



**TC06286**

**Appeal number:TC/2016/05686**

*VALUE ADDED TAX – payment for services in advance – tax point – section 6(4) VATA 1994 – whether amounting to prepayment – schedule 10A VATA 1994 – whether for face value voucher – if so, whether single purpose voucher*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**LUNAR MISSIONS LIMITED**

**Appellant**

**- and -**

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

**TRIBUNAL:    JUDGE JONATHAN CANNAN  
                     MRS MARY AINSWORTH**

**Sitting in public in Manchester on 7 July 2017 with further written submissions on 14 and 15 November 2017**

**Mr Nigel Gibbon of Nigel Gibbon & Co instructed by VAT Quest Ltd for the Appellant**

**Mr Richard Chapman of counsel instructed by HM Revenue & Customs Solicitor's Office and Legal Services for the Respondents**

## DECISION

### *Background*

1. This is an appeal by Lunar Missions Ltd against a decision of HMRC dated 25  
5 May 2016 that it ought to have been registered for VAT with effect from 16  
December 2014. That decision was confirmed following a review dated 21 September  
2016. The question of when the appellant ought to have been registered for VAT  
arises in the context of funds raised by the appellant through a crowdfunding platform  
known as “Kickstarter”. The appellant raised funds through Kickstarter amounting to  
10 £672,447 which were paid to the appellant, less Kickstarter’s fees, on 6 January 2015.  
The question which arises on this appeal is whether the appellant was liable to  
account for output tax in relation to supplies of services at the time it received  
payment.
2. In correspondence with HMRC the appellant disputed that at the time of  
15 receiving payment it intended to make any taxable supply for VAT purposes. It  
argued that the payments amounted to risk funding and were not consideration for a  
taxable supply. In the notice of appeal however, and in the arguments on this appeal  
the appellant concedes that there is a taxable supply in the form of rewards to be  
provided to backers in the future. The argument is now as to the time of supply.
3. The issues which arise may be summarised as follows:
- 20 (1) Do the sums received by the appellant represent a prepayment of  
consideration for supplies of services, or consideration for supplies of face  
value-vouchers?
- (2) If the sums received were consideration for a supply of face value  
25 vouchers, were those vouchers “single purpose vouchers” within Schedule 10A  
Value Added Tax Act 1994 (“VATA 1994”).
4. If the sums received were prepayments for supplies of services then it is  
common ground that the tax point is the date of receipt and the appellant was liable to  
be registered with effect from 16 December 2014.
- 30 5. If the sums received were for face value vouchers as defined by Schedule 10A  
VATA 1994 then the tax point will depend on whether or not those vouchers were  
single purpose vouchers. What might be regarded as the default position is that for  
face value vouchers the tax point is the date of redemption rather than the date the  
consideration is received. Output tax is then accounted for at the time of redemption  
35 rather than the time of issue. For single purpose vouchers, output tax is accounted for  
at the time the consideration is received on issue of the vouchers.
6. The burden is on the appellant to satisfy us that the Kickstarter funding was not  
a prepayment, alternatively that it was consideration for the supply of face value  
vouchers which are not single purpose vouchers. If it satisfies us that either alternative  
40 is the case, then it was not liable to be registered for VAT as at 16 December 2014. If

it does not, then HMRC will no doubt in due course issue an assessment for VAT in relation to the funds received.

7. The parties did not rely on any witness evidence but we were provided with relevant documentation concerning the appellant's business and in relation to the basis on which it raised funds with Kickstarter. There was an issue between the parties as to what inferences we should draw from the documentation. In particular as to the terms of the contractual relationship between individual funders or backers and the appellant. We set out below our relevant findings of fact. Thereafter we will consider in more detail the statutory framework and give reasons for our decision.

10 *Findings of Fact*

8. Kickstarter is a web-based crowdfunding platform. The terms and conditions of use of that platform were in evidence before us. Those terms and conditions included the following description of how the platform works:

15 “ Kickstarter provides a funding platform for creative projects. When a creator posts a project on Kickstarter, they're inviting other people to form a contract with them. Anyone who backs a project is accepting the creator's offer, and forming that contract.

Kickstarter is not a part of this contract – the contract is a direct legal agreement between the creators and their backers. Here are the terms that govern that agreement:

20 When a project is successfully funded, the creator must complete the project and fulfil each reward. Once a creator has done so, they've satisfied their obligation to their backers.

25 If a creator is unable to complete their project and fulfil rewards, they've failed to live up to the basic obligations of this agreement. To right this, they must make every reasonable effort to find another way of bringing the project to the best possible conclusion for backers.”

9. The terms go on to say that a backer is only charged if the project reaches its fundraising goal. If the campaign does not reach its goal then the backer will not be charged and no funds will be collected, although Kickstarter may reserve a charge on the backer's credit card at any time between the pledge and the collection of funds.

30 10. The following extracts from the Kickstarter website describe the project being undertaken by the appellant. This was the basis on which backers pledged funds through Kickstarter:

“ **What is Lunar Mission One?**

35 We plan to send an unmanned robotic landing module to the South Pole of the Moon - an area unexplored by previous missions.

We're going to use pioneering technology to drill down to a depth of at least 20m - 10 times deeper than has ever been drilled before - and potentially as deep as 100m. By doing this, we will access lunar rock dating back up to 4.5 billion years to discover the geological composition of the Moon, the ancient relationship it shares with our planet

and the effects of asteroid bombardment. Ultimately, the project will improve scientific understanding of the early solar system, the formation of our planet and the Moon, and the conditions that initiated life on Earth.

