulted in a lack of exclusivity of occupation and that was insufficient to confer sole occupation of the relevant pitches on the Exhibitors; thus the Company was not granting to the Exhibitors licences to occupy, and the Exhibitors did not have the right to use the pitches "as owner". This is, of course, similar to HMRC's contention in relation to three of the contracts between the Company and the respective site owners. We adopt the same approach as at [63] above and reach the same conclusion: that the terms of Clause 8 are entirely in accordance with the restrictions permitted by *Temco* (at [24-25]). Accordingly, we do not consider Clause 8 to be any obstacle to the pitch contracts being lettings of immovable property.

The Luc Varenne case

67. Both parties referred us to the recent case of *Luc Varenne*, where the ECJ considered whether "the making available of the facilities of a sports installation used exclusively for footballing purposes, understood as being the right to use and enjoy the football stadium playing surface (the pitch) and the players' and referees' changing rooms on an ad hoc basis for up to 18 days per season (a season starting on 1 July each calendar year and ending on 30 June the following year), constitute an exempt letting of immovable property" (see *Luc Varenne* at [19]). Although, with great respect to the ECJ, we have found this decision difficult to analyse, we consider the correct interpretation to be as follows.

(1) The ECJ (at [25-26]) referred to its decision in *Sweden v Stockholm Lindöpark AB* (Case C-150/99) [2001] STC 103 that golf course green fees were not an exempt supply:

> "… since the activity of running a golf course entails not only the passive activity of making the course available but also a large number of commercial activities, such as supervision, management and continuing maintenance by the service-provider and the provision of other facilities, letting out a golf course cannot, in the absence of quite exceptional circumstances, constitute the main service supplied"

(2) The ECJ then noted that in *Luc Varenne* it was considering collective use by a football club rather than access by individual golfers:

> "27. Admittedly, the circumstances in the main proceedings differ from those of the transaction at issue in the case which gave rise to the judgment in *Stockholm Lindöpark*, given that, first, the main proceedings concern a 'collective' use of facilities by a club, and not individual access by players; second, that use is repetitive and extended and, in principle, is exclusive on the agreed days, and, third, the duties

and prerogatives of the corporation as lessor seem, in part, to be dictated by what is inherently necessary for the use, for rental purposes, of sporting facilities which may host a wide range of bodies and individuals."

(3) The ECJ then referred back to the need for there to be "quite exceptional circumstances" for the letting of sports facilities to be an exempt supply:

> "28. The court must however state that the order for reference does not suggest, without prejudice to the assessment of the facts which is the task of the referring court, that there are quite exceptional circumstances which permit the conclusion that the use of the football ground constitutes the main service supplied in the transaction, so that the transaction can be classified as a letting of immovable property within the meaning of art 13B(b) of the Sixth Directive."

(4) The ECJ then described the other services supplied by the stadium owner, and considered separately (a) supervision, and (b) management, maintenance and cleaning:

> "29. In the circumstances of the main proceedings, what seems to be involved is the supply, by the corporation, of a more complicated service consisting of provision of access to sporting facilities, where the corporation takes charge of the supervision, management, maintenance and cleaning of those facilities.
>
> 30. As regards, first, supervision, namely the rights of access to the sporting facilities and the control of that access conferred on the corporation, it is true that those rights cannot, in themselves, preclude the classification of the transaction at issue in the main proceedings as a letting within the meaning of art 13B(b) of the Sixth Directive. Such rights may be justified in order to ensure that the use of those facilities by the lessees is not disturbed by third parties. The court has previously stated that the presence of restrictions on the right to occupy the premises let does not prevent that occupation being exclusive as regards all other persons not permitted by law or by the contract to exercise a right over the property which is the subject of the letting contract (judgment in *Belgian State v Temco Europe SA* (Case C-284/03) [2005] STC 1451, [2004] ECR I-11237, para 25).
>
> 31. In the circumstances at issue in the main proceedings, the rights of access to the sporting facilities and the control of that access seem none the less to have the effect, by means of a caretaking service, that representatives of the corporation are permanently present at those facilities, which could be evidence to support the view that the role of the corporation is more active than that which would arise from a letting of immovable property within the meaning of art 13B(b) of the Sixth Directive.
>
> 32. As regards, secondly, the various services of management, maintenance and cleaning, it appears that they are, for the most part, actually necessary to ensure that the facilities in question are suitable for the use for which they are intended, in other words sporting events and, more specifically, football matches in accordance with the applicable sporting regulations.
>
> 33. It must therefore be held that the facilities required for that purpose are, by means of the offered services of repair and upgrading, made available to RFCT [ie the football club user] in a condition which permits their use for the agreed purposes and that the provision of

