[2022] UKFTT 43 (TC)

TC 08395/V

VALUE ADDED TAX-car boot sale pitch-whether the leasing or letting of immoveable property-whether additional services provided-nature of the supply-whether a licence to occupy land or a service-whether zero rated or standard rated

FIRST-TIER TRIBUNAL **Appeal number: TC/2020/00973**
TAX CHAMBER **TC/2020/01224**

BETWEEN

RUFFORTH PARK LIMITED **Appellant**

-and-

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

TRIBUNAL: JUDGE MARILYN MCKEEVER
MR SIMON BIRD

The hearing took place on 24 January 2022. The form of the hearing was V (video). All parties attended remotely and the hearing was held on the Tribunal's VHS platform. A face to face hearing was not held because of the ongoing Covid-19 situation and it was considered appropriate to hold the hearing remotely. The documents to which we were referred are a Hearing Bundle of 205 pages and an Authorities Bundle of 441 pages. We also had the Skeleton Arguments of the Appellant and the Respondents.

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.

Mr Tim Brown, counsel, instructed by The VAT People, for the Appellant

Mr Dermot Ryder, litigator of HM Revenue and Customs' Solicitor's Office, for the Respondents

DECISION

INTRODUCTION

1. This is an appeal by Rufforth Park Limited (Rufforth Park) against an assessment issued on 2 December 2019 for VAT in the amount of £82,995.00 for the VAT periods 12/16 to 3/19 inclusive. Although not the subject of this appeal, we understand that a further assessment in the sum of £53,000, for different VAT periods is dependent on the outcome of this appeal. The point at issue is whether the car boot sale pitches supplied by the Appellant constitute the "grant of any interest in or right over land or any licence to occupy land" within Item 1 of Group 1 of Schedule 9 to the Value Added Tax Act 1994 (VATA). If so, the fees for the provision of the pitches are zero rated, as contended by the Appellant. If the licence to occupy is granted together with other goods and services such that the overarching supply is of a service, as contended by the Respondents, the pitch fees should have been standard rated and the VAT assessed is due.

2. The assessment was made on a "best judgement" basis. Officer Clark of HMRC arrived at the amount of VAT alleged to be due from his examination of the accounting records of the Appellant. The Appellant has not disputed the amount of the assessment, if the supply were found to be standard rated.

3. On 27 February 2020 HMRC also assessed Default interest in the amount of £4,800.05. This assessment stands or falls with the VAT assessment.

4. We had before us the documents mentioned above and we also heard oral evidence from Mr Roger Ginley, the director of the Appellant and from Mr Michael Clark, the HMRC officer who handled the case and made the decision. As Mr Roger Ginley is not very familiar with computers, his son Mr Alistair Ginley was also present to provide technical assistance to his father. References to Mr Ginley below are to Mr Roger Ginley.

THE FACTS

5. Rufforth Park has been running car boot sales at Rufforth Park, a site between York and Wetherby for the more than 40 years. When Mr Ginley began his car boot sales, he asked the VAT office to confirm that he did not need to charge VAT on the fees for the pitches. He was told that he should charge VAT, and did so, although he continued to believe that he was not providing a service but a licence to occupy land for the day to sell goods. After a few years, Mr Ginley showed the VAT office that other businesses in his position were not charging VAT and all the VAT the company had paid was refunded with interest. The company has not charged VAT on the pitch fees since on the basis that they are zero rated.

6. Rufforth Park holds car boot sales every Sunday morning throughout the year. It also holds an "auto jumble sale" (where the goods for sale are car and motorcycle parts, tools and related items) on one Saturday a month.

7. The sales are advertised on television, in magazines and newspapers, on Facebook and on the company's website. The advertising expenditure over a four year period was £23,000. Mr Ginley indicated that the advertising costs were about one or two percent of turnover.

8. Sellers can arrive on site between 6.30am and 9.00am. No booking is required and, in fact, no advance booking is possible. Spaces are allocated on a first come first served basis. There is no fixed number of pitches; Rufforth Park sells as many spaces as it can. The number of sellers varies depending on the season. On a busy summer weekend there might be 300 sellers. Last week (the middle of January) there were 50. As to customers, there might be between 300 and 500 or more cars or other vehicles with varying numbers of occupants.

