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Neutral Citation: **[2026] UKUT 00440 (TCC)**

Case Number: UT-2025-000094

UPPER TRIBUNAL
(Tax and Chancery Chamber)

Hearing venue: The Rolls Building
Fetter Lane
London
EC4A 1NL

Heard on: 27 July 2026
Judgment date: 11 November 2026

VALUE ADDED TAX – temporary reduced rate for admission to attractions – supercar driving experiences – whether supplies of a right of admission to similar cultural events or facilities – appeal allowed

Before

JUDGE SWAMI RAGHAVAN
JUDGE KEVIN POOLE

Between

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Appellants

And

INGLISTON DRIVING EXPERIENCES LTD

Respondent

Representation:

For the Appellants: Harry Winter, Counsel, instructed by the General Counsel and Solicitor to His Majesty's Revenue and Customs

For the Respondent: Edward Hellier, Counsel

DECISION

INTRODUCTION

1. This is HMRC's appeal against the decision of the First-tier Tribunal ("FTT") in *Ingliston Driving Experiences Ltd v HMRC* [2025] UKFTT 564 (TC) ("the FTT Decision").

2. During the Covid-19 pandemic, a temporary reduced rate of VAT was introduced by section 29A of, and Group 16 of Schedule 7A to, the Value Added Tax Act 1994 ("VATA 1994"). Group 16 was headed "Shows and certain other attractions". So far as material, Item 1 applied to:

> "Supplies of a right of admission to shows, theatres, circuses, fairs, amusement parks, concerts, museums, zoos, cinemas and exhibitions and **similar cultural events and facilities**…" (*emphasis added*)

3. Ingliston operated event days at which customers drove, or were driven in, high-performance vehicles at off-road venues. The FTT held that Ingliston's supplies were supplies of a right of admission to "similar cultural events and facilities" within Group 16 and therefore attracted the temporary reduced rate. With the permission of the FTT, HMRC appeal on five grounds concerning the FTT's interpretation of Group 16 and its application of that provision to Ingliston's supplies.

4. The dispute concerns HMRC's decision that Ingliston's supplies did not qualify for the reduced rate of VAT. As a result, they denied Ingliston's repayment claim and raised a VAT assessment for period 10/20. HMRC also disallowed a small amount of input tax (£2,091.47) claimed, but Ingliston did not dispute that disallowance, leaving a repayment claim of £13,109.20. The total amount remaining in dispute between the parties is £44,903.48, comprising the denial of Ingliston's repayment claim (£13,109.20) and an assessment (reduced on review from its original amount) for £31,794.28.

THE LEGAL FRAMEWORK

5. Article 98 of Council Directive 2006/112/EC (the "Principal VAT Directive" or "PVD") permitted Member States to apply reduced rates of VAT to certain supplies of goods and services, listed in Annex III of PVD. Item 7 included:

> "LIST OF SUPPLIES OF GOODS AND SERVICES TO WHICH THE REDUCED RATES REFERRED TO IN ARTICLE 98 MAY BE APPLIED
>
> …
>
> (7) admission to shows, theatres, circuses, fairs, amusement parks, concerts, museums, zoos, cinemas, exhibitions and similar cultural events and facilities;..."

6. Although Item 7 of Annex III permitted Member States to apply a reduced rate to admissions to the specified events and facilities, the United Kingdom did not originally implement that option in Schedule 7A VATA 1994. It did so during the Covid-19 pandemic, when Group 16, headed "Shows and certain other attractions", was inserted into Schedule 7A. Item 1 provided:

> "GROUP 16 - SHOWS AND CERTAIN OTHER ATTRACTIONS
>
> Item No 1 Supplies of a right of admission to shows, theatres, circuses, fairs, amusement parks, concerts, museums, zoos, cinemas and exhibitions and

> similar cultural events and facilities but excluding any supplies that are exempt supplies by virtue of Items 1 or 2 in Group 13 of Schedule 9."

7. Save for its concluding exclusion (broadly covering exempt admissions supplied by qualifying non-profit/eligible bodies to museums, galleries, zoos and certain cultural performances, which it is common ground is not relevant to this appeal) the wording of Item 1 was materially identical to Item 7 of Annex III.

8. Group 16 was a temporary provision. It had effect from 15 July 2020 until 31 March 2022. The reduced rate was 5% until 30 September 2021 and 12.5% from 1 October 2021 until the provision ceased to have effect on 31 March 2022. The supplies in issue in this appeal were made during the initial 5% period.

CASE-LAW

CJEU Decisions

9. The principal authority on the relevant Directive provisions on which the UK provisions are based is the CJEU case of *Erotic Center BVBA v Belgian State* (Case C-3/09) [2010] STC 1018. (Because the supplies in issue were made before 31 December 2020, the FTT and this Tribunal are bound by relevant CJEU decisions made before that date). The taxpayer operated private viewing cubicles in which customers could watch films on a television screen. Only one person could use a cubicle at a time and customers selected and controlled the films themselves. The issue before the Court of Justice was whether payment to use such a cubicle constituted admission to a "cinema" within Category 7 of Annex H to the Sixth Directive, the predecessor to Item 7 of Annex III to the Principal VAT Directive. The Court noted that reduced-rate provisions constitute an exception to the ordinary application of the standard rate and should therefore be interpreted strictly ([15]). It further observed that the concept of admissions to a cinema must be interpreted "in the light of its context" ([14]) and "in accordance with the usual meaning of those words" ([16]). At [17] the Court explained:

> "The various events and facilities listed in the first paragraph of Category 7 in Annex H to the Sixth Directive have in particular the common feature that they are available to the public on prior payment of an admission fee giving all those who pay it the right collectively to enjoy the cultural and entertainment services characteristic of those events and facilities."

10. The Court went on to hold at [18] that the concept of admission to a cinema could not be interpreted as covering payment made by a customer "so as to be able to watch on his own one or more films ... in private cubicles".

