



TC07999

*Value Added Tax – education and vocational training – identity of supplier - place of supply
– exemption – eligible body – taxable amount - value of supply*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2018/02188

BETWEEN

ST GEORGE’S UNIVERSITY LIMITED

Appellant

-and-

**THE COMMISSIONERS FOR
HER MAJESTY’S REVENUE AND CUSTOMS**

Respondents

TRIBUNAL: JUDGE GREG SINFIELD

**Sitting in public at Taylor House, 88 Rosebery Avenue, London EC1R 4QU on 16 – 20
September 2019**

Kieron Beal QC, instructed by PricewaterhouseCoopers LLP, for the Appellant

**Mark Fell, counsel, instructed by the General Counsel and Solicitor to HM Revenue and
Customs, for the Respondents**

DECISION

INTRODUCTION

1. The Appellant ('SGU') is a university based in Grenada, West Indies. SGU offers a four year medical degree course called the Doctorate of Medicine ('the MD Course'). Students on the MD Course can opt to complete parts of the course in the UK. Some students opt to spend the first year of the MD Course in the UK on the Keith B Taylor Global Scholars Program ('GSP') provided at the campus of the University of Northumbria in Newcastle ('UNN'). Some students also undertake their third and/or fourth year clinical training element of the MD Course in the UK ('the UK Clinical Training Programme') at teaching hospitals run by various NHS Trusts ('the UK Teaching Hospitals').

2. In a decision dated 15 May 2017, and upheld in a review letter dated 15 February 2018, the Respondents ('HMRC') determined that SGU was liable to be registered for VAT on the basis that it made taxable supplies of education to its students in the UK. HMRC decided that SGU was liable to account for VAT on the consideration paid or to be paid by the students in respect of the relevant academic years of study in the UK. SGU disagreed with HMRC's decision and appealed to the Tribunal under section 83(1)(a) and (b) of the Value Added Tax Act 1994 ('VATA 1994').

ISSUES AND SUMMARY OF SUBMISSIONS

3. SGU and HMRC agreed that the appeal raised the following issues:

- (1) Who supplies the GSP and the UK Clinical Training Programme to the students for VAT purposes?
- (2) If SGU is the supplier of the GSP and/or the UK Clinical Training Programme, where is the place of supply for VAT purposes?
- (3) If the GSP and/or the UK Clinical Training Programme are supplied by SGU in the UK, are those supplies taxable or exempt for VAT purposes?
- (4) If the supplies are taxable, what is the taxable amount of the supplies for VAT purposes?

4. In summary, SGU's primary case is that, in the light of the contractual and delivery arrangements, the relevant supplies of education and vocational training in the UK are made to the students by UNN and/or the NHS trust which operates the teaching hospital in question. HMRC contend that the contracts between SGU and the students, together with general commercial and economic realities, show that SGU supplies the GSP and the UK Clinical Training Programme to the students.

5. If, contrary to its primary case, I find that SGU supplies the GSP and/or the UK Clinical Training Programme to the students, SGU argues that the place of supply of those services is Grenada. HMRC submit that the supplies are made in the UK because they are supplies of services relating to educational activities which actually occur in the UK.

6. In relation to the third issue, SGU states that, if supplied in the UK, the supplies are exempt from VAT as the provision of education and vocational training by an eligible body. HMRC's position is that the supplies are not exempt because SGU is not a UK university or a college thereof. HMRC submit that the UK has lawfully exercised its discretion and powers to prescribe the bodies which can make exempt supplies of educational services and, having done so, supplies by a for-profit institution which is neither a UK university nor a college of one are not exempt.

7. As to the question of the value of the supplies, SGU considers that the taxable amount of the supply is that part of the amounts paid by the students to SGU which SGU accounts for

directly to UNN as course fees and to the UK Teaching Hospitals for the UK Clinical Training Programme. HMRC contend that VAT is chargeable on the full amount of the fees paid by the students to SGU for the academic terms in which the GSP and the UK Clinical Training Programme are supplied.

8. For reasons set out below, I have concluded that SGU supplies the GSP and the UK Clinical Training Programme to the students but that such supplies take place in Grenada and are, accordingly, outside the scope of UK VAT.

EVIDENCE

9. SGU served statements from six witnesses who described various aspects of the arrangements and produced contractual and related documents which I refer to below. The witnesses for SGU and the areas covered by their evidence were as follows:

(1) Nicholas Wilson is a Consultant Vascular and Paediatric Surgeon for the Hampshire Hospitals NHS Foundation Trust and also the Associate Dean of Clinical Studies UK and Associate Dean of Students UK for SGU. He gave evidence about the delivery of the UK clinical training programme to SGU students in the teaching hospitals.

(2) Ruth Crabtree is the Head of International Development for the Faculty of Health and Life Sciences at UNN. She described the relationship between UNN and SGU in relation to the GSP. She also gave evidence about the part played by UNN in admitting SGU students onto the GSP and in delivering the course.

(3) Kevin Robertson is the Faculty Associate Pro Vice-Chancellor (Learning and Teaching) at UNN. His evidence dealt with the introduction of the GSP at UNN and the quality assurance and accreditation processes of UNN in relation to the GSP.

(4) Joy Grenyer is the Head of Student Life at UNN and manages its Visa Compliance Team. She gave evidence about UNN's role and responsibilities as a Tier 4 sponsor of international students such as those on the GSP. She also explained the enrolment process for the GSP students.

(5) Joan Smith is the Director and Business Manager of St George's International School of Medicine Limited ('SGISML'). She is based at SGISML's office in the UNN campus. In her evidence, Ms Smith described the role of SGISML in relation to SGU, the GSP students and UNN. She also dealt with the relationship between SGISML staff based in Winchester and students on the UK Clinical Training Programmes. Ms Smith was the first point of contact for HMRC and, in her witness statement, she set out the history of the communications with HMRC which led to this appeal.

(6) Brian Zwarych is the Executive Vice President and Chief Financial Officer of SGU. He provided an overview of the relationship between SGU and SGISML and described the roles of SGU and UNN in relation to the GSP and of SGU and the UK Teaching Hospitals in relation to the UK Clinical Training Programme.

10. HMRC did not produce any witness evidence.

11. All six of SGU's witnesses gave evidence at the hearing. Their witness statements stood as their evidence in chief and they answered questions put by Mr Mark Fell, who appeared for HMRC, in cross-examination. I found all the witnesses who gave evidence for SGU to be credible and fully accept their factual evidence which I have taken into account in the description below of the activities of SGU and the GSP and/or the UK Clinical Training Programme.

12. In addition, I watched four short video clips in which SGU School of Medicine students from the class of 2019 spoke about their experience as participants in the GSP. Those students

were: Maximillian Solow who described about how the GSP allowed him to experience different cultures; Paige McCleary who said that the classes were well taught; Georgios Mihalopoulos, who talked about his teachers in Newcastle and said that studying in England was a great feeling; and Meghan Hopping, who said that she had experienced so many more things living abroad while she studied. I found the student experience videos, which were clearly produced for the purpose of marketing SGU and the GSP to potential students, provided no assistance in determining the issues in this appeal.

FACTUAL BACKGROUND

13. There was no agreed statement of facts in this case but the material facts were largely undisputed.

SGU and the MD Course

14. SGU is a university based in Grenada, West Indies. It is an indirectly wholly-owned subsidiary of Medforth Global Healthcare Education Group LP ('Medforth'). Medforth is owned by an investment partnership comprised of St George's Group LP (currently with an 82.42% equity stake) and Selinus LLC (currently with a 17.58% stake).

15. SGU was founded as an independent School of Medicine in 1976 after receiving a charter from the Government of Grenada. In the mid-1990s, SGU gained the authority to grant graduate degrees and, in 1999, veterinary undergraduate degrees. International students (non-US citizens or students who are not permanent residents of the US) make up approximately 30% of its School of Medicine. SGU has a well-established network of affiliated hospitals across the world and has 32 academic partners in 12 countries.

16. The SGU campus in Grenada covers more than 20 acres. SGU is the only University on the island of Grenada and is the largest employer in Grenada outside of the Grenadian Government. SGU is therefore the primary driver of economic activity to the island. SGU also supports the local hospital by providing medical students to work there as part of their clinical training.

17. One of the programmes which SGU delivers is a four year medical degree programme in Grenada called the MD Course. Years one and two of the MD Course constitute the basic sciences programme and years three and four consist of the clinical training programme. Each programme consists of five academic terms which students must complete over four to four-and-a-half years. Mr Zwarych emphasised that the MD Course is an integrated four year programme of 10 terms.

18. The MD Course is accredited by the Government of Grenada and the Caribbean Accreditation Authority for Education in Medicine and other Health Professions ('CAAM-HP'), which is the legally constituted body established in 2003 to prescribe standards and accredit medical, dental, veterinary and other health professions educational programmes in the Caribbean community.

19. CAAM-HP is an accreditation body comparable to a US accreditor and is recognised by the National Committee on Foreign Medical Education and Accreditation ('NCFMEA') which enables US students to receive Title IV US Government Loans to study at SGU. CAAM-HP accreditation is also recognised by the General Medical Council in the UK and the World Federation for Medical Education/Foundation for Advancement of International Medical Education and Research. To grant accredited status to SGU, CAAM-HP attends the SGU teaching sites in Grenada and elsewhere, including Northumbria, and the Teaching Hospitals in Canada, the US and the UK.

20. The entry requirements for the MD Course for applicants from North America include a bachelor's degree from an accredited university and the completion of specific undergraduate

courses, computer literacy and completion of the Medical College Admission Test. Students from outside of North America must have a bachelor's degree with a strong science background and have achieved a minimum overall score of 7.0 in the International English Testing System. It is also recommended that applicants complete the UK Clinical Aptitude Test, which is a test offered by the UKCAT Consortium, a charity and limited company managed by a Consortium of Universities who require the test for entry to their medical/dental programmes. Applicants who pass SGU's initial screening will then be interviewed.

21. Admission applications are reviewed and approved by SGU's Admission Department. Once SGU has accepted the student onto the MD Course, SGU's Admission Department will send the applicant an offer letter for the MD Course. Applicants are required to sign, among other documents, an Acknowledgement of Admission form in which the students acknowledge that they meet the technical standards required by the School of Medicine and will conform to all of SGU's rules and regulations including the SGU Honor Code. These are set out in an SGU Student Manual.

GSP

22. Students that have been accepted by SGU for the MD Course have the option of taking part in the GSP at the premises of the UNN in the UK for the purpose of fulfilling the requirements of the first year of the basic sciences programme. The UNN has campuses in Newcastle, London and Amsterdam. It does not have any colleges. Both Ms Crabtree and Mr Robertson said that they did not consider SGU to be a college of the UNN. Approximately 15% of UNN students are non-UK.

23. The relationship between SGU and the UNN began in 2006 and the GSP was introduced in 2007. Mr Zwarych said that the intention behind the development of the GSP was to provide an opportunity for the universities to work together and cooperate in developing an academic programme. He described the relationship between SGU and the UNN as a "joint venture partnership" because the two institutions collaborate to offer the GSP which is in both universities' interest and from which each benefit. Mr Zwarych's evidence was that, through the relationship, SGU has had the opportunity to develop its international network which forms an important part of its purpose and the UNN has been able to include a medical diploma in its course offering.

24. Mr Robertson described the arrangement as a "reverse franchise" because essentially it involved SGU allowing the UNN to use SGU's teaching materials to deliver the GSP or a combination of both partners delivering it. SGU controls the content of the GSP and the UNN ensures that the GSP conforms to the UNN's standards as it does with other programs where the UNN has a validated programme.

25. Mr Zwarych said that he would not use the term "franchise" but that Mr Robertson's description was correct. Mr Zwarych's evidence was that the UNN is primarily responsible for teaching and SGU is responsible for the content of the GSP. Mr Robertson said that the CAAM-HP panel visit the UNN every two or three years. They look to see that the learning experience of SGU students on the GSP meets medical requirements.

26. Ms Crabtree explained that the GSP was required to be approved by the UNN's Approval Committee before it could form part of the UNN's course offerings. The UNN apply the same rigorous quality assessment of the GSP as is applied to all other courses offered at the UNN. Ms Crabtree said that the UNN works with SGU to ensure that the course content and delivery of the GSP are the same as the basic sciences programme in Grenada. There are ongoing discussions between the UNN tutors and SGU tutors about how the programme is delivered.

27. Mr Zwarych's evidence was that SGU and the UNN are jointly responsible for the marketing of the GSP and the recruitment of students. Students elect to take part in the GSP in their main application to SGU for entry into the MD Course. Applications for entry into the MD Course received by SGU via the UNN are processed by SGU's Admission Department in New York. The entry requirements for students applying for the four year MD Course at SGU are the same whether they wish to take part in the GSP or to complete their first year basic sciences programme in Grenada.

