TC04469

Appeal number: TC/2011/07644

VAT — Provision by Appellants of cattle sheds for accommodation of customers' cattle — Provision of feed to customers' cattle — Whether an exempt supply of a licence to occupy land or a standard-rated supply of "animal husbandry" — Whether claim for input tax time barred under reg 29(1A) VAT Regulations — Appeal allowed in part

FIRST-TIER TRIBUNAL
TAX CHAMBER

DAVID OWEN **Appellants**
ANN OWEN

- and -

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

TRIBUNAL: JUDGE CHRISTOPHER STAKER
MR PHILIP JOLLY

Sitting in public in Prestatyn on 24 November 2014

Mr B Gavin Williams FCA of IG Jones & Co Chartered Accountants for the Appellants

Mr Susan Ellwood, Presenting Officer, for the Respondents

DECISION

Introduction

1. The Appellants appeal against an assessment to VAT issued on 20 July 2010 in the sum of £27,210, in respect of VAT periods ending 03/07 to 03/10. That assessment was upheld in a review decision of HMRC dated 26 November 2010.

Background

2. The following background matters do not appear to be in dispute between the parties. In any event, on the evidence before it the Tribunal finds the following background facts to be established.

3. The Appellants were at all material times in partnership in a VAT-registered business described as agricultural contracting, with a business address in Amlwch, Gwynedd. As part of their business activities, the Appellants for a fee made certain sheds on their property available to third parties for the accommodation of cattle belonging to those third parties. In the VAT periods material to the present appeal, the Appellants did not charge VAT on these supplies.

4. In approximately 2000, the Appellants undertook an extension to their residence. In their 03/07 VAT return, they claimed input tax in respect of 70% of the value of works carried out.

5. On 5 July 2010, HMRC officer Susan Edwards carried out an assurance visit. At that visit, she concluded that VAT should have been charged in relation to the supply of sheds for housing cattle, and that the input tax on the extension to the Appellants' residence was not recoverable.

6. A VAT assessment was consequentially issued to reflect those conclusions, and as noted above, this assessment was upheld on review. The Appellants now appeal against those assessments. Penalties were also imposed by HMRC, but these have not been included in the present appeal.

Applicable law

7. Schedule 8 of the Value Added Tax Act 1994 ("**VATA**") specifies supplies that are zero-rated. Item 2 in Group 1 of Schedule 8 specifies supplies of:

> Animal feeding stuffs.

8. Schedule 9 VATA specifies supplies that are VAT exempt. Item 1 in Group 1 of Schedule 9 specifies (subject to a list of exceptions):

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

9. Regulation 29(1A) of the Value Added Tax Regulations 1995 provided, at the time of the Appellants' 03/07 VAT return:

> The Commissioners shall not allow or direct a person to make any claim for deduction of input tax in terms such that the deduction would fall to be claimed more than 3 years after the date by which the return for the prescribed accounting period in which the VAT became chargeable is required to be made.

HMRC Guidance

10. HMRC Notice 701/15, "Animals and Animal Food" (December 2011) relevantly provides as follows:

> 10. Livery and other care packages
>
> 10.1 Keep of animals
>
> The supply of the keep of animals is generally standard-rated, but see paragraph 10.3. Even if you supply animal feed as part of the service of care, the full consideration for your service is standard-rated. The feed element cannot be treated as a separate zero-rated supply.
>
> 10.2 Stabling
>
> If you allow an owner exclusive use of stabling (that is you allocate all or an identifiable part of the stabling for the sole use of his animals) this is either an exempt supply of a right over land or standard-rated if you exercise the 'option to tax' – see Notice 742 Land and property.
>
> You may zero-rate separate supplies of feed (either as general feed or in the form of grazing rights) only when no element of care is supplied.
>
> 10.3 Livery services
>
> These are services provided for horses in a stable that go beyond the right to occupy the stable.
>
> They may include:
>
> • feeding or turning the animal out to graze
>
> • mucking out, spreading straw or other bedding
>
> • worming and clipping
>
> • grooming and plaiting
>
> • taking on any responsibility for the welfare of the animal, including arranging for veterinary treatment
>
> but not clearly identifiable separate supplies such as veterinary services.
>
> You must standard-rate the supply of livery services, including any food provided, unless the stabling is an exempt right over land – see paragraph 10.2 – which you have not opted to tax.
>
> If the supply of stabling is a right over land and you have not opted to tax it, the whole livery package is exempt unless it is provided by a special purpose stable. Livery packages provided by special purpose stables (such as race horse trainers, stud farms and stables involved in schooling horses or breaking them in) are standard rated.

