



TC07346

Appeal number: TC/2016/02530

*VAT – whether welfare services and therefore exempt – closely linked
and/or direct connected – appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

THE LILIAS GRAHAM TRUST

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE ANNE SCOTT

Sitting in public at George House, Edinburgh on Thursday 8 November 2018

Morag Ofili, Mishcon de Reya LLP, for the Appellant

**Natasha Barnes, Counsel, instructed by the General Counsel and Solicitor to HM
Revenue and Customs, for the Respondents**

Written Submissions dated 18 and 15 March 2019 respectively.

DECISION

Introduction

1. This concerns the appeal dated 5 May 2016 of The Lilius Graham Trust (“LGT”) from the decisions of Her Majesty’s Revenue and Customs (“HMRC”) dated 25 August and 16 December 2015 and upheld on review dated 8 April 2016.
2. HMRC’s view of the matter is that LGT’s supplies are exempt from Value Added Tax (“VAT”) on the basis that those are supplies of “welfare services” under Item 9, Group 7, Schedule 9 of the Value Added Tax Act 1994 (“VATA”) because those services are directly connected with the care or protection of children.
3. This is an unusual case in that if HMRC are successful then LGT would be deemed to have made exempt supplies and, consequently, it would have over-declared output tax (VAT) to HMRC. After deducting over-claimed input tax (VAT), LGT’s net position is that it would be due a net VAT repayment of £400,490.97 from HMRC.

LGT’s position

4. I heard evidence, at some length, from Ms Catherine A Morrison, the Chief Executive of LGT and she was an articulate and wholly credible witness. She was clear that the optimal outcome of a referral of a family to, and stay with, LGT was to “... strengthen the ties between parent and child and to keep them together ...”. The focus is on the parent and it is the parent who cares for the child at all times. She was adamant that LGT’s service was not an assessment of families to be included on the Child Protection Register (“the Register”).
5. The objective is to positively influence the lives of parents and families, particularly where the parents have had adverse childhood experiences themselves. This is achieved by giving parents, and their social worker(s), the necessary tools and information to maintain positive developments once the family returns to their own community.
6. The service was to act as an observer watching the parent care for the child and, as appropriate, offer advice enabling the parent to acquire essential parenting skills such as keeping a tidy home and nurturing a child or children. The parent can decline advice and is free to leave at any time.

HMRC’s position

7. HMRC argue that the services provided by LGT are directly concerned with the care or protection of children. “The essential purpose of the service is to ensure that children are better cared for and to guarantee their protection.”

Factual background

8. LGT is a company limited by guarantee and was incorporated on 15 November 2000. It was known as Braendam Family House or Braendam Family House Limited (“BFHL”) until 30 June 2006. It has charitable status having been established originally as a charity by Liliias Graham in 1967 and registered as such on 1 January 2000.

9. On 17 December 2004, following correspondence with HMRC, HMRC confirmed that, because BFHL did not care for the children “... as this is done by the parent or guardian with whom they attend”, BFHL would have to register for VAT because they made taxable supplies.

10. On 19 January 2005, BFHL applied to register for VAT and has been registered for (“VAT”) with effect from 1 January 2002. Historically, all of its supplies have been subject to VAT. In consequence of this, it has recovered in full the input tax chargeable on the supplies of goods and services made to it which it uses for the purposes of its business.

11. On 29 July 2013 the Care Inspectorate ruled that, because it is not providing a care service, LGT is not required to be registered under Section 59 of the Public Services Reform (Scotland) Act 2010.

12. By letter dated 25 March 2015, LGT requested from HMRC a “non-statutory clearance” in respect of whether it was applying the correct VAT liability to its supplies. The reason for the request was that LGT was planning to construct a new accommodation building and wished to know whether it could recover VAT on the cost of that development.

Agreed Facts following Alternative Dispute Resolution

13. The Exit Document dated 14 March 2017 from Alternative Dispute Resolution stated that the Agreed Facts are:

- 1) “The service provided by The Liliias Graham Trust (LGT) to the local authorities is an assessment and conclusions.
- 2) No care is provided on the premises.
- 3) Many different families of varying backgrounds and circumstances are referred to LGT. The services are not only in respect of homeless families.
- 4) Families who come to LGT may have children who
 - (a) Are on the Child Protection Register
 - (b) Are not on the Child Protection Register, or
 - (c) May be taken in to care.
- 5) The Conclusions contain recommendations and observations in relation to the individuals/families parenting capacity.

- 6) LGT makes no recommendations in their conclusions (either written or oral) as to whether the child should be placed or removed from the Child Protection Register.
- 7) At a case conference or core group meeting, the various agencies and interested parties (including LGT) may raise any concerns before a decision is made if they disagree.
- 8) The social worker makes the ultimate decision (using information obtained from various agencies and interested parties) as to the welfare and protection of a child.”

14. LGT originally provided respite holidays for families who were in receipt of benefits. They were usually referred by a Local Authority.

