



[2021] UKFTT 0405 (TC)

TC 08315/V

VAT – exemption – provision of spiritual welfare services as part of a retreat – Appellant is a self-supporting minister of the Church of England – whether Appellant is state-regulated – whether Church of England Measures and Canons of the Church of England are public general Acts - application of fiscal neutrality – Item 9, Group 7, Schedule 9, VAT Act 1994

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2020/02135

BETWEEN

**REVEREND JANE TAYLOR TRADING AS
MILL HOUSE RETREATS**

Appellant

-and-

**THE COMMISSIONERS FOR
HER MAJESTY’S REVENUE AND CUSTOMS**

Respondents

**TRIBUNAL: JUDGE ALEKSANDER
NORAH CLARKE**

The hearing took place on 1 November 2021. The form of the hearing was V (video/hybrid) with the Tribunal and the Respondents’ representative attending by video link using the CVP video platform, and the Appellant accessing the video platform using computer facilities made available to her at Exeter Tribunal Centre. A face-to-face hearing was not held because of the impact of the COVID-19 pandemic, and the difficulties faced by the Tribunal panel and the Respondents travelling to attend a hearing in Devon.

Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

The Appellant in person

Jessica Parlour, litigator of HM Revenue and Customs’ Solicitor’s Office, for the Respondents

DECISION

INTRODUCTION

1. The Reverend Jane Taylor appeals against a review decision of HMRC contained in a letter dated 6 May 2020. She submits that Mill House Retreats provides spiritual welfare services which are exempt from VAT by virtue of Item 9, Group 7, Schedule 9, VAT Act 1994.
2. At the hearing of the appeal, HMRC were represented by Jessica Parlour. The Appellant represented herself. Rev Taylor was accompanied by her colleague Rev Lynne Chitty.
3. We heard evidence and submissions from Rev Taylor. HMRC prepared an electronic bundle of documentary evidence of 118 pages, and an authorities bundle (split into two files, of 61 and 46 pages respectively). In addition, both parties submitted skeleton arguments.

BACKGROUND FACTS

4. The background facts are not in dispute, and we find them to be as follows.
5. Rev Taylor is an active priest in the Church of England, ministering in the Exeter diocese. She conducts services in the Exeter diocese, but her primary work is as director of the retreat centre, Mill House Retreats.
6. Rev Taylor is a “self-supporting minister”, which means that she is not in receipt of a stipend from the Church of England. She was previously a paid parish priest. Although she is self-supporting, she remains subject to the same quality of training and supervision as a paid member of the Church of England clergy.
7. Through the Church of England, Rev Taylor has received training in spiritual direction and her Mill House Retreat activities are supervised by the Church of England. She is licensed as a priest by the Exeter diocese and has current permission to officiate anywhere in the Exeter diocese. Her name appears on the National Register of Clergy maintained by the Church of England.
8. Rev Chitty is an ordained deacon of the Church of England and assists Rev Taylor at Mill House Retreats. She too is licensed and supervised by the Church of England as regards the provision of spiritual welfare.
9. Mill House Retreats provides spiritual welfare through the provision of Christian retreats. As well as ministering to individuals, it also hosts retreats for Church of England organisations – Rev Taylor gave as an example a retreat for bishops in South West England.
10. Rev Taylor’s evidence was that she operates Mill House Retreats on a non-profit making basis. By this she means that she does not extract any surplus from operating the retreats. However, if Mill House Retreats were to prepare GAAP compliant accounts, it is unclear whether they would show a profit from the perspective of UK accounting standards.

THE LAW

11. The Principal VAT Directive (Directive EU 2006-12) (“the PVD”) provides an exemption for the provision of services associated with the provision of welfare. Article 132(1) provides that

Member States shall exempt the following transactions:

[...]

(g) the supply of services and of goods closely linked to welfare and social security work, including those supplied by old people’s homes, by bodies governed by public law or by other bodies recognised by the Member State concerned as being devoted to social wellbeing;

[...]

12. Article 133 provides that:

Member States may make the granting to bodies other than those governed by public law of each exemption provided for in points [...] (g), [...] of Article 132(1) subject in each individual case to one or more of the following conditions:

(a) the bodies in question must not systematically aim to make a profit, and any surpluses nevertheless arising must not be distributed, but must be assigned to the continuance or improvement of the services supplied;

(b) those bodies must be managed and administered on an essentially voluntary basis by persons who have no direct or indirect interest, either themselves or through intermediaries, in the results of the activities concerned;

(c) those bodies must charge prices which are approved by the public authorities or which do not exceed such approved prices, or, in respect of those services not subject to approval, prices lower than those charged for similar services by commercial enterprises subject to VAT;

(d) the exemptions must not be likely to cause distortion of competition to the disadvantage of commercial enterprises subject to VAT.

