[2013] UKFTT 295 (TC)

TC02701

Appeal number: LON/2000/765

VAT – Caravans – removable contents- apportionment of consideration

FIRST-TIER TRIBUNAL
TAX CHAMBER

COLAINGROVE LIMITED **Appellant**

- and -

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

TRIBUNAL: JUDGE CHARLES HELLIER
TYM MARSH

Sitting in public at 45 Bedford Square, London WC1B 3DN on 2 – 5 April 2012

Roderick Cordara QC instructed by PwC Legal LLP for the Appellant

Jeremy Hyam instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. This decision relates to the apportionment of the consideration received by the appellant on the sale of a caravan between the removable content and the remainder of the caravan.

2. On 6 August 2012 we released our decision on the question of what in principle was removable content. We then set out some of the background to the apportionment issue and explained that there were some seven different methods of apportionment which had been canvassed before us. Those included: (1) the "agreed" method, (2) the method in HMRC's notice 701/20, (3) a variation of the agreed or notice method in which the manufacturer's cost allocation was split between truly zero rated and truly standard rated portions; (4) treating the replacement value of the removable items as the amount apportionable to them; (5) treating the replacement value plus an amount reflecting assembly or all or part of the fitting costs as the amount apportionable to them; (6) valuing every item comprising the caravan and apportioning by reference to the ratio of the value of standard rated to zero rated items; (7) the same but with an allowance in the valuation for assembly or installation. Each method appeared to us to suffer from difficulties of principle or practice.

3. We said that since to some extent the position of each party had not fully developed on this issue we should accede to Mr Hyam's suggestion and invite the parties to make further submissions in the light of our findings on the qualitative issue.

4. In response to our invitation the parties kindly provided their respective submissions. After they had been served the Appellant submitted a reply to the Respondents' submission. The Respondents wrote to the tribunal asking us to ignore that reply because it had not been directed.

5. We have to say that in this aspect of the appeal we needed all the help we could get. We found ourselves trying to navigate with a dim and flickering light across a dark and difficult terrain. That made us interested in the Appellant's reply, but with two exceptions we fear that the reply did not raise issues which had not already occurred to us on looking at the initial submissions (although we might have formulated our thoughts less elegantly). Those issues, alternative dispute resolution and the question of how representative the Appellant's valuation samples were, we deal with as necessary below.

6. This, then, is our decision in the light of those submissions. It repeats some of the material in the section of our earlier decision on quantification. It should be read with that decision. That decision however contains our conclusion on the case of *Victoria and Albert Museum trustees v Commissioners for Customs and Excise* [1996] STC 1016, which we do not repeat here.

1. Background

7. The Appellant sold new and used caravans. The new caravans it bought from manufacturers. The manufacturers' invoices to the appellant divided the price of the caravan between a portion which was zero rated and a portion which was standard rated - thereby they treated a portion of each caravan sold as removable contents outwith the zero rating of Group 9. The detailed nature of the portion treated as standard rated was not disclosed to Colaingrove (we understood that this was for commercial reasons; nor could HMRC compel disclosure). One supplier described the standard rated content on its invoice as "cooker/carpets/furniture/curtains" but no division between these items or breakdown of "furniture" was supplied.

8. Colaingrove sold certain items of replacement fixtures and fittings at a profit of about 20%. That was materially less than the markup at which it sold complete caravans.

9. The appellant has accounted for VAT attributable to the standard rated contents on various bases over time. From 1996 to 1999 it operated under a method agreed with HMRC under which treated its sale price as containing a standard rated element which was 120% of the standard rated element shown on the invoices it received from the manufacturers. This method reflects that the Appellant sells replacement items for caravans at a profit of 20%

10. From 1999 until the *Talacre* decision it treated the supply of caravans as a single zero rated supply; after the *Talacre* decision it reverted to previously agreed methods and made voluntary disclosures claiming that the VAT properly due was less than that determined by those methods.

