



**TC03295**

**Appeal number: TC/2012/01013**

*VALUE ADDED TAX – zero rating – donation of an interest in land to charity – whether goods for the purposes of Item 2 Group 15 Schedule 9 Value Added Tax Act 1996 – no – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**RONDINI LIMITED**

**Appellant**

**- and -**

**THE TREASURY OF THE ISLE OF MAN**

**Respondent**

**TRIBUNAL: JUDGE JONATHAN CANNAN  
MR MAURICE TRACE FCA**

**Sitting at Murray House, Douglas on 20 January 2014**

**Mr Watkin Gittins of Montpellier Group (Tax Consultants) Limited for the Appellant**

**Mr Peter Mantle of counsel for the Respondent**

## DECISION

### *Background*

- 5 1. Rondini Limited is an Isle of Man company registered for VAT in the Isle of Man with effect from 12 December 2006. The issue on this appeal is whether or not a supply by Rondini in the form a gift of an interest in land to a charity is zero rated or standard rated for VAT purposes.
- 10 2. There was no issue as to the facts on this appeal and we did not hear oral evidence. We make the following findings of fact based on the parties' submissions and the documents before us.
- 15 3. On or about 16 November 2006 Rondini purchased a 999 year lease of land known as Unit 4, Yew Tree Way, Stonecross Business Park, Golborne, Lancashire ("the Land"). It opted to tax the Land for VAT purposes and constructed an industrial unit on it. Rondini recovered input tax on the purchase of the Land and on construction of the unit. It then sub-let the unit and accounted to the Treasury for output tax on the rental income.
- 20 4. On or about 31 March 2010 Rondini sold part of its interest in the Land to two individuals. It is accepted by Rondini that output tax must be accounted for on those supplies.
- 25 5. On or about 1 April 2010 Rondini transferred by way of gift its remaining interest in the Land to a charity, the Achna Charitable Trust. There was initially an issue as to whether the Achna Charitable Trust was a charity. However well before the hearing the Treasury conceded for all relevant purposes in this appeal that it was a charity.
- 30 6. Rondini considered that the supply to the Achna Charitable Trust was zero rated pursuant to the provisions we shall now consider. On 2 August 2010 Rondini de-registered for VAT. Broadly the issue can be described as whether the supply of an interest in land is a supply of goods for the purposes of the relevant zero rating provision.

### *Statutory Provisions*

7. All references in this decision are to the Isle of Man legislation and secondary legislation, save where otherwise stated.
- 35 8. In his skeleton argument served prior to the hearing Mr Gittins, who appeared on behalf of Rondini, submitted that because the Land was situated in the UK when Rondini transferred its interest in the Land, there was no supply for the purposes of *section 1 Value Added Tax Act 1996* ("VATA 1996"). During the course of the hearing he indicated to us that he did not pursue that argument and we say no more about it.

9. Section 94(1) VATA 1996 defines a major interest in land as follows:

“ ‘major interest’, in relation to land, means the fee simple or a tenancy for a term certain exceeding 21 years;”

5 10. Schedule 5 VATA 1996 deals with matters to be treated as a supply of goods or services. It provides as follows:

“4 The grant, assignment or surrender of a major interest in land **is treated as** a supply of goods.

10 5 (1) Subject to sub-paragraph (2), where goods forming part of the assets of a business are transferred or disposed of by or under the directions of a person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, that is a supply by him of goods.

...

15 9 (1) Subject to sub-paragraphs (2) and (3), paragraphs 5 to 8 have effect in relation to land forming part of the assets of, or held or used for the purposes of, a business **as if it were goods** forming part of the assets of, or held or used for the purposes of, a business.

20 (2) In the application of those paragraphs by virtue of sub-paragraph (1), references to transfer, disposition or sale shall have effect as references to the grant or assignment of any interest in, right over or licence to occupy the land concerned.

25 (3) Except in relation to -

(a) the grant or assignment or a major interest; or

(b) a grant or assignment otherwise than for a consideration,

30 in the application of paragraph 5(1) by virtue of sub-paragraph (1) the reference to a supply of goods shall have effect as a reference to a supply of services.”

(Emphasis added)

35 11. The UK equivalent of Paragraph 4 is contained in Paragraph 4 Schedule 4 Value Added Tax Act 1994 (“VATA 1994”). It provides as follows:

“4. The grant, assignment or surrender of a major interest in land **is** a supply of goods.”

(Emphasis added)

12. *Schedule 9 VATA 1996* covers zero rating, and in particular *Group 15* relates to charities. *Item 2* zero rates the following supplies:

“ *The donation of any goods for any one or more of the following purposes -*

- 5                   (a) *sale by a charity or a taxable person who is a profits-to-charity person in respect of the goods;*  
                      (b) *export by a charity or such a taxable person;*  
                      (c) *letting by a charity or such a taxable person.”*

10 13. *Section 94(6) VATA 1996* provides that *Schedule 9* is to be interpreted in accordance with the notes contained in that schedule.

