[2017] UKUT 0027 (TCC)

Appeal number: UT/2015/0111

VALUE ADDED TAX – zero-rating – Item 1, Group 9, Schedule 8 VATA 94 – whether motor homes, motor caravans or campervans are 'caravans' – no – appeal dismissed

UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER

BETWEEN:

OAK TREE MOTOR HOMES LIMITED

Appellant

- and –

THE COMMISSIONERS FOR
HER MAJESTY'S REVENUE AND CUSTOMS

Respondents

Tribunal: The Hon Mr Justice Newey
Judge Greg Sinfield

Sitting in public at Royal Courts of Justice, Rolls Building, Fetter Lane, London, EC4A 1NL on 21 November 2016

David Scorey QC, instructed by Deloitte LLP, for the Appellant

Peter Mantle, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

© CROWN COPYRIGHT 2017

DECISION

Introduction

1. As its name suggests, Oak Tree Motor Homes Limited ('Oak Tree') sells vehicles commonly called 'motor homes', 'motor caravans' and 'campervans' ('the Vehicles'). Between 1 March 2007 and 31 May 2011, Oak Tree charged and accounted for VAT at the standard rate on its supplies of the Vehicles. In 2011, Oak Tree claimed a repayment of output tax of £1,181,480.53 plus interest on the basis that the supplies of the Vehicles should have been treated as zero-rated. Oak Tree considered that the Vehicles were caravans for the purposes of Item 1 of Group 9 of Schedule 8 to the Valued Added Tax Act 1994 ('VATA94'). The Respondents ('HMRC') disagreed and rejected the claim.

2. In 2012, Oak Tree appealed to the First-tier Tribunal (Tax Chamber) ('FTT'). A hearing took place in January 2015. The facts were not in dispute and the only issue was whether the Vehicles sold by Oak Tree were caravans for the purposes of Item 1 of Group 9. In a decision released on 3 June 2015, [2015] UKFTT 0251 (TC), ('the Decision'), the FTT held that the Vehicles fell outside the description 'caravans' in Item 1 and dismissed the appeal. Oak Tree now appeals, with the permission of the FTT, against the Decision. We understand that 27 claims or appeals are stayed behind this one.

3. For the reasons set out below, we have decided that the Vehicles are not caravans as that term is used in Item 1, Group 9, Schedule 8 VATA94. Accordingly, Oak Tree's appeal must be dismissed.

Legislation

4. In so far as material, section 30(2) VATA94 provides that supplies of goods of a description specified in Schedule 8 are zero-rated. At the relevant time and until 6 April 2013, Item 1 of Group 9 of Schedule 8 to VATA94 described the following goods:

> "Caravans exceeding the limits of size for the time being permitted for the use on roads of a trailer drawn by a motor vehicle having an unladen weight of less than 2,030 kilogrammes."

5. The size limits for trailers are prescribed by regulation 8 of the Road Vehicles (Construction and Use) Regulations, SI 1986/1078. The weight limit became 3,500 kg following amendment by SI 2010/964 with effect from 20 April 2010.

6. Although Directive 2006/112/EC (the 'Principal VAT Directive' or 'PVD') does not specifically authorise the zero-rating of supplies of caravans, Article 110 states:

> "Member States which, at 1 January 1991, were granting exemptions with deductibility of the VAT paid at the preceding stage or applying reduced rates lower than the minimum laid down in Article 99 may continue to grant those exemptions or apply those reduced rates.
>
> The exemptions and reduced rates referred to in the first paragraph must be in accordance with Community law and must have been adopted for clearly defined social reasons and for the benefit of the final consumer."

7. Before the Principal VAT Directive came into force on 1 January 2007, Article 28 of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the

laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment was to similar effect.

