



TC04157

Appeal number: TC/2013/01329

VAT – supplies of services by mother church of Scientology religion to churches in the UK – whether single supply or multiple supplies – whether exempt as educational services or standard rated as governance and ecclesiastical management services – art 132(1)(i), principal VAT Directive; Items 3 and 4, Group 6, Sch 9 VATA 1994

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**CHURCH OF SCIENTOLOGY
RELIGIOUS EDUCATION COLLEGE INC**

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE ROGER BERNER
MS SHAMEEM AKHTAR**

Sitting in public at 45 Bedford Square, London WC1 on 5 November 2014

Peter Hodkin, Hodkin & Company, solicitors, for the Appellant

Philip Shepherd, HM Revenue and Customs, Appeals & Reviews, for the Respondents

DECISION

1. The appellant, Church of Scientology Religious Education Inc (“CSR”), is an Australian charity. The churches of Scientology in England, where Scientology is a recognised religion¹, are part of CSR, which is registered for VAT in the UK. CSR largely makes exempt supplies of education, but also makes some taxable supplies.

2. Scientology was founded by L Ron Hubbard more than 60 years ago. Its scriptures consist of tens of millions of written words and his spoken words in over 3000 recorded lectures. Church of Scientology International (“CSI”) is a Californian charity which is described as the mother church of the Scientology religion. It creates courses and services from the scriptures, which it translates into many languages and delivers throughout the world through thousands of affiliated churches, missions and groups.

3. This appeal concerns the nature of the services which CSI provides to CSR. It is a relevant question because, since 1 January 2010, those services, which had hitherto been outside the scope of UK VAT, have been treated as having their place of supply in the UK. Accordingly, if and to the extent those supplies are taxable supplies, CSR will be liable to account for VAT on those supplies under the reverse charge provisions. Because CSR is partially exempt, that will have the effect that a large part of that VAT will not be capable of being recovered by CSR. By contrast, if the supplies made by CSI are exempt, as CSR claims them to be, no reverse charge will apply.

4. The respective primary positions of the parties are:

(1) CSR’s position is that there is a single supply made by CSI to CSR of educational services falling within the exemption for such services in Group 6 of Schedule 9 to the Value Added Tax Act 1994 (“VATA”).

(2) HMRC’s position is also that there is a single supply, but that it is a “supply of overall governance and specific assistance for churches and/or giving ecclesiastical direction to all churches of Scientology worldwide, seeing the orthodoxy of the Scientology religion is maintained and providing worldwide ecclesiastical management of the church as a whole”. As such, it is said, the supply is a standard rated supply, and the exemption claimed by CSR does not apply.

5. Both parties agree, therefore, that the supply made by CSI to CSR is a single supply. They disagree only as to the classification of that supply. Unusually, however, both parties envisage that the tribunal might take a different view, and decide that CSI made multiple supplies. In that event, they say, any remaining question of apportionment should be left, in the first instance, to the parties, with liberty to apply to the tribunal in case of further dispute in that respect.

¹ This was confirmed by the Supreme Court in *R (on the application of Hodkin and another) v Registrar General of Births, Deaths and Marriages* [2013] UKSC 77

The facts

6. We were provided with a bundle of documents and had a witness statement of Mr Massimo Angius, a trustee of CSR since 1997. Mr Angius also gave oral evidence, and was cross-examined by Mr Shepherd for HMRC.

5 7. From the evidence before us, we make the following findings of fact.

8. Out of the work of Mr Hubbard, hundreds of courses and religious services have been produced. This work took place both during Mr Hubbard's life, and following his death in 1986. New courses and religious services continue to be produced, and there remains a continuing process of revision to existing courses and services, which
10 takes account not only of material published in Mr Hubbard's lifetime, but also the substantial quantity of unpublished material and further directions left by Mr Hubbard on his death. This accords with what is termed in Scientology as the "Standard Technology"; the strict principle that all courses, services and materials must be exactly in accordance with Mr Hubbard's final work and directions.

15 9. Responsibility for these tasks lies in large part with CSI, which disseminates the materials to Scientology churches, missions and groups in more than 170 countries.

10. In common with the other churches of Scientology, CSR in the UK delivers many different courses and services, covering many aspects of life. We were provided with details of one such course, "The Student Hat", a course on practices
20 students should adopt in order to successfully study, understand and apply Scientology (and indeed any other subject), which is a necessary prerequisite to many other Scientology courses.

11. The materials we saw were, we understand, typical of a Scientology course. We find that such a course typically comprises:

25 (a) the curriculum, consisting of a checklist of all the study steps, essays and exercises the student is required to undertake in proper sequence;

30 (b) the course pack, which is a ring binder containing all the bulletins written by Mr Hubbard, in their most up-to-date revised form, which have to be studied as part of the particular course;

(c) the drill packs, containing practical exercises and learning drills for the course;

(d) taped lectures of Mr Hubbard, on CD, complete with full transcripts and glossaries, which are part of the course; and

35 (e) examination materials.

12. Students on The Student Hat also have the benefit of a large overall glossary for the course, which includes definitions of some 6,000 terms, expressions and references used by Mr Hubbard. Thus, by way of example, the term "hat" derives
40 from the fact that certain persons, such as firemen, policemen and train conductors often wear special hats to indicate their jobs. This is used in the sense of what a

person needs to know to do his job. Thus the Student Hat is the pack of materials that teaches the technology of how to study; the student learns how to wear his student hat in future studies.

13. All these courses and materials are prepared by CSI. They are provided to CSR under an agreement between CSI and CSR which was entered into on 1 January 1992 and which is known as the Ecclesiastical Services Agreement (“ESA”). Prior to that time CSI provided the individual services as described in the ESA (and which we shall consider in detail below), and made individual charges to CSR. It was because that process proved to be cumbersome and inconvenient that the ESA was entered into.

