



TC05309

Appeal number: TC/2014/04457

VAT – exemptions – subscriptions to association providing services to members – whether primary purpose of fostering professional expertise of its members – whether objects in the public domain and of philanthropic or civic nature – item 1(c) and item 1(e) Group 9 Schedule 9 Value Added Tax Act 1994 - appeals dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**THE ASSOCIATION OF GRADUATE CAREERS Appellant
ADVISORY SERVICES**

- and -

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

**TRIBUNAL: JUDGE ASHLEY GREENBANK
JOHN COLES**

**Sitting in public at The Royal Courts of Justice, The Strand, London on 17 and
18 February 2016**

**Michael Firth, counsel, instructed by Grant Thornton UK LLP, for the
Appellant**

Erika Carroll, officer of HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. These are appeals by the Appellant, the Association of Graduate Careers Advisory Services (“AGCAS”), against three decisions of the Respondents (“HMRC”):

5 (1) the first is a decision on 8 July 2014 that AGCAS’s supplies to its members are not exempt under item 1(c) of Group 9 of Schedule 9 to the Value Added Tax Act 1994 (“VATA 1994”);

(2) the second is a decision on 13 February 2015 that AGCAS’s supplies to its members are not exempt under item 1(e) of Group 9 of Schedule 9 to VATA 1994; and

10 (3) the third is the rejection by HMRC on 16 November 2015 of a claim for repayment of overpaid output VAT in respect of AGCAS’s supplies to its members (which claim was based on AGCAS’s contention that those supplies are exempt under either item 1(c) or item 1(e) of Group 9 of Schedule 9 to VATA 1994).

15 2. The appeals have been consolidated under a single appeal number.

The hearing and evidence

3. At the hearing, we were provided with an agreed bundle of documents. During the hearing, AGCAS also introduced other documentary evidence, in particular, a copy of a Code of Practice published by AGCAS and a paper entitled “Theories of Career Choice and Development” also published by AGCAS. The Respondents did not object to these documents being introduced and we accepted them as evidence.

4. The documentary evidence included witness statements of Mr Ian Ford, the Chief Operating Officer of AGCAS, and Mr Marc Lintern, a Trustee, Director and Treasurer of AGCAS. Mr Ford and Mr Lintern both gave evidence and were cross-examined on their statements.

5. At the hearing, we requested further submissions from HMRC on the effect of the reference to “employments” in item 1(c) on the interpretation of that paragraph. HMRC provided written submissions on this issue to the Tribunal and AGCAS. AGCAS provided written submissions in response to HMRC’s submission.

The facts

6. The facts are largely undisputed.

The constitution of AGCAS

7. AGCAS was established in 1967. It is a company limited by guarantee, incorporated in England and Wales. It is a registered charity in England and Wales and in Scotland.

5 8. Article 3 of the Articles of Association of AGCAS sets out the objects of the company. It states as follows:

10 “The objects for which the Company is established are to promote the benefits, and to advance the education, of students attending courses of higher education in the United Kingdom and the Republic of Ireland and elsewhere, and of the graduates and diplomates from those courses by providing, and assisting in the provision of careers education, information, advice and guidance to support the career development and enhance the employability of such students, graduates and higher diplomates.”

9. Article 3 of the Articles of Association then proceeds to set out the powers by which those objects are to be fulfilled.

15 “In furtherance of these objects, but not otherwise, the Company shall have the following powers:

3.1.1 to publish and distribute any periodicals, books, leaflets or audio/visual or electronic materials;

20 3.1.2 to own, exploit and acquire copyrights, rights of publication or reproduction and other rights in respect of any literary, audio/visual or other works or undertakings;

3.1.3 to undertake research and to publish or distribute the results of such research;

3.1.4 to organise, promote and conduct any meetings, conferences or other events;

3.1.5 to receive any subscription or gift, for the objects of the Company;

25 3.1.6 to purchase or acquire any property or assets and any interest in any property or assets, and subject to such consent as may be required by law, sale, lease, mortgage or otherwise dispose of or deal in all or any of the property or assets of the Company;

3.1.7 to invest any money of the Company not immediately required for its purposes as the Company thinks fit, subject to such conditions (if any) as may for the time being be imposed or required by law;

30 3.1.8 to borrow or raise money on such terms, and with such consents as by law required, and on such security as maybe thought fit;

3.1.9 to make any donations of assets or establish or support or aid in the establishment or support of or constitute or lend money to or for any charitable associations or institutions;

35 3.1.10 to undertake and execute charitable trusts;

3.1.11 to appoint such officers, and employees on such reasonable and proper terms as the Company thinks fit, as may from time to time be necessary for carrying on the work of the Company;

5 3.1.12 to pay any premium in respect of any indemnity insurance to cover the liability of the Directors or any of them, which by virtue of any rule of law would otherwise attach to them (or any of them) in respect of any act or omission which is or is alleged to be a breach of trust or breach of duty, unless the Director concerned knew that, or was reckless whether the act or omission was a breach of trust or breach of duty;

10 3.1.13 to do all such other lawful and charitable things as will further the attainment of the objects of the Company or any of them provided that

The Company shall not support with its funds any object or endeavour to impose on procure the observance by its Company Law Members or others of any regulation or restriction which if any object of the company would make it a trade union.”

15 10. The objects are pursued on a not-for-profit basis. Under the terms of its Articles of Association, AGCAS is not permitted to distribute its assets by way of profit and no director receives any remuneration or other benefit in money or money’s worth. If there are excess assets, on a winding up, they must be transferred to some other charitable institution having similar objects to AGCAS.

Other expressions of the aims of AGCAS

20 11. We were also directed to the mission statement of AGCAS which is set out on its website. The mission statement for 2013/16 is as follows:

“The Association of Graduate Careers Advisory Services (AGCAS) is the professional body for careers and employability professionals working with higher education students and graduates and prospective entrants to higher education.

25 AGCAS’s aims are to:

1. provide a lobbying voice for its membership
- 30 2. be the focal point for sector wide research and expert opinion
3. provide a range of support and development opportunities for its members.

To achieve this, AGCAS:

- 35 1. promotes standards for ensuring excellence in service delivery
2. conducts, gathers and disseminates research intelligence on higher education and a graduate labour market
- 40 3. delivers high quality training, development opportunities and events
4. offers peer support, mentoring and networking.”

12. A similar statement is found in the summary information return made to the Charity Commission for the financial period ended 31 July 2013, which was submitted on 14 March 2014.

The membership of AGCAS

5 13. The Articles of Association provide for two main types of membership of AGCAS: “service membership” and “full membership”.

14. Service membership is open to careers advisory services in institutions offering higher education courses, in the UK or elsewhere, that the Board of AGCAS accepts as offering an appropriate style and quality of service.

10 15. At present 155 higher education institutions are service members of AGCAS. This includes all of the leading universities in the UK. Of the 155 service members, 150 are careers services at UK universities. They represent over 94 per cent. of the UK’s recognized universities. The remaining five service members are international careers services or associations of careers services. These include the National
15 Association of Colleges and Employers in the US and the National Association of Graduate Careers Advisory Services in Australia.

16. Service members pay an annual fee, the amount of which is determined by reference to the number of full-time equivalent higher education students at the institution.

20 17. Full membership is only open to heads of service, careers advisers and other staff currently employed by a careers service which is a service member. AGCAS has 2,263 full members who, at present, pay an annual fee of £32.10.

18. The other main categories of membership are:

25 (a) “affiliate membership”, which is open to persons not employed by a careers service but who are involved in the provision of careers advice or guidance at an institution where the careers service is a service member (typically academics or individuals employed in business schools at universities where the careers service is a service member); and

30 (b) “conference membership”, which is open to individuals who are involved in the provision of careers advice or guidance to higher education students in the UK (typically those who are employed by a careers service that is not a service member).

35 19. There are various other categories of membership, for example, catering for those on career breaks, retired members and students.

