



Appeal number: UT/2018/0134

*VALUE ADDED TAX — construction of new building and partial demolition and reconstruction of existing building – one building or two – single supply or two separate supplies – whether supplies made for consideration constituting an economic activity – appeal refused.*

**UPPER TRIBUNAL  
(TAX AND CHANCERY CHAMBER)**

**ON APPEAL FROM THE  
FIRST-TIER TRIBUNAL (TAX CHAMBER)**

**THE GLASGOW SCHOOL OF ART**

**Appellant**

**v**

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

**Respondents**

**TRIBUNAL: LORD TYRE  
JUDGE DEAN**

**Sitting in public at George House, 126 George Street, Edinburgh on 9 May 2019**

**Philip Simpson QC, instructed by Charles K Rumbles, VAT Consultant, for the Appellant (The Glasgow School of Art)**

**Ross Anderson, Advocate, instructed by the Office of the Advocate General for Scotland, for the Respondents (HMRC)**

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## **DECISION**

### **Introduction**

1. The appellant is a Higher Education Institution Art School specialising in fine art, design and architecture. It has a campus at Garnethill, Glasgow. Between about 2011 and 2014, the appellant carried out a redevelopment project which consisted of the demolition of two buildings, the partial demolition, reconstruction and refurbishment of a building known as the Assembly Building, and the construction of a new building. The issue that arises in this appeal is whether the appellant is entitled to recover the whole of the input tax that it incurred on costs relating to the partial demolition, reconstruction and refurbishment of the Assembly Building. The appellant's claim to that effect was refused by the respondents (HMRC) and that refusal was upheld by a decision of the First Tier Tribunal (FTT) dated 23 May 2018, which by agreement of the parties was a decision in principle only. The appellant now appeals against the FTT's decision.

### **The redevelopment project**

2. The following uncontroversial narrative is a somewhat abbreviated version of the FTT's findings in fact.
3. The Assembly Building was constructed in or around 1936. Since approximately 1980 it had been used by the Students' Union to provide facilities for the student body including a bar, music venue and exhibition space. Adjacent to it were two other buildings, namely the Foulis and Newbery Buildings, which were used for the appellant's educational purposes. In 2003, the appellant conducted an Estates Strategy Review which concluded that a major redevelopment of the Garnethill campus was required. Phase 1 of the redevelopment concerned the site comprising the Assembly, Foulis and Newbery Buildings. It was not considered feasible to redevelop part only of that site and it was always planned to have a single delivery strategy.
4. Internal deliberations initially proceeded on the basis that all three buildings would be demolished and that there would be a dedicated space within a new building which would allow the Students' Union to function independently. A brief from the students, subsequently utilised by the architects, specified that there should be no functional connection to the rest of the Phase 1 building. After review, refurbishment of the Assembly Building was determined to be the better value for money option.
5. The winning design for the project proposed retaining much of the external structure of the Assembly Building and refurbishing the whole interior. A new building, which was ultimately named the Reid Building, would be constructed on the site of the demolished Foulis and Newbery buildings and cantilevered above what remained of the Assembly Building. Effectively the Reid Building would be wrapped around and above the Assembly Building. The Reid Building would be independently supported for structural and acoustic reasons, although at one end it would rest on the Assembly Building.
6. The Scottish Funding Council, who provided all of the funding for Phase 1, specified, as a standard condition of funding, that the works were required to meet, at a minimum, the British Research Establishment Environmental Assessment Method ("BREEAM") Excellent Standard. The Reid Building in isolation was considered unlikely to achieve that. The specialist consultant advised the appellant that "...there needs to be a physical usable link between the Assembly Building and the new building". The building design was therefore modified to include, on the second floor level, a single door connecting the two buildings.

7. Applications were made for planning and for listed building conservation area consents. The planning application was described as “new, purpose built studio and academic building for the Glasgow School of Art including the refurbishment of the existing student union building and public realm works”. Planning permission for “erection of academic building..., external alterations to listed building and associated public realm works” was granted subject to conditions on 22 March 2011. Planning permission for demolition of the Foulis and Newbery Buildings and “...partial demolition of, external alterations to and internal refurbishment of [the Assembly Building] in association with erection of academic building...” was granted subject to conditions on 27 April 2011.
8. The Bill of Quantities identified the two buildings separately with a total costing of £21,681,486.23 of which £1,423,201.78 was attributed to the Assembly Building. The design of the works led to construction being procured as a single contract and, with the approval of the Scottish Funding Council, Sir Robert McAlpine Ltd (“the contractor”) was appointed as main contractor in August 2011. The site works proceeded together under the single contract. For programming and progress monitoring purposes, however, and due to the different nature of the works, the Assembly Building construction works were recognised separately in the contractor’s master programme and progress reports. In the later stages of construction there was necessary coordination between the two work streams, as the Reid Building structure was effectively wrapped around the Assembly Building shell. Once this element of the works was completed, the finishing trades for both buildings proceeded separately.
9. All that was retained of the Assembly Building were the facades on three sides and the roof. All of the floors and internal structure of the previous building were removed. Part of one facade, including the then main entrance to the building, was demolished, as was the fourth facade. Another facade was altered to provide a new main entrance.
10. As the construction of the two buildings was tendered as a single construction contract, during the period of construction the contractor invoiced monthly with the combined cost, and charged VAT. In 2011 the contractor produced a one page summary of the costs divided between “New Build” and “Assembly Building”.
11. Construction of the whole site was sufficiently completed to enable the Reid Building to be opened to students on 6 January 2014 and the Assembly Building on 15 January 2014. Both buildings were certified for partial possession on 3 January 2014 (and in sections thereafter) subject to the completion of snagging works, and practical completion was achieved on 22 July 2014. The completed Phase 1 was known generically as the Reid Building but comprised both the Assembly Building and the Reid Building. The formal opening on 9 April 2014 was of both buildings.

### **Description of the site following redevelopment**

12. Following completion of the works, the Assembly Building retains, on three sides, the appearance of an ornate sandstone building. The fourth side is now a party wall with the Reid Building and it is there that the single link door has been placed. The reconstructed Assembly Building is purpose designed as a student union. It provides a bar and a club for students on the ground and first floor. The club/venue area has a separate fire escape. There are toilets in the basement and offices for the Students’ Union and a small student exhibition area. A partial second floor provides further space for the Students’ Union. It is controlled and managed by the Students’ Union as a building to provide social functions for students and members of the public, an administrative base for students and Students’ Union staff and exhibition/project space.

13. The Reid Building is a modern glass and steel clad building which is managed by the appellant and serves a number of art school functions. It primarily comprises learning, teaching and technical spaces with accommodation for academic support and management. There is a refectory. It comprises two main basement levels and four main upper levels with additional mezzanine floors. It has two entrances, one of which is to a public visitor centre for the nearby Mackintosh Building. It has a security system, and entry gates separate the public facing area from the main academic and studio areas. Everyone entering the non-public facing area of the Reid Building must do so through the front door and internal entry gates.
14. The only common facilities for the two buildings are the sprinkler and air handling systems which are centralised in the Reid Building, and the heating which is centralised in another nearby building together with that for other premises. The two buildings have a reciprocal fire alarm system but with separate fire panels to identify alarm activation sources. On the third floor of the Reid Building there are doors which give access to the roof of the Assembly Building but these are utilised purely for maintenance purposes and there is no access to the Assembly Building. The drainage outflow from both buildings enters the shared public infrastructure. Drainage from the upper floors on the west side of the Reid Building passes through and/or adjacent to the Assembly Building since those floors are immediately above it.
15. If students wish to go from the Assembly Building to the Reid Building, they must leave the Assembly Building by its front door and enter the Reid Building by one of its front doors. The Assembly Building is not usually open until late morning, whereas the Reid Building is open from early morning. The Reid Building closes to students at 10pm on weekdays whereas the Assembly Building is open until at least 1am. Each building has its own emergency exit and evacuation procedure.
16. The two buildings are classified separately for non-domestic rates with the Assembly Building classified as a business and the Reid Building as a charity.

### **The relationship between the appellant and the Students' Union**

17. The appellant awards an annual subvention to the Students' Union which covers the direct cost of employing its sabbatical officers and two support staff. The Assembly Building was, and is, occupied by the Students' Union in accordance with the terms of an agreement dated 7 July 2014 between the appellant on the one hand and two bodies, namely The Glasgow School of Art Students' Association SCIO and GSASA Limited (together referred to as GSASA) on the other. The agreement contains *inter alia* all of the basic elements required for a lease in Scotland, namely identification of the parties, the subjects, a rental, and an implied duration in that there is provision for termination on one year's notice. There is no provision for rent review other than that "any future amendments in the rental..." will be agreed between the Students' Union and the Director of Finance of the appellant.
18. In terms of the agreement, the appellant is responsible for the buildings insurance. In the first year, in addition, the contents insurance was paid by the appellant but in subsequent years it has been recharged. The appellant is responsible for maintaining the external condition of the premises other than in the case of vandalism. The appellant provides and supports the phone system. The appellant provides computer equipment and training for some staff. There is a degree of support, if not control, in relation to a number of areas such as health and safety, human resources, payroll and corporate governance.
19. The rental is £5,000 per annum plus VAT. It was set at a level that was affordable to the Students' Union and does not reflect market rates. The appellant receives a monthly

account of all of the income and expenditure of the Students' Union; there is no significant profit.

20. There is a close and necessary link between the appellant and the Students' Union. They work together to provide students with access to welfare services and to provide facilities for social and recreational activities. There is moreover a symbiotic relationship in that the appellant uses the Students' Union as a selling point in attracting students, and the Students' Union makes exhibition space available and funds some student projects.

### **The VAT issues**

21. At the time when the construction costs were being incurred and the original monthly invoices were being issued, the appellant treated the VAT on the contractor's invoices as being residual, ie as relating to all of its activities and thus neither fully recoverable nor fully blocked from recovery. It reclaimed a proportion of the input tax by applying its agreed business/non-business apportionment calculation and approved partial exemption special method. In August 2014, after the date of practical completion, the appellant submitted an election to waive exemption, ie an option to tax, in relation to the whole building.
22. Certain requests were made on behalf of the appellant in relation to amendment of its partial exemption special method; these were rejected by HMRC. It is unnecessary to narrate the detail of these requests, but it may be noted that at this time the appellant was arguing that the Reid Building and Assembly Building should be treated as a single building and HMRC were asserting that they should not.
23. Subsequently, however, the appellant presented a different argument, namely that the two buildings should be regarded as separate buildings, that the Assembly Building was being used wholly for taxable purposes, and accordingly that the input tax on the costs attributable to the partial demolition, reconstruction and refurbishment of the Assembly Building ought to have been treated as fully recoverable. By way of support for its argument, the appellant sought and obtained from the contractor separate invoices identifying the costs of the Assembly Building works, along with credit notes covering the previously issued (and paid) invoices relating to the whole project.
24. A visit by HMRC officers took place in October 2015, during which they noted the existence of the internal link door. In subsequent correspondence the appellant maintained that this was a fire exit which had never in fact been used as such. A fire door lock mechanism was now installed. However the FTT found in fact that the link door was not built as a fire exit. There had been no need for such a fire strategy. The link door had been created because it was a requirement of SFC funding that there be a physical link. The fire door mechanism had been installed after completion with a view to addressing HMRC's enquiries.
25. Claims were thereafter submitted by the appellant on the basis that VAT incurred on the design and construction of the Assembly Building had been incorrectly allocated to residual or non-attributed tax, when it should have been recovered in full as attributable to use for fully taxable purposes. The claims were refused.
26. Before the FTT and in the present appeal, there were two issues:
  - (i) Whether the design, partial demolition, construction and refurbishment works carried out in respect of the Assembly Building constituted a separate supply for VAT purposes. One of the elements within this issue was the question whether the Assembly Building and the Reid Building were properly to be regarded as separate buildings or as a single building.
  - (ii) If the Assembly Building works did constitute a separate supply, whether the input tax on that supply was fully recoverable as having been incurred by the appellant for the

purpose of making taxable supplies to GSASA consisting of the rental of the building for a consideration constituting an economic activity.

### **The FTT's decision**

27. The FTT addressed firstly the question whether there was one building or two separate buildings and found that there was one building. The Tribunal's reasons for so finding included the following:

- There is and always has been a physical link;
- The whole construction was envisaged as a single project;
- The whole site was repeatedly described as the Reid Building;
- Functionality was not determinative because the student union could equally have been incorporated within a single new building;
- There was no evidence that the Reid Building could have been constructed without the Assembly Building;
- On the totality of the evidence, the edifice constructed was more akin to a semi-detached building with an internal link.

The FTT observed, however, that it was not persuaded that it mattered whether there was one building or two. What did matter was whether there was one supply or two.

28. On that issue, the FTT held, applying principles derived from *Card Protection Plan Ltd v C&E Commissioners* [1992] 2 AC 601 and *Levob Verzekering BV v Staatsecretaris van Financiën* [2005] ECR-I 9433, that there was one supply. The Tribunal's reasons included the following:

- A single price was charged (though this was not decisive);
- The project had a single procurement strategy encompassing both buildings;
- It was a condition of funding that BREEAM rating be achieved, which meant that the buildings had to be constructed together and physically linked;
- Planning applications were for both buildings;
- The economic and commercial reality was that the appellant intended to, and did, develop the site as a whole;
- Separate invoices were not provided until after the VAT issue arose.

29. The FTT went on to consider whether, if it was wrong in holding that there were not two supplies, whether a separate supply of the Assembly Building works would have been a taxable supply. Again the Tribunal decided this issue in favour of the respondents because:

- Looking at the totality of the evidence, objectively considered, the appellant was not engaged in an economic activity of letting when leasing the Assembly Building to GSASA.
- Although a low rental was not an automatic bar, this lease was not an economic activity: it would take the appellant more than 500 years to recoup its capital outlay. It provided the lease and facilities as part of its necessary support of the Students' Union.

30. For these reasons, the FTT dismissed the appeal.

### **Argument for the appellant**

31. On behalf of the appellant it was submitted, firstly, that the FTT had erred in law in holding that the Assembly Building and Reid Building were a single building for VAT purposes. On the primary facts found, the only inference open to the Tribunal was that

they were separate buildings. Although there was no directly applicable statutory provision, assistance could be derived from the provisions of Group 5 of Schedule 8 to the Value Added Tax Act 1994 concerning zero-rating of construction of buildings for residential purposes, and from the case law on those provisions, notably *Cantrell v C&E Commissioners* [1999] STC 100 and [2003] STC 486. Having regard to their objective characteristics, the two buildings were separate buildings. They were capable of being, and were, operated independently. Neither was ancillary to the other. In practical terms there was no access between them. They had different appearance, functions and opening times and were in separate occupation. Shared aspects were minimal.

32. The above features were also relevant to the question whether there had been a single supply or separate supplies. The appellant had wanted, and had obtained, two separate premises with different purposes. One was a refurbished 1930s building; the other was a new build. Apart from one party wall they were structurally separate, with their own entrances and postal addresses. The construction costs had been separately attributed albeit a single price was tendered. The construction was programmed and progress monitored separately for the two buildings. The buildings were opened on different dates. Funding requirements were not relevant to the VAT classification of the supply; it was only relevant to have regard to the contractual terms of the supply. The fact that a single invoice had initially been rendered and paid was relevant but not decisive.
33. On the third issue, it was accepted that the appellant had to demonstrate both that there was an economic activity and that there had been a supply for a consideration in the course of that activity. The FTT had adopted too narrow an approach in regarding the matter as settled by the low level of the rental paid by GSASA. As a generality, the appellant carried on an economic activity consisting of the provision of education. Provision of a Students' Union was part of that activity. It was irrelevant that the appellant did not intend to make a profit from its agreement with GSASA; the whole circumstances had to be considered in order to ascertain whether there was a purpose of obtaining income on a continuing basis. Reference was made to *Lajvér Meliorációs Nonprofit Kft v NAV*, ECJ, Case C-263-15, [2016] BVC 20. There was a supply by the appellant to GSASA for a consideration consisting of the rent. The FTT had failed to take account of other benefits to the appellant, in particular the operation by GSASA of a Students' Union which was an important marketing feature for attracting prospective students.

### **Argument for the respondents**

34. On behalf of the respondents it was submitted that the FTT had made no error of law and that the appeal should be refused. The question whether there was one building or two separate buildings was one of fact upon which the FTT had reached a conclusion that was open to it. There was no basis in law to interfere with its decision.
35. It was accepted that the question whether there was one supply or more than one supply was one of law. However the appellant had failed to identify any basis upon which the FTT was said to have erred in law. The FTT had applied the correct principles and had correctly treated the contractual arrangements as the starting point. In attaching weight to the single price charged by the contractor, the single delivery strategy, the funding requirement for achievement of a BREEAM rating, development of the site as a whole, and the fact that the appellant's characterisation as more than one supply was *ex post facto*, the FTT had reached a conclusion that was sound in law.
36. If that was wrong, and it was necessary to address the question of characterisation of a separate supply of services in relation to the Assembly Building, there had been ample evidence to support the FTT's finding that services provided by the appellant under the

agreement with GSASA were part of the appellant's necessary support of the Students' Union, and not part of its economic activity. "Consideration" was not the same as the "remuneration" that was necessary for economic activity. The mere existence here of consideration in the form of the annual £5,000 payment was not sufficient to demonstrate the necessary remuneration. The distinction drawn by the FTT between the appellant's agreement with GSASA and the terms of a commercial lease was appropriate. Read as a whole, it was clear that the FTT had had regard to GSASA's other counterpart obligations.

37. For these reasons the input tax attributable to the design and construction costs of the Assembly Building had been correctly treated as residual.

## Decision

38. We start by addressing, briefly, the question whether the Assembly Building and Reid Building are separate buildings for VAT purposes. We share the FTT's view that the answer to this question is of no real importance. There is no relevant statutory definition of a "building", and the issue, in our view, is one of inference of fact from the primary facts found. We are unable to derive any assistance from the statutory provisions concerning, for example, zero rating of construction of certain types of building because the issues that might arise, and have arisen, for decision under those provisions are different: for example, whether a new build is an annexe to an existing building. That was the context in which Lightman J made his observations in *Cantrell v C&E Commissioners* (above) regarding the need for objective examination of the physical characteristics of a building, having regard *inter alia* to how the building or buildings were equipped to function. In the present case the FTT found as an inference of fact that there was a single building on the basis of the facts that we have listed in paragraph 27 above. That was a finding that was clearly open to the FTT and we see no reason to interfere with it.
39. On the issue of whether there was a single supply or two separate supplies, it was common ground that authoritative guidance was afforded by the decisions of the Court of Justice in *Card Protection Plan* and *Levob* (above). In *Card Protection Plan*, the Court observed (paragraph 29) that a supply which comprised a single service from an economic point of view should not be artificially split, so as not to distort the functioning of the VAT system, and that the essential features of the transaction had to be ascertained in order to determine whether the taxable person was supplying the customer with several distinct principal services or with a single service. In *Levob*, the Court added (paragraph 22) that there was a single supply where two or more elements or acts supplied by the taxable person were so closely linked that they formed, objectively, a single indivisible economic supply which it would be artificial to split. The question whether there is or is not a single supply is one of law; nevertheless we bear in mind Lord Hoffmann's admonition in *Dr Beynon and Partners v C&E Commissioners* [2005] 1 WLR 86, at paragraph 27, that an appellate court should show circumspection before interfering with the decision of a tribunal on a question of classification of a supply.
40. In our opinion the FTT applied the correct legal test and reached a decision which it was entitled to reach and, moreover, with which we for our part agree. The economic and commercial reality of the construction contract was a single development of the site as a whole. There was, as the FTT put it, a single delivery strategy. Funding was required and obtained for the project as a whole. The decision not to demolish the Assembly Building altogether, but rather to retain its facades and roof, was taken for reasons of value for money. Partial demolition and refurbishment of the Assembly Building on its own was never contemplated. Additional features supporting the single supply



characterisation are the fact that there was a single contract with payment being made during the construction phase in accordance with invoices issued for the whole project. While we do not attach particular weight to the existence *per se* of a connecting doorway, the reason for its existence, ie that it was considered necessary in order to meet the environmental assessment requirement for external funding, reinforces our view that the project should be regarded as a single supply from an economic point of view, and that a split between the two buildings would be artificial.

41. Balancing all of these factors against the features founded upon by the appellant, we consider that the FTT reached the correct decision. Although it is fair to say that the appellant wanted and obtained two separate premises with different functions, we do not regard that as raising an inference that there were two separate supplies. It was always the appellant's intention that the project should consist of both, whether as parts of a single new building or, as was decided, with most of the outer structure (though nothing else) of the Assembly Building being retained. Separate programming and separate attribution of construction costs appear to us to be of minimal importance when seen against the background of the project as a whole. The original invoicing arrangement appears to us to reflect the economic and commercial reality of the project more accurately than the amended arrangement substituted after the VAT issue had been identified.
42. For those reasons the appeal must fail, and the second principal issue, namely the VAT characterisation of a separate supply of services in relation to the Assembly Building, does not strictly arise for decision. For the sake of completeness, however, we will give our opinion on it.
43. In terms of section 4(1) of the Value Added Tax Act 1994, VAT is chargeable on any supply of goods or services made in the UK where it is a taxable supply made by a taxable person in the course or furtherance of any business carried on by him. This provision must, of course, be interpreted in conformity with the corresponding provisions of the Principal VAT Directive. Article 2 of the Directive states *inter alia* that VAT is chargeable on the supply of services for consideration by a taxable person acting as such. Article 9(1) defines a taxable person as any person who, independently, carries out in any place any economic activity, whatever the purposes or results of that activity. Article 9(1) further provides that the exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis shall in particular be regarded as an economic activity.
44. The proper interpretation, and interaction, of articles 2 and 9 has been considered by the European Court of Justice on a number of occasions, including *Commission v Finland* [2009] ECR I-10605, *Lajvér Meliorációs Nonprofit Kft v NAV* (above), and, more recently, *Gemeente Borsele v Staatsecretaris van Financiën* [2016] STC 1570. It is clear from these decisions that the separate requirements of articles 2 and 9 respectively must be satisfied before a supply of services is properly to be regarded as a taxable supply. First, there must be a supply for a consideration and, secondly, that supply must constitute an economic activity. The present state of the law was summarised by David Richards LJ in *Wakefield College v HMRC* [2018] STC 1170 at paragraphs 52-55 as follows:

“52. Whether there is a supply of goods or services for consideration for the purposes of article 2 and whether that supply constitutes economic activity within article 9 are separate questions. A supply for consideration is a necessary but not sufficient condition for an economic activity. It is therefore logically the first question to address. It requires a legal relationship between the supplier and the recipient, pursuant to which there is reciprocal performance whereby the goods or services are supplied in return for the consideration provided by the recipient: see,

for example, the judgment in *Borsele* at [24]. That is what is meant by ‘a direct link’ between the supply of the goods or services and the consideration provided by the recipient: see *Borsele* at [26] and contrast *Apple and Pear Development Council v C&E Commissioners* [1988] STC 221. There is no need for the consideration to be equal in value to the goods or services. It is simply the price at which the goods or services are supplied. This requirement was satisfied in both *Finland* and *Borsele*.

53. Satisfaction of the test for a supply for consideration under article 2 does not give rise to a presumption or general rule that the supply constitutes an economic activity. However, as [counsel] for HMRC pointed out, the Advocate General remarked in her opinion in *Borsele* at [49], ‘the same outcomes may often be expected’.

54. Having concluded that the supply is made for consideration within the meaning of article 2, the court must address whether the supply constitutes an economic activity for the purposes of the definition of ‘taxable person’ in article 9. The issue is whether the supply is made for the purposes of obtaining income therefrom on a continuing basis. For convenience, the CJEU has used the shorthand of asking whether the supply is made ‘for remuneration’. The important point is that ‘remuneration’ here is not the same as ‘consideration’ in the article 2 sense, and in my view it is helpful to keep the two terms separate, using ‘consideration’ in the context of article 2 and ‘remuneration’ in the context of article 9.

55. Whether article 9 is satisfied requires a wide-ranging, not a narrow, enquiry. All the objective circumstances in which the goods or services are supplied must be examined: see the judgment in *Borsele* at [29]. Nonetheless, it is clear from the CJEU authorities that this does not include subjective factors such as whether the supplier is aiming to make a profit. Although a supply ‘for the purpose of obtaining income’ might in other contexts, by the use of the word ‘purpose’, suggest a subjective test, that is clearly not the case in the context of article 9. It is an entirely objective enquiry.”

As David Richards LJ observed at paragraph 59, each case will require a fact-sensitive inquiry.

45. Turning to the circumstances of the present case, we have noted that the FTT decided that the lease of the Assembly Building by the appellant to GSASA was not an economic activity, largely because of the low level of rent charged. The Tribunal did not in terms differentiate between the article 2 and article 9 issues; we observe in this regard that the judgment in *Wakefield College* had not been issued at the time of the hearing before the FTT in this case.
46. We begin our own analysis by addressing the question whether there was a supply for a consideration so as to satisfy the article 2 requirement. In our opinion there was. There is ample ECJ authority that the fact that the price paid is lower than cost price or open market value is irrelevant in establishing whether the transaction was effected for a consideration: see eg *Lajvér* at paragraph 45; *Borsele* at paragraph 26. What matters is that there be a direct link between the supply of the services and the consideration received by the taxable person. In the present case the payment of rent is one of the conditions under which GSASA is granted occupation of the Assembly Building by the appellant, and the necessary direct link is established. It is irrelevant for the purposes of article 2 to compare the amount paid with a market rental.

47. The question whether the article 9 requirement of economic activity is satisfied requires a broader examination of the circumstances. The test here is whether the supply was made for “remuneration” as opposed to consideration or, to put it another way, whether the supply was made for the purpose of obtaining income on a continuing basis. As already noted, “purpose” must be assessed objectively. In our view it is clear from the uncontroversial facts that the purpose of the supply was not to provide the appellant with income from exploitation of the building but rather to facilitate the provision of a Union for students attending the School of Art. Clause 1 of the agreement between the appellant and GSASA states its purpose as being “to confirm respective responsibilities of The Glasgow School of Art and the GSASA in respect of” the Assembly Building, and this stated purpose is amply reflected in what follows. Some of the clauses impose obligations on GSASA, but others consist of offers or undertakings to provide assistance on matters such as first aid training, human resources legislation and finance. In this regard we agree with the FTT’s conclusion that the lease and associated facilities have been provided as part of the appellant’s necessary support of a Students’ Union.
48. Counsel for the appellant placed emphasis on the fact that the appellant benefited from the existence of the Students’ Union as a marketing feature. We regard this as falling within the category of a subjective, and therefore irrelevant, purpose. The use by the ECJ of the word “remuneration” is in our view a clear indication that what is envisaged is income obtained on a continuing basis from the recipient of the supply, and not income which might be obtained from one or more third parties as an indirect consequence of the making of the supply.
49. For these reasons, had it been necessary to do so, we would have held that the appellant is not making taxable supplies to GSASA, and accordingly that input tax on a separate supply of design and construction services in relation to the Assembly Building would not have been fully recoverable.

**Lord Tyre**

**Judge Dean**

**Release Date: 6 June 2019**