



TC05171

Appeal number: TC/2015/00577

VALUE ADDED TAX – exemption for supplies of welfare services – item 9, Group 7, Sch. 9, VATA – whether the services supplied by the operator of school holiday camps for 3 to 17 year olds were services directly connected with the care or protection of children or young persons, or closely linked to such protection (PVD art. 132(1)(h)) – held they were not, and that the appellant provides a single service constituted by what is enjoyed or received by attendance at its camps and that the essential nature of that service is the provision of the activities made available, rather than the care or protection of children or young people – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

SPORT ACADEMIES LIMITED

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE JOHN WALTERS QC
MRS HELEN MYERSCOUGH**

Sitting in public at Norwich on 1 December 2015

R Geary, Lovewell Blake, Chartered Accountants, for the Appellant

D. Wilson, HM Revenue and Customs, for the Respondents

DECISION

Introduction – the issue in the appeal

5 1. This is an appeal by Sport Academies Limited (“SAL”) against a decision by the
Respondent Commissioners (“HMRC”) refusing SAL’s request to cancel SAL’s VAT
registration with effect from the day when SAL was registered for VAT (1 April
2010). A VAT registration may be cancelled with effect from the date of registration
if HMRC are satisfied that on that date the registered person was not registrable for
10 VAT (paragraph 13(3), Schedule 1, VAT Act 1994 (“VATA”). A person is not
registrable for VAT if he/she is not liable to be so registered and is not entitled to be
so registered. This appeal turns on whether or not SAL was entitled to be registered
for VAT on 1 April 2010. That, in turn, depends on whether on that date SAL was
making taxable supplies or was carrying on a business and intended to make taxable
15 supplies in the course or furtherance of that business (paragraph 9, Schedule 1,
VATA). SAL’s case is that at all material times it was making (and/or intending to
make) welfare services, exempt from VAT pursuant to item 9, Group 7, Schedule 9,
VATA, and not taxable supplies.

2. Item 9, Group 7, Schedule 9, VATA provides for the exemption of supplies of
20 ‘welfare services and of goods supplied in connection with those welfare services’ by
a ‘state-regulated private welfare institution or agency’. SAL is, as HMRC accept, a
‘state-regulated private welfare institution or agency’, by reason of the admitted fact
that SAL’s business has been regulated by Ofsted (the Office for Standards in
Education, Children’s Services, and Skills) up until July 2013 on Ofsted’s ‘voluntary
25 childcare register’. Ownership of SAL’s business changed hands in December 2013
by way of a transfer as a going concern and HMRC understand that since July 2013
the business has been registered on Ofsted’s ‘early years register’ and ‘compulsory
childcare register’.

3. The relevant Notes to Group 7, Schedule 9, VATA are Notes (6) and (7), which
30 are in the following terms:

‘(6) In item 9 “welfare services” means services which are directly connected with-

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- (a) the provision of care, treatment or instruction designed to promote the physical or mental welfare of elderly, sick, distressed or disabled persons,
 - (b) the care or protection of children and young persons, or
 - (c) the provision of spiritual welfare by a religious institution as part of a course of instruction or a retreat, not being a course or retreat designed primarily to provide recreation or a holiday,

40 and, in the case of services supplied by a state-regulated private welfare institution, includes only those services in respect of which the institution is so regulated.

(7) Item 9 does not include the supply of accommodation or catering except where it is ancillary to the provision of care, treatment or instruction.’

4. The exemption for welfare services comprising the care or protection of children and young persons (see: Note (6)(b) above – which is the definition of welfare services in issue in this appeal) is derived from Article 132 (1)(h) of the Principal VAT Directive (Council Directive 2006/112/EC of 28 November 2006 on the common system of VAT) (“PVD”), which provides, under the title of exemptions for certain activities in the public interest, for an exemption as follows:

‘the supply of services and of goods closely linked to the protection of children and young persons by bodies governed by public law or by other organisations recognised by the Member State concerned as being devoted to social wellbeing;’

5. We note in passing that exemption from VAT is not claimed (in the alternative) by SAL on the basis that it provides education (Group 6, Schedule 9, VATA), or services closely linked with and essential to sport or physical education (Group 10, Schedule 9, VATA), because SAL is not an ‘eligible body’ for the purposes of either of those Groups.