The hearing

11. At a hearing on 19 May 2014, the Appellants were granted permission to bring a late appeal.

12. The substantive hearing of the appeal was held on 24 November 2014. At the hearing witness statements were provided and oral evidence was given by both Appellants, and by HMRC Officer Edwards. In their oral evidence, each witness adopted his or her witness statement. A witness statement was also provided by the Appellants' representative, Mr Gavin Williams. Before the Tribunal was a hearing bundle and a supplementary hearing bundle.

13. At the conclusion of the hearing, the Tribunal issued a direction providing for the filing by HMRC of further post-hearing written submissions on the applicable law, and by the Appellants of further written submissions in response. Further submissions were filed pursuant to that direction by HMRC on 17 December 2014 and by the Appellants on 12 February 2015.

The evidence of Mrs Owen

14. The witness statement of Mrs Owen states amongst other matters as follows. During her assurance visit, HMRC Officer Edwards did not visit any of the sheds to observe the livestock. Each individual customer is allocated a specific shed for their own exclusive use. The livestock of each customer are never allowed to mix with those of any other customer. Responsibility for the care and welfare of the livestock lies with the owner of the animals. The operation of mucking out takes place when the livestock have left and the sheds are empty.

15. In cross-examination, Mrs Owen stated amongst other matters as follows. The meeting with HMRC Officer Edwards did not take place on the farm. Mrs Owen does not recall stating at the meeting that cattle were provided with "bed and breakfast". It has always been the case that each customer is allocated a specific shed, the reason being that this is what customers want. The Appellants have about 8 sheds, and the Appellants' cattle are kept separately from their customers' cattle. If the customer provided their own food, the Appellants would put it in front of the cattle, but not necessarily every day as the bales may last more than a day. Mucking out only occurred after an owner had taken his or her cattle away, which might be after the cattle had been there for months. The sheds have no sides, so the Appellants do not need to do anything to let light in. The Appellants did not have written contracts with their customers for these arrangements; their customers just booked a shed and the Appellants charged them per head per day. The Appellants could always get hold of their customers if they needed to. The Appellants were not responsible for the cattle of others. The Appellants did not have to do anything to bring water to their cattle as the water came from rainwater.

The evidence of Mr Owen

16. The witness statement of Mr Owen was materially identical to that of Mrs Owen.

The evidence of Mr Williams

17. The witness statement of Mr Williams confirmed as follows. He has acted on behalf of the Appellants for some 30 years. He telephoned the VAT helpline some years ago and was told that in the Appellants' circumstances no output VAT should be charged on the trading arrangements with their customers. That concurred with the information provided in what is now VAT notice 701/15. Mr Williams telephoned

the English VAT helpline on 15 May 2014 and the Welsh VAT helpline on 21 November 2014 and received the same advice.

18. At the hearing, Mr Williams also stated as follows. He is a farmer himself, and the chair of two committees. In that capacity, he has met a large number of farmers and others in the agricultural industry. He has yet to meet anyone who has been instructed to charge VAT on arrangements such as this.