The activities of AGCAS

20. The activities of AGCAS are summarized in the following paragraphs.

21. AGCAS promulgates a Code of Practice for Member Services. The most recent Code of Practice for Member Services is dated 2015. It is a requirement of AGCAS Membership that service members sign up to the Code of Practice. The Code of Practice sets out core principles and standards for member services and their staff. It is organized under four key principles. Those four key principles are described in the Code of Practice as follows:

“The AGCAS Code of Practice sets out to assure that:

1. Member services are student-centred and positively contribute to the student experience in their institutions.
2. There is a clear commitment to quality and continuous improvement.
3. Professional competence and development are core principles and that the value of dignity and respect, impartiality, confidentiality and access for all are upheld.
4. There is support for the professional association AGCAS.”

22. AGCAS also promotes a Code of Practice for Service Provision. This Code of Practice applies to service members of AGCAS. It provides that an AGCAS service member should:

1. Operate within a structure that provides management for and ensures accountability of the service.
2. Have established structures to monitor and evaluate service provision as a means of continually improving those services and of meeting AGCAS quality standards.
3. Work within the AGCAS equal opportunities policy and follow this with regards to its own staffing as well as its professional practice.
4. Be committed to staff development. Staff should have, or be working for, appropriate vocational qualifications and work to associated occupational standards.
5. Provide a physical environment that is suitable for the purpose of service delivery and fulfils the key principles of confidentiality and accessibility. Ensure that information bases cover the full range of needs of the target groups for that service. Information should be accurate and up to date and in a form accessible to the individual.
6. Be committed to working collaboratively with other agencies in the interest of their clients.
7. Demonstrating commitment to working within the AGCAS network of careers services.”

23. AGCAS provides training courses. These courses are delivered on-line or through short courses run on a national and regional basis. It also offers bespoke training programmes to members and external bodies. For example, it provided

training for the British Council on the creation of career services in Kazakhstan's Universities.

24. It has developed, jointly with the University of Warwick, a qualification in Career Education Information and Guidance in Higher Education (CIEGHE).

5 25. AGCAS organizes conferences for careers advisers and an annual conference for heads of careers advisory services. Members of the AGCAS Board and other AGCAS Members speak regularly at conferences and events in the UK and abroad.

10 26. AGCAS has a number of Task Groups, the aim of which are to develop best practice and share information in relation to careers advice with university students and graduates. The Task Groups also lobby on behalf of the careers service industry and participate in debates on the development of best practice both in the UK and abroad.

15 27. AGCAS provides mentoring services for students who are registered on the qualification courses run with the University of Warwick and heads of careers services.

28. AGCAS facilitates networking and information sharing amongst members both through physical networking events and through social media.

20 29. AGCAS publishes an official journal, entitled "Phoenix", three times each year. The journal is provided to members free of charge. The journal focuses on a particular theme or topic relating to careers advice in each issue. In addition, AGCAS produces a fortnightly electronic newsletter which provides news on the latest activities and opportunities, an update on new resources available to members, details of training and events, listings of jobs currently available in the sector and a summary of news items covering the careers service sector.

25 30. AGCAS undertakes research. This research is often undertaken by the Task Groups within their areas of particular expertise. The research may be for the benefit of members or as part of externally funded projects for the benefit of specific clients. Examples of research projects that have been undertaken by AGCAS include the "Graduate Success Project" which was funded by the Department of Business
30 Information and Skills to investigate graduate and employer perspectives of the graduate employment market and a project funded by Nottingham City Council to review graduate retention in Nottingham.

35 31. AGCAS is involved with the Quality Assurance Agency for Higher Education in the creation and production of the UK Quality Code for Higher Education. This Code is used as a benchmark for institutions providing higher education in the UK.

Qualifications relevant to the provision of careers advice

32. There is no formal qualification that is required before a person can practice as a careers adviser.

33. There are, however, various qualifications which those wishing to become careers advisers may seek to obtain to validate their expertise. The longest-standing and most-recognized qualification is the Qualification in Career Guidance (QCG) in England and Wales or the Qualification in Career Guidance and Development (QCGD) in Scotland. These qualifications are currently available at 11 universities across the UK. In addition, as we have mentioned above, AGCAS has developed the Post Graduate Certificate, Diploma and MA in CEIGHE with the University of Warwick for those working in university careers services.

34. There are various other qualifications that are available through practical training. These include: the Qualifications and Credit Framework (“QCF”) Level 4 Diploma in Career Information Advice, which is designed primarily for practitioners who work in a role in which they provide career information and advice but not career guidance; and the QCF Level 6 Diploma in Career Guidance and Development, which is designed for those practitioners whose role involves providing career guidance and development.

35. Mr Lintern gave evidence on the expertise required in order to become a careers adviser. He did so primarily by reference to the core modules that are taught on the courses offered by the University of Warwick. Those modules include: career development and systems theory; life course, self-concept and role based theories; person environment-fit theories; theories of learning and career development; narrative based theories; psychoanalytic theories; community and structural theories; relevant government policies; models of delivery, systems and resources; the nature and extent of change in labour markets; and professional ethics.

36. He also referred to the availability of various academic papers and to academic journals covering the sector published in the UK and internationally such as: the British Journal of Guidance and Counselling, Human Relations, the Journal of Education and Work, and the Journal of Vocational Behaviour.

37. Mr Lintern also referred to the ability of careers advisers to specialize in particular aspects of practice whether defined by reference to particular client groups or particular industry sectors.

38. Although there is no formal qualification for a careers adviser, within the higher education sector universities have a virtual monopoly on the provision of careers advice and guidance to their students. In practice 87% of AGCAS service members require careers advisers to be graduates and 93% require careers advisers either to have a qualification or to commit to working towards a careers qualification (based on responses from 71 members i.e. a 54% response rate).

39. AGCAS does not impose any continuing education or development requirements. As a matter of practice, AGCAS service members do overwhelmingly insist on some form of continuing education or development.

40. As we have noted above at [22], AGCAS requires service members to adopt its Code of Practice for Service Provision. That Code of Practice requires that all staff

should have or be working towards appropriate vocational qualifications and work to associated occupational standards.

Promotion of ethical standards

41. AGCAS also promotes a Code of Practice on Guidance which is intended to “reflect the shared values to which AGCAS members voluntarily conform”. It requires the adoption of appropriate ethical standards based on six core principles: impartiality, confidentiality, individual ownership (focusing on the needs of the individual), equality of opportunity, transparency and accessibility.

42. There is, however, no disciplinary procedure within AGCAS for breach of this Code of Practice on Guidance. No member has ever been disciplined by AGCAS for breach of the Code. Service members take the leading role in ensuring compliance with ethical standards.

Other representative bodies

43. There are other bodies which careers advisers may join as a representative body. AGCAS is specific to the higher education sector. For example, careers advisers might also join the Career Development Institute. This is a relatively new organization that was formed as a result of the “Careers Profession Task Force” set up by the Government in 2010.

Government recognition

44. Mr Lintern also referred to the report of the Careers Profession Task Force entitled “Towards a Strong Careers Profession” which was published in 2010. He pointed to this report as the acknowledgement of the treatment of careers advice as a profession. The report itself sets out recommendations to enhance the principles of professionalism in the careers sector.

The legislation

45. AGCAS claims that the subscriptions paid by its members should be exempt from VAT under either item 1(c) or item 1(e) of Group 9 of Schedule 9 VATA 1994. Group 9 of Schedule 9 provides as follows:

“Group 9 - Subscriptions to trade unions, professional and other public interest bodies

Item No. 1

The supply to its members of such services and, in connection with those services, of such goods as are both referable only to its aims and available without payment other than a membership subscription by any of the following non-profit-making organisations -

- (a) a trade union or other organisation of persons having as its main object the negotiation on behalf of its members of the terms and conditions of their employment;
- 5 (b) a professional association, membership of which is wholly or mainly restricted to individuals who have or are seeking a qualification appropriate to the practice of the profession concerned;
- 10 (c) an association, the primary purpose of which is the advancement of a particular branch of knowledge, or the fostering of professional expertise, connected with the past or present professions or employments of its members;
- 15 (d) an association, the primary purpose of which is to make representations to the Government on legislation and other public matters which affect the business or professional interests of its members.
- (e) a body which has objects which are in the public domain and are of a political, religious, patriotic, philosophical, philanthropic or civic nature.”