14. *Note 1F to Item 2* provides as follows:

15                   “ *In items 1, 1A and 2, and any Notes relating to any of those items, “goods” means goods (and, in particular, does not include anything that is not goods even though provision made by or under an enactment provides for a supply of that thing to be, or be treated as, a supply of goods).”*

15. Zero rating under *Item 2* and *Note 1F* were introduced by the *Value Added Tax (Charities and Aids for the Handicapped) Order 2000*. The UK secondary legislation in an order of the same name made identical provision in *Item 2* and *Note 1F* as the  
20 Isle of Man order, although in the UK they appear in *Group 15 Schedule 8 VATA 1994*.

16. In addition to the legislation set out above, both parties relied on the terms of an agreement dated 15 October 1979 between the Governments of the Isle of Man and the UK in relation to customs and excise matters. This is known as “*the Common*  
25 *Purse Agreement*” and reflects the fact that subject to certain exceptions there is intended to be a customs union between the Isle of Man and the UK pursuant to which the Isle of Man administers and collects duties and VAT in the Isle of Man and receives a share of those revenues.

17. For present purposes we need only refer to paragraphs 3 and 13 of the Common  
30 *Purse Agreement*:

35                   “3. *Except as provided for in this Agreement or as may otherwise be agreed, the Isle of Man Government agrees to keep the law relating to the management of the Customs & Excise revenues and associated control functions correspondent with that of the United Kingdom and to legislate to maintain that correspondence whenever necessary and, in particular, when changes are made in relevant United Kingdom law.*

...

13. *The Governments agree that the United Kingdom and the Isle of Man shall be treated as a single tax area for the purposes of value added tax, but*

*that each Government will continue to provide separately for the care and management of the tax ...”*

*Decision*

- 5 18. Both parties were agreed that the policy behind zero rating in the present context is to encourage donations to charity, removing liability for output tax even where input tax credit has previously been obtained.
19. There is no doubt that the interest which was gifted to charity by the appellant was a major interest.
- 10 20. *Paragraph 4 Schedule 5 VATA 1996* provides that any supply of a major interest is treated as a supply of goods. Plainly in the ordinary meaning of the words land is not goods and *Paragraph 4* is a deeming provision.
- 15 21. Mr Gittins noted the different language used in the Isle of Man provision to the equivalent provision in the UK. In *Paragraph 4 Schedule 5 VATA 1996* (“*is treated as a supply of goods*”) compared to the UK provision in *Paragraph 4 Schedule 4 VATA 1994* (“*is a supply of goods*”). At the same time he pointed to paragraph 3 of the Common Purse Agreement, and submitted that the Isle of Man provision was not correspondent with the UK provision. In the light of the Isle of Man’s obligation under the Common Purse Agreement he submitted that the Treasury could not rely on
- 20 the Isle of Man provision, but must rely on the UK provision. Hence he argued that the supply was a supply of goods, and was not just treated as a supply of goods.
22. Mr Gittins submitted that the effect of that analysis was that the restriction to zero rating in *Note 1F* was not engaged. The supply was a supply of goods and was not simply treated as a supply of goods.
- 25 23. Mr Mantle submitted that the purpose of *Note 1F* was to restrict the meaning of the term “goods” as it is otherwise used in the VAT legislation of both the Isle of Man and the UK. For the purposes of zero rating under Item 2, the term goods is to bear its ordinary, non-technical meaning.
- 30 24. Mr Mantle submitted that both under *Paragraph 4 Schedule 4 VATA 1996* and *Paragraph 4 Schedule 4 VATA 1994* land was deemed to be goods for the general purposes of VAT. The difference in language was not significant.
- 35 25. It seems to us that Mr Mantle’s submissions are clearly correct. The Isle of Man legislation and the UK legislation deem land to be goods. Such deeming provisions are common and create what might be described as a “statutory fiction”. A fact or state of affairs is deemed to exist where it would not otherwise exist. It is clear that by saying the assignment of a major interest “*is*” a supply of goods or “*is treated as*” a supply of goods the effect is the same. In each case the legislation creates the same statutory fiction. In substance there is no difference in the effect of the terminology.

26. It is also clear, as Mr Mantle submitted, that *Note 1F* disapplies that statutory fiction in the case of zero rating donations to charity. For those purposes goods “*does not include anything that is not goods even though provision made by or under an enactment provides for a supply of that thing to be, or be treated as, a supply of goods*”. *Note 1F* plainly covers the language of both *Paragraph 4 Schedule 4 VATA 1994* which provides that the assignment of a major interest is a supply of goods and *Para 4 Schedule 4 VATA 1996*, which provides for the assignment of a major interest to be treated as a supply of goods.