11. Although the Court did not consider the meaning of the residual words "similar cultural events and facilities", it is to be inferred from its identification at [17] of a common feature applying to all the events and facilities specifically listed that the same feature would need to be present in order for an unlisted event or facility to be "similar" for the purposes of the provision.

12. We were also referred to *Phantasialand v Finanzamt Brühl* (Case C-406/20). Although the decision post-dates 31 December 2020 and is not binding upon us, it provides assistance on the meaning of the terms "fair" and "amusement park" in Item 7. The Court held that those terms are autonomous concepts of EU law which must be interpreted uniformly throughout the European Union, in accordance with their ordinary meaning and, as part of a reduced-rate provision, strictly: ([28]-[29]). At [30], the Court explained:

> "the expression 'amusement park' denotes a landscaped site containing various facilities for recreation and amusement, whereas a 'fair', although, in general, also possessing the same facilities, is characterised by the fact that it takes place, albeit with a certain regularity, for a temporary period."

The Court accordingly distinguished between fairs operated temporarily from mobile facilities and amusement parks operated permanently from a fixed site: ([31]-[33]). Its subsequent consideration of whether those services could be treated differently for VAT purposes concerned the separate principle of fiscal neutrality. The Court did not consider the meaning of the residual words "similar cultural events and facilities" in Item 7.

VAT Tribunal and First-tier Tribunal decisions

13. We were referred to three First-tier Tribunal decisions concerning Group 16 or similarly worded provisions. Those decisions are not binding on us, but we mention them briefly as aspects of their reasoning were referred to by the FTT in its decision and relied upon by the parties.

14. *Twycross Zoo East Midland Zoological Society Ltd v CCE* (VAT Decision 20439) concerned visitors who, having already paid for admission to a zoo, paid an additional fee for an "animal encounter" involving closer contact with particular animals and personal involvement from a keeper. The issue was whether the separate supply was exempt as a "right of admission" to a zoo. The Tribunal held that the encounter fell outside the exemption. It accepted (at [22]) HMRC's submission that the United Kingdom had exempted "the right of admission, nothing more and nothing less", and that the concept could not be extended to encompass all the cultural services offered by the zoo. The encounter was a "discrete package of benefits" beyond those available to ordinary visitors ([23]). The Tribunal also rejected the submission that the encounter was merely admission to a restricted area, explaining that the zoo was supplying a package or a range of benefits "…not merely… the right of admission to a part of the Zoo to which the general public would not normally be allowed access."

15. *Young Driver Training Ltd v HMRC* [2023] UKFTT 271 (TC) concerned driving experiences for children aged between four and seventeen. Younger children drove specially constructed electric vehicles, while older children drove conventional dual-control vehicles under the supervision of qualified instructors. The business described its activities as "driving lessons", referred to itself as a "driving school", and offered products including lesson bundles and mock practical driving tests: *Young Driver* at [24]-[30]. The Tribunal held that the supplies were not rights of admission within Group 16. At [48] it concluded that the supply comprised "considerably more" than admission to the fenced area where the driving took place because it included "the use of a vehicle, driving tuition and supervision". It explained:

> "What is being supplied is a package of benefits over and above a right of admission to the fenced off area. Without the use of a vehicle, driving tuition and supervision there would be no driving Experience."

16. The Tribunal found (at [50]) that, although the experiences were intended to be enjoyable, "the main supply is plainly a supply of driving tuition over and beyond the physical admission to the fenced off area". It also held that the experiences were not sufficiently similar to a fair or circus. It contrasted the range of attractions available at such facilities with the specific pre-booked experience supplied by the taxpayer and rejected an analogy with dodgem cars (at [55]-[56]).

17. *Lucky Voice Group Ltd v HMRC* [2026] UKFTT 903 (TC) concerned charges for the exclusive use of private karaoke rooms and their equipment. The Tribunal held that the payments were not for admission and that the private rooms were not sufficiently similar to the events and facilities listed in Group 16 (at [113]-[123]). In considering collective enjoyment, the Tribunal stated at [52] that admission "ordinarily refers to shared collective enjoyment". It illustrated the distinction between admission and private hire by reference to a swimming pool:

> "If I go for a morning swim, my admission entitles me to share the pool with others who similarly pay admission. Conversely, if I was to hire the entire swimming pool (for example for a children's birthday party) I would not be paying admission but hire. But if I happened to be the only one in the pool, perhaps as the first to arrive, when more might be admitted, I would still have paid for admission."

18. Dismissing the appeal, the Tribunal regarded the private and exclusive character of the karaoke rooms as distinguishing them from facilities enjoyed in common with other members of the public: *Lucky Voice* at [116].

BACKGROUND AND THE FTT'S FINDINGS OF FACT

19. There is no dispute about the FTT's primary findings of fact. The FTT heard evidence from Mr Hayes, Ingliston's director, which it described as "straightforward, credible and reliable" (FTT [6]).

20. Ingliston's business was the provision of opportunities for members of the public to drive, or be driven in, "supercars" at organised "event days" held at off-road venues. Ingliston operated approximately five or six such event days each month (FTT [7(1)]).

21. The FTT referred to Ingliston's terms and conditions on its website, which described the business as seeking to provide customers with a "fun, safe, exciting and memorable" experience and stated that customers would enjoy a "Thrilling Drive" using high-quality instructors, supercars and carefully selected venues (FTT [7(16)]). The FTT later found that the core of Ingliston's business was to provide enjoyment rather than driving tuition (FTT [47]).

22. Customers generally began the process by purchasing a voucher. Vouchers could be purchased through Ingliston's website, directly at event days, or through third-party sellers, although the great majority of sales were made through Ingliston's own channels (FTT [7(2)]). When redeeming a voucher, customers selected a venue, a vehicle and any optional extras. These included, for example, rides in one of Ingliston's four-seater vehicles. Customers could also purchase insurance. Once the redemption process was complete, the customer received a ticket entitling them to participate in the selected experience (FTT [7(2)]).

23. Event days also generated substantial on-the-day sales. Some customers who had pre-booked an experience chose to purchase additional experiences when attending the event. Others arrived initially as spectators accompanying friends or family members but decided to participate themselves after observing the activities taking place (FTT [7(3)]).

24. Ingliston operated from three off-road venues, namely a rally and go-kart track, a former race circuit and a current race circuit, although only one venue would be used at a time (FTT [7(4)]).

25. Ingliston owned a fleet of 18 vehicles. Sixteen were two-seater vehicles and two were BMW M3 four-seater vehicles (FTT [7(5)]). During an event day, the number of vehicles on track at any given time varied. On occasions all 18 vehicles could be in use simultaneously, although the average was approximately 12 vehicles at one time (FTT [7(5)]).

26. Customers were able either to drive a vehicle themselves or to be driven by a professional driver. In either case, they were accompanied in the vehicle by a member of staff referred to as an instructor (FTT [7(6)]). Between 60% and two-thirds of customers elected to drive themselves, while the remainder chose to participate as passengers (FTT [7(7)]). Passengers could participate in simulated races conducted by the professional drivers (FTT [7(7)]).

27. Rides in the BMW M3s were sold as a separate product. Each M3 could carry up to three passengers in addition to the professional driver and, in the great majority of cases, carried three passengers. Those rides could be purchased in advance, but most were bought on the day as an additional experience (FTT [7(8)]).

28. On a typical event day, approximately 200 customers would hold pre-booked tickets (FTT [7(9)]). Although approximately 80% of tickets sold related to the two-seater vehicles, the proportion of customers participating in the four-seater experiences was significantly higher because each BMW M3 could carry up to three passengers at a time (FTT [7(9)]).

29. Paying customers holding tickets were admitted to a fenced and gated pitlane area from which they accessed the vehicles. Friends and family members were not admitted to the pitlane but could watch from behind the fence. The pitlane was approximately five metres wide and customers would ordinarily spend only a few seconds crossing it before entering a vehicle: (FTT [7(11)]). The area behind the fence was known as the paddock. Access to the paddock did not require a ticket and it was open to the general public. Catering facilities were situated there (FTT [7(12)]).

30. Customers who drove were accompanied by instructors who provided advice on driving technique and guidance on matters including braking and cornering. The instructors' presence was both to ensure safety and to enable customers to enjoy the experience. All customers received a safety briefing before taking part (FTT [7(13)]-[7(14)]). The normal minimum age for driving experiences was 12, although younger children could participate as passengers in the four-seater vehicles. There was no upper age limit (FTT [7(10)]).

The FTT's reasoning

31. The FTT proceeded on the basis that Ingliston made a single type of supply, whose VAT treatment it was required to determine (FTT [34]-[37]). The first question was whether the supply constituted a "right of admission". HMRC submitted that it comprised far more than admission to the pitlane because customers received the use of a vehicle, tuition and supervision, and the essence of the supply was use of the vehicle as driver or passenger: (FTT [39]). However, applying the "plain and ordinary meaning" of the expression and the statement in *Twycross Zoo* that the provision extended to a "right of admission, nothing more and nothing less", the FTT held that Ingliston supplied a right of admission (FTT [40]).

32. The listed attractions showed that admission was not confined to entering and walking around a designated area. The short time customers spent crossing the pitlane did not prevent the supply from being one of admission (FTT [41]). Accepting that persons admitted to the listed attractions are admitted "to enjoy something", the FTT reasoned that, just as amusement-park customers pay for admission to enjoy the rides, Ingliston's customers paid

for admission to enjoy driving or being driven in a high-powered car (FTT [42]-[43]). Instruction and supervision were, in the FTT's view, necessary to enable members of the public to drive high-powered cars safely, but were not ends in themselves: (FTT [44]). Where a customer chose to be driven, the professional driver's role was not properly described as supervision: (FTT [45]).

33. The FTT distinguished *Young Driver*, where the business had promoted driving lessons and the tribunal had found that the principal supply was driving tuition. Ingliston instead promoted a "fun, safe, exciting and memorable" experience and a "thrilling drive". The core of its business was fun and enjoyment, not teaching skills beyond those required to enjoy the experience safely (FTT [46]-[48]).

34. Having found that the supply was a right of admission, the FTT considered whether it was admission to a "similar cultural event or facility". It was common ground that Ingliston did not supply admission to any specifically listed attraction (FTT [49]-[50]). Relying on *Erotic Center* at [17], HMRC identified three characteristics which it submitted an unlisted attraction had to share with those listed: collective rather than predominantly personal enjoyment; collective enjoyment by those who had paid; and simultaneous collective enjoyment by a relatively large number of paying customers (FTT [51]-[53]). The FTT addressed each in turn.

Collective enjoyment

35. The FTT accepted that the listed events and facilities conferred a right to collective enjoyment, which had been absent from the private cubicles in *Erotic Center*, but rejected HMRC's submission that Ingliston's experiences were predominantly personal (FTT [54]-[55]). It relied on the presence of an average of about 12 cars on the circuit; customers' ability to see and be seen by occupants of other cars; the possibility of simulated races; the presence of family or friends in four-seaters; and the presence of an instructor in two-seaters. These features made it "far from a solitary experience" and materially different from the private cubicles (FTT [56]). Although occupants of different cars were physically separated, the FTT noted that fairground and amusement-park rides could also place customers in separate compartments, sometimes out of one another's sight. Collective enjoyment did not therefore require the proximity found in a full theatre or cinema (FTT [57]).

Paying customers and spectators

36. The FTT rejected HMRC's submission that collective enjoyment had to derive solely from paying customers. It held that spectators in the paddock could heighten the enjoyment of participants (FTT [58]-[59]). The paddock also included paying customers not then driving and persons who might decide to purchase an experience after seeing what was available (FTT [60]). In any event, the FTT found that those driving or being driven at a particular time collectively enjoyed the activity as a group. Their enjoyment was heightened by spectators but did not depend on them. Although the role of spectators distinguished Ingliston from a concert, cinema or theme park, the FTT held that it nevertheless possessed the common characteristics identified in *Erotic Center* (FTT [61]-[62]).

Customer numbers

37. The FTT accepted that the listed attractions would ordinarily be expected to attract relatively large numbers, a characteristic it considered also followed from the words "public", "all" and "collectively" in *Erotic Center* (FTT [63]). It rejected, however, HMRC's reliance

on the number of customers in each vehicle. That approach treated each car as equivalent to a private cubicle, whereas the FTT had found that customers in different cars enjoyed the activity collectively (FTT [64]-[65]). An average of 12 cars meant that at least 12 customers would usually be participating at once, while all 18 cars could carry 22 customers (FTT [66]).

38. The FTT also rejected a requirement of strict simultaneity. Enjoyment had to occur within the same timeframe, but simultaneity was an additional requirement not found in *Erotic Center* (FTT [67]). It held that approximately 200 pre-booked customers over a typical event day was sufficient or, alternatively, that 12 simultaneous participants would suffice (FTT [68]).

Similarity to a fair or amusement park

39. The FTT then considered whether Ingliston's facility was similar to a fair or amusement park. Referring to *Phantasialand*, it accepted that "amusement park" was an autonomous EU concept which should be given its ordinary meaning and, as part of a reduced-rate provision, interpreted strictly (FTT [69]-[70]). HMRC relied on the instruction received by customers, their occupation of vehicles in small groups, and the absence of a landscaped site containing multiple attractions. The FTT emphasised that the question was not whether Ingliston was itself a fair or amusement park, but whether it was a "similar cultural event or facility" (FTT [71]-[72]).

40. Treating similarity as a matter of "overall impression", the FTT concluded that Ingliston's facility was similar to a fair or amusement park. Customers attended for an enjoyable day out and drove, or were driven, in supercars marketed as providing a thrilling experience. Speed, thrills and excitement were also characteristic of many fairground and amusement-park rides, while dodgems and go-karts provided closer analogies because customers drove the vehicles themselves (FTT [73]-[74]). The FTT regarded the peripatetic nature of Ingliston's facility as neutral: (FTT [75]). It also accepted that fairs and amusement parks offered multiple attractions whereas Ingliston did not, rejecting the suggestion that different vehicles, additional laps and other variations were equivalent to multiple attractions (FTT [78]). *Young Driver* did not alter its conclusion because Ingliston's supplies had already been distinguished from those considered in that case (FTT [76]-[77]).

41. Drawing those matters together, the FTT held that Ingliston did not have to establish that its facility was itself a fair or amusement park but concluded that it was sufficiently similar to one (FTT [79]). It accordingly allowed the appeal, discharged the VAT assessment and held that Ingliston was entitled to recover input tax of £13,109.20 (FTT [86]-[87]). (It is not clear to us why the FTT described the amount as input tax, since the dispute concerned the rate of output tax chargeable on Ingliston's supplies. Any issue concerning the correct description or calculation of the consequential VAT position does not, however, affect the question before us, which is whether those supplies qualified for the temporary reduced rate.)

GROUNDS OF APPEAL

42. HMRC advance five grounds of appeal which, in outline, are as follows:

(1) **Ground 1** – the FTT misconstrued the requirement that the supply be a "right of admission" and failed properly to distinguish between a right of admission and a supply which was "considerably more" than admission.

(2) **Ground 2** – the FTT misunderstood the concept of "collective enjoyment" and erred in concluding that the respondent's customers experienced such enjoyment in the relevant sense.

(3) **Ground 3** – the FTT erred in taking account of enjoyment derived by, or from the presence of, non-paying spectators when assessing collective enjoyment.

(4) **Ground 4** – the FTT erred in its treatment of the significance of customer numbers and, in particular, failed properly to take account of the limited number of customers simultaneously enjoying the attraction.

(5) **Ground 5** – the FTT adopted an incorrect approach to similarity and erred in concluding that the respondent's activities were similar to the attractions identified in Group 16.

DISCUSSION

43. Although HMRC advance five grounds, they overlap. Ground 5 concerns the proper approach to similarity. Grounds 1 to 4 concern, in different ways, the meaning of a right of admission, collective enjoyment and the proper characterisation of Ingliston's supplies. We address Ground 5 first and then Grounds 1 to 4 together.

GROUND 5 – SIMILARITY

44. HMRC submit that the FTT approached similarity at too high a level of generality. They argue that it was not sufficient to identify the characteristics shared by the attractions listed in Group 16 and ask whether those characteristics were present in Ingliston's activities. Given the requirement to interpret the reduced-rate provision strictly, HMRC submit that it was also necessary, as a second stage, to establish similarity with one or more of the attractions expressly listed. Ingliston submits that HMRC's proposed second stage imposes an unwarranted gloss on the statutory language.

45. It is helpful first to distinguish two related questions. The first is whether an event or facility falls within the ordinary meaning of one of the named attractions. A named term is not interpreted in isolation, but in the context of the provision as a whole. The second question arises where the event or facility is not itself one of the named attractions. It is then necessary to consider whether it falls within the additional category of "similar cultural events and facilities".

46. *Erotic Center* concerned the first question. The issue was whether private viewing cubicles constituted a "cinema". The Court interpreted that term "in the light of its context" within the Directive: ([14]). In doing so, it identified (at [17]) a common characteristic of the events and facilities in the statutory list. Although the cubicles had some evident features of a cinema, in that customers paid to enter premises in order to watch films, those similarities did not bring them within the meaning of "cinema" when that term was read in its statutory context.

47. *Phantasialand* also concerned the interpretation of named attractions. The Court was required to distinguish between a "fair" and an "amusement park", both of which were separately listed in Item 7. It therefore considered the ordinary meaning of each expression and held that each must retain its own scope: ([28]-[33]). The Court was not considering

whether an unlisted event or facility fell within the residual expression "similar cultural events and facilities".

48. Those decisions show that the meaning of a named attraction is informed by the statutory context. They do not, however, deprive the residual expression of its separate function. The words "similar cultural events and facilities" expressly extend Group 16 beyond events and facilities falling within the ordinary meaning of the named attractions.

49. The issue in this appeal concerns that residual expression. It is common ground that Ingliston's event days were not themselves a fair, amusement park or any other named attraction: FTT [50]. The question is whether they were similar to the category of cultural events and facilities represented by the statutory list.

50. We accept HMRC's submission that, as an exception to the application of the standard rate, Group 16 must be interpreted strictly: *Erotic Center* at [15] and *Phantasialand* at [29]. Strict interpretation does not, however, require the provision to be construed more narrowly than its language warrants. As the tribunal noted in *Twycross Zoo* at [18], Advocate General Jacobs observed in *CCE v Zoological Society of London* (Case C-267/00) at [19] that an exemption should be "strictly interpreted but should not be whittled away by interpretation" and should apply "to that to which it was intended to apply and no more".

51. The statutory language contains no basis for HMRC's proposed second stage referred to at [44] above. The natural meaning of "similar cultural events and facilities" is that the comparison is with the category represented by the list. The named attractions identify that category. They do not also operate as a series of individual comparators, similarity to at least one of which must separately be established.

52. This does not make comparison with a particular named attraction irrelevant. Such a comparison may assist in identifying the characteristics of the category or in deciding whether an unlisted event or facility falls within it. *Erotic Center* also illustrates that resemblance to an individual attraction may not be determinative: the private cubicles resembled a cinema in some respects but lacked a characteristic which the Court, reading "cinema" in its statutory context, regarded as material. Conversely, an unlisted event or facility may possess the characteristics of the statutory category without closely resembling any single named attraction.

53. Once the characteristics of the category represented by the list have been identified, the statutory question is whether the event or facility under consideration is sufficiently similar to that category. There is no additional requirement to establish meaningful similarity with one or more particular named attractions.

54. We therefore reject HMRC's submission that the FTT's approach was legally flawed because it did not require similarity to be established separately with one or more named attractions.

55. HMRC also rely on six features which, they submit, demonstrate that the FTT was wrong to regard Ingliston's event days as similar to a fair or amusement park: customers drove the vehicles themselves; instruction and supervision were integral to the supply; customers did not roam around a large attraction containing multiple activities; customers were compartmentalised in individual cars; non-paying spectators played a role in the experience; and the scale of attendance was dramatically smaller.

56. Some of those matters arise under the other grounds, including active participation and staff interaction under Ground 1, compartmentalisation under Ground 2, spectators under Ground 3 and customer numbers under Ground 4. We consider them in those contexts below. To the extent that HMRC rely on them under Ground 5 to establish that Ingliston was insufficiently similar to a fair or amusement park, it is unnecessary to determine that specific comparison. For the reasons given above, similarity to either named attraction was not a legal requirement. The matters relied upon do not therefore establish the error of approach alleged under Ground 5.

57. Ground 5 is dismissed.

GROUNDS 1 TO 4: RIGHT OF ADMISSION AND COLLECTIVE ENJOYMENT

The parties' submissions

58. Grounds 1 to 4 overlap. Ground 1 concerns the meaning of a "right of admission"; Ground 2, the concept of collective enjoyment; Ground 3, the significance of non-paying spectators; and Ground 4, the number of customers said to enjoy the facility collectively. Each bears on the proper characterisation of Ingliston's supplies. We therefore address the grounds together, while stating our conclusion on each at the appropriate stage of the analysis.

59. HMRC submit that the FTT adopted an unduly broad understanding of a right of admission. Mr Winter tested the limits of its approach by reference to a customer paying to enter a restricted part of a zoo in order to help feed certain animals, a person entering a theatre to experience performing as an actor on stage rather than watch the performance, and a customer entering a hairdresser's premises to receive the service provided there. In each case, access to the premises or a particular area is necessary in order to receive the service, but that does not make the supply one of admission. HMRC submit that the FTT did not identify a principled basis for distinguishing those examples from its conclusion at [42] that Ingliston's customers paid for admission so that they could enjoy driving or being driven.

60. Relying principally on *Twycross Zoo* and *Young Driver*, HMRC argue that Ingliston supplied "considerably more" than admission. Customers obtained a selected vehicle, a safety briefing, instruction or guidance and the opportunity to drive or be driven around the circuit. Ingliston's own description of what it sold as a "driving experience" was said accurately to reflect the substance of the supply.

61. HMRC also rely on two characteristics which they submit are generally present in the attractions specifically listed in the legislation. First, enjoyment of such attractions is predominantly passive. Although fairs and amusement parks may contain participatory elements, customers ordinarily use attractions provided and controlled by the operator. Most of Ingliston's customers, by contrast, personally performed the central activity by driving the vehicle.

62. Secondly, HMRC submit that the listed attractions generally involve limited personal interaction with staff, whereas every Ingliston customer was accompanied by a professional driver. Customers who drove received guidance on braking, cornering and driving technique; those who did not drive were personally driven around the circuit. Mr Winter accepted in oral argument that neither passivity nor limited staff interaction was an absolute requirement. He relied on those features as indicators that the customer purchased an individual participatory service rather than admission to an attraction made available generally to paying members of the public.

63. Grounds 2 to 4 develop HMRC's case on the "collective enjoyment" aspect of Ingliston's supplies as compared to the listed attractions. HMRC submit that the FTT wrongly treated instructors as contributing to collective enjoyment, attached significance to non-paying spectators and failed to give proper weight to the limited number of paying customers participating at any one time.