20 46. The interpretation of the items within Group 9 of Schedule 9 is assisted by the Notes to Group 9. Note (4) is relevant to item 1(c). It provides:

“(4) Paragraph (c) does not apply unless the association restricts its membership wholly or mainly to individuals whose present or previous professions or employments are directly connected with the purposes of the association.”

25 47. The UK legislation contained in Group 9 is derived from Article 132 of EU Council Directive 2006/112 on the common system of value added tax (the “Principal VAT Directive”). Article 132 provides, so far as relevant:

“1. Member States shall exempt the following transactions:

.....

- 30 (l) the supply of services, and the supply of goods closely linked thereto, to their members in their common interest in a return for a subscription fixed in accordance with their rules by non-profit making organizations with aims of a political, trade union, religious, patriotic, philosophical, philanthropic or civic nature, provided that this exemption is not likely to cause distortion of competition;.....”

The issues before the Tribunal

35 48. The question before the Tribunal is whether the supplies made by AGCAS to its members are exempt from VAT either under item 1(c) of Group 9 of Schedule 9 VATA 1994 or under item 1(e) of Group 9 of Schedule 9 VATA 1994.

40 49. It is accepted by the parties that the criteria in the preamble of item 1 are fulfilled. HMRC accepts that AGCAS’s supplies to its members are referable to its aims and are available without payment other than a membership subscription. HMRC also accepts that AGCAS is a non-profit making organization.

50. As regards the claim for exemption under item 1(c):

(1) HMRC accepts that any expertise fostered by AGCAS is connected with the past or present professions or employments of its members;

5 (2) HMRC also accepts that AGCAS restricts its membership wholly or mainly to individuals whose present or previous professions or employments are directly connected with the purposes of the association and that the requirements of Note (4) are satisfied (and this is so notwithstanding the importance of the service members within AGCAS);

10 (3) AGCAS accepts that its primary purpose is not the advancement of a branch of knowledge connected with the past or present professions or employments of its members.

51. The issues before the Tribunal in relation to item 1(c) are therefore:

(1) whether the fostering of expertise of graduate careers advisers is the fostering of professional expertise; and

15 (2) whether fostering the expertise of graduate careers advisers is the primary purpose of AGCAS.

52. As regards item 1(e), there are three issues before the Tribunal:

20 (1) whether AGCAS has objects that are in the public domain;

(2) whether AGCAS has objects that are of a philanthropic nature; and

(3) whether AGCAS has objects that are of a civic nature.

25 53. In the course of the hearing, two issues of more general interpretation arose that we should deal with before we approach these specific issues.

30 (1) The first was the extent to which our interpretation of Group 9 should reflect the fact that Group 9 is providing an exemption from VAT and therefore should be interpreted narrowly given the general principle that goods and services supplied by a taxable person should be subject to VAT.

35 (2) The second was the extent to which our interpretation of Group 9 should reflect the principle that a court or tribunal should interpret the provisions of domestic legislation which is designed to implement the Principal VAT Directive, so far as possible, in accordance with and in a manner consistent with the provisions of the Principal VAT Directive (so-called “conforming interpretation”).

The requirement to interpret exemptions strictly

40 54. The parties accept that given that Group 9 is an exception to or an exemption from value added tax, the general principle that VAT is to be levied by a member state on all services supplied for a consideration by a taxable person requires that any

exemption be construed strictly. This principle is set out in the judgment of the European Court of Justice in *Stichting Uitvoering Financiële Acties v Staatssecretaris van Financien* (Case C-348/87) [1989] ECR 1737, 1753 at paragraph 13, where the Court states:

5 “...the terms used to specify the exemptions envisaged by Article 13 of the Sixth Directive are to be interpreted strictly since they constitute exceptions to the general principle that turnover tax is levied on all services supplied for a consideration by a taxable person.”

10 55. Mr Firth accepts that any exemptions from VAT are to be given a strict interpretation, but, he says, they should not be given a restricted interpretation. Accordingly, although a court or tribunal should interpret an exemption strictly, that does not mean that the court or tribunal is required to give these provisions the most narrow possible meaning. There is some support for this proposition in the decision
15 of the Court of Appeal in *The Expert Witness Institute v Customs and Excise Commissioners* [2001] EWCA Civ 1882. In his judgment in that case, Chadwick LJ said, at [17]:

 “It does not follow, however, that the Court is required to give the phrase “aims of a
20 civic nature” the most restricted, or most narrow, meaning that can be given to these words. A “strict” construction is not to be equated, in this context, with a restricted construction. The Court must recognise that it is for a supplier, whose supplies would otherwise be taxable to establish that it comes within the exemption; so that if the Court is left in doubt whether a fair interpretation of the words of the exemption cover the
25 supplies in question, the claim to the exemption must be rejected. But the Court is not required to reject a claim which does come within the fair interpretation of the words of the exemption because there is another more restricted, meaning of the words which would exclude the supplies in question”.

56. HMRC did not disagree with that submission.

30 **Conforming interpretation**

57. The questions of conforming interpretation arise primarily from the fact that much of the wording of Article 132(1)(l) of the Principal VAT Directive is reflected in item 1(e) of Group 9. There are two key differences. The first is that item 1(e) refers to the objects of relevant bodies being “in the public domain”; a reference which does
35 not appear in Article 132(1)(l). The second is that the reference to “trade unions” in Article 132(1)(l) is omitted from item 1(e), but appears in item 1(a). This leads to the question as to what is the purpose of the other specific paragraphs in item 1 (including item 1(c))?

58. We have dealt with the first of these points (the reference to “in the public
40 domain”) later in this decision (at [120] to [124]). We deal with the second issue in the following paragraphs.

The parties' submissions

59. On this question, Mr Firth acknowledges that a court or tribunal is obliged to interpret a provision which is designed to implement the Principal VAT Directive so far as possible so as to be consistent with the provisions of the Directive. In the light of that principle, if a provision of the national legislation is inconsistent with the principles of the Directive, the national legislation must, so far as possible, be interpreted in the light of the Directive and so as to be consistent with EU law. This may involve a substantial departure from the language used in the domestic legislation.

60. Although that principle is a powerful one, Mr Firth says that it cannot apply where it is clear that Parliament has intended to depart from the Directive; it does not authorize a court or tribunal to ignore a fundamental feature of the legislation. In this respect, Mr Firth refers to the decision of the First-tier Tribunal in *Rapid Sequence Limited v. HMRC* [2013] UKFTT 432 and to the extracts from the decision of Arden LJ in *Revenue and Customs Commissioners v. IDT Card Services Ireland Limited* [2006] EWCA Civ 29 to which the Tribunal referred in its decision in the *Rapid Sequence* case.

61. On the basis of those cases, he says AGCAS is entitled to rely on the provisions of the domestic VAT legislation. It is a fundamental feature of the domestic legislation that there is an exemption for subscriptions to associations, the primary purpose of which are to foster professional expertise of their members. Accordingly, if the Tribunal were to decide that the purpose of AGCAS was not a purpose within Article item 1(e) of Group 9, it should not automatically take the view that the services provided by AGCAS cannot fall within item 1(c). Any other interpretation, he says, would deprive the other paragraphs of item 1 of any meaning. It was clear that the parliamentary intention was to give an exemption for associations which fostered professional expertise and if and to the extent that purpose was beyond the provisions of Article 132(1)(l) of the Principal VAT Directive, the Tribunal ought to honour that intention.

62. In the alternative, Mr Firth says that, unlike the provisions which were being discussed in the *Rapid Sequence* case, the underlying principle of Article 132(1)(l) of the Principal VAT Directive is not clear. Parliament has interpreted that provision to include supplies made by associations which foster the professional expertise of their members. The principle of legal certainty requires that that interpretation is respected as there is no reason why a taxpayer could know that the fostering of professional expertise was otherwise not within the exemption.

