# TC02746

**Appeal number: LON/2000/0765**

***VAT – zero rating of caravans – supply of caravan with a verandah – whether a single supply or two supplies – test to be applied in context of zero rating***

**FIRST-TIER TRIBUNAL**
**TAX CHAMBER**

**COLAINGROVE LIMITED ( Verandahs)** **Appellant**

**- and -**

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

**TRIBUNAL: JUDGE CHARLES HELLIER**
**TYM MARSH MA, MBA**

**Sitting in public at Bedford Square WC1B on 26 March 2013**

**Roderick Cordara QC instructed by PwC Legal LLP for the Appellant**

**Jeremy Hyam instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents**

## DECISION

1. Among other activities, Colaingrove sells static caravans.

2. The sale of static caravans is zero rated by virtue of group 9 schedule 8 VATA 1994.

3. Some of the caravans are sold with verandahs. The issue in this appeal is whether such a sale is a single (zero rated) supply, as the appellant maintains; or two separate supplies, one of a zero rated caravan and the other of a standard rated verandah, as HMRC maintain.

4. The appeal arises from HMRC's rejection of "voluntary disclosures" of overpaid VAT made by the appellant in respect of the periods 03/89 to 06/04 and 12/04 to 06/08.

**The Evidence and our findings of fact**

5. We heard oral evidence from Dermot King, who after participating in the audit of Colaingrove's accounts in 1987 joined the company in about 1989 and is now its company secretary. We saw pictures of caravans (with and without verandahs) and copies of invoices for their purchases and of the terms of their supply.

6. The verandahs consisted of a boarded area abutting at least two sides of the caravan. The level of the verandah deck corresponds to the level of the floor of the caravan. The area of the verandah along the longer side of the caravan has the width of a comfortable walkway; the area at the front of the caravan is wider and large enough to accommodate chairs and tables for outdoor living. The verandah is not covered. The edge of the verandah away from the caravan is bounded by posts and a handrail with the glazed panels. The area of the verandah could in our estimation be about a third or more of the combined area of the van and the verandah.

7. A verandah is supported by legs or posts along its edges. The outer posts are colinear with the handrail posts. The posts rest on, but are not fixed to, concrete pads in the site. The verandah is attached to the caravan by a bar which slides under the chassis of the caravan and is clamped to it.

8. The design of a particular verandah will be dependent upon the profile of the ground on which it is placed that is to say the profile of the pitch (a steeper pitch will require longer legs in some places and will affect the siting of the steps to the verandah) and the type of caravan. The verandah will generally incorporate steps leading up to it. Entrance to the caravan will be via the steps to the verandah, and from the verandah into the caravan.

9. Some caravans have a patio sliding door entrance across the front of the caravan (or outward opening French doors). These caravans require some sort of entry platform. Mr King told us that he did not know of such a caravan which had been

bought without a verandah and that for safety reasons such caravans were sold only with a verandah. We accept that these caravans were always bought from Colaingrove with verandahs.

10. The appellant sources the caravans and verandahs from different suppliers. Once the caravan has been put in position on its site the verandah would be fitted. The customer would be given access when the fitting was complete.

11. Caravans with verandahs were generally sited in designated areas of caravan parks because they required a large pitch. As a result those customers who had verandahs almost always purchased them at the time they purchased the caravan. Only a very few (less than 10%) of the verandahs were sold after the sale of the caravan.

12. Over the period since that of the first disputed voluntary disclosure, the way in which those caravans which were supplied with verandahs were described on the invoices to the customer had changed. More recent invoices (2012) show the various elements of the purchase and their prices separately; earlier invoices (1997 to 2006) showed the elements of the purchase (the verandah, a gas bottle, inventory, television aerial etc) separately, but only a single undivided price.

13. It was possible that a customer might decide to move from one caravan park to another. If so the caravan and the verandah would both be moved, but the verandah would require adjustment to ensure that its legs met the ground on the new site.In such a move the verandah was likely to be transported separately.

14. Since the period of the voluntary disclosures some manufacturers had produced caravans with integral covered verandahs at the front accessed by patio doors.