The evidence of HMRC Officer Edwards

19. The witness statement of HMRC Officer Edwards states amongst other matters as follows.

20. During her assurance visit, Mrs Owen said that the Appellants' business activities included provision of "bed and breakfast to cows". At one point she referred also to "care and feeding" of the cattle. At that visit, Mrs Owen further explained to her as follows. The sheds were specifically for the purpose of providing the "bed and breakfast" service. Generally, the food for the cattle was purchased by the Appellants, occasionally by the customer, but in all cases was given to the cattle by the Appellants. The cattle are left by the customer for the agreed term and all needs were catered for by the Appellants in the interim, including such things as general health and welfare, watering, etc. When asked why VAT had not been charged, Mrs Owen said at the time that she had been advised by her accountant that she did not need to charge VAT. At the time, Officer Edwards informed Mrs Owen that VAT would have to be charged.

21. At that assurance visit, Officer Edwards also noted that VAT incurred on extending the Appellants' family home had been claimed as input tax in 03/07, but the relevant invoices were more than three years old at the time of the claim. When asked why the claim had been made out of time, Mrs Owen had said that it was her fault in that she had been late in sending the invoices to her accountant. Officer Edwards informed her at the time that the claim would be disallowed as being out of time, but that it would be disallowed anyway as these were not business expenses.

22. In examination in chief, Officer Edwards stated amongst other matters that "bed and breakfast" were the actual words used by Mrs Owen at the meeting.

23. In cross-examination, Officer Edwards stated that although she asks set questions in inspection visits, this does not mean that she assumes or pre-judges answers. In re-examination, she acknowledged that her contemporaneous notes of the meeting were not verbatim notes of what was said.

The documentary evidence

24. Officer Edwards' contemporaneous handwritten notes of the inspection visit contain the words "Sheds – Bed and Breakfast – Cattle". The handwritten notes go on to state:

> Food provided & given by Partnership. Sometimes food provided by customer but given by Partnerhsip.

25. A typewritten VAT audit report prepared by Officer Edwards after the inspection visit states:

> Noted details of bankings re animal husbandry (trader provides 'B&B' for store cattle) trader charges per head for housing feeding and caring for store cattle owned by other farmers – Mrs Owen stated that she had queried the liability with her accountant and was told non vat bearing income- no evidence of info provided to acct or indeed ruling, not clear either whether ruling was in relation to exempt income or z/r [zero rated]. …
>
> Mrs Owen explained that an extensive extension had been undertaken on the family home (bungalow) Kitchen, dining room etc in 2000, that they had been lated [sic] sending the invoices through to the accountant who made the claim in 2007. Advised Mrs Owen re capping provisions and stated that the claim was out of time, also discussed general entitlement as the accountant had claimed 70% of the invoices a business use for a farm house. n.b. this is not a farm house nor is it on a working farm.

The Appellant's submissions

26. The Appellants' case is essentially that they made an exempt supply of a right to occupy land and a zero-rated supply of animal feed. The Appellants also rely on advice that they claim was given to their accountant by HMRC when he made telephone calls to the HMRC helpline. Reliance was also placed on Part 10 of Public Notice 701/15.

27. The Appellants submitted that the facts of the present case are distinguishable from *Smith v Commissioners of Customs & Excise* (VAT Tribunal, Manchester, 18 August 1988) ("*Smith*") and *Leander International Pet Foods Ltd (t/a Arden Grange) v Commissioners of Customs and Excise* [2003] UKVAT V18870 ("*Leander*").

The HMRC submissions

28. The primary submissions made on behalf of HMRC were as follows.

29. The onus is on the Appellant to show that the assessment by HMRC is incorrect. The assessments were made on the basis of information given by the Appellants to Officer Edwards at the time of the inspection visit. To the extent that the Appellants now give contrary evidence, this is insufficient to displace the HMRC assessment.

30. As to the reliance placed by the Appellants on advice said to have been given by the HMRC helpline to the Appellants' accountant, no references or approximate dates of call have been provided. Furthermore, the task of the Tribunal is to determine what is legally correct, and not whether HMRC has given incorrect advice in the past. If the Appellants contend that they have been given incorrect advice by HMRC, they can avail themselves of the HMRC complaints procedure.