9. The website makes clear that no tables are provided for sellers. Nor is any electricity/lighting provided.

10. The sellers include both members of the public selling second hand goods and traders. Most of the pitches are in the open but there are some covered pitches in a disused building. The pitch prices are as follows:

(1) Outdoor pitches

(a) Cars (second hand goods) £9

(b) Vans (second hand goods) £11

(c) Cars (new goods) £20

(d) Vans (new goods) £20

(2) Indoor pitches

(a) Cars (second hand goods) £12

(b) Vans (second hand goods)£12

(c) Cars (new goods) £20

(d) Vans (new goods) £20

11. Buyers are admitted from 8am and the sales finish at 1.00pm or later depending on the weather.

12. Customers at the car boot sale pay £1.50 per vehicle irrespective of the number of occupants. The fee is the same for a car, van or minibus.

13. The entry fee for the auto jumble sales is £2 per person.

14. There are no formal contracts with the sellers. As noted, there is no advance booking and a seller cannot choose which pitch they want. Mr Ginley's son Alistair allocates the pitches, filling up the spaces from the bottom of the site. He also takes the admission charges from the customers. A part time employee directs the sellers to their pitches and once all the sellers are parked, he has no further duties.

15. The sellers are given a receipt which sets out the conditions which apply. These conditions also appear on the website. Mr Ginley stated that the same wording has been used for the 40 years the car boot sales have been operating as is demonstrated by condition 5 which states "We accept no responsibility for your stalls, property or yourselves or servants".

16. Although condition 6 states "Bookings must be in full and paid in advance. No telephone bookings", Mr Ginley reiterated that there were no advance bookings at all.

17. Condition 8 states "Pitches are allocated at our sole discretion and this licence does not give the licensee exclusive possession of any part of the market/car boot". Mr Ginley clarified that that meant that the seller only had a licence for a pitch for that day and could not choose a particular pitch and would have no right to that or any other particular pitch if they returned another week.

18. Mr Ginley did not know whether sellers and buyers returned on a regular basis. He thought that one of the reasons people came was because you never knew what might be there- all the stalls are different. They simply take the fees and show the sellers where their pitch is. They do not take any notice of whether they have been before and by implication, do not keep records of the sellers who attend.

19. The receipt emphasises that sellers must not leave any rubbish at all and Mr Ginley said that the sellers did take most of their rubbish with them. There was a little rubbish generated by sellers, which the company cleared after the event, but it was very little.

20. The sellers had to keep within the white lines of their designated pitch.

21. Other conditions contained restrictions on the goods which could be sold. Illegal or stolen goods were prohibited as were takeaway food, pirate videos, firearms and alcohol among other things of a similar nature. Apart from these specific restrictions, the sellers could sell what they liked.

22. The facilities provided on-site were car parking for customers and a café and toilets which could be used by customer and sellers. There was a hedge which separated the customer car park from the sellers' area and the café and toilets were located by the hedge on the sellers' side.

23. The site was cleared of rubbish after the event. Virtually all the rubbish was generated by the customers and was in the area of the café. As noted, most of the sellers complied with the requirement to take their rubbish home and there was very little rubbish generated by the sellers which had to be cleared.

24. HMRC set great store by the description of the facilities on the company's website and on Facebook. The website states "Our on site facilities include a 5 star café … and large toilet facilities".

25. Mr Ginley explained that the "5 stars" referred to the café's cleanliness rating, rather than its gourmet menu. The café sells teas, coffees, sausage and bacon cobs and chips. There are also two burger vans. The company owns and operates the refreshment facilities, employing two or three staff in the café and two in the burger vans. These facilities, mostly used by customers generated most of the rubbish which was cleared by the company.

26. The "large" toilet facilities consist of:

(1) Indoors: men's-two cubicles and two urinals, ladies-three cubicles

(2) In a 20 year old portacabin: men's-three cubicles and six urinals, ladies-six cubicles.

27. We find that, in reality, the facilities were basic and the minimum one would expect at any venue or event.

28. Mr Ryder put it to Mr Ginley that there had been a lot of capital expenditure to improve the site and make it more attractive to sellers. Mr Ginley explained that the capital expenditure had been for small repairs and renewals and a larger amount for laying tarmac in the car park. It had not improved the site or made it more attractive. It was simply something that had to be done at intervals and as there had been no maintenance of the car park for many years, it was quite expensive when they did do it. We find that the capital expenditure was for maintenance rather than enhancement of the site.