15. Over time the nature of the supplies provided by LGT has evolved and changed.

16. Since approximately 2006, LGT has been running a residential assessment centre where the parenting capabilities of those referred to LGT are assessed. The service provided by LGT comprises handling the referral, where possible a pre-visit to observe the home environment, the observations and assessment by LGT staff, assessments with specialist consultants, production of a final Report and the Outreach Program.

17. The referrals are made by social workers employed by Local Authorities. The social worker in question has a statutory duty in relation to care and protection of the child or children. The Local Authority is invoiced in arrears and the timescale for that depends on the Local Authority in question. The charge is a fixed fee per family per week and is “all inclusive”. In particular the cost of all specialist consultants (eg psychiatry) is included.

The nature of the supply

18. It is common ground that the nature of LGT’s services is as summarised in a letter from Glasgow City Council dated 19 June 2015 and that is:-

- “● LGT is an assessment centre providing assessment services on the parenting capacity of those referred to the service;
- The assessment services cover families where there is an uncertainty about whether the parent(s) can safely look after their children;
- Predominantly, LGT services are undertaken when a rapid assessment is needed;
- LGT is simply acting as an observer watching the parent’s care for their own children and providing information in the form of advice;
- LGT is not providing any treatment in the form of medical care for any illness or injury;
- Importantly, for the Local Authority, LGT’s recommendation following the assessment provides a recommendation to social workers around whether the parent(s) has sufficient capacity to keep their child safe and healthy;

- The Council has a statutory duty to ensure that the needs of the child are paramount in relation to any further action, e.g. inclusion on the Child Protection Register or the child becoming Looked After and Accommodated. Information provided by LGT will help inform such decisions, however this is only a part of the intelligence gathered that will inform and influence the SW professional assessment of need and the identification of future support to the child and family. LGT has no locus in these statutory decision-making processes.”

19. In a second letter dated 12 October 2015, Glasgow City Council stated:-

“In addition to the nature of services outlined in my previous letter to you of 19th June 2015, I can confirm that we view the residential accommodation as a fundamental part of the provision of the assessment services on the parenting capacity of those families we refer to your organisation. The residential accommodation provides a period of time for your organisation to assess the parents in a safe environment”.

20. As can be seen, in all cases, concerns have been raised as to whether one or both parents (hereinafter “the parent”) can safely and adequately care for their child or children (hereinafter “the child”). There may be no indicator of risk. In many cases the family will be referred to LGT because there has been no engagement by the parents with social services and the social worker has been unable to evaluate whether there is any risk at all.

21. It is the family unit that is referred. The average placement lasts for 12 weeks although some are only for four weeks. The families are free to leave at any stage but that rarely happens. On occasion, if it is clear to LGT that the parent is caring adequately for the child, the stay will be cut short. The longest placement was 18 months. On occasion a family might be referred more than once.

22. During each residential assessment, which is accommodation in “a typical family home”, LGT staff work with the parent both to assess parenting capabilities and to provide support and guidance. They endeavour to “fill in the gaps in their knowledge”. In a letter dated 10 June 2015, HMRC acknowledged that: “I am also satisfied that any advice given is in the form of help to make an informed decision rather than instruction.” I agree.

23. The assessment of parental capacity involves the assessment of physical and emotional care and addresses the parent’s level of attachment and attunement to the child and the ability, or not, to understand the critical needs of the child. The LGT staff observe the interaction between parent and child and the focus is primarily on the parent and their actions rather than the child. The child is not assessed. The child is always under the supervision of the parent whose responsibility it is to look after and care for the child.

24. The LGT staff prepare detailed observation notes which record the day to day activities of the parent. The key criteria include the parent’s ability to respond, cuddle, relax, talk to and play with the child.

25. The type of advice and support offered in relation to those activities would include, for example, helping a parent budget, assisting them with waking up on time to feed a child, keeping a clean and tidy home, taking a child to school on time, demonstrating how to play with the child to encourage bonding and pointing out that

the child may be hungry or dirty. The staff would not intervene other than in a situation where there was immediate risk of critical danger as, for example, if there was a fire.

26. The observations are shared with the parent and the parent can challenge those. The support staff are physically in the room with the family or elsewhere, for example, visiting a supermarket. At the end of each of the two daily shifts the member of staff will write up the observations on an observation sheet. All of the families are provided with a laptop and email account on arrival and as soon as the observation sheet is written up it is emailed to the parent. The parent has to click on this sheet stating whether the observations are agreed or not. Every attempt is made to achieve consensus.

27. LGT employs six consultants on an *ad hoc* basis. The majority of families see one or more of those consultants who include, for example, an educational psychologist, a play therapist, and a psychologist. Many of the parents have mental health issues and a psychiatrist assesses and monitors same. The observation notes of the consultants (other than the psychiatrist) are shared with the parent.

