Neutral Citation: [2025] UKFTT 1320 (TC)

Case Number: TC09678

FIRST-TIER TRIBUNAL
TAX CHAMBER

By remote video hearing

Appeal reference: TC/2017/05628

VALUE ADDED TAX – whether supplies of staff (nursing and care assistants) are exempt as supplies of services closely connection to medical care under Item 4 Group 7 Schedule 9 Value Added Tax Act 1994 – no appeal dismissed

Heard on: 21 and 22 October 2025
Judgment date: 7 November 2025

Before

TRIBUNAL JUDGE AMANDA BROWN KC
SUSAN STOTT

Between

1ST ALTERNATIVE MEDICAL STAFFING LTD

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Ajayi, human resources manager for the Appellant.

For the Respondents: Ms Eleni Mitrophanous of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION

1. With the consent of the parties, the form of the hearing was a video hearing using Cloud Video Platform. The documents to which we were referred were contained in a hearing bundle of 542 pages, a supplementary bundle of 104 pages (to which HMRC added a further document of 30 pages) together with a skeleton argument from each party.

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

BACKGROUND

3. It is undisputed in these proceedings that 1st Alternative Medical Staffing Ltd (**Appellant**) is an employment business as defined in section 13 Employment Agencies Act 1973 i.e. a business supplying persons (either contracted under a contract of or for services) to act for and under the control of others. In the course of that business, it is agreed that the Appellant supplied nurses and care assistants to NHS and private hospitals and care homes. The consideration for such services was calculated by reference to the pay, taxes and other employment costs **(Employment Costs**) payable to the staff plus a commission to the Appellant. The Appellant accounted for VAT on the commission charged but treated the reimbursement of the Employment Costs as exempt from VAT. In this appeal we must determine whether the Appellant correctly treated the Employment Costs reimbursed in prescribed accounting periods 09/14 to 04/16 (**Relevant Period**) as exempt from VAT. If the Appellant correctly so treated the reimbursed Employment Costs it will have over accounted for VAT on the commission it charged.

4. HM Revenue & Customs (**HMRC**) planned to visit the Appellant in February 2016 to check that VAT and pay as you earn had been correctly accounted for by the Appellant. The visit was cancelled by the Appellant and HMRC requested certain information be provided. Absent the requested information HMRC determined that all consideration received by the Appellant from their client hospitals and care homes was properly taxable. On 29 July 2016 HMRC issued VAT assessments for the Relevant Period in the total sum £265,590 (**Assessments**). The Appellant challenged the Assessments and requested a review of them on a variety of grounds including that the supplies were properly exempt as the provision of medical care or welfare services, that the Assessments were unreasonably made and/or that the Appellant was entitled to apply the terms of Notice 701/57, the Nursing Agencies Concession (**NAC**). HMRC reviewed the Assessments amending its calculation of the sums due ensuring that the Appellant was assessed on the basis that the consideration received was treated as VAT inclusive. The revised amount due was calculated as £221,325.

5. The Assessments were appealed to this Tribunal on 10 July 2017. At that time the grounds of appeal (**GoA**) specified that the Appellant contended that its services were exempt from VAT generally under Group 7 Schedule 9 Value Added Tax Act 1994 (**VATA**) and that it was entitled to apply the NAC. The GoA were subsequently amended to include grounds that the Appellant had a legitimate expectation that it was entitled to rely on the NAC retrospectively particularly in the context of a letter from HMRC sent on 14 January 2004 to a company under common ownership (Delta Nursing Agency (**Delta**)).

6. In parallel to the present proceedings the Appellant lodged a judicial review claim to litigate those aspects of the appeal in which it was asserted that the Assessments were contrary to the Appellant's legitimate expectations. The judicial review was unsuccessful with both the

High Court and Court of Appeal determining that no legitimate expectation arose from either the NAC or the letter of 14 January 2004 to the related company.

7. The judicial review claim having failed, the Appellant was directed to confirm the basis, if any, on which this appeal was to be maintained. Revised GoA were served reframing the substantive liability challenge and introducing an argument that the Assessments had not been raised to best judgment. The Tribunal refused to admit the best judgment challenge directing that the GoA be limited to the following ground only:

> "… 3 The Appellant maintains that its supplies were exempt under VATA 1994, Schedule 9, Group 7.
>
> …
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> 5. VATA 1994, Schedule 9, Group 7, Item 4 exempts:
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> > "The Provision of care or medical or surgical treatment and, in connection with it, the supply of any goods, in any hospital or state-regulated institution."
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> 6. This must be interpreted consistently with Article 132(1)(b) of the VAT Directive, which exempts:
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> > "hospital and medical care and closely related activities undertaken by bodies governed by public law all, under social conditions comparable with those applicable to bodies governed by public law, by hospitals, centres for medical treatment or diagnosis and other duly recognised establishments of a similar nature;"
>
> 7. The exemption is not, therefore, limited to "goods" but exempt any supply/activity that is closely related to medical care.
>
> 8. On the meaning of "closely related", the CJEU has held:
>
> > "[29] The Court has held, as regards medical services, that, in view of the objective pursued by the exemption provided for in [Article 132(1)(b)] it follows that only the supply of services which are logically part of the provision of hospital and medical care services, and which constitute an indispensable stage in the process of the supply of those services to achieve their therapeutic objectives, is capable of amounting to 'closely related activities', within the meaning of that provision, given that only such services are of a nature to influence the cost of healthcare which is made accessible to individuals by the exemption in question (see judgment in *Ygeia* C-394/04 and C-395/04 paragraph 25)" (*De Fruytier* C-334/14).
>
> 9. Engaging medical professionals, such as nurses, is an indispensable stage in the supply of medical care to individuals and the cost of such services will, logically, influence the cost of healthcare which is made accessible to the individuals.
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> 10. It is clear from the Court's case law that exemption is not limited to the final stage of supplies to the patient, but includes prior stages in the supply chain.
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> …
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> 13. Accordingly, the appellant's supply is closely related to the supply of medical care. Further, the appellant is a state registered institution. It is licensed by the local authority to make its supplies or services, as an approved supplier to the NHS under the terms of a framework agreement and was registered and regulated by the CQC."

8. In this appeal therefore we must determine whether the supplies made by the Appellant should have been treated as exempt on the basis that they were closely related to supplies of medical care. Unfortunately, when the Appellant prepared its skeleton argument, it did not address the legal or factual basis on which that argument was pursued. The skeleton argument contended what had been conceded in the revised GoA and/or on which it had failed in the judicial review proceedings (i.e. that the supplies were in and of themselves medical care and/or that the Appellant should have been entitled to rely on the NAC).

RELEVANT LAW

9. The relevant legal provisions we must apply are Article 132(1)(b) PVD and Item 4, Group 7, Schedule 9 VATA (**Item 4**) (as set out above in the Appellant's GoA).

10. Also relevant are:

(1) Article 134 PVD which provides that a supply of goods or services shall not be granted exemption as provided for in all the provisions of Article 132(1) which concern the supply of closely related goods/services (a) where the supply is not essential to the transactions exempted and (b) where the basic purpose of the supply is to obtain additional income for the body in question from activities carried on direct competition with those of commercial enterprises subject to VAT.

(2) Note (8) to Group 7, Schedule 9 VATA (**Note 8**) provides the definition of "state regulated": as meaning "approved, licensed, registered or exempted from registration by any Minister or other authority pursuant to the provision of a public general Act, … Here "*Act*" means (a) an Act of Parliament …"

11. There was substantial agreement between the parties on the law. This agreement being derived from the amended GoA drafted on the Appellant's behalf by Michael Firth KC and HMRC's skeleton argument, as confirmed in the hearing. It was agreed that:

(1) Item 4 needed to be interpreted in a way which conformed with the provisions of Articles 132(1)(b) and 134 Principial VAT Directive.

(2) The principle of conforming interpretation continued to apply in this appeal despite Brexit (in this regard see the analysis of the continuing relevance of European Law as set out in *Isle of Wight NHS Trust v HMRC* [2025] UKFTT 01114 (TC)) (***IoW***).

(3) Consistent with such interpretation Item 4 exempts supplies of both goods and services which are closely connected to medical care (as determined in *Northumbria NHS Healthcare NHS Trust v HMRC* [2021] UKFTT 0071 (TC)) and not simply goods.

(4) Further, to qualify for exemption, a supply which was factually established to be closely related to the provision of hospital and medical care, must be supplied "by" a duly recognised establishment of similar nature to a hospital or medical treatment centre i.e. a state regulated institution as defined in Note 8. The reference to such supplies being in hospitals in Item 4 being so construed.

(5) The exemption under Item 4 for closely connected supplies did not require the supply under consideration to be made to the recipient of the medical care.

(6) To qualify under Item 4, the Appellant therefore needs to evidence both that:

(a) it is in EU terms a duly recognised establishments of a similar nature to a hospital and in domestic terms a state regulated institution meeting the terms of Note (8); and

(b) the supply of staff made by it was closely related (in the sense informed by the terms of Article 134 PVD and the relevant case law of the Court of Justice of

the European Union (**CJEU**)) to the provision of medical care which was itself exempt under Item 4 provided by the hospitals and care homes which received the Appellant's supplies.

EVIDENCE AND FINDINGS OF FACT

12. As indicated, we were provided with bundles containing over 700 pages of material to which we were taken by Counsel for HMRC. We were provided with a witness statement prepared by Robin Odong, director of the Appellant, who also gave sworn oral testimony and was subject to cross examination.

Application to admit additional documents

13. In the period immediately prior to the hearing additional documents were received from both parties that had not been included in the original bundle of documents. All such documents were admitted by us.

