



TC02111

Appeal number: EDN/08/23/, TC/09/0118 & TC/09/10694

VAT; use of castle for function such as wedding; additional supplies of overnight accommodation, afternoon tea and breakfast; single or multiple supplies; whether supplies including use of castle exempt under VATA 1994, Schedule 9 Group 1; whether exemption excluded by item 1(d)

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

DRUMTOCHTY CASTLE LIMITED

Appellant

- and -

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

**TRIBUNAL: JUDGE J GORDON REID QC, FCI Arb.
IAN M P CONDIE, CA**

Sitting in public at George House, Edinburgh on 17 & 18 April 2012

**Philip J D Simpson, advocate on the instructions of Robertson Craig & Co, CA,
for the Appellant**

**Ian Artis, advocate instructed by the Office of the Advocate General on behalf of
HM Revenue and Customs, for the Respondents**

DECISION

Introduction

- 5 1. These three appeals, which have been consolidated by Direction dated 19 June 2009, relate to the use of a castle for the purposes of a function such as a wedding service and reception; and whether the supply or supplies are a single supply, or multiple supplies and whether the supply or supplies should be standard rated or exempt.
- 10 2. A Hearing took place at Edinburgh on 17 and 18 April 2012. Philip Simpson, advocate, appeared on the instructions of Robertson Craig & Co., Chartered Accountants, on behalf of the Appellant. He led the evidence of Ewan Kirkpatrick, general manager of the Appellant. Ian Artis, advocate, appeared on behalf of the Respondents (“HMRC”). He led the evidence of Eilean Gray and Fiona Marshall, experienced HMRC officers. A joint bundle of documents, skeleton arguments and a bundle of authorities were also produced. All witnesses produced written statements. 15 The HMRC officers were not cross-examined.

The Assessments under appeal

- 20 3. The first Notice of Assessment, dated 21 May 2007, is in the sum of £130,908 plus interest and covers the periods from 1/9/04 to 30/11/04, and 1/3/05 to 31/1/07. The second Notice of Assessment is dated 11 March 2009, is in the sum of £155,771.00 plus interest and covers the period between 1/2/07 to 31/10/08. The total, including notified interest, was £296,722.40 as at 11 March 2009. There is no dispute on quantum.
- 25 4. The third notice (and third appeal) is a misdeclaration penalty in the sum of £23,361.00 and relates to the period specified in the second Notice of Assessment

Grounds of Appeal

- 30 5. These are remarkably brief given the sums involved. For the first Assessment (the first appeal), the grounds are that *Standard Rated VAT does not apply to the supplies included in the Assessment*. For the second Assessment (the second appeal), the grounds are *Assessment issued by HM Revenue and Customs is not in accordance with relevant VAT legislation*
- 35 6. As for the third appeal, the grounds are *Misdeclaration penalty relates to assessment issued by HM Revenue & Customs which is not in accordance with relevant VAT legislation*.

Procedural History

7. These appeals are of some vintage. They were sisted pending a complaint to the Adjudicator. The HMRC witness statements are dated July 2009. The complaint was

rejected and the sist recalled. A Hearing fixed for 6 and 7 February 2012 was postponed at the Appellant’s request.

Principal Issues

5 8. In broad terms, the Appellants provide Drumtochty Castle for use (as it is put in their skeleton argument) as a functions venue, principally for weddings. The question is whether what is supplied constitutes the grant of a licence to occupy the Castle, or composite supplies the principal element of which is the grant of a licence to occupy the Castle, or, as HMRC put it in their skeleton argument, a composite supply of wedding facilities and services which falls to be taxed at the standard rate.

10 Legal Framework

9. S31 VATA provides that a supply of goods or services is an exempt supply if it is of a description specified in Schedule 9. Schedule 9 Part II, Group 1 states *inter alia*:-

1 The grant of ...any licence to occupy land..... **other than**

15

(d) the provision in an hotel, inn, boarding house or similar establishment of sleeping accommodation or of accommodation in rooms which are provided in conjunction with sleeping accommodation or for the purpose of a supply of catering;

20 NOTES

.....