Ecclesiastical Services Agreement

14. The ESA is structured in a familiar way, with a series of recitals followed by a number of operative clauses. The matters recited include the origins of Scientology and that:

15 (a) A basic tenet of the religion is that doctrines contained in the Scientology scriptures must be observed in an orthodox manner to the end that the correct technology is applied in the correct manner.

20 (b) CSI, as the mother church, is responsible for overseeing the worldwide practice and dissemination, and expansion, of the religion. In that capacity CSI furnishes churches with advice, guidance and formulated direction designed to achieve the goals of the religion.

25 (c) CSI’s staff includes highly-trained scientologists, but also personnel skilled in public relations, legal affairs, financial planning and management, and real property acquisition and management. CSI also maintains large expertly-staffed departments for publication and dissemination of religious materials in various languages throughout the world.

30 (d) CSI’s activities, for the benefit of worldwide Scientology, impose a financial burden on CSI. Recognising both that and the incalculable benefits received by CSR from services provided by CSI, the ESA was entered into for the provision of those services in exchange for a financial contribution by CSR.

15. The services to be provided by CSI to CSR are described, first, in general terms, and then more specifically but not exhaustively. The general description is:

35 “Ecclesiastical Services. CSI shall furnish to [CSR], the services more particularly described hereinbelow, which services have as their goal the pure and ethical application of the Scientology Scriptures, the perpetuation of the religion of Scientology, the orthodox ministrations of Scientology religious services and the continued growth and expansion of the religion. CSI will provide specific services at the
40 specific times mandated by the Scientology Scriptures.”

16. Twelve specific services are identified, though this is expressed to be “without limitation”. We shall set out in full the descriptions of the specific services, and make findings on the performance of those services from the other evidence, in particular the evidence of Mr Angius, before us.

Description of service	Our findings
<p>(a) CSI’s specially trained personnel shall evaluate the activities of [CSR] to ensure that delivery of services by [CSR] and the conduct of [CSR] personnel are in accordance with the Scientology Scriptures and to assist the growth of [CSR] and the expansion of the religion.</p>	<p>The object of the service provided by CSI is to ensure the uniformity and correct delivery of the courses provided by CSR. It is a matter of oversight. We heard evidence from Mr Angius that CSI sends inspectors to CSR at least once a year. Those inspectors go into the classes and observe how the classes are taught. Where necessary they offer correction on the spot.</p> <p>Although the evidence of Mr Angius on this aspect was less than precise, we find that these inspections typically last one week and involve three or four personnel from CSI. Those inspectors are accompanied by one of the CSR personnel. There is a system of immediate feedback, which is followed up subsequently by compliance reports by CSR to CSI.</p>
<p>(b) CSI will provide [CSR] with all necessary guidance in writing or otherwise to ensure adherence to the Scientology Scriptures.</p>	<p>CSI releases educational courses, and also programmes for the implementation of the courses. Those programmes include programmes for the instructors, for “word clearers” (word clearing is discovering the meaning of words) and programmes for those staff of CSR responsible for quality control in the UK (mirroring the quality control personnel of CSI).</p> <p>We were shown an example of guidelines issued by CSI with regard to delivery of the Personal Efficiency Course. This comprises guidelines for both the person in charge of delivery of the course and the course assistant. The guidelines are both detailed and prescriptive.</p>

<p>(c) CSI will take all necessary supervisory action to ensure that [CSR] fully complies with any guidance CSI has provided so it can help identify and resolve problems that personnel of [CSR] may have in accomplishing its objectives.</p>	<p>This service is supervisory in nature. Exercises, as part of a given course, may be carried out individually or with another person. Quite detailed notes are taken on what happens during an exercise. Those notes are placed in a folder and are reviewed by a supervisor within CSR.</p> <p>On occasion, in the view of the CSR supervisor, things may not go according to plan. The whole folder will then be sent to CSI for review. Such a review, Mr Angius told us, and we accept, was quite extensive and time-consuming. Asked how extensively this service was availed by CSR, Mr Angius' evidence, which again we accept, was that in the past year this process was applied to hundreds of individual cases.</p> <p>In providing this service, CSI are seeking to achieve a standard and uniform procedure. The purpose is to achieve the aims of Scientology. The aim is to ensure that the student is happy with what has been achieved as a result of the particular course, and will be willing to enrol in a further course. We note, in this regard, that the guidelines prescribe that the person in charge of a particular course will lead attendees directly to the Public Registrars for enrolment on the next suitable course.</p>
<p>(d) CSI shall not less often than weekly analyze the statistical information furnished to it by [CSR] and will issue such directives as are necessary to ensure that the ministry of [CSR] and the conduct of its personnel are in accordance with Scientology Scriptures and to further the growth of [CSR] and expansion of the religion.</p>	<p>Each department of CSR produces statistics. Those include the numbers enrolling and paying for courses, the numbers attending the courses and how many graduate.</p> <p>The role of CSI is to interpret the statistics, and for example to compare the numbers enrolling with the numbers of those graduating from the courses.</p> <p>Under this heading, too, CSI undertakes performance reviews in order to decide</p>