8. As at 1 January 1991, the United Kingdom granted an exemption with deductibility of input tax, i.e. zero-rating, to supplies of caravans by virtue of Item 1 of Group 11 of Schedule 5 to the Value Added Tax Act 1983 ('VATA83'). That provision had originally been enacted as Item 1 of Group 11 of Schedule 4 to the Finance Act 1972 ('FA72') which, in combination with section 12 of that Act, zero-rated:

> "Caravans exceeding the limits of size for the time being permitted for the use of trailers on roads."

9. The Notes to the Clauses of the Finance Bill 1972 stated that the effect of what became Group 11 was to zero-rate the supply of caravans whose size exceeds the maximum limits of size for the time being permitted for the use of trailers on the roads. Under the heading "Reason for the group", the Notes stated:

> "Paragraph 4.5 of the Green Paper invisaged [sic] that there would be relief for 'houses and other domestic accommodation'. The caravans in this Group are akin to houses; they are too large to be towed on the road, and are usually permanently sited with some degree of attachment to the land. Ministers have decided that residential caravans should be given the same relief as houses."

10. Before the VAT provisions in the FA72 came into effect on 1 April 1973, Item 1 of Group 11 of Schedule 4 was amended by article 8 of the Value Added Tax (General) (No. 1) Order 1973 SI 1973/324 ('the 1973 Order'). Article 8 of the 1973 Order substituted a new Item 1 of Group 11 of Schedule 4 which was as follows:

> "Caravans exceeding the limits of size for the time being permitted for the use on roads of a trailer drawn by a motor vehicle having an unladen weight of less than 2 tons."

11. The Explanatory Note to the 1973 Order stated that it zero-rated certain caravans (mainly used by travelling showmen) which were above the normal limits of size permitted for use of trailers on the roads under the Motor Vehicles (Construction and Use) Regulations 1969.

12. There is no definition of the term 'caravans' in the FA72, VATA83 or VATA94. There is a definition of 'caravan' in section 29(1) of the Caravan Sites and Control of Development Act 1960 ('the 1960 Act'). As the introductory text makes clear, the 1960 Act was enacted to make further provision for the licensing and control of caravan sites. The Act defines 'caravan' as follows:

> "In this part of this Act, unless the context otherwise requires –
>
> …
>
> 'caravan' means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted, but does not include –
>
> (a) any railway rolling stock which is for the time being on rails forming part of a railway system, or
>
> (b) any tent."

13. The Caravan Sites Act 1968 ('the 1968 Act') was enacted to restrict the ability of site operators to evict persons from caravan sites and to secure the provision by local authorities of sites for use by "gipsies and other persons of nomadic habit". Section 13 extends the definition of 'caravan' in the 1968 Act as follows:

> "Twin-unit caravans
>
> (1) A structure designed or adapted for human habitation which —
>
> > (a) is composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices; and
> >
> > (b) is, when assembled, physically capable of being moved by road from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer),
>
> shall not be treated as not being (or as not having been) a caravan within the meaning of Part I of the Caravan Sites and Control of Development Act 1960 by reason only that it cannot lawfully be so moved on a highway when assembled.
>
> (2) For the purposes of Part I of the Caravan Sites and Control of Development Act 1960, the expression 'caravan' shall not include a structure designed or adapted for human habitation which falls within paragraphs (*a*) and (*b*) of the foregoing subsection if its dimensions when assembled exceed any of the following limits, namely —
>
> > (a) length (exclusive of any drawbar): 60 feet (18.288 metres);
> >
> > (b) width: 20 feet (6.096 metres);
> >
> > (c) overall height of living accommodation (measured internally from the floor at the lowest level to the ceiling at the highest level): 10 feet (3.048 metres)."