11. As well as selling new caravans, the appellant sells caravans which it has used for rental and caravans which have been sold back to it. The VAT attributable to the standard rated element of such sales (or to the relevant margin where the second-hand goods margin scheme applied) was calculated using a valuation method agreed in 1995 with HMRC.

12. The amounts of the voluntary disclosures made by the appellant and the assessments made by HMRC result from apportionment of the selling price of the caravans on the basis agreed in 1995 between HMRC and the appellant.

2. General principles.

13. Section 80(t) VATA gives the tribunal jurisdiction to hear an appeal both in relation to a claim under section 80 and, separately, in relation to the amount of the claim. Likewise, section 80(1)(p) gives the tribunal jurisdiction in relation to an assessment and the amount of the assessment. It seems to us that in relation to appeals falling within either provision, that the duty of the tribunal (see Carnwath LJ in *C&E Comms* v *Pegasus Birds* [2004] STC 1509 @ [38]*)* is to determine the amount of the assessment. In this appeal, because detailed figures were not before us, that takes effect as a requirement to determine the method by which the consideration should be apportioned. If that is right then the tribunal is not limited to an approach under which

it must accept one of the methods proffered to it and may only amend the amount if the appellant proves that his competing method is right and HMRC's wrong: just as on an appeal against an assessment for £40 the tribunal is not limited to deciding it should be £40 or what the appellant claims, but may determine it at any figure.

14. When a single consideration is received for more than one supply neither the VAT Directive nor the VAT Act provides any particularly helpful guidance. Section 19 (4) VAT act 1994 provides: --

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

15. But if one is to treat that section as having any relevance one has to ignore the Interpretation Act's injunction to treat the singular as encompassing the plural, and find, in the Delphic "properly attributable", hidden depths. But it is the best we have in the UK.

16. From the ECJ jurisprudence it is clear that the consideration attributable to a supply must be the subjective value of the consideration from the point of view of the supplier: because the charge is based on what is received by the supplier. This principle however helps only a little: there was no evidence to suggest that the appellant or its customer regarded any particular part of the consideration is applicable to any particular part of the caravan. We were, as Mr Cordara said, in the unusual position that all we had to go on were objective factors.

17. In *Madgett v Baldwin* C-94/97 the ECJ considered how to split the single margin made on a mix of services, some of which fell within the Tour Operators Margin Scheme (TOMS) and some (the in house provision of accommodation) outside that scheme. Although the judgment dealt with apportioning the margin the arguments seem to us to be as relevant to the apportioning of consideration.

18. Two principle methods of apportionment were in issue: one based on the actual cost of the services, and the other on the market value of the services. The Court noted that both were problematical: the actual cost method because there was no reason to suppose that the margins made on different services were in proportion to their respective costs, and the market value method because it presupposed that the price of accommodation offered as part of a package would be the same as its price if offered separately. But the Court then said:

> "[45] The actual cost method in relation to the in-house services requires a series of complex sub apportionment exercises and thus also means substantial additional work for the trader. By contrast, use of the market value of the in-house services, as the Advocate General observes ..., has the advantage of simplicity, since there is no need to distinguish the various elements of the value of the in-house services.
>
> "[46] In those circumstances - bearing in mind that it is common ground in the present case that calculation of the VAT on the margin for the bought in services

by using one alternative or the other in principle gives the same figure for VAT - a trader may not be required to calculate the part of the package corresponding to the in-house services by the actual cost method where it is possible to identify that part of the package on the basis of the market value of services similar to those which form part of the package".

19. Two questions arise from these passages: (1) whether the guiding principle of "simplicity" relates to the practical operation of the method or to its theoretical appraisal, and (2) whether it was a condition for the use of the market value method that it provided the same figure for the VAT (see the passage between the dashes in [46]). These questions were addressed by the judgment of the court in *My Travel plc v CCE* C - 291/03, to which we were not referred, but which helpfully illuminates the issues. In relation to the first issue the Court said:

"[22] As the Advocate General has observed in point 51 of his Opinion, it is clear from paragraph 45 of the judgement in *Madgett and Baldwin* that the reasons why the Court considered that the market value method had the advantage of simplicity did not relate to the particular circumstances of that case.

20. The Advocate General had said:

"[51] In my view it is clear from paragraph 45…that the reasons why the Court considered that the market value method had the advantage of simplicity did not relate to the particular circumstances of the case. The Court did not find that the method was simpler in the particular circumstances of Mr Madgett and Mr Baldwin but on comparison of the general conditions for applying the two competing methods, referring expressly to point 76 of my opinion in that Case [where he explained that the market value method meant that there was no need to deconstruct the value of the in house services] . It is therefore, because the market value method inherently has the advantage of simplicity compared with the actual cost method that it should be preferred according to that judgment.

…

"[61]…Accordingly I support the position [of the Commission that] the method of apportionment… should, generally, be such as to result, for in house services, in an outcome as close as possible to that which would result from the general scheme of VAT as set out in Article 11A(1)(a) of that directive and settled case law, according to which the taxable amount should be the consideration actually received by the trader and not an amount estimated according to objective criteria.

…

"[64] According to the judgement *Madgett and Baldwin* the market value method is to be preferred, not because, as the Commission argues, it is generally conducive to an outcome which is as close as possible to that resulting from the application of the general VAT scheme, but because it is inherently simpler than the actual method.

…

"[71] I therefore take the view that a travel agent [must generally use the market value method] unless he can prove that, for the tax year under consideration thet method based on actual costs accurately reflects the actual structure of the package price.""

The Court also said:

"...

"[26] It must be stated that the fact that these two methods result in a calculation of a similar tax liability seems, inasmuch as it appears between dashes in paragraph 46 of the judgement in *Madgett and Baldwin* to be a superfluous factor.

"...

"[34] ... the Commission of the European Communities is justified in its view that the apportionment of the package price between services bought in from third parties and in-house services should be made on the basis of the market value of the latter services where that value can be established. On the other hand, as the Advocate General has also observed in point 69 of his opinion, it is difficult to rule out altogether the option of derogating from that principle. Accordingly it is acceptable for a travel agent or tour operator who is able to prove that the actual cost method accurately reflects the actual structure of the package to apportion his package prices using that method rather than the market value method."

21. Thus it seems that, whilst there will no doubt be some overlap between the concepts, the "simplicity" which recommended the market value method was simplicity in theory rather than in application. The market value approach raised fewer theoretical questions about questions such as the allocation of overheads, not fewer practical difficulties in determining the figures.

22. We take the guiding principle to be to attempt to achieve an apportionment which would reflect the consideration actually received by the supplier by using methods of robust theoretical simplicity, but note that if it is possible for a taxpayer to show that a less simple method more accurately reflects the actual structure he may rely upon that method. Further it is not required that two methods should produce the same or even broadly the same result.

23. Mr. Cordara took us to *Commissioners for HMRC v Loyalty Management UK Ltd, Baxi Group Limited* C-53/09 and C-55/09. There the ECJ split a single consideration paid to the promoter of Baxi's loyalty scheme so that the purchase price of the loyalty rewards provided by the promoter of the scheme to Baxi's customers was taken as the part of the consideration attributable to their provision, and the balance, the promoters profit margin, was taken as the consideration for services provided by the promoter. There was as Mr. Cordara acknowledged, little reasoning. But it seems to us that it does not support a conclusion that where a package is supplied for one consideration the consideration attributable to one part may generally be determined by the deduction of the value of the other part. The reasoning seems to us to be that objectively and from the perspective of the supplier what it was receiving

for its services was the margin on the goods. Thus only if it can be shown that the two parts of a single supply can be viewed from that perspective as being for specific consideration should the consideration be so allocated.

24. A handful of cases have come before the tribunal in which apportionment has been considered.

25. In *Haulfryn Estates Company Ltd* VAT D 16145 the tribunal faced the same question which faces us - the division of a single sum between the zero rated caravan and a standard rated content. The tribunal said at paragraphs 21 and 22:

> "There is no evidence...that the purchasers took any interest in an apportionment of the purchase price ... I agree ... that the view of the Vendors alone is unlikely to lead to a "proper attribution" ... I would not rule out an apportionment based upon proper valuations of the caravan and the removable contents ... I also consider that in view of the object of the valuation, the [reported valuation] should have covered the value of the caravan itself. Against this background I do not think that the tribunal is in a position to approve or make a valuation-based apportionment.
>
> "[22] I agree with Mr. Ewart that an apportionment based on that used by the appellant's own supplier may be less than perfect in terms of logic or even fairness. However this is a case where there has to be an apportionment and I have to determine the "proper attribution" of the parts of the consideration as directed by section 19 (4). Although the May 1996 leaflet is not binding on me ... I consider that any method of…apportionment used must give "a fair and reasonable result". In my judgement the method favoured by the Respondents, based on the 1989 leaflet is much more likely to produce such a result than that advanced by the appellant. I therefore find that the respondents' method of apportionment is the proper one ..."

26. The tribunal in that case had been referred to *Tynewydd Labour Working Mens' Club and Institute limited v Commissioners for Customs & Excise* [1979] STC 570 at 578 in which Forbes J had observed that the apportionment should take account of the profit element by ensuring that the relevant part of the payment included a due proportion of the profit made from the corresponding part of the enterprise.

27. There have been other cases in which tribunals have conducted apportionment by reference to the cost of items supplied (see I. C Thomas 1995, DH Bright VTD 4577 and River Barge Holding VATD 572). Such an apportionment effectively determines the due part of the supplier's profit in relation to any one item as the proportion of that profit which the cost of the item bears to the whole cost (and thus assumes that the margin is the same on each item).

28. From these cases we conclude that unless a direct link between a particular part of a supply and a particular element of the consideration can be shown (as in *Baxi*), the object is to find an approximation to what the taxpayer would have sold the item for if he had had to separate out the consideration for the items in the package (which is not the same as selling them separately), that is why taking into account a due part

of his profit is relevant and why if he can show specific cost allocation, as was suggested in *My Travel*, a simpler apportionment of profit may not be required. A method which consists of the attribution of the stand alone value of part of a package to that part (rather than the apportionment of the price by reference to the fraction represented by such value) does not generally address the need to consider from the point of view of the supplier the attribution of a due proportion of his profit.

3. The evidence from the valuers.

29. Mr. Smyth provided us with a report valuing the replacement cost of items in a sample of the appellant's caravans. Mr. Scheers gave evidence of what, in his opinion, were acceptable methods of apportioning the price of a caravan between component parts. Mr. Smyth made his valuation on the basis of estimating the cost of replacing the items with identical or substantially similar items at current prices. In the case of fitted items for which there was no high street replacement cost he estimated the cost of materials necessary to make them, but did not include anything for the costs of assembly and installation.

30. There was no dispute about the values Mr. Smyth had produced on the basis which he had estimated them, but Mr. Scheers considered that that basis of valuation of purpose-built items and fixtures could not be used for a just and reasonable apportionment of the price of the caravan to those items because it failed to take account of the cost of assembly, alteration and installation.

31. Mr. Smyth agreed that the value of these purpose built or fitted items could (although he did not say “should”) be arrived at by including such costs.

32. Lastly we should record that Mr. Scheers offered five principles to regulate the selection of a just and reasonable valuation:

(1) Any apportionment should take account of the value of the different assets or parts. Thus it would not be appropriate to apportion sale price on the basis of floor area unless the different parts are of equal value per unit of floor area.

(2) Any apportionment should take account of the value of every part. It would not be appropriate simply to value one part in isolation and deduct that from the total price as that does not involve any element of apportionment.

(3) The aim should be to arrive at the contribution each part, in reality, brings to the total value. It would not be appropriate to adopt to values in some hypothetical isolation if the valuation assumptions would distort relative values and do not correspond to the reality in the price which is being apportioned.

(4) The valuations of the different parts should be on a consistent basis and follow a consistent methodology; and

(5) The apportionment should be considered in the eyes of all the parties who have influenced the price paid. It would not for example be reasonable to look at an apportionment purely from a particular point of view of the actual purchaser.

33. We broadly agree with these principles although we have some reservations about (5) in the context of VAT. We also note that the object of the exercise in this appeal is not to value the component parts of what was sold but to divide the consideration between those parts. A division on the basis of value as determined by those principles could be fair in certain circumstances but we suspect would not be theoretically simple for many detailed theoretical questions might arise.

4. The competing methods of apportionment.

34. In *Madgett and Baldwin* there was, as the ECJ noted, no reason to suppose that the margins on the different services were in proportion to their respective costs. The position is different in this appeal. The object of the apportionment is to ensure so far as possible that the removable content is burdened with the right amount of VAT. The VAT which the final consumer should bear should therefore be on the amount of the cost to the appellant plus its margin. The margin made by Colaingrove on one element of the package of the caravan plus content can in our view not be different from that on any other element – the caravans are bought and sold as a single package and there is no objective factor which indicates that the margins on different parts should be different. In particular it does not seem to us that the fact that individual items may be sold separately and at a separate mark up is any indication that when those items are sold as part of a single package, the mark up applicable to the elements which could be required separately should be the same (see for example the concerns of the ECJ in relation to the market value method in *Madgett and Baldwin* noted at para[18] above).

35. Thus the object of the method should generally be such as to result in an outcome as close as possible to apportionment of the consideration so that the amount apportioned to the removable contents is its cost plus that proportion of the margin which that cost represents of the total cost (see the quote above from the Advocate General at [61] in *My Travel*). But where that precise result is not possible consideration of simplicity and practicality require a balance to be struck. Simplicity in this exercise means, not simplicity for the particular taxpayer in the operation of the scheme, but inherent simplicity – the avoidance in the operation of the method of as many difficult questions as possible. If "fairness" is equated with simplicity and practicality (for taxpayer and HMRC) then a fair method may not be one which most accurately approximates the ideal.

(1) the Agreed Method

36. The agreed basis has the advantage of both theoretical and practical simplicity.

37. It also has the advantage that there is an apportionment of Colaingrove's profit across all elements of the caravan.

38. HMRC say that it "was also evident from the evidence given by Mr Dermot King that the mark up on caravans sold to customers by Bourne was in the order of 100%. Thus the limited (20%) mark up on the manufacture's allocation of removable contents (approximately 25% of the manufacturer's allocated cost) resulted in a position which was very favourable to the appellant..".

39. In using a 20% mark up this Method assumes that Colaingrove made a lower margin on the removable items sold with the caravan than on the rest of the caravan. Whilst this assumption effectively ensures that the burden of tax on the removable items sold separately is the same as that on items sold with the caravan, we do not see that as a result required by the principle of neutrality – for the items are being sold by the same supplier arguably for different prices. We recall in this context the reservation the ECJ had in *Madgett and Baldwin* over the market value method – namely that items sold as a package might not be sold for the same price as the items individually, and Forbes J's injunction to include a "due" proportion of the seller's profit.

40. Colaingrove buys complete caravans and sells them. Commercially and economically what is bought and sold is a single package (even if different parts of it are taxed in different ways) We can see no reason why it should be treated as realising a different margin on different parts of that package. The evidence that items sold separately achieved a 20% margin was not enough in our view to meet the requirement to prove that a 20% margin allocation "accurately reflected the actual structure of the package" (see [71] Advocate General in *My Travel* quoted above)

41. Furthermore, in our view a serious problem is that the method assumes that the allocation by the manufacturer on its invoice is correct. As Mr Scheers, noting that the precise nature of the figures they adopted suggested that the manufacturers carried out a detailed calculation, said "I would presume that manufacturers adopt HMRC's view of "removable content'". But our division between standard rated and zero rated is somewhat different from that for which HMRC contended. And in any event, although we believe that it is likely that the manufacturers would have attributed standard rating to a wider spectrum of items than we would have done, there is no way of testing the accuracy or fairness of the manufacturer's allocation.