28. SGU arranges the interviews with the students and, if they satisfy SGU's acceptance criteria, issues letters to the students offering them admission onto the MD Course. Where the student has applied to be part of the GSP, Mr Zwarych said in his witness statement that the offer is, in practice, conditional on the student being accepted by the UNN into its programme, which also requires the student to meet the immigration requirements set by the UK for overseas students but it would be very rare for the UNN to refuse or for the student not to obtain a visa. However, the offer letter issued by SGU that I was shown accepts the student onto the MD Course and the GSP without any reference to any conditions of acceptance by the UNN. There is no special acknowledgement of admission form for GSP students and the same form is used for all students admitted to the MD Course. Mr Zwarych said in evidence that if a student signs the acknowledgement of admission form then SGU is obliged to admit the student and if the UNN refuses to accept the student then they could still join the MD Course and complete the first year in Grenada.

29. After SGU issues the offer letter to the student, it forwards the student's application, transcripts, passport details and acceptance form to the UNN's International Admissions Department for processing. The UNN Admissions Department is responsible for admitting students onto the GSP in accordance with the programme and the UNN's admission criteria. The UNN is entitled to reject students if they are not satisfied that the students meet UNN's admission criteria, which include the relevant English language competency. Ms Crabtree's evidence was that students recruited by SGU have already met SGU's requirements for the MD Course and that provides comfort to the UNN. Ms Crabtree said the UNN is unlikely to reject a student who had been accepted by SGU. If the UNN is satisfied that the student meets the UNN's admission criteria, it will send the student an unconditional offer letter and an email containing their CAS number which enables the student to apply for their visa.

30. Ms Crabtree's evidence was that the UNN has a joint role with SGU in recruiting students onto the GSP. The UNN recruits some students to the GSP directly through its website where the aspiring student can apply online to both the UNN and SGU. The student must complete an application form for SGU which the UNN forwards to SGU's New York Admissions team. From that point, the process is the same as in the case of applications made to SGU. SGU then conducts the initial screening and interviews and decides whether to accept the student onto the MD Course. If SGU accepts the student, it then forwards application forms, transcripts, passport details and acceptance forms to the UNN's International Admissions team.

31. The UNN has different buildings dedicated to different study subjects in order to create a community among students studying those subjects. The GSP students are taught in the Drill Hall on the UNN's main campus in Newcastle. Only GSP students are taught at the Drill Hall. The UNN could re-house the GSP students elsewhere if it chose to do so. If the number of students enrolled on the GSP exceeded the capacity of the Drill Hall, then the lectures would be given in other lecture theatres on the UNN's campus. The GSP students' day comprises lectures, laboratory sessions, small group facilitation sessions, interactive multi-choice quiz sessions and self-study. In addition, GSP students are supported by SGU's Assistant Dean of Students (who works closely with the Dean of Students Office at SGU in Grenada) who can advise on matters related to academic progression.

32. The GSP students are taught by both UNN and SGISML staff involved with the GSP. The specification and content of the GSP is exactly the same as SGU's first year basic sciences programme. Ms Crabtree said the UNN has responsibility for quality and, while the teaching is joint, it is subject to the UNN quality assurance.

33. Any SGU appointed teaching staff are in fact hired directly by SGISML in the UK. The UNN also recruits and provides teaching staff for the GSP. Teaching staff costs for clinical tutors and one clerical staff are shared between SGU and the UNN. SGISML pays for the rest of the SGISML faculty and staff and then recharges the costs, with a mark-up, to SGU.

34. SGU and the UNN originally intended that the UNN would provide the teaching facilities, certain faculty, all student support services and housing (but through a financial arrangement with SGU), and that SGU would provide the course management. The GSP had an Associate Dean designated by SGU and course directorships were provided by SGU through a UK registered charity, St George's International School of Medicine, Grenada ('SGISM (G)') and, later, SGISML. SGU thereby provided oversight and helped to guide the programme because the UNN had never delivered a programme similar to the GSP before. SGU brought that expertise to the UNN.

35. It was further intended that the heavy lifting in terms of course delivery would be carried out by UNN staff. A few years into the commencement of the GSP, SGU considered it necessary to provide the UNN with some clinical tutors to assist the UNN with providing small group teaching. The UNN did not normally provide small group teaching. As SGU felt that small group teaching was a necessary attribute of its course, SGU and the UNN decided to split the employment costs of the clinical tutors. This began under an agreement between them in 2011 and is reflected in the 2015 Agreement (see [40] below).

36. SGU also brought in visiting professors to provide specialist content instruction from time to time. SGU adopts this practice at its Grenada campus and all affiliated sites, particularly where there is insufficient local expertise to deliver a given lecture. It was originally agreed that the UNN would contribute towards the costs of visiting professors. Subsequently, the UNN decided that it was beyond the scope of what it would ordinarily provide and SGU agreed to cover this cost to ensure that SGU's quality standards were maintained. If SGU had to send a visiting professor to the UNN because of a failure by the UNN to fill a teaching role which fell within the UNN's primary responsibility to provide teaching staff then the UNN would have to pay for the cost of SGU providing the professor.

37. Students on the GSP have the same access rights to facilities at the UNN as other UNN students. This includes access to sports facilities, students' union, pastoral care, wellbeing and disability support services and academic support through access to academic staff, access to teaching and learning material on the electronic course management site and access to junior faculty members. GSP students are treated in exactly the same way as all other UNN students and are for all intents and purposes seen as UNN students throughout their time at the UNN. Ms Crabtree and Mr Robertson agreed that SGU students probably regarded themselves as both SGU students and UNN students.

38. The content and timing of examinations sat by SGU students at the UNN at the end of the GSP is coordinated with the first year examinations taking place at SGU in Grenada. That is to prevent cheating and to harmonise standards.

39. The UNN awards students who successfully complete the GSP a Diploma in Higher Education in Medical Sciences ('DipHE'). The DipHE is the UNN's award and is a Level 5 qualification in the UK. A Level 5 qualification is below undergraduate honours degree which is Level 6. Mr Robertson said that the DipHE was an award in its own right. The students could use it in applications for clinical rotations. The DipHE allows them to do work in the

NHS. Although the DipHE is a UNN qualification and, in theory, some students could transfer credits and change course or university, Ms Crabtree's evidence was that she was not aware of any students on the GSP that did not go on to continue the MD Course (other than those who fail the GSP).

40. The UNN charges UK student's tuition fees of £9,250 per year and overseas students between £15,000 and £20,000 depending on the course taken. Ms Crabtree said that the amounts payable by SGU to the UNN under an agreement between them dated 1 July 2015 ('the 2015 Agreement') were payments of tuition fees in relation to the SGU students.

41. Mr Zwarych said that SGU invoiced the SGU students on the GSP for their tuition fees and the students paid the tuition fees to SGU. The UNN invoiced SGU and SGU paid the UNN to deliver the GSP. The SGU students did not know how much SGU paid to the UNN for the GSP. Mr Zwarych said that SGU's fees covered more than what the students received in the first year of the MD Course.

42. In addition to the UNN, SGU is also partnered with two other universities in the UK: Teesside University and the University of the West of England ('UWE'). Students who complete the first year of pre-medical studies at Teesside University and UWE, and who meet SGU's requirements, will gain entrance to the MD Course at SGU. These programmes act as feeder programmes into the SGU MD Course only, and SGU has no direct involvement in these programmes. A similar programme is run in conjunction with SGU's Veterinary School.

UK Clinical Training Programme

43. Generally, all medical students are required to undertake two to three years of clinical training as part of their medical education. Mr Wilson explained that the clinical training comprises a two to three year programme where students are given practical clinical exposure to patients across different departments. This is a core part of a student's medical education as it allows them to develop the knowledge and skills they will need in practice as doctors.

44. All SGU students on the MD Course complete years three and four of the course, the Clinical Training Programme, at independently operated teaching hospitals and health centres. The SGU students have the option of undertaking the Clinical Training Programme at teaching hospitals in the UK as well as in other locations.

45. In the UK, clinical training of UK university medical students is undertaken through NHS Hospital Trusts. In addition to providing clinical training for UK medical students, some NHS Hospital Trusts offer clinical training to medical students of overseas universities such as SGU. SGU is affiliated with 15 UK Teaching Hospitals.

46. SGU students select hospitals affiliated with SGU for their core rotations and elective rotations (often referred to in shorthand as 'cores' and 'electives') on the Clinical Training Programme. The number of students who attend UK Teaching Hospitals as part of the Clinical Training Programme is generally between 100 and 150 per year. Many SGU students undertake all their cores at the same UK site but some select cores and electives at multiple sites in the UK and, sometimes, in the USA. Most students tend to complete a year in the UK, choosing to complete all their core rotations and electives at a UK Teaching Hospital. However, students need only commit to a minimum of six weeks at one hospital for their core rotation courses and a minimum of eight weeks for their electives. This allows students to attend a range of hospitals in different countries over the two year Clinical Training Programme.

47. The control of the Clinical Training Programme moves from SGU to the UK Teaching Hospitals when the SGU students first arrive at a UK Teaching Hospital. The UK Teaching Hospitals are responsible for teaching the content of the Clinical Training Programme and

teaching the students on that Programme. The SGU Clinical Training Manual is issued to all students on the Clinical Training Programme via the SGU website. The manual sets out the responsibilities of SGU, the UK Teaching Hospitals and the students in relation to the provision of the Clinical Training Programme. In particular, the Clinical Training Manual provides at page 1 that:

“The hospital and its staff supervise the educational program and assess each student’s progress during the clinical attachment there. Within the bounds of its own teaching programs, it adheres to the precepts and standards of the University [SGU] teaching program as outlined and detailed in the latest edition of the Clinical Training Manual.”

48. SGU’s main responsibilities with regards to the Clinical Training Programme are in relation to the provision of pastoral care to students. SGU ensures students have support in stress management and time management as well as other support.

49. The training is provided by consultants and sometimes senior trainees employed by the UK Teaching Hospital at which the student is taking the rotation. SGU pays the UK Teaching Hospital for providing the training on a contractual basis.

50. Mr Zwarych explained that SGU appoints the UK Teaching Hospitals’ staff as members of SGU’s clinical faculty because that is a requirement of accreditation, eg by CAAM-HP which is concerned that there is consistency between training at different sites. Thousands of individuals worldwide are faculty members because of their connection to the MD Course. SGU does not pay them for being members of the faculty: they are employees of and paid by the UK Teaching Hospitals. SGU holds a meeting of faculty members in Grenada annually. Not all faculty members attend the annual meeting in Grenada. The faculty members are trained in the way that SGU delivers training.

51. SGU’s UK Executive Clinical Council, who have responsibility for the UK Clinical Training Programme (together with the Dean of Clinical Studies), appoint a Director of Medical Education (‘DME’) at each UK Teaching Hospital who is the administrator responsible for the UK Clinical Training Programme there. The role of the DMEs is to ensure that the UK Clinical Training Programmes remains compliant with the CAAM-HP rules. Once a year the DMEs attend a conference in Grenada which focuses on the development of the wider Clinical Training Programme curriculum.

52. Mr Wilson explained that SGU requires the DMEs and Clerkship Directors at the UK Teaching hospitals to deliver teaching and exam practice based on the requirements of the US National Board of Medical Examiners (‘NBME’). The NBME exams are set centrally – one for each core – and are a requirement for passing the SGU MD Course. The DMEs do not provide teaching on behalf of SGU. The DMEs are not paid by SGISML. No individual employed by SGISML provides any teaching to SGU students at the UK Teaching Hospitals. All teaching and training are conducted by the UK Teaching Hospitals. In practice, the face-to-face delivery is generally not SGU-specific and the training that SGU students receive is no different to that given to UK medical students.

53. Mr Zwarych’s evidence was that the SGU students paid their fees for the UK Clinical Training Programme to SGU at the beginning of each term. He said that SGU paid the fee to the UK Teaching Hospitals on behalf of the students. He accepted that SGU was paying the fee for that part of the students’ education and that the SGU students were not liable to the UK Teaching Hospitals for the fees charged by those hospitals to SGU. SGU has the sole contractual relationship with the SGU students under which the fees are payable.

SGISML

54. SGISML is a UK incorporated company, which provides SGU with a range of management and administrative services in relation to the GSP and UK Clinical Training Programme as described below. It is a wholly owned subsidiary of Galenus Educational Services (UK) Limited, which is itself a wholly owned subsidiary of Medforth.

55. The services provided by SGISML to SGU are set out in a Services Agreement dated 29 January 2016. The Schedule sets out the services provided by SGISML to SGU. The services include, amongst others:

- (1) leasing an office for SGISML employees supporting the UK Clinical Training Programme;
- (2) arranging residential accommodation for SGU students on the GSP as required by SGU;
- (3) managing all visa requirements of SGISML employees and students on the UK Clinical Training Programme; and
- (4) providing administrative support for the GSP and the UK Clinical Training Programme.