15. Mr King said, and we accept, that customers purchased caravans with verandahs for three reasons:

(1) because the verandah extended the available living space by creating an outdoor area similar to a patio or decking outside a house;

(2) because the pitch was uneven and without the verandah there would be no stable entrance; or

(3) to facilitate access where the addition of steps directly to the caravan door would be awkward because of the profile of the pitch, and the steps to the verandah could be placed at a more convenient place.

**The Relevant Law**

(a) The zero rating provisions

16. With effect from 1992 Article 28(2) of the Sixth Directive permitted a derogation from the obligation to charge VAT at the standard rate for domestic zero rating provisions which were in force on 1 January 1991. (Prior to 1992 a similar derogation applied by reference to zero rating in force on 31 December 1975).

17. Pursuant to this derogation the UK maintained the zero rating for caravans which is now in Group 9 Schedule 8 VATA 1994, but which had been in force in predecessor provisions in and before 1991. The group specifies the following items for zero rating:

> "Item 1. Caravans exceeding the limits of size for the time being permitted for use on the roads of a trailer drawn by a motor vehicle having an unladen weight of less than 2030 kg.
>
> ... Note: this Group does not include --
>
> (a) removable contents other than goods of a kind mentioned in item 3 of group 5 or ..."

18. In our decision in relation to removable contents (Colaingrove v HMRC [2013] UKFTT 312 (TC) we concluded that this provision was intended to provide a relief for a form of housing akin, but not identical, to that given to the construction and sale of dwellings (see paragraphs 45-47 of that decision).

(b) Single and multiple supplies

19. In *McCarthy & Stone (Developments) Limited v HMRC* [XXXref] the tribunal faced the question whether there was one single supply or multiple supplies but in relation to the zero rating of new houses in Group 5 of Schedule 8. The tribunal explained that after 1972 the UK courts started to grapple with the question as to whether, when several things were provided by a trader at the same time, that should be treated as a single supply (with a rate of tax and a place of supply determined by the nature of that single supply) or instead as multiple supplies taxed separately. It said:

> "The UK courts did this at first as a matter of domestic construction of domestic legislation without assistance from the ECJ. Thus in *British Railways Board v Customs & Excise Commissioners* 1977 FTC 221, the payment of £1.50 for a student Railcard was regarded as "a part payment in advance of the supply of transport by rail" and not as a separate supply: liability depended upon "the legal effect of the transaction considered in relation to the words of the statute." And per Brown LJ: "the question is whether, on the true construction of the Finance Act 1972 as applied to the undisputed facts documents, this was a zero rated supply. That is a question of law."."

20. That tribunal then reviewed a number of the cases decided by the UK Courts before the decision of the ECJ in *Card Protection Plan v Customs and Excise Commissioners* ("CPP") in 1999 in which the ECJ gave guidance on the principles to be applied in determining whether there was a single supply or multiple supplies. The tribunal concluded that the following principles had guided the UK courts before CPP:

> (1) Whether a supply was single or multiple was very much a question of impression;

(2) The answer required the application of common sense and the avoidance of artificiality;

(3) The test to be applied was: in substance and reality was A an integral part of, or incidental to, B

(4) Parliament should be taken not to have intended an absurd result.

21. The tribunal noted that immediately before the House of Lords had referred the matter to the ECJ in that case the Court of Appeal had applied the incidental/integral test, and noted the difference between the approach of the Court of Appeal and that of the House of Lords once it had the benefit of the ECJ's guidance.

22. The kernel of the ECJ's response to the question posed by the House of Lords was in paragraphs 28 to 31 of its judgement:

"28. However, the Court held in [Faaborg] concerning the classification of restaurant transactions, where the transaction in question comprises a bundle of features and acts, regard must first be had to all the circumstances in which that transaction takes place.

"29. In this respect, taking into account, first, that it follows from art 2(1) of the Sixth Directive that every supply of a service must normally be regarded as distinct and independent and, second, that a supply which comprises a single service from an economic point of view should not be artificially split, so as not to distort the functioning of the VAT system, the essential features of transaction must be ascertained in order to determine whether the taxable person is supplying the consumer, being a typical consumer, with several distinct principal services or with a single service.

"30. There is a single supply in particular in cases where one or more elements are to be regarded as constituting the principal service, whilst one or more elements are to be regarded, by contrast, as ancillary services which share the tax treatment of the principal service. A service must be regarded as ancillary to a principal service if it does not constitute for customers an aim in itself, but a means of better enjoying the principal service supplied ...