29. Mr Ryder also put it to Mr Ginley that the car boot sales were "expertly organised and expertly run". Mr Ginley denied this. They were doing what they had been doing for 40 years and no special expertise or skill was involved.

30. Mr Ryder suggested that the company offered other services with the pitches which made the event more attractive for sellers. He did not identify what those services might be. Mr Ginley said that for a charge of £9 per pitch they couldn't provide any services. We accept Mr Ginley's evidence that no services were provided, other than the items set out above.

31. We viewed a number of photographs of the site and screen shots from the Appellant's website together with a small number of "testimonies" which HMRC had taken from the company's Facebook page.

32. We find that the car boot sales and auto jumbles were well run; the company had had 40 years of practice, but no special skills or expertise were involved. The events were run with a small number of the company's own employees. No outside contractors were involved. The refreshment and toilet facilities were basic. The sellers were provided with a pitch, allocated by the part time employee. The sellers had no choice where they were put. The company had no obligations to the sellers, or buyers, to put on an event, although in practice they did take place regularly.

33. We also heard evidence from the HMRC decision maker, Mr Clark. Mr Clark had been asked to carry out a routine review of the Appellant's VAT records. He noticed that not all the supplies were standard rated. Following a review of the VAT returns, the Appellant's website and previous interactions with HMRC, he conducted a telephone interview with Mr Ginley, his son Alistair and their accountants. During the interview, Mr Clark referred to the case of *Zombory-Moldovan (trading as Craft Carnival) v Revenue and Customs Commissioners* [2016] UK UT 433 (TCC) (*Craft Carnival*) as an example to flesh out his view that the supplies of the pitches were more than a passive supply of land and should be standard rated. Both the Ginleys and their accountant remained of the view that the pitches had been correctly zero rated and the *Craft Carnival* case was irrelevant to them.

34. Mr Clark did not visit the site.

35. Following a discussion with one of HMRC's technical VAT consultants, he issued his decision that the supply consisted of a number of services and should be standard rated. Although Mr Clark had extensive VAT technical experience he had not had to deal with a car boot sale business before and in such circumstances it is routine to seek advice from a VAT consultant.

36. Mr Clark issued a decision letter on 17 September 2019. The Appellant's accountants raised some additional points and a further decision letter, together with the formal assessment was issued on 2 December 2019.

37. The decision letters concluded that the fees for the pitches should be standard rated because the supply of the pitches was provided with other goods and services which constituted a single overarching supply of a service, not merely the right to occupy land. His reasons were as follows:

(1) Forty years of running car boot sales builds up a reputation which is a tangible benefit to stall holders. The reputation of regular events is part of the supply the stall holder receives.

(2) Advertising to bring buyers to the site for the benefit of stall holders is part of the supply.

(3) The amenities on site enable buyers better to enjoy their time at the car boot sale and are part of the supply.

(4) The sellers benefit from the amenities as well as the activities undertaken by Rufforth Park to attract buyers to the site in order to buy items from the sellers. Those activities include:

(a) Advertising

(b) On site café

(c) Toilets

(d) Parking

(e) Capital improvements to the site to make it more attractive to buyers

(f) Provision of some pitches under cover

(g) Cleaning the site after the events.

38. This was said to show there was more to the supply than the passive supply of land for a stall to sell items. HMRC relied on the *Craft Carnival* case in coming to this conclusion.

39. The assessment of 2 December 2019 was made on a "best judgement" basis. The Appellant disputes the contention that any VAT is due, but if the supplies are found to be standard rated, there does not seem to be any dispute about the amount of the assessment.

40. A default interest assessment of £4,800 was made on 27 February 2020.

41. The Appellant requested an independent review of the assessment decision. The review conclusion letter of 31 January 2020 upheld the original appeal and the Appellant appealed to the Tribunal on 26 February 2020. The Appellant also appealed to the Tribunal against the default interest assessment on 9 March 2020. It is recognised that the interest assessment stands or falls with the assessment to VAT.

THE LAW

42. The issue in this case is whether the Appellant's supply of pitches at their car boot sales falls within Item 1 of Group 1 of Schedule 9 VATA which provides that a supply of goods or services is an exempt supply if it consists of:

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

43. This implements in domestic law Article 135 of Council Directive 2006/112/EC which requires that member states shall exempt "the leasing or letting of immoveable property". Domestic legislation must be interpreted, as far as possible, so as to achieve the purpose of the Directive.

