[2018] UKFTT 0031 (TC)

TC06311

Appeal number: TC/2016/03416

VAT – exemption – collision damage waiver payments made to eliminate potential liability for accidental damage to vehicles whilst being driven on "experience days" – whether supplies were made in consideration of the payments which were exempt supplies of insurance – PVD Article 135.1(a) and Items 1 & 4 of Group 2, Schedule 9 VATA94 – no – payments merely reduced the customers' potential liability under the appellant's terms of business – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

SUPERCAR DRIVE DAYS LIMITED **Appellant**

-and-

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

TRIBUNAL: **JUDGE KEVIN POOLE**

Sitting in public in Centre City Tower, Birmingham on 22 November 2017

Harriet Brown of counsel for the Appellant

Joseph Millington of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

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DECISION

Introduction

1. This appeal is concerned with the VAT treatment of collision damage waivers offered by the appellant to its customers in connection with its main business of providing supercar driving experiences. In broad terms, the issue is whether or not the nature of the waivers is such that they qualify for exemption under the insurance provisions.

The facts

2. I received a witness statement (supplemented by oral testimony) from Adam Hayes, a former director of the appellant. I also received a short witness statement made by a Mr James Stewart, an employee of Integro Insurance Brokers (whose involvement in the relevant transactions is detailed below). Mr Stewart's employers had not made him available to attend the hearing to answer questions about his witness statement, and the appellant had not applied for the issue of a witness summons by the tribunal. Mr Millington asked that Mr Stewart's witness statement be excluded as he was not present to answer questions about it. I refused this application, on the basis that it provided some reasonably uncontroversial background and, to the extent any material disputes arose in relation to it, I would give careful consideration to how much weight should be placed upon it. I also received an agreed bundle of documents. I find the following facts, none of which are particularly controversial.

3. The appellant has been registered for VAT since August 2012. Its main business activity was described as the provision of driving experiences in the United Kingdom. These typically take the form of "track days" in expensive high-powered cars colloquially called "supercars".

4. In August 2015 HMRC visited the appellant's principal place of business in order to establish why no VAT returns had been submitted since registration in August 2012. Mr Adam Trapp, a director of the appellant, attended the meeting on its behalf. No details of the content of that meeting were available to the tribunal. It appears to have been followed by the submission of two repayment VAT returns, covering periods 02/13 and 08/13. HMRC arranged a further visit to discuss these returns. That meeting initially took place on 14 October 2015 at the premises of the appellant's agents ADS Accountancy. As not all the records were made available at that time, a further visit took place on 11 November 2015, at which Mr Hayes (who was then a director) attended on behalf of the appellant.

5. Various wider VAT issues were discussed at that meeting. Mr Hayes then brought up the subject of collision damage waivers, which had not previously been raised in any of the correspondence. This formed the basis of extensive subsequent exchanges between the parties, ultimately resulting in this appeal.

6. At this point, it is important to set out a little more detail about the appellant's business and the terms under which it is carried out.

7. The appellant sells vouchers, either direct to the public (generally through its own website) or via intermediaries (such as Virgin Experience Days). Purchasers of vouchers can either use them themselves or can transfer them to another person. A voucher can be redeemed for a supercar driving experience – i.e. the opportunity to drive one or more expensive high-powered cars on a race track or similar venue. There are different driving experiences – involving more cars or a longer distance, for example. All drivers are accompanied during their experience by qualified instructors from the Association of Racing Driver Schools and the vehicles are now fitted with dual control pedals.

8. The contractual basis of the business is set out in detailed terms and conditions ("the Terms") which were included in my bundle. I was informed that the same terms and conditions have governed the appellant's business at all material times. The definitions are a crucial part of the Terms. In relevant part, they provide as follows:

> '"Beneficiary" means the person for whom the Experience or Open Voucher has been purchased by the Buyer.
>
> "Buyer" means the person purchasing the Voucher from Supercar Drive Days Ltd.
>
> …
>
> "Experience" means the driving experience supplied by Supercar Drive Days to the Buyer for the benefit of the Participant.
>
> …
>
> "Experience Voucher" means a voucher for a designated Experience.
>
> …
>
> "Open Voucher" means a voucher for an Experience to be nominated by the Participant.
>
> "Participant" means either the Buyer or Beneficiary.
>
> "Purchase Price" means the price for the Voucher together with any Extras, cancellation Scheme Cover fee or Collision Damage Insurance Waiver fee. (Cancellation Scheme Cover or Collision Damage Insurance Waiver is not subject to VAT)
>
> …
>
> "Collision Damage Waiver Insurance" means the scheme operated by Supercar Drive Days whereby the Participant may reduce his liability to meet the excess for any damage caused to Supercar Drive Days vehicles.
>
> "Voucher" means either an Experience Voucher or an Open Voucher'

9. The Terms go on to set out arrangements for expiry of Vouchers and the booking of Experiences. It is stated that the Participant "will be required to sign a disclaimer before undertaking the Experience".