14. However, during his cross examination, Mr Odong repeatedly asserted that additional documentary evidence was available to support the Appellant's case. Mr Odong waved at us his current operating procedures and policies manual indicating that it would substantiate matters on which he was being cross examined. Eventually, Mr Ajayi made an application that the Appellant be given the opportunity, after the hearing, to review what further documents there may be which might then be admitted in evidence.

15. We refused the application for the following reasons:

(1) Directions were issued in this appeal by Judge Poon on 29 August 2024 requiring that no later than 19 September 2024 each party was to produce a list of documents in the party's possession custody or power on which that party intended to rely or produce in connection with the appeal. The Appellant produced a list of documents. The directions also provided for service of Appellant's witness statements no later than 31 October 2024. The statement of Mr Odong was served together with an exhibit to that statement. The statement did not reference the operating policies and procedures manual or any other documents in addition to those on the list of documents and/or exhibited on which reliance was to be placed.

(2) In accordance with the directions, on 9 September 2025, HMRC served an index for the bundle. Attached to the index was the Appellant's list of documents requesting the provision of documents not then held by HMRC and explicitly inviting the Appellant to notify any additional documents to be included in the bundle. The Appellant did not invite HMRC to include additional documents.

(3) However, in the last couple of days prior to the hearing, both parties served additional documents to which they intended to refer.

(4) At no point until he was cross examined did Mr Odong consider the documents to be relevant. Beside the operating manual (which was a current document said to have evolved since its creation) there was no specific document identified to which the application was made; it was a general application for documents to be identified and subsequently served.

(5) No explanation was given as to why the need for additional documents to be included had not been identified previously and included in the list of documents. This despite HMRC challenging the adequacy of the Appellant's evidence in their skeleton argument.

(6) This appeal concerns VAT periods between 11 and 9 years ago. The Assessments were issued 9 years ago, and the appeal made 8 years ago. The time for identifying

relevant documents pertaining to the Relevant Period arose over a year ago. In the absence of any explanation for the failure and without having particularised the documents to which the application was made the effect of granting the application would have been to adjourn the appeal.

(7) In all these circumstances we did not consider it in the interests of the overriding objective to grant the application.

Agreed facts

16. We start by setting out the facts which were agreed between the parties, as discerned from the Appellant's amended GoA and the factual basis on which the Appellant presented its judicial review. We note that during the hearing Mr Odong and Mr Ajayi variously presented evidence or made submission which failed to recognise the factual concessions made in the amended GoA and/or the necessary factual basis on which the judicial review proceeded:

(1) The Appellant was, in the Relevant Period (and remains), an employment business such that the supplies it made in that period were supplies of staff contracted to the Appellant and provided by the Appellant to its client hospitals and care homes (see paragraph 6 *R (oao First Alternative Medical Staffing Ltd and another) v HMRC* [2021] EWHC 882 (Admin)).

(2) The Appellant was originally registered by the Care Quality Commission (**CQC**) but ceased to be so registered in 2010 (and therefore prior to the Relevant Period).

(3) The qualified and registered medical staff provided by the Appellant to its clients are engaged in the provision of medical care, such medical care being provided by the Appellant's client using their skills and expertise of the workers place by the Appellant, but subject to the direction, supervision and control of the clients.

Documentary evidence

17. We set out a summary of each document relevant to the issues we need to determine. We do not review the correspondence passing between the parties as it simply narrates the dispute and does not provide evidence relating to the issues to be determined. We also exclude documents concerning the NAC as it has been definitively determined by the Court of Appeal (*R (oao First Alternative Medical Staffing Ltd and another) v HMRC* [2022] EWCA Civ 249) that the Appellant had not chosen to apply the NAC in the Relevant Period and was not entitled to do so retrospectively. In addition, we did not review any document that expressly related to Delta on the grounds that Delta is a separate legal person to the Appellant.

(1) An email dated 15 December 2011 and accompanying "audit report" prepared by Neuven. The report appeared to indicate that checks were undertaken by Neuven in respect of agency workers. It identifies certain deficiencies in respect of 6 such workers. For two of those workers references were incomplete and for five the note states "safeguarding but level not indicated". The action associated with the absence of a safeguarding level was stated as "A lot of [the Appellant's] staff training is done on site by Delta Nursing Agency – we recommend that they consult the Intercollegiate document regarding the different [text then missing]". We note that this document is outside the Relevant Period but that in the period to which it relates the Appellant achieved a compliance score of 220 representing a percentage score of 95.24%.

(2) Certificate of registration for the Appellant under the Care Standards Act 2000 issued by the CQC dated 17 February 2010.