44. There is no statutory definition of the "leasing or letting of immoveable property" but the ECJ case *of Belgian State v Temco Europe SA* [2005] STC 1451 at [20] states that it is "usually a relatively passive activity linked simply to the passage of time and not generating any significant added value".

45. HMRC considers that a licence is characterised by four elements as set out at paragraph 2.5 of VAT Notice 742. Paragraph 2.5 states:

> "For a licence to occupy to exist, the agreement has to have all characteristics of a 'leasing or letting of immovable property'. This is the case if the licensee is granted right of occupation of:
>
> • a defined area of land (land includes buildings …)
>
> • for an agreed duration
>
> • in return for payment, and
>
> • has the right to occupy that area as owner and to exclude others from enjoying that right.
>
> All of these characteristics must be present. Where a licence to occupy is granted together with other goods and services as part of a single supply, the

> nature of the overarching supply will determine how it should be categorised for VAT purposes."

46. Paragraph 2.6 of VAT Notice 742 sets out examples of supplies that are licences to occupy land. They include:

> - the provision of a specific area of office accommodation, such as a bay, room or floor, together with the right to use shared areas such as reception, lifts, restaurant, rest rooms, leisure facilities and so on
> - the provision of a serviced office but only where the use of phones, computer systems, photocopiers is incidental to the provision of office space
> - hiring out a hall or other accommodation for meetings or parties and so on (but not wedding or party facilities where the supplier does more than supplying accommodation, for example by assisting with entertainment and arranging catering), the use of a kitchen area, lighting and furniture can be included
> - granting traders a pitch in a market or at a car boot sale

47. This is contrasted, in paragraph 2.7, with examples of supplies that are not licences to occupy land (and so are standard rated). They include:

> - "allowing the public admission to premises or events, such as theatres, historic houses, swimming pools and spectator sports events
> - wedding facilities (including, for example, use of rooms for a ceremony, wedding breakfast and evening party)"

48. I note that this is the current version of the Notice available online which therefore postdates the *Craft Carnival* case.

49. Notice 742 does not, of course, have the force of law, but represents HMRC's current view. We note that the list of items which HMRC regard as being a licence to occupy land include not only a pitch at a car boot sale but other rights to use property where the use of shared toilet, kitchen and other facilities is also included.

50. A supply may be a supply of a single item. Where it is part of a supply which includes other goods and services, there are two approaches to categorising it for VAT purposes, considered in two ECJ cases.

51. Where supplies comprise a single element to which all other elements are ancillary, the supply takes on the characteristic of its principal feature (*Card Protection Plan* C439/01).

52. In the case of *Levob* C41/01 was held at [22] that:

> "Where two or more elements or acts supplied by the taxable person to the customer, being a typical consumer, are so closely linked that they form, objectively, a single indivisible economic supply which it would be artificial to split…"

one must establish the nature of the "overarching supply" as a whole in order to categorise it for VAT purposes.

53. In the present case, this means; was the supply of the pitches the single supply of a licence to occupy land or if it consisted of more than one element was there a single element with ancillary elements or was there an indivisible composite supply so that we must decide what the overarching nature of the supply is?

THE APPELLANT'S SUBMISSIONS

54. The supply in this case is a single supply of a pitch rental.

55. One has to look at all the circumstances of the supply in order to establish its nature.

56. Regard must be had to the commercial and economic realities.

57. The *Craft Carnival* case can be distinguished on its facts.

58. The renting of a pitch in a car boot sale in the present case is a *relatively* passive activity linked to the passage of time and not generating any *significant* added value [Appellant's emphasis] and so is zero rated.

THE RESPONDENT'S SUBMISSIONS

59. The rental of the pitches at the car boot sale is more than a passive supply of land.

60. For the reasons set out in the decision letters about the facilities provided and the activities of the Appellant, the supply by the Appellant is to be regarded as the provision of a service and not simply the making available of property.

61. The ticket given to the seller sets out the contract and shows that the Appellant has control over how the seller can use the site and what the seller can sell.

62. The events are expertly organised and expertly run.

63. The Appellants have real and significant responsibilities to the sellers beyond the supply of land.

64. The supply comprises a number of goods and services and the overarching nature of the supply is the provision of a service, namely participation in an expertly organised event.