"31. In these circumstances, the fact that a single price is charged is not decisive. Admittedly, if the service provided to customers consists of several elements for a single price, the single price may suggest there is a single service. ..."

23. Those principles have been applied in many domestic cases since.

24. But in 2006 the ECJ gave its judgment in *Talacre Beach Caravan Sales Ltd v C&E Comms* C-251/05[2006] STC 1671. This case concerned at the interaction of the jurisprudence of the ECJ in relation to single and multiple supplies (the CPP principles) with the zero rating in group 9. The appellant in that case had supplied caravans and contents in a manner in which the tribunal had found would on CPP principles have been a single supply of a caravan; so that even if part of what was provided by the appellant in that case had been removable contents the entire supply would, on CPP principles, have been zero rated.

25. The ECJ held that the CPP single supply rules were trumped by the nature of the zero rating derogation:

> "24. The fact that the supply of the caravan and its contents may be characterised as a single supply does not affect [the conclusion that the zero rate should be restricted to what was covered by the national legislation on 1 January 1991]. The case law on the taxation of single supply, relied upon by Talacre and referred to in paragraph 15 of this judgement does not relate to the [zero rating] with which article 28 of the Sixth Directive is concerned ... the case law does not preclude some elements of that supply from being taxed separately where only such taxation compliance with the conditions imposed by article 28(2) of the Sixth Directive ...".

26. In *McCarthy & Stone* the tribunal commented on the reasoning of the ECJ which resulted in this decision thus:

> "65. It seems to us that the reasoning of ECJ is not dependent upon a specific exclusion in the domestic legislation nor what was only expressly included in it, but hinges on what was intended to be encompassed in the domestic legislation so far is apparent from the legislation. The Advocate General said that "the form of the [domestic] rules determines which supplies are exempt from VAT" and added that that determination should be strictly observed. At paragraph 21 she noted that these are non-harmonised concessions that these non-harmonised concessions "depend on political decisions by member states" and at paragraph 25 that "the intensity of the court's examination [of them] is restricted" as a result. These phrases look at the intention of the national legislature as expressed in legislation, not the words of the legislation. At paragraph 38 she says "in determining the scope of a supply all circumstances must be taken into account, including the specific legal framework [and] it is necessary to have regard to the particularity that the UK has established exemption in a particular way in accordance with its socio political evaluation." That again points to reasoning which depends, not on the specific semantic form of a national measure, but on the intention of the state expressed in the measures it enacted.
>
> "66. The ECJ reflects this in paragraph 25: the "specific legal framework" - not the specific words – "must be taken into account"; and the determination of the UK "that only the supply of the caravans themselves should be subject to the zero rate" determines what was in force in 1991. The final words of paragraph 25 look again to the UK's intention: "[the UK] did not consider that it was justified to apply that rate also to the supply of the contents ...".
>
> "67. The task we have to address therefore is what was "the content of the national legislation in force on 1 January 1991" (see judgement [22])? …
>
> **Construing the domestic legislation without reference to CPP**
>
> "68. During the hearing we asked whether there was an element of circularity which could be inherent in this process: (1) we had to consider the extent of the zero rating; (2) EU law in relation to what constitutes a single supply is part of

domestic law; (3) the CPP principles therefore apply in considering UK legislation; (4) under those principles a single supply of land would be treated only as such; (5) is therefore "the content of the national legislation" to be seen through CPP principles; and (6) if there is under those principles a single supply there is no room to say that the purpose and meaning of the domestic legislation is to bifurcate that supply.

"69. It seems to us however that this knot is cut by *Talacre*. What is required is an understanding of what in 1991 would have been understood at that time to be the purpose and effect of the domestic provision. That is because (1) otherwise the premise (the exclusion of certain supplies from zero rating) of the Talacre decision would be wrong; (2) the emphasis of that decision (and the decision in the infraction proceedings) is on the policy of the state which is given voice in the domestic legislation and that legislation can only be taken to be in interpreted in accordance with the principles used by domestic courts at the time that legislation was adopted.

"70. Accordingly it seems to us that in construing the UK's zero rating provisions we need to approach them as a UK court would have done before the decision of the ECJ in CPP. It is for that reason that earlier in this decision we have dealt at greater length with the decisions of the UK courts in relation to single and multiple supplies before CPP.

…

"84. For completeness we should say that we reject the suggestion that *Talacre* requires *any* ancillary element of a composite otherwise zero rated supply to be dissected and taxed separately. Were that the case the jar in which honey comes, the plastic wrapper of a pack of biscuits, or the bag for potatoes should all be separately taxed. Our conclusion is that recourse must be had to what would have been treated as part of the zero rated supply on a domestic construction of the relevant provision without regard to the CPP principles. On that basis we believe that all these examples would have been wholly zero rated."

27. Mr Cordara drew our attention to four cases which were not considered by the tribunal in *McCarthy & Stone*: the judgement of the Court of Appeal in *Bophuthatswana National Commercial Corp Ltd v Customs and Excise Commissioners* [1993] STC 702, *C & E Commissioners v Wellington Private* Hospital *Ltd* [1997] STC 445, *Dr Benyon and Partners* v *Customs and Excise Commissioners* [2004] UKHL 53, and *College of Estate Management v Customs and Excise Commissioners* [2005] STC 1597.

28. *Bophuthatswana* related to a package of services supplied to the government of Bophuthatswana by the appellant (BNCC) which could be given the description "services of a sort ordinarily provided by a diplomatic mission". The tribunal had concluded that this was a proper description of what had been supplied and that it did not fall within any of the zero rating provisions. In the High Court Rose J had held that it was impossible to regard the services as a single composite supply. He had said

"these matters are largely matters of first impression ... My impression is that this is not a single composite supply of services".

29. In the Court of Appeal Nolan LJ said, having regard to the approach taken by the tribunal, at 708 C – G (with our italics):

"…Such an approach may be perfectly sound when one is considering a single simple transaction or type of transaction involving two or more elements, and one has to decide what is the true and substantial nature of the consideration given for the payment. That was the approach in fact adopted in the cases to which we were referred on which the most recent, British Airways plc v Customs and Excise Commissioners ... will serve as an example. That was the case in which the question was whether, by providing in-flight catering for its passengers, British Airways was supplying two separate services, one of transport by air ... and the other of in-flight catering ... The facts were undisputed and this Court held that as a matter of law British Airways had made only one supply, namely that of air transportation to which the supply of in-flight catering was *merely ancillary*.

"The difference in the present case is that, although there may be only a single commercial relationship between BNCC and the government of Bophuthatswana the individual supplies of goods and services in the course of that relationship appear to vary widely both in nature and in taxability or potential taxability. It cannot be right in my judgement to cast over them a blanket label "services of the sort ordinarily provided by a diplomatic mission" and to conclude that, since this label does not appear in the relieving provisions, the whole of the services must be charged at the standard rate. It is essential in to my mind, to analyse the individual supplies of goods and services by reference to specific taxing and relieving provisions of the 1983 Act, as a preliminary to deciding whether any of them are *no more than ancillary or incidental* to another or others, and to determine whether and if so how the moneys paid by the Bophuthatswana government should appropriately and fairly be apportioned between them. That effectively was the view formed by [Rose J] ... and I would uphold the order he made."

30. In these passages we have italicised the use of the word "ancillary". There are two points to make. The first is that Nolan LJ first uses “ancillary” in relation to the *British Airways* case. In that case the Court of Appeal made its decision using the words “incidental" and "integral". There was no mention of "ancillary". It seems to us that Nolan LJ must therefore be using "ancillary" as a synonym for "incidental". Secondly it seems to us that the same intention is expressed in the words "no more than ancillary or incidental" in the second paragraph.

31. In *Wellington*, Jowitt J in the High Court had held that all the elements of the provision of services by the hospital were integral and interrelated parts of one whole supply of services. This approach has been criticised on the basis that Jowitt J had applied the approach which had been condemned by Nolan LJ in *Bophuthatswana* of categorising the service and then looking to see whether that description was found in that form in the zero rating provisions, rather than examining the individual elements

of supply and attempt to determine whether any should be treated as subsumed into others. Millett LJ, commenting on this criticism, said at 462D-H:

> "I am not convinced that there is necessarily a single approach which is appropriate in all circumstances. The risk in canonising one particular method is that it disguises the true nature of the enquiry, which is essentially one of statutory construction. But I accept that the appellant's submission that Jowitt J asked himself the wrong question. The issue is not whether one element of a complex commercial transaction is ancillary or incidental to, or even the necessary or integral part of, the whole, but whether one element of the transaction is *merely ancillary or incidental to*, or a necessary or integral part of, any other element of the transaction. The reason why the former is the wrong question is that it leaves the real issue unresolved; whether there is a single or a multiple supply. The proper enquiry is whether one element of the transaction is so dominated by another element as to lose any separate identity as a supply for fiscal purposes, leaving the latter, the dominant element of the transaction as the only supply. If the elements of the transaction are not in this relationship with each other, each remains as a supply in its own right with its own separate fiscal consequences.
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> "In determining whether what would otherwise be two supplies should be regarded as a single supply the court has to ask itself whether one element is an "integral part" of the other, or "ancillary" or "incidental" to the other; or (in the decisions of the Court of Justice) whether the two elements are "physically and economically dissociable". This however merely replaces one question with another. In order to answer this further question, the court must consider "what is the true and substantial nature of the consideration given to the payment" ..."
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> "In my judgement the approach adopted by this Court in the British Airways case is instructive. Lord Donaldson of Lymington MR said ... that the tribunal had asked itself the right question, viz- "was the supply of food and beverages incidental ["integral" might perhaps be a better word] to the air transportation?".".

32. It seems to us that in these passages Millet LJ uses "ancillary" to mean subordinate to the main supply ("dominated by" it) rather than "attendant upon" or serving .that supply. It is in the latter way – perhaps a more latinate way - that the ECJ appear to use it where they say in CPP:

> "A service must be regarded as ancillary to a principal service if it does not constitute for customers an aim in itself, but a means of better enjoying the principal service supplier."

33. Millett LJ refers to the use by the ECJ of the phrase "physically and economically dissociable". This, as Mr Cordara suggests, appears to come from the decision of the ECJ in *Commission v United Kingdom* C 353/85 [1988] 251 in relation to the scope of "medical care" in indent (c) of Art 13(A)(1) of the Directive (which bore on the arguments in *Wellington*), where the court had said:

"It is clear from the position of that indent ... that the services involved [in the exemption] are provided outside hospitals and similar establishments and within the framework of a confidential relationship between the patient and the person providing the care, a relationship which is normally established in the consulting room of that person. In those circumstances, apart from minor provisions of goods which are strictly necessary at a time when the care is provided, the supply of medicines and other goods, such as corrective spectacles prescribed by a doctor or other authorised person is physically and economically dissociable from the provision of service".

34. This is not the language currently used by the CJEU in the relevant tests for distinguishing between single and multiple supplies. The tests are now: independence, whether one supply is ancillary to another, and whether the components are so closely linked as to form a single indivisible economic supply (see for example *Purple Parking* [27-29]). There is no mention of physical dissociability. Nor is there any requirement that the two elements should be both physically and economically dissociable.

35. *Dr Benyon* concerned whether a doctor made a single exempt supply of medical services when in the course of that supply he administered what would otherwise have been zero rated drugs. Their Lordships held that there was, on CPP principles a single exempt supply. Lord Hoffman said:

> "18. However, *whatever Parliament may have thought*, the question whether there is one supply or two involves the application of principles of European law in compliance with the Sixth Directive. In [CPP], para 26 the European Court of Justice (the Court of Justice) gave authoritative guidance on the test for deciding -
>
> > "whether a transaction which comprises several elements is to be regarded as a single supply or two or more distinct supplies to be assessed separately."
>
> "19. In the course of argument your Lordships were referred, as were the courts below, to a number of cases, both in this country and in the Court of Justice which were decided before the [CPP] case ... their Lordships think that there is no advantage in referring to such early cases and their citation in future should be discouraged. The [CPP] case was a restatement of principle and it should not be necessary to go back any further."

36. Later, in *College of Estate Managemen,t* the House of Lords applied (and analysed) *CPP* and concluded that the college had made a single exempt supply of education in which an otherwise zero rated provision of books was an element. Their considerations were based on CPP principles.

