

Mixed supplies
Baxendale

This decision concerned the liability of the Lighter Life diet programme, where counsellors supply meal replacement food packs and support and advise people wishing to lose significant amounts of weight. The food packs comprise shakes, soups and bars totalling 500 calories a day and this is the only food the participant is supposed to consume. A single weekly fee is paid. The Tribunal had concluded that there were two supplies, the food and the support/counselling services and that 66 percent of the fee was zero rated being payment for the food (this seemed to be based on the cost of the food to the distributor plus a mark up, expressed as a proportion of the total weekly fee). The balance was standard rated as payment for advice and support on weight loss issues as well as encouragement to stick with the diet and then maintain any weight loss.

Both parties appealed. Baxendale sought a greater zero rate element while HMRC viewed the supply as a single standard rate service. In concluding that HMRC were right the Judge applied a very interesting supply test. He accepted that the food was the dominant element of the supply but that neither element was ancillary to the other. Ordinarily you would then expect that dominance to be recognised and for the supply either to be apportioned with a large part being zero rated, or even for it all to be zero rated if it was a single supply. However the judge concluded that the character and liability of the single supply was different from its dominant element and hence VAT was due on the full fee. This is quite a complex test to get to grips with though one would imagine it's not likely to apply very often.