31. The input tax claim in respect of the extension to the Appellants' residence was out of time. At the relevant time, regulation 29(1A) of the VAT Regulations 1995 provided for a three year time limit for making claims (it changed to 4 years with effect from 5 April 2009). Even if the claim been made at the correct time, VAT would not have been recoverable because the work carried out related to a place of residence and did not relate to an office or business area.

32. As to the provision of accommodation for customers' cattle, this was a single supply of animal husbandry, which is standard-rated. A supply of services in relation

to boarding and husbandry of cattle does not fall within the criteria of Schedule 9 VATA, as the supply is not simply one of a right over land. Neither is it purely the supply of animal feeding stuffs so it cannot be zero-rated under Schedule 8 VATA. Paragraph 10.2 of Public Notice 701/15 states that supplies of feed can be zero-rated only if no element of care is supplied. In this case, the supply included housing, feeding and caring for cattle. Care of cattle had been confirmed in discussion with the Appellants and in correspondence. No contrary evidence has been provided by the Appellants from any customers as to the terms of the arrangements, nor have any written contracts been provided between the Appellants and their customers, nor have any partial exemption calculations or consideration of the value of exempt supplies been carried out by the Appellants. Reliance was placed on *Smith* and *Leander*, and on Article 135 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

The Tribunal's findings

33. It is convenient to deal first with the Appellants' ground of appeal relating to their claim in 03/07 for input tax in respect of works carried out on their residence. The Tribunal finds that this claim, at the time it was made, was clearly time-barred by regulation 29(1A) of the Value Added Tax Regulations 1995. The representative of the Appellants effectively accepted at the hearing that this was the case, and that any recourse of the Appellants in relation to this matter, based on the claim that they were given incorrect advice by HMRC, lay in the HMRC complaints procedure. The Tribunal therefore does not need to address the merits of this claim for input tax. It is merely noted that it does not appear to be disputed that the works in question were carried out on the Appellants' residence, and that the merits are therefore far from obvious.

34. There then remains the appeal disputing the assessment to output tax on the Appellants' provision of accommodation for customers' cattle.

35. HMRC rely on two cases, *Smith* and *Leander*. *Leander* in turn considered *Window v Customs and Excise Commissioners* (VAT Dec.17186) [2001] V&DR 252 ("*Window*").

36. In *Window*, the trader provided stabling and livery services for horses. The relevant facts appear in the decision as follows:

> 7. As to the letting of stables, there was no issue but that this, on its own, represented an exempt supply as a licence to occupy land. …
>
> 12. Our finding is that although we are not satisfied that there were written licence agreements signed by each owner, the rent for stables as such was known and it was clear to owners that the rent for the stable was in principle a separate matter from any livery for which they might contract. There was therefore for each owner, whether or not they received livery services, the supply of a licence to occupy land which did not necessarily imply any further supply. …
>
> 13. The services that may be provided by the appellant are: feeding and watering, mucking out, turning out, worming, clipping, trimming, plaiting, exercising, cleaning tack, grooming, breaking in, schooling and arranging for vets. Schedules prepared by Customs from the records showed 43 horses at livery (to one extent or another) and 21 for whom no service was provided. There are thus about two thirds of the

> owners who get some sort of service in addition to the letting of stables to them. …
>
> 24. Our finding about livery services is that they were provided to owners who wanted them (and about 30% of owners did not want them), that the charges for livery were fixed at various levels depending on what was wanted. Although some statement of what was due from each owner would be available in the office, invoices as such were not usually sent out. Whether or not the statement always clearly distinguished between the stable rent and livery services, the difference was known to the owners and they were aware of the different elements of what they were paying for. Naturally, the livery owner — who was a non-business recipient of the stables' services generally — was principally concerned to see the total charge, which is what they paid. As far as the owners who had livery services were concerned, our finding is that they received one composite set of services: the use of the stable, as the basic service, and varying degrees of care of their horses as ancillary to that.