42. Unless one regarded the possibility of properly zero rated items being included in the manufacturer's apportionment as being roughly counterbalanced by the use of the 20% margin, this method seems to us not to achieve a proper (or fair) allocation.

(1A) A Modified Agreed Method

43. In its submissions the Appellant suggest a modification to Method 1 under which the proportion attributed by the manufacturer to removable content would be abated by a fraction representing the ratio of the value of items which should not have been standard rated in that attribution to the value of those which were.

44. It suggests that that ratio should be estimated (since it cannot be determined accurately as information from the manufacturer is not available) by treating the cost price of the properly standard rated items as being their replacement price less a discount of between 35 and 40% and dividing that amount by the amount of the cost treated as standard rated on the manufacturer's invoices. The replacement price would be drawn from the valuation evidence provided to the tribunal by Mr Smyth and the fraction determined by aggregating the relevant elements in the sales for the period 1 January 2007 to 30 June 2008.

45. This method loses some of the computational simplicity of Method 1, but sidesteps the serious disadvantage noted at [41] above. It is subject however to the following problems:

(1) whether adequate evidence of the discounts can be produced;

(2) whether the discount applied by caravan manufacturers extends to all the items at the same rate;

(3) whether the caravan models subject to the valuation exercise, and sales between the dates specified are representative of all sales in relevant periods.

46. If those problems can be overcome, then this method of addressing the paragraph [41] problem seems to us to have much to recommend it as a solution to the problem of the manufacturer's allocation. It is simple in its approach and practical.

(2) The Notice 701/20 Method

47. HMRC's VAT notice 701/20 section 8, proposes an apportionment of the sale price of a caravan between standard rated and zero rated items in the same ratio as the apportionment by the manufacturer between the standard rated and zero rated elements of the cost of caravan. The application of this method would give rise to a larger standard rated proportion than the 1995 agreed method because the gross profit made by the appellant on a caravan exceeds 20%.

48. HMRC submit that this method is likely to produce a fair apportionment.

49. Mr. Scheers made a number of criticisms of the approach advocated in HMRC's notice 701/20: he noted that it assumes that manufacturers' view of removable contents was correct; and he asked whether any part of the sale price might be regarded as attributable to the pitch location - if so he said that should be excluded from the caravan sale price before applying the approach described in the leaflet.

50. This method, like Method (1) has the advantage of practical and theoretical simplicity.

51. The method applies a mark up to the removable contents which is the same as that for the caravan. Mr Cordara says that this application of a uniform profit margin is a flaw in this method. He says that the evidence which led to the adoption of the agreed method demonstrated that this was not the case.

52. We disagree. We saw no evidence to suggest that the Appellant had a particular business model under which it expected to realise the same margin on the individual sale of items of contents as it did on their sale as part of a package. It therefore seemed to us that this part of this method was a better way of apportioning the margin made by the seller than the corresponding part of Method (1).

53. But this method suffers from the same major stumbling block, namely that it relies on the manufacturers' cost allocations which may well not reflect what we regard as a proper apportionment between zero and standard rated supplies

54. It may be possible to avoid the problem with the identification of the split by the manufacturer by the same method as that proposed in (1A). We call such a method (2A).

(3) A variation of the agreed or notice method in which the manufacturer's cost allocation was split between truly zero rated and truly standard rated portions.

55. This, however desirable, was not possible.

(4) Treating the replacement value of the removable items as the amount apportionable to them.

56. The appellant maintains that an apportionment based on replacement cost would produce a fair and reasonable result. To that end it presented to the tribunal the evidence of Mr. Smyth. Mr Cordara says the approach of determining the replacement value of the items and, as we understood it, treating the aggregate value of those items as the consideration for them, is straightforward and capable of being policed by HMRC. It has the advantage of simplicity.

57. HMRC (in company with Mr Scheers) complain that this method takes no account of the costs of delivery and installation of the items or the costs of putting together bespoke furniture.

58. Mr. Cordara objects to including those costs. He says: (1) the effect of so doing would be further to exacerbate the unfairness of the taxation regime which taxes ready made caravan purchasers like commissioned housebuilding services purchasers as regards such items; (2) the cost of putting the items in the caravan is the cost of enlarging the fabric of the caravan not the cost of the items; (3) these items are being taxed as if they were not part of the caravan, so the cost of putting them in the caravan is an irrelevance; (4) the exercise carried out by Mr Smyth did not take account of any discount which might be available to a customer buying in bulk: such a discount would at least match the assembly or fitting costs; and (5) on the tribunal's analysis in our earlier decision the only bespoke items which were to be standard rated were those which could be easily removed: thus the costs of installation would not be material.

59. We are not persuaded by the first argument. First, for the reasons set out in paragraph II(3)(a) "Policy and Parity" of our earlier decision, this is a different regime which provides for only approximately similar results. Even if it was right to strive for parity with an off-the-peg house purchaser, we can see no justification for approaching it through apportionment.

60. As regards arguments (2) and (3) they are not applicable to portable chattels like sofas, or the cost of assembly - only to fitting. They raise perhaps the question of whether it is the caravan which is fitted to the fixtures, or the fixtures to the caravan. It seemed to us that the benefit of installation of a fixture accrues both to the fixture and to the caravan: each is more useful because the item has been assembled and installed.

61. Arguments (4) and (5) depend on evidence which we do not have. Further the issue in relation to bespoke items related to their assembly as well as their fitting.

62. However, this approach has a number of problems whether the replacement value was determined on Mr. Smyth's basis or with adjustments for assembly and installation costs as proposed by Mr. Scheers. That is because it does not pursue the object of resulting in an outcome as close as possible to apportionment of the consideration so that the amount apportioned to the removable contents is its cost plus that proportion of the margin which that cost represents of the total cost so as to take into account a "due" part of his profit. In particular. :

(1) It uses replacement value to approximate to cost. Thus to the extent that the ratios of the replacement values differ from the ratios of the costs it differs from the object;

(2) Even where replacement value may be used as a proxy for cost this method does not do that. Instead it assumes that the replacement value of part of the package approximates to cost plus the appellant's margin. That assumption is equivalent to assuming that the aggregate of the replacement costs of every part of the caravan will be the sale price of the caravan and common sense and experience indicate that this will not be the case: anyone who has bought spare parts for a car, a printer or a computer will be aware that the costs of the spares necessary to build the whole would exceed the cost of a new complete item;

(3) the method effectively assumes that the appellant and its customer would have agreed to sell the caravan less the standard rated items for the excess of the sale price over that value of those items.

(4) the method effects an apportionment of the appellant's profit margin by reference to a figure (replacement cost) in relation to which there was no evidence that it played any part in the considerations of any party to the transaction.

63. Further it gives rise to a plethora of theoretical difficulties: should discounts for bulk purchase be reflected in replacement cost? how much of the cost of fitting and transport should be added in? whether the sample exercise reflected actual sales in the periods concerned; whether the profit margin made by the sellers of the replacement items reflected the proper share of the profit made by the appellant, and so on.

64. As a result we regard the method as neither theoretically simple nor as approximating to cost plus the due proportion of margin. .

65. Therfore, unless the problems in Methods 1,1A, 2 or 2A are insurmountable, we would reject this method.

(5) Treating the replacement value plus an amount reflecting assembly or all or part of the fitting costs as the amount apportionable to them.

