



Case alert

Court of Appeal – L.I.F.E Services Ltd & TLC Romford Ltd

26 March 2020

Summary

This is an appeal from the Upper Tribunal in two separate cases concerning the same issue.

L.I.F.E. Services Ltd (LIFE) and The Learning Centre (Romford) Ltd (TLC) provide welfare services. Under contract to a Local Authority, they provide day care services for adults with a broad spectrum of disabilities, principally learning problems. Both entities are profit making but it was common ground that the services they provided were 'welfare services'.

Under UK VAT law, the provision of such 'welfare services' is an exempt supply under certain conditions. One of those conditions is that the body in question (i.e. the supplier of the welfare services) must be a 'State Regulated private welfare institution or agency'. In both cases, the businesses argued that they were such bodies and the First-tier Tribunal agreed. However, the FTT's decision was overturned on appeal by HMRC to the Upper Tribunal.

Both LIFE and TLC now appeal to the Court of Appeal. LIFE argued that the Upper Tribunal was wrong to conclude that it was not a 'state-regulated institution or agency' and both LIFE and TLC argued that, in any case, denial of the VAT exemption for their respective supplies of welfare services breached the EU law principle of fiscal neutrality.

The Court of Appeal has dismissed the appeals in both cases. LIFE is not 'state-regulated' and the principle of fiscal neutrality is not breached.

Court of Appeal Judgment – 25 March 2020

Both UK and EU VAT law provides an exemption from VAT for supplies of certain welfare services. The VAT Directive exempts the supply of welfare services and goods closely linked to welfare and social security work by 'bodies governed by public law' or by other bodies recognised by the Member State concerned as being 'devoted to social wellbeing'. Under UK VAT law, which implements the VAT Directive, exemption from VAT applies only if certain conditions are met. One of those conditions is that, if the supplier of welfare services is neither a charity nor a Public Body, it must be a 'state-regulated private welfare institution or agency'. In both cases, LIFE and TLC argued at the First-tier Tax Tribunal that they were such bodies. They argued that they were 'registered' with and, to some extent, 'supervised' by their respective Local Authorities which meant that they were 'state-regulated'. The FTT agreed and allowed both appeals.

HMRC appealed to the Upper Tribunal which overturned the FTT's decision in both cases. The Upper Tribunal found, in essence that, in both cases, whilst the activities of each business were provided under contracts with the Local Authority, and that, as a result, there was clear oversight or supervision of their services, that did not mean that they were 'regulated' by the Local Authority.

Both businesses also had an alternative argument based on fiscal neutrality should the Tribunals find that they were not State-regulated institutions. The principle of fiscal neutrality is a principle of EU law which states that the supply of the same or similar goods or services that are in competition with each other must not be treated differently for VAT purposes. In this case, the LIFE argued that there was a breach of fiscal neutrality as the same supply of welfare services provided by a charity in the UK would automatically be exempt from VAT even if the charity was not state-regulated or was not 'devoted to social wellbeing'. Both LIFE and TLC also argued that, as the provision of day care services in Scotland and Northern Ireland is state-regulated (by virtue of devolved powers), there was a clear breach of fiscal neutrality as between providers in England and Wales and providers in Scotland and NI.

The Court of Appeal has now issued its judgment and has dismissed the appeals by LIFE and TLC. The Court considers that 'a mere delegation of functions by a local authority to a service provider does not amount to approval or registration of that provider in relation to the provision of welfare services within the meaning of UK VAT law'. On the fiscal neutrality argument, the Court considers that the exemption only applies to charities that have the provision of welfare services as part of their objects. In addition, UK charities are 'state regulated' coming under the direct supervision of the Charities Commission and subject to statutory provisions under the Charities act. As such, a UK charity is a wrong comparator for the purposes of a fiscal neutrality argument. As far as the different treatment between the different UK countries is concerned, the Court of Appeal agreed with the Upper Tribunal. VAT law in the UK does not discriminate between private welfare providers located in the different nations of the UK. It does discriminate between state-regulated providers and non-state regulated providers, but that does not contravene the principle of fiscal neutrality.

Comment – the Court of Appeal confirms that neither section 8(2)(a) nor section 8(2)(c) of the Care Act 2014 requires or empowers the local authority to "approve" or "register" the service provider in respect of welfare services so as to make the provider "state-regulated" within the UK's VAT law. It also confirms the Upper Tribunal was correct when it ruled that the principle of fiscal neutrality had not been breached. Appeals dismissed

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