14. The Mobile Homes Act 1983 provides that 'mobile home' has the same meaning as 'caravan' in Part I of the 1960 Act.

15. The word 'caravan' is defined for the purposes of income tax in section 875 of the Income Tax (Trading and Other Income) Act 2005 ('ITTOIA') and for the purposes of corporation tax in section 1314 of the Corporation Tax Act 2009 ('CTA'). In both cases, the definition is as follows:

> "Meaning of 'caravan'
>
> (1) In this Act 'caravan' means—
>
> > (a) a structure designed or adapted for human habitation which is capable of being moved by being towed or being transported on a motor vehicle or trailer, or
> >
> > (b) a motor vehicle designed or adapted for human habitation,
>
> but does not include railway rolling stock which is on rails forming part of a railway system or any tent.
>
> (2) A structure composed of two sections—
>
> > (a) separately constructed, and
> >
> > (b) designed to be assembled on a site by means of bolts, clamps or other devices,
>
> is not prevented from being a caravan just because it cannot, when assembled, be lawfully moved on a highway (or, in Scotland or Northern

> Ireland, road) by being towed or being transported on a motor vehicle or trailer."

16. With effect from 6 April 2013, Item 1 of Group 9 of Schedule 8 to VATA94 was amended to introduce further restrictions on the types of caravan that qualify for zero-rating. It was common ground that Oak Tree's sales of the Vehicles after the amendment do not satisfy the new criteria and are not zero-rated.

HMRC guidance

17. Paragraph 2.1 of VAT Notice 701/20/04: caravans and houseboats, dated February 2004, is as follows:

> "The term 'caravan' is not defined in the VAT legislation. In practice we adhere to the definition of a caravan as set out in The Caravan Sites and Control of Development Act 1960 and The Caravans Sites Act 1968.
>
> These define a caravan as being:
>
> > 'any structure designed or adapted for human habitation that is capable of being moved from one place to another (whether being towed or by being transported on a motor vehicle so designed or adapted)" (1960 Act).
>
> and, if a twin unit caravan,
>
> > 'is composed of not more than two sections separately constructed and designed to be assembled on site by means of bolts, clamps or other devices" (1968 Act).
>
> For a caravan to be regarded as designed for human habitation it must have the attributes of a dwelling, that is, it must consist of self-contained living accommodation. It would need to have washing facilities and the means to prepare food (such as kitchens and bathrooms).
>
> We see the term caravan as including mobile homes, residentials, statics, etc.
>
> The liability of a caravan depends upon its size (see paragraph 2.2)."

The Vehicles

18. The FTT ascertained the characteristics of the Vehicles from brochures and other promotional literature included in the bundle of documents which was also provided to us. From those materials, the FTT found, in [5], that:

> "… the vehicles concerned in this appeal will generally (if not invariably) include facilities analogous to those included in any residential accommodation, namely toilet, washing, cooking and sleeping as well as general relaxation. Apart from the ability to move from place to place under their own power, the facilities included in the motor homes are very similar in type and extent to those included in the large non-motorised touring caravans."

19. Neither party sought to challenge the FTT's description of the features and characteristics of the Vehicles sold by Oak Tree.

Issues in the FTT and the Decision

20. There was no issue as to the quantum of the claim for repayment of output tax. As the FTT recorded in [4] of the Decision, the parties had agreed that any issues as to the detailed quantification of the claim could follow once the issue of principle concerning the zero-rating (or otherwise) of the Vehicles had been determined.

21. There was no dispute as to the issue in the appeal which the parties agreed was whether the Vehicles were caravans for the purposes of VAT. It was common ground that the issue of whether or not the supply of the Vehicles was zero-rated, notwithstanding that it is permitted by Article 110 PVD, is a matter of domestic law. It was also common ground between the parties that, notwithstanding that it is a matter of domestic law, zero-rating provisions, as exceptions to the general principle that VAT is to be levied on all goods and services supplied for consideration by a taxable person, must be construed strictly but not restrictively. That is to say that the interpretation of those terms must not deprive the zero-rating in question of its intended effect; see Case C-175/09 *Commissioners for Customs and Excise v Axa UK plc* [2010] STC 2825, at [25]. The FTT stated, at [28], that they considered that their task was to decide, on the basis of a strict (but not restrictive) interpretation, in accordance with principles of English law, whether the Vehicles could properly be described as 'caravans', in the context in which that word is used in Item 1, Group 9, Schedule 8 VATA. Neither party quarrelled with that description of how the FTT should approach the issue in the appeal.