5 The Rosetta mission has opened the way for a new era of pioneering space exploration and demonstrates the public appetite to engage with the secrets of the solar system. We want this to be a truly international mission that everyone everywhere can get involved in, so we are using Kickstarter to finance the next phase of development. This is your chance to be part of Lunar Mission One and to reserve your place in space. Your pledge will reserve you a digital memory box that will be buried in the moon during the mission as part of a 21st Century time capsule.

10

...

### **Reserve your place in space**

15 We will place a 21st century time capsule inside the borehole that we drill on the Moon to be preserved for about a billion years by the exceptional conditions within the Moon. Our time capsule will consist of two main parts:

20 The private archive will consist of millions and millions of individual digital ‘memory boxes’. As a Kickstarter supporter you can be among the first to reserve your place in space and secure a ‘memory box’. In time, you will be able to upload anything you want into your virtual ‘memory box’ just as you would with a real-world time capsule. Over the next 10 years, anyone around the world will be able to buy a ‘place in space’ - this is how we secure the longer term funding for the Mission. When we launch, all of this information will be inside the time capsule ready to be buried on the Moon.

25 The public archive will contain a publically assembled, authoritative record of life on Earth, with a history of humankind and a species database that chronicles the Earth’s known biodiversity and how it all fits together - from geology to atmosphere. This archive will be available online both during development and after the Mission has been accomplished. We will have laid the groundwork for future generations to develop and maintain this hugely valuable research and educational tool. Publically owned and accessible to all, this archive is a hugely ambitious plan that could only be resourced by a project of this scale.

30

...

### **Tell me more about the digital memory box**

35 By pledging £60 you can be one of the first to reserve yourself a Digital Memory Box. Think of it like an iPod or memory stick: into your memory box, you will be able to upload whatever digital information you want: a personal message, a photo, a family tree, a poem, a video, your favourite song ... the choice is yours! Millions of individual memory boxes, belonging to people all over the world, will make up the private archive, to be buried deep inside the Moon as part of Lunar Mission One.

40 We expect that the private archive will be able to store tens of Terabytes. To put this into perspective, a photograph can range from kilobytes to megabytes in size. Precise costings for data have not yet been confirmed, but the more you spend, the bigger your memory box.

5 Sales of memory boxes will start during Lunar Mission One’s development stage, but why wait until then? By pledging £60 or over on Kickstarter, you will get a voucher for a memory box - the value of which will be equivalent to your pledge. So if you pledge more now, you secure more space later! We will also be offering physical space for you to deposit a strand of your hair.

**So, what would I get for £60?**

10 Essentially, what you are reserving is ‘space’ in the time capsule - either digital space (for data) or physical space for a strand of hair or a combination of both. We will send you a voucher for a value equivalent to your pledge. Now, at this stage we can’t give you precise data on exactly how much space your voucher will buy you. That’s part of what we’ll be working on in the development phase that you are all helping us to fund (thank you again!). Our plan, however, is that a £60 voucher will buy enough physical space for an anonymous deposit of a single strand of human hair. Or you might choose to use your £60 voucher to buy space for digital data instead. Or top up your voucher and go for a combination of hair and data. ...”

11. The Kickstarter website also had a “FAQ” section on the project which included the following:

**“ Can I gift a pledge?**

Absolutely!

20 When the Kickstarter page closes and we have reached our target we will be sending out a brief questionnaire asking, amongst other things, who the pledge is for and whose name you would like to appear on the ‘Wall of Thanks’.

Pledges are therefore freely transferable – meaning that they will make the perfect gift!

**How much will it cost to send a strand of hair to the Moon?**

25 Part of the next phase of the project will include further developing the ‘product’ including finalising pricing.

For digital information the cost will start at only a few pounds (eg: for the equivalent of a text message).

30 We anticipate that the entry level cost for an anonymous deposit of a strand of hair only would be approximately £50-60.

If you would like to include digital information alongside your strand of hair then the cost will be defined by how much information you want to include. Text info will clearly be cheaper than multi-media eg: videos. We expect on average that for a strand of hair plus digital information most people will buy in at over £100.”

35 12. The crowdfunding target was £600,000, to be raised by 17 December 2014. The timetable of the project extends to 2024 with the mission launch, although the Kickstarter material acknowledged that there were “lots of uncertainties” and no guarantees. This was funding for the initial stage of the mission. The website material also referred to a subsequent “funding model based on future sales of our ‘digital

memory boxes”. It also referred to the project having “more risks and challenges” than average Kickstarter projects and the absence of any guarantees about the outcome. In the event, the Kickstarter campaign resulted in 7,297 backers who pledged in total £672,447.

- 5 13. There are no written terms and conditions as such setting out precisely what backers receive in return for their pledges. However, the benefits of pledging funds to the appellant’s campaign, described by Kickstarter as “rewards”, were set out on the appellant’s Kickstarter website pages. The benefits depend on the amount pledged. The following table illustrates by way of example the number of backers in various categories and the principal benefits associated with pledges:
- 10

<b>Amount Pledged</b>	<b>Number of Backers</b>	<b>Benefits</b>
£3 +	901	Online community access to photos, videos and updates.
£15 +	967	Subscription to a regular newsletter and name inscribed on a website “wall of thanks”.
£30 +	1,279	Name included on a digital “wall of thanks” to be included in the public archive in the time capsule. Membership of the Lunar Missions Club.
£60 +	2,954	A voucher for your ‘digital memory box’
£120 +	313	A greater value voucher, value equivalent to the pledge.
£300 +	114	Invitation to an annual ‘meet the team event’ and a greater value voucher, value equivalent to the pledge.
£600 +	32	Entry into a ballot to win the chance of naming the lunar landing module and a greater value voucher, value equivalent to the pledge.
£1,200 +	45	Invitation to the rocket launch and a greater value voucher, value equivalent to the pledge.
£3,000 +	8	Name inscribed on the lunar landing module and a greater value voucher, value equivalent to the pledge.