6. The evidence received by the Tribunal about the activities of SAL related to the period after the change of ownership of the business. However we were told, and accept, that there was no material change in the activities brought about by the change in ownership, although the range of activities has been expanded. There has, however, been a change of branding. The name ‘Sport Academies’ has been dropped and has been replaced by ‘Kingswood Day Camps’.

7. We heard oral evidence from Mr Nicholas Goodwin of SAL and had before us two bundles of documents. In addition, following our request at the hearing, we were provided by Mr Geary (who appeared for SAL) with further extensive documentation under cover of a letter to the Tribunal dated 7 December 2015.

The facts

8. From the evidence we find facts as follows. Where we describe evidence given to the Tribunal, we should be taken to have accepted that evidence.

9. SAL has established camps which operate during the school holidays on the premises of schools, with which SAL has made an arrangement. A sample website page, which we were shown by Mr Geary, gives the following description under the heading ‘What We Do’:

‘The Academies are a range of school holiday camps for 3 to 17 year olds. For those who love to play sport, sing and dance, paint and draw or like a bit of everything, there is a camp that is safe, fun and inspirational. Found in 10 fantastic schools, and open from 8am to 6pm Monday to Friday during all school holidays.’

10. The camps are open to children of all ages (as already indicated, from 3 years to 17 years – although there is less interest from 15 to 17-year olds) and abilities. There is no entrance requirement. All camps (as indicated above) are registered with Ofsted.

11. The website page highlights 5 aspects of the camps designed to attract business. They are as follows.
12. ‘Unleashing potential’ in relation to which the attached text is: ‘It is our mission to unleash the potential of every child who comes through our camps. We believe that children learn the most when they are doing, so all our academies are action-packed.’
13. ‘Fantastic venues’ in relation to which the attached text is: ‘Our school holiday camps are held in some of the best schools in Britain, known for their fantastic facilities, grounds and locations with plenty of room for your children to run around.’
14. ‘Inspirational coaches’ in relation to which the attached text is: ‘It’s exciting when you meet people who inspire and motivate you. Our academies coaches are passionate about the sports and activities they teach, and it’s their job to unleash the potential of every child’.
15. ‘Safety standards’ in relation to which the attached text is: ‘Your child’s safety is our number one priority. All our venues are health and safety regulated and we have strict policies in place for the safety and protection of your children.’
16. ‘Childcare solutions’ in relation to which the attached text is: ‘Our academies operate in every school holiday, offering great childcare solutions for parents that children will love. We accept all childcare vouchers and booking is easy and affordable.’
17. The camps are day camps, with a daily charge, but with a price incentive for booking for a week. Food and drink is not provided and the general instructions are that children should bring with them a packed lunch as well as a couple of snacks for break times. SAL also advises that all children bring a refillable water bottle and the website states that ‘we’ll make sure that they stay hydrated’. Comfortable clothing suitable for all weathers is recommended, and in summer a cap, sunscreen and sunglasses are said to be necessary. The website states that mobile phones, ipads, tablets and game consoles are not allowed at camp. The website states that parents can be contacted or make contact with children via the camp manager’s phone.
18. Under the heading ‘Safety standards’, the website states that ‘throughout their time at the Academies your child will be under the care and supervision of our excellent coaches. We have high staff to child ratios, to make sure every child receives quality teaching and coaching’. It also states that all staff have DBS (Disclosure and Barring Service) checks.
19. The obtaining of an enhanced DBS check is one of the requirements (reference: CR3.1) necessary for registration on either part (compulsory or voluntary) of Ofsted’s Childcare Register. We were provided with the August 2014 version of the factsheet published by Ofsted, giving Childcare Register requirements applicable to childcare providers on non-domestic or domestic premises. There was no suggestion that the requirements in 2010 (when SAL was originally registered for VAT) were materially different.