66. The Appellant notes that there were extensive discussions with the Respondents in relation to the issue of assembly and fitting cost, but no resolution. Before us HMRC argued that fitting costs were attributable to the fixture; the Appellant argued

that they were attributable to the caravan. It seems to us that the benefitted both. That the fittings were fixed was no doubt part of the attraction of the caravan, but without being fitted the fittings would have less appeal. There was nothing to suggest any special allocation to fitting costs in the appellant's business planning.

67. For us the stumbling blocks with this method are the same as that for method (4): the method values the items but we do not see that as an apportionment of the consideration given for the whole, and the method is theoretically complex.

(6) Valuing every item comprising the caravan and apportioning by reference to the ratio of the value of standard rated to zero rated items.

68. Mr Cordara says that this is so complex as to be unworkable. It might require commercially sensitive information form the manufacturer which could not be obtained.

69. We agree

(7) As (6) but with an allowance in the valuation for assembly or installation.

70. As the Appellant points out, this method suffers from the same insurmountable defects as Method (6). It is even more theoretically complex.

(8) A Further alternative from Mr Scheers

71. Mr. Scheers proposed an alternative approach under which the price to be attributed removable content would be:

(1) the replacement cost of any chattels, plus

(2) that percentage of the cost of caravan (after deducting the replacement cost of the chattels) which was the percentage which the cost of the relevant fixtures to the manufacturer bore to the total cost of the caravan to the manufacturer, less any pitch premium.

72. It seemed to us that this suffered from the insurmountable problem associated with the fact that the cost to the manufacturer could not be ascertained.

Conclusions – New caravans

73. No method will be completely satisfactory in these circumstances. We find that Methods (3), (6), (7) and (8) are either impracticable or complex or both. Methods 1 1A, 2 and 2A seem to us inherently simpler than Methods 4 or 5.

74. If the relevant fraction for Method 2A can be fairly set, we believe that that method should be used. For the reasons set out above it is inherently simpler and directed more closely at the required objective than methods 4 and 5. If the fraction cannot beset, then in our view Method 1 should be used in preference to Methods 4 or 5.

75. That is because, as a simple rough and ready measure, the inapposite margin of 20% used in Method (1) is roughly compensated for by the over allocation to standard rated items which we believe it is likely that the manufacturer applies, and despite the rough and ready nature of the method it is better directed to the required object than Method 4 or 5 and is theoretically simpler.

Second hand and used Caravans.

76. The method agreed in 1995 for such caravans was to calculate a fraction of the selling price which represented the removable contents. A professional firm value the relevant contents of a sample of such caravans and the fraction was fixed at the average valuation divided by the average selling price. Where the caravans were ones which had been used for rental, but not previously sold by Colaingrove the fraction was applied to the total selling price of the caravan to obtain the standard rated portion; where the caravans were second hand caravans bought by Colaingrove from an individual, the fraction was applied to the margin made on the sale to obtain the standard rated amount applicable under the second hand goods margin scheme.

77. Mr Cordara submits that in the case of such caravans all that is needed is to revisit the valuation to adjust the value of the removable contents to one determined in accordance with the tribunal's earlier decision. HMRC made no additional submissions on this aspect of the case.

78. It seems to us that Mr Cordara is broadly right. In these cases no information from the manufacturer is available. It is not possible to attempt a calculation which seeks more accurately to spread Colaingrove's profit between the various elements. The only practicable method is the valuation method whatever its defects.

79. But HMRC's concerns over the costs of installation and assembly of fixtures remain relevant. We have said that this work benefits both the caravan and the fixture. It seems to us that it should therefore be split 50:50 between the caravan and the fixture and that amount added to the valuation. But to the extend that in valuing the contents an allowance is made for the fact that it is old, the cost of fitting should be abated by the fractional reduction in value of the items from new.

Rights of Appeal

80. 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.

CHARLES HELLIER
TRIBUNAL JUDGE

RELEASE DATE: 11 January 2013