56. In return for the services, SGU pays SGISML the cost of providing the services plus 5.63%. Mr Zwarych said that the mark-up had been determined by an external firm of transfer pricing consultants.

57. Prior to 2014, the services provided by SGISML to SGU were provided by SGISM (G) but nothing turns on that.

58. Ms Smith's evidence was that SGISML exists as a UK entity in order to facilitate entering into contractor agreements. SGISML also holds and maintains Tier 2 and Tier 4 Visa licences which enable members of the SGU faculty involved with the GSP and students undertaking clinical training in the UK to enter the country. It also is the employer of and operates the UK payroll and PAYE for:

- (1) members of the SGU faculty who assist the UNN with delivering the GSP; and
- (2) clerical staff who support the GSP and the UK Clinical Training Programme.

59. The SGU faculty assisting with the delivery of the GSP are appointed by SGISML and paid through SGISML payroll. All salaries of all SGU UK-based faculty and staff are recharged, with a mark-up, to SGU in accordance with the services agreement between SGU and SGISML.

60. SGISML currently employs Ms Smith and three other full-time clerical staff members to work within the SGISML office on the UNN campus in Newcastle. The cost of one of the clerical staff members based on the UNN campus is shared with the UNN. A further three part-time clerical staff are based at the SGISML office in Winchester.

61. SGISML also currently employs one full-time Assistant Dean, one full-time Discipline Manager, one part-time Discipline Manager, one full-time Instructor, three full-time Clinical Instructors, seven full-time Clinical Tutors and two full-time Coordinators for the GSP. The total headcount is 22 personnel. The cost of the seven Clinical Tutors is shared with the UNN in satisfaction of SGU's obligation to split the provision of academic staff for the GSP.

62. Ms Smith said that SGISML staff are hired by SGISML in consultation with SGU. When appointing senior faculty, a panel is formed for interview with the Dean of Basic Sciences, the Chair of the relevant department (both based at SGU in Grenada) and the Assistant Dean for

the GSP (based in the UK at the UNN). Clinical Tutors are interviewed by the Assistant Dean and Ms Smith. She also participates in interviews of Clinical Instructors along with the Dean of Basic Sciences and the Assistant Dean for the GSP. Clerical staff are interviewed by the line manager of the position and Ms Smith. Faculty engaged with the GSP do not have any responsibility to teach students on the basic sciences programme in Grenada. Occasionally, faculty are transferred by SGU to the UK, but these faculty members generally have no responsibility to teach in Grenada. SGU oversees their academic performance, but SGISML is their employer.

63. SGISML clerical staff, as SGU's representatives on the UNN's campus, provide the following support to GSP students:

- (1) preparing the timetable for orientation week and organising the welcome event;
- (2) organising the White Coat Ceremony, which is a ceremony distinctive to SGU held when students are admitted onto the MD Course and which, for students on the GSP, takes place at the UNN although it is branded as an SGU event;
- (3) class scheduling;
- (4) producing printed notes;
- (5) recording and uploading of all lectures with assistance from the UNN technicians;
- (6) arranging exams in liaison with the UNN;
- (7) scheduling of appointments with the UNN and SGISML faculty;
- (8) advising students who they should speak with regarding financial queries (all student financial queries regarding tuition and on-campus accommodation payments are dealt with by SGU's student finance team in New York);
- (9) advising students of the departments within the UNN which can assist them with visa issues and welfare issues; and
- (10) providing general advice and support to students.

64. The pastoral support provided by SGISML is in addition to the pastoral support available to GSP students as students of the UNN. Mr Robertson said that SGU students benefit from a lot of support systems from the UNN as well as from tutors from the SGU staff. He said that the SGU students are very active participants in non-academic activities.

65. Students tend to visit the SGISML office if they have accommodation queries, financial issues or need other forms of support. The SGISML office will refer students to the correct place to go to receive assistance; for example, academic issues are dealt with by SGISML's Assistant Dean of Students and the UNN's Programme Leader and Collaborative Ventures team, dependant on the nature of the issue. Welfare issues and issues relating to visas are dealt with by the UNN's Student Welfare Office. A copy of information relating to the welfare services and library services available at the UNN is made available to all UNN students, including SGU students on the GSP.

66. SGISML provides the UNN with administrative assistance in relation to scheduling lectures and uploading recordings of lectures onto the intranet. SGISML assists the UNN in arranging the exams for the GSP so that they take place at the same time as the exams for the basic sciences programme in Grenada. This is necessary in order to ensure there is no possibility of cheating.

67. SGISML also enters into the agreements with the UK Teaching Hospitals which are described below.

Summary of key facts

68. On the last day of the hearing, having heard all the evidence, I gave both parties a note which contained some points that I considered might be relevant common ground or agreed facts. The parties were not able to agree my document at the hearing but helpfully suggested amendments to it subsequently by email. Although the parties were not in complete agreement, their amendments showed there was consensus on certain points. Having regard to the parties' amendments and the evidence, I consider that the following statements are, or ought to be, uncontroversial and find as follows:

- (1) SGU is established in Grenada for VAT purposes and does not have a fixed establishment in the UK. Specifically, SGISML is not a UK fixed establishment of SGU (HMRC agree this only for the purposes of this appeal).
- (2) SGU provides the MD Course to students under a contract between SGU and the students.
- (3) The four year MD Course is a single supply of services relating to educational and vocational activities.
- (4) The consideration for the supply of the MD Course by SGU is the amounts invoiced and paid, ie the fees (reduced by scholarships and other credits where appropriate), for each term of the MD Course.
- (5) The MD Course requires the completion of both a two year basic sciences programme and two years of clinical training. The SGU students can choose where they complete certain elements of the course. SGU students may choose to take their first year basic sciences in the UK at the UNN. SGU students may opt to complete some or all of their clinical training in the UK at one or more of the UK Teaching Hospitals.
- (6) The first year basic sciences programme for SGU students studying at the UNN (but not in Grenada) is called the GSP.
- (7) The face-to-face teaching on the GSP at the UNN and on the UK Clinical Training Programme at the UK Teaching Hospitals takes place in the UK.
- (8) The UNN has a contract with SGU under which the UNN agrees to deliver the first year basic sciences programme and award a DipHE to the SGU students on successful completion of the course. The UNN programme is the GSP and is equivalent to the SGU first year basic sciences programme. The provision of the GSP (excluding certain supplies, such as accommodation) by the UNN is an exempt supply of education for VAT purposes.
- (9) In return for delivering the GSP, SGU pays the UNN the fees specified in the 2015 Agreement. If SGU does not pay the fees, the SGU students do not have any entitlement to receive tuition from the UNN.
- (10) The SGU students on the GSP enter into an agreement with the UNN and are also students of the UNN. The SGU students are not liable to and do not pay any fees to the UNN.
- (11) The UK Teaching Hospitals provide the UK Clinical Training Programme to SGU students in the UK under agreements with SGISML. The provision of clinical training by the UK Teaching Hospitals is an exempt supply of vocational training.
- (12) In return for providing the UK Clinical Training Programme, SGISML pays the fees charged by the UK Teaching Hospitals (ie the NHS Trusts). If the fees are not paid

by SGISML, the SGU students do not have any entitlement to receive tuition from the UK Teaching Hospitals.

(13) The SGU students do not have any contract with the UK Teaching Hospitals and are not liable to and do not pay any fees to the UK Teaching Hospitals.

69. I refer to these points and, where necessary, make additional findings of fact based on the witness and other evidence in my discussion of the issues below.

ISSUE 1: IDENTITY OF SUPPLIER

70. As Lord Millett showed in *Customs and Excise v Redrow Group Plc* [1999] 1 WLR 408 at p418, the way in which the service is described may dictate the answer to the question: to whom were the services supplied? In my view, the same is also true of the way in which the question is asked when considering who made a supply of services. To my mind, it is not helpful in this case to ask who supplies the GSP and UK Clinical Training to the students. It is clear that the UNN supplies the GSP and the UK Teaching Hospitals supply the UK Clinical Training Programme. It is equally clear that, as a matter of common sense, the SGU students received education on the GSP and vocational training when they participate in the UK Clinical Training Programme. It does not follow, however, that the UNN and the UK Teaching Hospitals make supplies of those educational or vocational services to the students for VAT purposes or, more relevantly, that SGU does not make supplies to the students in relation to the GSP and UK Clinical Training Programme. It is possible that the UNN and the UK Teaching Hospitals supply educational and training services to SGU which uses those services to make supplies to the SGU students studying in the UK. In this appeal, I consider that the appropriate first question is does SGU make any supply of services for VAT purposes to the students undertaking the GSP and/or UK Clinical Training?

71. I considered the correct approach to determining who supplied what to whom in *American Express Services Europe Ltd v HMRC* [2019] UKFTT 548 (TC) ('*AESEL*') at [8] – [12] relying on the decision of the Upper Tribunal in *Adecco UK Ltd v HMRC* [2017] UKUT 113 (TCC), [2017] STC 787 ('*Adecco UT*'), confirmed on appeal [2018] EWCA Civ 1794, [2018] STC 1722. In *Adecco UT*, the Upper Tribunal referred to the guidance given by Lord Neuberger in *HMRC v Airtours Holidays Transport Ltd* [2016] UKSC [2016] STC 1509 ('*Airtours*') at [47]:

“... in the subsequent case of [*WHA Ltd v HMRC* [2013] UKSC, [2013] STC 943, UKSC ('*WHA*')] where at para 27, Lord Reed said that “[t]he contractual position is not conclusive of the taxable supplies being made as between the various participants in these arrangements, but it is the most useful starting point”. He then went on in paras 30 to 38 to analyse the series of transactions, and in para 39, he explained that the tribunal had concluded that “the reality is quite different” from that which the contractual documentation suggested. Effectively, Lord Reed agreed with this, and assessed the VAT consequences by reference to the reality. In other words, as I said in [*Secret Hotels2 Ltd v HMRC* [2014] UKSC, [2014] STC 937 ('*SH2*')], para 35, when assessing the VAT consequences of a particular contractual arrangement, the court should, at least normally, characterise the relationships by reference to the contracts and then consider whether that characterisation is vitiated by [any relevant] facts.”

72. In *Adecco UT*, the Upper Tribunal concluded that determining who makes and receives a supply is a two-stage process which starts with consideration of the contractual position and then looks at whether that is consistent with the economic and commercial reality. The Upper Tribunal held at [43]:

“The starting point is to consider the contractual position and then consider whether the contractual analysis reflects the economic reality of the transaction. If, as a matter of contract, a party undertakes to provide services to another person in return for consideration from the other or a third party then there is, subject to the question of economic reality, a supply to the other person for VAT purposes. If the person who provides the consideration is not entitled under the contractual documentation to receive any services from the supplier then, unless the documentation does not reflect the economic reality, there is no supply to the payer. The contractual position normally reflects the economic reality of the transactions but will not do so where, in particular, the contractual terms constitute a purely artificial arrangement.”

73. In *AESEL*, I followed the approach of the Upper Tribunal in *Adecco UT* and that is the approach that I will adopt in this case to determine what is being supplied by SGU and to whom it is being supplied. I start by considering the contractual arrangements in relation to both the GSP and the UK Clinical Training Programme and then review the position in relation to both of them in the light of the facts.

Contractual position – GSP

74. There are three contracts which must be considered in relation to the provision of the GSP. The first is the contract between SGU and the students, the second is the agreement between the UNN and the students on the GSP and, finally, there is the 2015 Agreement between SGU and the UNN.

Contract between SGU and the students

75. It was common ground that there is a contract between SGU and the students under which SGU agrees to provide the four year MD Course in return for payment of the fees (reduced by scholarships and other credits where appropriate) for each term of the course. The contract includes the provision, as part of the MD Course, of the first year of the course as the GSP at the UNN if the student wishes to take that option.

76. The key contractual documents are:

- (1) the application form for SGU;
- (2) the offer letter;
- (3) the deposit and payment schedule; and
- (4) the acceptance.

77. To be admitted to the MD Course, prospective students complete an application form. On the form, the prospective students provide details about themselves including their contact details, academic qualifications and whether they are “interested in the Keith B. Taylor Global Scholars Program”. The form explains that:

“The Keith B. Taylor Global Scholars Program (KBTGSP) is a unique programme that allows students to complete the first year of basic sciences at Northumbria University (NU) campus in Newcastle, United Kingdom. The first year spent in Newcastle is the same program offered in Grenada and, in addition, students will have the experience of being immersed in UK urban culture for a year. Please note that this program does not qualify for US-DOE funding.”