10. The following sections of the Terms are central to the appeal:

5 "**DAMAGE BY THE PARTICIPANT – STANDARD SUPERCAR DRIVING**

The Buyer is liable for the first £2500 plus VAT of any damage beyond normal wear and tear to each and every vehicle or other item of equipment supplied for the Experience by Supercar Drive Days Ltd.,
10 arising out of any act or omission of the Participant.

The Buyer shall not be liable under the terms where the Participant has opted to take out Collision Damage Waiver.

Notwithstanding having opted to take out Collision Damage Waiver, where the cause of the damage arises as a result of the Participant's
15 Deliberate or Reckless action the Buyer shall remain liable under the terms.

The Buyer shall be additionally liable for any damage to the track not owned by Supercar Drive Days Ltd, as a result of the Participant's Deliberate, Negligent or Reckless actions whilst participating in an
20 Event.

INDEMNITY WAIVER INSURANCE

Supercar Drive Days requires all customers to complete an indemnity waiver form on the day of their event prior to commencing their activity. This is completed by signing the relevant indemnity form. With few
25 exceptions, all our experiences involve some element of risk and danger. This is what creates the excitement and the thrill. Every customer is covered by our standard public liability insurance. You may wish to take out additional cover over and above that provided. Accordingly you are advised to consider insurance cover for personal accident, loss of limb
30 and even death or indemnity insurance for damage caused to any vehicles on your event before embarking on your experience. Supercar Drive Days is not responsible for any risks not specifically covered by its own insurance and on arrival at your venue you will be asked to sign a driver's indemnity.

35 **COLLISION DAMAGE WAIVER**

Supercar Drive Days offers a Damage Collision Waiver Insurance which is available by paying a fee of £25-£30. Supercar Drive Days ask you to agree that should there be any damage whatsoever to any of the vehicles you drive, by purchasing the damage waiver cover, you will not have to
40 pay the first £2500 of damage as stated on the signing in sheet for your experience. The damage waiver Cover is void if found to be driving

negligently/dangerously or not listening to the instructors instructions. (Damage Collision Waiver Insurance is not subject to VAT)."

11. In the "Frequently Asked Questions" document on the appellant's website, the following question and answer also appear:

> "**Q What happens if I damage a supercar while driving.**
>
> A. You are liable for the first £2500 of any damage you cause which is beyond the normal wear and tear to the vehicle.
>
> There is an option to purchase Vehicle Damage Waiver Insurance which will insure you against this, however, if the damage is a direct result of your reckless, negligent or deliberate action then you will remain liable for all of the damage to the vehicle regardless of whether you have Vehicle Damage Waiver Insurance or not. The cost of vehicle damage waiver is £30 on the day and £25 at the point of booking your driving day. All vehicles have in-car footage and can be viewed by the management at any time on the day of your drive as required by our insurers."

12. Before being permitted to drive on the day of the Experience, each driver is required to sign a form headed "Indemnity & Waiver Declaration and Liability Statement for Supercar Drive Days". This standard form contains the following text:

> "…
>
> - I understand and agree to participate in this non-helmeted event as this is a driving experience and not a racing day. I confirm I do hold a full current driving licence, I am participating under the strict understanding that I must obey any directions given by an instructor and that I may be responsible for accidental or intended damage up to £2500.
>
> **IMPORTANT – Please Read**
>
> A Collision Damage Waiver (CDW) can be purchased on the day that indemnifies the driver from being liable for up to £2500 excess. The CDW is void if I am found to resist.
>
> Scale of charges – Cover for up to 4 cars £30.00
>
> Do you wish to purchase the damage waiver at additional cost? Yes/No"

13. Up to November 2015, the appellant only owned one of the vehicles which were used for providing experiences. The other vehicles were hired from their owners, who often (though apparently, surprisingly, not always) required the vehicles to be insured against damage whilst being used. Typically, the owners' insurances would carry an excess in the region of £2,500 to £3,000. This was the reason why the appellant required the customers to be liable for any damage up to that amount, but at all relevant

times they have offered the ability to remove the customer's risk by making an additional payment of, typically, between £30 and £50. I will refer to this payment as a "collision damage waiver payment" as this corresponds with the language used by the appellant. In doing so, I am not prejudging its true nature, or the nature of the supply for which it is made (which I will refer to as a "collision damage waiver" or "CDW").