14. The benefits are generally incremental. For example, a pledge of £60 would get all the benefits associated with smaller pledges. However, for the purposes of this appeal the parties have agreed that the only relevant supply for VAT purposes is a single supply of space in the time capsule which required a pledge of at least £60. At the time of the fundraising it was not clear how much space in the digital memory box or otherwise would be available for a pledge of £60 or more.
- 15

15. The benefits associated with a pledge of £60 or more are particularly relevant to the issues on this appeal. The website describes them as follows:

5 “RESERVE YOUR PLACE IN SPACE: a voucher for your digital ‘memory box’ in the time capsule (value equivalent to your pledge) – Membership of the Lunar Missions Club for this and all future missions – access to exclusive updates/information and the opportunity to participate in project reviews, investigations and voting to help inform key project decisions.”

16. Backers pledging £60 or more could download a certificate or voucher stating as follows:

“Congratulations - you have officially reserved your place in space!

10 This certificate notes that [NAME] has secured a Digital Memory Box voucher to the value of [AMOUNT].

Your voucher does not just reserve your place in space, but acknowledges your contribution to the most inspirational lunar mission since the Apollo landings.

Your contribution to Lunar Mission One will be forever remembered in the world wide legacy that the project leaves behind.”

15 17. It is not necessary for backers to hold or retain the printed voucher. Entitlement to the benefits of a pledge depends solely on payment, which is recorded electronically in the appellant’s records.

18. It is notable that the website material distinguishes space in the “digital memory box” and “physical space”. That is an important distinction which we consider further  
20 in our reasons below.

19. The Kickstarter page also included a table headed “What do I get for my pledge?” for each level of possible pledge. The table contained no reference to physical space for a strand of hair. As far as space on the capsule is concerned it read as follows:

25 “**Reserve your place in space**

– a voucher for your digital ‘memory box’ in the time capsule (value equivalent to your pledge.”

20. Towards the end of the hearing Mr Gibbon sought to adduce evidence, on  
30 instructions, as to market research conducted by the appellant addressing the question of what those who had made pledges might want to do. In particular, whether they wanted a digital memory box, physical space for a strand of hair or both. Both parties had approached the hearing on the basis that there was no dispute as to the facts, and given the lack of notice in relation to such evidence, the manner and late stage at which it was sought to be adduced, we decided not admit it in evidence.

35

*Statutory Framework*

21. VATA 1994 distinguishes between supplies of goods and supplies of services. Section 5(2) VATA 1994 provides that a supply for the purposes of VAT includes all forms of supply, but not anything done otherwise than for a consideration. Anything which is not a supply of goods but which is done for a consideration is a supply of services.

22. The time of a supply of services, otherwise known as the tax point, is generally the time the services are performed. However, section 6(4) provides that if, before that time, the trader issues a VAT invoice or receives a payment in respect of the supply, then to the extent that the supply is covered by the invoice or payment it shall be treated as taking place at the time the invoice is issued or the payment is received.

23. Section 6(4) implements Article 65 Principal VAT Directive which provides as follows:

“ Where a payment is to be made on account before the goods or services are supplied, VAT shall become chargeable on receipt of the payment and on the amount received.”

24. The parties approached their submissions on the basis that the funds paid by the backers could be prepayments within section 6(4) and Article 65 (HMRC’s contention) or consideration for the issue of face value vouchers (the appellant’s contention). If it is a face-value voucher then the appellant contends that it is not a “single purpose voucher”.

25. There are special rules in relation to face value vouchers which are set out in Schedule 10A VATA 1994. In so far as relevant Schedule 10A provides as follows:

**“1. Meaning of “face-value voucher” etc**

(1) In this Schedule “face-value voucher” means a token, stamp or voucher (whether in physical or electronic form) that represents a right to receive goods or services to the value of an amount stated on it or recorded in it.

(2) References in this Schedule to the “face-value” of a voucher are to the amount referred to in sub-paragraph (1) above.

**2. Nature of supply**

The issue of a face-value voucher, or any subsequent supply of it, is a supply of services for the purposes of this Act.

...

**4. Treatment of retailer vouchers**

(1) This paragraph applies to a face-value voucher issued by a person who –



(a) is a person from whom goods or services may be obtained by the use of the voucher, and

(b) if there are other such persons, undertakes to give complete or partial reimbursement to those from whom goods or services are so obtained.

5 Such a voucher is referred to in this Schedule as a “retailer voucher”.

(2) The consideration for the issue of a retailer voucher shall be disregarded for the purposes of this Act except to the extent (if any) that it exceeds the face value of the voucher.

...

10 **6. Treatment of other kinds of face-value voucher**

(1) This paragraph applies to a face-value voucher that is not a credit voucher, a retailer voucher or a postage stamp.

(2) A supply of such a voucher is chargeable at the rate in force under section 2(1) (standard rate) except where sub-paragraph (3), (4) or (5) below applies.