(3) Audit report prepared under the London Procurement Partnership (**LPP**) Nursing 2012 Framework by Neuven on 8 October 2012. The accompanying email indicates that

the Appellant's compliance score was less than 79.99%. For four staff, a list of deficiencies is identified. For the first worker it was identified that a series of training requirements had not been completed before a shift on 10 May 2012. The action identified was to ensure that all workers receive induction and annual ongoing training. There were also failings in connection with records of employment history and references. As regards the second identified worker issues were again noted with a failure to complete all mandatory annual training. There was also an absence of confirmation that the worker had received induction and orientation training. A failure to appraise was also noted. The required action states that appraisals are to be undertaken annually by a practitioner of the same discipline to confirm performance and standards of practice. For the third worker it was noted that qualifications had not been verified, and references not been updated annually. Fitness to work certificates were noted as having expired for the fourth worker with vaccinations having lapsed. Vis a vis the fifth worker the audit notes that NMC registration had not been confirmed on a 4 weekly basis as required. For all workers it was identified that they did not have identification bearing the name of the Appellant to facilitate identification that the worker was supplied by the Appellant and that the Appellant was required to have their own paperwork, policies occupational health contract etc and could not rely on those belonging to Delta.

(4) An undated brochure (**Brochure**). This appears to be material the Appellant made available to hospital and care home clients explaining the Appellant's services. It describes the Appellant as a leading provider of healthcare staffing founded in 1994 specialising in the recruitment of registered nurses, healthcare assistants and allied healthcare professionals for placement in public and private healthcare settings nationwide. The document states that the Appellant provides support and advice in connection with continued professional development and that it had in place "systems to maintain an excellent delivery of service". The Appellant's skill is said to be matching "candidates to the right work opportunities and providing customers with the right staffing and service solutions. The page heading "Training" states: "as part of our initial and ongoing registration, all candidates are required to undertake basic mandatory training" and a list of such training categories is provided. The recruitment procedure for workers is narrated and is said to include the receipt of satisfactory Criminal Records Board (**CRB**) checks, a requirement for two references sent to work addresses and a face-to-face interview "by a suitably trained person". The recruitment process is also said to require applicants to undergo an assessment of their occupational health status: "Delta has employed the services of an independent occupational health team that verifies and certifies that our healthcare staff are fit for work, and their health status adhere [sic] to the minimum health standards requirements.". NMC registration is stated to be verified and copied together with identity checks and course qualifications. Completion of "Delta's in house training covering such matters and Fire & Safety, CPR, and Manual Handling", all in house training stated to be provided by a "suitably trained person". The section on maintaining standards explains the approach to ensuring quality of services through policies and procedures as specified under the Care Standards Act and referring again to the comprehensive training provided and delivered through the internal training department. A section on "Induction Programme and Annual Monitoring" briefly sets out how workers are inducted and familiarised with company policies and procedures. All workers are said to be subject to ongoing appraisals and annual mandatory/refresher training and occupational health screening to ensure vaccinations are up to date and the professional thereby fit to work. The Brochure documents accreditations and memberships including the CQC and CRB.

(5) An undated flowchart (**Flowchart**) bearing no corporate logo or corporate indication said to set out the Appellant's processes for recruitment, placement and invoicing of workers. The Flowchart indicates that the registration unit reviews qualifications, registration, right to work, DBS and vaccinations, together with an occupational health assessment (including blood tests) prior to a clinical assessment of the candidate under "Nursing Agency Act 1957, Care Standards Act 2000 and Nurses and Midwifery Order 2001. Training and ongoing compliance assessments are referred to as being carried out by licenced nurses. The chart indicates that the business is externally audited by social services, police, CQC and Nursing and Midwifery Council.

(6) A letter from LPP to Delta concerning confirming appointment of Delta under the National Clinical Staffing Framework Agreement for the period 8 August 2016 to 7 August 2018 in respect of "Lots" for the placement of temporary agency workers and permanent and fixed term recruitment in the categories of nursing and midwifery, medical and dental, other clinical and all clinical staff.

(7) Partial copy of the standard terms and conditions between the Appellant and its clients. Pursuant to clause 8 the Appellant guaranteed that workers had been interviewed by qualified personnel and references had been taken up. Clauses 10, 11 and 12 provide that the client shall be responsible for providing the relevant insurance for the workers, compliance with health and safety legislation and that the workers are under the supervision and control of the client.

(8) Undated Manual for Bookings Team (**UMBT**) bearing the Appellant's corporate logo for the supply of nursing staff to a range of NHS providers pursuant to a Master Vendor agreement established with Medacs Healthcare. The procedures identified for booking staff was stated to involve the uploading of a completed checklist evidencing, DBS, right to work, references and occupational health/bloods through "Envoy". Once uploaded Medacs clear the worker who is then available to the identified Trust through the Medacs booking system.

(9) Timesheets and invoices provided for workers dated October 2018. All timesheets are signed by the worker; some are signed by the client.

(10) Materials provided by NHS trusts to the Appellant seeking to book workers. The documents show a list of roles available i.e. community nurses RGNs 5 and 6, mental health nurse, mental health support worker, etc. by reference to the hospital locations. The materials specify that the supplier provide the information on a checklist (not provided). The documents are undated.

(11) Excerpt of a document apparently produced by the NHS Staff Council providing national profiles for midwifery. A very detailed job description is provided for each grade of midwife/assistant for the maternity services.

(12) Undated general terms of engagement between the Appellant and the workers. The document references the Nursing Agencies Act 1957 and the Nurses Agencies Regulations 1961 both of which were repealed before the Relevant Period. The terms of the agreement expressly provide that the workers are self-employed and are placed on assignments in accordance with the Appellant's terms of business with its clients. The terms also reference medical/health assessments and the requirement to undertake all mandatory training though does not specify who will provide such health assessments or training.

(13) Contract dated 11 February 2014 between the Appellant and British United Provident Association Limited (**BUPA**). The recitals recognise that the Appellant is "in

the business of sourcing and introducing suitable temporary resource to its clients based on information supplied by its clients regarding the assignment, type of work, the experience, qualification, training and any authorisations required". The Appellant was appointed under the framework as part of a panel of agencies providing temporary workers. The contract refers to de Poel's and e-tips and to a requirement that the Appellant carry out an induction programme for all workers supplied under the contract to include training in the core competencies for the assignments to be filled. The Appellant is obliged to demonstrate through the production of relevant documentation that the worker proposed for an assignment had the "experience, training, qualifications and authorisations" necessary to meet the requirements of the assignment including DBS, right to work and other statutory checks and assessments. The Appellant undertakes to provide a worker who represents "an excellent match" for the specifications of the role provided by BUPA. The Appellant was required to fill 95% of roles offered by BUPA.

(14) A series of "e-tips vacancy" emails dated 20 November 2016 for placement of care assistants with Bupa establishments.

18. We note that we were not provided the Framework Agreements with LPP or any other framework provider. This is to be contrasted with the situation in *IOW*. In that case, whilst the evidence set was incomplete, in the context of the provision of agency doctors, there was some evidence of framework and master vendor agreements. We must assume that such contracts existed, but the Appellant chose not to provide them.

Mr Odong's evidence

19. Mr Odong is a director of the Appellant. He provided a witness statement on 10 December 2024 after the amended GoA had been served. Despite this, the witness statement provides evidence at some length addressing matters which had been the subject of the unsuccessful judicial review litigation and/or conceded for the purposes of this appeal. We do not set out this evidence as it is irrelevant to the issues we must determine.

20. Oral evidence including cross examination took the substantial part of a day of the hearing. Mr Odong's evidence was extremely repetitive, and he struggled to focus on the issues we need to determine repeatedly referencing both the provisions of the NAC and HMRC guidance and that the workers provided were involved in the provision of medical care by the Appellant's clients to patients in the hospitals and state regulated institutions to which they were assigned (the former being irrelevant and the latter accepted by HMRC).

21. His evidence explained, by reference to the document outlined and addressed at paragraph 17(5) above, that the Appellant's business comprehensively vetted, screened and trained all workers before accepting them onto its books and throughout the period they were contracted to the Appellant. He claimed that the Appellant employed/contracted the services of nurses at more senior grade bandings to interview staff as it was a requirement that interviews needed to be done by registered medical professionals of a more senior grade to the worker. Qualified occupational health practitioners were claimed to be employed by the Appellant to carry out the screening of workers to ensure that such workers were fit to work on each assignment. It was also claimed that the Appellant provided the workers with their annual mandatory training to ensure competence for the assignment. It was said that each allocation of a worker to an assignment was undertaken by a medically qualified practitioner within the Appellant's management to ensure suitability in meeting client need.

22. Annual appraisals were said to be carried out as required under client contracts.

23. Mr Odong said that the Appellant was required to maintain complete records of all vetting, screening and training for each of the workers which was then subject to audit by the

Appellant's clients (as demonstrated by the Neuven audit reports referred to at paragraphs 17(1) and 17(3) above). He also explained that other firms were subcontracted by clients to undertake these audits.

24. Mr Odong accepted in cross examination that there was no documentary evidence within the bundle which specifically demonstrated how the vetting, screening, training and appraisals which he said was provided by the Appellant was performed and by whom. He said it could be demonstrated through the operations manual and other documents which could have been produced. As to the application to admit these documents at this stage in the proceedings see paragraphs 13 to 15 above.

25. The evidence was unclear as to the arrangements for the assignment of non-medically qualified workers such as care assistants. Mr Odong claimed that all care assistants provided by the Appellant were under the supervision of medically qualified workers also provided by the Appellant, in effect that qualified and unqualified workers were provided as a package. No specific information was provided in this regard it was merely general assertion.

26. It was stated in Mr Odong's witness statement that post 2010 the Appellant was regulated and licensed by the Purchasing Agency of NHS Suppliers and other bodies. However, in evidence and cross examination that position was refined. Mr Odong accepted that the Appellant was no longer directly licenced, approved or registered under statute with any regulatory body. In 2010 nursing agencies were no longer required to be registered with the CQC and sole responsibility for meeting CQC requirements fell on the hospitals and other state regulated institutions providing the care to patients. However, he explained that the Appellant was nevertheless indirectly subject to the same regulatory regime because the hospital or state regulated institution could only comply, so far as the provision of care was through agency workers provided by the Appellant, by imposing obligations to vet, screen, train and appraise on the Appellant. Those obligations were audited by the Appellant's clients and were, therefore complied with.

Findings of fact

27. From the evidence we have summarised above we find the following facts in addition to the agreed facts set out in paragraph 16 above:

(1) The Appellant has not evidenced, and Mr Odong accepted that the Appellant was not regulated under any other statutory licence, approval or registration in connection with the provision of medical care.

(2) Any registration as an employment business under the Employment Agencies Act 1973 is not relevant to the issues we must determine as such businesses are expressly excluded from regulation, in the Relevant Period, under the Health and Social Care Act 2008 by virtue of Schedule 1 paragraphs 1 and 13.

(3) We infer that the Appellant worked under a system of framework and master vendor agreements with NHS Trusts including those identified in the documents summarised at paragraphs 17(6) - 17(8) but we cannot determine the terms on which workers were provided and thereby the obligations imposed on the Appellant by the NHS. However, we consider that it is reasonable to infer that the obligations imposed were similar to those set out in the BUPA contract summarised at 17(13).

(4) Contracts with such state regulated institutions do not represent licencing, authorisation or registration pursuant to an Act of Parliament.

(5) The Neuven audit report for 2012 indicates that, certainly up until that date, the Appellant used Delta's infrastructure for the operation of its business. It is at least

implicit, and we accept that such infrastructure included access to an occupational health contract.

(6) It is reasonably apparent that Mr Odong had little regard to the corporate separation between Delta and the Appellant. Documents said to pertain to and branded as those relating to the Appellant frequently referred to Delta indicating that Delta's documents were repurposed for the Appellant. We do not believe that this repurposing was with an intention to mislead either the Tribunal or clients it is more likely that it was sloppy practice.

(7) Whilst we accept that HMRC's concern that documents referring to the Nursing Agencies Act, CRB and CQC etc (including the Brochure, Flowchart and UMBT) did not relate to the Relevant Period, on balance, we consider that such references are more likely to be a further manifestation of sloppy practice and that documents correct at the point of drafting continued in use in the Relevant Period despite no longer containing the correct references to current legislation, regulators etc.

(8) The Appellant was audited by Neuven in 2010 and 2012. The latter audit report revealed failings in the Appellant's processes and record keeping. However, it is at least implicit from the 2012 audit outcomes and actions that the Appellant was expected/required pursuant to the terms on which the audit was carried out, to ensure, on its own behalf, that requirements as to registration, qualifications, references etc were met, and that induction training, occupational health assessments (including fit to work vaccinations) and annual appraisals had been provided by the Appellant to all workers.

(9) We consider it most unlikely that such obligations were removed from contracts relating to the Relevant Period despite not having been provided with copies of such contracts. We consider that conclusion to be consistent with the reference in documents relation to time before the Relevant Period and to booking procedures applying during the Relevant Period (i.e. the use of e-tips). That the Appellant undertook such activities is also apparent from the Brochure and Flowchart. Mr Odong was also adamant in his evidence that the role of the Appellant under such contracts required it to verify the registration, qualifications and references of the workers, to provide induction and annual mandatory training, undertake appraisals and occupational health and fit to work assessments. We are inclined to accept that the workers placed by the Appellant were verified, assessed and trained prior to the broad satisfaction of the Appellant's clients and those client's auditors during the Relevant Period.

(10) On the basis that the Appellant was unable to demonstrate that it employed nurses or other practitioners or otherwise owned any infrastructure to carry out the verification, assessment and appraisals we consider it more likely than not that it was Delta that provided these services on behalf of the Appellant but not though any formal contracting.

(11) Although we have accepted that the Appellant was subjected to the same requirements placed on its clients pursuant to their CQC registration and regulation the indirect imposition of these requirements does not represent the licencing, approval or regulation of the Appellant pursuant to an Act of Parliament.

(12) We do not accept Mr Odong's evidence that it was his staff who specified the roles to be filled by the workers the Appellant placed. Not only is such a conclusion highly improbably it is inconsistent with the role descriptions provided by the NHS. We find that the Appellant's clients will have identified resource gaps for medical staff of a specific grade and certain experience; the Appellant then identified the workers contracted to it which met the criteria specified. These workers were then offered to the client for placement. Given the implausibility of his evidence in this regard, and absent

any documentary evidence (from any period) that would assist we have no evidence on which to determine how this matching process took place and whether it directly involved medical practitioners contracted to or employed by either the Appellant or Delta.

(13) As indicated in the hearing we take judicial notice that for many years, including in the Relevant Period, the NHS has been routinely dependant on agency nurses to ensure that medical care is safely provided in hospitals.

LEGAL REQUIREMENTS FOR EXEMPTION AS A CLOSELY CONNECTED SUPPLY

28. For supplies which are not themselves supplies of medical care to be exempt they must be closely related to medical care and must be supplied by an entity meeting the requirements of Note 8.