(9) “Similar establishment” includes premises in which there is provided furnished sleeping accommodation, whether with or without the provision of board or facilities for the preparation of food, which are used by or held out as being suitable for use by visitors or travellers.

10. The grant of such a supply of land is therefore an exempt supply. Paragraph (d) is an exception to the exemption. Accordingly, if the supply is not a grant of a licence to occupy land or if the supply constitutes the provision of a supply which falls within paragraph (d), the supply is not exempt, and is standard rated, unless exempt or zero rated by virtue of some other statutory provision. No such other provision is founded on in this appeal.

11. The statutory exemption and the exceptions to it fall to be construed in the light of and having regard to the purposes of the underlying European Directive being implemented, here the Sixth Council Directive 77/388/EEC, and in particular, Article 13B(b).

12. The question whether, for the purposes of VAT, a transaction involves the provision of a single supply or multiple supplies has been considered at great length and depth in recent years by courts of the highest authority. More recently, however,

the principles have been conveniently set forth in the judgment of Roth J in *HMRC v Bryce* 2010 UKUT 26 (TCC) at paragraphs 19-27 to which we were referred. Neither party took issue with the statements of law therein set forth. We have also taken into account the CJEU decision in *Purple Parking Ltd v HMRC* 19/1/12 Case C-117/11 and the general review of the principles applicable to single and multiple supplies set forth in *David Baxendale Ltd v HMRC* 2009 EWCA Civ 831.

13. In summary (for present purposes), (i) every supply of a service is normally regarded as distinct and independent, (ii) a transaction which forms a single supply from an economic point of view should not be artificially split into separate supplies, (iii) where there are several elements to a transaction one or more elements may be regarded as predominant and as constituting the principal supply and the remainder regarded as ancillary to that principal supply; it will be regarded as ancillary to a principal supply if it does not constitute for the average consumer an end in itself but a means of better enjoying the principal service supplied; the VAT treatment of the ancillary supplies follows the VAT treatment of the principal supply; (iv) where none of the elements can be regarded as principal or ancillary, they may be regarded either as separate supplies or as elements of a single indivisible package or transaction, (v) how those elements are regarded is determined by whether they are so closely linked that they form, objectively, from the perspective of the consumer, a single indivisible economic supply which it would be artificial to split, (vi) in considering the essential features of the transaction and all the circumstances in which it takes place (such as the terms of the arrangements, the invoicing procedures, and what it was the consumer actually received) to determine these issues, (a) a single or all-inclusive price, or separate prices charged for two or more elements are relevant factors, (b) the availability of similar services from separate sources is not relevant as that possibility is inherent in the concept of a single composite transaction, and (c) whether each or several of the elements each has value and utility in their own right is not relevant.

14. These principles demonstrate that the facts of each case need to be determined and assessed with particular care in order to identify the nature of the supply or supplies and to determine how the arrangements in any given case fall to be classified for the purposes of VAT.

15. With this framework in mind, we have reviewed the evidence and make the following findings of fact which, unless otherwise stated, all relate to the periods covered by the Assessments.

Facts

The Castle

16. The owner of Drumtochty Castle, a Mr Anderson, granted, without charge, a licence to the Appellant to operate their business from the Castle. The licence was not produced and no details were put in evidence. The owner, previously operated much the same business from the Castle as the Appellants have done and do but did not claim that his turnover was exempt from VAT. The financial relationship between Mr Anderson and the Appellant was not discussed in evidence. According to

Mr Kirkpatrick, whose evidence we accept on this point, the Castle is being operated by the Appellant in substantially the same way as Mr Anderson operated it.

5 17. On the ground floor of the Castle there is a ballroom, three principal rooms (two lounges and a dining room) and a television room. On the first floor are eleven bedrooms.