20. The factsheet is informative in that all the requirements concern the context in which childcare is provided – none gives any concrete indication of what childcare services consist of. Thus, under the heading “welfare of the children being cared for”, the factsheet states that the registered person must ensure that children receiving childcare are kept safe from harm (CR1.1) and goes on to elaborate this requirement by insisting that at least one person who is caring for children must have an appropriate first aid qualification, that corporal punishment must not be used, and so on. Likewise, for example, minimum standards are laid down for the suitability of persons to care for, or be in regular contact with, children (CR3), their qualifications and training (CR4) and the suitability and safety of premises and equipment (CR5).

21. SAL’s staff at each venue comprises a Camp Manager, with overall responsibilities for the safe and effective running of all activities at the venue. The Camp Manager is responsible for supporting, motivating and managing his/her team of coaches, and ensuring that all policies and procedures are successfully executed, as well as liaising with parents and school representatives, and also with SAL head office.

22. Reporting to the Camp Manager are the coaches whose responsibility (according to a website page in evidence) was ‘to deliver structured sport, art and fun activities to groups of children ... with an emphasis on development, enjoyment and fun’. All resources and training to enable the coaches ‘to deliver fantastic activities’ are provided by SAL and applicants to be appointed as coaches ‘do need to have a passion for working with children and the ability to deliver activities from session plans and resources’. It is further stated that ‘experience in sports coaching would be desirable’. Applicants to be appointed as coaches ‘must be over 18 years of age and ideally studying a sports, teaching, childcare qualification and have an interest or experience in sports and/or arts’.

23. Children between the ages of 3 and 5 are admitted to a ‘Tiny Tots’ programme. These programmes concentrate on activities related to Ofsted’s ‘Early Years Foundation Stage’. The Camp Manager of a camp operating the ‘Tiny Tots’ programme has the responsibility of ensuring that all Ofsted ‘Early Years Foundation Stage’ requirements are met. Applicants to be appointed as coaches on such a camp are expected to be ‘passionate about all things early years and delivering inspiring and fun activities to young children’.

24. About 500 persons are employed by SAL. Many of the coaches are aged between 18 and 23 years.

25. Parents are not expected to be on site during the time the camp is operating, although they can attend if they wish. Likewise no staff or representatives of the host school are expected to be on site. The staff of SAL on site take full responsibility for the operation of the camps.

26. The activities are not provided to any accredited standard. For example, tennis courses do not follow any Lawn Tennis Association programme. The activities offered depend on the facilities available at the site of the camp in question. The

activities can be described as varieties of games and sports, dance and arts and crafts. There is a mixture of activities during the day, according to a structured programme.

27. Parents (or others purchasing places for children at SAL's camps) can pay SAL's charges with Child Care Vouchers. Child Care Vouchers provided by an employer to his/her employee are exempt from tax and National Insurance Contributions and therefore offer potential savings for working parents. They can be used to pay for qualifying childcare which includes childcare provided by persons registered on the Early Years Childcare register, the General Childcare Register – compulsory part, and the General Childcare register – voluntary part, which are all operated by Ofsted. Thus, for these purposes, SAL provides qualifying childcare.

28. In the course of considering SAL's claim for the cancellation of its VAT registration – SAL was originally registered as an activity-based sports club making taxable supplies – Officer Nick Crickmore visited Lovewell Blake on 9 July 2014 and spoke to Mr Geary. At that meeting, Mr Geary explained that following the change of ownership of SAL's business, the new owners reviewed the nature of the supplies made by SAL and came to the view that they were exempt welfare supplies. Mr Geary told Officer Crickmore that the charges made by SAL within each site varied according to the programme for which a child was signed up – in particular, for different sports offered. Parents (or others purchasing SAL's services) choose the activities, which the child concerned will carry out, at the stage of booking the child's place at the camp. Mr Geary said at the time that he thought the sports training was incidental to the main supply of care (the case persisted with at the hearing of the appeal) and it was said that the different prices charged reflected the commercial reality of additional costs being incurred to put on different modules.