> access to those facilities for that specific end constitutes the supply which is characteristic of the transaction at issue in the main proceedings (see inter alia, by analogy, the judgments in *Ministero dell'Economia e delle Finanze v Part Service Srl* (Case C-425/06) [2008] STC 3132, [2008] ECR I-897, paras 51 and 52; *Field Fisher Waterhouse LLP v Revenue and Customs Comrs* (Case C-392/11) [2013] STC 136, para 23; and *Minister Finansow v RR Donnelley Global Turnkey Solutions Poland sp z oo* (Case C-155/12) [2014] STC 131, para 22).
>
> 34. In that regard, the economic value of the various services supplied, those representing, according to the order for reference, 80% of the charge which is agreed in the contract to be payable, also constitutes evidence which supports the classification of the transaction at issue in the main proceedings, considered as a whole, as a supply of services rather than as a letting of immovable property within the meaning of art 13B(b) of the Sixth Directive."

(5) The ECJ concluded that:

> "35. … it is for the referring court to assess whether all the services offered by the corporation are in fact necessary in order to provide access to the sporting facilities for the purposes agreed in the contract, that is exclusively for the purposes of football."

68. We consider that (at [34]) the ECJ placed considerable weight on the fact that 80% of the consideration related to the various services provided by the stadium owner. We put that issue to both counsel and they both stated that no point was being taken by either party as to there being any particular significance in the 80% figure cited by the ECJ. While we agree that the 80% figure should not be taken to be a "benchmark", we do consider that the ECJ regarded it as important that over three-quarters of the consideration related to the services of supervision, management, maintenance and cleaning of the stadium facilities. The decision gives no explanation of the methodology by which the 80% figure was arrived at. We were informed (and accept) that it would be difficult for the Company to make any comparable overall calculation, other than that "ground rents" (ie licence fees paid to the site owners) accounted for about one-third of the Company's direct costs. In all these circumstances we do not consider that we gain any assistance from *Luc Varenne* that is not already provided by the earlier ECJ cases summarised in *Temco* (including *Sinclair Collis*, *Stockholm Lindöpark*, and *Stichting "Goed Wonen"*).

The correct VAT classification of the supply

69. Both parties agreed that the pitch fees were received for a single composite supply, rather than several independent supplies. We accept that agreed position. That then requires us to determine the correct classification of that single supply. The approach to be adopted was stated by Warren J in *Finnamore (trading as Hanbidge Storage Services) v Revenue and Customs Commissioners* [2014] STC 2754:

> "**The central issue**
>
> [18] The issue is therefore the correct classification of that single composite supply. The question is whether it is exempt either as the grant of a 'licence to occupy land' or as the 'leasing or letting of immovable property'.

[19] I dealt at length with the question of the proper classification of a single composite supply in *Byrom (t/a Salon 24) v Revenue and Customs Comrs* [2006] EWHC 111 (Ch), [2006] STC 992 ('*Byrom*'). I included a lengthy discussion of several cases including *Card Protection Plan Ltd v Customs and Excise Comrs* [2001] UKHL 4, [2001] STC 174; *sub nom Card Protection Plan Ltd v Customs and Excise Comrs (No 2)* [2002] 1 AC 202 ('*CPP*') when it returned to the House of Lords after a reference to the Court, *Dr Beynon and Partners v Customs and Excise Comrs* [2004] UKHL 53, [2005] STC 55, [2005] 1 WLR 86 ('*Dr Beynon*') and *College of Estate Management v Customs and Excise Comrs* [2005] UKHL 62, [2005] STC 1597, [2005] 1 WLR 3351 ('*College of Estate Management*'). I do not see any reason to qualify anything which I said in my judgment in *Byrom*.