37. In *Window*, the Tribunal further noted at [34] that it was not in dispute between the parties in that appeal that the supply of the right to occupy a stable was a licence to occupy land exempt under Schedule 8, Group 1, item 1 VATA. It was also not in dispute in that appeal that the livery services, on their own, would be standard-rated. It followed that in the case of a customer who rented a stable only, there was no dispute that the supply was exempt. The dispute concerned those customers who both rented a stable and received livery services. In the case of the latter customers, the question was whether the livery services were ancillary to the right to occupy the stable, or vice versa, or whether the two were independent of each other.

38. In *Window*, the Tribunal considered the case law on the principles relevant to determining whether a transaction which comprises several elements should be regarded as a single supply, or as two or more distinct supplies to be assessed separately. The main case referred to was the decision of the European Court of Justice in *Card Protection Plan Ltd v Customs and Excise Commissioners* (C-349/96) [1999] 2 AC 601 (the "*CPP* case"), in which the Court found:

> 27. … 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. …
>
> 29. … every supply of a service must normally be regarded as distinct and independent … a supply which comprises a single service from an economic point of view should not be artificially split … 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 …
>
> 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 …
>
> 32. … it is for the national court to determine, in the light of the above criteria, whether transactions such as those performed by C.P.P. are to

> be regarded for VAT purposes as comprising two independent supplies …

39. Applying these principles to the facts as found in that case, the Tribunal in *Window* concluded as follows:

> 40. The principal reason for the combined payments made by "livery" owners is to secure the use of a specified stable for their horses. If they want particular livery services they pay for them, to whatever extent they are desired and for however long they are needed. An owner who decides, for whatever reason, to do all that is necessary for the horse — to feed, water, turn out, muck out, and so on — can at any time do so. And an owner who, for whatever reason, is unable to attend to his horse can buy either partial or complete attention to it. It is an optional extra, which only makes sense in the context of the stabling itself. The horse can be stabled without livery, but the livery cannot be supplied without the stabling. There is stabling for every horse, but livery — and differing levels of livery — only for some.
>
> 41. As the principal service is exempt, and as the livery services supplied are ancillary to it and not independent of it, we find that there is a single exempt supply and that the appeal therefore succeeds.

40. The Tribunal notes at this juncture that paragraph 10.3 of HMRC Notice 701/15 seems to be referring to the specific circumstances of the *Window* case, and presumably that paragraph was included in HMRC Notice 701/15 with *Window* expressly in mind. This suggests that the HMRC guidance does not challenge the correctness of *Window*, although the Tribunal accepts the HMRC submission that the Tribunal is required, in the event of any inconsistency between the applicable law and HMRC guidance, to apply the former. The Tribunal also notes at this point that although paragraph 10.3 of HMRC Notice 701/15 refers specifically to stabling and livery services for horses, the reasoning of the Tribunal in *Window* is not specifically confined to horses.

41. The case of *Window* was subsequently distinguished by the Tribunal in *Leander*. The latter case concerned the supply of quarantine and non-quarantine kennel facilities for dogs and cats. In relation to both the quarantine and non-quarantine facilities the Tribunal found that there was a single supply that was standard-rated. In relation to the non-quarantine facilities, the Tribunal said at [38]:

> Viewed objectively we think that the non-quarantine customers use the services supplied by Leander to secure care and safe keeping of their pet for so long as they cannot themselves provide them. Compared to the other components of Leander's non-quarantine supplies, care and safe keeping of the pet comprises the principal service. Obtaining the benefits of kennel space and of food and water for the pet are not aims in themselves; those are the means by which the principal service is provided and, as such, are ancillary or incidental to the main objective of Leander's non-quarantine services, i.e. care and safe keeping. On that basis, it seems to us, the non-quarantine services supplied by Leander are, in their entirety, standard rated services and do not rank, for VAT purposes, as exempt supplies of "an interest in or right over land or licence to occupy land".