29. We were told that the pricing policy was overall influenced by competition in the market and that the pricing policy had changed since the change of ownership of the business and now there was one level price charged, whatever activities were engaged in.

30. We were also told that traders in the market offering services in competition to those supplied by SAL were not registered for VAT.

The submissions by the parties

31. Mr Geary submitted that the essence of the services offered by SAL had always been childcare during school holidays for working parents. He emphasised that SAL takes full responsibility of the welfare of each child attending a camp. He argued that the wide range of activities offered is commercially necessary in the provision of modern day childcare – parents purchasing SAL's services expect that their children will be stimulated and/or educated whilst being cared for in a safe and secure environment. He submitted that the fact that children are not graded or assessed on their ability at the various activities undertaken indicated that what SAL was supplying was an exempt composite supply of care and protection – parents were assured by SAL that their children's welfare would be paramount and their safety was SAL's number one priority.

32. Mr Wilson, for HMRC, submitted that SAL's primary aim is to offer sport and activities to children during the school holidays. He accepted that there is an element of care involved in what SAL does but childcare is not the primary or essential service offered by SAL – it is, instead, merely a by-product of the supply of activity-based courses. He prays in aid the differential pricing structure operated at the time of registration by SAL, whereby the price charged depended on the activities taken up at the camp concerned. He submitted that this indicated that the provision of the activities was the essential element of the service supplied by SAL. He contrasted the facts of SAL's case to the typical charging policy of a nursery, which would be expected to set a daily rate for care, regardless of what activities were planned. The activities in such a nursery environment were, he accepted, incidental to the main provision of care. For that reason, the main supplies made by SAL were different, and more akin to those made by an activity-based sports club. He accepted, however, that the supplies made by SAL in connection with the 'Tiny Tots' programme may amount to exempt supplies of welfare (childcare). However, this concession would not have the consequence that SAL's VAT registration ought to be cancelled, because most of its supplies were and always had been taxable.

33. To the same effect, Mr Wilson prayed in aid the evidence that, in recruiting coaches, SAL emphasised the ability to deliver on sports and other activities, rather than underlining the need for a childcare qualification.

34. HMRC's review letter (dated 5 January 2015 and sent to SAL by Higher Officer Mrs Asma Marah) made the point that when looking at services related to the care and protection of children and young persons (the formula used in Article 132 (1)(h) of the PVD) consideration should be given to activities related to the looking after of an individual child or young person rather than of children in general.

35. We were referred by Mr Geary to the tribunal decisions in *Slide & Seek Limited v Commissioners for HMRC* (TC0369) and *The Evangelical Movement of Wales v Commissioners of Customs and Excise* (2004), and by both parties to the tribunal decision in *Planet Sport (Holdings) Limited v Commissioners for HMRC* (TC03024).

30 **Discussion and conclusion**

36. Mr Geary sought to distinguish this appeal from *Slide & Seek Limited*, because in that case the tribunal found that the appellant never provided childcare services because the responsibility for the wellbeing of the children attending the site remained at all times with their parents, who were present throughout. We agree that the facts of this case are different, and that SAL assumes the responsibility for the wellbeing of the children attending their camps.

37. The tribunal in *The Evangelical Movement of Wales* held that, on the evidence, the appellant had established that the camps in issue in that case involved the supply of services 'directly connected with the provision of spiritual welfare by a religious institution' and that the provision of spiritual welfare concerned was not provided as part of 'a course ... designed primarily to provide recreation or a holiday'. We accept that this decision could assist us in determining this appeal, but observe that the legal issue is very fact-sensitive and the decision in *The Evangelical Movement of Wales*

turned on the special facts found in that appeal, in particular the programme which reflected the biblical standards to which the camps were committed. The tribunal found that the suppliers and the recipients of the services involved regarded the objective nature of the camps as a course of spiritual instruction not designed primarily to provide recreation or a holiday.