Discussion

63. We are obliged to interpret provisions of UK law which implement an EU directive so far as possible in a manner consistent with the provisions of the directive. This principle is derived from the case of *Marleasing SA v La Comercial Internacional de Alimentacion SA* (Case C-106/89) [1990] ECR I-4135. The facts of the case are not relevant here, but, in that case, the ECJ made the following comment regarding the interpretation of national law provisions that implement EU directives:

“8. in applying national law, whether the provisions in question were adopted before or after the directive, the national court called upon to interpret it is required to do so, so far as possible, in the light of the wording and the purpose of the directive in order to achieve the result pursued by the latter...”.

5

64. The obligation of a court or tribunal in such cases is a powerful one. As Arden LJ said in *Test Claimants in the FII Group Litigation v HMRC* [2010] EWCA Civ 103 at [260]:

10 “The obligation of a court to interpret domestic legislation in conformity with
Community law if it is possible to do so is a powerful one, requiring the court to go
beyond what could be done by way of statutory interpretation where no question of
community law or human rights is involved: see *R (IDT Card Services Ireland Limited)*
v Customs and Excise [2006] EWCA Civ 29; *Lister v Forth Dry Dock and Engineering*
Co Limited [1989] 1 All ER 1134. As explained in *IDT*, the courts apply by analogy
15 the principles established under section 3 of the Human Rights Act 1998, which
imposes a similar obligation on the court; see *Ghaidan v Godin-Mendoza* [2004] UK
HL 30 especially the speeches of Lord Nichols and Lord Rodger. Statutory provisions
can be read as subject to a limitation provided that the limitation does not go against the
grain of the legislation”.

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65. We must therefore apply those principles to the interpretation of the provisions of Group 9.

25 66. The wording of item 1(e) of Group 9 largely follows that in Article 132 (1)(l) of the Principal VAT Directive other than the omission of the reference to trade unions. Item 1(e) therefore deals with most of the requirements of the UK to implement Article 132(1)(l) of the Principal VAT Directive. That leaves open the question as to what is the purpose of the other more specific paragraphs in item 1.

30 67. Mr Firth’s first argument is that the evident intention of item 1(c) is that there should be a specific exemption for subscriptions to bodies which foster professional expertise. This, he says, is a fundamental feature of the legislation. It was clearly the intention of Parliament that there should be an exemption for such matters irrespective of whether such supplies would fall within the terms of the relevant provision of the Directive. AGCAS should be entitled to rely on the terms of the domestic legislation.

35 68. We do not agree. The decision of the Court of Appeal in the *IDT Card Services* case is clear authority that the obligation on the court or tribunal to adopt a conforming interpretation is “a powerful one”. For that reason, we should be reluctant to take the view that Parliament had intended Group 9 to be inconsistent with the Principal VAT Directive. Furthermore, in our view, there is nothing in the drafting of the legislation to evidence a manifest intention on the part of Parliament to
40 legislate in a manner that is not consistent with the Directive.

69. For example, items 1(b) and (d) are, in our view, Parliament’s expression of the reference in Article 132(1)(l) of the Principal VAT Directive to associations with objects of “a trade union nature”, where “trade union” is not given the restrictive meaning typically given to it in the English language to associations with the aim of

protecting workers rights, but also extends to organizations whose objects are to defend the collective interests of their members, whether those members be workers, employers, independent professionals or traders.

70. This point is explained in the decision of the European Court of Justice in *Institute of the Motor Industry v. Commissioners of Customs & Excise* Case C-149/97 [1998] STC 1219 at [14] to [22] in the context of Article 13A(1)(l) of the Sixth Directive (the predecessor to Article 132(1)(l) of the Principal VAT Directive). At [20] to [22], the Court concludes:

“20. The expression 'trade-union' in that provision means specifically an organisation whose main object is to defend the collective interests of its members—whether they are workers, employers, independent professionals or traders carrying on a particular economic activity—and to represent them vis-à-vis the appropriate third parties, including the public authorities.

21. Thus, a non-profit-making organisation whose main object is to defend and represent the collective interests of its members satisfies the criterion of exercising an activity in the public interest, which is the basis of the exemptions set out in art 13A(1)(l) of the Sixth Directive, in so far as it provides its members with a representative voice and strength in negotiations with third parties.

22. It is for the tribunal to assess, in the light of the above considerations, whether an association such as the institute is an organisation with aims of a trade-union nature within the meaning of art 13A(1)(l) of the Sixth Directive.”

71. This leaves item 1(c). Article 132(1)(l) does not deal expressly with supplies to members of associations which are either learned societies or for the fostering of professional expertise in consideration only for a membership subscription. However, it seems to us that such societies might be brought within a broader concept of associations with objects of a “civic nature” in Article 132(1)(l) – if not within the concept of objects of a “civic nature” as it has been interpreted by the courts and tribunals in the context of item 1(e) (see below) – and, on that basis, we should regard them as falling within Parliament’s legitimate expression of the terms of the Directive.

Item 1(c) – the first issue: does AGCAS foster “professional” expertise?

The Appellant’s arguments

72. Mr Firth makes the following points on behalf of AGCAS.

73. The provision of graduate careers advice is a profession. The test for determining whether an occupation is a profession is whether “the ordinary reasonable man would so regard it” (see *Committee of Directors of Polytechnics v Customs and Excise Commissioners* [1992] STC 873 at page 880).

74. Mr Firth says that that test cannot be applied in an arbitrary manner. It has to be applied by the Tribunal in a manner conducive to consistency and legal certainty.

Although the courts and tribunals have resisted attempts to prescribe a definitive list of criteria that should be taken into account in determining whether a given occupation is a profession, from an analysis of the case law, it is possible to identify a number of relevant factors and themes which a court or tribunal should take into account in determining whether an occupation should be regarded as a profession.

75. Having regard to those factors, Mr Firth says that graduate careers advice should be regarded as a profession.

(a) The knowledge base required of careers advisers is sufficiently broad and multi-disciplinary.

(b) Careers advisers have the opportunity to specialize in particular aspects of the guidance profession usually in either a specific sector or with a specific client group.

(c) Graduate careers advice is practised at a sufficiently expert level. As a result of the fact that the universities have a near monopoly on the provision of graduate careers advice, the universities can and do guarantee appropriate standards of recruitment and training. Service members of AGCAS must adhere to the AGCAS Code of Practice for Service Provision and it requires service members to ensure that all staff either have a relevant qualification or be working towards an appropriate qualification and work to relevant standards. Research on careers advice is featured in a number of international peer-reviewed journals.

(d) Graduate careers advisers operate to ethical standards. AGCAS itself maintains a code of practice which establishes the requirements for professional standards.

(e) Careers advice is recognized as a profession by Government departments.

76. In the alternative, even if careers advice is not yet a profession, Mr Firth says that AGCAS is fostering professional expertise.

(a) Item 1(c) does not require that AGCAS be fostering the expertise of professionals. The language of item 1(c) extends to fostering expertise in persons who are not yet part of a profession as long as the expertise which is being fostered is sufficiently similar to that of the recognized professions. There is authority for this proposition in *Institute of Information Security Professionals v. HMRC* [2009] UKFTT 365 (TC). Although there is authority to the contrary in other cases (for example, *The Association of Payroll and Superannuation Administrators v. HMRC* VATD 7009), there is no authority which is binding on the Tribunal.

(b) The wider interpretation is to be preferred. It is the more natural use of the language. If Parliament had intended to restrict the provision to fostering the expertise of existing recognized professions, it could and should have said

so. The wider interpretation has the benefit of reducing the arbitrary effect of the “ordinary man in the street test” which applies to determine whether or not an occupation is recognized as a profession.

HMRC’s arguments

5 77. Mrs Carroll says that HMRC do not accept that AGCAS is fostering professional expertise. She makes the following points.