[...]

13. These provisions of the PVD have been incorporated into UK law by Item 9 of Group 7 (Health and Welfare), Schedule 9, VAT Act 1994, as follows:

The supply by –

(a) a charity,

(b) a state-regulated private welfare institution or agency, or

(c) a public body

of welfare services and of goods supplied in connection with those welfare services.

14. Note (6) to Group 7 provides that “welfare services” includes the provision of spiritual welfare as part of a course of instruction or retreat.

15. The effect of Schedule 6, Finance Act 2010 is to limit the definition of charities for VAT purposes to registered charities that meet certain other conditions.

16. Note (5) defines “public body” to be a Government department, a local authority, or body operating under an enactment for public purposes, and which performs functions similar to those of a Government department or local authority.

17. Note (8) defines “state-regulated” in the following terms:

In this Group “state-regulated” means approved, licensed, registered, or exempted from registration by any Minister or other authority pursuant to a provision of a public general Act, other than a provision that is capable of being brought into effect at different times in relation to different local authority areas.

Here “Act” means –

(a) an Act of Parliament;

(b) an Act of the Scottish Parliament;

(c) an Act of the Northern Ireland Assembly;

- (d) an Order in Council under Schedule 1 to the Northern Ireland Act 1974;
- (e) a Measure of the Northern Ireland Assembly established under section 1 of the Northern Ireland Assembly Act 1973;
- (f) an Order in Council under section 1(3) of the Northern Ireland (Temporary Provisions) Act 1972;
- (g) an Act of the Parliament of Northern Ireland

SUBMISSIONS

18. Rev Taylor acknowledges that Mill House Retreats is neither a registered charity nor is a public body. However, she submits that Mill House Retreats is state-regulated for the purposes of the exemption in Group 7, or – alternatively – if it is not state-regulated, Mill House Retreats is entitled to exemption from VAT on grounds of fiscal neutrality.

19. Rev Taylor submits that the provision of retreats by Mill House Retreats is regulated by the Church of England. Further, as the Church of England is an established church, it forms part of the state. She submits, therefore, that Mill House Retreats is state-regulated.

20. She submits that both herself and Rev Chitty, as Church of England ordained clergy, have been approved and licensed by the Church of England and are subject to the supervision of the Church of England in respect of their retreat activities. Rev Taylor, as a Church of England priest, is named on the National Register of Clergy maintained by the Church of England, which is available for public inspection. She submits that their approval and licensing, and the arrangements for their supervision, are governed by Church of England legislation, including Church of England Measures (which are primary legislation of the United Kingdom, given the Church’s established status) and the Canons of the Church of England.

21. Rev Taylor notes the reference in Note (8) to regulation by “any Minister” and she submits that this includes a minister of the Church of England, which would include, for example, the Bishop of Exeter, under whose jurisdiction Rev Taylor and Mill House Retreats falls.

22. Rev Taylor submits that in giving effect to Item 9 of Group 7, we should take into account the underlying spirit and purpose of the legislation, as set out in the PVD, which indicates that voluntary, non-profit making, bodies providing welfare services (such as Mill House Retreats) should be exempt from VAT.

23. Alternatively, Rev Taylor submits that the spiritual welfare provided by Mill House Retreats should be exempt from VAT on grounds of fiscal neutrality – and as she is providing spiritual welfare of the kind also provided by charities and state-regulated entities, it breaches the principles of fiscal neutrality that Mill House Retreats’ services are not exempt.

24. Finally, Rev Taylor referred us to the guidance issued by HMRC in section 3.3.1 of Public Notice 701-2, which refers to providers regulated by various listed organisations and “[...] any other similar regulatory body”. Rev Taylor submits that the Church of England is a regulatory body similar to those listed.

DISCUSSION

25. It is not disputed that the provision of spiritual welfare by Mill House Retreats is of the kind described in Note (6) to Group 7, and we so find.

26. Rev Taylor acknowledges that Mill House Retreats is neither a registered charity, nor a public body, and we agree and so find.

27. The principal issue before us is, therefore, whether Mill House Retreats is “state-regulated” within the meaning of Note (8).