38. The facts of *Planet Sport (Holdings) Limited* were materially different to those of the present appeal. In that appeal, the appellant (Planet Sport) supplied trained and qualified sports coaches to organise and run after-school ‘clubs’ on school premises to occupy pupils who for one reason or another were not ready to go home, typically because their parents were still at work and could not collect them as soon as school was finished (*ibid.* [4]). Planet Sport’s staff were in charge of proceedings, but there was always a member of the school’s staff on the premises (*ibid.* [5]). In this appeal, SAL does not supply staff, but supplies the services constituted by what is enjoyed or received by attendance at the camps. The host school is not involved in the supply of SAL’s services. Further, Planet Sport was itself neither required to be, nor was it in fact registered with Ofsted (*ibid.* [10]) and the Tribunal found that it was not ‘state-regulated’ for the purposes of Group 7, Schedule 9, VATA (*ibid.* [28]), whereas in this appeal HMRC accept that SAL is state-regulated for relevant purposes.

39. These factual (and legal) differences between the two appeals need to be borne in mind in considering the applicability to this appeal of the Tribunal’s decision in *Planet Sport (Holdings) Limited* on the issue of whether it supplied welfare services. That decision was expressed as follows (*ibid.* [30]):

‘On the issue of welfare services, although it is true that Planet Sport contributed to the welfare of the pupils in its after school clubs, it is also true that it did so as the by-product of its essential service which was sports coaching. Planet Sport staff were not acting as child minders, and the discharge of their care and protection responsibilities for the pupils in their clubs was the condition upon which they were allowed by the schools to run the clubs; it was not the essence of what Planet Sport provided. Again, we are bound in any event by Hart J’s finding at [10] of his judgment to this effect, and nothing in *Card Protection Plan* as interpreted by *College of Estate Management* detracts from that conclusion.’

40. The reference in this passage to Hart J’s judgment is to *Revenue and Customs Commissioners v K&L* [2006] STC 18, which concerned the hiring of staff by the appellant to nurseries and schools, the staff being at all times under the control of the institutions to which they were hired. At [10] of his judgment, Hart J said:

‘The fact that the institutions to whom the services of staff are supplied are themselves regulated by the state, and that such regulation includes the imposition of duties on those institutions in relation to the suitability of personnel used by them in the delivery of welfare services, cannot in my judgment provide a basis for saying that the respondent is itself making supplies of welfare services.’

41. The *K&L* case is therefore even further removed on its facts from the present appeal than *Planet Sport (Holdings) Limited*.

42. The exemption from VAT for ‘services which are directly connected with ... the care or protection of children and young persons’ (under item 9, Group 7, Schedule 9, VATA), which must be ‘closely linked’ to such protection (Article 132 (1)(h), PVD)

must be construed strictly. This is so with any VAT exemption, but particularly so in a case where the terms of the exemption itself use the words ‘directly connected’ and ‘closely linked’.

5 43. We consider that SAL makes a single supply of services rather than multiple
supplies (and the contrary was not argued by either party), and in our judgment, we
must decide, on the basis of the evidence, whether, objectively, the recipients of the
that service (typically parents of children attending the camps, who would pay SAL
for the services it provided) would regard the nature of the camps as arrangements for
the care or protection of children and young persons rather than something else, for
10 example arrangements for the provision of activity-based courses.

44. The 5 aspects of the camps highlighted on SAL’s website and designed to attract
business are, in our view, a good indication of what the recipients of SAL’s services
objectively regarded as the nature of the services provided at the camps.