(a) Careers advice is not a profession. The test of whether or not an occupation is a profession is whether the ordinary man in the street would so regard it. Careers advice would not be recognized as a profession on that test.
10 In particular:

(i) Careers advisers do not possess a suitably broad academic base of knowledge which can then be developed into specific expertise. The skills of a careers adviser are much more practical.
15

(ii) There is no set recognized qualification that needs to be obtained in order to become a careers adviser. There are various non-prescribed courses and qualifications that can be undertaken to demonstrate a certain level of understanding or knowledge.
20

(iii) Careers advisers are not subject to any particular code of conduct. They are not subject to any professional code of ethics. AGCAS promotes a code of practice but it is not enforced by AGCAS. It is enforced by the universities in their position as the employers of the careers advisers.
25

(b) In item 1(c) the term “professional” has the same meaning as in item 1(b). The reference to a “professional” is therefore to a member of one of the recognized professions. The reference to fostering expertise is a reference to fostering expertise which is of the nature of one of the recognized professions. This is not limited to fostering the expertise of an existing professional. It could extend to fostering the expertise of those training to become a recognized professional. However, it cannot be extended to include fostering expertise of a sufficiently similar nature to that of a professional as AGCAS contends.
30

35 *Discussion*

78. On the assumption that AGCAS fosters expertise of its members, the question that we need to answer is whether or not that expertise is “professional” expertise. For the purposes of item 1(c) of Group 9.

79. As his first proposition, Mr Firth submitted that the occupation of a graduate careers adviser was a profession and therefore that the expertise which AGCAS fostered in its members was professional expertise.
40

80. The case law suggests that the overriding principle is whether or not the “ordinary reasonable man” would regard the relevant occupation as a profession. The authority

for this proposition is found in the judgment of the Court of Appeal in *Carr v Inland Revenue Commissioners* [1944] 2 All ER 163. In that case Du Parcq LJ said, at pages 166-167:

5 “Ultimately one has to answer this question: would the ordinary man, the ordinary
reasonable man – the man, if you like to refer to an old friend, on the Clapham
Omnibus – say now, in the time in which we live, of any particular occupation, that it is
properly described as a profession? I do not believe one can escape from that very
practical way of putting the question; in other words, I think it would be in a proper
10 case a question for a jury, and I think in a case like this it is eminently one for the
Commissioners. Times have changed. There are professions today which nobody
would have considered to be professions in times past. Our forefathers restricted the
professions to a very small number, the work of the surgeon used to be carried on by
the barber, whom nobody would have considered a professional man. The profession
15 of the chartered accountant has grown up in comparatively recent times, and other
trades, or vocations, I care not what word you use in relation to them, may in the future
acquire the status of professions. It must be the intention of the legislature, when it
refers to a profession, to indicate what the ordinary intelligent subject, taking down the
volume of statutes and reading the section, will think that “profession” means. I do not
think that the lawyer as such can help him very much.”

20 81. This principle has been adopted in the context of item 1 of Group 9 case VATA
1994 in various cases (see by way of example, the judgment of Brooke J in *Committee
of Directors of Polytechnics v Customs and Excise Commissioners* [1992] STC 873 at
page 879).

25 82. In this context, the Tribunal has to put itself in the place of the ordinary reasonable
man. As Pill J described it in his decision in *Institute of Leisure and Amenity
Management v Customs & Excise Commissioners* [1998] STC 602, the Tribunal has
to “form a judgment upon the question as the spokesperson of the ordinary reasonable
man, with his experience of life and everyday affairs” (see page 606).

30 83. Mr Firth submits, and we agree, that the process of determining what is or is not a
profession cannot, however, be arbitrary (see *British Association of Counselling*
(VAT Decision 11855)). The courts and tribunals have, in approaching this question,
sought to identify principles and factors which ought to be taken into account in
determining whether or not a particular occupation should be regarded as a
profession.

35 84. In this respect we have been referred to a large volume of case law by the parties.
Some of the cases to which we have been referred relate to the application of item
1(b) of Group 9 (professional associations) rather than item 1(c) (fostering
professional expertise). It is therefore necessary to distinguish those aspects of
criteria employed in defining a “profession” in item 1(b) which relate principally to
40 features of a professional body from those which are used to identify whether an
occupation should be regarded as a profession. There is no requirement in item 1(c)
for the association in question to be a professional association. The requirement is
simply for it to be an association. Accordingly, for example, although it may be a
feature of a profession that its participants may be required to conform to a set of

ethical or professional standards, there is no requirement for a body that falls within item 1(c) to be a body which enforces them.

5 85. Some of the cases to which we have been referred refer to the Monopolies Commission Report on the Supply of Professional Services in 1970. That report set out a list of characteristics that the Commission considered that a profession should possess. The relevant paragraphs are paragraphs 20-22. They read as follows:-

10 “20. Various attempts have been made to define the characteristics of the professions. None of these definitions will enable us to draw a clear line between professional and non-professional occupations nor, as we have said, have we found it necessary to do this.

21. No occupation has been regarded as falling within the ambit of our enquiry unless it has some of the following characteristics:

- (i) practitioners apply a specialist skill enabling them to offer a specialist service;
- 15 (ii) the skill has been acquired by intellectual and practical training in a well-defined area of study;
- (iii) the service calls for a high degree of detachment and integrity on the part of the practitioner in exercising personal judgment on behalf of a client;
- (iv) service involves direct, personal and fiduciary relations with the client;
- 20 (v) the practitioners collectively have a particular sense of responsibility for maintaining the competence and integrity of the occupation as a whole;
- (vi) the practitioners tend or are required to avoid certain methods of attracting business;
- 25 (vii) the practitioners are organised in bodies which with or without state intervention, are concerned to provide machinery for testing competence and regulating standards of competence and conduct.

22. Occupations having all these characteristics are, no doubt, professions. Some occupations with some but not all of the characteristics are nevertheless commonly regarded as professions.”

30 86. The courts, however, have resisted the temptation to adopt a prescriptive list of factors. It is clear that some factors are more important in some cases rather than others and that the absence of one or more factors may or may not be determinative.

87. From our review of the case law, we would identify the following factors as being of material importance to the identification of a profession.

35 88. As an initial point, it is clear that all “intellectual professions” (as opposed to aesthetic professions) require a specialist skill. That skill has to have sufficient coherence to constitute a single subject matter, but has to be capable of broad application (see *Institute of Chartered Shipbrokers* (VAT Decision 15033)). A

technical skill which is narrowly focussed in terms of the skill itself or the industry to which it is applicable is not consistent with the character of a profession (see, for example, *Institute of Leisure and Amenity Management* at page 607, *Association of Payroll and Superannuation Administrators* (1992) (VAT Decision 7009), *Institute of Legal Cashiers and Administrators* (VAT Decision 12383), and *Association of Reflexologists* (VAT Decision 13078)).

89. Whilst there is no absolute requirement for qualifications (see *Institute of Chartered Shipbrokers* (VAT Decision 15033) and the judgment of Scott LJ in *Carr v Inland Revenue Commissioners* at page 165), the ability to obtain relevant qualifications will be important in demonstrating that an occupation is carried on with an appropriate level of expertise and, in some cases, the requirement to obtain a given qualification or accreditation has been seen as an important feature of a profession (see *British Association for Counselling* (VAT Decision 11855) and *Institute for Information Security Professionals v HMRC* [2009] UK FTT 365).

90. The existence and application of some form of code of ethics and/or professional conduct is also an important factor. The code of ethics and professional standards may or may not be enforced by an appropriate professional body and may be a detailed code or general principle of ethical conduct (see *Institute of Chartered Shipbrokers*) but some means, formal or informal, of maintaining the integrity of the occupation is required.

91. There are other principles that we derive from the case law.

92. First, as very basic principle, it is clear that whether or not an occupation is regarded as a profession is distinct from whether or not the members of that occupation act in a professional, as opposed to amateur, manner.

93. Second, as can be seen from the above, the categories of profession are not closed. It is quite possible that over time certain occupations that would not previously have been regarded as professions will come to be regarded as professions under this test (see the passage from the judgment of Du Parcq LJ in *Carr* to which we refer at [80]).

