[2016] UKFTT 750 (TC)

TC05477

Appeal number: TC/2016/01484

***VALUE ADDED TAX – input tax on repairs to Prebends' Bridge – whether 'close and immediate link' to economic activities of cathedral – Art 168 Principal VAT Directive – s 24 VATA 1994 – Application of CJEU judgment in* Sveda.**

FIRST-TIER TRIBUNAL
TAX CHAMBER

DURHAM CATHEDRAL **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS **Respondents**

TRIBUNAL: JUDGE RICHARD THOMAS
LESLIE BROWN

Sitting in public at King's Court, North Shields on 17 October 2016

Mark Hetherington of UNW LLP (Chartered Accountants) for the Appellant

Bernard Haley, Presenting Officer, for the Respondents

DECISION

1. This was an appeal by Durham Cathedral, the representative member of a VAT group consisting of the Cathedral itself and a subsidiary company. Durham Cathedral is a body corporate consisting of the Council, Chapter and College of Canons by virtue of section 9(1)(a) of the Cathedrals Measure 1999 (1999 No 1). From here in this decision references to "the appellant" are to the deemed single person consisting of the two bodies corporate, while references to the cathedral are to the cathedral as a building. The appellant carries on economic activities including a gift shop and a cafeteria/restaurant and also charges admission for concerts etc (but not for admission to the cathedral generally) and some of the economic activities are exempt. It also, unsurprisingly carries on non-economic activities, that is the religious activities in the cathedral

2. The issue for us was whether input tax of £6,720.25 incurred on repairs to and maintenance of the Prebends' Bridge could be deducted (in part after applying the agreed split between religious and economic activities and, in respect of the latter, between exempt and taxable activities) for the periods 12/11 & 03/12.

3. Readers of this decision wondering who or what a prebend is, and especially those who are familiar with Anthony Trollope's novel *Framley Parsonage* and who therefore know what a "prebendary" is[1], will find from the OED that one meaning of "prebend" is in fact "prebendary", minor clergy whose appointment to a cathedral brought with it a benefice known as a prebend, the other meaning of the term. We assume that the prebends (prebendaries) used the bridge originally to visit their prebends, income-producing land. Much of the land on the western (ie not the cathedral) side of the bridge is still open land.

The evidence

4. We had a bundle which included all the documents the parties wished to present.

5. We had a witness statement from Mrs Gillian Jackson, the HMRC officer who had conducted the correspondence in relation to the current claim. She was cross-examined on the statement by Mr Hetherington. As is often the case with HMRC witnesses, the statement was a mix of undisputable fact, eg that a letter saying so-and-so was sent or received, and opinion on the issue that is before the Tribunal.

6. We obviously accept the first and disregard the second type of evidence. Mr Hetherington's cross-examination was about the reason why she had said what she had in correspondence. We accept her answers as true.

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[1] The Reverend Mark Robarts, Rector of Framley in Barsetshire, had a post as prebendary of Barchester cathedral dangled before his eyes by the scheming Mr Sowerby, who said "It is six hundred a year and a house".