15 (3) Where the voucher is one that can only be used to obtain goods or services in one particular non-standard rate category, the supply of the voucher falls in that category.

(4) Where the voucher is used to obtain goods or services all of which fall in one particular non-standard rate category, the supply of the voucher falls in that category.

20 (5) Where the voucher is used to obtain goods or services in a number of different rate categories—

(a) the supply of the voucher shall be treated as that many different supplies, each falling in the category in question, and

(b) the value of each of those supplies shall be determined on a just and reasonable basis.

25 **7A. Exclusion of single purpose vouchers**

Paragraphs 2 to 4, 6 and 7 do not apply in relation to the issue, or any subsequent supply, of a face-value voucher that represents a right to receive goods or services of one type which are subject to a single rate of VAT.”

30 26. It is clear that for a voucher to be a face value voucher it has to represent a right to receive goods or services up to the value of an amount stated on it or recorded in it. In *Leisure Pass Group Ltd v Revenue & Customs Commissioners* [2008] EWHC 2158 (Ch), Park J held that a London Pass which entitled the holder to enter a number of attractions without further payment was not a face value voucher. There was no monetary limit on the voucher, in the sense that when the limit was reached the  
35 voucher was exhausted.

27. Paragraph 7A in relation to single purpose vouchers was introduced in 2012 following a decision of the Court of Justice of the European Union (“CJEU”) in *Lebara Limited C-520/10*. Until 10 May 2012 the effect of paragraph 4 Schedule 10A was that all face value retailer vouchers were treated in the same way for VAT purposes. The initial consideration on issue up to the face value was disregarded but VAT on the consideration given for the vouchers was brought into account when the voucher was redeemed. The effect of para 7A was to treat single purpose vouchers differently. VAT on the consideration given for such vouchers is now brought into account when the voucher is issued.

28. Issues as to prepayments and face value vouchers were considered by the Court of Session in *Findmypast Ltd v Revenue Customs Commissioners [2017] CSIH 59*. At the hearing in the present appeal the parties’ submissions were based on the decision of the Upper Tribunal. The decision of the Court of Session was only released after the date of the hearing. In the circumstances the parties had an opportunity to make further written submissions in light of the decision of the Court of Session.

29. In *Findmypast Ltd*, access to certain genealogy and ancestry information was available via a website. Users could pay a lump sum in return for credits which were used to access certain records. The number of credits required depended on the nature of the record being accessed and was subject to change. Credits were valid for a fixed period of time, but once expired could be revived if the user purchased further credits within 2 years. The taxpayer was seeking repayment of VAT it had accounted for on credits which had expired in the period up to 10 May 2012 when the different treatment of single purpose vouchers was introduced.

30. The first issue concerned the nature of the supply, in particular, whether what was supplied was access to the records as argued by the taxpayer or a package of rights including the ability to search the records as argued by HMRC. The taxpayer’s arguments on the first issue were accepted by Lord Glennie sitting in the Upper Tribunal and by the Court of Session.

31. For present purposes the case is relevant for the second and third issues which followed if the taxpayer was right on the first issue. The taxpayer argued as follows:

- (1) The credits were not prepayments for the service provided by the taxpayer within section 6(4) and Article 65, alternatively
- (2) The credits were face value vouchers such that pursuant to Schedule 10A the tax point was when the credits were redeemed.

32. Lord Glennie had approached the matter in reverse order to that of the Court of Session. He first held that the credits were face value vouchers. He acknowledged that the question as to whether the credits were prepayments for a supply of services only arose if the credits were not face-value vouchers. He held that in any event they were not prepayments.

33. The Court of Session first considered the question of prepayments. It held that the payments were not prepayments within section 6(4) and Article 65. On that basis

the question of whether the credits amounted to face-value vouchers did not arise, but it nevertheless went on to consider whether the credits were face value vouchers and held that they were not.

5 34. In relation to prepayments, the Court of Session considered various authorities in the CJEU and identified the principles behind section 6(4) and Article 65 as follows:

10 “ 46. The general approach taken by the Court of Justice in relation to article 65 and its predecessors appears to us to have three principal components. First, the chargeable event for the purposes of VAT is the supply of goods or services, not the payment of the price. That underlies the structure of articles 63 and 65. Secondly, it follows that the normal rule is that VAT is payable when the supply is made. Thirdly, VAT may be payable in advance of that date if the requirements of article 65 are satisfied, but for that to happen there must be precise identification of the goods and services that are to be supplied. This conclusion follows from the general rule, discussed at paragraphs [14] and [17]-[18] above, that a supply for VAT purposes requires a consideration, and there must be a direct link between the consideration and the goods or services that are supplied: reciprocity is fundamental. Consequently both the goods or services and the consideration must be clearly identified before there can be a charge to VAT.

20 47. ... The [prepayment] rule must be applied in a practical and pragmatic manner, having proper regard to the economic reality of the transaction under consideration. Once again, the overall context in which the transaction occurs is of fundamental importance.

25 ...

30 51. ... If a prepayment is to be chargeable to VAT, it must relate to a particular supply of goods or services, with a direct link between the goods or services and the consideration paid in advance. Unless such a link exists, the payment made in advance of the supply is a mere payment to the general account of the customer, without a sufficient link to the service that is to be supplied...”

35 35. On the facts there was no prepayment because of the uncertainties described at [48]. In particular it was uncertain whether the chargeable event (redemption of the credits) would occur, when redemption might occur, what documents would be available at that time or what number of credits might be required to download a document at that time.