18. The Castle grounds extend to several hundred acres and include trout lochs, forest trails, and clay pigeon shooting.

10 19. The Castle is an approved place for civil marriages/civil partnerships under the Marriage (Approval of Places) (Scotland) Regulations 2002. The marriage may also be celebrated at the nearby church of St Palladius just beyond the estate boundary.

20. The Castle is licensed to sell alcohol.

15 21. Between 2007 and 2011, between 58 and 68 weddings have taken place there each year, with the occasional conference and corporate dinner over and above. The average number of guests on each occasion is about 90, the largest being about 120 and the smallest 12.

Staff

20 22. There are ten full time staff namely, Mr Kirkpatrick (the general manager), his personal assistant, an assistant manager, an estate worker who lives on the estate, and six house-keeping staff. In addition there are seven part-time employees who carry out a variety of housekeeping/breakfast services; and bar services when requested by the customer.

23. Staff waiting at table at the wedding breakfast are engaged by the outside caterer. The full time staff serve breakfast in the mornings.

25 24. Mr Kirkpatrick, who is a hotelier by profession, or his assistant manager is present on site throughout the duration of the function. Mr Kirkpatrick frequently acts as toastmaster. He considered that if the celebrations at a wedding *got out of hand*, he had power to require a guest to leave. We also infer from his evidence that he would take charge of any emergency that might arise.

30 25. On request and at extra charge, the Appellant's staff will serve drinks. Sometimes, on request, the Appellant provides a cash-bar which it mans from its own staff.

26. The housekeeping staff do not clean or launder the bedrooms on the first floor at all over the duration of the function.

Advertising and Promotional Material and Terms of Business

35 27. The Appellant produced a brochure advertising wedding functions. It contains a number of colour photographs of the Castle, the grounds and the principal rooms. It

states that the Appellant will *meticulously plan and organise every part, from the flowers and food to carriages and helicopters*. It also states *We can organise a band or Scottish Ceilidh*

28. The brochure contains a list of additional services and prices including *Horse & Carriage, Church (payable direct to the Minister)* additional accommodation. Towards the end there is a page which states *Additional services which we will be pleased to co-ordinate*. There is then a list of the following items:-

“Use of St Palladius Church for the marriage ceremony
Horse and carriage
Additional accommodation in a wing of the Castle

Services we can help you contact:

Photographer/video
Wedding cake
Florist for bridal and table flowers
Vintage cars
Music and entertainment
Piper or full pipe band
Hairdresser and beauty therapist
Accommodation and transport for guests

For your weekend guests some activities can be organised within the castle grounds and tailored to your particular needs:

Trout fishing (rainbow and brown trout)
Clay pigeon shooting
Cycling
Archery”

29. The Appellant has standard terms of business in the following terms:-

Written confirmation of booking is required with a deposit of £X which is non-refundable.

50% of the facility fee is due 6 months prior to the wedding date.

Prepayment of 100% of the total of the facility fee, plus any additional services will be required 4 weeks prior to the date.

Any additional catering/drinks costs must be paid before departure from the Castle.

In the event of cancellation by the hiring party, the cancellation charge will equal the payments already made.

All prices can be changed without notice prior to payment of the deposit.

Drumtochy Castle is a non-smoking venue, if traces of tobacco are found in any of the rooms there is a deep cleaning charge of £x applied.

We regret that we cannot take any pets including dogs in the castle.

5 Biodegradable confetti or Rose Petals can be used outdoors, however due to cleaning difficulties confetti cannot be used inside the Castle.

Guests may arrive at the Castle any time after 3pm and should vacate by 12 noon on the day of departure.

The burning of candles is limited to the dining room and ballroom due to safety reasons.

10 The use of smoke effects, aerosol sprays, sparklers and other “special effects” should be restricted to outdoors.

Deliberate damage to, or misappropriation of Castle property will be charged.

Provision is made on the form for the customer signing and returning it to the Appellant.

30. There is no separate brochure for corporate events.

15 31. The Appellant is in direct competition with the hotel sector in relation to the provision of wedding function packages. Ardoe House Hotel, Deeside, is an example of such a competitor.