94. Third, it is not necessary for all persons who carry on a particular occupation to be doing so as a professional. In *Carr*, Scott LJ (at page 165) specifically distinguished the “universal proposition” that opticians in general carry on a profession from the question of whether a specific taxpayer carried on that profession. In a similar way, in *British Association for Counselling*, the VAT Tribunal concluded that accredited members of the Association carried on counselling as a profession, but unaccredited members did not. Also, in *Institute of Chartered Shipbrokers*, the VAT Tribunal commented that the Tribunal was unsure whether an unqualified or inexperienced person engaged in shipbroking “would necessarily be described as a shipbroker”.

95. We find this a difficult case, but on balance, we have concluded that the provision of careers advice is not a recognized profession (or perhaps, more accurately, not yet a recognized profession) within the meaning of item 1(c) of Group 9. In reaching that conclusion, we have taken into account the following factors.

96. While some careers advisers do acquire a broad spectrum of knowledge which permits those practitioners to specialize to some extent, not all practitioners who would describe themselves as “careers advisers” practice at that level. There is a range of expertise covering those who operate at a more administrative level to those who provide career guidance and counselling at an expert level.

97. We accept Mr Firth’s argument that it is not necessary to show that all practitioners who call themselves “careers advisers” practice at a level that might be regarded as professional in the required sense (see *Carr*, and *British Association of Counselling*). However, we do think that it is necessary to show an identifiable group of persons who meet the criteria (for example, the accredited counsellors in *British Association of Counselling*). Mr Firth suggested that this point could be addressed by describing the relevant profession as that of graduate careers advisers. But we regard that as an artificial distinction.

98. Nor, in this case, is the element of coherence to be found in any level of qualification or accreditation. Although it is not an essential requirement for an occupation to be a profession that it is necessary to gain an appropriate qualification before being entitled to practice, we do regard some form of qualification or accreditation as an important aspect. The existing qualifications for careers advice act to validate the particular expertise of those who obtain them; they do not define a group of persons who could be regarded as professionals. There is no accepted qualification or accreditation required for acting as a careers adviser whether as a graduate careers adviser or otherwise.

99. We also regard an important aspect of a profession that there is some form of code practice or code of ethics which is adhered to by its practitioners. As we understand it, the code of practice promulgated by AGCAS is a code of standards imposed upon its service members and not upon the individual members. It is the service members who enforce standards and ethical practices of their employees. There is no separate disciplinary code or procedure applying outside their contract of employment with the relevant careers services.

100. This leads to Mr Firth’s second proposition. He submits that it is not necessary for AGCAS to show that careers advice is a profession or even that graduate careers advice is a profession. He says that it is only necessary for AGCAS to show that careers advice has characteristics that would enable it to become a profession in due course. In essence, he says that even if item 1(b) is limited to recognized professions (because only a recognized profession would have a professional body), that is not a necessary limitation for item 1(c). Item 1(c) can therefore extend to associations which foster expertise which is of its nature “professional” even though it does not relate to what is currently a recognized profession.

101. There is no binding authority on this point. In support of his submission, Mr Firth refers to the decision of the First-tier Tribunal in *Institution of Information Security Professionals* [2009] UK FTT 365, at [43], where the Tribunal states:

5 “We do accept that the word “professional” in (c) must be interpreted in the same way as it is in (b), but that does not entail accepting that, because the IISP is not yet a profession, it cannot bring itself within (c). Whilst the IISP’s members are not employed in a recognized profession, the intention of the IISP is to foster professional expertise within that employment in order that in time it may be recognized as a profession. If Parliament had intended that item 1(c) could only be met by a body that has members who are members of a profession within (b) as Miss Mitrophanous submitted, it could have said so. As it is, (c) makes a specific distinction between “profession” and “employment”.”

10 102. There are earlier decisions of the VAT Tribunal that appear to hold that, if an occupation is not a profession, an association which promotes the expertise of its practitioners cannot satisfy item 1(c). So, for example, in the *Association of Payroll and Superannuation Administrators* (VAT Decision 7009), The Tribunal stated:

15 “It is clear that there are two independent definitions [in item 1(b) and item 1(c)] and we treat them as such but they are both linked to the exercise of a profession. In this case we do not find that the Association’s primary purpose is the fostering of professional expertise connected with the employment of its members...

20 ...If that employment is not regarded as the practice of a profession then (c) cannot apply. The Association’s purpose is to ensure that its members do their job to the best of their ability and, as Mr Winkley conceded, act in a professional manner, but that does not create a profession”.

103. The point also arises in the decision of the VAT Tribunal in *British Association for Counselling* (VAT Decision 11855) but the Tribunal did not have to make any decision on the point.

25 104. On balance, we take the view that the word “professional” in item 1(b) and item 1(c) must be given the same meaning. We also take the view that “professional expertise” in item 1(c) must refer to expertise relating to an existing recognized profession. That seems to us the most natural reading. Furthermore, if it were not the case, item 1(c) might extend to fostering expertise in an occupation which, whilst
30 capable of developing into a profession, might never become so. In coming to that conclusion, we are also mindful of our obligations to interpret exemptions from VAT strictly, although not in a restricted manner.

Item 1(c) – the second issue: is fostering that expertise the “primary purpose” of AGCAS?

35 105. Our conclusion on the first issue determines the question of whether or not the supplies made by AGCAS to its members can be regarded as falling within item 1(c). However, as we have heard full argument on the second issue from the parties, we have set out below our views on that issue.

AGCAS’s arguments

40 106. Mr Firth, on behalf of AGCAS argues that fostering the expertise of graduate careers advisers is the primary purpose of AGCAS. He makes the following points.

(a) The test of whether a purpose is a primary purpose is an objective one. It has to be answered by an examination of the taxpayer's stated objects in its constitutional documents and other reference materials, but also tested against the reality of what it actually does.

5

(b) A review of AGCAS's Articles of Association, its mission statement and the activities actually undertaken by it show that AGCAS's primary operational purpose is that of fostering the expertise of graduate careers advisers.

10

(c) The fact that AGCAS has an express purpose in its objects of benefitting students does not prevent it from having a primary purpose of fostering the expertise of its members if fostering the expertise of its members is what it actually does and that is the means by which it benefits students.

15

(d) Any other result would risk treating similar supplies made by different persons in a different way for VAT purposes. That would offend the EU law principle of tax neutrality.

HMRC's arguments

107. Mrs Carroll, on behalf of HMRC, submits that fostering expertise is not the primary purpose of AGCAS.

20

(a) She accepts that the test for determining a primary purpose is an objective one. It is to be determined by reference to the stated objectives of the person or body and tested by reference to that person or body's actual activities.

25

(b) The objects of AGCAS as set out in its Articles of Association state that its principal aim is to benefit students. There is no reference in the Articles of Association to objects that amount to the fostering the expertise of members. The powers of AGCAS by which it is to obtain those objects contain no reference to fostering expertise of members.

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(c) AGCAS's mission statement on its website includes several aims only one of which is to provide support and development opportunities for its members. AGCAS's report to the Charities Commission is in similar form.

Discussion

108. If its supplies to its members are to fall within item 1(c), the "primary purpose" of AGCAS must be to "foster the expertise" of its members. The principles which govern this enquiry were set out by Morgan J in *British Association of Leisure Parks, Piers and Attractions Limited v HMRC* [2013] UKUT 0130 at [14] where he said:

35

"(1) ...

40

(2) the reference to "primary purpose" in item 1(d) does not require the Association to show that the purpose referred to in item 1(d) was the sole purpose of the Association, but the purpose referred to in item 1(d) must be its main or principal purpose;

- (3) it is possible for a body to have multiple objects so that no single object could be said to be predominant or the primary purpose;
- (4) the primary purpose test involves an objective enquiry, not a subjective one; the matter is to be determined primarily by an examination of the stated objects and the actual activities of the body in question; the subjective views of the officers and members of the body may throw some light on the relevant objective enquiry but those views are not to be elevated into a diagnostic test;
- (5) the enquiry as to the primary purpose of the body normally involves the Tribunal looking at the constitutional documents of that body and other materials from which the purposes of the body can be derived, tested against the reality of what the body does.”