42. In *Leander* at [39], the Tribunal distinguished *Window* on the following basis:

> The question [in *Window*] was whether supplies of stabling and livery of horses comprised an exempt supply of land or whether the supply of livery was a standard rated supply separate from the exempt supply of stabling. The tribunal decided that the object of the payments by owners of horses at livery being to secure stabling for the horse which could not be stabled without livery, then the principal supply was exempt and the livery was ancillary to it and not independent of it. On that basis the tribunal concluded that there was a single exempt supply. Horses, unlike pet cats and dogs, live their lives in stables and fields. On that basis it is understandable that an owner who wants to keep a horse has to obtain a licence to occupy land in order to provide his horse with living space. Pets by contrast inhabit their owners' homes. When they are placed in kennels the object is either to secure a quarantine licence or, in the case of non-quarantine premises, to secure care and safe keeping. Each case has to be decided on its facts and the circumstances of the *Window* decision are, as we have pointed out, significantly different from the present.

43. In *Smith*, the other case relied on by HMRC, the facts were described by the Tribunal as follows:

> The Appellant's main activity is rearing or keeping other persons' heifers. Some of the rearing is long-term, which the Appellant called "contract rearing". In such cases the Appellant receives the heifers when they are between 3 and 6 months old and they remain at his farm until they are ready to enter a dairy herd, which stage they reach when they are between 2 and 2 ½ years old. Normally they are with the Appellant for a summer, the following winter and the following summer. The Appellant also accepts heifers for a summer or a winter season.
>
> In the summer the cattle are kept in the fields. The Appellant looks at them regularly, in his words "to see if they are all right", and he moves them from field to field to give them good grazing. In the winter the cattle are kept in the covered yard, where they have a water trough, straw bedding and a feeding device into which the Appellant puts silage and (depending on the rate of the cattle's growth) supplementary foods. As in summer, the Appellant inspects the cattle regularly.
>
> If something appears to be wrong with a beast, the Appellant telephones the owner and gets instructions from him. …

44. The position of the appellant in *Smith* appears to have been that either he made a single zero-rated supply of animal feed (with other matters integral or incidental to it), or he made a standard-rated supply of management of cattle and a separate zero-rated supply of cattle feed. (There does not appear to have been any consideration of the possibility that there was a single exempt supply of a licence to occupy land.) The Tribunal rejected the appellant's position, and accepted the HMRC position that there was a single standard-rated supply. It said:

> In our judgment, the Appellant's activities cannot properly be described as the supply of food and water, with the other matters as integral parts of it or incidental to it. In our judgment, what the Appellant provides, and what the owners pay for, is the services of keeping cattle in a broad sense, and feeding and watering and merely an important and indeed integral part of that service. We consider that owners of cattle will entrust them to the Appellant, not merely to have them fed and watered, but generally to have them properly looked

> after, part of which is the reasonable care of them which it is the Appellant's duty to take as bailee for reward, and another part of which is regular and effective inspection by the Appellant. This last matter involves the "skilled eye", as it was called in the Scott case The Times 8 August 1988. Both the Appellant and Mr Smith made the point that a considerably less skilled eye is needed to see whether all is well with a heifer than that which is needed in the case of a mare at a stud farm. That may be so, but we have no doubt that the Appellant's skill and experience play a not insignificant part in the owner's decision to entrust their cattle to him.

45. As to the facts of the present case, the Tribunal finds as follows.

46. HMRC argue that for there to be a licence to occupy land for purposes of VATA Schedule 8 Group 1 item 1, the licensee must be granted the right of occupation of a defined area, for an agreed duration, in return for payment, and have the right to occupy that defined area as owner and to exclude others from enjoying that right. These criteria are taken from HMRC VAT Notice 742. Based on the evidence referred to at paragraph 14 above, and in the absence of significantly contradictory evidence from HMRC, the Tribunal is satisfied on a balance of probability that these requirements are satisfied in the present case. In *Window*, the Crown did not even seek to dispute that the supply of the right to occupy a stable was a licence to occupy land exempt under Schedule 8, Group 1, item 1 VATA. The Tribunal is therefore satisfied that the supply by the Appellants to a customer of the exclusive right to keep cattle in a particular shed, viewed in isolation, would be an exempt supply of the right to occupy the shed.

