[2022] UKFTT 00007 (TC)

TC 08360/V

VALUE ADDED TAX – appellant operated children's home – registered for VAT – appeal against decision by HMRC to cancel registration on basis that appellant made exempt supplies – appeal made 3½ years after decision – Martland *applied as to whether to permit late appeal – no good reason for significant and serious delay – little prejudice to either party in refusing permission for late appeal - permission for late appeal refused*

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2019/03202 V

BETWEEN

FLYING SPUR LIIMTED **Appellant**

-and-

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

TRIBUNAL: JUDGE ZACHARY CITRON
MS GILL HUNTER

The hearing took place on 11 November 2021. The form of the hearing was V (video). A face to face hearing was not held because of the pandemic. The documents to which we referred were an electronic bundle of 186 pdf pages.

Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

Further written submissions of the Appellant were received on 14 December 2021.

Mr N Monk of TM Sterling, tax consultants, for the Appellant

Mr D Ryder, Litigator of HM Revenue and Customs' Solicitor's Office, for the Respondents

DECISION

THE APPEAL

1. The appellant company ran an OFSTED-registered children's home in Norfolk; it was registered under the Value Added Tax Act 1994 from November 2013 to September 2015, when the respondents ("**HMRC**") cancelled its registration on the grounds that its supplies were exempt.

2. The appellant company's notice of appeal was received by the Tribunal on 9 May 2019. In answer to "What is your appeal about?", the notice of appeal said "HMRC claim you owe money"; in answer to "What is the amount of tax?", it said "88,000".

3. The notice of appeal said that the "desired outcome" was "to be able to register my company for VAT or to be able to reclaim VAT on all expenditure like all other Govt bodies and LAs to which Table applies. (Both retrospectively applied)". By "**Table**", the appellant company meant a table appearing in an HMRC manual under the heading "VAT and Government Bodies" and sub-heading "Other local authority activities: childcare and welfare: VAT status of childcare services: M to R". The contents of the Table are set out in the appendix to this decision.

4. Attached to the notice of appeal (and referred to in the notice as the "grounds of appeal") was a single page document headed "Desired Outcome of Complaint to Government Ombudsman". The document said that the Table did *not* apply to the appellant company; and that none of the VAT "statuses" shown on the left side of the Table ("non-business") applied to it. It inferred from these facts that, due to "acceptance" by HMRC of the appellant company's VAT registration, "then we [the appellant company] should be eligible to register for VAT." It also made arguments in the alternative, if it was held that the Table *did* apply to the appellant company.

5. The notice of appeal said the claim was late and said this by why of "reason for late appeal":

> "I hoped to avoid ending up in litigation. I have asked HMRC several times to provide a comprehensive response, answering all my points, but so far this has not happened. Letters appear to cherry-pick aspects of the case but do not provide a full answer. I have appealed to the Adjudicator and Ombudsman. The Ombudsman has told me that it is appropriate to take legal action to resolve this matter and that my complaint would be better dealt with by the court".

EVIDENCE BEFORE THE TRIBUNAL

6. The bundle contained Tribunal documents and correspondence between the parties, and also:

(1) a witness statement of Christopher Bruce, HMRC officer, dated 14 June 2021;

(2) a witness statement (undated) of Clifford Rapley, sole director of the appellant company;

(3) a document produced by HMRC headed "Summary of call made to the VAT helpline 14/06/2012", summarising a telephone conversation between an HMRC adviser and Mr Rapley on that date.

7. Mr Rapley did not attend the hearing; the hearing was briefly adjourned so that Mr Monk, representing the appellant company, could phone Mr Rapley; upon recommencing the hearing, Mr Monk reported that Mr Rapley said he was needed at the children's home run by the appellant company and was content for hearing to proceed in his absence. Mr Ryder,

representing HMRC, said they did not have anything major to challenge in Mr Rapley's witness statement. The Tribunal asked if Mr Rapley would be free at any point in the day – Mr Monk responded that he understood Mr Rapley would be unavailable all day. The Tribunal decided that fairness and justice favoured carrying on with the hearing as

(1) this was the appellant company's preference;

(2) the appellant company was represented;

(3) HMRC were not challenging anything major in Mr Rapley's witness statements; and

(4) the appellant company had notice of the hearing (which was not on a date the appellant company had asked to avoid).