64. For Ingliston, Mr Hellier submits that the FTT correctly focused on whether customers were admitted to enjoy an attraction. Neither the legislation nor the authorities distinguishes between active and passive enjoyment or prescribes a permitted degree of staff interaction. The FTT found that instruction and supervision enabled customers to enjoy the experience safely and were not ends in themselves, and that the core of Ingliston's business was fun and enjoyment rather than driving tuition (FTT [44] and [47]). Those findings, he submits, distinguish *Young Driver*.

65. Mr Hellier also submits that "considerably more" is descriptive language drawn from *Young Driver*, not a statutory test. The provision of rides, performances or activities does not take a supply outside Group 16 merely because the customer receives more than physical entry. For example a cinema customer pays to see a film and an amusement-park customer to use the rides.

66. In relation to Grounds 2 to 4, Mr Hellier supported the FTT's reliance on its findings that several vehicles were ordinarily on the circuit, that participants could see and be seen by one another and that some took part in simulated races. Those features, he submitted, distinguished the event days from the private viewing cubicles considered in *Erotic Center*. He further submitted that the FTT had not treated spectators as essential to its conclusion and that neither the legislation nor the authorities prescribed a minimum number of customers or required strict simultaneity.

67. During oral argument, the Tribunal explored with the parties whether "the right collectively to enjoy" as mentioned in *Erotic Center* was concerned with customers enjoying themselves as a group or, instead, with paying customers receiving the benefit of an event or facility made available in common. Mr Hellier supported the latter interpretation. In doing so, he relied on the swimming-pool example in *Lucky Voice* at [52], submitting that the nature of a facility does not change merely because only one customer happens to be using it at a particular time.

68. Mr Hellier emphasises, finally, that the FTT's conclusions involved evaluative judgments reached by a specialist tribunal after hearing the evidence. As such, an appellate tribunal should be slow to overturn them, whether or not it would itself reach the same view.

Discussion on Grounds 1 to 4

Collective enjoyment

69. Both parties rely on the statement in *Erotic Center* at [17] that the listed events and facilities have the common feature that they are available to the public on prior payment of an admission fee giving all those who pay it the right "collectively to enjoy" their characteristic cultural and entertainment services.

70. HMRC submit that this describes collective rather than predominantly personal enjoyment. The occupant of a two-seater vehicle was ordinarily the only paying customer in it, while a four-seater contained no more than three paying customers. Mr Winter argues that

this compartmentalisation was closer to the private viewing cubicles considered in that case than to a theatre, concert, fair or exhibition.

71. As noted above, the meaning of "collectively to enjoy" was explored during oral argument. One possible reading was that it required customers to enjoy the relevant entertainment together or to derive collective amusement from it. The alternative was that "enjoy" meant receiving or having the benefit of the service, so that the expression was directed to whether paying customers were admitted to an event or facility made available in common. Mr Hellier supported the latter reading, submitting that cinema and theatre patrons collectively receive the benefit of the same performance or screening without any requirement that they experience collective fun.

72. We consider that the latter interpretation is correct. The Court's reference to collective enjoyment does not require collective amusement, social interaction or a shared recreational response. Read in context, it contrasts an event or facility made available in common to those who pay admission with an event or facility provided for private and individual consumption. The question is therefore whether paying customers are admitted to receive the benefit of the same underlying event or facility, not whether they enjoy themselves together or experience it identically. Patrons of a theatre receive the same performance, although each experiences it individually. Museum visitors may view different exhibits, amusement-park visitors may choose different rides and zoo visitors may follow different routes. Those differences do not convert admission to a common attraction into a series of personalised services.

73. That interpretation identifies the question which the FTT was required to answer. It was not enough to determine whether the participating customers were physically alone or whether they were aware of others taking part nearby. The issue was whether those who paid were admitted to receive the benefit of an event or facility made available to them in common, rather than each receiving a service supplied for individual consumption.

74. Much of the FTT's reasoning at [56] was directed to the former question. It relied on the presence of several vehicles on the circuit, the ability of customers to see and be seen by others, the possibility of simulated races and the presence of another person in each vehicle. Those findings showed that the experiences took place in a shared setting and were "far from solitary". They did not, without more, establish that paying customers received the benefit of a common event or facility. A number of services selected and purchased individually may be delivered at the same place, at approximately the same time and within sight of one another without thereby becoming a common event or facility.

75. Nor did the presence of an instructor in each two-seater vehicle establish collective enjoyment in the relevant sense. Although the customer was not physically alone, the instructor was delivering the service rather than receiving it as a paying customer. The instructor's role might assist in identifying the character of the service supplied, but it could not establish that paying customers were admitted to enjoy an event or facility made available to them in common.

Spectators: Ground 3

76. HMRC rely on the words "all those who pay" in *Erotic Center* and submit that collective enjoyment must be assessed by reference to paying customers. Enjoyment obtained by friends or family members in the paddock was not enjoyment of the service by persons who had paid for it. Mr Winter also challenges the FTT's conclusion at [59] that spectators could enhance

the participants' enjoyment. The reactions of persons who had neither paid for nor received the relevant supply could not determine its VAT character.

77. Mr Hellier responds that the FTT did not treat spectators as essential. The paddock contained customers awaiting their turn or who had already participated, as well as non-paying observers. More importantly, at [61] the FTT found that those driving or being driven collectively enjoyed the activity independently of the spectators.

78. In our view, the FTT's conclusion at [59] concerned the effect of the spectators' presence on the paying participants, not enjoyment of the service by the spectators themselves. The difficulty is that the FTT treated the capacity of spectators to heighten the participants' fun or excitement as supporting its conclusion that the enjoyment was collective. That reasoning reflects the interpretation of "enjoyment" which we have rejected. The relevant question is not whether the presence of others makes the experience more enjoyable, but whether those who pay are admitted to receive the benefit of an event or facility made available to them in common. The presence of spectators may be consistent with a shared setting, but their enhancement of the participants' enjoyment does not necessarily assist in answering that question.