109. Further guidance can be found in the decision of the First-tier Tribunal in *United Grand Lodge of England* [2014] UKFTT 164 at [23]:

“23. It seems to us that the importance of the written rules of a body in determining its aim may depend upon the nature of the body: trustees are required to act in accordance with the Trust Deed: that Deed must therefore be highly significant; companies may be bound by transactions they enter into which are not authorised by their constitutions, but they are bound to their members by their constitutions: there is more scope than there is with a trust governed by a trust deed for finding their aims in what is actually done; and unincorporated associations are generally bound together by agreement between their members: such agreements may more readily change over time, and the nature of the agreement which holds members together may not be reflected, or not wholly reflected in any written set of rules: in their case what is actually done may be of greater significance in determining what the aims are.”

110. From those cases, it is clear to us that we must determine the primary purpose of AGCAS from its constitutional documents and other sources and to test those objects against what AGCAS actually does. In doing so, we bear in mind that there may be more scope for finding the aims of AGCAS from its activities than might otherwise be the case, for example, in the context of a trust (in the light of the comments of the First-tier Tribunal in the *United Grand Lodge of England* case).

111. In his submissions, Mr Firth sought to draw a distinction between different levels of “purpose” which a body might have. He said that it was possible for a body to have different purposes at different levels of specificity. In this case, he said that it would be possible for AGCAS to have an “aspirational purpose”, namely to benefit students, an “operational purpose”, to foster expertise, and a “day to day purpose”, to publish a journal. He suggested that the appropriate comparison should be made by reference to the purposes at the same level. So, for example, a body with a primary operational purpose of fostering the professional expertise of its members did not cease to have that as its primary purpose simply because that is the way in which the body gives effect to its aspirational purpose, for example, of benefitting students.

112. We have to say that we did not find that analysis particularly helpful. Accordingly, we have approached this question in the manner suggested by Morgan J in the *British Association of Leisure Parks* case.

113.If we adopt that approach, we look first to the objects of AGCAS as demonstrated from its constitutional documents and other external expressions of its aims and objectives. We take into account the following factors.

114.As we have noted at [8] above, the Articles of Association of AGCAS state that the objects of the AGCAS are, to paraphrase, to benefit students by promoting and assisting in the provision of high quality careers advice and guidance to support their career development and enhance their employability. There is no reference in the Articles of Association to any of the objects of AGCAS being to foster the expertise of the individual members of AGCAS, although some of the powers of AGCAS (described at [9] above) could be used for that purpose.

115.The mission statement of AGCAS for 2013 to 2016 (to which we refer at [11] above) and the information return made to the Charity Commission (see [12] above) set out three aims: providing a lobbying voice for its membership; being a focal point for research and opinion; and providing support and development opportunities for its members. Only the latter, to the extent that it refers to individual members, relates directly to activities that might be described as fostering the expertise of its members, although, to some extent, being a focal point for research and opinion may do so.

116.We then turn to the actual activities of AGCAS.

117.As we have described above, AGCAS performs various functions.

(1) It seeks to ensure good practice amongst its service members by promoting codes of practice in relation to service provision and standards of service delivery.

(2) It acts as a form of representative body for its members by promoting the careers advisory sector with government and within the higher education sector and acting as a spokesperson on behalf of careers advice services at universities.

(3) It provides a forum for its service members to share ideas and best practice for service provision.

(4) It develops and runs training courses for those individual members who wish to expand their skills or obtain accreditation for their skills as graduate careers advisers. In particular, it has played an important role in developing a specific qualification for careers guidance and advice with Warwick University.

(5) It produces and coordinates research for the benefit of members or for the benefit of third parties such as the Government.

(6) It publishes a peer reviewed journal.

118.It is clear to us that AGCAS performs many of the functions that would be expected of a representative body, perhaps short of enforcing a code of conduct. Some of its activities involve the fostering of expertise of individual members. We

refer in particular to the development of qualifications in graduate careers advice and the promotion of training courses more generally. We would also include within this category, to some extent, the commissioning and sharing of research and its activities in publishing its peer reviewed journals. However, it also performs many other functions on behalf of its service members. These include acting as a quasi-representative body, promoting voluntary codes of conduct to raise the standards of service provision and acting as a voice for the careers service sector.

119. The enquiry as to the primary purpose of AGCAS requires us to establish its main or principal purpose. As Morgan J stated in *British Association of Leisure Parks*, it is quite possible for a body to have multiple objects so that no single object could be said to be the predominant or primary purpose. We think that this applies to AGCAS. In our view, the purposes of AGCAS are most aptly described in its mission statement and the functions that it performs reflect the aims and objectives as set out in the mission statement. As a result, AGCAS has some objectives and performs some functions which might be regarded as fostering the expertise of its members, but it has other objectives and performs other functions that are equally important. On that basis, we have come to the view that fostering the expertise of its individual members could not be said to be its only or its primary purpose.

Item 1(e) – the first issue: are the objects of AGCAS “in the public domain”?

120. We therefore turn to item 1(e). The first issue before the Tribunal is whether the objects of AGCAS are “in the public domain” as required by item 1(e).

The parties’ arguments

121. For AGCAS, Mr Firth says as follows.

(a) Article 132(1)(l) does not use the expression “in the public domain”. Accordingly, the phrase should not be interpreted as requiring anything going beyond the level of public orientation necessarily implicit in the activities that are specifically listed in Article 132(1)(l) bearing in mind that the purpose of the exemptions is to exempt from VAT certain activities that are regarded as being in the public interest.

(b) In practice, it is clear that the aims of AGCAS are “in the public domain” in that sense. There is a large population of potential direct beneficiaries of the services of AGCAS members. These include over 2.3 million students, but also those who are considering entering into higher education and those who have passed through higher education. In any event, society as a whole benefits directly from AGCAS’s aim as it is concerned with the transition of students from higher education into the workforce.

122. For HMRC, Mrs Carroll says that AGCAS does not have aims that are in the public domain. The objects of AGCAS are confined to students within higher education who seek careers advice. There is no direct link to the community as a whole.

Discussion

123. The case law suggests that the purpose of the exemptions in Article 132(1)(l) is to exempt from VAT certain activities which are in the public interest. Mr Firth referred us, in particular, to the judgment of the European Court of Justice in *Institute of the Motor Industry v. Customs & Excise Commissioners* Case C-149/97 [1998] STC 1219. In paragraph 18 of the Court’s judgment, the Court states:

“It must also be remembered that the aim of Article 13A of the Sixth Directive is to exempt from VAT certain activities which are in the public interest. As the Court has stressed on several occasions (see *EC Commission v. Germany* (Case 107/84) [1985] ECR 2655 at 2668, paragraph 17 and *Stichting Uitvoering Financiele Acties* [1989] ECR 1737 at 1752 – 1753, paragraph 12), that provision does not provide exemption for every activity performed in the public interest, but only for those which are listed and described in great detail.”

124. There is no reference in Article 132(1)(l) to the phrase “in the public domain”. In our view, the reference should simply be read as requiring the appropriate level of public interest in the pursuit of the objects that are listed in Article 132(1)(l) and reflected in item 1 of Group 9. On that basis, we should take into account these factors in interpreting the specific objects identified in item 1(e) of Group 9.

Item 1(e) - the second issue: does AGCAS have objects of a philanthropic nature.

125. The next issue before the Tribunal is whether or not AGCAS has objects of a philanthropic nature.

The parties’ submissions

126. For AGCAS, Mr Firth made the following points.

(a) A philanthropic object is one that indicates goodwill towards mankind in general (see *United Grand Lodge of England v. HMRC* [2014] UKFTT 164 (TC), at [145] – [146]).

(b) AGCAS’s wider objects do indicate goodwill towards mankind in general because (i) the class of persons in higher education is a very large section of society; and (ii) mankind as a whole benefits indirectly from the employment of graduates.