8. Mr Monk had no cross examination questions for Mr Bruce at the hearing.

9. The only piece of evidence of any materiality that was in dispute was the "Summary of call made to the VAT helpline 14/06/2012" document produced by HMRC: Mr Monk suggested that weight should not be placed on it because the HMRC helpline adviser was not named in the document; nor was the helpline adviser present at the hearing to give oral evidence. The appellant company's specific criticism of the document (as reported in HMRC's statement of case – Mr Rapley's witness statement said nothing about the document) was to deny that Mr Rapley was explicitly told during the call that he was ineligible to register for VAT. In our view:

(1) the fact that the HMRC helpline adviser was not named in the document has little bearing on its evidential value;

(2) it was unlikely that the HMRC helpline adviser would have been able to recall the conversation if s/he had attended to give evidence – it occurred over nine years earlier on what was probably a busy helpline;

(3) it was likely that the document was contemporaneous evidence of the conversation: large institutions like HMRC routinely keep records of 'helpline' conversations of this kind;

(4) as such, the evidential strength of the document was that it was not subject to the vagaries of human memory (given that the conversation took place more than nine years before the hearing);

(5) the appellant company's one specific criticism of the document (as well as the fact that Mr Rapley's witness statement did not say anything about the document) suggests that, apart from the specified disputed point, the appellant company had no specific challenge to the rest of the document.

We have concluded, on the balance of probabilities, that this document is an accurate record of the conversation that took place in June 2012.

FINDINGS OF FACT

10. We make the following findings of fact, on the evidence before the Tribunal and on the balance of probabilities. We make further findings in the "Decision" section below (at [51]).

Events up to HMRC's decision to cancel the appellant company's VAT registration

11. The appellant company was in the business of running a children's home in Norfolk. It began trading in January 2013. It supplied its services to local authorities. The children's home was registered with the Office for Standards in Education, Children's Services and Skills

(OFSTED) in March 2012. Mr Rapley was sole director of the appellant company at all relevant times.

12. On 14 June 2012, Mr Rapley telephoned HMRC's VAT registration unit (the "**helpline**") for advice about the VAT treatment of the children's home he was planning to start up. The helpline adviser referred to HMRC's Notice 701/2 *Welfare* (on HMRC's website). The helpline adviser referred to the section of the Notice giving information on the exemption for welfare services; the helpline adviser said that children's homes were within this section; care provided in a children's home was on a list of exempt services. The helpline adviser explained that this means the children's home would not charge its local authority customers VAT; and it would not register for VAT. There was discussion of whether the position would be different if the children's home were registered as a charity; the helpline adviser provided details of a charities helpline and transferred Mr Rapley to this.

13. On 21 October 2013 the appellant company, using HMRC's on-line VAT registration tool, submitted HMRC form VAT1 (application for registration). Under "business activities", the completed form said "social care – children's home" by way of "description", and also said "children's home (non-charitable)" by way of "business activity description". In the "voluntary registration" section of the form, the appellant company ticked "no" and also ticked the box saying "intend to make taxable supplies in the future".

14. On 25 October 2013 HMRC wrote to the appellant company saying its application for registration "before you start to make taxable supplies" had been accepted; under "change of circumstances", the letter said that if the appellant company no longer intended to make taxable supplies, it should notify HMRC within 30 days of the change.

15. The appellant company was registered for VAT with effect from 1 November 2013.

16. On 4 November 2013 HMRC wrote to the appellant company accepting its application to join the VAT annual accounting scheme. It was removed from that scheme on 8 July 2014 (due to £25,000 of VAT outstanding).

17. On 24 April 2015 HMRC wrote to the appellant company explaining the exemption for services provided by state-regulated welfare institutions (including children's homes) and stating that, because its only income was from exempt welfare services, the appellant company was not eligible to be registered for VAT, and action would be needed to cancel its VAT registration.

18. On 16 September 2015 HMRC wrote to the appellant company saying that they had started to cancel its VAT registration with effect from the date of the letter.