78. The application form is reviewed by SGU’s admission committee which reviews applications and decides whether the applicant is qualified to be admitted onto the MD Course. If the application passes the first level of the review, then the applicant will be interviewed by SGU and, if successful, is offered a place on the MD Course. The letter to the applicant offering

admission to the MD Course also offers, if the applicant has expressed interest, a place on the GSP and states it will be taught at the UNN under the direction of course directors and department chairs of “SGUSOM”, which I understand to mean the SGU School of Medicine.

79. The offer is conditional on the applicant signing an acknowledgment of admission and providing a non-refundable deposit to reserve a seat in the class. In addition, acceptance onto the MD Course is subject to the conditions that the applicant completes their current academic courses and that the application form did not state anything which was not true or correct. There is no condition that the student must be accepted by the UNN or meet any criteria set by the UNN. Only after the conditional offer letter has been issued to the student by SGU does SGU forward the student’s application form to the UNN. Mr Zwarych stated that it was very rare for the UNN to refuse an application in relation to the GSP and then only usually because there is some problem with the student’s visa.

80. The non-refundable deposit referred to in the offer letter is specified in a deposit and payment schedule. The schedule also provides an estimate of the fees payable throughout the four year MD Course. The fees vary but are all in the region of \$30,000 per term. The schedule also cautions that US citizens and permanent residents of the US who attend the GSP programme “will not be eligible to receive US Department of Education Loans throughout their education at SGU”.

81. Prospective students who intend to take up a place on the MD Course must return their signed acknowledgement of admission form and pay their deposit by the date specified in the deposit and payment schedule. The form notes that SGU reserves the right to change the fees at any time during the student’s period of study. Students on the MD Course are sent invoices for each term by University Support Services LLC, which issues invoices on behalf of SGU. Nothing in this appeal turns on the fact that the invoices are actually issued by University Support Services LLC.

Contract between the UNN and the students

82. SGU contended that there is a contract between the UNN and the SGU students on the GSP for the supply of education and that contract is found in a number of documents which must be considered together. HMRC accepted that there is an agreement between UNN and the GSP students but submitted that it does not contain any obligation to pay fees and, in the absence of any consideration, there can be no supply of services for VAT purposes under that agreement - see Article 2(1)(c) of the Council Directive (EC) 2006/112/EC of 28 November 2006 on the common system of VAT (‘the Principal VAT Directive’ or ‘PVD’) and *Wakefield College v HMRC* [2018] EWCA Civ 952 at [52].

83. Mr Zwarych’s evidence was that the contract between the UNN and the students is in the form of the application for admission to the UNN, which is an application for enrolment onto the DipHE course at the UNN, the offer letter sent by the UNN to students, which is provided with the UNN’s Handbook of Student Regulations, and the UNN’s Terms and Conditions of Offer. In addition, there is an online self-registration/enrolment form which requires students to acknowledge that they agree to be bound by the UNN’s Handbook of Student Regulations.

84. The Handbook of Student Regulations sets the rules and regulations with which UNN students must comply during their study at the UNN. Clause 1.9 of the Handbook states:

“This Handbook is incorporated into the contract between the student and the University. Students should pay particular attention to the enrolment conditions set out in Section 2 ...”

85. Clause 2.1.1 of the Handbook states:

“These conditions are the standard enrolment conditions for undergraduate, postgraduate and all other students of Northumbria University ... Together with the other documents to which they refer, these conditions form the contract between the University and you, the student, with regard to your course of study or programme of research at the University.”

86. Clause 2.2.1 of the Handbook provides:

“2.2.1 It is your responsibility to ensure that the University’s tuition fees in respect of the Programme ... are paid promptly.”

87. Clause 2.1.4 states that the student agrees to pay “all fees due” but I note here that the SGU students are not told at any time what fees are or may be payable nor when they are or might be due. Accordingly, it seems to me that Clause 2.1.4 is otiose. This is borne out by the offer letter.

88. The UNN offer letter sent to student’s states (emphasis in original):

“Thank you for your application for admission to Northumbria University. I am pleased to offer you an unconditional place on the FULL TIME TAUGHT Diploma in Higher Education which requires a minimum of 30 supervised contact hours per week and [is] taught at level 5 of the National Qualifications Framework.

While you are enrolled full-time in the diploma course at Northumbria University, you will also be enrolled in the first year of the basic sciences programme at St George’s University School of Medicine in Grenada, West Indies. This course covers year one of the four year collaborative programme leading to a Doctor of Medicine (MD), which will be awarded by St George’s University. Upon successful completion of the partnership study abroad year at Northumbria University, you will gain a Diploma (Higher Education) in Medical Sciences and continue on to Grenada, West Indies, to complete the second and then final years of the Doctor of Medicine programme at St. George’s University School of Medicine.

...

Northumbria University does not require any fees from the student. All payments are made direct to partnership institution, St George’s University.

Before travelling to the UK, it is essential that you obtain the correct entry clearance to allow you to study in the UK.

...”

89. The UNN’s Terms and Conditions of Offer document provides that a student should accept an offer by returning an offer acceptance form. It also provides:

“Deposits

International students are required to pay a non-refundable deposit of £5,500 in advance of enrolment

Tuition Fees

Tuition Fees for your programme(s) are stated in your offer letter.”

90. The acceptance process for foreign students triggers the production of a Confirmation of Acceptance form (‘CAS form’) which is needed to meet the Visa requirements imposed by the Home Office for visiting overseas students. The document also confirms the UNN’s role as sponsor of the student’s Tier 4 (General) Adult student visa.

Contract between SGU and the UNN

91. The arrangements between SGU and the UNN concerning the GSP are set out in a series of contracts which have changed over time, albeit not to a significant extent. The parties agreed that I need only consider the 2015 Agreement which was in force at the time of HMRC's disputed decision.

92. Under clause 1 of the 2015 Agreement, the UNN agrees to award a DipHE to the SGU GSP students registered with the UNN on successful completion of the one year course and, in return, SGU agrees to pay a fee. The term "the Fee" is defined at clause 1.1 as "that sum of money payable by SGU to UNN on a per Student per annum basis, such sum initially to be £12,100 per student with a 3% increase to £12,450 per student from August 2016". The UNN invoices SGU for the fees under the contract.

93. Clause 2.1 of the 2015 Agreement provides that the UNN will comply with the course delivery obligations in Schedule 1 and with the Operations Manual set out in Schedule 2. Under clause 2.1 of the 2015 Agreement, the UNN is obliged to (among other things), provide the relevant academic and administrative support, infrastructure and materials to be able to deliver the GSP at the UNN campus. The UNN is also required to recruit and employ persons who are suitably qualified to teach the GSP to SGU's standards. The UNN pays the costs of its own teaching staff and contributes half of the staff costs of the clinical tutors based at the UNN who are employed by SGU. The UNN is also required to provide SGU students on the GSP with the same level of support services and other benefits as are given to UNN Students not on the GSP. By Clause 2.2, the UNN is responsible for the quality and standards of all its academic awards.

94. Under Clause 3 of the 2015 Agreement, SGU agrees to comply with its obligations in Schedules 1 and 2 and pay the UNN the fee due under the agreement. Clause 3.5 requires SGU to ensure that the SGU students were aware that they are registered as UNN students for the purpose of obtaining the DipHE and subject to the UNN's Student Regulations. SGU is also required to provide suitably qualified employees of SGU to support the UNN in the delivery of the GSP and recruit, hire and pay the Clinical Tutors based at the UNN. Under Clause 6, SGU and the UNN agree to establish a joint committee on curriculum coordination to ensure academic quality and establish joint systems.

95. Schedule 1 to the 2015 Agreement contains a programme specification which states under the heading "Educational Aims of the Programme":

"This DipHE in Medical Sciences programme at Northumbria University has been designed to provide students with an opportunity to develop their knowledge & understanding of the basic sciences that underpin a medical curriculum and to progress to a MD awarded by St George's University (SGU), Grenada. The programme has been designed to provide the educational equivalent to the First Year of the SGU MD Course ...

Notes on terminology

It should be noted that the curriculum ... is identical to that of the SGU MD Year 1 Basic Sciences Programme. For MD students studying at Northumbria (but not in Grenada) the MD Year 1 Basic Sciences Programme is termed 'The Keith B. Taylor Global Scholars Programme'; however the curriculum they follow is the same as their counterparts in Grenada."

96. The Operations Manual in Schedule 2 sets out the respective roles of the UNN and SGU and details about the delivery of the GSP. It states on its opening page that:

"It must be noted that the curriculum content and delivery of the [GSP] must at all times be in conformance with the programme at SGU's Grenada campus

and that no changes to this curriculum content or delivery will be made unless changed by SGU by normal processes in Grenada.”

97. The Operations Manual outlines the aims of the GSP at paragraph 2 as follows:

“The [GSP] at UNN has been designed to provide students with an opportunity to develop their knowledge and understanding of the basic sciences that underpin a medical curriculum and to progress to the MD awarded by SGU, Grenada. The programme has been designed to provide the educational equivalent to the First Year of the SGU MD Course.”

98. Paragraphs 5.1 and 5.2 of the Operations Manual provide for a joint management structure and a joint curriculum coordination committee which requires both SGU and the UNN to agree any curriculum changes.

99. Paragraph 5.3 of the Operations Manual describes the matters that are the responsibility of the UNN. Paragraph 5.3.1 provides that the Executive Dean of the Faculty of Health and Life Sciences at the UNN has overall responsibility for the GSP, including supporting the programme with the agreed level of resourcing. Paragraph 5.3.2 provides that the UNN Director of Programmes has responsibility for (among other things) “reviewing the resources necessary to deliver the [GSP] to the required UNN standard” and “managing the teaching responsibilities of UNN staff on this programme”. Paragraph 5.3.4 says that the UNN module teacher has academic oversight of the modules.

Contractual position – UK Clinical Training Programme

100. The contractual position in relation to the UK Clinical Training Programme is straightforward. The UK Clinical Training Programme is part of the MD Course. It is common ground that there is no contract between the UK Teaching Hospitals and the SGU students for the provision of any vocational training. The only contract that the SGU students have in relation to any clinical training in the UK is their contract with SGU for the MD Course.

101. The provision of teaching and vocational training of the SGU students on the UK Clinical Training Programme is provided by the UK Teaching Hospitals under agreements called affiliation agreements. As an example of an affiliation agreement, I was shown an agreement, dated 1 March 2012, between SGISM (G) and Frimley Park Hospital NHS Foundation Trust. In 2014, the rights and obligations of SGISM (G) under the affiliation agreements were transferred to SGISML. It is SGISML that now contracts with the UK Teaching Hospitals for the provision of the services under the affiliation agreements.

102. In clause 3.1 of the example affiliation agreement, the UK Teaching Hospital (referred to in the agreement as the ‘Foundation Trust’) agrees to provide the services, which are defined as services described in Schedule 1 to the agreement, at the hospital premises. Schedule 1 sets out various teaching and training services to be provided by the Foundation Trust. The services are required by paragraph 1.1 of Schedule 1 to conform with the guidelines specified in a ‘Clinical Manual’, issued by SGU. Further details of the vocational training to be provided to the students are set out in clause 7. The term ‘Student’ is defined in clause 1 as:

“An undergraduate medical student of St. George’s University School of Medicine, Grenada, attending the Foundation Trust under the terms of this Agreement.”

103. Clause 4.1 of the agreement provides that, in consideration for the services, SGISM (G) pays the Foundation Trust the fees set out in Schedule 3. At the time, the fee was £270 per student per week.

104. Clause 8.4 provides that the Dean of Clinical Studies UK, appointed by SGISM (G), has a liaison role overseeing the training provided by the Foundation Trust.

105. SGISML has a services agreement with SGU and sends it regular invoices in relation to the GSP and the UK Clinical Training Programme. For visa purposes, SGISML is the sponsor of overseas students who receive vocational training at the UK Teaching Hospitals.

Discussion and conclusion on identity of supplier

106. In considering whether SGU supplies the GSP and the UK Clinical Training Programme to the students for VAT purposes, the logical starting point (see *Airtours* at [47]) is the contract between SGU and the students for the provision of the MD Course. That is because SGU agrees to supply a four year course (subject to students passing the relevant exams to progress between years). The GSP is not a standalone course but a component of the MD Course equivalent to the first year of the course in Grenada. Similarly, the UK Clinical Training Programme is a part of the MD Course. There was no evidence to suggest that students enrol with SGU simply so that they can participate in the GSP or undertake clinical training in the UK: the evidence was that students wished to undertake the MD Course to qualify as medical practitioners, primarily in the United States but also elsewhere. In return for being enrolled on the MD Course and provided with the education and vocational training, the students are obliged to pay fees to SGU. The process of admission to the MD Course and the charging and invoicing for fees are the same for students who study at the UNN and those who undertake the first year basic sciences course in Grenada. Once the students have been accepted onto the MD Course, SGU is contractually responsible for providing the first year, whether in Grenada or Newcastle for those students who opted for the GSP, in return for the fees. Similarly, there is no difference in admissions and billing for those students who undertake clinical training in the UK and those who do their clinical training elsewhere.