47. There was some dispute between the Appellants and HMRC as to the nature and extent of any additional services provided by the Appellants in relation to their customers' cattle.

48. It is common ground that the Appellants provided feed to the cattle. Mrs Owen said in her evidence that if the customer provided their own food, the Appellants would put it in front of the cattle, but not necessarily every day as the bales may last more than a day. This implies that the Appellants, in addition to bringing feed to the cattle, monitored the level of feed that the cattle had, with a view to replenishing it when necessary. Mrs Owen also said in her evidence that the Appellants did not have to do anything to bring water to the cattle as the water came from rainwater. This implies that there was some structure in place by which rainwater would be collected and channelled to the cattle. This in turn suggests that customers were relying on the Appellants to ensure that the necessary structure was maintained and monitored to ensure that their cattle had sufficient water. The Tribunal is satisfied on a balance of probability that the Appellants took responsibility for ensuring that the cattle were provided with necessary feed and water.

49. Mrs Owen denied in her evidence that the Appellants otherwise provided any care to their customers' cattle. She said that responsibility for the care and welfare of the livestock lay with the owners of the animals. HMRC sought to challenge the plausibility of this claim, referring for instance to a March 2010 "Code of Practice for the Welfare of Livestock: Cattle", issued by the Welsh Assembly Government. The Tribunal finds that it does not have sufficient expertise in agriculture to assess what specific legal obligations the Appellants would have had in respect of the cattle belonging to their customers in the circumstances of the present case. The Tribunal will assume for purposes of this case that in addition to providing their customers'

cattle with feed and water, the Appellants would additionally have undertaken the minimum required to comply with any legal obligations to which they were subject. For instance, the Tribunal accepts that if cattle were kept in the sheds for a period of months, some form of cleaning of the sheds may have been necessary during the time that they were there. The Tribunal also assumes that if an animal had been ill, the Appellants would have contacted the owner, and if unable to contact the owner, might on their own initiative have called a vet if necessary. However, as *Window* indicates, this of itself does not mean that the single supply must necessarily be standard-rated.

50. Officer Edwards states in paragraph 4 of her witness statement Mrs Owen explained to her at the time of the compliance visit that "The cattle are left on site by the farmer for the agreed term and all needs were catered for by the partnership in the interim, including such things as general health and welfare, watering, etc". However, this witness statement was made in August 2014, some 4 years after the compliance visit. Officer Edwards' handwritten notes and typewritten VAT audit report, which are contemporaneous with the visit, do not say that Mrs Owen said that the Appellants catered to "all needs", or that the Appellants were responsible for the "health" of the cattle. The VAT audit report states: "trader charges per head for housing feeding and caring for store cattle", but does not specify what the "caring" consisted of, apart from feeding.

51. HMRC relies on the evidence that Mrs Owen said to Officer Edwards at the 5 July 2010 compliance visit that the Appellants provided "bed & breakfast" to the cattle. Although Mrs Owen said at the hearing that she did not remember saying this, the Tribunal is satisfied that she did. The expression "bed & breakfast" is recorded in Officer Edwards' handwritten notes and typewritten VAT audit report prepared soon after the event. However, the Tribunal notes that the expression "bed & breakfast" inherently implies something less than "full board". The Tribunal does not consider that the expression "bed & breakfast" can be taken to imply that the Appellants catered to all needs of the cattle housed in their sheds. In fact, the term implies the contrary.

