[2016] UKUT 0121 (TCC)

Appeal number: UT/2015/0014

VALUE ADDED TAX – input tax – purchase of Single Farm Payment Entitlement units – whether used or to be used for the purposes of the taxable person's economic activity – whether direct and immediate link with the taxable person's business – yes – appeal refused – Council Directive 2006/112, article 168 – VATA 1994, section 24.

UPPER TRIBUNAL
(TAX AND CHANCERY CHAMBER)

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

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS

Appellants

v

FRANK A SMART & SON LIMITED

Respondent

TRIBUNAL: LORD TYRE

Sitting in public at George House, 126 George Street, Edinburgh on 11 February 2016

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

David Small, Advocate, instructed by Glyn Edwards CTA, Wolters Kluwer, for the Respondent (Frank A Smart & Son Limited)

LORD TYRE:

Introduction

1. The respondent is a company which carries on a farming business in Aberdeenshire. This appeal is concerned with the company's entitlement to repayment of VAT amounting to £1,054,852.28 which it paid on its purchase of 34,477 units of Single Farm Payment Entitlement (SFPE). These units, which are tradeable, entitled the company, subject to fulfilment of conditions, to benefits under the EU Single Farm Payment (SFP) scheme. The issue arising in the appeal is whether the SFPE units were services used or to be used for the purposes of the company's taxable business supplies, so as to entitle it to repayment of the VAT charged on them. The appellants, HMRC, refused the claim and the company appealed to the First-tier Tribunal (FtT).

Findings in Fact

2. At paragraph 38 of its Decision, the FtT set out its findings in fact, which it noted were not generally controversial, as follows:

   (a) The appellant company is wholly owned by Frank Smart who is its sole director. He and his wife are the whole partners of "Mr and Mrs Frank Smart, trading as Tolmauds Farm" which owns the farmland there. The farm which extends to about 200 hectares is leased by the appellant company for £30,000 per annum.

   (b) The appellant company receives Single Farm Payments (SFPs). These are agricultural subsidies paid by the Scottish Government. At the inception of this scheme in 2005 UK farmers received initial units of entitlement without consideration. These were tradeable and a market in them developed. To claim the SFP in respect of one unit the farmer must have one hectare of eligible land at his disposal on 15 May of the particular year. To satisfy this, the requirements of ensuring plant and animal health and maintaining Good Agricultural and Environmental Condition (GAEC) must be met. This latter condition does not require the claimant personally or anyone else to cultivate the land or stock it with animals.

   (c) In addition to leasing Tolmauds Farm the appellant company leased a further 35,150 hectares under seasonal lets. Typically the relative leases were qualified by a post-lease agreement in terms of which the landlord could stock the land or cultivate it himself provided that the ground was kept in GAEC. The rent payable in respect of such seasonal lettings was generally about £1 per acre but could go up to £10 per acre.

   (d) At Tolmauds Farm the appellant company produces beef cattle for slaughter and store purposes. It also produces certain crops. It did not cultivate or stock the ground held on seasonal leases. The appellant company ensured that it held more hectares than units to ensure that it received its full entitlements to SFP.

   (e) The appellant company paid over a period about £7.7m in respect of traded SFPE units. In addition to its original allocation of 194.98 units, it purchased a further 34,477 units. This was funded by loan finance from the Clydesdale Bank with whom it had its only bank accounts. These units yielded a payment of £1.7m in the year to 30 September 2011 and of £2.4m in the year to 30 September 2012. VAT was charged to the appellant company in respect of the units purchased. After about March 2012 the appellant company did not purchase units bearing "input" VAT. The operation of the Scheme has been extended from 2012 to 2014.

(f) The appellant company's intention in purchasing the units was to apply the income arising in settling its overdraft and developing its business operations. At present and for most of the material period the farm has been worked by Mr Frank Smart and Roderick, one of his four sons. Both are engaged full-time on the farm. Another son, Stuart, now employed as a land agent, assisted on the farm for a period. There are no other employees. During the material period stock numbers have not been increased, at least significantly. From about 2011 the appellant company has been considering establishing a windfarm. The necessary preliminary investigations have involved obtaining technical information and costings. Local community responses, including finding a "community partner", have been investigated. A planning application and enquiries have been conducted with professional assistance. Over £119,000 has been spent to date in relation to this. The capital costs of such a development would be substantial.