28. On a weekly basis a multi-disciplinary group including the parent, the social worker, LGT staff and any consultant that is involved, review the progress and the observations.

29. In addition, LGT furnishes an “Outreach Program” which can last for up to six months after the family leaves LGT. In that context the family will be visited two or three times per week and would be furnished with assistance with activities of daily living such as help with shopping etc. The sole aim of the Outreach Program is to support the transition from the residential assessment to the community and to help sustain the lessons learnt by the parent. That forms no part of the assessment process and the details are not included in the final Report.

30. LGT are invited to various meetings involving social work and the family and attend, as appropriate. Those meetings are also attended by the professionals, other agencies and volunteers involved in the child’s life extending even to, for example, the Boy Scouts. Everyone in attendance may contribute a verbal report of relevant information and any suggestions for plans that may be implemented. Part of the role is to mediate particularly where a child has previously been removed from the family by social services.

The Report

31. At the end of the placement LGT compiles a comprehensive Report which is usually delivered between four and six weeks after the family has left LGT. That Report details the staff observations regarding parenting capacity and, in the light thereof combined with reports from consultants, makes recommendations to social workers as to how the parent can best be supported in future. The majority of Reports do not refer to risk.

32. Due to the volume of information that goes into the Report, in 95% of cases the Report cannot be made available in a shorter timescale. LGT are therefore often invited to attend and participate in a number of meetings before the Report is issued and after the placement has ended.

33. The Report comprises various sections, namely:-

- (a) The observation sheets and the minutes of the weekly meetings are compiled in the Service Manager's section of the Report.
- (b) The running notes of the health consultant are included together with a summary report which includes the results of all of the tests that have been carried out.
- (c) Any other specialist who has interacted with the parent during the stay also has their running notes and summary included in the Report.
- (d) The Social Work Child Care consultant's running notes and summary report are included with a series of recommendations as to what is required by the family and/or parent from Social Services in terms of future engagement.
- (e) Lastly, generic information about LGT and its aims and objective is also included.

34. LGT do not make specific recommendations in the Report but can and do support those made by the social worker and reasoning is furnished for that support.

35. Specifically LGT never makes a recommendation as to whether or not a child is to be included on the Register since LGT does not have adequate visibility of external factors that may be present on a return to the community.

36. Where a social worker argues that a child should be put on the Register LGT does not disagree. It may be that LGT would offer a suggestion as to a possible alternative approach.

37. Where LGT receives information directly from a relevant agency involved with the care and protection of children, that information is included in the Report.

38. There have been very few cases of children leaving LGT to be put on the Register. The purpose of the Report is not that it should be used to assess whether the child should be placed on the Register; it is to assess parenting capability.

General

39. Although the major part of LGT's income comes from the Local Authority referral fees, it is also subsidised to a degree by grants and donations.

40. In its Financial Statement for the year ending 31 March 2016, LGT provided a description of its "Objectives and Activities". The first four of those objectives are described on the Charity Commission's website as follows:-

“(a) To support and sustain people who are in distress by reason of poverty, deprivation, or associated adverse circumstances.

(b) To strengthen the ties of family life.

(c) To help the most deprived families and groups to play a full part in the cultural, spiritual and political life of the community.

(d) To study the factors which help cause social and economic deprivation and exclusion.”

The remaining two are in the Financial Statement and read as follows:-

“... ”

e. To establish, operate, promote, maintain, manage and develop residential accommodation (and associated facilities) for individuals and families who are in distress or are otherwise in need of support.

f. To design, prepare, publish and/or distribute information packs, leaflets, books, newsletters, magazines, posters and other publications, audio and video recordings, multimedia products and display materials. ...”.

The Financial Statement goes on to read:-

“We work in close partnership with Scotland wide Local Authority Social Work services to deliver on the assessment of parents’ level of capacity. Our service is innovative and is well supported by motivated and highly skilled consultants, support staff, Service Manager and support functions within the organisation.”

The Legislation

European Legislation

41. Council Directive 2006/112/EC of 28 November 2006 on the common system of Value Added Tax is commonly known as the Principal VAT Directive (“the PVD”) and is the current EU Directive on VAT. Title IX of the PVD is headed “Exemptions”.

42. Chapter 1 of Title IX, headed “General Provisions”, consists of Article 131 which provides:

“The exemptions provided for in Chapters 2 to 9 shall apply without prejudice to other Community provisions and in accordance with conditions which the Member States shall lay down for the purposes of ensuring the correct and straightforward application to those exemptions and of preventing any possible evasion, avoidance or abuse.”

43. Chapter 2 of Title IX is headed “Exemptions for certain activities in the public interest”. Article 132(1)(h) provides as follows:

“1. Member States shall exempt the following transactions:...