	<p>whether to make an intervention. CSI will also, in given circumstances, issue orders to CSR. An example was if there has been an attempt locally to short cut a particular requirement, such as a requirement for one-to-one teaching. That would give rise to an order from CSI to follow the prescribed guidelines, and may involve further training or instruction.</p> <p>This, we find, is an important element of the relationship between CSI and CSR. The service provided by CSI in this respect is one of overall quality control by CSI. This is particularly important given the emphasis on uniformity, and the strict approach taken. Violations of procedure are frowned upon, and if persisted with could result in excommunication.</p>
<p>(e) CSI shall review on a periodic basis the financial status of [CSR] and shall offer recommendations as to the solvency of [CSR] and its ability to implement all programs.</p>	<p>Mr Hubbard devised what he considered to be the ideal financial system. This includes guidelines on such matters as how much to re-invest, funding priorities and spending plans.</p> <p>CSI reviews the financial statistics. Asked what benefit was obtained by CSR from the provision by CSI of this service, Mr Angius explained, and we accept, that it provided for CSR both stability and certainty in its financial affairs.</p>
<p>(f) CSI shall advise CSR on matters relating to the physical premises in which it operates, including, without limitation, location, design, acquisition, renovation, construction and operation.</p>	<p>Property matters are the subject of an ongoing programme. CSI sets the standards for accommodation that are to be met, according to Mr Hubbard's own guidance, as to size and configuration of premises. A programme under which each church would acquire new premises had been under way since 2004.</p>
<p>(g) CSI shall counsel [CSR] in its selection and posting of material to ensure conformity with the Scientology Scriptures.</p>	<p>This service relates to promotional material, for both internal and external consumption. By way of example, CSI produces "shooting boards", for use in</p>

	<p>producing advertising material. Although CSR also produces its own posters, it principally relies on those produced by CSI, which seek to achieve a consistent design. These may consist of a digital file received from CSI to which is then added the address of the particular church. The aim of these advertising materials is to promote the courses.</p>
<p>(h) CSI shall supervise and approve all decisions and rulings of ecclesiastical courts and committees of evidence through the office of the International Justice Chief and his staff. The International Justice Chief shall review ecclesiastical justice proceedings of [CSR] where such review is mandated by the Scientology Scriptures or requested by [CSR] or its parishioners.</p>	<p>Inspectors from CSI can instigate disciplinary action through a process of committees of evidence. The ultimate sanction is one of excommunication. That is something that can only be authorised by the head of CSI.</p> <p>The application of the correct technology is mandatory for all. An example given of where a transgression could occur would be in the production of an unauthorised translation of course materials.</p> <p>Transgression was not a regular occurrence. Much of the monitoring was self-monitoring. However, the overall purpose of the existence of the disciplinary regime was to achieve the result of delivering, with emphasis on course results, what had been promised in relation to a course.</p>
<p>(i) CSI shall disseminate to [CSR] copies of NCO Bulletins, HCO Policy Letters and other directives for use by staff of [CSR]. CSI shall also produce for use by [CSR], hat packs which consist in the main of HCO Bulletins, HCO Policy Letters and other parts of the Scientology Scriptures and which, for the most part, outline the purposes, duties and know-how of a post (i.e. an assigned area of responsibility within a Scientology org). CSI shall furnish materials to [CSR] to assist [CSR] in the ministry of Scientology religious services and the dissemination of the religion to ensure compliance with Scientology scriptures. Specifically, CSI shall provide shooting boards for magazines,</p>	<p>CSI is the only body that can produce the course materials to ensure application of the correct technology, by means of the following of very precise rules laid down by Mr Hubbard.</p> <p>Course materials are distributed to all relevant recipients. The instructions on how a particular course is to be run will go to CSR's qualifications secretary.</p> <p>CSI also produces "hat packs" setting out the requirements for performance of every function within the organisation, including all administrative function.</p>

<p>brochures, advertisements, leaflets and similar publications. In addition, CSI shall furnish [CSR] with surveys, flyers, posters, brochures, information packs, certificates and other religiously-orientated materials used for the dissemination and expansion of the religion.</p>	<p>Asked to what extent the provision of hat packs were related to the provision of the courses, Mr Angius said that all those functions were aimed at delivery of the courses. Although the functions are diverse, they are all aimed at the single goal of provision of the courses. Thus, by way of example given by Mr Angius, the finance function (the collection of money) was connected with the courses.</p>
<p>(j) CSI shall provide experienced media personnel to implement media campaigns in the area served by [CSR], which campaigns will be designed to disseminate the religion.</p>	<p>Mr Angius explained that CSI's media personnel would not come to the UK, but would coordinate, for example, TV campaigns that would run in the UK. The costs of those campaigns would be borne by CSI.</p>
<p>(k) CSI will conduct national and international events and media campaigns to disseminate the Scientology religion. CSI shall also conduct information campaigns via satellite television or video tape to permit [CSR] to disseminate national and international information to its parishioners.</p>	<p>In his evidence, Mr Angius described a convention held in October 2014 at the East Grinstead church. CSI had sent representatives to organise the event and had paid CSR for the facility. This was one of 4 – 5 major events sponsored by CSI during each year, taking place in different venues around the world. One example was an event for the International Association of Scientologists, of which every scientologist is a member, which funds charitable projects.</p> <p>Such conventions are recorded and the DVD is shown in each church. Thus the DVD of the event can be shown to students to inform them of good examples of the application of the correct technology, and how Scientology is progressing worldwide.</p>
<p>(l) CSI shall make contributions on an as needs basis to legal costs incurred in connection with defense of [CSR's] interests.</p>	<p>The evidence of Mr Angius was that services were only rarely provided under this head. One example he gave was of an action for infringement of copyright. Another was assistance with a claim of discrimination against a scientologist in the workplace. He accepted that matters dealt with under this head had less to do</p>

	with the courses themselves.
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17. Certain other services may be provided by CSI to CSR outside the terms of the ESA. CSI may dispatch missions to the UK outside those terms. Furthermore, training of CSR staff was a separate service for which a separate fee was payable.