37. Mr Cordara suggests that *Dr Benyon* and *College of Estate Management* indicate that the rules which must be applied in this appeal are the CPP rules and not those in earlier cases.

38. We do not agree that either of these cases require us to apply CPP principles in determining whether there was a single supply in this appeal. Their Lordships opinions in those cases were delivered in November 2004 and in October 2005; the ECJ gave its judgement in *Talacre* in July 2006. Their Lordships did not have the opportunity of considering the analysis of the ECJ. But even if they had, they would, in our opinion, have found in the same way and for the same reasons. That is because they were considering whether a supply was exempt, and exemption forms part of the fabric of the Directive; zero rating, by contrast, is a derogation from the Directive: that was the main reason the ECJ found that the CPP rules did not apply *Talacre* . In order to decide whether there is for the purposes of the Directive a single exempt supply one must apply CPP principles. If the conclusion, on those principles is that there is such a single supply, that is the end of the matter. And that is the case whether or not other elements of that supply would, had they been treated as single as a single separate supply, have been zero rated. Thus in coming to their conclusion their Lordships had no need to stray beyond CPP, and their statements that the earlier case law is no longer of relevance must be viewed in light of *Talacre* in relation to the zero rated supplies which exist by virtue of a derogation in the Directive.

39. In the same vein we note that in paragraph 18 of Lord Hoffmann's speech that he contrasts "whatever Parliament may have thought" with the application of principles of European law, namely the CPP principles. The difference in the case of zero rating is that the key is that it is what the domestic legislature sought to zero rate for its own social and political reasons which must be ascertained because it is that, and only that, which is to be permitted to be zero rated (see [68 and 69] *McCarthy & Stone* quoted above).

40. Mr Cordara also refers us to *Customs and Excise Commissioners the United Biscuits (UK) Ltd* [1992] STC 326 where the Court of Session found that a supply of biscuits in a tin was a supply of biscuits. The Court held that the correct test to apply was whether the supply of the tin was incidental to or an integral part of the supply of the biscuits. The Court considered that there was no distinction in that test between "incidental" and "integral"; they were different descriptions of the same test. At 330 G-J Lord Moray said:

> "Applying the foregoing tests to the true legal issue between the parties, namely whether the supply here consisted constituted two separate supplies, being a zero rated supply of biscuits and a standard rated supply of tin, or a single zero rated supply of biscuits in a tin, we have no difficulty in concluding that, when the two separate elements are considered, the provision of a tin of the characteristics and quality narrated in the agreed facts is subordinate to the supply of biscuits, which could admittedly have been supplied in different and cheaper packaging of the kind used on most biscuits marketed. In essence in our opinion what was supplied with biscuits in a biscuit tin rather than a general-purpose container with biscuits in it. We accept that the tin had the potential afterlife as a general-purpose container, but on the agreed findings we do not consider it to be so elaborate, expensive or decorative as to qualify as a container in its own right. The tin was incidental to the biscuits rather than the

biscuits being incidental to the tin (to take the other extreme) - or neither item being incidental to the other. This was the tribunal's conclusion.

"We would reach the same conclusion applying the test in its alternative wording. In our view the agreed facts disclosed that the tin was integral to the biscuits ...".

41. Mr Cordara says that the Court of Session's test gives the same result as CPP principles. He accepts that prior to *CPP* the aspirations of the customer were not at the forefront of the test. There was no sense that the question was ever resolved by asking whether, for a typical customer, a particular element was an aim in itself rather than a means of better enjoying the principal service. Instead there had been a more Olympian approach. But he says that in practice the results of these approaches were indistinguishable and should be indistinguishable in this case. The domestic test "integral with" is at least similar to the ECJ's later test of economic dissociability, and the "incidental" test, expressed as a question of whether one thing is "subordinate" to another, was the same as the ancillary test of the ECJ.

42. Although there may be considerable overlap between the tests (in particular between "integral or necessary" and economically dissociable") we think that there is a difference of emphasis in the tests which makes them capable of producing different results. The domestic test was not based on the functioning of the VAT system but on statutory construction; the domestic test may have regard to physical dissociability, the CPP test has regard only to economic dissociabiity; the domestic test is concerned with whether one element "dominates" the other, the CPP test may be concerned with whether one serves the other; the question of whether there was a single price seemed more important in the domestic test than the CPP test.