19. Throughout the period in which it was VAT registered the appellant company's supplies of services were OFSTED-regulated and directly connected with the care or protection of children – and so, by reason of item 9 Group 7 Schedule 9 Value Added Tax 1984 (see [29] below), its supplies were exempt from VAT.

20. The appellant company made no VAT returns in respect of the period in which it was VAT registered.

Events subsequent to HMRC's decision to cancel the appellant company's VAT registration

21. On 12 May 2017 Mr Rapley sent a letter headed "Complaint" to Helen Megarry of the Adjudicator's Office (copied to a Mr Wragg at HMRC). The letter referred to an earlier letter of Mr Rapley's dated 15 February 2017. In this letter, similar arguments were made by reference to the Table as were made in the document headed "Desired Outcome of Complaint to Government Ombudsman" attached to the notice of appeal (see [4] above).

22. On 22 June 2018 the Parliamentary and Health Service Ombudsman wrote to Mr Rapley saying that they had completed their consideration of his complaint; they said that because his complaint would be better dealt with by the court, they would not consider it further and would take no further action. Under "Reasons for our decision", the letter said:

> "By law, we cannot investigate your complaint if it is or was reasonable for you to take legal action in order to resolve it. You can potentially seek judicial review to allow your company to claim VAT back and can appeal to the tribunal if you are not happy with the decision to cancel your VAT registration. You had the right of appeal via a tribunal for the decision to [de]register you on 23 September 2015 but did not do so. HMRC also told you of your right to appeal the deregistration decision on 23 September 2015 and the time limit for this action.
>
> As the VAT decision itself is appealable, you should have taken this route at the time (or take it now, out of time, should you obtain permission to do so). This will address the main issue and outcome you are seeking.
>
> We understand that this may not address all of your concerns (whether you should be able to register or reclaim VAT) but we would still consider it is appropriate for you to take legal action in order to resolve your complaint at this time and it will be for the court to decide how far it goes in terms of addressing all of your issues.
>
> Once the legal route is exhausted you can ask us to consider any matters or outcomes that the court could not have considered. There is no guarantee we will investigate, but we will look at it again should you return to us. If you decide to return to us, you should do so as soon as court action is completed, due to our time limit."

23. On 28 December 2018 Mr Rapley sent a letter headed "Complaint" to Mr Wragg at HMRC. After referring to a letter from Mr Wragg to Mr Rapley received on 27 December 2018, the letter opened as follows:

> "I am afraid this matter remains in dispute. I have been advised by the Ombudsman that this matter is best dealt with in court. I have also been advised by the Ombudsman as follows: that it is reasonable for me to take legal action to resolve this issue; that I could apply for Judicial Review to reclaim all VAT on my expenditure, and that I could appeal to the tribunal and I also had the right to appeal the deregistration decision by HMRC. I chose neither of these avenues simply because I wanted to, and thought we could, resolve this issue simply and quickly and without protracted discourse and complexity. Clearly, we are not in that position."

24. The letter then made similar arguments by reference to the Table as were made in the document headed "Desired Outcome of Complaint to Government Ombudsman" attached to the notice of appeal (see [4] above).

25. On 28 March 2019, HMRC Debt Enforcement wrote to the appellant company under the heading, "Warning of winding up action". It said the appellant company had a debt to HMRC of £88,452.40; and that if the appellant company did not pay or phone HMRC by 26 April 2019, HMRC would apply for a winding up order against the company.

26. In letters dated 4 and 29 April 2019 the chief executive and permanent secretary of HMRC wrote to Mr Rapley's MP, responding to the MP's letter about HMRC's decision to cancel the appellant company's VAT registration. The letters said that HMRC had exhausted their complaints process; that if Mr Rapley was still unhappy he should appeal to the Tribunal

(and as the deadline had passed, he would have to explain why the appeal was late); and that after he had appealed, Mr Rapley could ask the Ombudsman to look at his case.

SUMMARY OF RELEVANT LAW

27. References in what follows to sections (or "s") or schedules are to sections and schedules of Value Added Tax Act 1994 (the "**Act**").