(g) The construction of further farm buildings, including cattle-courts and a Dutch barn, is contemplated. Recently site preparation works have been undertaken with a view to erecting one additional cattle-court. The necessary planning applications have been made too.

(h) The possible purchase of neighbouring farms, expected to be on the market for sale shortly, is being contemplated too.

(i) The SFP payments have been accumulated in the company and are held as cash in the company's bank account with the Clydesdale Bank. (This is the company's only bank account apart from a Euro account in which the payments were deposited initially and then later transferred. This has certain potential currency exchange advantages.) The SFPs received and the amounts of other subsidies are set out in FS15 and G5. The company's overdraft has been repaid but none of the SFP payments have been withdrawn for any personal use or benefit by Mr Smart.

(j) The appellant company seeks repayment of VAT paid on SFP units during the period from October 2008 to June 2012. The Respondents have refused to make payment. That decision is the subject of the present appeal.

3. The FtT allowed the company's appeal, and HMRC now appeal against that decision to this Tribunal.

The decision of the First-tier Tribunal

4. The FtT's reasoning was set out in paragraphs 39-43 of its decision as follows:

"39. The matter of the appellant company's intention with regard to the application of the payments received on the purchased units of SFPE is critical to our conclusion. There, the evidence of Mr Frank Smart as to its being used to develop the farming business bears to be consistent with the evidence of the farm accounts and the other documentation produced relating to exploratory work relating to the wind-farm development and the excavations and site preparation work for a cattle-court, the first of several new farm buildings. The evidence is thus subjective and objective, and supports the necessary direct and immediate link between inputs and future taxable supplies. The acquisition of SFPE units was a funding exercise and related to business overheads.

40. We paid regard particularly to the ECJ's decisions in *Abbey National* and *Kretztechnik*, and in the opinion of the Advocate General in the latter we note –

> '76 It seems likely that the use of the capital – and the services connected with the raising of that – cannot be linked to any specific output transactions, but must rather be attributed to the company's economic activity as a whole. There can be no reasonable doubt that a commercial company which raises capital does so for the purposes of its economic activity.'

41. In *Kretztechnik* the input VAT related to the costs of a share issue, a means of raising capital by the taxpayer. We tend to agree with [counsel for the appellant company] that its circumstances are "on all fours" with the circumstances of the present appeal. The supplies of the appellant (present and future) are all taxable: none are exempt. There is no intermediate factor which might break the VAT "chain", such as an *exempt* transaction. There is no factor subsequent to the acquisition of the units which might amount to a supply of goods or services. The leasing arrangements entered and the annual SFP claim do not represent "supplies". The decision in *Mohr* confirms this and it seems consistent with the commentary on VAT in the respondents' Tax Bulletin dated June 2005.

42. The financing opportunity afforded by purchasing the SFPE units did not form a distinct business activity in our view. Given the intended application of the profits *ab initio* it was a wholly integrated feature of the farming enterprise. It was not a separate enterprise. None of the receipts was abstracted for any unrelated or personal purpose. On this view the circumstances of *Lord Fisher* and *Morrison's Academy* are readily distinguishable. It follows that we disagree with the stance of [the HMRC officer] in her letter to the appellant's tax adviser dated 5 August 2013.

43. Accordingly we consider that the appeal should be allowed."

Legislation

5. So far as EU law is concerned, article 1(2) of Council Directive 2006/112 (the Principal VAT Directive) states as follows:

> "The principle of the common system of VAT entails the application to goods and services of a general tax on consumption exactly proportional to the price of the goods and services, however many transactions take place in the production and distribution process before the stage at which the tax is charged.
>
> On each transaction, VAT, calculated on the price of the goods or services at the rate applicable to such goods or services, shall be chargeable after deduction of the amount of VAT borne directly by the various cost components.
>
> The common system of VAT shall be applied up to and including the retail trade stage."

Article 2(1) provides *inter alia* that:

> "The following transactions shall be subject to VAT:
>
> (a) the supply of goods for consideration within the territory of a Member State by a taxable person acting as such;
>
> …
>
> (c) the supply of services for consideration within the territory of a Member State by a taxable person acting as such…"

Article 167 confers a right of deduction at the time when the deductible tax becomes chargeable. Article 168 then states:

> "In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled… to deduct the following from the VAT which he is liable to pay:

(a) the VAT due or paid… in respect of supplies to him of goods or services, carried out or to be carried by another taxable person…"

6. The corresponding provisions in UK domestic legislation are to be found in the Value Added Tax Act 1994. Under section 1(1), VAT is charged *inter alia* on the supply of goods and services in the United Kingdom. Section 4 then provides that

"(1) VAT shall be chargeable on any supply of goods or services made in the United Kingdom, where it is a taxable supply made by a taxable person in the course or furtherance of any business carried on by him.