14. In relation to the cars owned by the appellant, they do not insure them against accidental damage whilst being driven by customers. They have found there has generally been a very good accident record, presumably because the customers always drive under appropriate supervision. The worst that usually happens is damage to an alloy wheel or bumper, costing £30 to £40 to refurbish the wheel or up to £300 to repair a bumper.

15. Historically, the appellant simply accumulated the collision damage waiver payments it received as a reserve against the possibility of some major expensive accident.

16. By reference to the public records at Companies House, it is clear Mr Hayes was appointed as a director on 10 May 2015. When HMRC were taking an interest in the appellant company in relation to VAT compliance generally, they held an initial meeting with another director Adam Trapp in August 2015 and a more detailed meeting with the appellant's accountants on 14 October 2015. They required another meeting to address some "questions regarding the day to day running of the business and to receive help and information on future compliance issues". Mr Hayes was put forward by the appellant to represent it at that meeting with HMRC, which took place on 11 November 2015, along with a representative from the appellant's accountants. After all the matters raised by HMRC had been discussed, Mr Hayes raised the question of VAT on the collision damage waiver payments which the appellant had been receiving, expressing the view that the payments were for VAT exempt supplies of insurance.

17. Following that meeting, HMRC enquired on 19 November 2015 whether the CDWs were underwritten by an insurance company. It appears the reply was somewhat ambiguous, to the effect that the appellant was insured, but without confirming that the insurance extended specifically to the underwriting of CDWs. Mr Hayes, either at the earlier meeting or during the later exchange, likened the supplies made by the appellant to collision damage waiver insurance which was typically sold alongside normal car rentals. On 1 December 2015, therefore, HMRC wrote to the appellant explaining that in the absence of specific supplies of insurance underwritten by a registered insurer, they considered the appellant's supplies in exchange for the collision damage waiver payments to be taxable. In doing so, they cited the following paragraph taken from the Avis website:

> "Collision Damage Waiver is not an insurance. It is an optional coverage that reduces the customer's financial liability, in case of damage to the vehicle (which as resulted from a collision) or of its attempted theft or caused by fire"

They also referred to the fact that on the Avis website, "all prices for CDW include VAT."

18. There followed some debate between HMRC and the appellant as to the correct position, Mr Hayes maintaining that the appellant was making two separate supplies (one of the driving experience and one of insurance). He cited the following wording from Wikipedia:

> "Damage waiver or, as it is often referred to, collision damage waiver (CDW) or loss damage waiver (LDW), is optional damage insurance coverage that is available to you when you rent a car.
>
> Car rental companies treat the CDW as a waiver of their right to make the renter pay for damages to the car.
>
> In many countries, it is a legal requirement to have CDW insurance included in the basic car rental rate. It covers the rented car. Some rental companies also offer liability insurance and coverage of towing charges. Terms and prices vary.
>
> Insurance or not?
>
> CDW meets the basic definition of insurance, since it transfers some risk from the car renter to the rental company. However rental companies do not call it insurance, since it is a waiver between the renter and the company that the company waives their right to charge the renter for valid damages to the vehicle. Rental companies are not licensed or regulated as insurers. There are also no claims made. Rental companies treat CDW as a waiver of their right to make the renter pay for damage to the car."

19. Further exchanges between HMRC and Mr Hayes followed. HMRC ultimately wrote a letter dated 6 January 2016, in which they provided a formal ruling to the effect that the CDWs were taxable at the standard rate. By email dated 1 February 2016, Mr Hayes set out the appellant's position in some detail and asked HMRC to "reconsider your position". HMRC responded with a detailed letter of their own dated 15 March 2016 (Mr Hayes had ceased to be a director on 25 February 2016, so this letter was sent direct to the appellant); on 11 April 2016 Mr Trapp requested a statutory review of the decision. HMRC acknowledged this request on 18 April 2016.