79. The alternative finding at [61] does not make that error immaterial. Whether that finding can stand depends on whether the participating customers received the benefit of a common event or facility. For the reasons given under Grounds 1 and 2, the FTT's conclusion on that question was itself affected by the same misunderstanding of collective enjoyment.

80. Ground 3 is therefore made out. The FTT's reliance on the enhancement of the participants' enjoyment reflected the same misunderstanding of collective enjoyment identified under Ground 2, rather than a separate error of principle.

Numbers and simultaneity: Ground 4

81. HMRC's case under Ground 4 is not that a listed attraction ceases to qualify whenever attendance on a particular occasion is low. They submit that the listed attractions are characteristically available for collective enjoyment by relatively large numbers, whereas Ingliston's operational model involved few paying customers at any one time.

82. HMRC rely on the fact that there was ordinarily one paying customer in each two-seater vehicle and no more than three in a four-seater. Alternatively, there were on average about 12 vehicles on the circuit and a possible total of 22 customers in the gated area if all 18 vehicles were in use. HMRC also submit that the FTT was wrong at [68] to aggregate approximately 200 pre-booked customers attending over a typical event day. Customers participating at different times did not enjoy the activity collectively merely because their experiences occurred on the same day. Although Mr Winter suggested when pressed that a sufficient figure might be "in the region of 100 upwards", he accepted that neither the legislation nor the authorities specified a threshold.

83. Mr Hellier submits that this confuses the nature of the facility with the number using it. A small cinema, an intimate theatre or a comedy performance before a modest audience remains within Group 16. Collective enjoyment does not require every customer to use the facility at the same instant.

84. We agree with Mr Hellier. The expression "collectively to enjoy" describes the basis on which the event or facility is made available. It does not prescribe a minimum audience or

require each customer to enjoy it simultaneously. The swimming-pool example in *Lucky Voice* at [52] illustrates the point. A person admitted to a public pool is no less admitted to a commonly available facility because that person happens temporarily to be its only user. Similarly, a small theatre or sparsely attended cinema screening may fall within Group 16, whether many or few choose to attend.

85. We recognise HMRC's response that its case concerns the characteristic scale of the listed attractions rather than fluctuations in actual attendance. The difficulty is that neither Group 16 nor the Court's reasoning in *Erotic Center* identifies substantial capacity or attendance as a characteristic of the category. Listed attractions may themselves operate on a small scale, and there is no principled basis for selecting a threshold of 12, 22, 100 or any other number.

86. We therefore reject the proposition, accepted by the FTT at [63], that the listed attractions necessarily share an expectation of attendance by relatively large numbers at any one time. We also reject HMRC's submission that collective enjoyment requires strict simultaneity. The FTT, having accepted that relatively large numbers were required, held at [68] that the requirement was satisfied by either approximately 200 customers over a typical event day or 12 simultaneous participants. That numerical assessment was unnecessary. Group 16 imposes no threshold of that kind. Ground 4 is not made out.

Right of admission: Ground 1

87. Both parties rely on *Twycross Zoo* and *Young Driver* in relation to the meaning of a right of admission. Neither decision however supplies a comprehensive definition of a right of admission, but each illustrates the need to identify what was in substance supplied. In *Twycross Zoo*, the animal encounter was a discrete package of benefits extending beyond ordinary admission to the zoo. In *Young Driver*, the principal supply was found to be driving tuition and supervision, described at [48] as comprising "considerably more" than admission.

88. We accept Mr Hellier's submission that passive enjoyment does not mark the boundary of Group 16. The statutory language draws no distinction between passive observation and active participation, nor can such a distinction sensibly be derived from the list, which includes fairs and amusement parks. Those attractions may contain dodgems, shooting galleries and other activities in which customers participate directly. HMRC's distinction between a passenger on a rollercoaster and an Ingliston customer controlling a car identifies a factual difference which may assist in characterising the supply, but it does not establish that active participation is inconsistent with the nature of the supply amounting to "admission".

89. Nor do we accept that limited interaction with staff is a characteristic which defines the scope of Group 16. Staff may operate rides, conduct tours, explain exhibits, provide safety instructions or otherwise facilitate an attraction. The nature and extent of their involvement may, of course, assist in identifying what is supplied. Sustained one-to-one tuition, for example, may show that the service is tuition rather than admission, as the tribunal found in *Young Driver*. But that is a matter of characterisation; admission does not cease to be admission merely because staff involvement has passed some unspecified level.

90. In the present case, the FTT found that Ingliston's instruction and supervision enabled customers to enjoy the experience safely and were not ends in themselves. It also found that the core of the business was fun and enjoyment rather than teaching driving skills: FTT [44] and [47]. Those findings distinguish *Young Driver*, and we therefore reject HMRC's case

insofar as it characterises tuition as the principal supply. They do not, however, answer the distinct question whether the supply was one of admission. A supply which is not principally tuition may instead be a recreational driving experience.

91. The relevant distinction is not between physical entry alone and physical entry accompanied by some further benefit. Admission to the attractions listed in Group 16 necessarily carries the right to enjoy their characteristic content. A cinema customer pays to watch the film, a theatre customer to see the performance and a zoo visitor to see the animals. In each case, the supply remains one of admission because the customer is admitted to an event or facility whose characteristic content is made available on the same essential basis to all those who pay for admission.

92. The question is therefore whether the activity or benefit received by the customer is the characteristic content of an event or facility made available in common to paying entrants, or is instead a distinct service selected by and supplied to that customer at premises to which access is required. Customers admitted to the same event or facility may, of course, use or experience it differently. That does not prevent the supply from being admission, provided that the underlying event or facility is made available to them on the same essential basis.

93. The point may be expressed by saying that the listed examples generally involved "something being put on" for whoever attended. Mr Hellier correctly observed that a ride might operate only when a customer was present and that customer participation might be necessary for the activity to occur. The event or facility need not therefore exist or operate independently of every customer. The material point is that its characteristic content is made available on common terms to paying entrants, rather than selected and arranged separately for each one.