The typical services provided

20 32. The Appellant charges a facility fee. This is usually in the order of £11,000 for the first night and £2,000 for each additional night. This gives the customers and their guests the use of the castle and its extensive grounds for the duration of the function. During that period no other function takes place at the Castle. In that sense, the customer has exclusive use of the Castle and grounds. The period covered by the fee is usually from 3pm on Friday to twelve noon on Sunday. During the summer, there
25 are a number of mid-week weddings at the Castle.

33. The facility fee also covers afternoon tea on arrival and bed and breakfast accommodation for up to twenty two people.

30 34. Additional (optional) services, mostly at additional cost are frequently provided. These include extra sleeping accommodation, chair cover hire, horse and carriage hire, clay-pigeon shooting, and trout fishing. VAT is charged on the supply of these services (except trout fishing which IS free). The Appellant is sometimes asked to provide a cash-bar, which it does.

35. The Appellant provides the cutlery, crockery, glassware and table linen for the wedding breakfast provided by outside caterers.

35 36. The Appellant recommends to the prospective client one or other of two caterers with whom they work regularly. This had advantages for the Appellant. They

worked and liaised with caterers they knew and trusted. These caterers were familiar with the layout of and the set-up at the Castle, and in particular, the kitchen area. Moreover, the Appellant obtained payment of 5% of the fee of the caterer selected.

Typical Arrangements with customers

5 37. When potential clients visit the Castle, Mr Kirkpatrick discusses the various aspects of the wedding, including catering, the church, and various options. He provides a sample menu and makes recommendations about the various third parties who might provide optional additional services eg having the marriage celebrated in the chapel adjacent to the estate (the minister's contact number is provided); names
10 of photographers, hairdressers, beauty treatments, transport, outside caterers, florists etc.

38. The customers then make their own arrangements with these third parties.

39. On the evidence, we infer that if for example, the police were to arrive during a function (there is we stress no evidence of this ever having happened) to investigate
15 an incident or a complaint and asked *Who is in charge here; who is the keyholder?* Mr Kirkpatrick or one of his staff would have stepped forward and said that he was in charge and held the keys. He and his staff arrive before the guests so they have to open up, and they depart after the guests have gone so they must lock-up too.

The actual VAT treatment of the services supplied

20 40. The facility fee, in general, is treated as being exempt from VAT. It is this treatment of the facility fee which is in dispute.

41. The part of the facility fee relating to the provision of afternoon tea and bed and breakfast accommodation is treated as including VAT at the standard rate

25 42. The Appellant charges VAT on the amount charged for extra sleeping accommodation, horse and carriage hire and chair cover hire.

43. The Appellant charges VAT on the amount charged for serving drinks. Output tax is accounted for on income from the cash-bar.

30 44. The Appellant receives 5% of the caterer's charges. This is treated as VAT inclusive and the VAT accounted for as output tax even although the caterers do not appear to provide the Appellant with an invoice.

Invoicing and Payment

35 45. The Appellant's records show that they collate the various services which they provide and charge for under a single booking reference. Thus, an invoice specifying additional services such as horse and carriage, additional accommodation, the provision of bar staff, drinks service (at £5 per head) and chair covers will all appear on the same invoice (to which VAT is added) and will be cross referenced to an invoice for the facility fee *for your wedding*, to which no VAT is added.

46. Where drinks are supplied by the customer and served by the caterers' staff, the Appellant charges corkage of £5 per person.

HMRC Position

47. Following a visit to the Castle and an examination of the Appellant's records, HMRC took the view, in their letter dated 10 April 2007 to the Appellant's representative, that the treatment of the fee for the hire of the Castle as exempt was incorrect and that it should be standard rated, being excluded from exemption by Schedule 9 Group 1 Item 1(d) to VATA. In subsequent correspondence (letter 9 July 2007) HMRC expressed the view that a wedding *package* appeared to be offered to clients.