[20] At [30] of my judgment in *Byrom*, I looked at the issue of whether questions of classification were questions of law or not. I cited [26] and [27] of Lord Hoffmann's speech in *Dr Beynon*. He concluded that the characterisation (to use his word) of a supply was, indeed, a matter of law, although it would be 'customary for an appellate court to show some circumspection before interfering with the decision of the tribunal merely because it would have put the case on the other side of the line'. Although Lord Hoffmann said what he did in the context of the question 'one supply or separate supplies', the same approach must, in my view, be applied to the correct classification of the single supply once identified. Thus, in *Dr Beynon*, once it was decided that there was a single supply, it was a matter of law that the supply was one of medical services and not of drugs as such. Likewise, in *College of Estate Management*, it was also a matter of law that the supply was one of educational services and not of the printed materials as such. It is perhaps worth noting that, conceptually, a supply of medical services was capable of subsuming a supply of drugs and a supply of educational services was capable of subsuming a supply of educational written material: there was no need to invent some new concept to cover all aspects of the supply.

[21] Since the issue is one of law, I must make my own decision about the proper categorisation of the composite supply made by Mr Finnamore, bearing in mind that element of circumspection referred to by Lord Hoffmann if I were minded to interfere with the tribunal's decision. Before coming to that, however, I want to refer further to *UK Storage*. [*UK Storage Company (SW) Ltd v RCC* [2013] STC 361]

[22] In *UK Storage*, the tribunal identified ([2013] STC 361 (at [42])) the two well-established distinct types of single composite supply. These were accurately described in this way:

> '(1) where two or more elements or acts supplied by the taxable person are so closely linked that they form, objectively, a single, indivisible economic supply, which it would be artificial to split (see *Levob Verzekingen BV v Staatssecretaris van Financiën* (Case C-41/04) [2006] STC 766, [2005] ECR I-9433 (para 22); and
>
> (2) where one or more supplies constitute a principal supply and the other supply or supplies constitute one or more ancillary supplies which do not constitute for customers an end in themselves but a means of better enjoying the principal service supplied (see *Card Protection Plan Ltd v Customs*

and Excise Comrs (Case C-349/96) [1999] STC 270, [1999] ECR I-973 (para 30) ("*CPP*")).'

[23] In [43], the tribunal went on to consider the decision in *Field Fisher Waterhouse LLP v Revenue and Customs Comrs* (Case C-392/11) [2013] STC 136 and mentioned my own decision in *Byrom*. The tribunal concluded that the nature of the single supply was to be found by determining the economic reason or purpose of the whole transaction from the point of view of the typical customer. This was so whichever category of single composite supply was involved. This would involve looking at what the tenant in that case would obtain as a result of the grant of the lease to him and the supplies of services linked to the leasing; and looking at whether any one of the services might be regarded an end in itself for an average tenant of premises such as those at issue. They saw that approach to be essentially the same as that taken by me in *Byrom* ([2006] STC 992 (at [70])) where I referred, reflecting the language of Lord Hoffmann in *Dr Beynon and Partners v Customs and Excise Comrs* [2005] STC 55, [2005] 1 WLR 86 (at [31]), to the 'description which reflects the economic and social reality' of a single supply and considers it from the point of view of the recipient of the services. I agree with the Tribunal's conclusion and agree also that the words it uses are essentially what I was saying in *Byrom*.

[24] A more detailed exegesis can be found in *Middle Temple*. The entirety of the section from [28] to [59] repays reading. This section is primarily directed at the question whether there is a single composite supply and not directly at the correct categorisation of the supply, if a single composite supply is established. These two aspects are, of course, very closely connected. Accordingly, what the tribunal says about the correct approach to the first aspect informs the correct approach to the second. At [60], the tribunal summarised the key principles relating to the first aspect, that is to say for determining whether a particular transaction should be regarded as a single composite supply or as several independent supplies. Certain of those stated principles are apposite also to the second aspect, that is to say for determining the correct classification of the single composite supply. Thus in relation to that second aspect, it is possible to derive the following principles to be applied in conjunction with those explained in *Byrom*:

> (a) The essential features or characteristic elements of the transaction must be examined in order to determine whether, from the point of view of a typical consumer, the supplies constitute several distinct principal supplies or a single economic supply. Those same features and characteristics will inform the answer to what is the nature of the single supply, from the point of view of a typical customer, in a case where the conclusion is that there is a single supply.
>
> (b) Where one or more elements are to be regarded as constituting the principal services, while one or more elements are to be regarded as ancillary services, the overarching supply will take the tax treatment of the principal element.
>
> (c) A service must be regarded as ancillary if it does not constitute for the customer an aim in itself, but is a means of better enjoying the principal service supplied.