The FTT's errors: Grounds 1 and 2

94. At [41], the FTT correctly held that a right of admission is not confined to entering and walking around a designated area. At [42], however, it reasoned that, just as amusement-park customers pay for admission to enjoy the rides, Ingliston's customers paid for admission to enjoy driving or being driven in a high-powered car.

95. Mr Hellier supports that reasoning. He submits that admission necessarily takes its content from the thing to which the customer is admitted: Ingliston's customers entered the controlled area to experience the cars, while instruction and safety arrangements merely facilitated that recreational activity.

96. We accept that admission cannot be analysed separately from the event or facility to which entry is granted, and that the provision of equipment and safety arrangements does not necessarily prevent a supply from being one of admission. The FTT's analysis did not, however, distinguish between entry obtained in order to enjoy a common event or facility and entry which merely enables a customer to receive a distinct service. Mr Winter's examples illustrate the importance of that distinction. A customer may enter a restricted area of a zoo to feed an animal or a theatre to participate on stage, but the resulting supply is not necessarily admission to the zoo or theatre.

97. The FTT was entitled to find that Ingliston supplied enjoyment rather than driving tuition. It does not follow, however, that, because tuition was not the principal supply, the supply must have been admission to an entertainment attraction. A supply may be neither tuition nor admission; it may instead be a recreational driving experience.

98. The FTT found that customers redeemed vouchers by selecting a venue, a vehicle and any add-ons; could purchase additional driving experiences on the day; and chose whether to drive or be driven FTT [7(2)], [7(3)] and [7(6)]. Those choices defined the service which Ingliston was obliged to provide. A customer who chose to drive obtained use of the selected vehicle together with the guidance needed to do so safely, while a customer who chose to be driven obtained a different service in which the professional driver operated the vehicle.

99. Mr Hellier is right that customer choice and variation do not themselves distinguish Ingliston from the listed attractions. Visitors to amusement parks and museums also make choices. The difference lies in what the customer purchased. At an amusement park or museum, a common attraction or facility is made available to those who pay for admission, after which visitors decide how to use it. Ingliston's customers instead purchased a selected driving experience involving a selected vehicle and mode of participation. The event day brought those separately purchased experiences together; it was not itself the common attraction supplied on the same essential basis to every ticket holder.

100. We do not reach that conclusion merely because the experience might be described as "personalised", because the customer temporarily occupied a particular vehicle or because an instructor was involved. A theatre ticket may allocate an individual seat, and an amusement-park visitor may choose particular rides. Those matters are relevant here only insofar as they reveal the content of the service contracted for and the manner in which it was delivered.

101. Nor is the analysis altered by the presence of several cars on the circuit, visibility between their occupants or the possibility of simulated races. Those features showed that the experiences occurred in a shared setting and were not physically solitary. They did not establish that paying customers collectively enjoyed the benefit of a common event or facility. A number of services selected and supplied individually do not become a common event merely because they are delivered at the same place, at approximately the same time and within sight of one another.

102. That was the material error in the FTT's approach to collective enjoyment. At [56], the FTT reasoned that the presence of several cars, the ability of customers to see and be seen by others, simulated races and the presence of another person in each vehicle made the experience "far from a solitary" one and therefore materially different from the private viewing cubicles. That reasoning treated the physical solitude of the customer as the decisive feature of the Court's analysis. In our view, the significance of the private cubicles lay not simply in the fact that the customer was alone, but in the individualised character of what was supplied given the ability for the customer to personally select the films they viewed.

103. The FTT's findings concerning the shared setting were therefore insufficient to establish collective enjoyment in the relevant sense. Each Ingliston customer had purchased a separately selected driving experience involving a chosen vehicle and mode of participation. The proximity of those experiences did not convert them into collective enjoyment of a common event or facility. Ground 2 is made out.

104. The same misunderstanding affected the FTT's characterisation of the supply under Ground 1. Having concluded that the activity was collective because it was not solitary, the FTT did not ask whether the benefit obtained by paying customers was admission to a common event or facility or, instead, the provision of separately selected driving experiences. For the reasons given above, the latter is the correct characterisation. Ground 1 is also made out.

105.Grounds 1 and 2 therefore succeed, but on a narrower basis than some of HMRC's submissions. Predominantly passive enjoyment and limited staff interaction are not defining characteristics of Group 16; nor do customer choice, active participation or differences in individual experience by themselves take a supply outside the provision. We have borne in mind Mr Hellier's earlier submission that the FTT's conclusion was an evaluative judgment reached by a specialist tribunal after hearing the evidence, and should not be disturbed merely because this Tribunal might have reached a different view. The error we have identified, however, lies in the legal criteria applied to the FTT's findings: its misunderstanding of collective enjoyment led it to mischaracterise the benefit supplied to each paying customer. Correcting that error does not involve reassessing the primary facts or substituting our own evaluation on the same legal test.

RE-MAKING THE DECISION

106.The errors established under Grounds 1 and 2 are material and require the FTT Decision to be set aside. Neither party submitted that further findings of primary fact would be required, and we are satisfied that the decision can be re-made on the findings already made by the FTT.

107.Applying the correct approach, the facts found by the FTT establish that customers purchased selected driving experiences rather than admission to a common event or facility. Each customer selected a vehicle, any add-ons and whether to drive or be driven. Those choices defined the service which Ingliston was obliged to provide. The event day brought those separately purchased experiences together in a shared setting, but did not alter their character.

108.We therefore conclude that Ingliston supplied recreational driving experiences rather than rights of admission to events or facilities within Group 16. The supplies did not qualify for the temporary reduced rate.

CONCLUSION

109.HMRC's appeal is allowed. We set aside the FTT Decision and remake it by dismissing Ingliston's appeal. HMRC's assessment for VAT period 10/20 and its denial of the repayment claim are upheld.

JUDGE SWAMI RAGHAVAN
JUDGE KEVIN POOLE

UPPER TRIBUNAL JUDGES

Release date: 11 November 2026