107. If the correct approach is to focus on the contract between SGU and the students for the supply of the MD Course then it is clear that the supplier of that course, including the GSP and UK Clinical Training where applicable, to the students is SGU. Any contrary analysis is unarguable in relation to the UK Clinical Training Programme because there is no contract between the students and the UK Teaching Hospitals for the supply of any training. In the case of the GSP, there is an agreement between the students and the UNN but it does not require the students to pay any fees to the UNN and all fees for the provision of the GSP are payable to SGU (see [87] above). There is nothing in the contract between SGU and the students to provide that SGU is acting as an agent of the students in paying fees to the UNN (or the UK Teaching Hospitals). There is also no provision in the agreement between SGU and the UNN that SGU receives the fees or any part of them on behalf of the UNN. When it pays the UNN and the UK Teaching Hospitals, SGU is simply discharging its own liability. Further, in the unlikely event that SGU stopped paying the UNN to provide the GSP, the students have no contractual right to insist that the UNN provide them with any educational services if they continue to pay SGU.

108. I did not understand Mr Beal to disagree with that analysis if the focus is solely on what SGU supplies under the contract for the MD Course. Mr Beal, however, contended that the fact that SGU is contractually obliged to ensure that its students receive teaching and vocational training in the UK does not mean that it is SGU which is supplying those services. Mr Beal was forced, in effect, to bypass the contract between SGU and the students and make submissions on third party consideration and economic reality. He submitted that the correct approach to the construction of contractual relationships for VAT purposes is set out in *SH2* and that there is room for an analysis of the economic realities of the situation. Mr Beal referred to the case of *HMRC v. Reed Personnel Services Ltd* [1995] STC 588 (*Reed Personnel*) in which Laws J made clear, at 595, that the contractual relationship may not be determinative of the proper classification of the relevant supplies. Mr Beal submitted that *Reed Personnel* showed that, notwithstanding the fact that SGU contracted with the students to provide the four

year MD Course which included the GSP and UK Clinical Training, it was UNN and the UK Training Hospitals that supplied the education and vocational training in substance and reality. Mr Fell agreed that *Reed Personnel* was authority for the proposition that the contractual analysis is not necessarily determinative but that did not take matters in relation to this case any further. I agree. It seems to me that there is no reason to depart from the clear contractual position in this case unless it is inconsistent with economic reality.

109. In my view, the economic reality of the provision of education and vocational training to SGU students on the GSP at the UNN is clear. The UNN is primarily responsible for the delivery of the course in terms of the bricks and mortar, staff (who are not subject to the cost-sharing arrangement with SGU) and facilities. The fact that the GSP is provided by the UNN on its campus and using its facilities and equipment and leads to the award of the DipHE by the UNN on the students, if successful, at the end of the year all support the view that the GSP is supplied by the UNN. However, the students are only able to participate in the GSP if they have been accepted by SGU onto the MD Course and only SGU students can participate in the GSP. In that respect, they are treated as a class apart from other students at the UNN. That is clear from the White Coat Ceremony which marks the students' admission onto the MD Course and is branded as an SGU event even though it takes place, for SGU students on the GSP, at the UNN. Even if other students can obtain a DipHE at the UNN, that is a separate course and does not entitle them to proceed to the second year of the MD Course. The GSP is not a stand-alone course but is the first year of the MD Course.

110. Although there is an agreement between the SGU students and the UNN, it is not a contract for the provision of education for consideration. Not only do the students have no obligation to pay the UNN, but they also have no knowledge of the fees due to the UNN for providing the GSP. The fact that the SGU students are treated in the same way as other UNN students in matters such as the student experience and accommodation (which is a separate supply) does not alter the economic reality that the students are on the GSP because it is the first year of the MD Course provided by SGU.

111. The content of the GSP is set by SGU which provides some staff who teach it and requires the UNN staff who teach parts of the GSP to conform to SGU's standards and processes. SGU is responsible for the curriculum content of the GSP, its delivery and the assessment of students on the GSP. SGU grants the UNN a non-exclusive, non-transferable right to use SGU's copyright in course materials solely for the purpose of delivery of the GSP to students in accordance with the 2015 Agreement. The level of oversight by SGU ensures that the MD Course retains its accreditation status with CAAM-HP which, in turn, allows the SGU students to access US Federal funding and, on completion of the MD Course, practise medicine in the USA and elsewhere. SGU needs to maintain control because it has contracted with the students to provide teaching and training that lead to a MD degree on successful completion of the MD Course. SGU is the course provider and the UNN simply supplies a component that SGU provides as part of that course.

112. The economic reality in the case of the UK Teaching Hospitals is even more stark. The employees of the UK Teaching Hospitals who teach the SGU students are all members of the SGU faculty. There is no contract or agreement between the SGU students on their clinical rotations and the UK Teaching Hospitals. The UK Teaching Hospitals enter into agreements with SGISML under which the hospitals agree to provide training to the SGU students in return for payment by SGISML. SGISML has a contract with SGU under which it recharges the costs of the training to SGU. SGU then charges termly fees to the SGU students in relation to the UK Clinical Training programme. The UK Clinical Training Programme is part of years three and four of the MD Course which is supplied to the students by SGU.

113. My view is that, on the proper reading of the contracts and assessment of the economic reality of those arrangements, SGU supplies educational services (including the GSP and the UK Clinical Training Programme) to the SGU students in return for the termly fees to be paid by those students. In contrast, UNN and the UK Teaching Hospitals make supplies to SGU or SGISML in return for consideration provided by SGU and SGISML.

ISSUE 2: PLACE OF SUPPLY

114. If, as I have found, SGU makes supplies of services to students on the GSP and the UK Clinical Training Programme, the next issue is whether those supplies take place in the UK or elsewhere.

115. Articles 43 to 59b of the PVD contain the rules concerning the place of supply of services. Article 45 provides that, as a general rule, the place of supply of services to a non-taxable person shall be the place where the supplier has established his business. Other articles make separate and specific provision for particular types of services.

116. Articles 53 and 54 of the PVD set out specific place of supply rules for, among others, supplies of educational and similar services. Article 53 relates to the place of supply of services in respect of admission to educational events. Neither party suggested that article 53 was relevant to this case which I consider must be right as the GSP and UK Clinical Training cannot be described as “events” and SGU does not supply admission to them.

117. Article 54(1) of the PVD stipulates the place of supply of certain services to non-taxable persons as follows:

“The place of supply of services and ancillary services, relating to ... educational ... or similar activities, ... including the supply of services of the organisers of such activities, supplied to a non-taxable person shall be the place where those activities actually take place.”

118. The provisions of the PVD relating to place of supply are implemented in the UK by the VATA 1994 and legislation made under it. Neither party suggested that there was any material difference between the PVD and the VATA 1994 on this point and there is no need to refer to the place of supply rules in the UK domestic legislation further in this decision.

119. The first point to consider is whether SGU’s supplies of services fall within article 54(1) of the PVD. The services covered by article 54(1) go beyond the direct provision of education to students and include services relating to educational activities, ancillary services and services of organisers of such activities. On the basis of the facts as described above, I find that SGU makes supplies of services relating to education directly to students studying the MD Course in Grenada. In relation to the students on the GSP and UK Clinical Training Programme, I consider that SGU makes supplies of services relating to educational activities and also services of organising such activities when SGU makes all necessary arrangements for the students to take those parts of the four year MD Course in the UK. Accordingly, I find that SGU’s supplies of services to the students on the GSP and UK Clinical Training Programme fall within article 54(1) of the PVD.

120. The next question is whether SGU’s supplies to the students, who are non-taxable (ie non-business) persons, on the GSP and UK Clinical Training Programme take place in the UK or elsewhere. Article 54(1) of the PVD provides that supplies of services relating to educational activities, including organising such activities, to non-taxable persons take place where the educational activities actually take place. I was referred to numerous case law authorities on the subject of place of supply but there was, perhaps surprisingly given that it is not an uncommon arrangement, no case which had the same or similar facts to this one. Accordingly,

it is necessary to try to discern the principles from the decided cases while remembering that some decisions may turn on the particular facts of the case.

121. HMRC's position is straightforward: article 54(1) of the PVD applies and SGU's supplies in relation to the GSP and the UK Clinical Training are made in the UK because they are supplies of services relating to educational activities which actually take place in the UK.

122. Mr Fell sought to rely on the principle of territoriality. He cited Case 283/84 *Trans Tirreno Express SpA v Ufficio Provinciale IVA* [1986] ECR 231 ('*Trans Tirreno*'). That case concerned the supply of a transport service, consisting of the carriage of passengers and goods by ship between the Italian mainland and Sardinia. The issue was whether the part of the service that took place in international waters was subject to Italian VAT. In [15], the ECJ (as it was then) states that article 9 of the Sixth Directive was designed to avoid conflicts of jurisdiction between Member States and article 9(1), which provides that a service is supplied at the place where the supplier has established his business or has a fixed establishment from which the service is supplied, is a derogation from the strict principle of territoriality. However, in [16], the ECJ makes clear that the rule in article 9(1) is subject to further derogations in the specific place of supply rules for certain services "where the fiction that the services are supplied at the supplier's place of business is inappropriate".

123. In my view, *Trans Tirreno* shows that there is a principle of territoriality, ie the principle that VAT is charged on the supply of goods and services within the territory of a Member State in which the goods are located or the services are performed. However, that general principle is subject to specific derogations in the place of supply rules which are intended to apply where the fiction that services are supplied at the supplier's establishment is inappropriate. Where the derogations apply, the principle of territoriality must give way.

124. Mr Fell also referred to Case C-111/05 *Aktiebolaget NN v Skatteverket* [2008] STC 3203 ('*Aktiebolaget*') which concerned the supply and laying of an undersea cable between two Member States which was partly in international waters and outside the territory of either Member State. The first issue was whether the supply was a supply of goods or services and the second was where did it take place. The CJEU held that the provision and laying of the cable was a supply of goods. It then went on to hold that the supply of goods took place in each Member State pro rata according to the length of cable in its territory and that the part of the supply that took place in international waters was not subject to VAT.

125. I do not consider that *Aktiebolaget* is of any assistance in determining the appropriate place of supply in this case. First, *Aktiebolaget* concerned a supply of goods not services and, secondly, the result turned on the specific rule in Article 8(1)(a) for the place of supply of installed goods.

126. I do not accept that *Trans Tirreno* or *Aktiebolaget* support the proposition that Article 54 of the PVD should be interpreted so that the UK is entitled to tax the GSP and the UK Clinical Training Programme simply because they are carried out within the territory of the UK while the rest of the four year MD Course takes place elsewhere. I consider that the place of supply must be determined by reference to the specific rule which, in this case, is found in Article 54 of the PVD and without regard to the principle of territoriality.

127. SGU contends that the place of supply is Grenada. Mr Beal submitted that if it is right to regard SGU as making a single supply of the MD Course then SGU makes that supply in Grenada and not in the UK. He contended that the relevant supply of services is a supply of the entire four year MD Course. It would be logically inconsistent and wrong to split a single supply of services into separate supplies purely for the purposes of the place of supply rules. The MD Course is a single supply of services and there can only be one place of supply.

128. Mr Beal also contended that Article 54 of the PVD concerned the supply of educational events, such as fairs and exhibitions, rather than the supply of educational services from a fixed establishment. In support of that proposition, he referred to Case C-114/05 *Ministre de l'Économie, des Finances et de l'Industrie v Gillan Beach Ltd* [2006] ECR I-2427 (*'Gillan Beach'*). The issue in that case was whether the service of organising two boat shows in Nice supplied by Gillan Beach Limited, a company established in the UK, was supplied in France or the UK. The question in *Gillan Beach* addressed by the CJEU was whether the service of organising a boat show in another country fell within Article 9(2)(c) of the Sixth VAT Directive. Article 9(2)(c) of the Sixth VAT Directive was the predecessor to article 54 of the PVD and, as material, provided:

“(c) the place of the supply of services relating to:

- cultural, artistic, sporting, scientific, educational, entertainment or similar activities, including the activities of the organisers of such activities, and where appropriate, the supply of ancillary services,

...

shall be the place where those services are physically carried out”.

129. In particular, Mr Beal relied on [24] and [25] of the CJEU's judgment in *Gillan Beach* but it is also necessary to refer to [23]:

“23. In that regard, there are grounds for stating ... that the features common to the various categories of services referred to in the first indent of Article 9(2)(c) of the Sixth Directive originate in the complex nature of the services concerned, which are various services, and in the fact that those services are generally provided for a number of different recipients, that is to say, all the people taking part, in a variety of capacities, in cultural, artistic, sporting, scientific, educational or entertainment activities.

24. Those various categories of services also have the common feature that they are usually provided for specific events, and the place where those complex services are physically carried out is easy to identify, as a rule, since such events take place at specific locations.

25. A show or a fair, whatever its theme, seeks to provide to a number of different recipients, as a rule in a single place and on a single occasion, a variety of complex services, with the purpose, in particular, of presenting information, goods or events in such a way as to promote them to the visitors. In those circumstances, it must be possible to regard a show or a fair as being covered by the similar activities referred to in the first indent of Article 9(2)(c) of the Sixth Directive.”

130. Mr Fell submitted that [24] and [25] of *Gillan Beach* did not limit the place of supply rule in Article 9(2)(c) to events. He pointed out that, in this case, the students are all at an identifiable place and the teachers are there at the same place and time.

131. I do not agree that *Gillan Beach* is authority for the proposition that Article 9(2)(c) (now Article 54 PVD) is confined to “events”. I consider that the reference to “events” is clearly related to the facts of that case and not a general statement about the scope of the rule. The use of the words “generally” in [23] and “usually” in [24] show that the CJEU did not consider that Article 9(2)(c) of the Sixth VAT Directive (now Article 54 of the PVD) was only concerned with events. It is also clear from the last sentence of [25] that the CJEU's conclusion that the services supplied by Gillan Beach Limited fell within Article 9(2)(c) was based on the circumstances of that case, namely that the services related to shows or fairs. Further, there are, in my view, material factual differences between *Gillan Beach* and this case. In this case,

the parties agree that SGU makes a single supply of services relating to educational activities but the educational activities take place in different countries (Grenada and the UK) at different times over a period of four years. In *Gillan Beach*, however, the relevant activities (the boat shows) took place in one country (France) and each one lasted for a limited period of time (three days). For those reasons, I do not find the CJEU’s reasoning and application of Article 9(2)(c) in *Gillan Beach* helpful in determining the place of supply in this case.

132. Mr Beal also submitted that treating part of the supply of the MD Course as taxable in the UK created the risk of double-taxation. He contended that it would be entirely possible for Grenada to apply whatever indirect taxing regime it might have to those supplies. Mr Beal submitted that the place of supply rules in the PVD are intended to avoid double taxation and relied on Case C-401/06 *Commission v Germany* [2008] STC 2906, and *HMRC v. IDT Card Services Ireland Ltd* [2006] STC 1252 (*‘IDT’*). I do not accept that the possibility of double taxation provides any guide to the proper place of supply in this case. It is, of course, possible that Grenada might seek to charge VAT or some other indirect tax on supplies of education by SGU but there was no evidence that it had done so and, even if it had, there is no authority for the proposition that such double taxation between EU and non-EU countries is prohibited or is even a guide to the application of the place of supply rules in the PVD. The cases of *Commission v Germany* and *IDT* relied on by Mr Beal concerned possible double taxation between Member States of the EU and say nothing about the possibility of the same supply being taxed in a third country and also in a Member State.

133. The case that seems to provide the closest parallel to this one (although the services are of a very different nature) is Case C-568/17 *Staatsecretaris van Financien v L W Geelen* (*‘Geelen’*). The case concerned Mr Geelen, who was established and registered as a taxable person for VAT purposes in the Netherlands. Mr Geelen provided consumers, all of whom were also in the Netherlands, with access to live interactive erotic webcam sessions in return for consideration. The models filmed during the sessions were in the Philippines and worked for Mr Geelen who provided them with the hardware and software required to broadcast the webcam sessions. The sessions were interactive and the customers could communicate with the models and make requests. Each session was live and could be viewed by several customers simultaneously. To access the sessions, Mr Geelen’s customers had to create an account with one of the internet service providers (*‘ISPs’*). The ISPs received payments for the sessions from the customers and paid over a share of the payments to Mr Geelen. Mr Geelen did not account for VAT on the services and he was assessed by the Dutch tax authority. The matter reached the Supreme Court of the Netherlands which referred some questions to the CJEU for a preliminary ruling.

134. The first question consisted of two issues. The first issue was whether services supplied by Mr Geelen were “entertainment or similar activities, including the activities of the organisers of such activities, and where appropriate, supply of ancillary services” within Article 9(2)(c) of the Sixth VAT Directive and article 52(a) of the PVD. The second issue, which only arose if the services were entertainment or similar activities and which is particularly relevant to this case, was where were those services “physically carried out”. Article 52(a) of the PVD, which was the predecessor to article 54, also included educational activities, including organising such activities.

135. At the hearing, I was provided with an unofficial translation of the judgment as it was not available in English. The CJEU’s judgment has since been made available in English and I use that version below.

136. The CJEU held, at [25], that Article 9(2) of the Sixth Directive (and, therefore, Article 52(a) of the PVD) must not be regarded as an exception to a general rule which must be

narrowly construed. The Court then considered, at [30] – [42], whether the services provided by Mr Geelen were “entertainment or similar activities”.

137. Only at [43] did the CJEU start to consider where the services were physically carried out. The CJEU repeated its observation, made in [32] – [34], that the supply of the services of organising and offering live interactive erotic webcam sessions was a complex supply which was rendered not by the models in the Philippines but by Mr Geelen, who organised the sessions. In [47], the CJEU adopted the Advocate General’s observations in point 50 of his Opinion that:

“... since the activities necessary for the supply of those complex services are concentrated in the place from which the provider, on the one hand, organises the interactive sessions relating to the erotic show performed by the models and, on the other hand, provides customers with the opportunity to view those sessions on the internet, from the place of their choice, and to interact with those models, such a complex supply of services must be regarded as being ‘physically carried out’ ... in the place where that service is supplied by that provider, namely, in the case in the main proceedings, the place where his business is established: the Netherlands.”

138. It is clear from the facts of the case and the use of the term “those complex services” that the CJEU recognised that both Mr Geelen and the models were providing services. The use by the CJEU of the term “complex supply of services” in relation to Mr Geelen’s supplies to his customers might suggest that the CJEU regarded the services as a single supply, ie a composite service. I do not accept that the CJEU’s reasoning in *Geelen* is confined to single supplies because, if so, then I would have expected the Court to discuss that in further detail which it does not do. In any event, the point is not relevant in this case as the parties agree that the four year MD Course is a single supply of services.

139. At [48] and [49], the CJEU stated that it did not matter that the place of supply under Article 9(2)(c) of the Sixth Directive, as interpreted by the Court in that case, was the same as the place of supply under Article 9(1), now Article 45 of the PVD, ie the Member State in which the supplier of the services is established. I consider that the CJEU meant no more by this than that two different place of supply rules may produce the same place of supply in an appropriate case. At [50], the CJEU emphasised the importance of achieving a rational result for tax purposes in the circumstances of the case.

140. At [53], the CJEU held that:

“... a complex supply of services ... consisting in the offer of live interactive erotic webcam sessions constitutes an ‘entertainment activity’ ... which must be regarded as being ‘physically carried out’ ... at the place where the supplier has established his business or a fixed establishment from which those services are supplied or, in the absence of such a place, the place where he has his permanent address or usually resides.”

141. Having found that it is SGU, and not UNN and the UK Training Hospitals, that makes supplies to the students for VAT purposes, the question is where do the activities of SGU which make up those supplies actually take place. It is therefore necessary to identify the activities.

142. SGU provides the MD Course to students under a contract between SGU and the students. The MD Course is a single supply by SGU of services relating to education and vocational training delivered in Grenada and elsewhere. Students may undertake all or most or only one year of the four years of the MD Course in Grenada. Regardless of where the students decide to study, the course is organised and administered by SGU in Grenada. In order to provide teaching and administrative support in relation to the MD Course, SGU has

staff and physical infrastructure in Grenada. In addition, SGU requires some staff and physical infrastructure in the UK so that the students can take parts of the MD Course, namely the GSP and the UK Clinical Training, in the UK. The parties agreed that SGU does not have a fixed establishment in the UK. The staff and technical resources used to provide the GSP and UK Clinical Training on the ground in the UK are not owned by SGU but are provided to it by, variously, SGISML, UNN and the UK Training Hospitals. That conclusion is not, in my view, undermined by the fact that some of the teaching staff at the UK Teaching Hospitals are members of the SGU Faculty.

143. Applying the CJEU's analysis in *Geelen*, it seems to me that the supply of the MD Course which, for some SGU students, includes the GSP and UK Clinical Training Programme, is a complex supply by SGU. Mr Beal was not inclined to accept that SGU was making a complex supply, however, I consider that it is properly described as such. SGU devises, organises and supervises the GSP and UK Clinical Training provided by UNN and the UK Teaching Hospitals. SGU offers the students the opportunity to take part of the four year MD Course in the UK if they so choose. Where students choose to take part of the MD Course in the UK, SGU's services are not the performance of the underlying educational activity but the provision to students of the opportunity to take part of the MD Course in the UK and the organisation of the provision of education and training in the UK. I consider that, as in the case of Mr Geelen's supplies, the place where SGU's activities actually take place is where it makes all the necessary arrangements for the provision of the GSP and UK Clinical Training to the students, ie Grenada. It follows that SGU's supplies are outside the scope of UK VAT.

144. My conclusion on this issue means that the fees paid by students for the four year MD Course, which is a single supply of services, do not need to be apportioned to reflect those parts of the course taken by students in the UK and subjected to UK VAT. Accordingly, SGU's appeal must be allowed and it is not necessary for me to consider the remaining two issues, however, I do so because I heard submissions on them and in case I am wrong on the question of the place of supply.

ISSUE 3: VAT LIABILITY OF SUPPLY

145. The third issue, which only arises if SGU makes supplies to the SGU students in the UK, is whether the supplies are exempt from VAT as the provision of education and vocational training by an eligible body.

146. Title IX of the PVD covers exemptions from VAT. Article 131 states 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 of those exemptions and of preventing any possible evasion, avoidance or abuse."

147. Chapter 2 sets out exemptions for certain activities in the public interest. Article 132(1) states that:

"1. Member States shall exempt the following transactions:

...

(i) the provision of children's or young people's education, school or university education, vocational training or retraining, including the supply of services and of goods closely related thereto, by bodies governed by public law having such as their aim or by other organisations recognised by the Member State concerned as having similar objects;"

148. Article 133 provides that Member States may make the grant of the exemption conferred by Article 132(1)(i) subject to conditions, such as a requirement that the body in question does

not systematically aim to make a profit or is managed and administered on an essentially voluntary basis and other matters.

149. The provisions of the PVD relating to the exemption of the supply of university education and vocational training are implemented in the UK by section 31(1) of the VATA 1994 which provides that:

“(1) A supply of goods or services is an exempt supply if it is of a description for the time being specified in Schedule 9 and an acquisition of goods from another member State is an exempt acquisition if the goods are acquired in pursuance of an exempt supply.”

150. Group 6 of Schedule 9 to the VATA 1994 covers supplies of education. Its relevant Items read as follows:

“1. The provision by an eligible body of—

- (a) education;
- (b) ...
- (c) vocational training.

...

4. The supply of any goods or services (other than examination services) which are closely related to a supply of a description falling within item 1 (the principal supply) by or to the eligible body making the principal supply provided—

- (a) the goods or services are for the direct use of the pupil, student or trainee (as the case may be) receiving the principal supply; and
- (b) where the supply is to the eligible body making the principal supply, it is made by another eligible body.”

151. The Notes to Group 6 of Schedule 9 state in Note 1 that:

“(1) For the purposes of this Group an ‘eligible body’ is—

...

(b) a United Kingdom university, and any college, institution, school or hall of such a university;

...

(e) a body which—

- (i) is precluded from distributing and does not distribute any profit it makes; and
- (ii) applies any profits made from supplies of a description within this Group to the continuance or improvement of such supplies;

...”

152. In this decision, I refer to a body within Note 1(e) as a ‘not-for-profit body’.

153. Mr Beal submitted that if, contrary to his submissions on the first two issues, SGU makes supplies of education and vocational training in the UK then those supplies fall within the exemption for the provision of education and vocational training by an eligible body. Mr Beal put forward three arguments in support of that submission. The first was that Article 132(1)(i) of the PVD has direct effect and that SGU can rely on it because SGU meets the criteria for treatment as a UK university or other organisation which has been recognised as having similar

objects by the UK providing education and/or vocational training. The second argument is that SGU is, or should be treated as, a college or institution of a UK university, ie UNN, and thus an eligible body for the purposes of Item 1 of Group 6 by virtue of Note (1)(b) to the Group. Mr Beal’s final argument is that restricting the exemption to a UK university, as Note (1)(b) does, would breach a number of principles of EU law and HMRC cannot rely on it.

154. Mr Fell contended that the supplies could not be exempt because SGU is not a UK university or a college of one. He submitted that the UK has lawfully exercised its discretion and powers to prescribe the bodies which can make exempt supplies of education and, having done so, supplies by an institution which is neither a UK university (or a college of one) nor a not-for-profit body are not exempt.

155. Mr Beal’s submission on the first argument was simple and straightforward: SGU is a UK university within Note (1)(b) to Group 6 of Schedule 9 to the VATA 1994 because it is a university and is making supplies of higher education and vocational training in the UK. The definition of university given in the PVD does not depend on the specific definitions given in domestic law - see *University of Cambridge v HMRC* [2009] EWHC 434 (Ch) (*‘Cambridge University’*) at [48]. SGU has the same objects as a UK university, namely providing educational services, and should be treated as such and the UK is bound to recognise it as such – see *HMRC v Open University* [2016] EWCA Civ 114 (*‘Open University’*) at [120] – [123].

156. I do not accept Mr Beal’s submissions on the first argument. Article 132(1)(i) of the PVD exempts the supply of university education by bodies governed by public law having such as their aim and by other organisations recognised by the Member State concerned as having similar objects. Article 132(1) does not define ‘university’ or ‘body governed by public law’. Importantly in this case, Article 132(1) does not prohibit Member States from providing that supplies of university education by their national universities, if they are not bodies governed by public law, are exempt as supplies by ‘other organisations’. That is, of course, subject to the national universities meeting the condition in Article 132(1)(i) that they are recognised by the Member State concerned as having similar objects to public bodies providing university education. Note (1)(b) to Group 6 recognises that UK universities are such organisations as Arden LJ pointed out in *Finance and Business Training Ltd v HMRC* [2016] EWCA Civ 7 (*‘FBT’*) where she said at [69] that:

“Note 1(b) achieves the result that all UK universities, even though not ‘bodies governed by public law,’ are bodies which are recognised by the UK for the purposes of Article 132(1)(i).”

157. The effect of Note 1(b) to Group 6 was also noted by Lord Kitchin in *SAE Education Ltd v HMRC* [2019] UKSC 14 (*‘SAE’*) where he said at [46]:

“... Parliament has chosen to exercise the discretion conferred upon it [in Article 132(1)(i)] by exempting from VAT, so far as relevant, the provision of education by a United Kingdom university and any college of such a university. The term ‘university’ is not defined in the VAT Act. However, the conditions under which a body in the United Kingdom is entitled to use the word university in its title are regulated by statute. Over 100 bodies are presently entitled to call themselves a university and they vary greatly in character.”

SGU is not one of those bodies regulated by statute and entitled to call themselves a university in the UK. I conclude that SGU is not a UK university for the purposes of Note (1)(b) to Group 6. That conclusion does not determine this issue as Mr Beal also contended that SGU is entitled to rely on the direct effect of Article 132(1)(i) of the PVD.

158. In [48] of *Cambridge University*, the Chancellor held that the decisions of the CJEU discussed in that case established that ‘body governed by public law’ in the predecessor to Article 132(1)(i) is a concept of EU law and means such bodies must be identified as part of the public administration of the relevant Member State and whether a body can be so identified is a matter for the national court. In that case, it was held that Cambridge University was not a body governed by public law. In this case, it is not contended that SGU is a body governed by public law in the sense explained in *Cambridge University* nor, in my opinion, could it be. That means that, when relying on the direct effect of Article 132(1)(i), SGU must establish that it is an organisation recognised (or which ought to be recognised) by the UK as having similar objects to bodies governed by public law in the UK which provide university education or vocational training.

159. In Case C-319/12 *Minister Finansów v MDDP sp z oo Akademia Biznesu, sp komandytowa* [2014] STC 699 (*‘MDDP’*), the CJEU held, at [37], that Article 132(1)(i) does not specify the conditions or procedures for defining the similar objects and Member States have a discretion in relation to the national law rules which determine whether recognition may be granted to such organisations. Such rules are subject to the requirements of European Union law, in particular the principle of equal treatment, which, in the field of VAT, takes the form of the principle of fiscal neutrality (see *MDDP* [38]). It is clear from *MDDP* (see [39]) that:

(1) there is no general exemption for supplies of educational services without consideration of the objects pursued by non-public organisations providing those services; and

(2) Member States have a discretion, subject to the principles of EU law, in setting their rules for recognising whether an organisation has similar objects to a body governed by public law which provides the same services.

160. The case of *FBT* concerned a company, which provided courses leading to the grant of degrees by the University of Wales. The courses were university education but the question was whether the supplies of such education were exempt. The taxpayer company was a profit-making enterprise and so did not qualify as an eligible body under Note 1(e) to Group 6 of Schedule 9 to the VATA 1994. It contended that it was a college, institution, school or hall of a UK university and thus an eligible body by virtue of Note 1(b) to Group 6. The FTT applied the factors described in *HMRC v School of Finance and Management (London) Ltd* [2001] EWHC 1175 (Ch) (*‘SFM’*) and decided that the taxpayer company was not a college etc of the university. The taxpayer appealed unsuccessfully to the Upper Tribunal. On further appeal to the Court of Appeal, the taxpayer argued, among other things, that Parliament had failed to set conditions for the education exemption in accordance with EU law and, in particular, the principles of legal certainty and fiscal neutrality. Arden LJ (with whom Gloster and Sharp LJJ agreed), rejected that submission. She held as follows at [53] and [54]:

“53. ... It is now clear from *MDDP* that a Member State can and should set the conditions for bodies which are not governed by public law which are to be entitled to the education exemption (‘non-public bodies’). How it sets those conditions is a matter for national law.

54. No one has suggested that Parliament had to use any particular form of words to set these conditions. In my judgment, it was therefore open to Parliament to exercise the UK’s option by deciding which non-public bodies were to qualify and then including a list of them in the relevant legislation. That is what Parliament has done in Note 1(b).”

161. Arden LJ concluded on this point at [57]:

“57. FBT contends that Parliament has not met the requirements of the EU law principle of legal certainty by setting out criteria which are to apply to determine when non-public bodies seek to enjoy the education exemption. The criteria have to be ‘neutral, abstract and defined in advance’. In my judgment, this is achieved by the combination of note (1)(b) and the *SFM* factors. These factors are neutral, they are abstract and defined in advance. By applying them, it is possible to know what supplies and which suppliers qualify for exemption.”

162. SGU is not a body governed by public law and is not classified as a UK university by the UK. As I have already stated, nothing in Article 132(1)(i) defines a ‘university’ or requires a Member State to recognise an entity as one for the purposes of the exemption. The issue then is whether, on the assumption that it makes supplies of university education or vocational training in the UK, SGU is an organisation recognised by the UK as having similar objects to bodies governed by public law which have the aim of providing university education or vocational training. There is no dispute that SGU is not so recognised in the UK: the question is whether it should be.

163. At [123] of *Open University*, the Chancellor held:

“In the present case, for the reasons I have given, during the relevant period the BBC had the same objects as public bodies specified in the first part of Article 13A(1)(i) and, if it had been a public body, the BBC would have satisfied all the requirements for exemption for educational and training supplies. Either the UK had defined the BBC as having ‘similar objects’ within Article 13A(1)(i) or, if the United Kingdom had not, the BBC and the OU are entitled to rely directly on that Article because the failure of the UK was a failure to implement the Sixth VAT Directive. The object of the education and training exemption was intended to increase access to the services specified in Article 13A(1)(i) by avoiding the increased costs that would result if they were subject to VAT: the *MDDP* case at paragraph 26. To exclude the BBC from the exemption would both be contrary to the objective of the Sixth VAT Directive and contrary to the principle of fiscal neutrality.”

164. The *Open University* is not authority for the proposition that the UK must recognise non-UK universities as UK universities for the purposes of Group 6 of Schedule 9 to the VATA 1994. That would be contrary to the views expressed in *FBT* and *SAE* quoted in [156] and [157] above. The Chancellor’s comments in [123] of *Open University* were obiter and based on the facts of that case. Importantly, there was no discussion in that case (because the issue did not arise) of the conditions in Note 1(e) to Group 6 of Schedule 9 to the VATA 1994. If SGU is not a UK university but has similar objects to bodies governed by public law which have the aim of providing university education or vocational training, SGU will be an eligible body for the purposes of Group 6 if it is precluded from distributing (and does not distribute) any profit it makes and it applies any profits made from supplies of education and vocational training to the continuance or improvement of such supplies. However, SGU did not contend and there was no evidence to suggest that it met those conditions.

165. Mr Beal’s second argument is that SGU is, or should be treated as, a college or institution of a UK university, ie UNN. As a college or institution of UNN, SGU would be an eligible body for the purposes of Item 1 of Group 6 of Schedule 9 by virtue of Note (1)(b) to the Group. The fact that SGU is a profit-making enterprise does not disqualify SGU because the not-for-profit condition in Note 1(e) does not apply to universities or their colleges and institutions. Mr Beal relied on the reasoning of Lord Kitchin in *SAE* at [53] and [54]. He did not contend that SGU is a college etc but that it is functionally equivalent to a college of the UNN.

166. In *SAE*, Lord Kitchin set out, in [53], five questions which should be asked when considering whether an entity is a college, institution, school or hall of a UK university and the significance of the responses to those questions in [54]:

“53. ... As I have said, the presence of a foundation or constitutional document or some other legal relationship establishing the college as a constituent part of the university in a constitutional or structural sense will be sufficient to prove that it is a college of the university within the meaning of Note 1(b), save in an exceptional case. But that is not a necessary condition. In assessing whether a body is a college of a university the following five questions are also likely to be highly relevant: (i) whether they have a common understanding that the body is a college of the university; (ii) whether the body can enrol or matriculate students as students of the university; (iii) whether those students are generally treated as students of the university during the course of their period of study; (iv) whether the body provides courses of study which are approved by the university; and (v) whether the body can in due course present its students for examination for a degree from the university.

54. If a body can establish the presence of each of these five features, focused as they are on the objects of the body, the relationship between the students of the body and the university and the degree to which the activities of the body are recognised by and integrated with the university, then in my judgment it is highly likely to be a college of the university within the meaning of Note 1(b). Again, I do not suggest that there may not be other cases where the degree of integration of the activities of the body and the university is such that it may properly be described as a college of the university in light of some or most of the factors I have identified and other aspects of the services it supplies. All will depend on the particular circumstances of the case.”

167. In closing, Mr Beal formally accepted that the witnesses for SGU and UNN had repeatedly stated that they did not regard SGU as a college of the UNN. Mr Beal accepted that SGU and the UNN are both universities, one of which is established in the UK and one of which is not. He submitted that focusing solely on the word ‘college’ in a formalistic sense and trying to determine whether SGU is a college of the UNN is not the right approach. He contended that the correct approach is to consider the functional test set out by Lord Kitchin in the last sentence of [56]:

“The question is whether the college and the university are so integrated that the entity is imbued with the objects of the university, and that is best answered in the manner I have described.”

168. I do not accept Mr Beal’s submission on this point. It is obvious on its own terms that the final sentence of [56] in *SAE* is a summary and refers to the questions and approach described by Lord Kitchin in [53] and [54]. I consider that, in order to reach the position that SGU is an eligible body within Note 1(e) to Group 6 of Schedule 9 to the VATA 1994, it must be shown that SGU is a college or institution (it was never suggested that ‘school’ or ‘hall’ were relevant) of the UNN. That should be approached by asking the questions set out by Lord Kitchin in [53] and taking into account the matters discussed in [54]. To ignore those questions and simply ask whether an entity is so integrated with a university that the entity is imbued with the objects of the university is to apply a different and, in my view, incorrect test.

169. Mr Beal contended that, even if it must be accepted that SGU and the UNN did not regard SGU as formally being a college of the UNN it was necessary to look at the bigger picture and it was sufficient to answer the other four of Lord Kitchin’s questions in the affirmative. I now consider the remaining four questions in the context of the facts of this case.

170. The second of Lord Kitchin's questions is whether SGU can enrol or matriculate students as students of the UNN. The evidence of Mr Zwarych and Ms Crabtree, described in [28] and [29] above, shows that while SGU (and SGU alone) decided whether to admit an applicant as a student on the MD Course and the GSP, the UNN retained the power to enrol those students as students of the UNN. I was told that only very rarely, if at all, did the UNN refuse to accept a student that had been admitted by SGU onto the MD Course. However, that does not address Lord Kitchin's question which is not what happened in practice but what is the degree to which the activities of SGU in relation to enrolment of persons as students of the UNN are recognised by and integrated with the UNN. On the basis of the evidence, I find that while admission onto the MD Course was a necessary preliminary step in participating in the GSP, SGU had no power to enrol students accepted for the MD Course as students of the UNN.