Taxable and exempt supplies

28. A taxable supply is a supply of goods or services in the UK other than an exempt supply (s4).

29. The supply by a state-regulated private welfare institution (or by a charity or a public body, including a local authority) of welfare services and goods supplied in connection with those welfare services, is exempt. "Welfare services" includes services which are directly connected with the care or protection of children and young persons and, in the case of services supplied by a state-regulated private welfare institution, includes only those services in respect of which the institution is so regulated (Schedule 9 Group 7 item 9 and note (5)).

Taxable persons and input tax

30. A taxable person is someone who is or is required to be registered under the Act. Such persons are entitled at the end of each prescribed accounting person to so much of their input tax as is attributable to (inter alia) taxable supplies. "Input tax" means (inter alia) VAT on the supply to him of any goods or services. Such deduction of input tax shall not be made except on a claim made in such manner and at such time as may be determined under regulations. (ss24-26 in broad outline). Claims for input tax are generally made on VAT returns (regulation 29 VAT Regulations 1995).

Registration and cancellation of registration

31. Persons become liable to be registered where the value of their taxable supplies exceed certain minimum thresholds, either over the past year or, prospectively, in the next 30 days (paragraph 1 Schedule 1).

32. A person who is not liable to be registered may be registered if the person satisfies HMRC that he makes taxable supplies or is carrying on a business and intends to make taxable supplies in the course of that business (paragraph 9 Schedule 1). If such a person ceases to make taxable supplies or to have the intention of making taxable supplies, he must notify HMRC within 30 days (paragraph 11 Schedule 1).

33. Where HMRC are satisfied that a registered person has ceased to be so registrable, they may cancel his registration with effect from the day on which he has so ceased or from such later date as may be agreed between him and them (but not if the person is, at that time, subject to a requirement, or entitled, to be registered) (paragraph 13(2) and (5) Schedule 1).

Refunds of VAT in certain cases

34. Where VAT is chargeable on the supply of goods or services to certain bodies (including local authorities), and the supply is not for the purpose of any business carried on by the body, HMRC shall, on a claim made by the body in such form and manner as HMRC determine, refund to it the amount of VAT so chargeable (s33).

Appeals to the Tribunal

35. An appeal lies to the Tribunal in respect of certain matters, which include:

(1) the registration or cancellation of registration of any person under the Act (s83(1)(a));

(2) the amount of any input tax which may be credited to a person (s83(1)(c));

(3) certain assessments in respect of a period for which the appellant has made a return under the Act (s83(1)(p)(i)).

36. An appeal is to be made to the Tribunal before the end of the period of 30 days beginning with the date of the document notifying the decision to which the appeal relates (where no review of the decision was offered or required). An appeal may be made after the end of this period if the Tribunal gives permission to do so. (Section 83G).

PARTIES' ARGUMENTS IN BRIEF

37. In his witness statement Mr Rapley argued that the use of HMRC's proprietary online registration tool combined with HMRC's registration of the appellant company (and admitting it to the annual accounting scheme) gave rise to reasonable expectation.

38. He also said it was unjust that industry specific suppliers, such as employment agencies concerned with the supply of care staff, as well as the local authorities that the appellant company serves, should be enabled to charge and/or reclaim VAT, whilst the appellant company is not.

39. He said he was of the belief that HMRC's decision to de-register the appellant company for VAT was inequitable and should be reversed.

40. The appellant company submitted that 'legitimate expectation' was a relevant consideration in this appeal because the cancellation of the appellant company's registration in September 2015 was "enforcement action" on the part of a public body (HMRC); and a recent Upper Tribunal decision (*KSM Henryk Zeman SP Z.o.o. v HMRC* [2021] UKUT 0182 (TCC)) found that taxpayers are entitled to defend themselves by challenging the validity of an "enforcement decision" on public law grounds (unless the statutory regime excludes that entitlement).

41. HMRC maintained that the appellant company's registration had been correctly cancelled in September 2015, as it made exempt supplies.

Late appeal issue

42. The reason given in the notice of appeal for the delay in appealing was that the appellant company did not wish to litigate as regards HMRC's decision to cancel its VAT registration; but rather wished to pursue a complaint with the Adjudicator and Ombudsman.