65. Accordingly the pitch fees should be standard rated.

DISCUSSION

66. The issue in this case is whether the supply of the pitches by the Appellant to the stallholders is the relatively passive provision of a licence to occupy land which is zero rated or whether, in the circumstances of the case, it amounts to the provision of a service including the provision of the pitches, which is standard rated.

67. Mr Ryder, for HMRC, took us to the High Court case of *Holland (t/a The Studio Hair Co) v Revenue and Customs Commissioners* [2008] EWHC 2621 (Ch) and the comments of Blackburne J 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 *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."

68. *Holland,* and a related appeal *Vigdor*, concerned contracts between a hair salon owner and stylists who were operated their own self-employed businesses within the salon. The contracts purported to be a supply of land; the chair in the salon and an area round it. Apart

from the fact that the area allocated to the stylist was not clear, the payments under the contract consisted of a licence fee and a service charge. The owner had significant obligations to the stylists and had to pay all the running costs of the premises, maintenance, decoration and insurance. The salon had to be open for a certain number of days a year. The stylist was granted access to other parts of the salon including a staff room, kitchen and toilet facilities. If the Stylist was absent for a period, the owner could use her designated area of the salon. The services provided comprised all the salon facilities including the reception facility, heating, lighting, water, laundered towels, cleaning, maintenance and waste disposal. The stylists also had the use of the owner's staff who manned the reception, washed clients' hair, swept up hair and provided refreshments to clients. The stylists were also able to use salon equipment such as the chairs, mirrors and hairdryers. Unsurprisingly, the provision of the salon services, which included the right to use a chair and the area round it was found to be the provision of a standard rated service and not a licence to occupy the chair and surrounding area.

69. Mr Ryder also relied on the *Craft Carnival* case in the Upper Tribunal, but he did not refer us to any particular parts of the judgement. We will examine that case below.

70. In the present case, Mr Ryder submitted that the economic and commercial reality of the nature of the supply was that it was the opportunity to participate in an expertly organised event which constituted a service and not the passive supply of land.

71. In support of this, he listed the additional facilities available which, he contended significantly add value. The facilities were:

(1) The five star café advertised on the website

(2) The provision of car parking

(3) The events were advertised on television and elsewhere

(4) Covered pitches were offered

(5) Extensive cleaning was carried out

(6) There were extensive toilet facilities

(7) There was capital expenditure to maintain standards and make it more attractive to buyers and sellers

(8) The contract constituted by the ticket given to sellers gave the Appellant control of how the seller occupied the site and to some extent what he could sell

(9) The events had been going on for many years and were successful and profitable, which meant that they were expertly organised and expertly run, as evidenced by the fact they had been going on so long and the testimonies on Facebook, some of which referred to the events as being well run.

(10) The Appellant had real and significant responsibilities to the sellers (although Mr Ryder did not specify what they were)

72. Mr Ryder asserted that the fact that Mr Clark had not visited the site did not invalidate the decision. We, of course, agree, although a site visit might have given Mr Clark a more realistic view of the facilities on offer, which we have found as a fact, were quite basic.

73. Mr Brown, for the Appellants emphasised that in determining the nature of a supply one has to look at all the circumstances in which the supplies take place. See [38] *HMRC v Aimia Coalition Loyalty UK Ltd*. [2013] UKSC 15.

74. Mr Brown also took us to the *Craft Carnival* case, on which HMRC rely, and to the First Tier Tribunal case of *International Antiques and Collectors Fairs Ltd v Revenue and customs Commissioners* [2015] UKFTT 354 (TC), which was referred to in *Craft Carnival*.

75. International Antiques and Collectors Fairs Ltd (International Antiques) organised one of the largest antiques fairs in Europe. They organised fairs at various locations around the country, generally at large showgrounds. They charged fees to exhibitors who booked spaces at the fairs. Although some exhibitors could take pitches on the day, most were booked in advance. There were approximately 20,000 exhibitors a year. The exhibitors were sent a "booking pack" with details of all the fairs for the year and which included International Antiques' terms and conditions. Exhibitors could book particular pitches in advance and had the opportunity to rebook the same stand at each fair, which many did. There were a number of types of pitches, including outside pitches, indoor stalls, with electrical sockets, marquees and "shopping arcades" outside, erected by the Company's contractors with light and a power point. The pitch fee varies depending on the nature of the pitch and its position.