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

44. The PVD replaced the previous VAT Directive, namely the Sixth Council Directive of 17 May 1997 on the harmonisation of the laws of the Member States relating to turnover taxes (77/388/EEC), commonly known as the Sixth VAT Directive (“the Sixth Directive”). That contained a similar exemption in Article 13A(h) in almost, but not quite, identical terms to Article 132(1)(h).

UK legislation

45. The current domestic UK statute relating to VAT is the Value Added Tax Act 1994 (“VATA”).

46. In terms of section 31(1) VATA 1994, a supply of goods or services is an exempt supply if the supply is of a description specified in Schedule 9 VATA.

47. Schedule 9 refers to a number of different types of supply of goods and services, arranged in Groups. Group 7 is headed “Health and Welfare”.

48. Item 9 of Group 7 (“Item 9”) in its current form (which it has been since 31 January 2003) reads as follows:

“The supply by

- (a) a charity,
- (b) a state-regulated private welfare institution or agency, or
- (c) a public body,

of welfare services and of goods supplied in connection with those welfare services”.

(It should be noted that the version included in the Authorities Bundle at 7 is incorrect and the correct, and current, version is in the Core Bundle at 8.97.)

49. Section 96(9) VATA provides that Schedules 7A and 9 are to be interpreted in accordance with the notes contained in those Schedules.

50. Note 6 to Group 7 of Schedule 9 (“Note 6”) provides a definition of “welfare services”, namely:

“In item 9 ‘welfare services’ means services which are directly connected with – ...

- (b) the care or protection of children and young persons, or...”.

51. Note 7 to Group 7 of Schedule 9 provides further qualification as to when the exemption should be applied:

“Item 9 does not include the supply of accommodation or catering except where it is ancillary to the provision of care, treatment or instruction.”

52. Item 1 of Group 9 of Schedule 7A VATA provides that “... supplies of welfare advice or information” by a charity are subject to a reduced rate of VAT. Note 1 to that Schedule provides the following definition:

“1. In this Group ‘welfare advice or information’ means advice or information which directly relates to—

- (i) ...
- (ii) the care or protection of children and young persons.”

53. Note 3(c) to Group 9, Schedule 7A provides:-

“3. Item 1 does not include—

...

- (c) supplies of advice or information provided solely for the benefit of a particular individual or according to his personal circumstances.”

VAT Notice 701/2: welfare

54. This Notice was first published on 5 July 2011 and sets out HMRC’s view as to the meaning of welfare services. The starting point in this context, quite correctly, is found at paragraph 2 being “... services which are directly connected with ... the care or protection of children and young persons”. That is then defined as follows:-

“2.2 Care or protection of children and young persons

2.2.1 Services relating to care and protection of children that are exempt

- care provided in a children’s home
- day care services such as those provided by a nursery, playgroup or after school club (but not activity based clubs such as dance classes)
- the placement of a child with foster carers by a fostering agency
- the assessment of families to be included on the at risk register by providers mentioned in section 3
- the care, support and protection of looked after children
- the training and assessment of prospective adopters by an adoption agency”

55. Section 3 referred to in the preceding quotation from the Notice stipulates that supplies of welfare services are only exempt when made by charities, public bodies and state regulated private welfare institutions or agencies. Of course LGT is a charity.

Overview of the issues

56. The dispute between the parties centres on whether LGT is entitled to claim input tax credit, or whether it is denied from making such a claim, on the basis that the relevant supplies made to the Local Authorities are exempt.

57. HMRC state that LGT has identified three issues for determination in this appeal being:-

- 1) Whether LGT's supplies are directly connected to the care and protection of children.
- 2) In the alternative whether the supply of accommodation is ancillary to LGT's services.
- 3) In the alternative, whether LGT supplies welfare advice and information which carries a reduced rate of VAT.

58. Ultimately both parties agreed that the supply of accommodation is essential to the supply, however defined. It is not ancillary to the service provided by LGT and therefore Note 7 does not apply. LGT does not make two separate supplies of welfare services and accommodation but only a single supply of welfare services which includes within it the provision of accommodation. As the Officer stated in the decision letter of 16 December 2015, HMRC do not dispute that:

“LGT is making a single supply of residential assessment services of which the assessment and the accommodation are integral to each other and are not separate supplies.”

59. I have no hesitation in finding that there is one supply, which includes within it, residential accommodation.

Overview of LGT's arguments

60. LGT's supplies should not be categorised as exempt on the basis that they are supplies of welfare services under Item 9, Group 7, Schedule 9 VATA.

61. LGT accepts that there is a causal relationship between the services provided and the care and protection of children and young persons. However, any such connection is too remote to be deemed to be a direct connection not least because the dictionary definition of “direct” is that it is “without intervening factors or intermediaries”.

62. LGT's supply is only indirectly connected with the care and protection of children as there are several intervening factors and intermediaries between the service provided and the care and protection of children. Therefore it is not providing welfare services, as defined.

63. The main purpose of the supply is the assessment of parenting capability in residential accommodation and it is not assessing whether the child should be on the Register.