22. Approaching their task in that way, the FTT concluded that the 1960 Act definition of 'caravan' did not apply and was not of any assistance in determining the meaning of 'caravans' in Item 1. The FTT rejected the notion that motor caravans, an alternative name for the Vehicles, must necessarily be a subset of the wider category of caravans and thus fall within that wider category. The FTT held that, in ordinary English usage and disregarding the legislative context, the word 'caravan' does not include motorised vehicles. Taking the legislative context into account and, in particular, the reference to size limits for trailers that can be towed by motor vehicles on the roads, the FTT concluded that 'caravans' meant vehicles that were dependent upon an external source of locomotive power, rather than self-propelled vehicles. The FTT did not consider that their conclusion was affected by the fact that the Vehicles might contain the same features and facilities as non-motorised caravans. Accordingly, the FTT dismissed Oak Tree's appeal.

Grounds of appeal

23. Oak Tree now appeals, with the permission of the FTT, on three grounds which can be summarised as follows:

> (1) the FTT erred in law when they determined the meaning of 'caravans' based on the ordinary usage of the English language without regard to the definition of 'caravan' in the 1960 Act;
>
> (2) even if it is correct to disregard the definition of 'caravan' in the 1960 Act, the FTT misconstrued the term 'caravan' as that term is ordinarily understood and, in particular, should not have limited its meaning to caravans that are not self-propelled; and
>
> (3) the FTT was wrong to hold that 'caravans' does not include vehicles that are motorised.

Summary of parties' submissions

24. On behalf of Oak Tree, Mr David Scorey QC put forward five propositions in support of the appeal.

(1) The test in Group 9 is a matter of domestic law.

(2) The purpose of the zero-rating is to create equivalence between caravans and "bricks and mortar" properties.

(3) The test for zero-rating is twofold:

(a) the structure must be a caravan; and

(b) the caravan must satisfy certain size requirements.

(4) The definition of caravan in other legislation is the proper place to start the enquiry into what is a caravan.

(5) The Vehicles are caravans as defined in the dictionary and within the statute as properly construed.

25. Mr Mantle, for HMRC, said that the first of Mr Scorey's propositions was not controversial and, with some qualifications, he also agreed with the second and third propositions. Mr Mantle concentrated his submissions on refuting Mr Scorey's fourth and fifth propositions. We deal with the submissions of both parties on these points in our discussion below.

Discussion

26. An appeal to the Upper Tribunal from a decision of the FTT can only be made on a point of law - see section 11 Tribunals, Courts and Enforcement Act 2007 ('TCEA'). Findings of fact by the FTT cannot normally be challenged because they are not matters of law unless the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal which is an error of law (Lord Radcliffe in *Edwards v Bairstow* [1956] AC 14 at 36). Lord Carnwath's comments in *HMRC v Pendragon plc & Ors* [2015] UKSC 37 at [49] – [51] may be taken to indicate that, in an appeal to the Upper Tribunal such as this one, nothing much turns on the distinction between an issue of fact or law. In case it is significant, we have considered the FTT's conclusion on the meaning of 'caravans' both as a question of fact and a point of law.

27. We begin by considering the FTT's conclusion that the Vehicles fell outside the term 'caravans' in Item 1 of Group 9 of Schedule 8 on the basis that it was a finding of fact. The proper construction of a taxing Act (or any statute), as opposed to the ordinary meaning of a word in the English language, is a question of law. In *Brutus v Cozens* [1973] AC 854, Lord Reid said at 861:

> "The meaning of an ordinary word in the English language is not a question of law. The proper construction of a statute is a question of law if the context shows that a word is used in an unusual sense; the court will determine in other words what that unusual sense is. It is for the tribunal which decides the case to consider, not as law but as fact, whether in the whole circumstances the words of the statute do or do not as a matter of ordinary usage of the English language cover or apply to the facts which have been proved. If it is alleged that the tribunal has reached a wrong decision then there can be a question of law but only of a limited character. The question would normally be whether their decision was unreasonable in the sense that no tribunal acquainted with the ordinary use of language could reasonably reach that decision."