State regulated institution

29. This appeal fails because the Appellant does not meet the requirements of Note 8. This follows from the agreed fact set out at paragraph 16(1) and our findings at 27(1), 27(2) and 27(11) above.

Closely related

30. Our conclusion at paragraph 29 above disposes of the appeal and it is therefore strictly unnecessary for us to consider whether the Appellant's supplies were closely related to the supplies of medical care which HMRC accept, as they must, are supplied by the Appellant's clients.

31. However, the point was raised by the Appellant in the amended GoA in which it contended that for the Appellant's clients the engagement of agency nurses was an "indispensable stage in the supply of medical care" influencing the cost of healthcare and, as such the supply of such staff qualified as closely related to medical care for the purposes of the exemption. Having ceased to be represented, the Appellant was ill equipped to develop the argument; it was not addressed in the skeleton argument at all and neither Mr Odong nor Mr Ajayi provided any analysis to support the amended GoA.

32. However, HMRC fully argued the point before us, and we consider it appropriate to shortly indicate what our decision on this issue would have been had we needed to determine it.

33. HMRC provided a comprehensive review of the European and domestic case law on "closely related" supplies. From which they asserted that a supply of staff did not represent an "indispensable stage in the process of the supply of medical care" by the Appellant's clients and as such was not closely related.

34. We were referred to the following CJEU cases which have determined whether certain supplies are closely related supplies in the context of Article 132(1)(b):

(1) *Christoph-Dornier-Stiftung fur Klinische Psychologie v Finanzamt Giessen* (C-45/01 [2005] STC 228) concerned the provision of outpatient psychotherapy care. The Court determined that the supplies were exempt under Article 132(1)(c) (provision of medical care outside a hospital setting by qualified medical practitioners) but also provided its view on the potential parallel exemption under Article 132(1)(b) as supplies closely connected to medical provided by a hospital or similar establishment. The Court determined that to be a service closely related to medical care the psychotherapy needed to be given as a service ancillary to hospital or medical care.

(2) *Diagnostiko & Therapeftiko Kentro Athinon- Ygeia AE v Ipourgos Ikonomikon* (C-394/05 and C-395/04 [2006] STC 1349) concerned the provision of telephone services and televisions to inpatients and beds and meals to those accompanying inpatients. The

Court confirmed that a closely related supply was required to be ancillary to the principal exempt supply i.e. a means of better enjoying the principal supply. This was explained as requiring that the supply under consideration was an "indispensable stage in the process of the supply" of the medical care. As it could not be said that access to telephones, television and beds and meals (usually for the parents of children) were indispensable in meeting the therapeutic objectives which underpin the provision of exempted medical care such supplies were not exempt as closely related to medical care. It was also noted that to exempt the provision of such services by the hospital would result in a distortion of competition with commercial providers who necessarily fell outside the scope of the exemption because they were not hospitals or similar establishments.

(3) In *Belgium v De Fruytier* (C-334/14 [2015] STC 2507), the taxpayer was engaged in a self-employed capacity transporting human organs and samples to various hospitals and laboratories. The Court restated that to be closely related to medical care, the supply under consideration must constitute an indispensable stage in the process of supplying medical care. Whether that was made out on the facts was stated to be a matter for the referring court but unless it was also determined that the supplier was another duly recognised establishment similar to a hospital the exemption would not apply.

(4) *Autoridade Tributaria e Aduaneira v Termas Sulforosas de Alcafache* (C-513/20) concerned a registration fee paid by recipients of thermal treatments which were prescribed to the recipients by a doctor. Such treatments are provided exempt from VAT pursuant to Article 132(1)(b). The service provided for the registration fee provided for the possibility of treatment through the compilation of information about the recipient. The Court restated the connection between Articles 132(1)(b) and 134(a) PVD and thereby the requirement that a closely connected service must facilitate the better enjoyment of the principal exempt supply and be essential to its provision. It repeated the requirement that the supply asserted to be closely related needed to represent an indispensable stage in the process of the supply of medical care to achieve its therapeutic aim and thereby reducing the cost of health care at the point of end use. It was determined that the service provided in return for the registration fee would closely related if it facilitated a decision on what care might be provided and the manner in which it was administered. However, a service which merely provided information which was not then used in the delivery of the treatments would not be exempt as closely related.

35. We accept that the critical themes to be taken from these cases requires us to look at the relationship between the services provided by the Appellant, namely a supply of staff, and the provision of medical care to determine whether the supply of the agency workers to the Appellant's clients represents an indispensable stage in the provision of medical care by the client hospitals and establishments.

36. Before applying the facts as we have found them, we have regard to the CJEU judgment in *Stichting Regionaal Opleidingen Centrum Nooord-Kennemerland/West Friesland (Horizon College) v Staatssecretaris van Financien* (C-434/05 [2008] STC 2145) (***Horizon***) which is the only case to have considered a supply of staff as a potentially exempt supply closely connected with an underlying exempt supply. The context of the case was the education exemption prescribed in Article 132(1)(i) which provides for the exemption of supplies of education and goods and services closely related to education by bodies governed by public law with educational aims and other bodies recognised by member states with similar aims.