5 18. The basis of the consideration paid by CSR for the services under the ESA is
founded on the principle that its contribution should be a proportionate share having
regard to the contributions of all churches of Scientology. At the time of the ESA, the
contribution of CSR was fixed at 12.5% of its Corrected Gross Income, defined for
10 the purpose of the ESA. Although there is provision for this percentage to be
adjusted, there has been no change to that percentage throughout the term of the
agreement.

15 19. There is, however, provision for adjustment on an annual basis. First, the ESA
provided that if the first annual accounting for CSI's common expenses (costs and
allocations incurred by CSI) showed either an excess or shortfall of contributions
under the ESA by the constituent churches, a credit or additional claim would be
made, on a proportionate basis, on CSR. Secondly, with respect to each calendar
year, CSI accounts for its "receipts, disbursements and set asides", and determines the
amount, if any, of a surcharge or credit to be afforded to all affiliated churches,
crediting or debiting the account of CSR as required.

20 20. Mr Angius' evidence was that the services provided under the ESA were very
diverse, but that they were all intended to help CSR deliver Scientology courses and
services. Mr Angius also explained that, since CSI operated within a finite budget, it
had to prioritise different aspects of the service it provided from time to time, and that
within the different descriptions of services set out in the ESA there could be very
25 different amounts of services at different times. Indeed, in relation to some of the
more peripheral services, there might be times when none of that service was
provided at all. But he said that by far the greatest use by CSR (and, we perceive
other churches) of CSI's services related to the creation of the courses and their
materials in an ever-growing number of languages.

30 *Status of CSI under US tax law*

21. CSI is an organisation that is exempt from US federal income taxation under
section 501(c)(3) of the US Internal Revenue Code. It qualifies under that provision
because it is regarded as being operated exclusively as religious or charitable
organisations. We note, from a confirmatory letter dated 4 September 1996 from the
35 US Internal Revenue Service to Lord McNair in the House of Lords, that although s
501(c)(3) relates also to educational organisations, that element did not form the basis
of the IRS's confirmation, even in respect of CSI's related educational entities.

22. A further requirement of section 501(c)(3) is that no part of the entity's net
earnings can inure to the benefit of any private shareholder or any individual. In

reaching its conclusions on the exemption for CSI, the IRS considered voluminous materials submitted by CSI, including in relation to financial activities and staff compensation arrangements. It was also confirmed that the activities of CSR had no adverse impact on the tax exempt status of CSI.

5 **The law**

23. Article 132(1) of the Principal VAT Directive (Council Directive 2006/112/EC) (“PVD”) provides for exemptions from VAT for certain activities in the public interest. Included amongst those activities are:

10 “(i) the provision of children’s or young people’s education, school or university education, vocational training or retraining, including the supply of services and of goods closely related thereto, by bodies governed by public law having such as their aim or by other organisations recognised by the Member State concerned as having similar objects”

15 24. Article 132(1)(i) has been implemented into UK law in Group 6, Sch 9 VATA. That provides, so far as is material:

Group 6 — Education

Item No

- 1 The provision by an eligible body of—
- 20 (a) education;
- (b) research, where supplied to an eligible body; or
- (c) vocational training.
- ...
- 3 The provision of examination services—
- 25 (a) by or to an eligible body; ...
- 4 The supply of any goods or services (other than examination services) which are closely related to a supply of a description falling within item 1 (the principal supply) by or to the eligible body making the principal supply provided—
- 30 (a) the goods or services are for the direct use of the pupil, student or trainee (as the case may be) receiving the principal supply; and
- (b) where the supply is to the eligible body making the principal supply, it is made by another eligible body.

35 ...

NOTES

(1) For the purposes of this Group an “eligible body” is—

...

(e) a body which—

(i) is precluded from distributing and does not distribute any profit it makes; and

(ii) applies any profits made from supplies of a description within this Group to the continuance or improvement of such supplies ...

...
(4) "Examination services" include the setting and marking of examinations, the setting of educational or training standards, the making of assessments and other services provided with a view to ensuring educational and training standards are maintained.

Discussion

Single supply or multiple supplies

25. We start, as we were invited to do so by the parties, by considering whether the services provided by CSI to CSR under the ESA are provided by way of a single supply or by multiple supplies. In so doing, as we explained to the parties at the hearing, we are labouring somewhat under the disadvantage that neither party put forward a positive argument in favour of a multiple supplies analysis, even though it necessarily followed that each party's alternative case were we to have been minded to find a single supply of the description argued for by the other party would be that there were multiple supplies.

26. The jurisprudence of the Court of Justice ("ECJ") on this question is now well-established, through the twin authorities of *Card Protection Plan Ltd v Customs and Excise Commissioners* (Case C-349/96) [1999] STC 270 and *Levob Verzekeringen BV and another v Staatssecretaris van Financiën* (Case C-41/04) [2006] STC 766.

27. In *CPP* the question was whether the card plan provided by CPP constituted a single supply, and if so of insurance services or card registration services, or whether there were separate supplies of insurance on the one hand and other card services on the other. The House of Lords referred the matter to the ECJ, which answered the question whether there was a single supply or multiple supplies in the following way:

"26. By its first two questions, which should be taken together, the national court essentially asks, with reference to a plan such as that offered by CPP to its customers, what the appropriate criteria are for deciding, for VAT purposes, whether a transaction which comprises several elements is to be regarded as a single supply or as two or more distinct supplies to be assessed separately.