40 36. In relation to face value vouchers the Court of Session held that there were four conditions to be met for the credits to qualify as face value vouchers, with the result that VAT in the period prior to 10 May 2012 would be charged at the point the voucher was redeemed and not when it was issued. The conditions are as follows:

- 45 (1) there must be a token, stamp or voucher, in physical or electronic form,
- (2) the token, stamp or voucher must represent the right to receive goods or services,
- (3) the right to receive goods or services must be up to the value of an amount, and

(4) the amount in question must be stated on or recorded in the token, stamp or voucher.

37. In relation to these conditions, the Court of Session said at [59]:

5 “ 59. The essence of a face-value voucher is that it is a physical or electronic document that represents a right to receive goods or services to a specified amount, which is stated on or recorded in the document itself. That follows from the basic definition in paragraph 1(1) of Schedule 10A. The document is therefore acquired for its own sake, as the representation in physical or electronic form of a right to a specified product. The most traditional form of such a voucher is perhaps the book token, which can be  
10 redeemed against the price of books at a very wide range of retailers. A face-value voucher can be confined to a single retailer, however, and vouchers of this nature are commonly issued by many retailers, whether over-the-counter in physical form or online in electronic form, or sometimes in electronic form on a card that is supplied by the retailer. So understood, the face-value voucher is distinguishable from a mere credit with a retailer; the credit is an accounting entry, whereas the face-value voucher is  
15 representative of a right. Moreover, the face-value voucher will normally be capable of transfer to another person, typically by way of gift...”

38. On the facts the Court of Session held at [60] – [62] that conditions (2), (3) and (4) were not satisfied because:

20 (1) The credits were mere credits that permit the customer to view and download particular documents on the taxpayer’s website, through the operation of the taxpayer’s accounting system. They were not purchased for their own sake but as a means to view or download documents.

25 (2) They could not be used in conjunction with the customers own funds to pay for services.

(3) Whilst they were transferrable at the point of issue, thereafter they could not be transferred.

30 (4) The credits did not contain information stating or recording the amount of the credits. The value of the credits would depend on the amount currently being charged for viewing or downloading particular documents.

39. In the course of its judgment the Court of Session endorsed a decision of the F-tT in *Skyview Ballooning Ltd v Revenue & Customs Commissioners [2014] UKFTT 032 (TC)*. Again, HMRC argued firstly that the consideration paid by customers was a prepayment for services. In the alternative it argued that what was provided was not a  
35 face-value voucher because no amount was recorded in the voucher. The F-tT regarded it as a straightforward case on its facts and found that customers were provided with face-value vouchers. The vouchers could be redeemed against whatever balloon ride or merchandise the holder wished to purchase, up to the cash value of the voucher. It did not regard the voucher as merely evidence of prepayment. Further it  
40 held that the amount was recorded in the voucher because the vouchers came with a code which enabled the trader to identify the remaining balance on the voucher from its computer records.

40. If the vouchers in the present case are face value vouchers, the question arises as to whether they are single purpose vouchers. A single purpose voucher is a face value voucher which represents a right to receive goods or services of “one type” which are subject to a single rate of VAT. Both parties agreed that the identification of single purpose vouchers applying paragraph 7A Schedule 10A involves considering two questions:

(1) Whether the voucher represent a right to receive goods or services of “one type”, and

(2) Whether those goods and services are subject to a single rate of VAT.

41. We were not referred to any authority as to the characteristics of a single purpose voucher, and in particular how one distinguishes different “types” of goods or services for the purposes of paragraph 7A. We were however referred to HMRC *Brief 12/12* issued on 10 May 2012, the date from which paragraph 7A was introduced. Brief 12/12 was in effect advance notice of legislation to be contained in the Finance Bill 2012. It gave examples of single purpose vouchers and other types of face value vouchers. Examples of single purpose vouchers were given as follows:

(1) The right to a manicure at a particular retailer.

(2) Prepaid telephone cards that can only be used for making calls.

(3) Electronic download vouchers to be used for downloads, apps, file streaming or other electronically supplied services.

(4) Vouchers redeemable for specific services or goods.

(5) Vouchers for admission to an amusement park which cannot be exchanged for other goods and services in the park.

42. Examples of other types of face value vouchers known as “multi purpose vouchers” were given as follows:

(1) Shop vouchers for stores selling goods at different rates.

(2) Book tokens which can also be used for e-books.

(3) Garden centre vouchers.

(4) Game console vouchers which can be redeemed for goods as well as downloading electronic products.

43. We recognise that Brief 12/12 is simply HMRC’s view as to how Schedule 10A operates or was intended to operate and that it is not an authoritative statement of the law.

#### Reasons

44. Both parties focussed their submissions by reference to a backer who had pledged and paid £60 through Kickstarter. We shall do the same. The following issues arise for determination:

(1) To what services is a backer contractually entitled in return for a payment of £60?

(2) Does the £60 amount to a prepayment for the supply of those services?

(3) Does the backer receive a face value voucher?

5 (4) If so, is that face value voucher a single purpose voucher?

45. Mr Gibbon's submissions in relation to those issues may be summarised as follows:

(1) The principal benefits to a backer pledging at least £60 were as follows:

10 (a) The right to upload digital information to a digital memory box, and/or

(b) The right to include a strand of hair in the time capsule.

15 (2) Payment of the £60 is not a prepayment for a future supply of services. In particular it was not known at the time of payment what the backer would receive, either in terms of digital or physical space or in terms of the quantity of such space. Further, it was uncertain whether any supply at all would take place because of uncertainties inherent in the mission.