43. It seems to us that in the light of *Bophuthatswana* and *Wellington*, the description by the tribunal in *McCarthy & Stone* of the approach of the domestic courts to the question of single and multiple supplies should be extended thus. The guiding principles were that in deciding as a matter of statutory construction what was the true and substantial nature of the consideration given for the payment:

(1) Whether a supply was single or multiple was very much a question of impression;

(2) The answer required the application of common sense and the avoidance of artificiality;

(3) The test to be applied was: in substance and reality was A a necessary or integral part of, or merely ancillary or incidental to, B; where merely ancillary meant subordinate or incidental or that A was so dominated by B as to lose its separate identity;

(4) Parliament should be taken not to have intended an absurd result.

**The Application of these Principles**

44. The question is one of statutory construction. If the statutory term is wide enough to encompass a verandah (as chocolate on a biscuit is part of the biscuit) then there may be no need to ask whether it is integral with or incidental to the caravan.

45. Mr Cordara refers as to the meaning of "caravan" in the Caravan Sites and Control of Development Act 1960: "any structure designed or adapted for human habitation which is capable of being moved or towed from one place to another (whether by being towed, or being transported on the motor vehicle trailer) ...". A caravan with its verandah was, on the evidence, within that definition.

46. Mr Hyam argues that "caravan" still carries connotations of its Persian, "wandering" derivation, and although the verandah is not fixed to the ground, it is something adapted or designed to be in a fixed place and not to be taken from one place to another.

47. We agree with Mr Hyam. We do not find that the definition given in the Caravan Sites Act necessarily transfers to the VAT Act and consider that whilst "static" caravans retain enough possibility of movement and similarity with moving caravans to justify the epithet "caravan"; the attached verandah does not fall within that word.

48. We accept that the policy of the zero rating is to provide a relief akin to that for houses and that a patio attached to a house may benefit from zero rating, but, as we noted in our decision in relation to removable contents, the two regimes are different. We cannot say that everything which would be zero rated in a house must be zero rated on the supply of a caravan.

49. Was the purchase of the verandah “incidental” to the purchase of the caravan? We thought that the verandah served the caravan and promoted its enjoyment. But, we did not consider that the verandah was subordinate to the caravan:

(1) as a matter of visual impression we thought that the verandahh was separate from the caravan. One would say “there is a caravan with a verandah”, not just “there is a caravan”;

(2) we thought that the verandah qualified as a structure in its own right albeit a structure attached to the caravan. It was not like the tin in which the biscuits came;

(3) the verandah was a substantial part of a purchase. It significantly extended the floor area available to the inhabitant and was a material part of the cost. We could not say that either physically or economically its purchase was a minor part of the transaction.

(4) whilst the caravan was the dominant element of the purchase it was not so dominant that the verandah lost all identity

50. Was the verandah integral with the caravan? It was attached to it but:

(1) it looked like an addition to the caravan rather than an extension of it;

(2) it was not necessary to the caravan although the verandah was little use without the caravan;

51. We accept that the verandah had no purpose without the caravan, but unlike the honey on the jar or the wrapping on the packet of biscuits, the caravan could be acquired without a verandah. It was an optional extra even though its purpose was to serve the caravan.

52. We concluded that the verandah was neither incidental to or integral with the caravan. By contrast a set of steps leading up to a caravan door did seem to us to be merely incidental to or integral with the caravan – they were a minor addition to the purchase of a caravan.

53. We reached the same conclusion in relation to a verandah supplied with a caravan which had patio doors or French windows at the front. If those doors were the only entrance to the caravan a set of steps up to them would be necessary and an integral part of the caravan, but we did not see a verandah as a necessary adjunct of patio doors or merely incidental to the caravan.

54. Mr Hyam accepted that if CPP principles applied the verandah would be part of the supply of the caravan. It seems to us that this is a case where the domestic approach gives rise to a different result. That must have been the result intended by Parliament, and that intention defines the scope of the zero rating. We conclude that the verandahs are not zero rated.

55. 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.

**CHARLES HELLIER**
**TRIBUNAL JUDGE**

**RELEASE DATE: 12 June 2013**