27. It must be borne in mind that the question of the extent of a transaction is of particular importance, for VAT purposes, both for identifying the place where the services are provided and for applying the rate of tax or, as in the present case, the exemption provisions in the Sixth Directive. In addition, having regard to the diversity of commercial operations, it is not possible to give exhaustive guidance on how to approach the problem correctly in all cases.

5 28. However, as the court held in *Faaborg-Gelting Linien A/S v Finanzamt Flensburg* (Case C-231/94) [1996] STC 774 at 783, [1996] ECR I-2395 at 2411–2412, paras 12 to 14, concerning the classification of restaurant transactions, where the transaction in question comprises a bundle of features and acts, regard must first be had to all the circumstances in which that transaction takes place.

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

15 30. There is a single supply in particular in cases where one or more elements are to be regarded as constituting the principal service, whilst one or more elements are to be regarded, by contrast, as ancillary services which share the tax treatment of the principal service. A service must be regarded as ancillary to a principal service if it does not constitute for customers an aim in itself, but a means of better enjoying the principal service supplied (see *Customs and Excise Comrs v Madgett and Baldwin (trading as Howden Court Hotel)* (Joined cases C-308/96 and C-94/97) [1998] STC 1189 at 1206, para 24).

20 31. In those circumstances, the fact that a single price is charged is not decisive. Admittedly, if the service provided to customers consists of several elements for a single price, the single price may suggest that there is a single service. However, notwithstanding the single price, if circumstances such as those described in paras 7 to 10 above indicated that the customers intended to purchase two distinct services, namely an insurance supply and a card registration service, then it would be necessary to identify the part of the single price which related to the insurance supply, which would remain exempt in any event. The simplest possible method of calculation or assessment should be used for this (see, to that effect, *Madgett and Baldwin* (at 1208, paras 45 and 46)).

25 32. The answer to the first two questions must therefore be that it is for the national court to determine, in the light of the above criteria, whether transactions such as those performed by CPP are to be regarded for VAT purposes as comprising two independent supplies, namely an exempt insurance supply and a taxable card registration service, or whether one of those two supplies is the principal supply to which the other is ancillary, so that it receives the same tax treatment as the principal supply.”

30 33. The ECJ in *CPP* was at pains to point out that the guidance it was giving on how to approach the problem of ascertaining the character, for VAT purposes, of a transaction comprising a bundle of features and acts, was not exhaustive. As the House of Lords in *College of Estate Management v Revenue and Customs Commissioners* [2005] STC 1597 observed (per Lord Rodger of Earlsferry, at [12]),

the essential criterion, as explained at para 29 in *CPP*, is whether there is a single supply from an economic point of view. It has accordingly been determined that a transaction of such a nature may be a single supply even if it is not possible to identify one or more transactions, in goods or services, that are ancillary to others.

5 29. That was the case in *Levob*, where the contract was for the supply of software for the management of insurance policies. The contract broke the price down into a sum for the basic software and the cost of customising it to Levob's platform. The ECJ held that there was a single supply which, in the light of the degree and importance of the customisation process, had to be classified as a supply of services.

10 30. The ECJ said:

15 "20. Taking into account, firstly, that it follows from art 2(1) of the Sixth Directive that every transaction² must normally be regarded as distinct and independent and, secondly, that a transaction which comprises a single supply from an economic point of view should not be artificially split, so as not to distort the functioning of the VAT system, the essential features of the transaction must in the first place be ascertained in order to determine whether the taxable person is making to the customer, being a typical consumer, several distinct principal supplies or a single supply (see, by analogy, *Card Protection Plan* [1999] STC 270, [1999] 2 AC 601, para 29).

20 21. In that regard, the Court has held that there is a single supply in particular in cases where one or more elements are to be regarded as constituting the principal supply, whilst one or more elements are to be regarded, by contrast, as ancillary supplies which share the tax treatment of the principal supply (*Card Protection Plan* [1999] STC 270, [1999] 2 AC 601, para 30, and *Customs and Excise Comrs v Primback Ltd* (Case C-34/99) [2001] STC 803, [2001] 1 WLR 1693, para 45).

25 22. The same is true 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.

30 23. In the context of the co-operation required by art 234 EC, it is indeed for the national courts to determine whether such is the situation in a particular case and to make all definitive findings of fact in that regard. Nevertheless, it is for the Court to provide the national courts with all the guidance as to the interpretation of Community law which may be of assistance in adjudicating on the case pending before them.

35 24. With regard to the dispute in the main proceedings, it is apparent, as held by the *Gerechtshof te Amsterdam* whose decision was the subject of the appeal in cassation pending before the referring court, that the economic purpose of a transaction such as that which took

² As noted in the Court of Appeal in *David Baxendale Limited v Revenue and Customs Commissioners* [2009] STC 2578, per Patten LJ at [17], the reference here to "transaction" is a mis-translation; it should be a reference to "supply".

5 place between FDP and Levob is the supply, by a taxable person to a consumer, of functional software specifically customised to that consumer's requirements. In that regard, and as the Netherlands Government has correctly pointed out, it is not possible, without entering the realms of the artificial, to take the view that such a consumer has purchased, from the same supplier, first, pre-existing software which, as it stood, was nevertheless of no use for the purposes of its economic activity, and only subsequently the customisation, which alone made that software useful to it.

10 25. The fact, highlighted in the question, that separate prices were contractually stipulated for the supply of the basic software, on the one hand, and for its customisation, on the other, is not of itself decisive. Such a fact cannot affect the objective close link which has just been shown with regard to that supply and that customisation nor the fact that they form part of a single economic transaction (see, to that effect, *Card Protection Plan* [1999] STC 270, [1999] 2 AC 601, para 31).

15 26. It follows that art 2 of the Sixth Directive must be interpreted as meaning that such supply and such subsequent customisation of software are, in principle, to be regarded as forming a single supply for VAT purposes.”