(3) The backer receives a face value voucher satisfying the requirements of paragraph 1(1) Schedule 10A.

20 (4) The face value voucher is not a single purpose voucher because it represents a right to receive more than one type of service, namely digital space and physical space.

46. Mr Chapman's submissions in relation to the issues may be summarised as follows:

25 (1) Backers were contractually entitled to £60 worth of digital space in a digital memory box. There was no contractual entitlement to physical space.

(2) The payment of £60 was a prepayment for a future supply of services.

(3) Backers do not receive a face value voucher because the conditions in paragraph 1(1) Schedule 10A are not satisfied.

30 (4) If there is a face value voucher, then it is a single purpose voucher. This is because the contractual entitlement is limited to digital space, or because digital space and physical space are properly to be regarded as one type of supply.

47. We consider each of the issues in turn. The parties did not make submissions as to the interaction of section 6(4) in relation to prepayments with schedule 10A in relation to face value vouchers. In particular it was not submitted that in the  
35 circumstances the sums paid were either prepayments or consideration for a supply of face value vouchers. Hence, issues (2) and (3) were treated as discrete issues and we shall follow that approach.

*(1) Terms of the Contract*

48. Mr Chapman submitted, correctly in our view, that we must first identify the contractual terms and conditions of the relationship between the appellant and its backers. In particular what the backers received in return for their pledges.

49. The terms and conditions of the contract can only be derived from the  
5 Kickstarter website. It is clear from the Kickstarter website that the project as  
described by the “creator”, in this case the appellant, was intended to form the basis of  
a contract between the appellant and backers. It is not clear in legal terms whether  
there was an invitation to treat or an offer by the appellant, but we are satisfied that  
once the £60 is paid the appellant is contractually bound to provide the “rewards”  
10 described in the project, subject to the project being successfully concluded.

50. Mr Chapman acknowledged that the terms and conditions must be derived from  
material on the Kickstarter website. He noted that the description of the project was  
peppered with references to the provision of a “digital memory box”, but that there  
was only isolated reference to the availability of physical space. He observed,  
15 correctly, that there were no terms and conditions explaining how vouchers would be  
redeemed or how a backer would obtain a digital memory box. However we do not  
consider that is relevant to the issues in the present appeal.

51. Mr Chapman submitted that the evidence supports a conclusion that it is only  
digital space which would be supplied and not physical space. He submitted that the  
20 references to physical space for a strand of hair were too vague to amount to a  
contractual obligation.

52. On the other hand, Mr Gibbon submitted that we cannot simply ignore  
references in the Kickstarter materials to physical space for a strand of hair and take  
them out of the bargain. He submitted that it was clear that pledges could be redeemed  
25 for a digital memory box, physical space for a strand of hair or both.

53. It is true that the physical voucher which could be printed off once a pledge had  
been paid referred only to securing a digital memory box. It contained no reference to  
securing physical space for a strand of hair. Similarly, there are parts of the website  
material that refer only to reserving a digital memory box with no reference to  
30 physical space. However, under the heading “*So, what would I get for £60*” the  
website states:

“Essentially, what you are reserving is ‘space’ in the time capsule - either digital space  
(for data) or physical space for a strand of hair or a combination of both... Our plan,  
35 however, is that a £60 voucher will buy enough physical space for an anonymous  
deposit of a single strand of human hair. Or you might choose to use your £60 voucher  
to buy space for digital data instead. Or top up your voucher and go for a combination  
of hair and data. ...”

54. Further, it is not necessary to hold the printed voucher. Entitlement to the  
benefits of a pledge depends solely on payment, which is recorded in the appellant’s  
40 records.

55. We agree with Mr Gibbon that we cannot discount references in the website material to the provision of physical space. It is clear to us from the website material that the mission contemplates making physical space as well as digital space available. Backers can use a £60 pledge to obtain digital space and/or physical space  
5 to that value. If £60 is insufficient to obtain physical space for a strand of hair then the backer can “top up” the amount already pledged and paid.

56. We find that that appellant is contractually bound to provide digital space and/or physical space in return for a pledge in the event that the project is completed. A backer can top up the amount of a pledge if necessary to secure the desired amount of  
10 space. Having said that, it is uncertain how much digital or physical space would be provided for a pledge of £60.

(2) *Prepayments*

57. Mr Gibbon submitted that the payments made by backers were not directly linked to a future supply of services because at the time of payment no-one knew  
15 precisely what would be obtained for the payment. In particular, whether digital space, physical space or both would be supplied and how much digital or physical space would be supplied.

58. Mr Chapman submitted that space in the time capsule equivalent to the value of the pledge was being supplied for a consideration. Section 6(4) VATA 1994 applies  
20 so that the tax point is when the payment is received.

59. In *Findmypast Ltd* the Court of Session stated at [46] that for there to be a prepayment there must be precise identification of the goods and services that are to be supplied. This follows from the requirement for a direct link between the consideration and the goods or services being supplied. Further, at [47] the Court of  
25 Session stated that the “prepayment rule” must be applied in a practical and pragmatic manner having regard to the economic reality and the context of the transaction.

60. On the facts of *Findmypast Ltd* the Court of Session emphasised at [48] that it was uncertain whether the “chargeable event”, that is the taxable supply, would ever occur. Mr Gibbon submitted that there was similar uncertainty in the present case  
30 about whether the mission would actually happen. The Kickstarter funding was only the first stage of the mission.