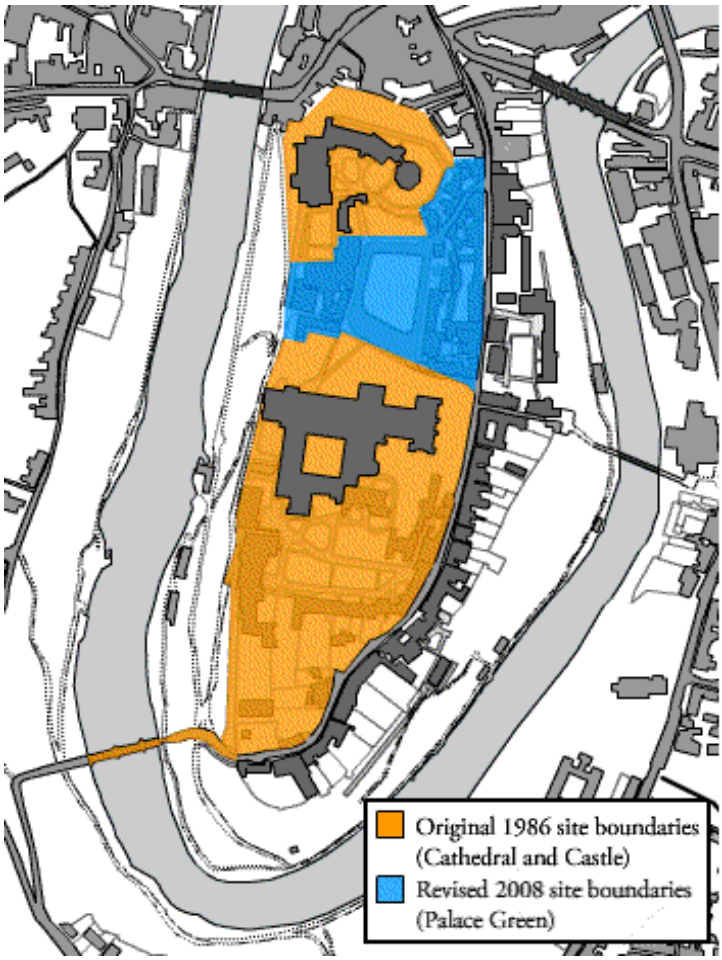
7. Mr Hetherington was also to some extent giving evidence on behalf of the appellant, though much of it was in adding further detail about the maps and photographs we had in the bundle and about Durham generally. This was not disputed by Mr Haley.

The facts: the cathedral, the World Heritage Site and the bridge

8. Durham cathedral sits on a peninsular formed by the winding course of the River Wear. The cathedral is in the middle of the peninsular with Durham Castle at the north end. The cathedral is at the highest point of the peninsular well above the river, as any traveller on the East Coast Mainline will know.

9. There are four bridges on to the peninsular, two at the north end going east and west and linking the peninsular with the major built up areas of Durham. At the southwest of the peninsular is the Prebends Bridge and on the other side is open space. There is a pedestrian bridge on the east side of the peninsular.

10. Much but not all of the peninsular is part of a Unesco World Heritage Site ("WHS") listed in 1986. We were shown a map of the WHS, but our copy was in black and white. The colour version which the appellant had is here:



11. As the legend shows, the orange part is the original WHS area. The building in the middle of the peninsular with the internal square area is the cathedral. The thin extension to the southwest coloured orange is the Prebends Bridge. The other bridges at the top of the picture and on the right in the middle are not in the WHS Area.

12. We were told by Mr Hetherington, unlike the thin bridge across the river on the east side, the two bridges at the top are used by traffic. It was stressed to us that the walk from the Prebends' Bridge to the cathedral was steeply uphill and would take about 5 minutes. We were also told that the Prebends' Bridge could be approached by vehicle, but there were bollards on the cathedral side preventing further access by car.

13. It was accepted by the appellant that not everyone who crossed the bridge from the land to the south west of the peninsular would then go to or even by the cathedral itself or to the facilities such as the gift shop or café whose supplies were taxable. Some might be dog walkers or joggers who stayed at river level; some might be occupants of or visitors to the houses on the peninsular which were we understood occupied by clergy or cathedral officials.

14. The Bridge is an attraction in itself, being a historic structure, a listed building and an Ancient Monument. It has, HMRC had been told, the best view, indeed the only good view, of the cathedral from river level and as a result it attracts photographers and selfie-takers and we note that J M W Turner painted the view of the cathedral from the Bridge (though Turner's painting takes artistic licence in that it shows a much greater area of the west front of the cathedral than is actually visible from the bridge[2]).

15. It seemed not entirely clear whether the appellant owned the Bridge. It was said to be part of the cathedral estate, and is as we have noted part of the WHS. The source of the obligation to repair and maintain the bridge was also obscure, but the appellant clearly recognised an obligation to repair it.

16. We find all the above matters as fact. In particular we find that not everyone using the bridge will visit the cathedral or the facilities within its precincts, and that not everyone using it will even approach the cathedral. We find it unlikely though that many people will cross the bridge and pass by the cathedral on their way further north, given the steep slopes and the availability of other ways of getting to their destination. On the other hand we find that many people must visit the bridge after the cathedral and then return to the cathedral. We also find as a fact that the taxable supplies and the out of scope religious services are both supplied at the same overall location, the cathedral and its precincts. Finally we find as fact that the costs of repair are part of the general costs (overheads) of the appellant.

17. Our overall finding of fact is that the Bridge is an important aspect of the WHS as a whole and an important part of visitors' experience of the cathedral and its

[2] See http://www.durhamworldheritagesite.com/architecture/historic-bridges.

precincts and its facilities. The Bridge serves to attract visitors who may, either before or after visiting it and using it for their own purposes, such as photography, use those facilities such as the gift shop and the cafeteria whose supplies are taxable.

The facts: the appeal

18. Mrs Jackson's evidence was that in November 2009 her (aptly named) colleague, Mr Bede Murray[3], had agreed that the appellant was properly regarded as a band B cathedral for the purposes of an agreement between HMRC and the Churches Main Committee about the percentage spilt between religious activities (outside the scope of VAT) and economic activities (within the scope).

19. In a letter of 12 November 2009 to a Mr Church of the Cathedral Mr Murray gave further detail on the treatment of costs under the agreement. Where costs were not "directly and exclusively" for either business or for non-business activities they should be split as to 35% for non-business and 65% for business activities ("the NB/B split"), with the 65% attributable to business activities being further apportioned using the agreed partial exemption method ("PESM"). We are not concerned with the PESM in this appeal.

20. The letter of 12 November also referred specifically to certain costs:

(1) The non-attributable costs (by which we assume he meant the costs not directly and exclusively related to either business or non-business activities) included "costs relating to the cathedral building and buildings within the curtilage of the Cathedral. It will also include VAT on general overheads that relate to both business and non-business activities".

(2) "The College buildings are within the curtilage …. VAT incurred on domestic accommodation is excluded from the banding system."

(3) "I understand college houses are occupied by clergy. As such, any VAT incurred relates to the non-business activities of the [appellant] and is irrecoverable"

(4) "I do not consider the maintenance of the river banks and bridges to be a business activity [*sic*]. Related VAT is irrecoverable."

21. There matters rested, with the appellant following this guidance, until 18 December 2015. That was the date of a letter to HMRC from UNW LLP referring to the decision of the Court of Justice of the European Union ("CJEU – an abbreviation which in this decision also covers the European Court of Justice) in Case C-126/14 *'Sveda' UAB v Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos, third party: Klaipėdos apskrities valstybinė mokesčių inspekcija* EU:C:2015:712 [2015] STC 447 ("*Sveda*"). The decision had been given on 22 October 2015.

[3] The Venerable Bede is buried in the Cathedral.

22. The letter said that in the light of *Sveda* the appellant considered that the input tax on repairs to the Prebends' Bridge could be included in the calculations, because its situation was likely to enable the public to access the cathedral more readily.

23. The letter added that "we are not aware of HMRC publishing a comment on the Sveda case, but given the time the work was carried out [12/11 and 03/12], on behalf of the [appellant] we are submitting this claim mereley to protect the cathedral's position". They provided a schedule of the amount of VAT claimed having applied both the band B percentage and the PESM percentage.

24. On 11 February 2016 Mrs Jackson wrote to UNW LLP rejecting the claim. She relayed the views of HMRC's Partial Exemption Unit of Expertise. We expand on this advice below when setting out the rival submissions.

25. Following that rejection the appellant appealed to the Tribunal on 9 March 2016.

26. We find as fact that this correspondence took place. So far as there were arguments of law in it, and the grounds for the claim and for refusing it, that is what we have to decide, and so we make no findings of fact about the correctness of the statements made on such matters.

Law

27. We were referred to a number of articles of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ["PVD"] but in particular to relevant parts of art. 168 PVD:

> "In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT which he is liable to pay:
>
> (a) the VAT due or paid in that Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person;
>
> …"

28. We were also referred to sections 24 to 26 VATA, of which part of s 24 was directly relevant:

> "(1) Subject to the following provisions of this section, "input tax", in relation to a taxable person, means the following tax, that is to say—
>
> (a) VAT on the supply to him of any goods or services;
>
> …
>
> being … goods or services used or to be used for the purpose of any business carried on or to be carried on by him.