76. The exhibitors received a vehicle pass which identified their pitch, booked or allocated in advance. The exhibitors parked in a separate designated area. The fairs were generally multi-day events and exhibitors could remain on site overnight where they would have access to toilets and some food outlets. Entry to the fairs was by ticket only. International Antiques provided security via external contractors who supervised entry. At one venue, the Company paid for a uniformed police presence. The Company employed parking marshals and general marshals and cleaning contractors to clean and tidy the site after the fair. The total number of staff varied between 10 and 85 depending on the venue. The Company undertook extensive advertising in trade press and specialist publications, on its own and trade websites (national and international) and used two paid bloggers. The advertising was aimed at customers. At [72] the Tribunal referred to the things an exhibitor got for its money:

> "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."

77. The Tribunal's conclusion, set out in the headnote, was:

> "… assessing the supply from the perspective of a typical exhibitor, the economic and social reality was that the booking fees were payment for participation as a seller at one of the largest antiques fairs in Europe, attended by plentiful traders and public buyers. That was the opportunity provided by the company and for which the exhibitor paid the fees. The over-arching single supply by the company was not 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 was the provision of the pitch."

78. International Antiques is not binding on us, but *Craft Carnival* is. The First Tier Tribunal decision [2015] UKFTT 245 (TC), sets out the facts. Mrs Zombory-Moldovan was a sole trader organising craft and garden fairs at various venues across Dorset, often in the grounds of stately homes or castles. Apart from negotiating the hire of the venues, Mrs Zombory-Moldovan organised the erection of marquees, which were hired for the duration of the fairs which lasted two or three days. She also organised the provision of other temporary facilities including portable toilets, electrical generators and security fencing. She employed between five and seven staff to act as ticket sellers an car park marshals. The fairs would be advertised in advance in local newspapers and online and a children's entertainer would be booked to encourage families to attend. At some venues, free overnight camping was available to stallholders.

79. Mrs Zombory-Moldovan had a mailing list of 4,000 craft workers to whom she sent an annual brochure listing the events. It contained colour photos of the venues and a price list and set out what was done to encourage visitors and maximise sales. The cost of a pitch was £180. A potential stallholder had to complete a booking form accepting the terms and conditions, and, among other things, stating the type of craft concerned and whether they wanted an indoor or outdoor pitch. Mrs Zombory-Moldovan is not obliged to accept a booking and does not accept every booking request. She selects stallholders selling crafts appropriate to the venue and has turned down, for example, tarot card readers and face painters. A stallholder whose booking is accepted is so informed. Stallholders can choose an indoor or outdoor pitch but Mrs Zombory-Maldovan allocates the pitches a few days before the event. About 60% choose an indoor pitch.

80. At [20], the Upper Tribunal referred to *International Antiques* and at [21] noted the Tribunal's reasoning as to why it did not consider the supply to be exempt:

> "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."

81. The Upper Tribunal went on to say at [22] that regard must be had to the economic realities when determining the nature of a supply and at [23] that the contractual position is likely to be the most useful starting point, even though it may not always fully reflect the economic reality. Where a transaction involves more than one element one must consider whether there is a single supply for VAT purposes or two or more distinct supplies and if a single supply, whether, taken as a whole it is exempt (at [27]).

82. The issue in *Craft Carnival* was whether Mrs Zombory-Moldovan had an obligation to those stallholders she accepted to put on a the event specified. The Upper Tribunal held that she did, saying at [40]:

> "In the circumstances, it seems to us that, on the true construction of the contract between Craft Carnival and a stallholder, Craft Carnival is obliged to provide a stallholder with a stall or pitch *at the relevant fair*. The reference to the 'Show' in the terms and conditions does not, as the FTT thought, merely set out the context of the agreement. To echo Lord Hoffmann in the Investors Compensation Scheme case …the booking form and terms and conditions would 'convey to a reasonable person having all the background knowledge which would have been available to the parties in the situation in which they were at the time of the contract' that Craft Carnival was promising that there would be a fair of the relevant description. That, moreover, was the economic reality."