28. In deciding whether the FTT determined a question of law or fact, it is first necessary to decide whether 'caravans' in Item 1 of Group 9 of Schedule 8 has an unusual, which we take to mean a special or technical, meaning. If so, the meaning of

the word is a question of law which we can consider on appeal. If, on the other hand, 'caravans' is an ordinary word in the English language, its meaning is a question of fact and, as *Brutus v Cozens* shows, a decision on the point can only be challenged if it was unreasonable in the sense that no tribunal acquainted with the ordinary use of language could reasonably have reached that decision.

29. In our view, there is nothing in the text of Item 1 of Group 9 of Schedule 8 or its context to suggest that 'caravans' is to be given an unusual or technical meaning beyond the requirement that they must exceed a specified size. The size limits stated are those for the use on roads of a trailer drawn by a motor vehicle having a specified maximum unladen weight. As Mr Scorey submitted, before considering whether the size criterion is satisfied, one must first consider whether the vehicle is a caravan. We consider that 'caravans' is an ordinary word in the English language. Its meaning is not a question of law.

30. The FTT decided that 'caravans' did not include the Vehicles and that the Vehicles were not caravans. They did so having considered the ordinary English usage of the word. They had been referred to the definition in the Shorter Oxford English Dictionary (1993) which, so far as relevant, is:

> "A covered carriage or cart … Now usu. a dwelling on wheels, able to be towed by a horse or a motor vehicle."

31. We were also referred to the definition in the Oxford English Dictionary which defines caravan, so far as relevant, as:

> "… usually, a house on wheels, e.g. the travelling house of gipsies, a showman, or (according to recent fashion) a party on a pleasure tour … Now freq. one able to be towed by a motorcar and used as a stationary dwelling (esp. while on holiday)."

We consider that the extended definition adds little to the shorter one and certainly does not undermine the FTT's conclusion that the Vehicles are not 'caravans'.

32. The FTT also considered the legislative context in which the word occurred and, in particular, that the size limit for caravans was set by reference to the limits for trailers drawn by motor vehicles on the roads. Mr Scorey objected to this. He contended that the FTT were wrong to interpret the size limit as showing that 'caravans' was intended to refer to vehicles that were towed and dependent upon an external source of locomotive power, rather than self-propelled vehicles. Mr Scorey said that the FTT had made motorisation critical to the application of zero-rating but the provisions make no reference to motorisation or self-propulsion.

33. We do not accept that this shows any error by the FTT. The FTT started, at [33], by considering the meaning of 'caravan' in ordinary English usage. They held that it did not encompass the Vehicles. In doing so, they appear to have accepted Mr Mantle's submission that the definition of 'caravan' in the Shorter Oxford English Dictionary did not cover a self-propelled motor home such as the Vehicles. As is clear from [35], the FTT considered what features caravans and the Vehicles had in common and what set them apart. The FTT did not highlight the presence or absence of a motor as a feature of particular significance but the "the ability [of the Vehicles] to move under [their] own power". That is an obvious and significant distinction between a caravan, defined as "a dwelling on wheels, able to be towed" and a motor home. We were told by Mr Scorey

that some large caravans, which are usually towed when moved from one location to another, nevertheless have motors that enable them to be manoeuvred with greater ease on site. It seems to us that the inclusion of such motors does not make those caravans motor homes. Although they may be able to move under their own power over a short distance, such caravans are primarily intended to be towed and not designed to be driven on public roads. In contrast, the Vehicles have not only motors but all the apparatus, including a driver's cab, seat, steering wheel, lights etc, necessary to travel the roads independently.