20. However, Mr Trapp was clearly actively pursuing the matter elsewhere in the meantime. By letter dated 3 May 2016, he wrote to HMRC, and his letter included the following paragraph:

> "I have approached this from a fresh point of view and asked the experts, our insurers, if they consider the product to fall under the banner of insurance, and if they did, would they therefore underwrite the same product. I hereby attach the policy that they have issued to the company, which proves irrevocably that the product is 100% an insurance product, otherwise they would not be willing to underwrite it. We will continue to sell this insurance to our customers as a separate stand alone product has we have done in previous years."

21. In spite of carrying the date of 3 May 2016, this letter is date stamped as received by HMRC on 10 May 2016 and it enclosed a "Cover Note" dated 6 May 2016 issued

by Integro Insurance Brokers Limited referred to below. I infer that the letter was prepared on 3 May 2016 but was only sent to HMRC once the cover note had been received from the appellant's insurance brokers so that it could be included.

22. Copies of the policy cover note and some of its associated terms and conditions were included in my bundle. The commencement of the policy was stated as 29 April 2016, so clearly it had only just been arranged. The insurance in it was described as "collision damage waiver insurance". The appellant was the insured. The insured's "interest" was described as "Legal Liability to pay policy excess in the event of vehicle damage whilst being driven by participants on experience or event days." The sum insured was "GBP 2,500 any one occurrence but GBP £15,000 in the aggregate." There was an excess of "GBP 1,250 each and every loss" (as a result of which only half such loss, at most, was "covered" in any event). Against the heading "Subjectivity", it was stated that "Cover will only apply to participants who have purchased a collision damage waiver agreement with Supercar Drive Days Limited". The premium was "GBP 10,000.00 payable in full at inception", and Insurance Premium Tax at 9.5% was payable in addition. At first sight, paying £10,950 for insurance cover of up to £1,250 per occurrence and not exceeding £15,000 in aggregate does not appear a particularly good bargain, but although Mr Hayes said the purpose of obtaining the insurance was so as to provide tangible reassurance to any concerned customers that their £2,500 liability was indeed covered, I infer from the overall sequence of events that in fact the main purpose of obtaining the cover was to strengthen the appellant's case with HMRC.

23. By letter dated 23 May 2016, HMRC formally confirmed their previous view that "the company's supplies of collision damage waivers do not qualify to be treated as exempt from VAT".

24. Further correspondence between the appellant and HMRC ensued, but ultimately this was the decision appealed to the Tribunal.

25. In the context of that further correspondence, the appellant arranged for some changes to the insurance it had arranged. An addendum was issued by its insurance brokers dated 17 March 2017, which purported to amend the original cover retrospectively to its commencement date of 29 April 2016 in two ways:

> (1) the "policy type" was amended to read "DAMAGE REFUND INSURANCE POLICY", and
>
> (2) the "Interest" was amended to read: "Legal Liability to pay policy excess in the event of vehicle damage on behalf of and driven by participants on experience or event days."

26. At no time has the appellant held the relevant authorisation to permit it to underwrite insurance.

27. As Mr Hayes made clear in his evidence, by the time this policy was put in place, the appellant was well advanced in its programme of buying all its own vehicles (rather than hiring them in as necessary) and it did not insure its own vehicles against accidental damage whilst being driving by its customers. Thus there was generally no

insurance policy excess payable to third party insurers in respect of any claims for such damage.

The Law

28. Article 135 of Directive 2006/112/EC ("the PVD") provides, so far as relevant, as follows:

> "1. Member states shall exempt the following transactions:
>
> (a) insurance and reinsurance transactions, including related services performed by insurance brokers and insurance agents;"

29. This exemption is implemented in UK law through sub-section 31(1) Value Added Tax Act 1994 ("VATA94") and Items 1 and 4 of Group 2, Schedule 9 VATA94, which provide (so far as relevant) as follows:

> "(1) A supply of goods or services is an exempt supply if it is of a description for the time being specified in Schedule 9…"

and:

> "1. Insurance transactions and reinsurance transactions.
>
> 4. The provision by an insurance broker or insurance agent of any of the services of an insurance intermediary in a case in which those services –
>
> (a) are related (whether or not a contract of insurance or reinsurance is finally concluded) to an insurance transaction or a reinsurance transaction, and
>
> (b) are provided by that broker or agent in the course of his acting in an intermediary capacity."

The arguments

30. In very broad terms, Mr Millington for HMRC argued that there was no element of insurance involved in the supplies made by the appellant. There was a supply of a driving experience, which involved various terms and conditions. One of those terms and conditions was that the Buyer of the experience would be liable to pay for any damage to the vehicle, up to a maximum of £2,500, but in exchange for a further payment the terms of the supply could be varied so that this liability would not arise. Whilst this might have the same practical effect as if a potential £2,500 liability was being insured against, it was not legally the same, it amounted to a variation of the terms on which (and consideration for which) the driving experience was undertaken.