52. The Tribunal accepts the submission of HMRC that the onus is on the Appellant to show that the assessment by HMRC is incorrect. The Tribunal also takes into account that the Appellants have not provided any evidence other than the Appellants' own witness statements and oral evidence, in support of their appeal. The Tribunal takes into account the HMRC submission that none of the Appellants' customers have given evidence as to the nature of the arrangement, and that there are no written contracts setting out the terms of what the Appellants supplied to their customers. However, the Tribunal also takes into account that the HMRC assessment itself is based essentially only on what Mrs Owen told Officer Edwards at the time of the compliance visit.

53. On its consideration of the evidence as a whole and the respective arguments of the parties, the Tribunal finds on a balance of probability that the Appellants provided their customers' cattle with feed and water, and possibly some additional services as referred to in paragraph 49 above, but that the Appellants did not provide for all needs of the cattle.

54. The cases considered above indicate that in cases of the present type, the single supply will be standard-rated if the supply as a whole can be described as a supply of care and safe-keeping of animals, but that the single supply will be exempt if the

supply as a whole can be characterised as the supply of the right to use a stable or shed for the keeping of animals (to which any other services are ancillary or incidental).

55. *Leander* shows that the former categorisation will readily be applied in the case of kennelling for pets, on the basis that pets normally inhabit their owners' homes, such that the only reason for kennelling them is to secure their care and safe keeping during periods when they cannot inhabit their owners' homes. On the other hand, the latter characterisation is more readily applied in the case of horses or cattle, on the basis that horses and cattle live in stables/sheds and fields, such that an owner who wants to keep horses or cattle has to obtain a licence to occupy land in order to provide them with living space (see paragraph 42 above).

56. In *Window*, the single supply was found to be an exempt supply of a licence to occupy land, notwithstanding that the ancillary livery services were in some instances extensive, including such matters as feeding and watering, mucking out, turning out, worming, clipping, trimming, plaiting, exercising, cleaning tack, grooming, breaking in, schooling and arranging for vets (and see also paragraph 10.3 of HMRC Notice 701/15). It is noted that in *Window*, the customers were not required to avail themselves of the livery services, and about a third of the customers did not. However, the fact that the livery services were optional did not form part of the reasoning leading to the Tribunal's conclusion in that case. Indeed, the fact that the livery services were optional if anything would have militated in favour of a conclusion that the livery services were a separate and independent supply, rather than (as the Tribunal found) merely ancillary to the supply of a right to occupy the stable. The Tribunal therefore does not consider that anything turns in the present case on whether or not the Appellants had one customer to whose cattle the Appellants were not responsible for providing feed (a claim made by the Appellants at the hearing which HMRC invited the Tribunal not to accept).

57. In contrast, in *Smith* there was found to be a single standard-rated supply of "keeping cattle in a broad sense". However, this conclusion was reached in *Smith* on the basis that the services as a whole involved the owners of heifers entrusting them to the trader "generally to have them properly looked after", a service which involved the trader exercising a "skilled eye".

58. On the basis of its findings at paragraphs 47-53 above, the Tribunal concludes that in the present case, the services provided by the Appellants in respect of their customers' cattle did not involve the customers entrusting the cattle to the Appellants "generally to have them properly looked after", and that the level of services actually provided by the Appellants did not involve the exercise of a "skilled eye" of the kind referred to in *Smith*.

59. The Tribunal therefore concludes that the Appellants made a single exempt supply to their customers of the right to occupy sheds for purposes of keeping cattle, and that any additional services provided by the Appellants in respect of the cattle were ancillary to and part of that single exempt supply. On the facts found by the Tribunal, this case is relevantly similar to *Window*.

Conclusion

60. For the reasons above:

(1) this appeal is dismissed in relation to the Appellants' claim in 03/07 for input tax in respect of works carried out on their residence; and

(2) this appeal is otherwise allowed.

61. The Appellants have not as such appealed against the penalties that have been imposed as a result of the HMRC decision appealed against. However, those penalties will need to be revised in line with the present decision.

62. 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.

DR CHRISTOPHER STAKER

TRIBUNAL JUDGE
RELEASE DATE: 27 May 2015