83. The Tribunal considered that there was a single supply consisting of a number of elements and went on to consider the VAT categorisation of the single supply. It concluded at [47]:

> "On the view we take of the correct interpretation of the contract between Craft Carnival and a stallholder, the transaction does not involve a 'relatively passive activity linked simply to the passage of time and not generating any significant added value' (to quote from *Temco*, ….) Craft Carnival has very real and significant responsibilities beyond the bare provision of an appropriately-sized plot with, potentially, a table and chairs. In the *International Antiques and Collectors Fairs* case, the FTT considered that the contracts with which it was concerned were for 'the provision of a service of participation as a seller at an expertly organised and expertly run antiques and collectors fair' … We take a similar view in the present case and do not therefore consider Craft Carnival's supplies to stallholders to fall within the land exemption."

84. The critical point in the *Craft Carnival* and *International Antiques* cases is that the contract between the organiser and the seller, entered into in advance, in each case obliged the organiser to put on the event in question. A seller paid their fee, not for the right to occupy a pitch, but for a service, being the participation at an expertly organised and expertly run event, one element of which was the right to occupy a specific pitch. The activities of the organisers provided significant added value. The events were organised at prestigious and attractive venues intended to attract customers. The organisers had to negotiate the hire of those venues. They actively sought the "right" kind of sellers, targeting stallholders through mailing lists of past attendees and adverts in trade and specialist paper and online publications. They had separate and extensive advertising aimed at attracting customers. They provided marquees, in some cases electricity and a generator, tables and chairs, a choice of indoor or outdoor pitches, toilet facilities, restaurant concessions, security, advance entry ticket sales and marshals to ensure the smooth running of the event. Some facilities such as an electrical supply and tables and chairs were available at an extra cost.

85. There is no formal contract between Rufforth Park and its sellers. The contract, such as it is, consists of the conditions on the back of the ticket which the seller is given once they have paid their £9 to get in. It is not possible to book in advance. There is no selection of sellers. Anyone who turns up and pays their fee gets a space, allocated by Rufforth Park. The advertising on the company's website and Facebook provides basic information to both buyers and sellers about times, prices and conditions and some colour photographs showing the sales area and the car park and referring to the 5 star café and large toilet facilities. The television advert is a 21 second animation with photos of the sales and information about the days and times, presumably shown on local television.

86. Rufforth Park has no obligation to put on the car boot sales or the auto jumbles. That they do put them on regularly does not impose any such obligation. Sellers have no right to attend. If there was no sale, they would have no recompense.

87. The boot sales are not held at carefully chosen venues designed to attract customers. They are held in the Appellant's field off the B1224 near Wetherby.

88. No tables, chairs or electricity are provided, even for an extra fee.

89. There is no provision of security.

90. The toilet and refreshment facilities are basic.

91. The Appellant has carried out such maintenance as is required eg repairing the surface of the car park, but has not attempted to enhance the facilities.

92. Whilst the car boot sales and auto jumbles might be efficiently run, they are simple events involving only the Appellant's land and its employees and not requiring any particular organisational or management skills or the co-ordination of a variety of third party contractors. Well run is not the same thing as "expertly organised and expertly run".

93. There is more than one element to the supply in the present case, in that some basic facilities are provided to the sellers in addition to the right to occupy the allocated pitch for the duration of the sale and Rufforth Park undertakes some advertising and post-sale cleaning of the site. We consider that this constitutes a single and indivisible supply to the stallholder.

94. The question is what is the nature of that overarching supply?

95. Having considered all the facts and circumstances of this case we have concluded that the commercial and economic reality is that the supply provided by Rufforth Park is a licence to occupy a pitch at a car boot sale or auto jumble. It is a relatively passive activity linked to the passage of time and not generating any significant added value. Rufforth Park is not providing a service to the sellers giving them the opportunity to participate in an expertly organised and run event. Rufforth Park's events are, as Mr Ginley put it, "an ordinary car boot". The company has no obligation to put on the events at all. The provision of a car park, basic refreshment facilities and toilets and some cleaning and advertising activities does not alter the overarching nature of the single supply as a supply of a licence to occupy land.

DECISION

96. For the reasons set out above, we have concluded that the nature of the supply provided in return for the pitch fees is a licence to occupy land within Item 1 of Group 1 of Schedule 9 VATA and according the fees are zero rated for VAT purposes.

97. We therefore allow the appeals against both the assessment to VAT and the assessment of default interest.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

98. 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.

MARILYN MCKEEVER
TRIBUNAL JUDGE

Release date: 08 FEBRUARY 2022