20 31. The question, therefore, is whether, on the one hand, the transaction comprises a single supply from an economic point of view, or on the other comprises a number of distinct and independent supplies. The former may be the case where one or more elements are ancillary to another, principal element, or where the elements or acts supplied are so closely linked that they form, objectively, a single, indivisible, supply which it would be artificial to split.

25 32. The enquiry is an objective one, the reference point being the typical consumer. All the circumstances are to be taken into account. One of those circumstances is the contractual relationship between the parties. That, however, is not decisive; the search is for the economic reality, which may or may not be determined by the contractual arrangements (see, for example, *Tesco plc v Customs and Excise Commissioners* [2003] STC 1561, per Jonathan Parker LJ, at [159], and *Revenue and Customs Commissioners v Paul Newey (t/a Ocean Finance)* (Case C-653/11) [2013] STC 2432).

30 33. Applying these principles, and having regard to the evidence before us, we can dispose quite shortly with the argument put forward by HMRC. We can understand how, in the light of the particular drafting of the ESA, it might be considered that the supply being made by CSI might be encapsulated as a supply of ecclesiastical services, and as a single supply of such services performed in the various ways set out, although not exhaustively, in the agreement. But in our view such an analysis does not reflect the economic reality of the underlying services provided.

35 34. In *Bophuthatswana National Commercial Corp Ltd v Customs and Excise Commissioners* [1992] STC 74, in the High Court, Rose J allowed an appeal by the taxpayer company (BNCC) from the decision of the VAT tribunal that there was a single commercial relationship between BNCC and the government of

Bophuthatswana and that BNCC had provided a single supply of services that would be supplied by an accredited diplomatic mission, and that the provision of certain services, in relation to advertising, was an incidental part of that overall supply. On appeal to the Court of Appeal, the judgment of Rose J was upheld.

5 35. In giving the leading judgment in the Court of Appeal, Nolan LJ (with whom Evans LJ and Neill LJ agreed) said, at p 708:

10 “But in the context of an Act which charges tax on specific supplies of goods or services in a specific territory during a specific 3-month period it is not always possible to approach the matter as if it involved a single transaction. Such an approach may be perfectly sound when one is considering a single simple transaction or type of transaction involving two or more elements, and one has to decide what is the true and substantial nature of the consideration given for the payment. That was the approach in fact adopted in the cases to which we referred, of which the most recent, *British Airways plc v Customs and Excise Comrs* [1990] STC 643, will serve as an example. That was the case in which the question was whether, by providing in-flight catering for its passengers, British Airways was supplying two separate services, one of transport by air which fell to be zero-rated under item 4(a) or (c) of Group 10 of Sch 5, and the other of in-flight catering which was chargeable to tax by virtue of para (a) of Group 1 of Sch 5. The facts were undisputed, and this court held as a matter of law that British Airways had made only one supply, namely that of air transportation, to which the provision of in-flight catering was merely ancillary.

25 The difference in the present case is that, although there may be only a single commercial relationship between BNCC and the government of Bophuthatswana, the individual supplies of goods and services in the course of that relationship appear to vary widely both in nature and in taxability or potential taxability. It cannot be right in my judgment to cast over them a blanket label 'services of the sort ordinarily provided by a diplomatic mission' and to conclude that, since this label does not appear in the relieving provisions, the whole of the services must be charged at the standard rate.”

35 36. With respect to the arguments for HMRC, it seems to us that these essentially amount to no more than attaching a label to the aggregate of services provided by CSI, and concluding that there is thus a single supply of ecclesiastical services. That may well have been the generic description given to the range of services provided by CSI to CSR under the ESA, but it is nonetheless no more than a label. What matters is not the label, whether or not it is one that the parties themselves have adopted, but the economic reality or substance of the underlying transactions.

45 37. The services provided under the ESA are diverse in character. Some are directly related to the provision of education, such as the provision of the course material and examination sheets and associated guidance. Others, such as finance and discipline, relate principally to governance and control by CSI. There are services of advertising and legal assistance. We do not consider that the totality of these services

can properly be analysed, in economic terms, as a single supply of “ecclesiastical services”. We accordingly reject HMRC’s single supply analysis.

38. Mr Hodkin, for CSR, argued that the analysis of HMRC had proceeded from the viewpoint of CSI and not, as it should have, from the viewpoint of the typical consumer. That, of course, is the correct approach, as follows from *CPP* and *Levob*, and Mr Hodkin drew our attention too to the confirmation given by the Court of appeal to that proposition in *Revenue and Customs Commissioners v Weight Watchers (UK) Ltd* [2008] STC 2313, per Sir Andrew Morritt C at [17]:

10 “In summary, therefore, the court must have regard to all the circumstances. It must apply the relevant test on an objective basis. There are various formulations of what the relevant test is in *Card Protection Plan* (para 29) and *Levob* (para 22 and ruling 1). Common to all of them are the requirements that the court must look at the transactions from the view point of the typical consumer rather than the supplier. The extent of the linkage between the relevant transactions must be considered from an economic point of view, rather than, say, a physical, temporal or other standpoint. So regarded the question then is whether it would be artificial to split them into separate supplies. The fact that the supplier has charged a single price for the aggregate of the transactions is a relevant circumstance but is not conclusive because that price may be apportioned.”

39. Mr Hodkin submitted that the primary purpose of CSR is to deliver orthodox Scientology services to the public. The only services which are considered orthodox are the courses created by CSI. It is the services that CSI provide to CSR that enable CSR to provide such orthodox services to the public. CSR is an educational establishment. In common with other such establishments CSR says that it is the availability, content and quality of the education it delivers which is important, and that everything else is secondary to that. That therefore is the dominant purpose of CSR and, it is submitted, having regard to CSR’s viewpoint, the dominant purpose of the ESA.