(2) A taxable supply is a supply of goods or services in the United Kingdom other than an exempt supply."

The definition of input tax in section 24(1) includes VAT on the supply to a taxable person of any goods or services used or to be used for the purposes of a business carried on by him. Section 24(5) then provides that where goods or services supplied to a taxable person are used or to be used partly for the purposes of a business carried on by him and partly for other purposes, VAT on the supplies must be apportioned so that so much as is referable to the taxable person's business purposes is counted as his input tax. Section 25(2) confers an entitlement to deduct from any output tax due by the taxable person so much of his input tax as is allowable under section 26. Finally, section 26 provides *inter alia* as follows:

"(1) The amount of input tax for which a taxable person is entitled to credit at the end of any period shall be so much of the input tax for the period (that is input tax on supplies… in the period) as is allowable by or under regulations as being attributable to supplies within subsection (2) below.

(2) The supplies within this subsection are the following supplies made or to be made by the taxable person in the course or furtherance of his business –

(a) taxable supplies…"

7. It is not contended by either party that there is any material difference between EU and domestic law; I shall refer in this decision mainly to the provisions of the Principal VAT Directive.

Matters not in dispute

8. Before narrating the parties' contentions in the appeal against the decision of the FtT, it is convenient to note certain matters of fact or law which were not in dispute, as follows:

(i) The company is a taxable person which carries on an economic activity, namely its farming business, with plans to diversify into production of electricity in a wind-farm.

(ii) None of the company's business activities or proposed business activities constitutes an exempt supply.

(iii) The purchase by the company of SFPE units was a supply of services.

(iv) The receipt by the company of SFPs was not an economic activity and did not constitute the making of supplies.

Argument for HMRC

9. The primary position adopted by HMRC was that the SFPE units had been acquired for the purpose of obtaining SFPs, ie for the purpose of a non-economic activity outside the scope of VAT. In such circumstances, no right of deduction arose: *Securenta Göttinger Immobilienanlagen und Vermögensmanagement AG v Finanzamt Göttingen*, [2008] ECR I-1597 at para 28; *Vereniging Noordelijke Land- en Tuinbouw Organisatie* (*VNLTO*) *v Staatssecretaris van Financiën*, Case C-515/07 at paras 28-36. That was the end of the matter. The acquisition and retention by the company of SFPE units in order to obtain receipts of SFPs were transactions carried out for their own sake and thus for a purpose other than taxable transactions. That was the "use" – and the only use – of the services supplied, and it gave no right to a deduction.

10. Alternatively, it was submitted that the FtT had erred in law in holding that there was a direct and immediate link between the cost of acquiring the SFPE units and the company's taxable economic activity so as to entitle them to a deduction of input tax. There were two ways in which the "direct and immediate link" test could be satisfied: (i) if there was such a link between the services acquired and a particular output transaction; or (ii) where the services had a direct and immediate link with a clearly defined part of the taxable person's economic activities consisting of the making of taxable supplies, so that the costs formed part of the overheads of that part of the business: cf *Abbey National plc v C&E Commissioners* [2001] ECR I-1378. In the present case the company claimed to satisfy the test in the second of those ways but no such link had been established. A causal link between cost incurred on a supply and a taxable person's overall economic activity was not sufficient.

11. The case of *Kretztechnik AG v Finanzamt Linz*, Case C-465/03, which the FtT had regarded as on all fours with the present case, did not affect the application of the direct and immediate link test to general overheads: they had to be demonstrated to be a cost component of the price of the taxable person's taxable supplies. It was incorrect to read the judgment of the Court (at paragraph 36) as deeming overheads to be component parts of the price; it had to be demonstrated that the cost was an overhead reflected in the price. The FtT had made no finding that the expenditure on which input tax had been paid was a component of the cost of its outputs. As a consequence of the artificiality of the scheme whereby SFPE units could be acquired in the market, it could be seen that this was not a cost of VAT outputs generated by the company on its farmed land; none of its outputs was generated from land leased in order to entitle the company to receive SFPs.