…

(5) Where goods or services supplied to a taxable person … are used … partly for the purposes of a business carried on … by him and partly for other purposes—

(a) VAT on supplies … shall be apportioned so that so much as is referable to the taxable person's business purposes is counted as that person's input tax, and

(b) the remainder of that VAT ("the non-business VAT") shall count as that person's input tax only to the extent (if any) provided for by regulations under subsection (6)(e)."

No such regulations of any relevance to this case were cited to us.

29. The case law authorities in our bundle were Case C-4/94 *BLP Group plc v Commissioners of Customs and Excise* ECR 1995 I-00983 ("*BLP*") and Case C-118/11 *Eon Aset Menidjmunt OOD v Direktor na Direktsia Obzhalvane i upravlenie na izpalnenieto - Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite* EU:C:2012:97 ("*Eon*") as well as *Sveda* (both A-G Kokott's opinion and the CJEU's judgment). We have only needed to consider *Sveda*.

The submissions

30. For the appellant Mr Hetherington argued that the case law of the CJEU had developed since *BLP*, a development explained in *Eon* and particularly in the A-G's opinion in *Sveda*, which was adopted by the Court in that case.

31. *Sveda* had made it clear that the "direct and immediate link" between an output and input which HMRC relied on, in accordance with *BLP*, did not need to be between an input and a specific output: it was sufficient if the link was to the taxable transactions of the person as a whole.

32. *Sveda* also showed that the requirement that the costs on which the input VAT arose did not have literally to be a cost component of the price of any output, and that overheads do have a direct and immediate link to the transactions as a whole.

33. The A-G's opinion in *Sveda* suggested that the UK was reading *BLP* too narrowly and continued to do so.

34. For HMRC Mr Haley submitted that each case has to be looked at on its own merits to include examining whether the costs in question are critical to the business operation.

35. There has to be a sufficient and direct link between the costs and the business activity, but the link between repairs to the Prebends' Bridge and the business activity is a tenuous one and so must remain as a purely non-business one. In argument Mr Haley added that the tenuousness of the link was exacerbated by the distance of the Bridge from the cathedral, involving as it does a steep uphill climb.

36. We add here that we have taken this submission of Mr Haley to be (or also be) that the physical distance between the Prebends' Bridge and the cathedral means that there is no link for VAT purposes with any of the appellant's non-business (religious) activities as well as its business activities.

37. The appellant commented on Mrs Jackson's reasons (provided by the Unit of Expertise) for saying there was no direct and immediate link, that the bridge has been in existence historically and affords a crossing point for access not just to the cathedral but for viewing the city and that "[i]ts purpose cannot be said to be to make taxable supplies."

38. The appellant responds to that by pointing out that the cathedral is 700 years old but that does not stop costs incurred on its maintenance from entering the apportionment of expenses.

Discussion

39. We start with *Sveda* because it is that case on which the appellant relies. The facts are set out §§12 to 15 of the A-G's opinion:

> "12. In 2012 Sveda was working on the creation of a 'Baltic mythology recreational/discovery path' ('the recreational path'). It created paths, steps, observation decks, campfire sites, an information stand and car parks.
>
> 13. The work on creating this recreational path was performed on the basis of the obligations under an agreement that Sveda had entered into with the National Paying Agency under the Ministry of Agriculture ('the Agency'). Under this agreement Sveda is required to provide the public with access to the recreational path free of charge. The agreement also establishes that Sveda is to be reimbursed up to 90% of the costs of setting up the path in the form of a 'grant'.
>
> 14. According to the findings of the national court, Sveda intends to carry out an independent economic activity within the meaning of Article 9(1) of the VAT Directive in the tourism sector. Visitors to the recreational path would thus be offered services, such as the sale of food or souvenirs, for consideration.
>
> 15. In its VAT declaration Sveda claimed the input VAT that it had paid on goods and services purchased during the work of creating the recreational path. However, the Lithuanian tax authorities refused to reimburse those input VAT amounts because it had not, in their view, been shown that the goods and services purchased by Sveda were used for an activity subject to VAT."