40. We do not accept that this is a proper application of the typical consumer test. It strays into the territory of subjectivity, whereas the test is necessarily an objective one. It confuses purpose of the consumer with purpose of the contract, and is not decisive of the economic reality. The fact that the purpose of CSR, and other similar entities, would be to achieve the availability of educational material of the requisite quality does not answer the question whether what was provided under the ESA was a single supply, nor the nature of the supply or supplies.

41. Mr Hodkin submitted that there was a dominant supply, of education services, to which other services provided under the ESA were ancillary. We do not agree. Whilst we accept that the preponderance of what is provided under the ESA consists of the provision of course materials and services designed to ensure the quality and consistency of the education provided by CSR, we do not regard services relating to the financial affairs of CSR, premises, advertising and legal assistance as ancillary in the sense of being a means for the better enjoyment of those education services.

Viewed objectively, we regard those services equally as being principal supplies alongside the supplies of education services.

42. As was the case in *Bophuthatswana*, this is a case in which it is accepted that the services provided under the ESA are diverse. The extent to which particular services are provided, or whether certain services are provided at all, changes over time. This is not a case of a single simple transaction or a type of transaction involving one or more elements where what is to be decided is the true and substantial nature of what is provided for the payment. The fact that there is a single commercial relationship, under the ESA, between CSI and CSR cannot, in our view, in the circumstances of the range and nature of services which are provided, result in the aggregation of different services provided under the agreement being treated as a single supply. This is not a case where there is a single indivisible economic supply which it would be artificial to split. Any artificiality, in our view, would be to treat these eminently divisible elements as a single whole.

43. In view of our conclusion that the services provided under the ESA are multiple supplies and not a single supply, the parties are agreed that we should adjourn to enable them to seek to agree an appropriate apportionment as between exempt and standard rated supplies. We are happy to do so, but there are some further observations we should make in view of the submissions we have received.

Whether certain services provided under the ESA should be regarded as a single supply

44. Although we have decided that the aggregation of services under the ESA cannot be regarded as a single supply, that would not preclude a finding that certain of the services should, taken together, be a single supply. The only services to which this analysis could attach, in my view, would be the provision of course materials and those services we shall describe in more detail below as examination services.

45. We did not, of course, receive any argument on that issue, and so any comments at this stage should be regarded as provisional. But, having considered the point, we take the view that each of those services must properly be regarded as a supply in its own right. It would not be appropriate, in our view, in the circumstances of this case, to treat either the provision of course materials as ancillary to the examination services, or to treat the provision of the examination services as ancillary to the provision of the course materials. Each complements the other, but they occupy a position of equal significance in the scheme of the ESA.

Examination services

46. For HMRC, Mr Shepherd argued that a supply could only be exempted as one of examination services if it was provided by an independent person, and represented an independent check of the courses provided. He submitted that the necessary element of independence was lacking from the services provided by CSI as the parent church.

47. We do not consider that the exemption for the supply of examination services necessarily imports a test of independence. We can well imagine that, in particular circumstances, a lack of independence could result in a finding that the services provided did not encompass the necessary setting and maintenance of standards to qualify as examination services. But that would depend, not on the fact of lack of independence, but on the effect such a circumstance would have on the nature of the services provided.

48. In this case we are satisfied that the relationship between CSI and CSR is not such as to inhibit the relevant services provided by CSI being characterised as examination services. It is clear that the overall setting of standards is carried out by CSI, that it is CSI that, independently, sets the curriculum and sets the examinations. It is CSI that makes assessments and performs other activities, such as the making of inspections with a view to it ensuring that the educational standards which it has set are maintained by CSR.

49. Mr Hodkin referred us to the decision of the VAT tribunal (Chairman: Michael Tildesley OBE) in *RM Education PLC v Revenue and Customs Commissioners* (9 January 2009; no 20911), a case which had considered whether the provision of a package of software applications and IT support services to an examination board constituted examination services. Dismissing the appeal, the tribunal said (at [48]);

“... we found that the Appellant was not responsible for setting the curriculum, devising exam questions, establishing marking schemes and standards of marking, monitoring the performance of examiners, and the validation and accreditation of exams ...”

50. We do not consider that this adds anything to the meaning of examination services, or the non-exclusive definition in Note (4) of Group 6, Sch 9 VATA. We are satisfied that those matters we have outlined earlier do fall within the meaning of that term. To assist the parties, on the evidence before us, services provided under the following paragraphs of the ESA to which we have referred in our findings of fact would be included under this head: (a), (b), (c), (d) (but only to the extent that the analysis of the statistical information goes to the maintenance of educational standards, and not the recruitment of new students or the growth or expansion of the religion), and (i) to the extent that the materials produced are related to the examination process and not the conduct of the courses.

Closely related services

51. Mr Hodkin’s case is that the services that CSI provides in creating the educational services and making them available in multiple languages to CSR is an exempt supply within Item 4, Group 6.

52. Mr Shepherd argued that the relevant services were management services, predominantly concerned with ensuring that CSR performed in the manner prescribed by CSI, and that the materials provided under the ESA were to assist CSI in the dissemination and expansion of the Scientology religion. As such, Mr Shepherd submitted, those services could not be regarded as closely related to education.