48. In response, the Appellant's accountants pointed out (by letter dated 12 October 2007 *inter alia* that outside caterers, not the Appellant, provided the wedding catering; those caterers provided their own staff and dealt directly with the clients. Money was received from the caterers but there were no invoices for this. Output tax on this money was accounted for in the Appellant's VAT returns.

49. Following the first assessment, a reconsideration was requested. By letter to the Appellant's accountants dated 14 January 2008 (erroneously dated 2007), the HMRC reviewing officer agreed with the assessment and its basis.

50. We should also add that there was some correspondence in 2005 and 2008 about whether HMRC had at one stage approved the VAT treatment of the facility fee. This led to a complaint being made to the Adjudicator, which was ultimately rejected in March 2011. However, nothing was made of this in closing submissions, and accordingly we need say no more about it.

Submissions

51. Phillip Simpson for the Appellant submitted that, for the purposes of VAT, the supplies in dispute constituted a licence of the exclusive use of Drumtochty Castle and grounds. Alternatively, those supplies were composite supplies, the principal element of which was that licence. The supply or supplies were thus exempt in terms of Item 1 Group 1 in Schedule 9 to VATA. Moreover, those supplies did not constitute the provision in an establishment similar to an hotel, inn or boarding house of sleeping accommodation or accommodation in rooms which were provided in conjunction with sleeping accommodation or for the purposes of a supply of catering. The supplies were thus not excluded from exemption by virtue of Item 1(d) of Group 1.

52. Mr Simpson developed those submissions by reference to *Bryce, Card Protection Plan Ltd v CC&E* 1999 ECR I-973, *Levob Verzekeringen v Staatsscretaris van Financien* 2005 ECR I-9433, *Blasi v Finanzamt Munchen* 1998 ECR I-481, particularly the Opinion of the Advocate-General, and *Asington Ltd v CC&E* 2003 UKVAT V 18171, *Waldendoff* 2008 STC 3079, *Priory M Blendhome Ltd v CC&E* 1999 LON/98/966 No 16048, *Willerby Manor Hotels Ltd* MAN/99/871 NO 16673, *Chewton Glen Hotels Ltd* (LON20/5/08 *Acrylux*, 2009 UKFTT 223 (TC).

53. Ian Artis, advocate, for HMRC submitted that the issue was whether the supply was a supply of composite wedding services or whether there was a supply of an interest in land for consideration namely the facility fee. The predominant activity was the supply of services in relation to the use of the Castle as a wedding venue; these services all slotted together; the whole purpose was the celebration of the wedding and the provision of rooms had no independent purpose. He submitted that the facility fee was high and only made economic sense in the context of a wedding as opposed to the simple renting of the Castle. What is being supplied is a prestige event. The very notion of a facility fee suggests that a whole range of services are being brought together. The giving of advice on how to bring the event together was a service based on experience and provided as part of the facility. The standard terms and conditions do not give the client free rein; they apply to all the services provided by the Appellant. Typically, clients were supplied with a package of services paid for under a single contract rather than a bare let. The Appellant competed in the hotel market and this was relevant to the analysis of the supply.

54. Mr Artis further submitted that leasing and letting of immovable property was a passive activity rather than an economic activity producing added value (*Belgian State v Temco Europe SA* (Case C-284/03 2005 STC 1451). The client was not acquiring or enjoying an interest in land; there was restricted access; the Appellant's staff were on the premises and this was quite different from a landlord inspecting premises from time to time.

55. He reminded us that exemptions to the generality of the taxation of services are to be interpreted strictly *Stichting Uitvoering Financiële Acties v Staatssecretaris Van Financien* (*Secy of State for Finance*) (1991 2 CMLR 429, *Blasi v Finanzmt Munchen* 1998 STC 336.

56. He also referred to *Card Protection Plan* 1999 STC 270, *Levob, David Baxendale Ltd* 2009 EWCA civ 831 and *Purple Parking Ltd and Airparks Services Ltd v HMRC* (Case 117/11); *Best Images Ltd* 2010 UKFTT 175 (TC), *Acrylux* and the Sixth Directive 77/388/EC Article 13.