43. The appellant company submitted that its failure to file a timely appeal was countered by its taking continued steps to bring matters to an efficient and effective conclusion: it submitted that Mr Rapley had been in continued contact with HMRC, his MP and the Ombudsman concerning HMRC's decision to cancel the appellant company's registration in September 2015. It cited the passage from Mr Rapley's letter to HMRC of 28 December 2018 at [23] above. It said it would be inequitable to refuse permission for the late appeal, as Mr Rapley acted in good faith prior to the appellant company notifying the appeal; and permitting the late appeal would not prejudice, and was not objected to by, HMRC.

44. HMRC did not object to the Tribunal permitting the late appeal.

DISCUSSION

Subject matter of the appeal and Tribunal's jurisdiction

45. The Tribunal clearly has jurisdiction in this case insofar as it is an appeal against HMRC's decision to cancel the appellant company's VAT registration in September 2015 (and, indeed, at the hearing, Mr Monk confirmed that this was the (sole) subject matter of the appeal).

46. Some of the arguments raised by Mr Rapley in his witness statement and in correspondence suggested, possibly, a broader appeal e.g. against the appellant company not being treated as a local authority would in respect of its non-business activity (i.e. entitlement

to a refund of VAT under s33); or against the appellant company not being able to deduct its input tax, as persons making taxable supplies are able to do.

47. For the avoidance of doubt, the Tribunal considers that these are not matters found in s83 and consequently the Tribunal has no jurisdiction in respect of them. (There is a jurisdiction in respect of appeals regarding the amount of any input tax which may be credited to a person, but the appellant company never made any VAT returns and so never claimed any input tax deductions (unsurprisingly, we may add, as it was making exempt supplies), and so this jurisdiction is not engaged on the facts of this case).

48. In addition, the notice of appeal said the appeal was about HMRC's claim that the appellant company owed them £88,000. Again, for the avoidance of debt, the Tribunal considers it has no jurisdiction in this regard, as no evidence of an assessment was produced to the Tribunal in respect of which it might have jurisdiction under s83(1)(p)(i) (and even if there was such evidence, the Tribunal would have no jurisdiction, as the appellant company made no VAT returns).

Late appeal

49. As the appeal against the decision to cancel the appellant company's VAT registration was late, we must carry out the three-stage process set out in *Martland v HMRC* [2018] UKUT 178 (TCC) at [44] in order to decide whether to give permission under s84G(6).

Stage 1: establish length of delay

50. The appeal should have been made to the Tribunal by 16 October 2015 (30 days after HMRC's letter of 16 September 2015 notifying the appellant company of their decision to cancel its VAT registration). In fact it was received by the Tribunal on 9 May 2019. The appeal was therefore just over 3½ years late. This is clearly a significant and serious delay.

Stage 2: the reason(s) why the default occurred

51. We find that

(1) the reason for the delay in appealing was that, for a prolonged period following the cancellation of its VAT registration, the appellant company did not wish to appeal the matter to the tribunal. It chose the alternative route of a complaint to the Ombudsman; and even when, in June 2018, the Ombudsman concluded their review, and said that they considered it appropriate for Mr Rapley to take legal action in order to resolve his complaint, the appellant company did not lodge an appeal. Rather, about six months later, at the end of 2018, it was engaged in further "complaint" correspondence with HMRC on the matter.

(2) the appellant company only changed its mind about lodging an appeal when it received the "winding up warning" letter from HMRC in late March 2019 – threatening to wind up the appellant company in pursuit of a debt of just over £88,000 (an entirely different matter from the cancellation of the appellant company's VAT registration in September 2015). It was around this time that Mr Rapley's MP contacted the chief executive and permanent secretary of HMRC, who advised (in April 2019) (in effect, summarising the Ombudsman's letter of June 2018) that if Mr Rapley was still unhappy he should appeal to the Tribunal; the appellant company lodged its appeal very shortly afterwards.

Stage 3: Evaluation of all the circumstances of the case

52. This stage involves a balancing exercise, essentially assessing the merits of the reason(s) given for the delay and the prejudice which would be caused to both parties by giving or refusing permission for the late appeal. The balancing exercise should take into account the

particular importance of the need for litigation to be conducted efficiently and at proportionate cost, and for statutory time limits to be respected.