64. LGT is not providing welfare services as defined within Note 6 since the care of the child is at all times the responsibility of the parent, as was the case in *Slide & Seek Ltd v HMRC*¹ (“Slide”).

65. To the extent that there is any element of protection it is incidental to the main supply. The exemption does not extend to welfare services that are but a by-product

¹ [2014] UKFTT 512 (TC)

of the principal service and reliance is placed on *Planet Sport (Holdings Ltd) v HMRC*².

66. In any event, LGT supplies welfare advice and information which carries a reduced rate of VAT at the rate of 5%. That advice and information is general and provided both to the Local Authority and to the parents.

Overview of HMRC's arguments

67. The appellant's supplies amount to exempt welfare services because they are directly connected with the care or protection of children.

68. It is not necessary that the services provided by LGT be essential to the care and protection of children before they meet the criteria for exemption. Further, it is not relevant whether or not there are any intervening factors or intermediaries between LGT's supplies and the care and protection of the child.

69. HMRC argue that LGT services are directly connected to the care and protection of children in the following ways, namely:

- 1) In every case there is the possibility of a child being exposed to risk and in providing supervised accommodation those potential risks are reduced in the short term thereby ensuring the care and protection of the child.
- 2) Whilst the families are resident with LGT the suggestions and guidance furnished to the parent are developing the parenting capacity and skills to ensure better care for the child in the future. Thus it guarantees, insofar as possible, that child's care and protection. The exemption is not limited to the care or protection of children but extends to services "directly connected" with the care or protection of children. Therefore the fact that the parent actually cares for the child does not mean that the exemption does not apply.
- 3) The Report furnished by LGT, and indeed the input at multi-agency meetings, is a factor in the development of the Local Authorities' decision-making process. The fact that LGT does not itself determine the outcome does not mean that its supplies are not directly connected to the care and protection of children. HMRC rely on paragraph 2.2.1 of Notice 710/2 albeit accepting that that does not have the force of law

70. Whilst it was agreed that LGT does not provide any service of "protection" it was argued that it was not required to do so to fall within the welfare exemption; there simply has to be a direct connection to care and protection.

71. LGT cannot avail itself of the reduced rate of VAT for the provision of "welfare advice and information" because such advice is provided to and for the benefit of a "particular individual". (Note 3c to Item 1, see paragraph 53 above).

² [2013] UKFTT 639 (TC)

Discussion

72. The point was not addressed by the parties but it is appropriate for me to address it in case it “crops up” in a subsequent appeal and it was canvassed in the decision dated 25 August 2015. Certainly LGT, in its previous incarnation, registered for VAT only because HMRC insisted that it should do so. In fact it paid a penalty for late registration.

73. Why then has HMRC “changed its mind” and is that appropriate? Firstly, it would appear that the correspondence leading up to the end of December 2004 was predicated on relatively minimal information. Furthermore, Ms Morrison, in her evidence, made it clear that it was only after her arrival with LGT that the type of service that they provided was reviewed and, indeed, changed. The position after 2005 is clearly very different to that which pre-dated that. In my view it was therefore appropriate for HMRC to revisit the position.

74. I accept the clear evidence at bullet point 4 in paragraph 18 above, that LGT acts as an observer and provides advice. It is only exceptionally that LGT would provide any level of care at all. In any event, as HMRC argue, it is care or protection with which this appeal is concerned. I observe that the appellant erroneously refers to care and protection in the written submission.

75. Of course, the child, and the family, particularly if they have been homeless, and by no means all were, will be better cared for and protected whilst staying with LGT. However, as the Tribunal pointed out at paragraph 25 in *Slide*: “The premises meet all the statutory requirements for ensuring the safety of all users (not just children) of the facility”. And in that case, as in this, the potential examples of care given by Ms Morrison are no more than the legal obligations of the occupier of any premises.

76. As indicated at paragraph 64 above, LGT relied on *Slide* where HMRC had argued successfully that that appellant did not provide services involving the care and protection of children because the parents were in attendance at all times and never handed over responsibility for the child. That is the case in this instance and indeed at paragraph 15 of HMRC’s Skeleton Argument, HMRC “... accept that the parents retain responsibility for their children during their stay with the Appellant”.

77. However, that case is not quite on all fours with this since in *Slide* the appellant provided a children’s play centre and although staff assisted in activities they did not give formal tuition and had no expert qualifications. The LGT staff are well qualified and they certainly give advice.

78. HMRC’s argument is that by assessing the parenting capacity, the potential risks to the child are reduced in the short term thereby helping to ensure the care and protection of the child in the longer term because the parent develops better skills and improved parenting capacity.

79. HMRC also rely on bullet point 4 at 2.2.1 of VAT Notice 701/2. Firstly, that is simply HMRC's understanding of the legislation³ and it is certainly not binding on this Tribunal. Secondly, by no means all of the families are, or ever would be, included on the Register.