40. The question referred to the CJEU by the Supreme Administrative Court of Lithuania was:

> "Can Article 168 of the VAT Directive be interpreted as granting a taxable person the right to deduct the input VAT paid in producing or acquiring capital goods intended for business purposes, such as those

in the present case, which (i) are directly intended for use by members of the public free of charge, but (ii) may be recognised as a means of attracting visitors to a location where the taxable person, in carrying out his economic activities, plans to supply goods and/or services?"

41. In making her legal assessment of the question whether the materials used to construct the path were to be used for the purposes of taxed transactions, A-G Kokott said:

"29. On the one hand, the recreational path is to be made available to the public free of charge. This operation is not taxed. There is no tax obligation deriving either from Article 2(1)(c) of the VAT Directive, because Sveda does not make visitors pay, or from its [*sic*] Article 26(1)(a), because the capital goods are not used for purposes other than those of its business within the meaning of this provision. Use for purposes other than those of his business is certainly excluded when the use of capital goods must be allocated to the taxable person's economic activity. None the less, the national court has previously found that Sveda did act for the purposes of its economic activity when creating the path.

30. On the other hand, the recreational path is also meant to attract visitors so that Sveda can offer them goods and services. These processes would be taxed under Article 2(1)(a) and (c) of the VAT Directive.

31. The acquisition or manufacture of the capital goods thus serves two different aims. First and foremost of these is the provision of the recreational path to the public free of charge (primary use), which confers no right of deduction under Article 168 of the VAT Directive. However, besides that there is the use of the recreational path as a means of providing visitors with taxable services (secondary use), which gave rise to a right of deduction. Hence the question is: which of these two aims is decisive under Article 168 of the VAT Directive?

32. In *BLP Group*, the Court came to the general conclusion on this question that a direct and immediate link of the acquired goods or services with the taxable transactions is necessary and that the 'ultimate' aim pursued by the taxable person is irrelevant in this respect. The Court therefore refused the deduction of input VAT in a situation in which services had been provided to the taxable person in relation to the exempt sale of shares, even though this sale was a means of enabling the taxable activity of the taxable person. In other words, the Court made a distinction in this case between the solely decisive primary and the merely secondary use of an input transaction.

33. However, the Court has further developed its case-law since that case. It still remains the case that for Article 168 of the VAT Directive to apply a direct and immediate link must have been found between a given input transaction under examination and a particular output transaction or transactions giving rise to the right of deduction. Such a link may nevertheless also exist with the economic activity of the taxable person as a whole if the costs of the input transactions form

part of the general costs of the taxable person and are therefore cost components of all goods or services delivered or provided by him.

34. According to recent case-law, the decisive factor for a direct and immediate link is consistently that the cost of the input transactions be incorporated in the cost of individual output transactions or of all goods and services supplied by the taxable person. This applies irrespective of whether the use of goods or services by the taxable person is at issue.

35. Consequently, there is a right of deduction in the present case if the cost of acquiring or manufacturing the capital goods of the recreational path is incorporated, in accordance with case-law, in the cost of the output transactions, taxed under the VAT Directive."

42. Her conclusion was:

"46. In the present case the national court found that the creation of the recreational path serves to attract visitors who may then be supplied with goods and services for consideration. Consequently, the creation of the recreational path belongs, from an economic perspective, to the cost components of these transactions.

47. It follows that there is in principle a direct and immediate link, as understood in case-law, between the acquisition or manufacture of the capital goods of the recreational path and the chargeable services offered to visitors."

43. In its judgment the CJEU said by way of preliminary remarks in its consideration of the referred question :

"16. In order to answer that question, it should, as a preliminary point, be recalled that the right of deduction provided for in Article 168(a) of the VAT Directive is an integral part of the VAT scheme and in principle may not be limited. The right to deduct is exercisable immediately in respect of all the taxes charged on input transactions (see, to that effect, judgment in *SKF*, C - 29/08, EU:C:2009:665, paragraph 55 and the case-law cited).

17. The deduction system is intended to relieve the trader entirely of the burden of the VAT payable or paid in the course of all his economic activities. The common system of VAT consequently ensures neutrality of taxation of all economic activities, whatever their purpose or results, provided that they are themselves subject in principle to VAT (see, inter alia, judgment in *Eon Aset Menidjmunt*, C - 118/11, EU:C:2012:97, paragraph 43 and the case- law cited).

18. It follows from Article 168 of the VAT Directive that, in so far as the taxable person, acting as such at the time when he acquires goods, uses the goods for the purposes of his taxed transactions, he is entitled to deduct the VAT paid or payable in respect of the goods (see, inter alia, judgment in *Klub*, C - 153/11, EU:C:2012:163, paragraph 36 and the case-law cited)."

44. On the question discussed by the A-G and set out at §§40 and 41, the CJEU said:

> "27. According to settled case-law, the existence of a direct and immediate link between a particular input transaction and a particular output transaction or transactions giving rise to entitlement to deduct is, in principle, necessary before the taxable person is entitled to deduct input VAT and in order to determine the extent of such entitlement. The right to deduct VAT charged on the acquisition of input goods or services presupposes that the expenditure incurred in acquiring them was a component of the cost of the output transactions that gave rise to the right to deduct (see, inter alia, judgment in *SKF*, C - 29/08, EU:C:2009:665, paragraph 57).
>
> 28. Nevertheless, as the Advocate General observed in points 33 and 34 of her Opinion, the Court has held that a taxable person also has a right to deduct even where there is no direct and immediate link between a particular input transaction and an output transaction or transactions giving rise to the right to deduct, where the expenditure incurred is part of his general costs and are, as such, components of the price of the goods or services which he supplies. Such expenditure does have a direct and immediate link with the taxable person's economic activity as a whole (see, to that effect, judgments in Investrand, C - 435/05, EU:C:2007:87, paragraph 24, and SKF, C - 29/08, EU:C:2009:665, paragraph 58). [Tribunal's emphasis]
>
> 29. It is apparent from the case-law of the Court that, in the context of the direct-link test that is to be applied by the tax authorities and national courts, they should consider all the circumstances surrounding the transactions concerned and take account only of the transactions which are objectively linked to the taxable person's taxable activity. The existence of such a link must thus be assessed in the light of the objective content of the transaction in question (see, to that effect, judgment in *Becker*, C - 104/12, EU:C:2013:99, paragraphs 22, 23 and 33 and the case-law cited).
>
> 30. The findings of the referring court establish that, in the case in the main proceedings, the expenditure incurred by Sveda as part of the construction work on the recreational path should come partly within the price of the goods or services provided in the context of its planned economic activity.
>
> …
>
> 35. Thus, there does appear to be a direct and immediate link between the expenditure incurred by Sveda and its planned economic activity as a whole, which is, however, a matter for the referring court to determine."

45. There are, it seems to us, a number of factual differences between the situation in *Sveda* and that here[4]:

(1) In *Sveda* the items were goods; here they are services.

(2) In *Sveda* the expenditure was a capital (one off) transaction; here they are continuing expenses.

(3) In *Sveda* the expenditure was on a new structure; here the expenditure was on a structure over 200 years old.

(4) In *Sveda* there was a direct link with a (presumed) non-business supply and an indirect link with a proposed business supply; in this case there is an indirect link with both types of existing supply.

46. However we do not think that these differences are material:

(1) We note that in the A-G's opinion at [32], [33] and [34] she refers indiscriminately to "goods or services" in the context of deduction, as does the CJEU at [27], [28], [30] and [31].

(2) Nor do either the A-G or the CJEU make any distinction between capital goods transactions and others.

(3) The general references to goods and services also show that the age of the structure is irrelevant.

(4) The difference at §45(4) is to our minds one that, if anything, assists the appellant.

47. In this case we have found that the business activities and non-business activities are carried on by the appellant in the same place, the cathedral and its precincts, so that it is impossible to say that the expenditure on a structure some way away from the cathedral can be linked to non-business activities only, or, for that matter, to business activities only. So we reject HMRC's submission that it can be linked only to the non-business activities: it is either linked to the total activities or to none at all.