30 Discussion

57. We consider first whether there has been the grant of a licence to occupy land within the meaning of Item 1 of Group 1 to Schedule 9. If there has been no such grant then the question of whether there has been a composite supply the principal element of which is the grant of a licence to occupy land and the VAT treatment of which any related ancillary services follow, does not arise. In those circumstances, the composite supply of services, whether there is a principal supply and ancillary supplies or whether none of the supplies predominates, will be standard rated, unless they are exempt for some other reason. No other reason is relied on in this appeal.

58. According to the European jurisprudence, the exemptions in Article 13 of the Sixth Directive, have their own independent meaning in Community Law. The basic concept is the conferring of the right to occupy property as owner and to exclude any other person from enjoying that right; these are both essential ingredients. It is

usually a passive activity linked to the passage of time and which does not generate added value from other activities which are commercial in nature. [The theory underlying the exemption and the exceptions to it is set out in Advocate General Jacobs' Opinion in *Blasi* (paragraphs 15-18), and is discussed in *Asington*. It is of
5 some interest to note that one of the purposes of the exceptions to or exclusions from the exemption is to ensure that the provision of temporary accommodation similar to and hence in potential competition with that provided in the hotel sector is subject to tax (see paragraph 18, endorsed by the Court at paragraph 20)]. Duration is not
10 conclusive, but a short period may be an appropriate basis for distinguishing an arrangement which is exempt and one which is excluded from the exemption. The arrangement may fall within the exemption even though the owner has a right of regular inspection, or certain parts are used in common with others. (see *Temco*
paragraphs 16-25; *Walderdorff* paragraphs 17-20).

59. We acknowledge that the exemption falls to be interpreted strictly but
15 exclusions from the exemption do not (see eg *Blasi* at paragraphs 18 and 19). Nevertheless, the exemption should not be construed in such a way as to deprive the exemption of its intended effect (*Temco* at paragraph 17).

60. In our view, the arrangements made between the Appellant and its clients do not
20 constitute or include the grant of a licence to occupy land, here, the Castle and its grounds. The arrangements do not confer on the client exclusive rights of possession, occupation or control or the right to exclude others. Rather, these arrangements constitute the active commercial exploitation of the Castle as part of an overall
25 package of supplies. The nature of the arrangements does not have the flavour of the grant of a licence of land, but is best understood as the provision of a range of commercial services part of which is making the Castle and its grounds available for
30 use. These services include the benefits of management, superintendence and maintenance of the Castle. The provision of the Castle and the selected additional services supplied by the Appellant and third parties all go hand in hand. This is not the relatively passive activity of letting of land as contemplated by Article 13 of the
Sixth Directive.

61. The arrangements and facilities provided added value to the provision of the
Castle. They were not merely ancillary to the use or for the better enjoyment of the
Castle. They were a substantial part of the overall package of facilities and services.
35 These facilities and services which were provided by the Appellant, including making recommendations about the services of third parties, constitute along with the use of the Castle, a package of closely linked wedding function services.

62. That range of services is similar to what is provided in certain branches of the
hotel sector, eg a wedding celebrated at a Country House hotel where the ceremony
takes place there or nearby, the wedding breakfast takes place there along with other
40 festivities, such as music and dancing, with some guests staying overnight at the hotel, and with some services provided by third parties whether directly to the customer or as sub-contractor to the hotel. It is plain as was accepted in evidence by Mr Kirkpatrick, that the Appellant is in direct competition with such hotels.

63. The principle of fiscal neutrality inherent in the common system of VAT precludes or at least discourages treating similar goods and supplies of services, which are thus in competition with each other, differently for VAT purposes. From the point of view of the average consumer, it is difficult to see any difference in substance from the wedding package offered by the Appellant on the one hand, and a wedding package which might be offered by say a country house hotel. By according the multiple or complex supply of services by the Appellant, embraced in the phrase *wedding package*, the same VAT treatment as similar services by other competitors, the principle of fiscal neutrality is respected (*Purple Parking Ltd* at paragraph 38).