80. The appellant sought to rely upon the decision in *Parents and Children Together v HMRC*⁴ ("PACT"), where HMRC had succeeded in establishing that there was no direct connection, because in that case, as in this, what was being provided to the Local Authority was an assessment of parental suitability.

81. *PACT* was dealing with slightly different legislation where the relevant wording was "...services which are directly connected with...the protection of children and young persons..." but in my view that is sufficiently similar that it is relevant.

82. HMRC contend that *PACT* can be distinguished on its facts. Of course, it can, because the facts are different, but in some ways it is not dissimilar. I quote from paragraph 21 thereof as follows:-

"The services are made to the prospective adopter; they are designed to assess the suitability of the prospective adopters for inter-country adoption and, if suitable, to enable them to obtain certificates of eligibility from the Department of Health. Although the end result of PACT's service, coupled with the prospective adopter's actual adoption of a child, may be the provision of protection for that child, this does not, we think, mean that PACT's contractual services are 'directly connected with' that state of protection or even 'closely linked to' it."

83. The supply by LGT is to the Local Authority and I also find that the end result of that supply may be the provision of protection for the child. I do not accept HMRC's argument that the distinction with *PACT* is that in that case, the identity of the child was not known when the supply is made and that that made the supply very much more remote. That was undoubtedly the case but this paragraph is predicated on an instance where the child was actually adopted.

84. I find that the distinction is that all prospective adopters were assessed whereas only parents where there is a concern about risk to the child are assessed by LGT.

85. LGT's recommendation to the Local Authority is only one of a number of factors which are taken into account and even if a child is put on the Register or taken into care, it may not be as a direct result of LGT's Report or attendance at meetings but may be attributable to entirely different factors.

86. I do accept that in some cases, LGT may find that the parent has capacity to provide suitable care and protection for the child. LGT argue that therefore that assessment affords the child no greater protection than it had in the first place. That is only partially correct. By definition the requisition of the assessment was because of a perception of risk. In finding that the parent has appropriate parenting capacity the risk has been assessed and the child is not removed from the parent.

³ Paragraph 4, *Leeds City Council v HMRC* [2015] EWHCA Civ 1293

⁴ LON/00/1146 (VTD17283)

87. I accept HMRC’s argument that the fact that the supply is made to the Local Authority is not determinative of the nature of the supply.

88. Although I am aware that the decision is under appeal, I agree with Judge Kempster in *YMCA Birmingham & Others v HMRC*⁵ at paragraph 65 where he states:

“I conclude there is a supply of services for VAT purposes by YMCA to the local authority (regardless of the fact that the main beneficiaries of the HRS are the young residents), and the identity of the recipient does not affect whether the supply falls within Item 9.”

89. That is precisely the position in this appeal where the supply of services is to the Local Authority but in many ways the beneficiary is the parent who learns skills and/or bonds with the child. Of course, the child also benefits from that.

90. It is accepted by the appellant that the service they provide does impact on the care or protection of the child.

91. However, the nature of the supply is not the real issue here; rather, it is whether that supply is directly connected to the care and protection of the child.

Are LGT’s supplies directly connected to the care and protection of children?

92. It is not disputed that when considering exemptions the legislation should be strictly construed. It is also trite law that domestic legislation in this context should give effect to the PVD.

93. At paragraph 28 of their Skeleton Argument, LGT relied on *Staatssecretaris van Financiën v Stichting Kinderopvang Enschede*⁶ (“Stichting”) stating that it provided “...clarification of the term ‘closely linked’ as contained within the PVD. Goods and services are ‘closely linked’ if they are essential to the exempted service.”

94. LGT then went on to state that there is no definition of “direct connection” in VAT law and that those words should be interpreted according to their normal and everyday meaning.

95. At paragraph 11 of HMRC’s Skeleton Argument, HMRC referred to Article 132(1)(h) of the PVD and pointed out that, contrary to the appellant’s assertion in relation to *Stichting* that: “The ECJ did not elucidate on the meaning of ‘closely linked’ as referred to in Article 132(1)(h) PVD”. HMRC also argued that the appellant was not correct in stating that *Stichting* supported the proposition that “closely linked” meant that the supply had to be essential to the exempted service.

96. I cannot agree with the appellant. Far from providing clarification, the Court stated at paragraph 25: “Whatever the interpretation given to the expression ‘closely linked’ under art 13A(1)(g) and (h) of the Sixth Directive, art 13A(2)(b) thereof in any event...” and went on to

⁵ 2018 UKFTT 458 (TC)

⁶ C-415/04

look at whether the taxpayer's intermediary services were "essential". It was not in dispute that there was a close link.

97. In paragraph 12 of their Skeleton Argument HMRC go on to argue that:

"The test is simply whether those supplies were 'directly connected' to the care and protection of children, according to the natural and ordinary meaning of those words."