48. We also reject what we have taken to be HMRC's submission that the expenditure is physically too far (or too far downhill) from the activities of the cathedral to be attributable to *any* activities of the appellant. We put to Mr Haley a stately home with a large estate surrounded by a wall and with entrance gates through which visitors intending to visit the grounds or use business facilities could come. If the business claimed for the cost of repair to the gates or walls would that be disallowed as too far from the taxable activities. He said no.

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[4] It could also be said that, ironically, in *Sveda* the park relates to Baltic mythology which will be pagan, as Lithuania was controlled by pagan kings until the mid-13th century, probably one of the last countries in Europe to be so controlled (see "*Vanished Kingdoms*" Norman Davies (Penguin 2011) at pp 250-1); this is many centuries after the Venerable Bede and St Cuthbert were active in what is now County Durham.

49. We agree with him on that point which is why we say that physical distance is not an issue if, as is here the case, the structure in question is part of the "estate" and the repairing obligation is that of the taxable person. We also think that had there been an information board or a signpost on or near the Bridge directing the way to the cathedral and all its facilities stated, costs related to that would clearly be linked to the total activities of the appellant.

50. In our view then, the costs of maintenance and repair of the Prebends' Bridge is capable of being linked to all the appellant's activities, business and non-business. It seems to us obvious that there is no direct and immediate link between the expenditure and any particular taxable transaction of the appellant, and none was suggested. The question then is whether there is, contrary to HMRC's submission, a direct and immediate link between the expenditure and the business activities of the appellant. We add that we do not have to be satisfied that there is no link with the non-business activities, as if there is a link to both types of activity the NB/B split will apply to reduce the deduction accordingly.

51. The test for whether there is a direct and immediate link to the entire business (taxable) activities is that set out in *Sveda*. We find from the CJEU's judgment at [28] that:

> "… the Court has held that a taxable person also has a right to deduct even where there is no direct and immediate link between a particular input transaction and an output transaction or transactions giving rise to the right to deduct, where the expenditure incurred is part of his general costs and are, as such, components of the price of the goods or services which he supplies. Such expenditure does have a direct and immediate link with the taxable person's economic activity as a whole

52. By using the words "as such" (the A-G uses "therefore" in the equivalent passage at [33]) the CJEU is saying that overheads *are* ipso facto components of the price of services, and that, contrary to the view of the UK in other cases, no enquiry into the way a person establishes the price for its goods and services is necessary. To be fair to HMRC in this case they did not so argue.

53. On the face of it the words of the CJEU seem to be conclusive of the case. But the Court goes on to say:

> "29. It is apparent from the case-law of the Court that, in the context of the direct-link test that is to be applied by the tax authorities and national courts, they should consider all the circumstances surrounding the transactions concerned and take account only of the transactions which are objectively linked to the taxable person's taxable activity. The existence of such a link must thus be assessed in the light of the objective content of the transaction in question (see, to that effect, judgment in *Becker*, C - 104/12, EU:C:2013:99, paragraphs 22, 23 and 33 and the case-law cited).
>
> 30. The findings of the referring court establish that, in the case in the main proceedings, the expenditure incurred by Sveda as part of the construction work on the recreational path should come partly within

the price of the goods or services provided in the context of its planned economic activity."

54. We have also noted[5] that the A-G's opinion in Sveda has been considered by the Court of Appeal in *Volkswagen Financial Services (UK) Limited v HMRC* [2015] EWCA Civ 832 ("*VWFS*"). We can see nothing in the judgment of Patten LJ (with whom Sharp and King LJJ agreed) that affects this decision.

Decision

55. Our decision then is that as we have found (at §§16 and 17) that the expenditure on repairs to the bridge is linked to the activities of the appellant as a whole, and that as the link is an objective one not dependent on the appellant's intentions, the appeal succeeds.

56. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

RICHARD THOMAS
TRIBUNAL JUDGE

RELEASE DATE: 8 NOVEMBER 2016

[5] This discovery was prompted by the judge in this case having had *VWFS* cited to him in a case he heard shortly before this one.