12. Moreover, *Kretztechnik* was distinguishable because the non-economic activity in that case was an issue of shares carried out to increase its capital. Expenditure incurred in connection with a share issue could only be for the benefit of the business's future economic activity. By contrast, in the present case purchase of the SFPE units merely facilitated the receipt of an income stream which could have been used for business purposes or distributed for personal use as the company chose. That being so, the company's subjective intentions, which the FtT had characterised as critical to its decision, were irrelevant. In any event it appeared from the evidence that none of the funds received in respect of the SFPE units had in fact been used to finance the company's outputs.

Argument for the company

13. On behalf of the company it was submitted that the FtT had made no error of law and that the appeal should be refused. As regards HMRC's primary position, the blocking of recovery of input tax would subvert the principle that VAT is a tax on consumption by imposing a levy on non-consumption. In contrast to the finding of the Tribunal in *University of Southampton v R&C Commrs* [2006] STC 1389, where the non-economic activity (publicly funded research) in respect of which the input tax was incurred was a distinct activity and an end in itself, the receipt of SFPs in the present case was not an end but a means of fund raising for the purpose of the carrying on of the company's taxable business. Although few farmers would have invested in SFPE units to the extent that the company did, it shared with the "conventional" farmer who bought SFPE units an intention to use the SFPs generated to fund its business. Receipt of the SFPs was not therefore the "use" for which the expenditure giving rise to input tax was incurred.

14. With regard to HMRC's alternative submission, the *Abbey National* and *Kretztechnik* cases established that the principle of neutrality required incidental costs to be regarded as overheads of, and thus as cost components of, the business generally. The fact that the cost of the SFPE units would, economically, be recouped from the annual receipts of SFPs rather than from sale of farm produce or electricity was irrelevant. Contrary to HMRC's submission, the words "as such" in paragraph 36 of the judgment of the Court in *Kretztechnik were* a deeming provision, requiring costs incurred for the benefit of the company's economic activity in general to be regarded as cost components of the price of its products. The significance of the *Kretztechnik* decision for present purposes was its application of the principles established in *Abbey National* to business fund raising. There was no material difference between a share issue to raise capital and the present circumstances in which large annual payments were received which reinforced the company's capital base.

15. Moreover, it was submitted, the FtT had not erred in having regard to the intention of the company, in respect of which there had been evidence from its sole director and controlling mind. In terms of article 167 of the Principal VAT Directive, the right to deduct input tax arose at the time when it became chargeable. EU law allowed a deduction where the supply received was intended to be used for making taxable supplies: *Belgium v Ghent Coal Terminal* [1998] STC 260; the same result was achieved in UK domestic law by the reference in VATA 1994, section 24(1) to goods or services "used or to be used" for business purposes. Delay in commencing the business use did not affect the right to deduct, although a subsequent change of intention could result in the deduction being reversed.

Decision

16. The issue between the parties falls to be determined by application of the guidance afforded by the series of decisions of the Court of Justice on the right of deduction under what is now article 168 of the Principal VAT Directive. A convenient starting point is the judgment of the Court in *C&E Commrs v Midland Bank plc* [2000] ECR I-4198, which concerned a claim to deduct input tax on legal expenses incurred to defend a claim for damages arising from past output transactions by a member of Midland's VAT group. The Court held that the expenditure was not part of the cost components of the past outputs. It continued (para 31):

> "On the other hand, the costs of those services are part of the taxable person's general costs and are, as such, components of the price of an undertaking's products. Such services therefore do have a direct and immediate link with the taxable person's business as a whole,

so that the right to deduct VAT falls within [what is now Article 173 of the Principal VAT Directive] and the VAT is, according to that provision, deductible only in part."

There are two points to note here. Firstly, the deductibility of "general costs", ie overheads, is confirmed. Secondly, general costs are treated as components of the product price and *therefore* as having the necessary direct and immediate link with the business as a whole.