98. To the limited extent that the legislation was addressed in oral argument, the only submissions were addressed to "directly connected". LGT relied on the dictionary definitions. They argued that:

(i) Connection is defined as:

"A relationship in which a person or thing is linked or associated with someone else".

(ii) Direct is defined as:

"Without intervening factors or intermediaries".

99. HMRC did not accept that the wording should be reduced to its constituent parts and that the Tribunal should look at the natural and ordinary meaning of the phrase.

100. Whilst that is undoubtedly the dictionary definition of "direct", in the context of this legislation, the phrase is intended to look at a connection with care and protection regardless of others being involved. There may be many agencies providing services to the one child all of which are directed at providing care and/or protection.

101. HMRC state in their Revised Statement of Case at paragraph 22 that:

"The Respondents note that the Appellant does not seek to argue that the relevant provisions of VATA fail to implement correctly the PVD".

102. On reflection, I thought that that issue should be addressed since I had looked at, for example, *PACT* at paragraphs 20 and 21, the relevant (for these purposes) portions of which read as follows:-

"20. ...But, is protection of children, or something '**directly connected**' or '**closely linked**'...to protection ...".

21. ... Although the end result of PACT's service, coupled with the prospective adopter's actual adoption of a child, may be the provision of protection for that child, this does not, we think, mean that PACT's contractual services are '**directly connected with**' that state of protection **or even 'closely linked to' it...**".

103. I have highlighted in bold the words that concern me. Had Sir Stephen Oliver thought that the two phrases meant the same thing he would not have used the word "even" and separated the two phrases. I was concerned that I had not heard argument as to whether there is a potential disconnect between Article 132(H) of the PVD which describes a supply of services as being "closely linked to the protection of children and

young persons” and VATA at Note 6 which refers to “welfare services” being “directly connected”.

104.I decided that it was appropriate to seek written submissions and I referred the parties to:

(a) *Commission v Ireland*⁷ at paragraph 44 where the Court stated:

“It should, in that regard, be recalled that the transposition of Community legislation into national law does not necessarily require the relevant provisions to be enacted in precisely the same words in a specific express legal provision; a general legal context may be sufficient if it does ensure the full application of the directive in a sufficiently clear and precise manner (Case C-360/87 *Commission v Italy* [1991] ECR I-791, paragraph 7 and the case-law cited).”

(b) *Google Inc v Vidal-Hall and others*⁸ (“Google”) where the Master of the Rolls and Sharp LJ, referring to *Marleasing SA v La Comercial Internacional de Alimentation SA*⁹, stated at paragraph 86 that:

“The *Marleasing* principle is not in doubt. It is that the courts of member states should interpret national law enacted for the purpose of transposing an EU Directive into its law, so far as possible, in the light of the wording and the purpose of the Directive in order to achieve the result sought by the Directive.”

and to paragraph 89 which reads:

“Mr White submits that there is greater scope for applying the *Marleasing* principle by reading words in to a national measure (i.e. to expand its potential field of application) or by reading it down (i.e. to expand its potential field of application) than by disapplying or striking out an incompatible measure. We accept this submission.” and

Lord Rodger at paragraph 121 in *Ghaidan v Godin-Mendoza*¹⁰ is then quoted where he states:

“For present purposes, it is sufficient to notice that cases such as *Pickstone v Freemans plc* and *Litster v Forth Dry Dock & Engineering Co Ltd* suggest that, in terms of section 3(1) of the 1998 Act, it is possible for the courts to supply by implication words that are appropriate to ensure that legislation is read in a way which is compatible with Convention rights. When the court spells out the words that are to be implied, it may look as if it is ‘amending’ the legislation, but that is not the case. If the court implies words that are consistent with the scheme of the legislation but necessary to make it compatible with Convention rights, it is simply performing the duty which Parliament has imposed on it and on others. It is reading the legislation in a way that draws out the full implications of its terms and of the Convention rights. And, by its very nature, an implication will go with the grain of the legislation. By contrast, using a Convention right to read in words that are inconsistent with the scheme of the legislation or with its essential principles as disclosed by its provisions does not involve any form of interpretation, by implication or otherwise. It falls on the wrong side of the boundary between interpretation and amendment of the statute.”

⁷ C-554/07

⁸ [2015] 3 WLR 409

⁹ Case C-106/89

¹⁰ [2004] UKHL 3

105. The appellant's submission was to the effect that the two terms are synonymous and relied on paragraphs 20 and 21 of *PACT*. It is evident from paragraph 103 above that I disagree with that analysis. I do not think that "closely" means the same as "directly".

106. As the appellant points out in its submission, the provisions of Article 132 PVD use differing expressions for different exemptions ranging from "incidental thereto" or "with a view to" at one end of the spectrum to "closely" related or linked or "directly necessary". Clearly that draftsman distinguished between the words "directly" and "closely". I annex at Appendix 1 the table produced by the appellant comparing the expressions used by the list of exemptions in Article 132 PVD and Schedule 9 VATA,

107. The appellant argues that their supplies are neither directly related nor closely linked because the supply is secondary to the responsibilities and decisions of the Local Authority and the parent. It is erroneously argued that the legislation requires both "care and protection". The wording in Schedule 9 is "care or protection" and I observe that Article 132 refers only to "protection".