31. Insofar as supplies made on or after 29 April 2016 were concerned (i.e. from the date when the insurance policy through Integro took effect), the analysis was essentially the same, all that had changed was that the appellant had taken out some insurance to protect itself from having to pay up to £2,500 in respect of damage to

vehicles where the collision damage waiver payment had been made. The changes made in March 2017 did not affect this. This was not a block policy stated to have been taken out on behalf (and for the benefit) of all the appellant's customers, such as in *Card Protection Plan*, it simply provided some insurance cover to the appellant. Furthermore, in view of the contractual and insurance arrangements for driving experiences, the Integro policy "raised as many questions as it answered": If it was truly intended to cover the customers directly, it was sadly deficient, in that on its face it only gave cover in respect of any damage claim above the excess of £1,250 (leaving the customer to pay that first £1,250), and once there had been claims up to the aggregate limit of £15,000, any further claims would not be covered – so if there were 12 accidents and claims (of £1,250 each) in a policy year, the customers who had the 13th and subsequent accidents would not have any cover.

32. Ms Brown argued, in broad terms, that the supplies made by the appellant in exchange for the collision damage waiver payments bore all the characteristics of insurance, in particular as explored by the ECJ in *Card Protection Plan v Customs & Excise Commissioners* [Case C-349/96]. The appellant, as insurer, undertook in exchange for a premium to provide the insured, in the event of materialisation of the risk covered (i.e. damage to the car and consequential liability up to the excess of £2,500), with the service agreed when the insurance contract was concluded (i.e. cancellation of, or indemnity against, liability for the excess). She did not shy away from accepting that the appellant would have been conducting insurance business without due authorisation, and that liability to insurance premium tax would arise.

33. In respect of the period after inception of the Integro policy, she argued that in the alternative, the appellant was supplying insurance-related services by acting as an intermediary between the Lloyds Underwriters and the Buyers, who were indemnified against the risk of excess liabilities under the terms of the policy.

Discussion and decision

34. There was some disagreement between the parties as to what amounts to "insurance" for the purposes of the phrase "insurance transaction" in both Article 135 PVD and Group 2, Schedule 9 VATA94. Mr Millington sought to refer to the decisions of the UK courts in *Prudential Insurance Co v Commissioners of Inland Revenue* [1904] 2KB 568 and *Medical Defence Union Limited v Department of Trade* [1908] Ch 82. From those cases, he argued, a contract of insurance required three elements: it must provide that the assured will become entitled to something on the occurrence of some event; the even must be one which involves some element of uncertainty; and the insured must have an insurable interest in the subject matter of the contract.

35. Ms Brown on the other hand submitted that "insurance transaction" was a free-standing EU law concept, and referred to the judgment in *Card Protection Plan* at [17]:

> "… the essentials of an insurance transaction are, as generally understood, that the insurer undertakes, in return for prior payment of a premium, to provide the insured, in the event of materialisation of the risk covered, with the service agreed when the contract was concluded."

36. She went on to point out that in *Card Protection Plan*, the structure involved an insurer standing "behind" CPP itself, whose agreement with its customers was that it would procure insurance from a third party (a commitment which was fulfilled by CPP obtaining a "group policy" from an insurer under which the insurer provided the insurance cover direct to CPP's customers). Nonetheless, the ECJ had held that CPP's supply to its customers (even though it was not a supply of insurance, merely a promise to provide insurance) did constitute an "insurance transaction" within the meaning of the relevant provisions:

> "Such a supply of services by CPP constitutes an insurance transaction within the meaning of Article 13B(a)[1]. It is true that the exemptions provided for by Article 13 of the Sixth Directive are to be construed strictly (see *Stichtung Uitvoering Financiele Acties*, paragraph 13). However, the expression 'insurance transactions' is broad enough in principle to include the provision of insurance cover by a taxable person who is not himself an insurer but, in the context of a block policy, procures such cover for his customers by making use of the supplies of an insurer who assumes the risk insured."

37. In principle, I consider Ms Brown is correct on this point of interpretation – i.e. that the EU law interpretation of "insurance transaction" is the correct one to apply.

38. However, whichever interpretation applies, the question still remains as to whether the appellant made any supply to its customers in exchange for the collision damage waiver payments which answers to the relevant description.