17. The concept of "direct and immediate link" was subjected to further analysis by Advocate General Jacobs in *Abbey National* (above) at paragraph 35 of his Opinion where, under reference to the judgment of the Court in *BLP Group v C&E Commrs* [1995] ECR I-983, he observed:

> "…What matters is whether the taxed input is a cost component of a taxable output, not whether the most closely-linked transaction is itself taxable. As the Commission submitted at the hearing, the conclusion to be drawn from the *BLP* judgment is that the question to be asked is not what is the transaction with which the cost component has the most direct and immediate link but whether there is a sufficiently direct and immediate link with a taxable economic activity… The need for a 'direct and immediate link' thus does not refer exclusively to the very next link in the chain but serves to exclude situations where the chain has been broken by an exempt supply."

The Court in its judgment in the same case largely reiterated the analysis previously provided in its ruling in *Midland Bank*. Importantly for present purposes, however, that analysis was applied to a situation where the costs in question had been incurred in connection with a transfer of business as a going concern which fell outwith the scope of VAT. Again the phraseology employed (at paragraph 35) was that the costs of the services formed part of the taxable person's overheads and *as such* were cost components of the products of a business, even where the costs related to the disposal of a part of the business.

18. The disregarding of transactions falling outside the scope of VAT was made more explicit in the Opinion of Advocate General Jacobs in *Kretztechnik*. This case concerned input VAT incurred on the legal and other incidental costs of a share issue to increase the company's capital. The share issue was a transaction outwith the scope of VAT. The Advocate General observed:

> "71. Determination of the right to deduct… is based on an attribution of input costs to output transactions.
>
> 72. Any link which those costs may have with other events, such as other inputs, transactions purely internal to the taxable person's business, or events, other than supplies, entirely outside the scope of VAT, is simply irrelevant in that regard.
>
> …
>
> 74. Thus, if the transaction with which the input is most closely linked is one which falls entirely outside the scope of VAT because it is in any event not a supply of goods or services, it is irrelevant for the purpose of determining deductibility. What matters is the link, if any, with such output supplies, and whether they are taxed or exempt.
>
> 75. The question to be asked in Kretztechnik's case is therefore whether the capital raised by the share issue was used for the purposes of one or more taxed output transactions.

76. It seems likely that the use of the capital – and the services connected with the raising of that capital – cannot be linked to any specific output transactions, but must rather be attributed to the company's economic activity as a whole. There can be no reasonable doubt that a commercial company which raises capital does so for the purposes of its economic activity."

Having referred *inter alia* to *Midland Bank* and *Abbey National*, the Court ruled:

"36. In this case, in view of the fact that, first, a share issue is an operation not falling within the scope of the Sixth Directive and, second, that the operation was carried out by Kretztechnik in order to increase its capital for the benefit of its economic activity in general, it must be considered that the costs of the supplies acquired by that company in connection with the operation concerned form part of its overheads and are therefore, as such, component parts of the price of its products. Those supplies have a direct and immediate link with the whole economic activity of the taxable person.

37. It follows that… Kretztechnik is entitled to deduct all the VAT charged on the expenses incurred by that company for the various supplies which it acquired in the context of the share issue carried out by it, provided, however, that all the transactions carried out by that company in the context of its economic activity constitute taxed transactions…"

19. The key element of each of the *Abbey National* and *Kretztechnik* decisions, in my opinion, was that the operation not falling within the scope of the Directive was found to have been carried out for the benefit of its economic activity in general. By way of contrast, the costs in respect of which input tax was incurred in *Securenta* were found to have been attributable to economic activities and non-economic activities carried out simultaneously. Taking the matter one stage further, the costs in respect of which input tax was incurred in *University of Southampton* were found not to have been expended for the purposes of the University's general economic activity at all, but rather for the benefit of a separate activity which did not form part of its VAT business. These two cases are therefore distinguishable on their facts from the principle established in *Abbey National* and *Kretztechnik*, and *VNLTO* adds nothing to the analysis.

20. On which side of the line, then, does the present case fall? In my opinion it falls clearly within the principle. The FtT found (paragraph 42), on the basis of its primary findings in fact, that the financing opportunity afforded by purchasing the SFPE units did not form a distinct business activity but was a "wholly integrated feature of the farming enterprise" rather than a separate enterprise. In my opinion there was ample evidence to entitle the FtT to make that finding. I do not accept HMRC's submission that the FtT erred in placing weight upon evidence of the intention of Mr Smart as the company's controlling mind. It is fundamental to the VAT system that the right to deduct arises immediately upon the incurring of the charge to tax, and may be exercised in respect of goods and services *intended to be used* in connection with taxable transactions: see eg *Belgium v Ghent Coal Terminal* (above), paras 16-17. The relevance of intention is also recognised by the UK in its implementation of the Directive by the references in section 24 of the 1994 Act to goods and services "used or to be used" for the purposes of the taxable person's business (or otherwise). It may be that a change of intention will result in withdrawal of the right to deduct (although the *Ghent Coal Terminal* case demonstrates that that will not be the case where the change results from circumstances beyond the taxable person's control). In the present case the FtT was fully entitled to proceed on the basis of evidence which