34. We consider that the FTT were right to take account of the fact that the minimum size requirement referred to trailers towed by motor vehicles, but did not refer to self-propelled vehicles. That is, as the FTT said, an indication that Item 1 was directed at "vehicles that were dependent upon an external source of locomotive power, rather than self-propelled vehicles". That reinforced the FTT's view of the ordinary meaning of the word 'caravans'. In our view, the FTT were entitled to conclude, as a question of fact, that, giving the word its ordinary meaning in the English language, 'caravans' does not include the Vehicles. It could not, in our view, sensibly be said that that no tribunal acquainted with the ordinary use of language could reasonably reach that conclusion.

35. That is sufficient to dispose of Oak Tree's appeal if the issue of the meaning of 'caravans' was a question of fact. It is not, however, how Mr Scorey put his case. He contended that the meaning of 'caravans' was a question of law. Moreover, Mr Mantle accepted that the issue was a point of law. HMRC did not contend that 'caravans' was an ordinary English word and that its meaning in Item 1 of Group 9 was thus a question of fact. As discussed above, we do not agree that the meaning of 'caravans' Item 1 of Group 9 of Schedule 8 is a question of law but in case we are wrong in classifying this issue as one of fact and in deference to the submissions that were made to us, we now consider the meaning of 'caravans' on the basis that it is a point of law.

36. If 'caravans' has a special or technical meaning then the question of what a word means in its context within an Act is one of legal interpretation, and therefore of law. As with any other question of law, these questions are answered in accordance with the ordinary principles of statutory construction. As Cranston J observed in *Sword Services Limited and others v HMRC* [2016] EWHC 1473 (Admin), [2016] 4 WLR 113 at [59]:

> "The idea of a separate approach to interpreting tax statutes is rightly dead and buried. The words in tax legislation must be interpreted in light of the context and scheme of the Act as a whole. Regard must be had to the purpose of the provisions, a literal and formalistic approach being eschewed: see for example *Barclays Mercantile Business Finance Ltd v Mawson (Inspector of Taxes)* [2004] UKHL 51, [2005] 1 AC 684, [28] - [29], per Lord Nicholls, referring to *Inland Revenue Commissioners v McGuckian* [1997] 1 WLR 991 HL (NI) and *Ramsay (W T) Ltd v Inland Revenue Commissioners* [1982] AC 300."

37. We consider that, in this case, it is appropriate to look first at the context in which Item 1 of Group 9 of Schedule 8 to VATA94 appears and then consider what is its purpose before considering what, if any, special or technical meaning should be given to the word 'caravans' in that provision.

38. As is clear from Article 110 of the PVD, and its predecessor, the provision zero-rating caravans must have been adopted for clearly defined social reasons and for the benefit of the final consumer. The Notes to the Clauses of the Finance Bill 1972, set out

at [9] above, refer to zero-rating benefiting only "caravans [that] … are akin to houses too large to be towed on the road, and are usually permanently sited with some degree of attachment to the land." The Notes indicate, as both parties accepted, an intention to provide the same relief from VAT for such caravans as was available for houses and similar accommodation. In our view, relieving accommodation that is equivalent to conventional housing from VAT shows a social purpose and benefits the final consumer and neither party sought to argue otherwise. We consider that, it is as a social measure for the benefit of the final consumer that Item 1 of Group 9 of Schedule 8 to VATA94 must be construed.

39. Before the legislation in the Finance Bill came into force as Item 1 of Group 11 of Schedule 4 to the FA72, it was amended to describe 'caravans' in exactly the same terms as the provision with which this appeal is concerned save as to the specified weight for the towing vehicle. From the Notes and the language of Item 1 as originally drafted, we consider that the purpose of the provision was to zero-rate caravans that could be used as dwellings and which were sited permanently or semi-permanently because they were not suitable, by reason of their size or otherwise, to be towed on the road. The original intention appears to have been to limit zero-rating to static caravans. The provision that actually came into force, however, zero-rated a broader category of caravans. The Explanatory Note to the 1973 Order stated that it zero-rated "certain caravans (mainly used by travelling showmen) which were above the normal limits of size permitted for use of trailers on the roads". It is clear that the provision, as enacted, did not restrict zero-rating to caravans that were permanently or semi-permanently sited: it also included caravans that were capable of being towed on the roads provided they exceeded the size limit specified for trailers drawn by motor vehicles under a certain weight. We consider that the legislative history of the provision that became Item 1 of Group 9 of Schedule 8 to VATA94 shows that its purpose is to provide relief from VAT for caravans that are capable of being used as dwellings and that may be seen as performing the same function as houses or similar accommodation. The same history shows that the caravans which were envisaged as falling within the relief were originally static caravans and then, in addition, others that could be towed on the roads but only if they exceeded a size specified for trailers drawn by certain motor vehicles. There is nothing in the context and purpose of Item 1 of Group 9 of Schedule 8 to VATA94 to suggest that the term 'caravans' was intended to apply to vehicles, whatever their size, that were capable of moving independently under their own power. In our view, this interpretation of the word 'caravans' as excluding vehicles capable of independent movement under their own power is reinforced by the use of the size limit for trailers as a qualifying condition.

40. Oak Tree's case was not based on the construction of 'caravans' in Item 1 of Group 9 of Schedule 8 to VATA94 in isolation. Mr Scorey submitted that, in deciding whether the Vehicles are 'caravans', it is appropriate to have regard to how 'caravan' is defined in the 1960 Act, as extended by other legislation. Mr Scorey argued that the FTT erred in refusing to apply or even take account of the definition of 'caravan' in the 1960 Act in determining the meaning of 'caravans' in Item 1 of Group 9 of Schedule 8. In support of this submission, Mr Scorey relied on the fact that HMRC adopt the definition in the 1960 Act in their guidance, see Notice 701/20 at [17] above. Mr Scorey submitted that HMRC's published guidance formed part of the context in which to construe 'caravans' in Item 1. He also pointed out that the definition in the 1960 Act had been cited in tax cases relating to caravans. Mr Scorey referred us to *Tallington*

Lakes Limited v HMRC [2013] UKFTT 0159 (TC) ('*Tallington Lakes*'), *Scandinavian Log Cabins Direct Limited v HMRCs* [2016] UKFTT 0563 (TC) ('*Scandinavian Log Cabins*') and *University of Kent v HMRC* [2004] UK V18625 ('*University of Kent*'). Mr Scorey also submitted that the concept of a 'caravan' as defined in the 1960 Act is not merely found in what he called social-purpose legislation but also appears in tax legislation, see section 875 ITTOIA and section 1314 CTA at [15] above. Finally, he argued that where a word or phrase in an Act has been given a particular meaning over a long period then there must be, at the very least, a powerful presumption that the meaning that has customarily been given to the word or phrase in issue is the correct one (see Lord Phillips in *Bloomsbury International Ltd v Sea Fish Industry Authority and Department for Environment, Food and Rural Affairs* [2011] UKSC 25, [2011] WLR 1546 at [57] to [61]).

41. We do not accept that the definition of 'caravan' in the 1960 Act is relevant in determining the meaning of 'caravans' in Item 1 of Group 9 of Schedule 8 to VATA94. First, section 29(1) of the 1960 Act, which defines 'caravan', starts with the words "In this part of this Act …". In our view, those words make clear that the definition of 'caravan' in the 1960 Act is a definition for the purposes of that Act and no other. Of course, another statute could incorporate the definition by express reference, as the Mobile Homes Act 1983 does, or by including a definition of caravan, modelled on but not precisely reproducing the definition in the 1960 Act, as modified by the 1968 Act, as the ITTOIA and the CTA do. The VATA94 does neither. We consider that, if it had been intended to apply the 1960 Act definition of 'caravan' or include a definition based on it, the draughtsman could easily have done so in the FA72, VATA83 or VATA94. He did not do so and we consider that the omission was deliberate and significant.