53. We note that the Upper Tribunal in *Martland* said this at [47]:

> "Shortage of funds (and consequent inability to instruct a professional adviser) should not, of itself, generally carry any weight in the FTT's consideration of the reasonableness of the applicant's explanation of the delay: see the comments of Moore- Bick LJ in *Hysaj* referred to at [15(2)] above. Nor should the fact that the applicant is self-represented – Moore-Bick LJ went on to say (at [44]) that "being a litigant in person with no previous experience of legal proceedings is not a good reason for failing to comply with the rules"; HMRC's appealable decisions generally include a statement of the relevant appeal rights in reasonably plain English and it is not a complicated process to notify an appeal to the FTT, even for a litigant in person."

54. The reasons for the appellant company's delay in this case are, in our view, weak. Essentially, the appellant company decided not to appeal to the Tribunal, but changed its mind after 3½ years, belatedly following advice given to it by the Ombudsman nearly a year earlier. The spur to its change of tack was HMRC's winding up warning in respect of a debt of just over £88,000 – but that debt was not the subject matter of the appeal in respect of which the Tribunal has jurisdiction (the appeal against the cancellation the appellant's VAT registration in September 2015) – hence, there is, in our view, no good reason for the lengthy delay in appealing.

55. We note that no letter from HMRC telling the appellant company about its appeal rights at the time of their cancellation decision has been produced in evidence (the letter from the Ombudsman in June 2018 says there was such a letter, dated 23 September 2015, but we do not have a copy in the evidence); however, given the delay of almost a year after it received advice from the Ombudsman to lodge an appeal in June 2018, we are not persuaded that, even had HMRC written to the appellant company about its appeal rights in September 2015, it would have appealed any earlier.

56. Turning now to questions of prejudice,

(1) we infer from the fact that HMRC does not object to the Tribunal giving permission for the late appeal, that there would be little material prejudice to them in our taking that course;

(2) the prejudice to the appellant company of our refusing permission would, of course, be that the appeal would fail. However, we would not put a great deal of weight on such prejudice, since

(a) it is unclear to us what the benefit would be to the appellant company even if the appeal succeeded: continued registration of the appellant company after 16 September 2015 would make no difference to the exempt nature of the services supplied by the children's home (which was not in dispute); and so, even if the appellant company had continued to be registered after 16 September 2015, input tax attributable to those children's home services would be non-deductible; and

(b) without descending into a detailed analysis of the merits of the appeal (at this stage of the discussion), it seems to us there is an obvious weakness to the appellant company's case – that it had a reasonable expectation that its VAT registration would not be cancelled - namely, the exempt nature of the services supplied by the children's home, combined with its statement on form VAT1 in September 2013 that it would be making taxable supplies: these facts (neither of which was in dispute) support an initial general impression that the appeal is weak.

57. Although we take into account, as a relevant circumstance, that HMRC do not object to our giving permission for a late appeal in this case (and have, as a result, assumed no material prejudice to HMRC of our giving permission for the late appeal), we do not regard this as a decisive, or even especially weighty, factor: statutory time limits are set down by Parliament for the good of court and tribunal users as a whole – they are not automatically 'suspended' by the agreement of the litigants in a particular case; and respecting statutory time limits is to be accorded particular importance in the weighing up exercise.

Conclusion on giving permission for late appeal

58. The balance is in our view swayed by the particular importance of respecting statutory time limits together with the absence of good reasons for the very long delay in this case. We therefore do not give permission for this late appeal. This clearly disposes of the appeal. However, because we heard the case in its entirety (on the basis that we might have decided to give permission for the late appeal, and to avoid the delay and expense of an adjournment), we shall go on to explain the decision we would have made had we given permission for the late appeal.

Decision we would have made if we had given permission for the late appeal

59. HMRC have power to cancel a person's VAT registration where they are satisfied that the person is no longer registrable. We note that this is a power rather than an obligation.