27. Mr Gittins referred us to the Explanatory Note issued with the Isle of Man Order introducing *Item 2* and *Note 1F*. The Explanatory Note states as follows:

“*Note 1F excludes land (and other things deemed to be goods for the purposes of the VAT law) from zero-rating under items 1, 1A and 2.*”

28. Both parties agreed that we could take into account the Explanatory Note as an aid to construing the provisions of *Item 2* and *Note 1F* (See *Bennion on Statutory Interpretation 5<sup>th</sup> edition Sections 60 and 219*). An Explanatory Note is an aid to construction, in particular where it casts light on the objective setting or contextual scene of the instrument being construed, or the mischief at which the instrument is aimed. However in construing the instrument, the intention expressed by the words enacted cannot be altered by an Explanatory Note. See *Tarlochan Singh Flora v Wakom (Heathrow) Ltd [2006] EWCA Civ 1103 at [15]-[17]*.

29. Both parties also agreed that the terms of the Explanatory Note to the Isle of Man order were identical to the UK order.

30. For the reasons given above we do not consider it necessary to have regard to the terms of the Explanatory Note in construing the scope of zero rating. It is clear that land is excluded from zero rating by the terms of *Note 1F*.

31. In any event, the Explanatory Note supports the Treasury’s case. There is no mention of the term ‘land’ in either *Item 2* or *Note 1F*. The only mention of land in this context comes in the Explanatory Note which states that gifts of land are excluded from zero rating.

32. Mr Gittins argued that Rondini transferred an interest in land, as opposed to land itself. As such, he submitted it was significant that the Explanatory Note restricted the exclusion to land and not an interest in land. He further submitted that an interest in land was not covered by the term “*other things deemed to be goods*” in the Explanatory Note.

33. We do not accept Mr Gittins submissions in relation to the Explanatory Note. Mr Mantle referred us to meaning of the term ‘land’ in a statutory context. *Section 3(1) Interpretation Act 1976* defines land as follows:

“ ‘land’ includes messuages, tenements and hereditaments, houses and buildings of any tenure, and any interest in land, and any easement or right in, to or over land. ” (Emphasis added)

34. We should also mention that the UK Interpretation Act 1978 defines land in similar terms, and in particular as including “any estate, interest ... in or over land”.

35. There is no reason to expect the draughtsman of the Explanatory Note to have used a more limited meaning of the term land. Indeed there is no rationale to distinguish between land and an interest in land in the present context.

36. We have already rejected Mr Gittins’ further submission in relation to the Explanatory Note. Land is deemed to be goods and the Explanatory Note confirms it is to be excluded from zero rating when donated to a charity.

37. Our construction of the statutory provisions, including our conclusion that the IOM legislation and the UK legislation have the same effect, is enough to dispose of this appeal. We do not need to consider therefore what the position might have been if the Isle of Man legislation did not correspond to the UK legislation.

38. For the sake of completeness we also briefly set out further submissions made by Mr Mantle in support of the Treasury’s position.

39. Firstly, Mr Mantle submitted and Mr Gittins accepted that a provision for zero rating is an exemption from VAT and as a general rule must be strictly construed (See *Stichting Uitvoering Financiële Acties v Staatsecretaris van Financiën (Case 348/87) [1989] ECR 1737*). Hence *Item 2* is to be strictly construed and *Note 1F*, which limits the exclusion, is to be broadly construed. In the present context that would support the conclusion we have reached above that excludes land or an interest in land from zero rating.

40. Secondly, there is no policy reason why the gift of a 999 year lease of land should be zero rated and the gift of a freehold interest in land should be standard rated. As appears above, we accept that submission

41. Thirdly, it is not necessary for the Isle of Man VAT legislation to repeat word for word the UK legislation in order to comply with the Common Purse Agreement. The two will correspond where they have the same effect. Mr Gittins on the other had suggested that they must correspond word for word. We can see the strength of Mr Mantle’s submission, but strictly it is not necessary for us to express any view on this issue and we prefer not to do so.

42. In this context Mr Mantle pointed to the derivation of the Isle of Man provision, in particular that it was the same form of words as had been used in the UK in *section 5(6) Finance Act 1972*. Without seeing precisely how *section 5(6)* came to be *Paragraph 4 Schedule 4 VATA 1994* and the history of the Isle of Man legislation we cannot attach significance to this derivation.

43. Fourthly, Mr Mantle submitted that the UK provisions must implement the terms of the EU Principal VAT Directive (2006/112/EC). *Article 14* of that Directive provides as follows:

