



TC05078

Appeal number: TC/2015/01934

VAT – supply of premises for civil wedding ceremony as part of “wedding package” by hotel – single exempt supply of land or standard rated composite supply of wedding package – held — hire of licensed premises separate supply – not exempt supply of land – appeal dismissed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Blue Chip Hotels Limited

Appellant

- and -

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

TRIBUNAL: JUDGE Rachel Short

**Sitting in public at St Catherine’s House, 5 Notte Street, Plymouth on 14 March
2016**

**Mr and Mrs Redmond and Mr T Brown of Temple Tax Chambers instructed by
Mr D Brown of Dave Brown VAT Consultancy for the Appellant**

**Mrs Jane Ashworth, instructed by the General Counsel and Solicitor to HM
Revenue and Customs, for the Respondents**

DECISION

1. This is an appeal against an assessment of VAT of £54,610 on the supply of the
5 hire of a room, (“the Tamarisk Room”) in which civil wedding ceremonies were
carried out, by the Appellant, Blue Chip Hotels Limited (“Bluechip”) for the periods
09/09 to 12/12 issued on 29 August 2013.

2. The Appellant’s view is that the supply of the hire of this room licensed for civil
wedding ceremonies is an exempt supply of land under Group 1 of Schedule 9 Value
10 Added Tax Act 1994 (“VATA 1994”).

3. HMRC’s view is that this supply is (i) part of a single taxable supply of a
“Wedding Package”, comprising catering services, the hire of other rooms at the hotel
and the hire of the room in which the wedding service is carried out, which is subject
to VAT at the standard rate or (ii) part of a composite supply of which the principal
15 element is the supply of the wedding reception and therefore the whole supply is
standard rated.

4. It is worth explaining before going any further how the VAT legislation and
numerous authorities approach cases like this in which a single price is paid for
something which is described as a package of services. The starting point of the VAT
20 legislation is that a single price is paid for a single, identifiable supply, but
commercial practice is not always that straightforward, as many cases before the UK
and European courts have demonstrated.

5. In circumstances where a price is paid for something which might be viewed as
more than one supply for VAT purposes, there are at least two possible ways of
25 approaching this. One is to split the supply into component parts and treat each of
those parts as a separate supply. Another is to identify the most significant element of
the supply and treat all the other components as part of that supply.

6. The parties in this case have applied both of these approaches to the “Wedding
Package” supplied by the Appellant to its customers; the Appellant’s preferred
30 approach is that the supply of the Tamarisk Room can be treated as a separate supply,
being a component of the Wedding Package, which is a mixed supply. The
Respondents’ preferred approach is that the supply of the Tamarisk Room is part of a
single composite supply of a Wedding Package which has multiple, but no main
elements.

35 *Preliminary matters*

7. The Appellant served a bundle of additional documents comprising various
invoices issued by the Appellant late, on 9 March 2016, but the Respondents did not
objected to these documents being admitted as evidence at the Tribunal.

8. The Respondent served an additional bundle of authorities on 11 March 2016.
40 The Respondents requested costs under Rule 10 of Tribunal Procedure (First tier-
Tribunal) (Tax Chamber) Rules 2009 (“the Tribunal Rules”) for an additional £750 of
costs which it claimed had been incurred as a result of the late service of these
authorities.

9. There is no material dispute between the parties over the relevant facts in this case.

Background

10. The Appellant owns a large hotel called the Glendorgal in Newquay, Cornwall.
5 Mr and Mrs Redmond are directors of the Appellant. Like many large hotels, the Glendorgal has a licensed room, the Tamarisk Room, in which civil wedding ceremonies can be carried out.

11. Other wedding services are also offered by the Appellant, including catering, guest accommodation, car parking and the use of the hotel grounds for photographs,
10 referred to here as the Wedding Package.

12. The only activity carried out in the Tamarisk Room is the wedding ceremony itself. If customers require catering services for their wedding celebration, that takes place in the dining room, which is a separate room

13. The Glendorgal offers customers who are looking for somewhere to hold their
15 wedding a number of options:

(i) Hold the wedding ceremony only in the Tamarisk Room at the Glendorgal and hold the wedding reception and all other parts of the celebration elsewhere.

(ii) Hold the wedding ceremony in the Tamarisk Room and the wedding reception including full catering at the Glendorgal.

20 (iii) Hold the wedding ceremony at the Glendorgal with some additional catering (drinks) but not a full reception/wedding breakfast.

(iv) To hold only the wedding reception at the Glendorgal and hold the wedding ceremony elsewhere.

14. Invoices issued by the Appellant to customers who choose any of these options
25 show the charge for hiring the Tamarisk Room (referred to as the wedding room) as a separate VAT exempt item. Any other services provided are separately itemised and charged VAT at the standard rate.

15. HMRC have accepted that the supply by Glendorgal of services under option
30 (i), the use of the Tamarisk Room for the wedding ceremony only, is an exempt supply for VAT purposes and the VAT treatment of those supplies is not included in this appeal.

16. HMRC issued their assessment on 29 August 2013 charging VAT on the price
35 paid for the hire of the Tamarisk Room under options (ii) and (iii) when the Tamarisk Room was included as part of a Wedding Package including full or minimal catering. That assessment was reviewed and upheld by HMRC on 21 January 2015. The Appellant appealed to this Tribunal on 19 February 2015.

17. The onus of proof is on the Appellant to demonstrate that the assessment of 29 August 2013 is not correct to the normal civil standard of proof.

The law

18. Value Added Tax Act 1994, Schedule 9 group 1, item 1(d)

5 Group 1 – Land exempts from VAT “*The grant of any interest in or right over land or of any licence to occupy land*” subject to the exceptions listed at (a) to (n) including at (d)

“*the provision in an hotel, inn, boarding house or similar establishment of sleeping accommodation or of accommodation in rooms which are provided in conjunction with sleeping accommodation or for the purpose of the supply of catering*”

- 10 19. The EU legislation from which the UK legislation derives is the Principal Directive 2006/112 Article 135.

20. Marriages (Approved Premises) Regulations 1995

Schedule 2 – Conditions to be attached to grants of approval includes among a number of detailed conditions;

15 “*Condition 7 No food or drink may be sold or consumed in the room in which a marriage ceremony takes place for one hour prior to that ceremony or during that ceremony.*

20 *Condition 8 All marriage ceremonies must take place in a room which was identified as one to be used for the solemnisation of marriages on the plan submitted with the approved application.*

Condition 9 The room in which a marriage is solemnised must be separate from any other activity on the premises at the time of the ceremony.

Condition 12 Public access to any ceremony of marriage solemnised in approved premises must be permitted without charge”.

25 *Authorities*

21. *American Express Services Europe Ltd v Revenue & Customs Commissioners* [2010] EWHC 120 (Ch).

22. *Best Images Limited v HMRC* [2010] UKFTT 175

23. *Blendhome Ltd T/A Stanhill Court Hotel* Decision Number 16048

30 24. *Byrom, Kane & Kane Trading as SALON 24 v Commissioners of HM Revenue & Customs* [2006] EWHC 111(Ch)

25. *Card Protection Plan Ltd v Customs & Excise Commissioners* Case C-349/96.

26. *Chewton Glen Hotels Ltd v HMRC* Decision Number 20686

35 27. *Honourable Society of Middle Temple v Revenue & Customs Commissioners* [2013] UKUT 0250 (TCC)

28. *International Antiques & Collectors Fairs Limited [2015] UKFTT 354(TC)*
29. *Levob Verzekeringen BV and another v Staatssecretaris van Financien Case C-41/04.*
30. *Regie communal autonome du stade Luc Varenne Case C-55/14*
- 5 31. *Temco Europe SA Case C-284/03*
32. *Willant Trust Limited [2014] UKFTT 1083*
33. *Willerby Manor Hotels Limited Decision Number 16673*

Witness evidence

10 34. The Tribunal saw a witness statement from Mr Redmond dated 9 November 2015. Mr Redmond gave oral evidence to the Tribunal and was cross-examined by Mrs Ashworth. Mr Redmond is a Director of the Appellant, the company which owns and manages the Glendorgal Hotel. The Appellant has owned the hotel for 22 years.

15 35. Mr Redmond's witness statement provided some information about HMRC's previous dealings with the Appellant, including inspections in 2006 and 2009. According to Mr Redmond, the inspection in 2009 included a statement from HMRC that the hiring of the room for a wedding ceremony was exempt from VAT.

20 36. Mr Redmond explained the usual booking process for weddings at the Glendorgal. He said that in the first instance customers are only interested in identifying where they want to get married. Once they are happy with the Glendorgal as a wedding location, the Tamarisk Room is reserved for them and a deposit is paid. He said

25 *"I would stress that most couples are initially only looking for a place to get married. Very few have ideas about guest numbers or menus at that point..... initially the only price they have agreed is the cost of the room hire, for the wedding ceremony only and the deposit is for that room hire. If couples later decide to have the meal in the hotel restaurant then a separate price is agreed for that service."*

30 37. Mr Redmond confirmed that the only room in the Glendorgal Hotel which was licensed for wedding services was the Tamarisk Room. This room would be set up in a basic fashion with chairs and a desk for the registrar. Alcohol was not served in the Tamarisk Room, guests had to go to a different room to get drinks after the ceremony had been performed. Arrangements with and payment for the registrar were made by the bride and groom themselves.

35 38. Mr Redmond explained the pricing on some of the invoices which we were shown, for example an invoice issued in April 2012 which charged £2,200 for the hire of the Tamarisk Room. He said that there was no additional charge for the room where the wedding reception took place, but only a per head charge for the food which was provided.

39. The Tribunal asked Mr Redmond to explain the wide range of prices which were charged for the Tamarisk room, ranging from £200 to £2,200. Mr Redmond said that this price depended on what had been negotiated by the “wedding planner” employed by the Appellant and the price did not reflect any different level of service being provided. Mr Redmond accepted that the price negotiated by the wedding planner would depend on whether the customers were booking to have the reception at the hotel as well, or just booking the Tamarisk Room.

40. Mr Redmond suggested that the price for the Tamarisk Room depended on the number of guests, but accepted in response to questions from Mrs Ashworth that this might not necessarily be the case since the price for the room was usually negotiated at the first stage of the planning process, before it was known exactly how many guests would be attending.

41. Mr Redmond told the Tribunal that although some invoices referred to the Tamarisk Room as the “Tamarisk Suite” in fact there was only one wedding room.

15 *Other evidence*

Invoices – Tamarisk Room

42. We were shown a number of different invoices provided by the Appellant covering the period from April to December 2012 in which the Tamarisk Room had been provided with other wedding services, mainly catering. Each of these invoices included both the hire of the Tamarisk Room (referred to as “Wedding Room Hire”) and other services, meals, drinks and accommodation. In each case the cost of the Tamarisk Room was set out as a separate item at the head of the list of charges and was in all but one case the largest element of the total invoice, ranging from £800 to £2,200.

43. There was no obvious correlation in the invoices which we saw between the number of people attending (to whom catering was provided) and the cost of hiring the Tamarisk Room. For example an invoice dated 17 September 2012 charged £800 for the hire of the Tamarisk Room with a total of 102 meals, while an invoice of 17 April 2012 charged £2,200 for the hire of the Tamarisk Room with a total of only 45 meals.

44. We also saw a number of invoices in which the Tamarisk Room had been provided alone or with minimal catering (celebration drinks) and overnight accommodation, issued on dates from August 2009 to September 2012. The charge for the Tamarisk Room on these invoices was significantly lower, ranging from £100 to £600 but was also entered as a separate charge.

45. The Appellant did not provide written contracts to its Wedding Package customers. Mr Redmond told us that there was an oral agreement followed up with the payment of a deposit and an invoice.

Appellant’s Arguments

46. The Appellant’s position as explained by Mr Brown is that the hire of the Tamarisk Room is an exempt supply of a licence to occupy land for VAT purposes.

The Tamarisk Room should be treated as a supply which is separate from other services supplied to customers who hold their wedding at the Glendorgal Hotel.

47. If it is not possible to treat the supply of the Tamarisk Room as a separate supply, the supply made by the Appellant is a single composite supply of which the principal element is the supply of the wedding ceremony in the Tamarisk Room, which is an exempt supply. The other supplies which make up the Wedding Package are ancillary supplies.

Tamarisk Room is a separate supply

48. The guidance provided by the authorities suggests that in order for supplies to be treated as a single composite supply, the elements of the supply must be so closely linked that they form a single indivisible economic supply which it would be artificial to split, as stated in *Levob* they must be “*so closely linked that they form objectively a single indivisible economic supply that it would be artificial to split*”. The supply of the Tamarisk Room is not so closely linked that it is artificial to split it from other elements of the Wedding Package because:

(a) There is a legal requirement in the form of the Marriage Regulations, Conditions 7, 8 and 9 which stipulate that the room provided for carrying out the civil ceremony should be physically separate from the rest of the wedding activities. At the Glendorgal the Tamarisk Room is physically separate from the place where the other parts of the wedding celebration take place. No catering services or alcohol are provided in the Tamarisk Room.

(b) It is possible for customers to choose to hire the Tamarisk Room without any of the other elements of the Wedding Package. The Tamarisk Room is a commercially separate element of the Wedding Package. Here, as in the *Middle Temple* case, guests can chose different elements of the Wedding Package.

(c) The fact that a single charge is made or that services are described as a single package is not determinative, as made clear by the *American Express* decision. Customers did receive a single invoice for the Wedding Package, but the Appellant broke down the elements of the services provided and showed a separate charge for the Tamarisk Room.

(d) HMRC have accepted in other similar circumstances that the hire of the room for the wedding ceremony can be treated as exempt, even when supplied with other standard rated services, as for example in the *Blendhome* Tribunal decision.

(e) HMRC’s existing guidance about the correct treatment of the hire of a room for example as a conference room (at VATLP11800 and business Brief 02/13) suggests that room hire should be treated as exempt for VAT purposes.

All of this suggests that the correct approach is to treat the hire of the Tamarisk Room as a separate supply for VAT purposes. The supply of other elements of the Wedding Package and the Tamarisk Room are linked, but not so closely that it is artificial to split them.

Hire of Tamarisk Room is the principal element of a composite supply

49. If the hire of the Tamarisk Room cannot be treated as a separate exempt supply for VAT purposes, the supply is part of a single composite supply of which the principal element is the supply of the Tamarisk Room for the wedding ceremony.

5 50. On the basis of the *Card Protection Plan* decision, if elements of a composite supply are not means in themselves but a means of better enjoying the principal supply the supply is a single supply characterised by reference to its predominant character: The wedding ceremony itself is the most important element of the Wedding Package. Without the wedding ceremony there is no wedding.

10 51. The nature of the supply depends on economic and social reality from the perspective of the recipient of the supplies, here the hotel's customers, as made clear in the *Byrom* decision, citing earlier cases

15 *"The answer will, accordingly "be found by ascertaining the essential features of the transaction under which the taxable person is operating when supplying the consumer, regarded as a typical consumer". The key lies in analysing the transaction" leading to the conclusion in that case that "the overarching single supply is not to be treated as a supply of a licence to occupy land. The description which reflects economic and social reality is a supply of massage parlour services, one element of which is the provision of the room."* Paras 33 &
20 70

52. The decision in *Chewton Glen* makes clear that if the hire of the room for the wedding ceremony includes only the addition of services such as a small amount of catering and photography, those elements should be treated as ancillary to the main supply, which is the hire of the room:

25 *"The addition of modest amounts of food such as canapés served in the same room does not take the additional services beyond what can be described as a better means of enjoying the use of the room as a principal service and an aim in itself."* Para 19

30 53. To determine the extent of the service supplied all relevant circumstances need to be taken into account. Mr Brown explained that HMRC had suggested that in all circumstances in which the Tamarisk Room was hired with any catering services, including for example only two glasses of prosecco, that was a standard rated supply of catering services and not an exempt supply of the hire of the Tamarisk Room. HMRC's view did not reflect the relative significance of the different services being
35 supplied.

Hire of the Tamarisk Room is an exempt supply of a licence to occupy land

40 54. Mr Brown distinguished the Tribunal decisions originally relied on by HMRC concerning the hiring of rooms for weddings; In *Willerby Manor Hotels Limited* there was no reference to the room used for the civil ceremony, the decision only considered the room used for the wedding reception. In *Chewton Glen* there was no right to exclude others from the room hired for the wedding ceremony and other supplies were made by the Appellant with the hire of the room. Neither of those is true on the facts of this case.

55. Mr Brown relied on the *Luc Varenne* case as authority for his argument that it was possible to treat the supply of a room as an exempt supply of a licence to occupy land even if some other services were supplied. In that case the supply of supervision of the right to access a sports facility did not preclude the supply being an exempt supply of land.

56. Mr Brown distinguished the *Antique and Collectors Fair* decision, in which the supply of space at antique fairs was treated as outside the scope of the VAT exemption for licences to occupy land, as a case which on its facts related to more than merely the provision of a “pitch” for selling antiques.

10 *HMRC’s arguments*

57. HMRC have accepted that if a customer hires the Tamarisk Room only for the wedding ceremony and no other wedding services are provided by the Appellant, that is an exempt supply of a licence to occupy land for VAT purposes. However, it is HMRC’s view that when the Appellant provides the Tamarisk Room as part of a Wedding Package which includes the hire of other rooms (the dining room) and catering, that is a single standard rated supply for VAT purposes of the Wedding Package, which falls within the exclusion from the exemption at Item 1(d) of Group 1, Schedule 9 Value Added Tax Act 1994.

The Wedding Package is a single supply

58. HMRC’s starting position is that customers purchasing a Wedding Package from the Appellant would consider that they had received a single supply of the wedding, including all the relevant elements, rather than separate supplies of each aspect of the wedding celebration.

59. HMRC relied for this analysis on the ECJ decisions in *Levob* and *Card Protection Plan*, suggesting that the elements of the supply in this case were so closely linked “*that they formed objectively, from an economic point of view, a whole transaction*”. *Levob*:

“*Where two or more elements or acts supplied by the taxable person to the customer, being a typical consumer, are so closely linked that they form objectively, a single indivisible economic supply, which it would be artificial to split*” Para 22.

60. To decide whether a transaction which includes several elements is a single supply or two or more distinct supplies, it is necessary to look at the essential features of the transaction.

“*There was a single supply where one or more elements constituted the principal service and others were merely ancillary, in that they did not constitute for customers aims in themselves, but simply a means of better enjoying the principal service*”. *Card Protection Plan*, p 272

61. Despite the fact that the elements of the Wedding Package supplied by the Appellant were broken down in the invoices provided to customers, HMRC’s analysis is that a single supply has been made to the customer. HMRC’s view is that it is more likely than not that a person organising their wedding at the Glendorgal Hotel would

consider that they were receiving a single supply of the wedding, including all the relevant elements, rather than separate supplies of each part.

62. It is necessary to consider the reality of the situation and what the customer views them self as receiving as part of the analysis of the supply. In this case the customer would be unlikely to view the services supplied as split between the Tamarisk Room hire and the other elements which went to make up the Wedding Package. The supply being made here is one supply with multiple elements. There is no “principal supply”. On this point the approach in *Levob* is preferable to that in *Card Protection Plan*. On these facts it is not realistic to treat the wedding ceremony as the principal supply. In HMRC’s view, if anything, it is the reception which is the principal supply, if there is one, taking account of the relative cost and duration of the reception compared to the wedding ceremony

Is the supply of the Tamarisk Room an exempt supply of a licence to occupy land?

63. On behalf of HMRC, Mrs Ashworth’s contention is that the hire of the Tamarisk Room does not constitute an exempt supply other than in circumstances when the only service which is provided is the hire of the room itself. She referred to the *Chewton Glen* decision to support this position:

“*In cases where more extensive additional services such as a reception, meals or dancing etc are provided then it is realistic to regard the package as a whole as going beyond the hire of the room and services purely ancillary thereto*”.
Para 19

64. Mrs Ashworth disagreed with the Appellant’s view that the Wedding Regulations meant that the Tamarisk Room had to be separate from the rest of the wedding function and could therefore be treated as a separate, exempt supply of a licence over land. She pointed out that there was nothing in the Wedding Regulations which prevented the room from being used for other purposes after the wedding ceremony had taken place. She also referred to Condition 12 of Schedule 2 of the Wedding Regulations which requires that the public must be admitted to the civil wedding ceremony. *Chewton Glen* could not be distinguished from the Appellant’s case on the basis that there was no right to exclude others, since that was not true of the Tamarisk Room either.

65. Mrs Ashworth took the Tribunal to the ECJ cases which considered the scope of “leasing and letting” supplies for VAT purposes, including the *Temco* and *Luc Varenne* decisions suggesting that the hire of a room plus the significant additional services of a reception for a wedding was outside the scope of the VAT exemption for the letting of land because it went beyond the “*relatively passive activity linked simply to the passage of time not generating any significant added value*” (*Temco* Para 20).

66. Mrs Ashworth referred in particular to the Tribunal decision in *Willant Trust Ltd* which also concerned the supply of wedding packages in a hotel, but by reference to a slightly different “package”. The Tribunal in that case accepted that the supply of the wedding package was a single composite supply which it would be artificial to split, looked at from the point of view of the client and that the services provided by the hotel in that case were more than “*a relatively passive activity*”.

67. Mrs Ashworth referred to the Tribunal decision in *Blendhome*, which concluded that the payment of an “exclusivity fee” for exclusive access to parts of the hotel as part of a wedding package could not be treated as a free standing service, or as a supply of land, but as part of a composite supply of wedding services which was not exempt. She acknowledged that the *Blendhome* decision referred to HMRC’s acceptance that the hiring of the room for the wedding ceremony was exempt, but pointed out that the decision did not make clear on what basis this had been accepted and whether any additional services were provided.

68. In response to questions from the Tribunal Mrs Ashworth confirmed that it was HMRC’s view that the same analysis applied whether the services other than the supply of the Tamarisk Room amounted to a full wedding breakfast or just two glasses of prosecco; both were catering services and both meant that the supply of the Tamarisk Room plus catering, however minimal that might be, should be treated as a taxable supply and outside the scope of the exemption at Group 1 of Schedule 9.

15 *Findings of fact*

69. On the basis of the evidence produced to the Tribunal we make the following findings of fact:

(1) The Tamarisk Room was licensed for the carrying out of civil wedding ceremonies. The price paid for the hire of the room to the Appellant excluded the services of the Registrar, which was negotiated and paid for separately by customers.

(2) The price for the hire of the Tamarisk Room was agreed before other details of the Wedding Package were discussed.

(3) The price agreed for the hire of the Tamarisk Room was set out separately on the invoices issued to customers.

(4) The Tamarisk Room was physically separate from the place where the wedding reception and other elements of the wedding celebration took place.

(5) No services other than the room itself, chairs and a desk for the Registrar were provided to customers with the Tamarisk Room.

(6) Different customers could and did choose different elements of the Wedding Package.

(7) It is a requirement of the Wedding Regulations that members of the public are given access to civil wedding ceremonies.

35 *Decision*

Is this a single supply or a mixed supply?

70. The parties agreed that the correct test for determining whether a supply was a single or a separate supply was the test formulated in *Levob* as whether elements of a supply “are so closely linked that they form objectively a single indivisible economic supply which it would be artificial to split” but came up with different answers to that test.

71. We have approached this question firstly by asking in what ways the supply of the hire of the Tamarisk Room and the other supplies made to customers who wanted to get married at the Glendorgal Hotel were linked and have looked at different ways in which supplies can be linked.

5 72. The supplies comprised in the Appellant's Wedding Package were linked geographically; they all happened at the Glendorgal Hotel. They were also linked chronologically; they all happened on the same day. The wedding services were linked economically; they were all paid for by the same person (the bride and groom) on the same invoice. Finally they were linked from a marketing perspective; they
10 were sold to potential customers as a "package" of services.

73. We have then considered in what ways the supply of the hire of the Tamarisk Room and the other supplies made to customers who wanted to get married at the Glendorgal were separate, taking account of different types of separation.

15 74. The supply of the Tamarisk Room was separate legally from the other wedding services supplied. It was supplied to the bride and groom in accordance with specific legislation setting out the requirements of a legal marriage in the UK, including the Marriage Regulations. Those legal requirements led to other types of separation. The licensed room had to be physically separate from the place where the other wedding celebrations took place and could not overlap with some elements of the wedding
20 celebration, including the serving of alcohol and food.

75. The supply of the Tamarisk Room was also commercially separate from the other elements of the wedding services; it was possible and not unusual for customers to choose one but not another element of the Wedding Package and, according to Mr Redmond's evidence, the different elements of the package could be agreed at
25 different times.

76. There is nothing in any of the authorities to which we were referred to suggest which of these different types of linkage and separation should be considered to be of greater or lesser importance in determining whether a supply should be treated as a separate supply. The reference in the *Levob* case is to a "single indivisible economic
30 supply", which seems to us to leave the question open. From an economic perspective, while customers paid for the Tamarisk Room as part of a single payment for the Wedding Package, it is not the case that the hire of the Tamarisk Room is without value unless other parts of the Wedding Package are also supplied. From the invoices which we saw it seemed to be the case that the charge for the Tamarisk
35 Room was higher if other parts of the Wedding Package were supplied, but we also saw invoices in which the Tamarisk Room was invoiced as a stand-alone supply.

77. Our view is that HMRC's argument must depend on the geographical and chronological linkage being the most significant and over-riding the legal, commercial and any economic separation of the wedding ceremony and the wedding
40 reception. In other words, the supplies should be treated as a single supply because they happen at the same place, on the same day. Our view is that this is not sufficient to pass the test for treating the Tamarisk Room as part of a single supply for VAT purposes.

78. HMRC also rely on the fact that a single invoice was produced and that the
45 services were marketed as a package but (i) as Mr Brown pointed out, the authorities

suggest that this is not determinative and (ii) the invoices which we saw and the evidence of Mr Redmond made clear that the Tamarisk Room was included as a separate element on those invoices and was negotiated as a separate element.

79. Finally HMRC refer to the authorities such as *Byrom* which give particular weight to the perspective of customers to determine the nature of a supply and state “it is more likely than not that a person organising their wedding would consider that they were receiving a single supply of the wedding, including all the relevant elements, rather than a separate supply of each part”. However, we were not provided with any evidence to support this conclusion, we saw no evidence at all from either party about how the Appellant’s clients viewed the wedding services provided.

80. Both parties referred to the *Levob* decision but we have not found the facts of that case to be particularly apposite here. The question for the ECJ in that case was whether a supply of customised software made to a customer could be split into two supplies, one of the non-customised software and one of the software in its customised state. The court held that it was not possible to categorise the pre - customised software as something separately supplied without entering the realms of artificiality.

81. In this case our view is that the customers (the bride and groom) could separate the elements of the Wedding Package without entering the realms of artificiality. There are a number of basis on which those involved in receiving the supplies would have viewed them as separate, including the general understanding that the wedding ceremony is a distinct part of a wedding celebration and the knowledge that in many cases it is possible to hold the wedding ceremony in a different place than the wedding reception, and even have different people in attendance.

82. According to Mr Redmond it was clear from the first conversations with potential customers that they did not have to buy the whole Wedding Package and the wedding ceremony element of the package was usually agreed first. Therefore it seems to the Tribunal that certainly at the time when the original bargain was made, there was a natural and not an artificial distinction between the various elements of the Wedding Package.

83. This separation is supported by the physical separation of the wedding ceremony from the rest of the wedding celebrations on the day of the wedding itself and the separate charge for the Tamarisk Room on the invoice issued to customers.

84. It is unfortunate that neither party provided evidence about how the Glendorgal’s customers viewed these supplies. On the evidence with which we have been provided, we agree with the Appellant that the supplies comprising the Wedding Package are linked but separable, if not separate. Despite the fact that there is a degree of interdependence between the supplies made, we have concluded that the supply of the Tamarisk Room can be treated as a separate supply for VAT purposes.

40 *Is there a principal supply?*

85. Having concluded that the supply of the Tamarisk Room is a separate component of a mixed supply, we do not need to consider what the principal element of the Wedding Package should be if it were to be treated as a single composite

supply, however we have considered these arguments because they shed some light on our conclusion that these supplies should be treated as separate supplies.

86. Both parties referred to the *Card Protection Plan* decision as a guide to determining how the principal nature of this supply should be identified. In this case it is actually difficult to determine which, of the wedding ceremony or the wedding reception is the “essential feature of the transaction”. Without the wedding ceremony, there is nothing to celebrate, without the wedding reception, there is not much of a celebration. This is quite unlike the situation in *Levob* where the court could reasonably conclude that no customer would have wanted the pre-customised version of the software which was being supplied.

87. HMRC suggested that the reception was the predominant supply because it was the most costly and of the longest temporal duration. The Appellant suggested that the wedding ceremony was the predominant supply because it was the basis of the whole celebration. We note in passing that on the basis of the invoices that we saw it is not necessarily correct that the reception was the most costly element of the Wedding Package and even if that were the case it is not clear that this is the only measure of predominance.

88. In our view it is difficult to compare the relative significance of these elements of the Wedding Package because they are of a quite different character. The fact that it is difficult to identify an essential feature of the Wedding Package suggests to us that actually it is just that, a package, comprising what are actually two distinct services.

89. The parties also referred to a number of Tribunal decisions dealing with room hire and the provision of various types of wedding services. While some analogies can be drawn from some of those cases, we have not found any of them to be particularly helpful, since each are dependent on facts none of which are exactly the same as the facts under consideration here. None of the Tribunal decisions cited other than the *Chewton Glen* decision specifically considered the hire of the room in which the wedding ceremony took place. In fact Mrs Ashworth withdrew her reliance on some of these Tribunal decisions at the Tribunal (*Willerby Manor* and *Best Images*) for that reason. Even the facts in *Chewton Glen* differed from this case in some significant respects; the room used for the wedding ceremony was also used for the service of drinks and canapés and other services were provided in that room.

90. Our conclusion is that it is not possible to identify a principal element of a composite supply in these circumstances and this supports our view that the hire of the Tamarisk Room should be treated as a separate supply for VAT purposes, despite the fact that it is sold as a part of a “Wedding Package”.

Is the hire of the Tamarisk Room as part of the Wedding Package an exempt supply of land?

91. Even though we have concluded that the hire of the Tamarisk Room can in these circumstances be treated as a separate supply, that is not the end of the analysis. For the Appellant to succeed our conclusion must be that this separate supply can properly be treated as an exempt supply of a licence to occupy land.

92. HMRC have accepted that if the Tamarisk Room is supplied without any other element of the Wedding Package, that is an exempt supply of land. Supplies made in those circumstances are outside the scope of this appeal. Nevertheless HMRC's arguments at the Tribunal concentrated on the distinction between a passive supply of land and the type of supply being made by the Appellant, suggesting that even the addition of two glasses of prosecco changed the nature of the supply from one of an exempt supply of land to a taxable supply of a wedding package. A conclusion to which the Appellant not surprisingly took exception.

93. We were not provided with HMRC's reasons for deciding why the supply of the Tamarisk Room by itself was properly treated as an exempt supply of land and we have considered the question in the light of the circumstances which are the subject of this appeal. We were referred to a number of decisions which considered whether the hire of a room being used in circumstances similar to those in which the Tamarisk Room was hired could be treated as an exempt supply of land as that term is defined in the Principal Directive.

94. What is clear from these decisions, including *Chewton Glen*, is that the hiring of a room for a wedding celebration cannot be assumed to fall within the exemption for the letting of land since as the Tribunal said in that case "*it is far removed from the letting of property by a landlord to a tenant, or that the couples occupying the wedding room do so in any sense as owners with the right to exclude others.*"(Para 15). Whether the hiring of the wedding ceremony room falls within the exemption for the letting of property is a question of degree; the degree to which the activities carried on in the room are more or less akin to a "letting" situation.

95. The Appellant relied on the exclusivity of the rights given to the Tamarisk Room for the duration of the wedding ceremony to indicate that this was an exempt supply of a licence to occupy land, as well as the restrictions in the Wedding Regulations suggesting that the Tamarisk Room could not be used for any other services (such as catering) at the same time.

96. HMRC referred to the requirement in the Wedding Regulations that the public be granted admittance and to the other services which were being provided alongside the Tamarisk Room to suggest that this was more than the mere granting of a licence over land.

97. We agree with HMRC that the provisions of the Wedding Regulations mean that the Appellant did not have the right to grant a licence of the room exclusively to their customers and their guests for the wedding ceremony. It was a condition of the licence that members of the public should have access to the Tamarisk Room. On that basis, whether the Tamarisk Room is supplied with or without two glasses of prosecco, it can be differentiated from a normal letting of land.

98. We take the Appellant's point, that unlike in the *Chewton Glen* decision, the evidence here suggested that the Appellant did not provide any add on services as part of the hire of the Tamarisk Room itself (no flowers were provided, and alcohol was not allowed in the Tamarisk Room and if requested was served elsewhere).

99. However, that leaves the question of whether, even without any additional services such as flowers and the taking of photographs, the hiring of the Tamarisk Room for the wedding ceremony can be treated as falling within the exemption for

supplies of land. Our starting point is that as an exemption these provisions should be construed restrictively.

100. The ECJ cases to which we were referred, *Temco* and *Luc Varenne* make the distinction between obtaining passive income from the leasing of the land itself, and
5 obtaining income from other services as part of the leasing of the land:

“While the Court has stressed the importance of the period of the letting in those judgments, it has done so in order to distinguish a transaction comprising the letting of immovable property, which is usually a relatively passive activity linked simply to the passage of time and not generating any significant added
10 value from other activities which are either industrial and commercial in nature..... or have as their subject matter something which is best understood as the provision of a service rather than simply the making available of property, such as the right to use a golf course or the right to use a bridge on the payment of a toll” Para 20 *Temco*.

15 101. A similar approach was applied in the *Luc Varenne* decision to conclude that providing a football stadium plus “a more complicated service consisting of provision of access to sporting facilities, where the corporation (the owner) takes charge of the supervision, management, maintenance and cleaning of those facilities” did not constitute the letting of immovable property.

20 102. The question for this Tribunal is whether, other than the elements of the Wedding Package which we have accepted to be separate services, the Appellant is providing more than the mere hire of the Tamarisk Room as a “passive” lease of land. In our view there is a clear additional service which is being provided here; this is more than the lease of an area of land, it is the provision of the service of a legal
25 wedding ceremony which can be provided only because of the licensed nature of the Tamarisk Room. Similar to the approach in the *Antiques & Collectors Fairs* case, what is being paid for here is the right to participate in a particular event (the wedding ceremony), only part of which entails the provision of the physical space in which that event occurs. That is the opportunity which is being provided by the Appellant.

30 “Assessing the supply from the perspective of a typical exhibitor, the economic and social reality was that the booking fees were payment for participation as a seller at one of the largest antique fairs in Europe..... That was the opportunity provided by the company and for which the exhibitor paid fees” *Antiques & Collectors Fairs* Para 71.

35 103. In coming to this conclusion we have taken account of the evidence which we saw from the invoices that a significant fee was charged for the hire of the Tamarisk Room. It seems unlikely to us that any customer would have paid this for the hire of a bare room with some chairs and a desk, which was how Mr Redmond described the Tamarisk Room. Our conclusion is that the payment made for use of the Tamarisk
40 Room was for more than a mere licence over land, it was for the provision of access to a room which was licensed for carrying out civil weddings and which, for that reason, was open to the public. As was concluded in the *Willant Trust* decision, the Appellant here is not engaged in a relatively passive activity, there is significant added value and what is being provided goes beyond an exempt supply of the licence
45 to occupy land.

104. We have concluded that the supply of the Tamarisk Room cannot be treated as an exempt supply of land when it is provided as part of a wedding package which includes the wedding ceremony, whether or not the price paid for the hire of the room includes the supply of catering and other related services. In our view it is not the
5 supply of two glasses of prosecco which determines the nature of this supply, but the reason why the prosecco is being served. The provision of licensed premises in which a civil wedding can legally be carried out is beyond the “passive letting of land” and outside the scope of the exemption at Group1, Schedule 9 VATA 1994.

105. For these reasons the Appellant’s appeal is dismissed and HMRC’s assessment
10 of 29 August 2013 is confirmed.

Costs

106. In view of the very late service of the Respondents’ additional bundle of authorities Mr Brown asked for additional costs for taking time to read the authorities on his journey to the hearing, necessitating an upgraded train ticket.

15 107. The basis on which costs can be granted in standard cases such as this under the Tribunal Rules is limited. Rule 10 allows the Tribunal to award costs if “*a party or their representative has acted unreasonably in bringing, defending or conducting the proceedings*”. The authorities which have considered what amounts to unreasonable behaviour in this context have suggested that the hurdle to be met is rather high.

20 108. The additional authorities served by the Respondents on 11 March 2016, the Friday before the hearing, which started at 10am on Monday 14 March, extended to 181 pages. Admittedly a short amount of time to consider a considerable amount of material.

25 109. No explanation was proffered for the late service of these documents by Mrs Ashworth, whose letter of 11 March merely stated “*It has come to HMRC’s attention that there are a number of authorities that have not been referred to in HMRC’s skeleton argument but may assist the Tribunal in their consideration of the points at issue in this appeal*”.

30 110. There was however nothing to suggest that this late service was an intentional attempt by HMRC to hamper the course of the hearing, but rather an oversight on HMRC’s part. It is the Tribunal’s view that this does not amount to the type of unreasonable behaviour which would justify a costs order in a standard case like this one and the Appellant’s request for costs is therefore refused.

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111. 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.

**RACHEL SHORT
TRIBUNAL JUDGE**

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RELEASE DATE: 6 May 2016