28. We agree that Mill House Retreats is regulated by the state. Both Rev Taylor and Rev Chitty are ordained clergy of the Church of England, and subject to the supervision and regulation of the Church of England. The provision of retreats by Mill House Retreats is subject to the oversight of the Church of England. As an established church, the Church of England is an emanation of the state. Measures made by the General Synod of the Church of England (subject to their approval by Parliament and Royal Assent), take effect as primary legislation of the United Kingdom, and Rev Taylor and Mill House Retreats are regulated pursuant to Church of England Measures.

29. However, the requirement of Note (8) is that the entity providing the services is “state-regulated”, not that it is regulated by the state – and the distinction is critical. “State-regulated” is a defined term and Note (8) requires that the regulation be by a “Minister or other authority pursuant to a provision of a public general Act”. “Act” is further defined to be an Act of Parliament or an Act of one of the devolved legislatures (or certain other kinds of legislation not relevant here).

30. Note (8) refers specifically to “public general Acts”, rather than primary legislation in general. So, an entity regulated pursuant to other kinds of primary legislation – such as, for example, private Acts of Parliament, local or personal Acts of Parliament, or orders made under the Royal prerogative - do not fall within Note (8).

31. Although we agree that Rev Taylor and Mill House Retreats may be subject to the regulation pursuant to a provision of primary legislation of the UK (namely a Measure of the Church of England, or some other provision of canon law), Note (8) requires that the primary legislation takes the form of a public general Act, and we find that Church of England legislation (such as Measures and other provisions of canon law) are not public general Acts.

32. Further, we find that the reference to “Minister” in Note (8) is to a Government Minister (including a minister in one of the devolved administrations), and not to a minister of the Church of England (or of any other denomination or religion for that matter). This follows from the context in which the term “Minister” is used in Note (8).

33. We therefore find that Mill House Retreats and Rev Taylor are not “state-regulated” for the purposes of Item 9.

34. As regards Rev Taylor’s submissions on the application of the PVD and fiscal neutrality, we are bound by the decision of the Court of Appeal in *Leisure, Independence, Friendship and Enablement Services Ltd and The Learning Centre (Romford) Ltd v The Commissioners for Her Majesty’s Revenue and Customs* [2020] EWCA Civ 452 (permission to appeal to the Supreme Court was refused on 15 January 2021, so the decision of the Court of Appeal is final). Although this case dealt with the provision of adult day-care services provided by commercial businesses, in its judgment the Court set out a number of principles which are of general application to all providers of services potentially within the scope of Item 9, including providers of spiritual welfare. The Court of Appeal held that Article 132(1)(g) was correctly implemented into UK law by Item 9, and that Item 9 did not contravene fiscal neutrality. Rev Taylor’s submissions on these points must therefore fail.

35. Finally, as regards Rev Taylor’s submissions regarding HMRC’s public notice, we reiterate that our role is to apply the law as it is found in legislation, rather than apply HMRC’s interpretation of the law as set out in their Public Notices and other guidance. Whilst this Tribunal is known to criticise HMRC’s guidance in many cases, in this case we have some sympathy with HMRC’s drafting of section 3.3.1 in Public Notice 701-2. This kind of guidance, if it is to be useful to the majority of traders, has to be expressed in straightforward language – and cannot be expected to deal with esoteric issues, such as whether a Church of England Measure is a public general Act of Parliament. We note that section 2.3 (which

addresses supplies of spiritual welfare specifically) states that the supply has to be made by a charitable religious institution if it is to be exempt.

36. We therefore find that the provision of spiritual welfare by Rev Taylor in the course of her Mill House Retreat activities is not an exempt supply for VAT, as it does not fall within the scope of Item 9.

CONCLUSION

37. The appeal is dismissed.

38. Although not strictly relevant to the outcome of the appeal, we note that in the course of correspondence between HMRC and Rev Taylor, a suggestion was made that Mill House Retreats be registered as a charity. Rev Taylor said that she had discussed the possibility of registering Mill House Retreats as a charity within the Church of England, but because the retreat building was also her home, she had been advised that this was not possible. Whilst we appreciate that the fact that the building is Rev Taylor's home does complicate charity registration, we consider that she might benefit from specialist legal advice as to whether it might be possible to reorganise her affairs in a way that would make registration feasible.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

39. 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.

**NICHOLAS ALEKSANDER
TRIBUNAL JUDGE**

Release date: 05 NOVEMBER 2021