61. Mr Chapman submitted that the only apparent uncertainty in the present case is as to the precise size of the memory box. However, if what is being supplied is memory equivalent to a specified value then there is no uncertainty. He contrasted the  
35 present case with the significant uncertainties in *Findmypast Ltd* which included uncertainty as to whether all the credits would be used.

62. We accept Mr Gibbon’s submission that there are considerable uncertainties in relation to what if anything will be supplied to backers. The Kickstarter material recognised those uncertainties, including whether the mission would in fact launch.  
40 Whilst much of the material uses language that assumes the project will be successful,



it also recognises that the mission will require longer term funding which appears to be inherently uncertain.

63. At the time pledges were paid it is unclear what if anything will be supplied. We do not consider that there is the precise identification of the goods and/or services to be supplied required by section 6(4) and Article 65. In our judgment therefore the sums received by the appellant do not amount to prepayments.

(3) *Face Value Vouchers*

64. Mr Gibbon submitted that backers pledging £60 or more received face value vouchers. They were substantially in electronic format, in that they were held on computer by the appellant, but a physical certificate was also issued. However he described the physical certificate as being “meaningless” in the sense that the right to redemption does not depend upon presentation of the physical certificate. It depends upon payment of the pledge, evidenced in the appellant’s electronic records. Further, Mr Gibbon pointed to the fact that the benefits to backers were freely transferrable and could be given as gifts. This was, he submitted, consistent with a voucher.

65. Mr Chapman did not challenge the appellant’s case that it supplied vouchers in electronic form which represented the right to receive goods or services. He accepted that the vouchers do record their value, could be transferred for example by way of gift and could be used together with additional funds to purchase more space. However he submitted that what backers obtained was £60 worth of memory or £3,000 worth of memory depending on the amount of the pledge. He relied particularly on the website description of what was being supplied, namely a digital memory box, with “value equivalent to your pledge”. In relation to a pledge of £60 what was being provided was not memory up to the value of £60, but £60 worth of memory once the specifications and pricing were eventually worked out. The backers would simply receive a specific amount of memory which they could use in full or in part. The backer cannot decide to use the voucher for more than one memory box. It was not like a book voucher which can be used to buy a number of books up to the value of the voucher. Mr Chapman drew an analogy with memory space in a “cloud” based server where a customer would purchase memory of a specific size, and could use memory up to the amount supplied.

66. In summary Mr Chapman’s submission was that the value of the voucher was not “up to” the specified amount. The vouchers were simply exchangeable for a memory box of that size. They were similar in that sense to the London Pass in *Leisure Group Pass*.

67. We do not accept Mr Chapman’s submissions. Condition (3) identified by the Court of Session in *Findmypast Ltd* is satisfied. The vouchers in this case do represent the right to receive services “up to” the value stated. The vouchers are redeemable for a digital memory box of a value equivalent to the pledge. Alternatively they may be redeemed for physical space. The website material indicates at one point that the cost of physical space for a strand of hair would be approximately £50-60. A backer might therefore redeem the voucher for physical space together with digital space of up to

£10. We acknowledge that all these figures are estimates and it seems to us that they are inherently uncertain. However, unlike *Leisure Pass Group* there is a monetary limit on the voucher such that when the limit is reached the voucher is exhausted.

5 68. In our judgment therefore the backers are supplied with face value vouchers within paragraph 1 Schedule 10A.

(4) *Single Purpose Vouchers*

10 69. Mr Gibbon submitted that the vouchers were not single purpose vouchers. He submitted that in construing paragraph 7A a supply of physical space was a different “type” of supply of services to a supply of digital space. Digital space would require no separate “container” or “packaging” whereas physical space would require a separate container or packaging.

15 70. In support of that submission Mr Gibbon contrasted the different VAT treatment of a supply of a human hair and a supply of digital information. The former was a supply of goods and the latter was a supply of services. We do not consider that distinction is relevant in identifying the type of supply. The items identified are not the subject of any supply and the different VAT treatment if they had been supplied is in our view irrelevant.

20 71. Mr Chapman submitted that even if, as we have found the vouchers can be redeemed for digital and physical space, they still represent a right to receive only one type of goods or services. He submitted that there was no material distinction for present purposes between a supply of digital space and a supply of physical space. It was a right to put something in the time capsule. Even where digital information is put in the time capsule it will require a physical medium to be held. The more digital information the greater the size of the physical medium. On that basis he submitted that there was no analogy between books and e-books used as an example in *Brief 12/12*. A book is a physical object whereas an e-book is electronic data which itself has no physical medium.

30 72. Both parties agreed that paragraph 7A imports a two stage test for single purpose vouchers. Firstly, whether there is a right to receive goods or services of “one type”. Secondly whether those goods or services are subject to a single rate of VAT. If that is right the existence of a single rate of VAT does not itself identify the type of goods or services being supplied.

35 73. It is necessary to give paragraph 7A a purposive construction. Mr Chapman submitted that a single purpose voucher was effectively treating a cash payment for the voucher as a prepayment because of the restrictive way in which it could be used. Beyond that neither party was able to identify any purposive approach we could take in distinguishing different “types” of goods or services for the purposes of paragraph 7A. However, it remains necessary for us to give some meaning to the word “type” in this context. Unfortunately Parliament did not expressly define how different types of goods and services are to be identified and, if Mr Chapman is right as to the broad

purpose, it did not make clear the nature and extent of the restriction that would engage paragraph 7A and disapply Schedule 10A.