15 45. Of those 5 aspects, 3 focus on the activities offered rather than care or protection.
Those 3 aspects are ‘Unleashing potential’, which is a reference to what children will
learn at camps; ‘Fantastic venues’, which is a reference to the facilities which will be
available for children to use or enjoy at camps; and ‘Inspirational coaches’, which is a
reference to the people who will ‘inspire and motivate’ children at camps, and who
are said to be ‘passionate about the sports and activities they teach’.

20 46. On the other hand, the other 2 featured aspects, viz: ‘Safety standards’ and
‘Childcare solutions’ may be said to emphasise care and protection of children and
young persons at SAL’s camps.

25 47. The text attached to ‘Childcare solutions’ in fact states the case that Mr Geary
advanced at the hearing of the appeal, namely that SAL’s camps offered ‘great
childcare solutions for parents that children will love’. His case was that the activities
at the camps should be seen as ways in which the primary function of childcare is
carried out by SAL.

30 48. However, as we have noted, under the heading ‘Safety standards’, SAL
emphasises that the care and supervision of children is actually provided by ‘our
excellent coaches’, and that SAL has high staff to child ratios ‘to make sure that every
child receives quality teaching and coaching’. So, here again, the teaching and
coaching aspects of what SAL’s camps provide is emphasised.

35 49. The qualities looked for by SAL in recruiting coaches (as explained on its
website) are indicative of the commercial reality of the services SAL seeks to provide.
As set out in paragraph 22 above, coaches’ responsibility is described as being ‘to
deliver structured sport, art and fun activities to groups of children ... with an
emphasis on development, enjoyment and fun’. We consider that if the care and
protection element of what SAL provides was fundamental, and going to the essential
nature of its supplies, that would have been reflected much more prominently in the
40 description of the qualities looked for in coaches.

50. The fact that SAL is registered under Ofsted's registers and was, in 2010, registered under the voluntary part of the General Childcare register is not, in our judgment, of fundamental significance to the question we have to determine (as opposed to the requirement that the supplier of welfare services must be state-regulated, which is not in issue). As we have observed (at paragraphs 19 and 20 above), it appears that such registration governs the context in which a registered entity can operate, rather than defining (as childcare) the services which are provided. Similarly, we do not consider that the fact that Child Care Vouchers are accepted in payment by SAL shows that the services supplied by SAL are services of care or protection – instead it underlines the fact that SAL is registered under Ofsted's register and supplies its services in a context which is compliant with Ofsted's regulations.

51. We note that originally (at the time of its registration for VAT) SAL took the view that it would be making taxable supplies of activity-based sports club services, and while, of course, that view might have been incorrect, the fact that SAL registered for VAT on that basis is some indication that care and protection was not the essential nature of the supplies made.

52. We add that the fact that originally SAL charged differently for attendance at a camp, according to the activities that would be pursued, is an indication that the essential nature of the service supplied by SAL is the provision of activities. However, we have not regarded this fact as determinative of the issue.

53. Against this, we accept that SAL does take responsibility for the care and protection of children and young people attending its camps, and that the activities organised at the camps are not provided to any accredited standard, which would suggest that training in sports, etc., is not the overwhelmingly predominant aim of the services supplied. We also accept that the fact that SAL's camps do offer a 'childcare solution' may well be attractive to some parents.

54. Nevertheless, we have on balance reached the clear overall view, for the reasons given at paragraphs 44 to 52 above, that SAL provides a single service constituted by what is enjoyed or received by attendance at its camps and that the essential nature of that service is the provision of the activities made available, rather than the care or protection of children or young people. We have reached this view on considering the services offered at SAL's camps other than the 'Tiny Tots' programme. It is possible, as HMRC acknowledge, that the services provided in that programme are exempt welfare services.

55. We see nothing in the domestic or EU legislation which would require welfare services to be related to the looking after of an individual child or young person rather than children in general.

56. For the reasons given above, the appeal is dismissed.

57. 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.

JOHN WALTERS QC

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TRIBUNAL JUDGE
RELEASE DATE: 14 JUNE 2016