> (d) A single supply consisting of several elements is not automatically similar to the supply of those elements separately and so different tax treatment does not necessarily offend the principle of fiscal neutrality."

70. Warren J also stated:

> "[28] In ascertaining the correct description of the single composite supply, in order to establish whether it is an exempt supply, it is necessary, in accordance with the principles I have discussed, to take proper account of all the circumstances and to assess the matter from the perspective of a typical user of the plot and the storage facilities. Thus it is possible to arrive at a description which reflects 'the economic and social reality' of the supply. Those words come from Lord Hoffmann in *Dr Beynon*. They are portmanteau words designed, I think, to capture all the surrounding circumstances, including the commercial imperatives of the customer; I use them in that sense below."

71. Our conclusion is that assessing the supply from the perspective of a typical Exhibitor, the economic and social reality is that the booking fees are payment for participation as a seller at one of the largest antiques fairs in Europe, attended by plentiful trade and public buyers. That is the opportunity provided by the Company and for which the Exhibitor pays the fees.

72. The description in the Booking Pack, and also on those parts of the Company's website that are aimed at Exhibitors, of what an Exhibitor gets for its money is the opportunity to sell to plentiful buyers at a successful fair organised and run by the Company. The typical Exhibitor is relying on the extensive marketing and organisation undertaken before the fair by the Company, and the Company's proven expertise in running well-attended multi-day fairs. For example (from the Booking Pack), "Keen to ensure we continue to deliver to you a high footfall of custom, we will once again be keeping the current entry price for buyers. And through investing in engaging marketing initiatives, clever editorials and the effective use of the very latest in social media, we aim to reach out to and encourage a new generation of buyer to our fairs. We thank you for your continued support and for helping to maintain the truly global reputation of our fairs." Mrs Hamilton invited us to take that mainly as advertising "puff" but even if we make some allowance for the detailed attendance figures and other particulars stated on the website, the general picture remains as we have characterised it above.

73. We do not accept Mrs Hamilton's submission that the Company's supply to an Exhibitor is "a relatively passive activity linked simply to the passage of time and not generating any significant added value" (*Temco* at [20]). On the contrary, the Company's activities in organising and running the fair do generate significant added value; they are, we conclude, exactly what the ECJ described as "other activities which are … commercial in nature, … or have as their subject matter something which is best understood as the provision of a service rather than simply the making available of property" (*ibid*). Our response to the ECJ's question (at [27]), "whether the contracts, as performed, have as their essential object the making available, in a passive manner, of premises or parts of buildings in exchange for a payment linked to the passage of time, or whether they give rise to the provision of a service capable of being categorised in a different way" is that the contracts between the Company and

the Exhibitors are for the provision of a service of participation as a seller at an expertly organised and expertly run antiques and collectors fair.

74. We are led to the same conclusion as Warren J reached in relation to the contracts for rooms in a massage parlour in *Byrom*:

> "[70] … it is then necessary to categorise the resulting single supply viewed as a complex of elements (the provision of the licence and of the various services). In my judgment, the over-arching single supply is not to be treated as a supply of a licence to occupy land. The description which reflects economic and social reality is a supply of massage parlour services, one element of which is the provision of the room. That, in my judgment, is the correct conclusion even if, which for my part I think probably is the case, the provision of the room was, to the masseuse, the single most important element of the overall supply and, indeed, one predominating over the other elements taken together. This is a case where the tax treatment of the supply is self-evident once it is established that the other service elements are not ancillary to the provision of the licence."