64. While the facts of each case must be carefully considered, we note that there is a consistent line of Tribunal decisions in recent years where, on similar facts and similar arguments, it has been held that the use of premises for the supply of services for the purposes of celebrating a wedding or other event does not constitute an exempt supply.

65. Thus, in *Blendhome* the issue was whether a hotel's charge for an exclusivity fee was exempt; the fee was for exclusive use of the public rooms including the bar and restaurant and the entire 35 acres of grounds for the period of the ceremony and the reception; certain other facilities and services were agreed to be either exempt or standard rated. In dismissing the taxpayer's appeal, the tribunal found that the exclusivity was part of the wedding celebration and reception arrangements which were the primary consideration for moneys paid; the right to enjoy the use of the hotel and grounds free from the presence of non-wedding guests was not a right to occupy the non-catering parts of the hotel and grounds; the exclusivity was an enhancement of the reception or a means of better enjoying the principal services supplied.

66. *Willerby* concerned the hire of a room for an evening reception made in conjunction with the wedding breakfast. The tribunal, in dismissing the appeal, held that what was offered was a package of wedding reception facilities consisting of whatever goods and services the customer ordered; it was irrelevant that the charge for a room for an evening function was calculated and charged differently from the charge for the room for a wedding breakfast. All the goods and services were provided by the appellant. The hire of the function room for an evening reception was a supply ancillary to those of wedding reception facilities and was integral to the reception arrangements; it was a means of better enjoying the principal service supplied; all this it was said accorded with commercial reality; it was a continuation of one function, an entire wedding reception. The appellant thus made a composite supply of a standard-rated package of wedding reception facilities.

67. In *Leez Priory*, the appellants offered a large country house with 40 acres of adjacent gardens and parkland as a wedding and reception venue. The services provided in conjunction with the use of the priory and grounds were selected by the customer and included catering (with bespoke menus), overnight accommodation, discotheque, florist, photographer, bar facilities including staff, and front of house manager. The evidence was that the appellant sought to combine the provision of the right to use the priory for weddings with the provision of all the other services related

to the supply of food, drink, accommodation and entertainment, together with other services to persons using the priory on those occasions. Although the venue charge was a separate charge the tribunal concluded that what was supplied was a complete package of which the venue charge was only a part. There was a composite supply of
5 *wedding functions* or *wedding services*. The supply was the package. The tribunal considered that it would be a distortion in economic terms if the venue charge were to be treated as the principal service when the other services amounted to the major part of the transaction. Thus, the main supply, namely that of wedding functions, was not exempt.

10 68. The tribunal in *Leez Priory* also considered the exception to the exemption on the hypothesis that they were in error in concluding that the venue charge was not a distinct supply of the grant of a licence to occupy land. They noted that the priory did not hold itself out as being an establishment open to visitors or travellers generally, but was in other respects similar to an hotel, inn or boarding house; it provided
15 sleeping accommodation and accommodation in rooms which were provided for the purpose of the supply of catering. On the foregoing hypothesis, the tribunal's conclusion was that the priory was a *similar establishment*. Wedding guests were visitors to the priory.

20 69. *Chewton* related to the hiring of rooms at a hotel for wedding ceremonies. A comprehensive service was provided including a range of catering, overnight accommodation, flowers, music and dancing and other related services as well as the use of a room for the ceremony itself; there were also extensive grounds suitable for wedding photography. Which services over and above the room hire were supplied varied depending on the customer's wishes. Even where only room hire was supplied
25 the customer received permission to park at the hotel and to use the hotel's common facilities and possibly the grounds for photography. The tribunal observed that the transactions were far removed from the letting of property by a landlord to a tenant and that the couples occupying the wedding room did not do so in any sense as owners with the right to exclude others.