171. I need only deal briefly with the third question, which is whether the SGU students on the GSP are generally treated as students of the UNN during their period of study, ie the GSP, at the UNN. I accept that the evidence, set out at [37] above and elsewhere, is that the SGU students on the GSP are treated in exactly the same way as all other UNN students and are for all intents and purposes seen as UNN students throughout their time on the GSP. I do not regard the fact that the SGU students on the GSP are taught separately from the general body of UNN students as significant. Students on different courses are no doubt taught separately but are still all students of the UNN.

172. The fourth question is whether SGU provides courses of study which are approved by the UNN. In this case, there was no evidence that the UNN approved the MD Course or the GSP provided by SGU and I find that the reality is quite the reverse. The contractual obligations imposed by Schedules 1 and 2 to the 2015 Agreement described in [95] and [96] above and the evidence of Mr Zwarych and Ms Crabtree recorded in [25] and [26] above show that SGU controlled the content of the GSP and the teaching provided by the UNN. I accept that, as Ms Crabtree stated in evidence, the UNN needed to be satisfied that the GSP meets the same quality standards as the other courses offered at the UNN. However, that is not approval of the GSP provided by SGU but a condition of the award of the DipHE. Accordingly, I conclude that the answer to the fourth question must be 'no'.

173. Lord Kitchin's final question is whether SGU can, in due course, present its students for examination for a degree from the UNN. In my view, the answer to this question is also 'no'. There was no evidence that SGU presented the students on the GSP for examination leading to the presentation of a degree by the UNN. As described at [39] above, in the UK, undergraduate honours degrees awarded by universities are Level 6 qualifications. The DipHE awarded by the UNN on successful completion of the GSP is equivalent to a Level 5 qualification in the UK. A Level 5 qualification is not a degree but, as Mr Robertson stated, an award in its own right.

174. If, by 'degree', Lord Kitchin also meant any lesser academic award made by a university then I still regard the answer as 'no'. Lord Kitchin's question envisages that SGU provides a course of study (see question four) after which it presents the students to the UNN to be examined for an academic award which is the object of the course of study. In this case, the evidence does not show that the DipHE is the object of the SGU students on the GSP. The GSP is the first year of and a necessary step in completing the four year MD Course which is the course of study provided by SGU and the objective of the students who enrol on it. The DipHE is simply the recognition of completion of the first year of the MD Course by students on the GSP.

175. Having considered Lord Kitchin's questions, the contractual relationships and the interaction between SGU, the UNN and the students revealed by the evidence, I find that SGU is not a college of the UNN.

176. Mr Beal's third argument on this issue is that exempting educational services supplied by a UK university while not exempting the same services when supplied by a university, such as SGU, established outside the UK infringes a number of general principles of EU law, including the principles of non-discrimination and fiscal neutrality. As they do not involve any further findings of fact but are purely matters of law (and my decision on this point is not necessary for the determination of the appeal), I can deal with Mr Beal's submissions on EU law quite briefly.

177. I have already described, when discussing Mr Beal's first argument on this issue, how Article 132(1)(i) of the PVD confers a discretion on Member States to recognise organisations which are not bodies governed by public law but have similar objects to such bodies which have the provision of education as their aim. *MDDP* makes clear that Member States can and should set the rules for determining which bodies that are not governed by public law are recognised as organisations whose supplies of educational services are exempt. That is what the UK has done in Notes 1(b) and 1(e) to Group 6 of Schedule 9 to the VATA 1994 (see *FBT* and *SAE*) which, in my view, must be considered together.

178. In those provisions, the UK recognises UK universities as other organisations which have similar objects to bodies governed by public law that provide educational services. If the UK had stopped there, then Mr Beal's submissions would have had considerable force. However, the UK has not only provided that only UK universities can benefit from the exemption but also exempts supplies of education and vocational training by not-for-profit bodies. The imposition of a not-for-profit condition is specifically permitted by Article 133 of the PVD. It seems to me that the principles of EU law relied on by Mr Beal do not require the UK to recognise all universities, wherever they are established, for the purposes of the exemption or to disapply a permitted not-for-profit condition in relation to non-UK universities but not other bodies that are not universities. In short, there is no infringement of EU law where a Member State correctly implements a provision of the PVD and applies a permitted restriction to the implementation of that provision.

179. For the reasons given above, I consider that the UK is entitled to, and has, restricted the exemption for the provision of university education and vocational training to supplies of such services by UK universities (including colleges, institutions etc of such universities, if separate entities) and not-for-profit bodies, ie other organisations recognised by the UK and subject to the condition permitted by Article 133 of the PVD. SGU is not a UK university or a college or institution of one and nor is it not a not-for-profit body. It follows that any supplies of university education or vocational training made by SGU in the UK do not fall within Item 1 of Group 6 of Schedule 9 to the VATA 1994 and there are no grounds on which SGU can invoke the direct effect of Article 132(1)(i) of the PVD. Accordingly, supplies of university education or vocational training made by SGU in the UK are not exempt.

ISSUE 4: TAXABLE AMOUNT

180. The fourth issue is what is the taxable amount in relation to the supplies made by SGU in the UK for VAT purposes. Obviously, the issue does not arise if (as I have held) SGU's supplies to its students on the GSP and undertaking the UK Clinical Training Programme take place in Grenada for VAT purposes and are thus outside the scope of UK VAT. In case I am wrong and SGU's supplies of the GSP and the UK Clinical Training Programme take place in the UK, I consider the evidence and submissions in relation to the taxable amount of the supplies.

181. Chapter 2 of Title VII of the PVD contains the rules for determining the taxable amount of supplies of goods and services. In this case, the general rule in Article 73 applies:

“In respect of the supply of goods or services, other than as referred to in Articles 74 to 77, the taxable amount shall include everything which constitutes consideration obtained or to be obtained by the supplier, in return for the supply, from the customer or a third party, including subsidies directly linked to the price of the supply.”

182. Article 79 provides that the taxable amount does not include, among other things, “amounts received by a taxable person from the customer, as repayment of expenditure incurred in the name and on behalf of the customer”. To exclude such amounts from the taxable value, the supplier must enter them in their books in a suspense account and provide proof of the actual amount of the expenditure. Neither party in this case suggested that SGU incurred expenditure with the UNN or UK Teaching Hospitals on behalf and in the name of the SGU students participating in the GSP or UK Clinical Training Programme and there was no evidence that any amounts were entered in a suspense account by SGU.

183. The provisions of the PVD relating to place of supply are implemented in the UK by the value of supply sections in the VATA 1994 and the VAT Regulations 1995. Section 19(2) of the VATA 1994 provides that, where the supply is for a consideration in money, its value is such amount as, with the addition of the VAT chargeable, is equal to the consideration. Section 19(4) of the VATA 1994 provides:

“Where a supply of any goods or services is not the only matter to which a consideration in money relates, the supply shall be deemed to be for such part of the consideration as is properly attributable to it.”

184. SGU’s position is that the taxable amount should be determined by reference to that portion of the consideration which is attributable to the supplies in the UK which is not the same as the fees paid for the academic terms during which the SGU students study in the UK. Mr Beal submitted that the termly payments made by SGU students while they were participating in the GSP and the UK Clinical Training were consideration for services in addition to those provided in the UK. The fees paid (or included payment) for supplies of the whole of the four year MD Course and were consideration for more than just the services provided in the UK. Mr Beal asked me to give a decision on whether a cost-based apportionment method should be agreed by the parties rather than determine the value of the supplies or the detail of how it should be calculated.

185. HMRC contend that the taxable amount of SGU’s supplies in the UK is consideration, ie the fees, paid by the SGU students to SGU for the academic years in which the GSP and the UK Clinical Training are supplied. Mr Fell contended that VAT is chargeable on the full amount of the fees paid by the students to SGU for the academic terms in which the GSP and the UK Clinical Training Programme are supplied.

186. Essentially, the only matter for my determination is whether the fees paid by the SGU students to SGU for the terms in which the GSP and UK Clinical Training take place relate solely to the education and vocational training in the UK or are also consideration for other services which take place elsewhere, eg in Grenada.

187. In his first witness statement, Mr Zwarych’s evidence was that the cost to SGU in providing each individual term varies as the resources required differ depending on whether the student spends the term on site at SGU, at the GSP or at a teaching hospital. However, as part of SGU’s invoicing arrangements, the amount charged to students each term is not intended to represent the actual cost of that term but rather represents a spreading of the cost over the ten terms to make the total cost of the MD Course easier for students to manage.

188. Mr Zwarych said the fees charged by SGU for each term of the four year MD Course, effective from 1 May 2018, were:

- (1) US\$30,062 for each of terms one and two;
- (2) US\$41,122 for both of terms three and four which are typically invoiced together;
- (3) US\$33,202 for term five; and
- (4) US\$30,345 for each of terms six to ten.

The tuition fees for each term included an administrative fee which Mr Zwarych said was 17%.

189. In addition, SGU charged each student on the UK Clinical Training Programme US\$550 per week for the year 2018. SGU pays the fees received for the UK Clinical Training Programme to the UK Teaching Hospitals on behalf of the students.

190. When he was giving oral evidence, Mr Zwarych was asked why, if the intention was to spread the cost of the MD Course over the ten terms, SGU did not just divide the total into ten equal instalments. Mr Zwarych said that the fees for the MD Course were divided into two halves: the first half is the academic course and the second (terms six to ten) is the clinical training. A decision had been taken, before Mr Zwarych's time, to try and allocate the cost between those two halves disproportionately and more cost had been allocated to the last two years than to the first two. Mr Zwarych acknowledged that there was not a lot of science to the allocation which was really just an historical convention.

191. Students on the MD Course are invoiced separately for each term. The invoices are issued by University Support Services LLC on behalf of SGU. I was shown some invoices for fees payable by students issued while they were studying in the UK. One such invoice was the second term of the year at the UNN on the GSP. It identified the fee charged as for "Tuition Global Scholars Term 2". It also included some other charges, eg for administration and accommodation (which is agreed to be a recharge in respect of a supply by the UNN).

192. In my view, the taxable amount for the supply of the MD Course, which is a single supply of services relating to educational and vocational activities, is the aggregate of the fees received by SGU for the course. If, contrary to my decision on Issue 2, part of that supply takes place in the UK and is taxable then what is the value of supplies of the GSP and the UK Clinical Training Programme made by SGU in the UK? The answer to that question is the part of the consideration that is properly attributable to it (see section 19(4) of the VATA 1994) but how is that to be determined? In this case, the answer seems to me to be straightforward.

193. Under the contract between them, SGU and the students agree that the consideration for the four year MD Course should be apportioned and invoiced termly with one invoice and payment for each term. Both in contract and in practice (or economic reality), the consideration for each term is the amount invoiced for that term. Where the place of supply of the education and training services supplied during that term is the UK then the amount invoiced for that term is, in my view, properly regarded as the consideration for that part of the MD Course, ie the services supplied during the period covered by the invoice.

194. That conclusion is not undermined by the fact that some part of the fee shown on the invoice for a term relates to administration which is carried out in Grenada. Such administration will inevitably relate to parts of the MD Course supplied in the UK as well as parts supplied elsewhere. Making that proportion of the administration charge which is calculated and charged by reference to the fees for services supplied in the UK is an appropriate allocation of charges for overheads to the supply. There was, in any event, no evidence to show how the fees and administration charge were allocated. Mr Zwarych's evidence was that it owed more to historical practice than mathematical calculation. In the circumstances, I can

see no reason to set aside contractual provisions and practice in favour of unexplained “historical convention”.

DISPOSITION

195. For the reasons set out above, I have concluded that:

- (1) SGU makes supplies of educational services (including the GSP and the UK Clinical Training Programme) to the SGU students for VAT purposes;
- (2) the place of supply for VAT purposes of those supplies is Grenada;
- (3) accordingly, the supplies are outside the scope of UK VAT; and
- (4) SGU’s appeal is allowed

196. I would like to thank both counsel for their extremely clear and helpful presentations, both written and oral, of the issues in this case.

COSTS

197. This case was allocated to the Complex case category under rule 23 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (‘FTT Rules’) and SGU has never requested that the proceedings be excluded from potential liability for costs under rule 10(1)(c) of the FTT Rules. Accordingly, the Tribunal has power to award costs on an application or of its own motion. Any application for costs in relation to this appeal must be made in writing within 28 days after the date of release of this decision. As any order in respect of costs will, if not agreed, be for a detailed assessment, the party making an application for such an order need not provide a detailed schedule of costs claimed with the application as required by rule 10(3)(b) of the FTT Rules.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

198. 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.

JUDGE GREG SINFIELD

CHAMBER PRESIDENT

RELEASE DATE: 22 JANUARY 2021

POSTSCRIPT

I apologise to the parties for the delay in producing this decision. It was partially complete at the time that the country entered lockdown due to the Covid-19 in March 2020, but I regret to say that work on it then ceased as other matters occupied my attention. Subsequently, I found it difficult to find time to focus on writing the decision and, due to the passage of time, completion of the remainder took far longer than it should have done.