75. We conclude that the over-arching single supply by the Company is not to be treated as a supply of a licence to occupy land, but rather a supply of participation as a seller at an expertly organised and expertly run antiques and collectors fair, one element of which is the provision of the pitch. Accordingly, the correct VAT treatment of the booking fees is a standard rated supply.

76. That is sufficient to determine the appeal against the Company, although we wish to touch briefly on two matters: the VAT Tribunal case of *Miller Freeman*, and RCB 22/12.

The VAT Tribunal case of Miller Freeman

77. The Company placed reliance on this case for two good reasons: the facts were similar to the situation of the Company, and in *Miller Freeman* it was HMRC who argued (successfully) that the exhibitor booking fees were exempt land supplies. We have decided not to follow that case, which is not binding on this Tribunal, and we should briefly explain why. In *Miller Freeman* the VAT Tribunal itself decided not to follow an earlier decision of that Tribunal: *International Trade and Exhibitions J/V Ltd* (*ITE*) (cited at [53] above). Having considered the passages in *Miller Freeman* in which the divergence from *ITE* is explained, we consider that on balance we prefer the analysis of Sir Stephen Oliver QC in *ITE*. Before quoting a relevant passage from *ITE* we should mention that in *ITE* it was also held that the taxpayer was not granting a licence to occupy, but that does not affect the further analysis which we consider relevant.

> "17. It is evident from the agreed facts as set out above and from the terms of the Brochure that the selling point is the right to participate in the exhibition. The stand and the rest of the hardware are facilities needed by all exhibitors, but they are not the real and substantial advantage secured in return for the Georgian Physics Institute's payment of £3,555. The payment secures the advantage for the Georgian Physics Institute to take part in "an unprecedented event ... to exhibit products and services to the niche markets of the Arabian Gulf ... A chance to win contracts ... An unbeatable and cost effective means of introducing" the Georgian Physics Institute and its product to "the

> thousands of interested customers from Saudi Arabia and the Arabian Gulf ...". The stand, the rest of the hardware and the right to have it placed somewhere in the exhibition centre are the means of achieving the end, which is for the Georgian Physics Institute to advertise itself and its products through the exhibition.
>
> 18. With those features in mind it seems to me that the relative importance of the land to the arrangements between ITE and the Georgian Physics Institute is slight. The land itself provides support for the stand and the other hardware hired by the Georgian Physics Institute. The right of occupation of the land at the exhibition centre was not, in my view, the dominant feature of the supply. The substance and reality of the matter is that the exhibitor, by entering into the Space Application Contract, obtains a supply of advertising services through the medium of the exhibition and all the preparatory work provided by ITE."

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78. The Company is disgruntled that after many years of treating the booking fees as exempt land supplies HMRC changed their policy by an announcement (RCB 22/12) that – says the Company – was not explicit that it affected the sorts of fairs organised by the Company; in particular, that the emphasis of RCB 22/12 was on the place of supply rules affecting international conferences.

79. HMRC's response to this was fully and fairly stated in the Disputed Decision (which runs to five pages), which gave a carefully argued explanation of why the change did affect the Company's fairs.

80. RCB 22/12 (which is titled "The place of supply of services connected to land") is clear that HMRC are "changing certain aspects of its policy *on the place of supply of* stands at exhibitions" (emphasis added), and gives a three month transitional period for taxpayers to change their systems. We consider that Mr Burns was justified in assuming that the policy change should not affect the Company because, as all its fairs are in the UK, the place of supply rules were irrelevant. However, as we have found above, HMRC were correct in law that the booking fees are standard rated supplies. It is unfortunate that the title of RCB 22/12 may give the impression that a taxpayer unaffected by the place of supply rules need not consider the contents of RCB 22/12. Mr Singh for HMRC correctly reminded us that any issues concerning, for example, legitimate expectation or administrative fairness were outside this Tribunal's jurisdiction. We would just comment (in case it may be relevant, for example, to the matter of any potential penalties) that we do not think any blame can attach to the Company or its officers or advisers for not spotting earlier that there might be some VAT problem with continuing the previous long-standing arrangements after the publication of RCB 12/22.

Decision

81. The appeal is DISMISSED.

82. 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.

PETER KEMPSTER
TRIBUNAL JUDGE

RELEASE DATE: 15 JULY 2015