108. HMRC's submission, which confusingly addressed Article 132(1)(g) rather than (h), was to the effect that there was no material disconnect between the two terms and that on the ordinary meaning of the words "closely linked" is of wider application. It should be noted that in both (g) and (h) the expression used is "closely linked" and the domestic legislation for both uses is "directly connected".

109. The case to which HMRC referred, albeit they considered it to be of limited assistance was dealing with the predecessor to Article 132(1)(g). In that case, *Les Jardins de Jouvence SCRL v État Belge*¹¹, ("Jardins") the Court stated at paragraph 52:

"In that regard, it must be borne in mind that, in accordance with the first indent of Article 13A(2)(b) of the Sixth Directive, the Member States are not to exempt the supply of services envisaged, inter alia, in Article 13A(1)(g) if they are not essential to the transactions exempted. As is apparent from the case-law of the Court, that provision, which is binding on the Member States, lays down conditions which must be taken into account for the interpretation of the various exemptions referred to therein, which, like that provided for in Article 13A(1)(g), concern the supply of services or goods which are 'closely related' or 'closely linked' to an activity in the public interest (see, to that effect, judgment in *Ygeia*, C-394/04 and C-395/04, ... paragraph 26).

110. That appeared to equate 'closely related' and 'closely linked'.

111. I then looked at *Ygeia AE v Ipourgou Ikonomikon*¹² ("Ygeia") in order to understand why that should be. In fact paragraph 26 has nothing to do with Article 13A(1)(g) and refers only to "closely related" because the Court was considering

¹¹ C-335/14

¹² C-394-04 and C395/04

Article 13A(1)(b) and that is the terminology in that exemption. I do not think that the case assists at all.

112. *Stichting, Jardins* and *Ygeia* are all concerned with whether services are “essential” and they do not assist in deciding whether I should look at closely linked or directly connected. I take the view that the draftsman chose to use “closely” in sub paragraphs (g) and (h) having used “directly” in (f) and, as HMRC, argue it is “closely linked” is of slightly wider application than “directly connected”.

113. In summary I find that the “essential purpose”¹³ of the supplies made by LGT is to ensure that the child is better cared for and has optimal protection; that is precisely why the Local Authority employs LGT. Its supplies are both closely linked and directly connected with the protection of children as also to their care.

114. Accordingly, the appellant makes supplies of welfare services which are exempt from VAT.

115. Lastly, I do not accept that the appellant supplies welfare advice and information which carries a reduced rate of VAT. Note 3 C to Item 1 specifically provides that “Item 1 does not include supplies of advice or information provided solely for the benefit of a particular individual or according to his personal circumstances.” That is precisely what LGT does when offering advice, support and guidance to the parent.

116. The appeal is dismissed.

117. 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.

**ANNE SCOTT
TRIBUNAL JUDGE**

RELEASE DATE: 29 AUGUST 2019

¹³ Paragraph 29 *College of Estate Management v CEC* [2005] STC 1597

Appendix

Article 132 PVD		Schedule 9, VATA	
Paragraph	Associating expression (if applicable)	Associating expression (if applicable)	Source
(a)	" <i>incidental thereto</i> "	" <i>incidental to</i> "	Group 3, Item 2
(b)	" <i>closely related</i> "	See footnote ⁵	Group 7, Item 4
(f)	" <i>directly necessary</i> "	" <i>directly necessary</i> "	Group 16, Item 1
(g)	" <i>closely linked</i> "	" <i>directly connected</i> "	Group 7, Item 9
(h)	" <i>closely linked</i> "	" <i>directly connected</i> "	Group 7, Item 9
(i)	" <i>closely related</i> "	" <i>closely related</i> "	Group 6, Item 4
(k)	" <i>with a view to</i> "	" <i>incidental to</i> "	Group 7, Item 10
(l)	" <i>closely linked</i> "	" <i>in connection with</i> "	Group 9, Item 1
(m)	" <i>closely linked</i> "	" <i>closely linked and essential to</i> "	Group 10, Item 3
(n)	" <i>closely linked</i> "	See footnote ⁶	Group 13, Items 1 & 2
(o)	" <i>in connection with</i> "	" <i>in connection with</i> "	Group 12, Items 1-3

⁵ EU law exempts "hospital and medical care and closely related activities", etc. The UK approach exempts the "provision of care or medical or surgical treatment and, in connection with it, the supply of any goods, in any hospital or state regulated institution".

⁶ EU law exempts "the supply of certain cultural services, and the supply of goods closely linked thereto", etc. The UK approach is to exempt a right of admission to certain events by certain bodies.