



Neutral Citation: [2023] UKFTT 784 (TC)

Case Number: TC08937

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2021/02184

*VAT – services of repatriation of bodies – whether exempt as services in connection with the disposal of the remains of the dead - whether a supply of transport services*

**Heard on:** 31 October 2022 & 27 June 2023

**Judgment date:** 20 September 2023

**Before**

**TRIBUNAL JUDGE MCGREGOR  
IAN MALCOLM**

**Between**

**UK FUNERALS ON-LINE LIMITED**

**Appellant**

**and**

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

**Respondents**

**Representation:**

For the Appellant: Steven Mears, Managing Director of UK Funerals On-Line Limited  
and, at the second hearing only, Mr Duggan of Edwards Tax

For the Respondents: Ms Sharon Hancox, litigator of HM Revenue and Customs’ Solicitor’s  
Office

## DECISION

### INTRODUCTION

1. With the consent of the parties, the form of the hearing was V (video) on the Tribunal video hearing system. A face-to-face hearing was not held because a remote hearing was appropriate. The documents to which we were referred at the first hearing were a bundle of 196 pages containing both documents and authorities. For the second hearing, we had a supplementary bundle of 115 pages, containing written submissions, evidence and authorities.
2. 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.
3. This appeal relates to the VAT treatment of services provided by the Appellants of repatriating the remains of deceased persons. We are making a decision in principle as to the correct treatment of the services provided, not addressing the specific amounts of VAT charged or recoverable in any given period.
4. The first hearing was held on 31 October 2022. Following that hearing, written submissions were requested by the Tribunal. One receipt of those written submissions, we decided that a second hearing was necessary to deal with those submissions properly. This second hearing was held on 27 June 2023.

### ATTENDANCE AT THE SECOND HEARING

5. There was no representative from HMRC present at the start of the second hearing. We adjourned the hearing in order to try to get hold of the officer listed, Ms Hancox, by both telephone and email but had no success.
6. We confirmed that Ms Hancox had been sent notice of the hearing, including the start time at 10 am. There had been an outage on the usual Tribunal Video platform that morning, so the hearing had been switched at last minute to CVP. We confirmed that this notification had also been sent to Ms Hancox at 7.40 am on the day of the hearing.
7. On that basis, particularly given this was already a second hearing in this case and because we had the benefit of HMRC's written submissions, we decided that it was in the interests of justice, in accordance with Rule 33 of the Tribunal Procedure Rules, to proceed with the hearing in HMRC's absence.
8. After the hearing had completed, the Tribunal received an email from an HMRC officer, Pembe Ramadan, extending her apologies and explaining that:
  - (1) She had been expecting to attend the hearing in Ms Hancox's place;
  - (2) She had made a mistake and thought it was an afternoon hearing;
  - (3) As soon as she discovered her mistake, she had tried to log into the hearing, but it was completed.
9. Nothing in this correspondence altered our decision to proceed with the hearing in HMRC's absence. The correspondence confirmed that the notification of the move to CVP had been sent by email to Pembe Ramadan at 9:16 am and included both the name of the hearing and the words "Super Urgent" in the heading. Further, HMRC was under an obligation, set out in the directions, to notify the Tribunal of any change of attendees for the hearing. This was not done. If HMRC had complied with that obligation, the Tribunal may have been able to contact the relevant person in an appropriate time frame.

## LAW

10. Section 31 of Value Added Tax Act 1994 (VATA 1994) provides that a supply of goods or services is an exempt supply if it is of a description specified in Schedule 9.
11. Group 8 of Schedule 9 to the VATA 1994 includes two items:
  - (1) The disposal of the remains of the dead.
  - (2) The making of arrangements for or in connection with the disposal of the remains of the dead.
12. Section 30(2) of VATA 1994 provides for the zero rating of supplies that fall within a description set out in Schedule 8 to VATA 1994.
13. Group 8 of Schedule 8 to VATA 1994 includes:
  - (1) Item 5: The transport of goods from a place within to a place outside the United Kingdom or vice versa, to the extent that those services are supplied within the United Kingdom.
  - (2) Item 10: The making of arrangements for—
    - (a) the supply of, or of space in, any ship or aircraft;
    - (b) the supply of any service included in items 1 and 2, 3 to 9 and 11; or
    - (c) the supply of any goods of a description falling within items 2A or 2B, or paragraph (d) of item 3.
  - (3) Item 11: The supply—
    - (a) of services consisting of
      - (i) the transport of goods to or from a place—
        - (A) from which they are to be exported, or
        - (B) to which they have been imported,
      - (ii) the handling or storage of those goods at that place, or
      - (iii) the handling or storage of those goods in connection with their transport to or from that place,

## FACTS

14. The facts of this case were not controversial or in dispute. We heard from Mr Mears as to what the international transport regulations require on transport of bodies. HMRC did not dispute any of these statements and therefore we adopt them as facts found.
15. UK Funerals On-line Limited (UKFO), trading as Mears Repatriation, provide services of repatriation of the bodies of deceased persons.
16. The majority of the services supplied entail repatriation services provided from the UK to other countries, i.e. where a person has died within the UK and the family of the deceased wish to transfer the body to another country before the body is ultimately laid to rest in that other country.
17. UKFO also provides services of repatriating bodies of persons who have died overseas, to transport their bodies to the UK, but this is a much smaller part of their business.
18. UKFO's customer in conducting its business is almost always the next of kin of the deceased.

19. Mr Mears described a typical arrangement (relating to a death in the UK) as follows:
- (1) The next of kin telephones to inform UKFO that a person has died and that they wish to appoint UKFO to repatriate the body;
  - (2) UKFO arranges for an “out of England” form to be granted from the coroner, which gives UKFO the permission to transport the body, but does not give permission for a burial or cremation to take place in the UK;
  - (3) UKFO transports the body to its unit, which is on an industrial estate in the South East of England;
  - (4) The body is prepared for transport, which requires:
    - (a) a specific type of embalming in order to comply with international transport regulations; and
    - (b) limited dressing – no shoes are allowed and nothing else may be included in the casket, again in order to comply with transport regulations;
  - (5) The body is moved to a coffin or casket for transport and the coffin or casket is sealed. The type of coffin or casket is at the customer’s request. All international transport of bodies must take place in a zinc-lined container, but whether that container is a standard, basic crate or a more elaborate casket is a choice of the customer;
  - (6) UKFO obtains a “freedom from infection” certificate, which is, again, a requirement of international transport regulations;
  - (7) UKFO arranges the flight through a shipping agent;
  - (8) UKFO provides the airline with the name and contact details of the “Consignee”, being the person who will take responsibility for the body on arrival in the other country;
  - (9) The airline seeks confirmation from the Consignee and will only take delivery of the body once they are in receipt of an “OK to forward” confirmation from the Consignee;
  - (10) UKFO delivers the body in the coffin/crate/casket to the airport;
  - (11) Once the body has cleared the x-ray at the airport, UKFO cease to have any further involvement with that body.
20. Other findings of fact are:
- (1) The zinc-linings of all the coffins/containers/caskets were removable;
  - (2) Zinc-lined coffins/containers/caskets are not suitable for cremation or burial;
  - (3) Customers of UKFO usually came to UKFO through either an online search or through word of mouth, since there are only 3 or 4 businesses in the UK who offer this service; and
  - (4) Occasionally, a customer will request a viewing before the transportation takes place, in which case the body is moved to a more appropriate location, such as a chapel of rest, before the transport, but this is very rare.

#### **PARTIES' ARGUMENTS**

##### ***Appellant's submissions***

21. The Appellant submits that it is not providing funeral services but rather specialist transport services and that this should be zero-rated and not exempt.

22. Mr Mears submitted that they simply transport the bodies and have no involvement in the funeral arrangements that go on after the body has left their control.
23. The body may or may not be removed from the coffin/crate/casket it is transported in and may be buried, cremated or disposed of in whatever way is decided in the country of destination. The Appellant does not know what happens to the body after it has left their control and is not responsible for it once it goes onto the airline.
24. The embalming that they perform is a very specific type of embalming that is only required for international transport and is not the same as the embalming that would be performed in the context of a domestic funeral.
25. Their specialism is in arranging repatriations of bodies and this is a specialist type of transport provision, in the same way that transporting of live animals is performed by specialist transporters. The law prevents the transport of human remains by means of any standard postal or courier service and UKFO, amongst a few others, performs this specialist transport service.
26. Mr Mears stated that everything that they do is to enable the body to be transported out of the country and that the purpose of customers approaching UKFO is to get the deceased body to the chosen country, not to complete a funeral.
27. Mr Duggan submitted that the overarching supply being made by UKFO is a zero-rated supply of goods out of the UK, under item 5(b) of Group 8 of Schedule 8 to the VAT Act 1994.
28. Human remains are treated as “goods” rather than passengers. Mr Mears submitted an airway bill that showed that the airlines treat human remains as cargo.
29. UKFO submitted that, if the services fall within both the exemption and the zero-rating, UKFO would choose to treat the services as zero-rated, following the principles set out in E-Zec [2022] UKFTT 302.
30. Mr Mears also made a number of comments regarding what he perceived as the poor treatment of UKFO, in particular the fact that they had had at least two previous VAT compliance visits after which their zero-rating of their services were not challenged and he felt that it was now unfair for HMRC to change their mind when there had been no change in the law and no change in the services he had supplied.
31. He submitted that it was disgusting that HMRC are now blaming them for adopting the VAT treatment that HMRC had themselves agreed to on previous visits.

### ***HMRC submissions***

32. Ms Hancox, for HMRC submits that the services being undertaken by UKFO fall squarely into the exemption in item 2 of Group 8 of Schedule 9 to the Value Added Tax Act 1994 (VATA 1994):

“The making of arrangements for or in connection with the disposal of the remains of the dead”

33. The words “in connection with” expressly widen the services that are treated as falling within the scope of Item 2.
34. The services being provided by UKFO are services that are usually included in a funeral supply, including a coffin, embalming and the use of a chapel of rest.
35. The choice of coffin or casket, which included options from the basic £550 up to caskets worth over £21,000 are more than simply crates for transport.
36. The zinc-lining, while included to conform to transport regulations, is fully removable and so does not alter the nature of the supply.

37. The embalming service is a specialist service that is not part of a normal transport service and is a service usually provided by undertakers.

38. She also pointed us to VAT Notice 701/32, which sets out HMRC's view of the scope of the VAT exemption and its application to repatriation services. It says:

“7.2 Repatriation packages supplied by undertakers

If you are an undertaker or business that specialises in repatriation and you supply a repatriation package consisting of goods and services that are normally provided by undertakers, your supply will be exempt from VAT to the extent that it consists of the supply of:

- goods and services covered by paragraphs 3.1 and 3.2 (for example, coffin, embalming, use of chapel of rest)
- services of obtaining documents and permits necessary to repatriate the deceased
- transportation of the deceased to burial ground, crematorium or to another undertaker”

39. She relied on a decision of the High Court in *Network Insurance Brokers v HM Customs and Excise Commissioners* [1998] STC 742 as support for the submission that the concept of “in connection with” was wider than just providing funeral services.

40. With regards to the application of the zero-rating provisions, HMRC submitted that:

(1) It is not disputed that the services provided to UKFO by the airline is treated as the transportation of goods in the course of exportation;

(2) UKFO does not supply air transport to its customers but the service the Appellant provides includes the arrangement of air transportation of the remains of the dead. This element forms only part of the overarching supply of repatriation services made by the Appellant.

(3) Prior to the transportation of the remains by air the services provided by the Appellant include:

- (a) provision of coffins/caskets;
- (b) international embalming and use of care facilities;
- (c) preparation of documentation and liaison with appropriate authorities;
- (d) supervising and conducting the repatriation arrangements;
- (e) transfer of the coffin/casket to the airport;

(4) These services do not fall into the zero-rating for transport of goods or passengers outside of the UK.

(5) The entire service provided by the Appellant is an exempt supply as per the VAT Act 1994, Schedule 9, Group 9, Item 2 which exempts ‘making arrangements for or in connection with the disposal of the remains of the dead’.

41. The Respondents accept that if the supply is determined by the Tribunal as qualifying as both zero-rated and exempt the Appellant can choose to treat the supplies as zero-rated.

## DISCUSSION

### *Scope of the appeal*

42. As we explained to Mr Mears at the hearing, this Tribunal is a creature of statute and our powers are to hear the appeals that are set out in statute. In this case, that power derives from section 83(1)(b) of VATA 1994, which sets out that an appeal lies to this Tribunal on the VAT chargeable on the supply of any goods or services.

43. HMRC has made a decision that no VAT should be chargeable on the supplies of repatriation services made by UKFO on the basis that the supplies are exempt. UKFO has appealed against that decision, arguing instead that the supplies are zero-rated.

44. The scope of the appeal is therefore whether the supplies are exempt or zero-rated within the law.

45. Although we have sympathy with UKFO, who appear to have sought to comply with the law as they understood HMRC to interpret it based on previous VAT inspections, we do not have any power to deal with complaints against HMRC or the fact that HMRC may in the past have agreed or accepted that the supplies were zero-rated.

### *Exemption*

46. We reviewed *Network Insurance* relied upon by HMRC concerning the construction of Item 2 of Group 8 and set out short details of the facts and what we consider is the ratio of the case.

47. Network Insurance Brokers Limited was a registered insurance broker and acted on behalf of a hospital fund which provided funeral benefits for its members. Network Insurance Brokers Limited argued that it was providing services in connection with funerals and its services should therefore be exempt. Moses J in the High Court decision considered that:

“Item 1 refers to the process of burial or cremation. Item 2 refers to arrangements for burial or cremation. That is an arrangement usually made by an undertaker or funeral director. The words 'in connection with' are clearly words of extension. They are designed to widen the services within the exemption beyond the mere disposal of the body or arrangements for that disposal. Such services would include arrangements made not merely to achieve the objective of disposal but also arrangements which are in connection with the disposal, for example, the provision of a chapel of rest, provision of transport for mourners and many other incidents of funeral arrangements. Interpreted in that way, the United Kingdom exemption is consistent with the directive. The only inconsistency would be a requirement that the supplier is in fact an undertaker. But if the United Kingdom exemption is construed as referring to services such as are provided by an undertaker, it has the merit not only of consistency but also of giving full effect to the words 'for and in connection with'.”

48. Moses J concluded that the approach to adopt was to consider the type of services that might be provided by an undertaker. He said:

“However, the services supplied must be arrangements for the disposal of the remains of the dead or arrangements in connection with such disposal. It is important to focus on the words 'disposal of the remains of the dead'. Arrangements which directly lead to the result which the making of those arrangements seeks to achieve, namely the disposal of the remains of the dead, are arrangements for such disposal. Arrangements that do not lead directly to that result but are arrangements made in connection with that result, namely the disposal of the remains of the dead, are also exempt.”

49. Ultimately, he found that the services provided by Network Insurance Brokers Limited were not exempt:

“The services failed to qualify for exemption not because they were made in advance, not because they do not relate to specific funerals, but because they do not lead to the particular result that the exemption refers to and are not in connection with that result. They are ... a stage removed. They are arrangements made for the arrangements to which the exemption refers.”

50. In interpreting Item 2 of Group 8 of Schedule 9, we must adopt the approach taken by Moses J in *Network Insurance* and consider whether the services supplied by UKFO lead directly to the disposal of remains of the dead or are a step removed and are connected with arrangements for the disposal of the remains of the dead.

51. The services provided by UKFO clearly involve the “remains of the dead”. The activities undertaken all related to the processing, treatment and transporting of a body. The question therefore, is whether those activities are sufficiently closely connected to the disposal of those remains as to fall within the exemption; or whether the fact that UKFO is not involved in the actual disposal of the remains and is only involved in transportation is sufficient to conclude that the services are not connected with arrangements for the disposal of the remains of the dead.

52. It is clear from the decision in *Network Insurance* that there is a point on the line where the connection to the disposal of the remains of the dead ceases to be close enough. It is also clear, in our view, that repatriation services are very much closer to the disposal of the remains of the dead than an insurance plan.

53. Each time UKFO is engaged, there is a specific deceased person and the reason for engaging UKFO is ultimately to lead to the disposal of the remains of that person. UKFO is not the only person involved in the arrangements for the disposal of the remains since the Consignee at the airline destination and invariably additional funeral directors in that country will also be involved.

54. Moses J focused on the “result” of the exemption. With this guiding principle, we conclude that the repatriation services are made in connection with arrangements for the disposal of the remains of the dead and therefore fall within Item 2 of Group 8 of Schedule 9 to VATA 1994.

### ***Zero-rating***

55. However, that is not the end of the appeal. If services fall within the definition of both a zero-rated service and an exempt service, following section 30(1) of VATA 1994, the zero-rating provision will prevail.

56. As correctly identified by HMRC, there are a number of different elements of what UKFO does and these elements have potentially different VAT treatments. At one end of the scale, the services that are specific to disposing of the remains of the dead would, without more, fall to be treated as exempt, and at the other, services closely related to transport would, without more, fall to be treated as zero-rated.

57. There have been a number of cases where this question has been considered. Included in the authorities bundle were 4 relevant cases. The most recent was *Gray & Farrar International LLP v HMRC* [2023] EWCA 121.

58. Lady Justice Simler, giving the unanimous judgment of the Court of Appeal decided, at paragraph 47 of its decision that:



“In *Mesto* the CJEU gave authoritative guidance on the test for deciding how a single complex supply must be categorised for VAT purposes. The language used by the CJEU in setting out this test is mandatory. Where it is possible to do so, the predominant element must be determined. This is the primary test to be applied for this purpose.”

59. She also went on to approve the following statement of the Upper Tribunal from *MIS*:

(1) The *Mesto* predominance test should be the primary test to be applied in characterising a supply for VAT purposes.

(2) The principal/ancillary test is an available, though not the primary, test. It is only capable of being applied in cases where it is possible to identify a principal element to which all the other elements are minor or ancillary. In cases where it can apply, it is likely to yield the same results as the predominance test.

(3) The “overarching” test is not clearly established in the ECJ jurisprudence, but as a consideration the point should at least be taken into account in deciding averments of predominance in relation to individual elements, and may well be a useful test in its own right.

60. The *Mesto* test being referred to is from *Mesto Zamberk Finanční reditelství v Hradci Králové* (Case C-18/12) [2014] STC 1703, where the CJEU found (paragraph 30):

“It follows from the case-law of the Court that the predominant element must be determined from the point of view of the typical consumer (see, to that effect, in particular, *Levob Verzekeringen and OV Bank*, paragraph 22, and Case C-276/09 *Everything Everywhere* [2010] ECR I-12359, paragraph 26) and having regard, in an overall assessment, to the qualitative and not merely quantitative importance of the elements falling within the exemption provided for under Article 132(1)(m) of the VAT Directive in relation to those not falling within that exemption (see, to that effect, *Bog and Others*, paragraph 62).”

61. The objective factors that were taken into account in *Mesto* were factors such as whether the design of the aquatic park lend themselves to swimming of a sporting nature, or essentially of a recreational nature. The CJEU also noted that an approach consisting of taking into account the intention of each visitor taken individually would be “contrary to the objectives of the VAT system of ensuring legal certainty and correct and straightforward application of the exemptions” (para 36).

62. We find that the predominant element of the supplies being made by UKFO are those of transport. When a customer approaches UKFO, it is because they want UKFO to arrange for their deceased relative to be transported to the country of choice, so that the customer can go on to arrange a funeral.

63. HMRC pointed out that the value of some of the caskets on offer were very substantial and this pointed against it being a supply of transport. This is one of the objective elements of the supply. As in *Mesto*, some of the customers would be attending the venue for purely recreational purposes, but it was not necessary or feasible to consider each customer’s intention. We must look at the typical consumer.

64. In our view, the typical consumer was looking primarily for a business that could arrange the transport of their recently deceased relative. It is true that, in some cases, the value of the supply of the casket could exceed the value of other elements of the supply; this considers only the quantitative importance, not the qualitative importance of the elements.

65. Taking both qualitative and quantitative elements into account, the predominant element of UKFO's supplies to a typical consumer of its services was one of specialist transport services, made up of:

- (1) the supply of actual transport services within item 5 of Group 8 of Schedule 8: being the collection of the body and the delivery of the body to the airport; and
- (2) the making of arrangements for the supply of transport services within item 10 of Group 8 of Schedule 8: being arranging all the documentation for the body to be transported out of the country, arranging the flight, supervising the movement of the body onto the plane.

66. Having reached that conclusion, both parties are in agreement that, in accordance with section 30(1) of VATA 1994, the zero-rating applies rather than the exemption.

**DISPOSITION**

67. For the reasons set out above, we would allow the Appellant's appeal.

**RIGHT TO APPLY FOR PERMISSION TO APPEAL**

68. 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.

**ABIGAIL MCGREGOR  
TRIBUNAL JUDGE**

**Release date: 20<sup>th</sup> September 2023**