it accepted of the company's future intention as demonstrating, in contrast to the findings of the Tribunal in *University of Southampton*, that the acquisition of entitlement to SFPs was not an end in itself but formed part of the company's economic activity in general. For these reasons I reject HMRC's primary contention.

21. I turn then to consider whether, on the FtT's findings, there is established the necessary direct and immediate link between the cost of the SFPE units and the company's taxable business supplies. In my opinion the company's interpretation of the judgments of the Court in *Abbey National* and *Kretztechnik* is correct. In a case such as the present one where the input tax was not incurred in connection with a particular output transaction, the starting point is to determine whether the cost in respect of which the input tax was charged was incurred for the purposes of its economic activity in general. If so, it must, according to the *Abbey National/ Kretztechnik* analysis, be considered to be part of the company's overheads. It is *therefore* considered to be a cost component of the price of the company's products. The necessary direct and immediate link is thereby established. It is unnecessary for the company to prove that the cost in question was actually built into the price charged for the supply.

22. This reading of the ECJ rulings receives strong support from the decision of the Court of Appeal in *Volkswagen Financial Services (UK) Ltd v R&C Commrs* [2015] EWCA Civ 832. Having referred to the judgments of the Court in *BLP* and *Midland Bank*, Patten LJ (others agreeing) observed at paragraph 52:

> "Those statements of principle in *Midland Bank* are directed, as I read them, to whether (in the absence of a specific link between the input and the output supply) the residual inputs constitute expenditure incurred by the taxable person in order to maintain his economic activity as a whole. Where that is demonstrated, the overheads are treated as cost components of the supplies which are made and the only issue is how to apportion those costs between exempt and taxable supplies. The words 'as such' in para 31 of *Midland Bank* mean that the general costs are *ipso facto* cost components of those supplies. The reference to 'price' has to be read in that sense. This is, I think, confirmed by what is said about the link between costs and the taxable person's economic activities in the extract from the decision in *Abbey National* [at paragraphs 35-39] which post-dates the decision in *Midland Bank*."

Whether or not one uses the expression "deeming", it is clear that once expenditure is categorised as being for the benefit of the taxable person's economic activity as a whole, it follows that it is to be treated as a cost component of its supplies. If, as in the present case, the taxable person makes only taxable supplies, it must also follow that the input tax paid in respect of the expenditure is fully deductible.

23. Nor, in my view, is *Kretztechnik* distinguishable on the basis that it was concerned with raising capital whereas in the present case the purchase of the SFPE units (along with the seasonal letting) produced a series of receipts akin to an income stream. The cases in which transactions falling outside the scope of VAT have been disregarded have concerned a variety of different types of expenditure; what matters is that the cost, whatever it may have been, was incurred for the purpose of the economic activity in general; the nature of the non-economic activity is not relevant.

24. HMRC sought to place emphasis on what they submitted was the artificial nature of the SFPE transaction entered into by the company in the present case. It was pointed out that the number and value of SFPE units purchased was wholly disproportionate to the company's farming business activities, and that the land leased under seasonal lets was never in fact used for any purpose connected with those activities. I accept that the SFPE purchase transaction – and hence the incurring of the input tax at issue – could only have occurred because of the emergence of a market in SFPE units. In the end, however, the artificiality issue seemed to me to have limited significance. In the course of the hearing it was confirmed by counsel for HMRC that their position was that *any* purchase of SFPE units, regardless of how closely or otherwise it related to the carrying on of a farming business, fell foul of their primary argument based on use for non-economic activity. In relation to their alternative argument it was submitted that the artificiality of the arrangement prevented the cost of the SFPE units from being treated as an overhead of the farming business. I do not accept that submission. As I have said, once the cost was found to be for the benefit of the company's taxable activity – as the FtT found – it fell to be treated as a cost component of the business's taxable supplies.

Disposal

25. For these reasons, the appeal is refused.

Release Date: 18 March 2016