37. Horizon made some of its teachers available to other educational establishments, the receiving or host establishments assumed responsibility, direction and control for the teachers

it received pursuant to the contract between Horizon, the host and the teacher. The charges made by Horizon were limited to the employment costs incurred by them in respect of the teacher. The first issue before the CJEU was whether there was a supply of education by the assigned teacher, the answer was no, there was a supply of staff. The second question was whether the supply of staff was a supply closely connected to education. A third question asked whether it made a difference whether Horizon was, itself, an educational institution.

38. In giving its judgment on the closely related question, the Court considered the provisions of what is now Article 132(1)(i) and 134 compendiously. The Court confirmed that a supply was "closely related" to another supply applying the same test as that for determining the existence of a composite supply i.e. whether the related supply is ancillary to the principal supply, providing a means of better enjoying that principal supply. The Court accepted, in principle, that a supply of staff on a temporary basis to carry out the teaching duties in the host establishment could be a supply closely related to the supply of education made by the host establishment because such supplies enabled students to better enjoy the education provided by the host establishment (paragraph 30). This was so even though Horizon was not itself suppling education to the students (paragraph 31).

39. The "in principal" conclusion was then stated to be subject to the following conditions derived from both Article 132(1)(i) and 134:

> (1) The host establishment had to be a body governed by public law with an educational aim or organisation defined by the state with similar aims making supplies of education pursuant to Article 132(1)(i) (paragraph 34 and 35); and
>
> (2) the supply of staff by Horizon must be essential to the supply of exempt education by the host establishment and, in that context, it must be "of a nature and quality, such that, without recourse to such a service, there could be no assurance that the education provided by the host establishments and, consequently, the education from which their students benefit, would have an equivalent value" (paragraph 39); and
>
> (3) the nature of the service must be such that it is discernibly different to the services offered by commercial organisations providing supply teachers "owing, for example, to the qualifications of the staff in question or the flexibility of the terms of their supply" (paragraph 40); and
>
> (4) the income stream derived from the supplies of staff could not be "additional income" derived from carrying out transactions in direct competition with commercial agencies.

40. We turn therefore to consider whether, had the Appellant been a state regulated institution meeting the terms of Note 8, we would have considered the supplies to be closely related.

41. In this regard we observe that the Advocate General in Horizon noted the argument in favour of treatment of the supplies of staff as being closely related as "if students are receiving education, … from an educational establishment, and that establishment suffers a temporary shortage of qualified teachers or instructors, then the benefit of the education or training received will be greatly enhanced by the school secondment qualified staff from another such establishment" (paragraph 71). The Advocate General then comments "[t]hat view appears so immediately and obviously correct, as a matter of common sense, that a very powerful reason indeed would seem necessary in order to refute it" (paragraph 72).

42. We agree that, particularly in the context of the finding we have made by way of judicial notice as set out at paragraph 27(13) without agency nursing staff the NHS at least would not be able offer safe medical care. The agency nurses provided as a supply of staff by the Appellant provide what we consider to be an essential resource that enable the Appellant's

clients to provide a standard of medical care which would not be provided were the hospitals to have to rely only on permanent employed and bank nursing staff (bank nurses are contracted directly to the hospital or Trust and provide additional flexible resource). Therefore, and as articulated in *Horizon*, the medical care received by the patients of the Appellant's clients would not be of equivalent value without the provision of agency staff by the Appellant and other providers to the hospitals and similar state regulated establishments. Thus, the nature of the activity carried on by the Appellant is "in principle" closely related to medical care.

43. We are satisfied that the Appellant ensures that the nurses it provides meet the requirements set by its clients in terms of vetting, fit to work assessments and training etc. and such compliance is audited to the satisfaction of the clients. The Appellant does not do more than is required and certainly has not satisfied us that it sets itself apart from other similar providers.

44. We consider, on the facts, that it provides a service akin to that provided by other commercial providers and potentially to that provided by state regulated institutions. The nature of the market for such services (to the extent that it involves both commercial and state regulated providers) drives the conclusion that all suppliers will make taxable supplies because the exemption of such services by state regulated institutions would distort the commercial market and breach Article 134. The position may well have been otherwise pre 2010 when all nursing agencies were registered with the CQC but that is not the case before us.

DISPOSITION

45. For the reasons stated we find that the Appellant's supplies do not meet the conditions for exemption under Item 4 as closely related to supplies of medical care. The consideration received from its customers was received including VAT.

46. HMRC were therefore correct to assess the Appellant for VAT in the Relevant Period at the appropriate VAT fraction of the consideration received on which the Appellant had not accounted for VAT. We are satisfied that the Assessments, after review, have been calculated on that basis.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

47. 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.

Release date: 07th NOVEMBER 2025