53. On the evidence, we agree with Mr Hodkin. We accept that, to the extent of the provision of course materials, those services fall into the category of services closely related to the supplies of education by CSR. The relevant principles were summarised by the Upper Tribunal recently in *Revenue and Customs Commissioners v Brockenhurst College* [2014] STC 1332, at [34]:

“In our judgment, in relation to the exemption for supplies closely related to education, the following are the principles to be derived from the case law:

(1) As a general principle, the exemption must be construed so as to be consistent with its objective and so as to ensure its intended effect (see, for example, *Skatteverket v PFC Clinic AB* (Case C-91/12) [2013] STC 1253, para 23).

(2) An especially narrow interpretation of the exception for activities closely related to a principal exempt supply of education is not appropriate, since the exemption is designed to ensure that the benefits of the principal supply are not hindered by the increased costs of providing it that would follow if the principal supply, or the closely related activities, were subject to VAT (*EC Commission v Federal Republic of Germany*, para 47³).

(3) To be closely related to a principal exempt supply, the service in question must be an ancillary supply, that is one that does not constitute an end in itself, but is a means for better enjoying the principal service supplied (*Horizon College*, paras 28 and 29⁴).

(4) The closely related supply must be essential to attain the objective of the principal supply (art 134(a)). In order to satisfy that requirement, the ancillary supply should be of a nature and quality such that, without it, there could be no assurance that the education from which the students benefit would have an equivalent value (*Horizon College*, para 39).

(5) There is no requirement that the closely related supply be made to the same recipients as the principal supply. To be services closely related to education it is not necessary for those services to be supplied directly to those students (*Horizon College*, para 32).”

54. The Upper Tribunal in *Brockenhurst College* further concluded, at [47], that the requirement for “direct use” of the pupil, student or trainee in Item 4, Group 6 denotes no more than a need for the goods or services to be for the direct benefit of the student. There is no requirement under EU law that the goods or services must be consumed by the student. The test is whether those services are a means whereby the students better enjoy the supply of education to them.

55. The course materials provided by CSI to CSR are a means for the better enjoyment of the students of CSR’s educational supplies. That service does not

³ *EC Commission v Federal Republic of Germany* (Case C-287/00) [2002] STC 982

⁴ *Stichting Regionaal Opleidingen Centrum Noord-Kennemerland/West Friesland (Horizon College) v Staatssecretaris van Financiën* (Case C-434/05) [2008] STC 2145

constitute an end in itself; it is only a means to CSR providing the education to its students. That education could not be provided by CSR without the provision by CSI of the course materials. Without those materials the education of those students would not have equivalent value.

5 56. In our view, on the evidence before us, the only element of the services provided by CSI to CSR under the ESA that would be capable of falling within Item 4 is that provided under paragraph (i) of the summary of the ESA services, and only to the extent that this constitutes course materials or other material that can be regarded as a means for CSR's students better enjoying the education provided to them.

10 *Is CSI an eligible body?*

57. The fact that, in our view, certain services are capable of falling within Item 4 is not the end of the matter. Where the supply of such services is to an eligible body such as CSI, it is necessary that the supply is made by another eligible body. This requirement will be satisfied only if CSI is an eligible body.

15 58. We have described the evidence before us on that question. It consisted partly of correspondence from the IRS confirming that CSI is accepted as exempt from US federal income tax, having satisfied certain conditions, including that no part of CSI's net earnings can inure to the benefit of any private shareholder or individual. Mr Hodkin submitted that was sufficient to satisfy the requirement, under Item 4 and
20 Note (1) that CSI is precluded from distributing and does not distribute any profit it makes.

59. We are not satisfied that this is the case. Although we appreciate the level of investigation undertaken by the IRS, it is not possible for us to be satisfied that the relevant tests under the relevant US tax law translate directly into satisfaction of the
25 non-profit distribution condition for an eligible body. We saw no constitutional or financial information concerning CSI itself, nor did we receive evidence from any person with relevant responsibility within CSI. In those circumstances, we could not conclude, on the evidence before us, that CSI is an eligible body.

60. The same considerations apply to the further condition in Note (1), that CSI
30 applies any profits made from the making of educational supplies as described in Group 6 to the continuance or improvement of such supplies. We acknowledge the provisions of clause 4 of the ESA, and the ongoing requirement for CSI to determine amounts of surcharge or credit to be debited or credited to the accounts of CSR and other churches with similar agreements. However, although this suggests that no
35 profit on the provision of the relevant services should be derived by CSI, we are unable to make a finding in this respect in the absence of further evidence. We had no evidence of the application of clause 4 on an annual basis, nor did we have relevant financial information relating to either CSR or CSI.

61. It will be for the parties to consider this matter further, and to seek agreement if
40 possible. In the event of disagreement, there is liberty to apply to the Tribunal for a further determination.

Standard rated supplies

62. On the basis of the evidence before us, we conclude that the following elements of the services provided under the ESA would fall outside the scope of Group 6, irrespective of the conclusion reached on the status of CSI as an eligible body: (d) (to
5 the extent that such services are not examination services), (e), (f), (g), (h), (i) (to the extent that such services are not either examination services or closely related to the supply by CSR of education), (j), (k), and (l).

Stay of proceedings

63. These proceedings are stayed for a period of six months from the date of release
10 of this decision to enable the parties to consider, in the light of our determination that CSI makes multiple supplies under the ESA, and our further observations, whether agreement can be reached on the manner of apportionment of those supplies as between exempt and standard rated supplies.

64. There shall be liberty to apply to the Tribunal for further determination. If
15 further time is required, the parties should make an application to the Tribunal for an extension of time before the expiry of the six-month stay, or any extension.

Application for permission to appeal

65. This document contains full findings of fact and reasons for the decision. Any
20 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.

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**ROGER BERNER
TRIBUNAL JUDGE**

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RELEASE DATE: 28 November 2014