127. For HMRC, Mrs Carroll says that the objects of AGCAS are not of a philanthropic nature. She makes the following points.

(a) A philanthropic object connotes an object of promoting the well-being of mankind.

(b) The fact that the activities may be of benefit to the public although they are not designed to be so will not bring the activities within the definition of philanthropic (see *The Game Conservancy Trust* (VAT decision 17394)).

(c) The activities of AGCAS benefit its members and indirectly students. There is no direct link to the community as a whole.

5 (d) The argument that the activities of AGCAS benefit society as a whole is too broad. The exemption is intended to be a limited one.

Discussion

128. An aim or object will be “philanthropic” in nature if it is intended to benefit mankind as a whole. Acts which are intended to benefit a defined class of person are
10 not philanthropic. In this context, we refer to the decision of the First-tier Tribunal in the *United Grand Lodge of England* case in that decision, the Tribunal stated at [145] and [146]:

“145. In [*Rotary International v. Customs & Excise Commissioners* [1991] VATTR [177]], the Tribunal said this of the meanings of “philanthropic” and “philanthropy”:

15 Philanthropy is given this meaning in the Shorter Oxford Dictionary: “love towards mankind; practical benevolence towards men in general; the disposition to promote the wellbeing of one’s fellow men.”

Philanthropic means “characterised by philanthropy; benevolent, humane”, The Oxford Dictionary gives the same meaning and additionally “actuated by love of one’s fellow
20 men”.

In *Re McDuff* [1986] 2 CH 451... Stirling J said that:

“an act cannot be philanthropic unless it indicates goodwill towards mankind at large”.

At page 464 Lindley LJ could not put any definite meaning on the word:

25 “All I can say is that a philanthropic purpose must be a purpose which indicates goodwill towards mankind in general.”

146. Neither party dissented from these interpretations. It seems to us that, particularly in view of the requirement that the exemption have a public interest, that acts which are intended to benefit only a defined class rather than mankind in general may not be, or
30 be wholly, philanthropic, particularly if that class is small.”

129. In addition, an aim or object must itself be philanthropic. It is not sufficient that the activities in question may provide some collateral benefit to the wider public unless the aim of the activities is itself philanthropic. In this respect we refer to the decision of the VAT Tribunal in *The Game Conservancy Trust* (VAT decision 17394)
35 where the Tribunal stated at [65]:

“...the ordinary meaning of the term “philanthropic” connotes an aim or object promoting the well-being of mankind by serving one’s fellow men. This must be the stated aim as well as the real aim. The fact that the activities of the body in question may bring benefit to the public although not specifically designed to do so will exclude
40 it from qualifying as philanthropic. Equally if on examination of the evidence, it

transpires that the body has some underlying aim or object that is more substantial than its stated aim, the body will be excluded from the exemption.”

5 130. In the present case, the aims and objectives of AGCAS are, as described above, to benefit service members by encouraging cooperation between them, to benefit individual members by promoting education and continuing development and thereby to promote the provision of high quality careers advice for the benefit of students.

131. In our view, these aims are not wholly philanthropic as required by item 1(e).

10 132. First, the aims of AGCAS are at least in part to benefit the members themselves. The fact that a body makes supplies of membership services to its members does not preclude that body from having philanthropic motives, but the aims of AGCAS are targeted at too narrow a class to be treated as philanthropic in themselves.

15 133. Second, although there may be some wider benefit to society as a whole to the extent the employability of students and graduates is improved, in our view, that benefit is too far removed to be treated as an aim or purpose of AGCAS. As in *The Game Conservancy Trust* case, the aims and objects of AGCAS are not themselves philanthropic and the fact that its activities may produce a collateral benefit to wider society does not make them so.

Item 1(e) - the third issue: does AGCAS have objects of a civic nature?

20 134. The final issue that we need to resolve is whether or not AGCAS’s objects could be regarded as being of a civic nature.

The parties’ submissions

135. For AGCAS, Mr Firth makes the following points.

25 (a) An object is of a civic nature if it is “of, pertaining, or proper to citizens” or “of or pertaining to citizenship” (*The Expert Witness Institute v. Customs & Excise Commissioners* [2001] EWCA Civ 1882 per Chadwick LJ at [30]).

30 (b) The pursuit of remunerative work is a crucial element in civil society and accordingly the facilitation of employment promotes the relationship between citizens and the state of which they are citizens.

(c) On that basis supporting career development and enhancing employability of citizens is a civic object.

136. For HMRC, Mrs Carroll makes the following points.

35 (a) Objects of a civic nature are objects which “promote the relationship of citizens, not amongst themselves, but with the state of which they are citizens” (*The Expert Witness Institute v. Customs & Excise Commissioners* [2001] EWCA Civ 1882 per Longmore LJ at [36]).

(b) The objects of AGCAS do not relate to the relationship between citizens and the state. The objects of AGCAS relate to the relationships between service members, individual members and students and graduates.

5 (c) The exemption in item 1(e) is intended to be a limited one and confined to
bodies which have objects and aims which are in the public interest (see the
decision of the European Court of Justice in the *Institute of the Motor Industry*
case at [18]). There is no direct link between the supplies made by AGCAS and
10 the community as a whole. Its supplies benefit its members. Any wider benefit
to society in improving the employability of students is too remote. If there is a
wider benefit it is to the students themselves.

Discussion

137. Both parties referred in their arguments to the decision of the Court of Appeal in
The Expert Witness Institute v. Customs & Excise Commissioners [2001] EWCA Civ.
15 1882. In that case, the Court of Appeal decided that the object of The Expert Witness
Institute which was “the support of the proper administration of justice and the earlier
resolution of disputes through fair and unbiased expert evidence” was an object of a
civic nature. In his judgment, Chadwick LJ said at [30]:

20 “The remaining question, therefore is whether “the proper administration of justice and
the earlier resolution of disputes through fair and unbiased expert evidence” – which is
the primary object for which the Institute is incorporated – is an aim of a civic nature,
giving the word “civic” the meanings “of, pertaining, or proper to citizens” or “of or
pertaining to citizenship” which, as it seems to me, it can properly bear. I do not think
25 that the answer to that question can be in doubt. A proper administration of justice is,
as it seems to me, a central element in the social contract between the state and its
citizens.”

138. In his judgment, Longmore LJ said at [36]:

30 “...the requirement that a body has objects which are of a civic nature if it is to be able
to claim exemption, means that the body must have objects which promote the
relationship of citizens, not among themselves, but with the state of which they are
citizens.”

He continued at [37]:

35 “it would be different if the Institute’s objectives were solely or even, perhaps mainly
for the benefit of its members. In that case, the objects would not be of a civic nature
and the body would have to seek exemption, if at all, as a trade union or professional
association.”

40 139. In the present case, as we have described above the objects of AGCAS relate
primarily to its members, both service members and individual members, and
ultimately to graduates and students who benefit from the services provided by the
members of AGCAS. It cannot properly be said that those objectives “promote the
relationship of citizens, not among themselves, but with the state of which they are
citizens”. Rather the objectives promote the relationships between citizens

themselves – whether the service members and their employees (who may be individual members) or between members and the graduates and students or ultimately between students and their respective employers.

5 140. Any benefit to wider society is, in our view, too remote. In this context, we are mindful of the principle that the exception in Article 132(1)(l) and reflected in item 1(e) is intended to be limited to bodies whose objects are within the wider public interest. In this case, the principal beneficiaries of AGCAS’s services are its members and the students who benefit from their services.

Decision

10 141. For the reasons that we have given above, we answer the questions before the Tribunal as follows:

- (1) the supplies made by AGCAS to its members do not fall within item 1(c) of Group 9 of Schedule 9 VATA 1994;
- 15 (2) the supplies made by AGCAS to its members do not fall within item 1(e) of Group 9 of Schedule 9 VATA 1994.

142. We dismiss these appeals.

Rights to appeal

20 143. 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.

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**ASHLEY GREENBANK
TRIBUNAL JUDGE**

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