42. In our view, the fact that HMRC stated in their guidance that they adhered to the definition of a caravan as set out in the 1960 Act and then partially reproduced it does not provide any support for Mr Scorey's submission. First, the guidance omits the very part of the definition on which Oak Tree seeks to rely. It is clear from the FTT's description of the Vehicles in [5] that they were vehicles designed or adapted for human habitation and, hence, 'caravans' for the purposes of the 1960 Act but that part of the definition in section 29(1) is missing from paragraph 2.1 of VAT Notice 701/20/04. Secondly, we reject the view that such guidance can alter the way that the ordinary rules of statutory construction are applied to legislation. HMRC's public notices are, with some clearly specified exceptions, without statutory force and the guidance they contain is only that; it does not replace, supplement or amend the legislation. Nothing in Notice 701/20 had the force of law and it only reflected HMRC's understanding of the legislation. We consider that it is clear from the comments of the Divisional Court in *Chief Constable of Cumbria v Wright and another* [2006] EWHC 3754 (Admin), [2007] 1 WLR 1407 at [17] and the Court of Appeal in *Brent London Borough Council v Risk Management Partners Ltd* [2009] EWCA Civ 490 at [109] and [227] that guidance such as that contained in HMRC's public notices may be of assistance in interpreting a statutory term if it throws light on its purpose or if its explanation of the meaning is inherently persuasive but that is the full extent of its authority. It does not create any presumption as to the interpretation to be applied.

43. In our view, the tribunal decisions relied on by Mr Scorey, which in any event are not binding on us, do not show that other tribunals have decided that the definition of 'caravan' in the 1960 Act should apply for the purposes of Item 1 of Group 9 of Schedule 8 to VATA94. *Tallington Lakes* did not concern Item 1 or the meaning of

'caravan'. The decision does not refer to section 29(1) of the 1960 Act but only refers to section 1 of and schedule 15 to the 1960 Act which concern when the operator of a caravan site is required to hold a site licence. In *Scandinavian Log Cabins*, it was common ground that assembled wooden cabins were 'caravans' for the purposes of Item 1. The FTT agreed with the parties that the wooden cabins, when fully assembled, met the definition of a caravan in the 1960 Act but the issue was whether a cabin in kit form and unassembled was a caravan. In *University of Kent*, the VAT and Duties Tribunal considered whether student accommodation units known as 'Lodja Sleep' units were caravans for the purposes of VAT. The Tribunal referred to the definition in the 1960 Act at [48] and proceeded on the basis that the 1960 Act definition applied without deciding the point. None of these cases was concerned with the question which arises in this case, namely whether the 1960 Act definition of 'caravan' describes or informs what is a caravan for the purposes of item 1, Group 9 of Schedule 8 to VATA94.

44. For the reasons already given in relation to VAT Notice 701/20/04 and the tribunal cases just referred to, we do not accept that there was any common understanding that the Vehicles should be regarded as 'caravans' for the purposes of Item 1 of Group 9 of Schedule 8 to VATA94. We agree with the FTT that, properly construed, the description 'caravans' in Item 1 of Group 9 of Schedule 8 to VATA94 does not include the Vehicles and, therefore, supplies of the Vehicles are not zero-rated.

Disposition

45. For the reasons given above, Oak Tree's appeal against the Decision is dismissed.

Costs

46. Any application for costs in relation to this appeal must be made in writing within one month after the date of release of this decision and should include a schedule of costs claimed with the application as required by rule 10(5)(b) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

The Hon Mr Justice Newey

Judge Greg Sinfield

Release date: 25 January 2017