30 70. In the tribunal's view in *Chewton*, the transactions were best understood as the provision of a service and a transaction of a commercial nature even in the case where a room was let without much, if anything, additional by way of specific services being provided. The tribunal concluded that there was a single supply from an economic point of view; the wedding services of the hotel were supplied as a package, even
35 although the various elements chosen by the customers were broken down so far as cost was concerned. Where additional services beyond the room hire were minimal these additional elements were regarded as a better means of enjoying the principal service of the room hire. However, even in those circumstances the supply was not an exempt supply. The reason appears to be that the couples occupying the room did not
40 do so in any sense as owners with the right to exclude others (as noted above). Where a more extensive range of services was included, then the package as a whole went beyond the hire of the room with services purely ancillary thereto. The appeal was dismissed.

71. *Acrylux* concerned a large 22 bedroom country house in rural Devon. It was used for a variety of events including weddings, birthday parties, murder mysteries and group get-togethers, although by far the largest use was for weddings. Whoever hired the property had to organise their own caterers, waitresses and other services, although there was an approved list which customers were encouraged to use. The property was supplied fully furnished and equipped with the basic amenities needed for two or three days use. The appellant provided some form of booking and reception service, and cleaned the property each week and changed the linen. The provision of sleeping accommodation was an important part of the package. The tribunal observed that the fact that the appellant supplied the whole property which could then be put to a variety of uses, including sleeping, rather than supplying sleeping accommodation as such, did not prevent the supply of being a taxable supply especially when the sleeping accommodation was an essential part of the package. The appellant was clearly providing services of a type ordinarily provided by the hotel sector. The tribunal's overall conclusion was that the property was a similar establishment within Item 1(d) of Group 9 and that the appellant's supplies were therefore taxable.

72. *Best Images* related to premises (two large rooms or halls in a building) used for Indian weddings; no question of the provision of sleeping accommodation arose. Catering appeared to be arranged direct between the customer and the caterer recommended by the appellant. The appellant also guided the customer to various other suppliers (flowers, music, Indian dancers etc); the appellant's director and/or his wife were present at the weddings. The appellants also provided bar staff (but not waitress or serving staff), chairs, someone to clean up when needed, and security staff. The customer expected these various services as well as the use of the rooms in return for the price paid. The tribunal concluded that it would be artificial to split the additional services which the appellant supplied from the provision of the premises; the premises and additional goods and services were obtained by the same bargain. These were so closely linked that they constituted a single supply. The additional services provided added value and were not simply for the better enjoyment of the hall; they were not merely ancillary to the use of the land. The conclusion was that the appellant was not providing the passive activity of letting land but providing to its customers the benefits of its management, supervision and maintenance of the premises. This went beyond merely providing the key to the door. The supplies did not fall within Item 1 of Group 1.

73. What emerges from these decisions is that they are analysed as a closely linked range or package of services which includes the use of a hall, rooms, building and/or adjacent grounds for a very short period, comparable with but not necessarily identical to the facilities and services provided by many hotels. The use of the rooms, hall, building and grounds in question is not regarded as a grant of a licence to occupy land but as an element of the overall package. It is artificial to split the additional services supplied from the provision of the rooms, hall or building. These additional services were not merely ancillary to the provision of the rooms etc but actively provided added value.

74. In the light of our findings and conclusions, all the elements of the single complex supply of services which make up the wedding package receive the same

VAT treatment. Even if the use of the Castle is predominant, as there is no grant of a licence, that element is standard rated. If the other elements are ancillary, they, too, are standard rated, because, either they follow the treatment of the predominant element (which we have held is **not** exempt) or because they are elements which, if regarded separately, would be standard rated in any event.

75. In the light of our conclusions, it is unnecessary for us to consider whether the Appellant's supplies fall within the exception to or exclusion set forth in Item 1(d) of Schedule 9 Part II Group 1 to VATA. Had it been necessary to do so, we would have concluded that the supplies fell within Item (d).

76. Finally, we record that no separate argument was advanced in relation to the misdeclaration penalty appeal. It stands, or rather falls with the other appeals.

Summary

77. All three appeals are dismissed.

78. 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.

**J GORDON REID
TRIBUNAL JUDGE**

RELEASE DATE: 29 June 2012