74. The effect of excluding single purpose vouchers from the treatment set out in Schedule 10A is to tax the consideration paid for such vouchers at the time they are issued. In that sense they become equivalent in practical terms to a prepayment. Mr Gibbon did not suggest that in those circumstances the consideration was only subject to VAT if it amounted to a prepayment within section 6(4) VATA 1994.

75. HMRC *Brief 12/12* was issued on 10 May 2012. Neither party suggested that it did not reflect the practical application of paragraph 7A. By way of background it stated that the principles considered by the CJEU in *Lebara* were of general application “and would apply to other single purpose vouchers that can be used to obtain only one type of good or service”. It was said to be as a consequence of *Lebara* that Schedule 10A was amended by the introduction of paragraph 7A. It is notable that the amendment was introduced into the Finance Bill 2012 after the Business Brief was published. *Brief 12/12* was therefore part of the context for the amendment.

76. We were not referred to *Lebara* itself. In fact the CJEU judgment says little about single purpose vouchers. The case was concerned with the VAT treatment of phonecards sold by Lebara to distributors and by distributors to end users. At [28] the court states:

“ 28. As regards the special features of the marketing system at issue in the main proceedings, phonecards are for a single purpose in so far as they may be used only to make international telephone calls to destinations, and at rates, determined in advance. Accordingly, they allow access only to services of one type, the nature and quantity of which are determined in advance and which are subject to a single rate of tax.”

77. The reference to services of one type appears to distinguish the phonecards from certain pre-paid SIM cards which were referred to by the Advocate General at [25] of his opinion:

“ 25. First, it is important to emphasise that the only use to which the phonecards can be put is the making of telephone calls through Lebara's system. They cannot be used, for example, for paying for other goods and services provided by Lebara or third parties. In this respect the phonecards differ from the scenario in which the credit on a prepaid SIM-card can be used for multipurpose payments. On the contrary, Lebara's phonecards resemble what are often termed 'single purpose vouchers'.”

78. The effect of *Lebara* is that single purpose vouchers are subject to VAT at the time of issue. It was therefore necessary for the UK to amend the domestic legislation in Schedule 10A to reflect the decision of the CJEU.

79. It is also notable from our own researches that on 10 May 2012 the European Commission published a proposal for a Council Directive regarding the treatment of vouchers (*COM (2012) 206 final*). The following extracts from that proposal appear relevant to the purpose behind paragraph 7A:

“ 1. Defining Vouchers for Tax Purposes

The first step is to make clear what a voucher is for VAT purposes. This involves a new Article 30a. The VAT Directive needs to be clear about which vouchers are to be taxed when issued and which are to be taxed only when redeemed. The former are described as ‘single-purpose vouchers’ and the latter as ‘multi-purpose vouchers’. This distinction hinges on whether the information is available to tax on issue or whether, because their end-use is subject to choice, taxation has to await redemption.

## 2. Time of Taxation

...

For vouchers which are not taxed when issued because the place and level of taxation cannot yet be established, tax should only be charged when the underlying goods or services are supplied.”

“ An SPV entitles the holder to receive identified goods or services in circumstances when the level of taxation (in particular, the rate of VAT), the supplier's identity and the Member State in which the underlying supply of goods or services takes place, can be definitively identified from the outset. The VAT treatment is settled when the voucher is sold. An example of an SPV is where a service provider sells vouchers (either directly or via an agent) which carry an entitlement to a defined service (e.g., telecommunications) to be supplied in one particular Member State.

An MPV entitles the holder to receive goods or services where these goods or services or the Member State where they are to be supplied and taxed are not sufficiently identified such that the VAT can be fixed at the time the voucher is issued. An example would be where an international hotel chain seeks to promote its products through vouchers which can be redeemed for accommodation in its establishments in any of several Member States. Another would be where prepaid credit could be used either for telecommunications (standard rated for VAT) or to pay for public transport (where a reduced rate may apply).”

80. Whilst we were not referred to the material mentioned above, it seems clear to us that the purpose of paragraph 7A is to define single purpose vouchers primarily by reference to whether the VAT chargeable on the ultimate supply can be identified or “fixed” at the time the voucher is issued. That will be possible where the level of taxation, the type of goods or services being supplied, the identity of the supplier and the place of supply can be ascertained at the time the voucher is issued. In the present context it seems to us that it would be arbitrary to distinguish types of supply by reference to whether the supply is of physical space in the time capsule or of digital space. It was not suggested that such a distinction would affect the VAT treatment applicable to the supply. We accept Mr Chapman’s submission that the vouchers in the present case were redeemable for one type of service, namely space in the time capsule. Indeed the website material itself recognised that what was being supplied would be space in the time capsule. The website stated:

“ Essentially, what you are reserving is ‘space’ in the time capsule - either digital space (for data) or physical space for a strand of hair or a combination of both.”

5 81. There is no relevant distinction for present purposes between physical space and digital space, unlike the distinction between a physical book and an e-book. The digital space would itself require a physical medium on which to be held. Hence the more digital information uploaded the greater the physical size of the memory required.

10 82. We do not propose to set out any general principles to be applied when distinguishing different types of supply. For present purposes it is sufficient for us to find that the vouchers were redeemable for one type of service for the purposes of paragraph 7A. As such the face value vouchers supplied by the appellant were single purpose vouchers and the consideration was taxable at the time the vouchers were issued.

*Conclusion*

83. For the reasons given above we must dismiss the appeal.

15 84. 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)”  
20 which accompanies and forms part of this decision notice.

25 **JONATHAN CANNAN**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 4 JANUARY 2018**