60. It is clear on the facts here that the appellant company

(1) was originally registrable, in November 2013, because it put on form VAT1 that it intended to make taxable supplies in the course of its business; but

(2) in fact its supplies of services were OFSTED-regulated and directly connected with the care or protection of children – and so, by reason of item 9 Group 7 Schedule 9, exempt supplies.

These facts mean that the HMRC were justified in being satisfied, in September 2015, that the appellant company was no longer registrable; and so they had the power to cancel the appellant company's VAT registration, at the time they did so.

61. The question raised by the appellant company's arguments in this appeal is – should HMRC have declined to exercise that power, on the grounds that their actions, in registering the appellant company from November 2013, had given the appellant company a 'reasonable expectation' that its VAT registration would not be cancelled, so long as it ran a children's home? In our view that facts do not support this proposition:

(1) on its form VAT1, filed electronically at the end of October 2013, the appellant company both said its business was a children's home (non-charitable), and that it intended to make taxable supplies; these statements were not necessarily contradictory - it could have been that some of the appellant company's supplies would fall outside the welfare exemption;

(2) thus, through the form VAT1, the appellant company had told HMRC that it intended to make taxable supplies; it was registered by HMRC on this basis; the appellant company could not, in our view, have had a reasonable expectation of remaining registered if this information changed (i.e. if it came to light that the appellant company was not making, and had no intention of making, taxable supplies);

(3) during the conversation with an HMRC helpline adviser in June 2012, the appellant company was told that its children's home's supplies would be exempt and therefore it would not register for VAT.

62. The availability of VAT refunds to local authorities in respect to non-business activities (s33) has no bearing, in our view, on the correctness of HMRC's decision to use their power to cancel the appellant company's registration: we find no compelling analogy between a local authority's non-business activity, and the appellant company, a private company carrying on a business; more fundamentally, the decision to cancel registration did not (unlike s33) relate directly to deduction, or refund, of input tax – even if HMRC hadn't cancelled the appellant company's VAT registration, it would have been unable to deduct input tax because its supplies were only exempt.

63. For completeness, we agree with the appellant company that the Table did not apply to it: the Table was an extract from HMRC manuals addressing the position of local authorities, which clearly did not apply to the appellant company.

64. We conclude that there is nothing to impugn HMRC's decision to use their powers to cancel the appellant company's VAT registration in September 2015; and so, had we given permission for the late appeal, we would have dismissed the appeal.

DISPOSAL OF THE APPEAL

65. Permission to bring the appeal is refused in accordance with the conclusion reached at [58] above.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

66. 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.

ZACHARY CITRON
TRIBUNAL JUDGE

Release date: 05 JANUARY 2022

VAT Government and Public Bodies
Other local authority activities: childcare and welfare: VAT status of childcare services (M to R)

Service	Statute	Duty of Local Authority	VAT status
Maintenance of children on remand	Children Act 1989 section 21	'Shall' provide accommodation for children in police protection, detention or on remand.	Non-business.
	National Assistance Act 1948 section 21	To provide residential accommodation for persons in need of care and attention which is not otherwise available to them.	Non-business.
	Children (Scotland) Act 1995 sections 52 to 72	To provide measures of supervision where a child has committed an offence (as well as a number of other relevant circumstances).	Non-business.
	National Assistance Act 1948 section 22	Can seek parental contribution towards cost.	Non-business.

Service	Statute	Duty of Local Authority	VAT status
Provision of temporary board and lodgings to prospective adoptive parents and children	Adoption Act 1976 section 1(2)(a) Adoption Act (Scotland) 1978 section 1(2)(a)	To provide.	Non-business.
Registration of children's homes	Children's Act 1989 section 63 and Schedule 6 Social Work (Scotland) Act 1968 section 62	Appears to be a duty to register.	Non-business.
Residential (children and young people provision of accommodation and maintenance of children taken into care by a care order)	Children Act 1989 section 20 (onwards)	To provide accommodation for any child in need in their areas where nobody else has, or is able to assume, that responsibility.	Non-business.
	Children Act 1989 section 23	To provide accommodation to children in care.	Non-business.
	Children (Scotland) Act 1995 section 25	General accommodation provision.	Non-business.