39. For the period prior to the inception of the Integro insurance policy, the parties are agreed that the relevant question is whether the appellant itself acted as insurer in making a direct supply of insurance to its customers.

40. In that situation, Mr Millington's argument was that the payment for the CDW could not be characterised as the payment of a premium for an insurance policy. The fact of the matter was that the initial terms of the contract imposed a liability on "the Buyer", up to "£2,500 plus VAT of any damage beyond normal wear and tear… arising out of any act or omission of the Participant." However, the same terms included a provision under which "by purchasing the damage waiver cover, you will not have to pay the first £2500 of damage…" If a Participant chose to take up this offer, then the contract was specifically varied so as to eliminate the £2,500 potential liability (neither party addressed the point that the initial potential liability was set at "£2,500 plus VAT" whereas the collision damage waiver only removed £2,500 of that liability, presumably on the basis that the intention of the provisions, as stated by the appellant, was to remove the whole of the original potential liability). This variation of the contract resulted in there being no potential liability (whether of £2,500 or of £2,500 plus VAT); it could not be construed contractually as insuring against the liability, as the operation of the original terms of the contract meant that there was no liability to insure against. Whilst

[1] This provision was the predecessor to Article 135 PVD and was in the same terms.

in practical terms this was the same result as might be achieved by obtaining third party insurance, it was not legally the same thing.

41. Ms Brown argued that this was to misinterpret the position as properly understood in the light of *Card Protection Plan*. In her submission, it was not appropriate to regard "the risk" as being the risk of having to pay £2,500, which was both created and removed by the same contract; the true risk was the risk of damaging the car, and that risk could only be eliminated by not driving the car; all the contract did was to "divide" the risk which arose from driving the car.

42. However ingenious, I do not find Ms Brown's argument persuasive. The Terms clearly impose a potential liability of up to £2,500 (plus, possibly, VAT) on the Buyer, but the Participant is able to take advantage of the Terms to eliminate that potential liability by making the collision damage waiver payment to the appellant. If the Buyer has not already made the collision damage waiver payment by the date of the Experience, the Participant has a choice: He/she can either accept the risk of imposing a liability on the Buyer of up to £2,500 (plus, possibly, VAT) under the Terms if some accidental damage occurs[2], or he/she can remove that risk by paying an extra sum to the appellant for what is called a "collision damage waiver". In other words, whilst the practical effect of making the CDW payment might be similar to purchasing insurance, I consider the legal nature of the transaction to be crucially different because it simply varies the potential liability of the Buyer under, and in accordance with, the original contract.

43. In respect of the period before inception of the Integro insurance, therefore, as I do not consider the arrangement to amount to "insurance" at all (whether applying the English law or EU law tests) it follows that it cannot amount to an "insurance transaction" for the purposes of the VAT exemption.

44. In respect of the period after the inception of the Integro policy, the contractual position as between the appellant and its customers remained entirely unchanged. The policy itself was not a block policy for the appellant's customers of the type involved in *Card Protection Plan*, it was expressed to apply solely to the appellant as "the insured"; and the customers' liabilities under the Terms remained exactly as before (including the ability to remove the £2,500 liability by means of the collision damage waiver payment). In the light of this, I do not see how it can be argued that the transaction between the appellant and its customers who make the collision damage waiver payments could be characterised as an "insurance transaction", any more than for the earlier period.

45. Furthermore, where the insurance cover is stated to be for the benefit of the appellant and in a situation where the contracts between the appellant and its customers are still structured on the same basis as before, I do not think it can properly be argued the appellant is acting as an "insurance broker or insurance agent" in the provision of

[2] Though it should be noted that the form of waiver to be signed by the Participant on the day of the Experience implies that it would be the driver who would be liable, rather than the "Buyer" as stated in the Terms and Conditions

"any of the services of an intermediary" of the type set out in Item 4 of Group 2, Schedule 9 VATA94. Clearly, if the appellant's contract with its customers had specifically provided that the excess was always payable to the appellant in the event of accidental damage, but had also included express reference to the ability to insure against that liability through Integro by means of a policy arranged through the appellant, matters might be different. But that is not this case.

46. It therefore follows that I do not consider that the collision damage waiver payments were made in respect of any supplies which are exempt from VAT under Items 1 or 4 of Group 2, Schedule 9 VATA94, whether before or after the inception of the Integro policy. The appeal must accordingly be DISMISSED.

47. 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.

KEVIN POOLE
TRIBUNAL JUDGE

RELEASE DATE: 29 JANUARY 2018

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