



[2022] UKFTT 46 (TC)

**TC 08397**

**Appeal number: TC/2019/08948**

*CORPORATION TAX – Theatre Tax Relief – members of the public paying a single fee to a third party for admission to a site where there is free access to a number of attractions including theatrical performances produced by the Appellant – no separate fee charged for the Appellant’s shows – whether members of the public are “paying” in respect of the Appellant’s production – no – whether Commercial Purpose Condition in Section 1217GA CTA 2009 is met – no – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**SGA PRODUCTIONS LIMITED**

**Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY’S  
REVENUE & CUSTOMS**

**Respondents**

**TRIBUNAL: JUDGE JANE BAILEY**

**The Tribunal determined the appeal on 23 and 24 September 2021 without a hearing under the provisions of Rule 29 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, with both parties having given their consent to the matter being decided without a hearing.**



## DECISION

### **Introduction**

1. The Appellant appeals to the Tribunal against the conclusions in a closure notice issued by the Respondents for the accounting period ended 31 December 2015. In that Notice, the Respondents disallowed the Appellant's claim to Theatre Tax Relief in the sum of £60,506 in respect of live performances produced by the Appellant at the Legoland Windsor park site and at Whipsnade Zoo.

### **Burden of proof**

2. In an appeal against the refusal of a claim to relief, the onus is upon the Appellant to demonstrate that it is entitled to Theatre Tax Relief in the accounting period under appeal. The standard of proof is the balance of probabilities.

### **Evidence before me**

3. No witness evidence has been filed in this appeal. Documents have been provided by both parties, and the Appellant has also provided links to three websites. Where a link has been provided to the home page of a website, I have attempted to identify the pages to which I consider the Appellant may have wished to refer. However, I have not looked at the entire website of either Legoland Windsor or of Whipsnade Zoo because the practice of the Tax Chamber is not to undertake its own research to identify facts that may be relevant to an appeal. The parties are required to provide the Tax Chamber with the evidence on which they rely.

4. The documents provided for this appeal do not, on the whole, relate to the accounting period under appeal. For example, the main contract provided for the arrangements in Legoland Windsor covers 2014, whereas the accounting period with which this appeal is concerned is 1 January 2015 to 31 December 2015. The terms and conditions provided for both the Legoland Windsor park site and for Whipsnade Zoo are the current terms and conditions rather than the 2015 versions.

5. I have attempted to make such findings as I can but, as set out above, the onus is upon the Appellant to demonstrate that it is entitled to the relief it has claimed for the accounting period ended 31 December 2015. It is very much harder for any appellant to meet the burden of proof when much of the documentary evidence before the Tribunal does not relate to the accounting period that is under appeal.

### **Background facts**

6. On the basis of the documents in the bundle and the supplementary bundle, including the online links, I find the following facts:

#### Background

7. The Appellant is a specialist events production company, founded in 2002.

8. At various times the Appellant has contracted to provide live performance shows at the Legoland Windsor park site and at Whipsnade Zoo. It is agreed by the parties to this appeal that each show produced by the Appellant at these locations constituted a “theatrical production”.

The Appellant’s contracts in respect of shows at the Legoland Windsor park site

9. On 6 February 2014, the Appellant and Legoland Windsor Park Limited (“Legoland Windsor”) entered into an agreement (the “2014 contract”) for the Appellant to provide entertainment services within the Legoland Windsor park site during 2014, including on theatre stages owned by Legoland Windsor.

10. Under the 2014 contract, the live performance shows at the Legoland Windsor park site were a mix of stunt shows and puppet shows. Each live show was created by the Appellant following the agreement of a basic concept by the Appellant and Legoland Windsor. The Appellant agreed to create, manage and perform the shows it had created. The Appellant was responsible for the staging, casting and running of each production, including the hire and management of the performers and other staff necessary for the production. The Appellant was also responsible for procuring its own insurance, including public liability insurance.

11. Unless for reasons of health and safety, the Appellant was not permitted to cancel a show except with the consent of Legoland Windsor. Where a show was cancelled for reasons attributable to the Appellant, the Appellant agreed to pay £500 to Legoland Windsor for each non-performance. This amount was stated to be “a genuine and reasonable pre-estimate of the likely losses which [Legoland Windsor] would suffer in the event of each non-performance of a show”. An email from Legoland Windsor to the Appellant, sent on 19 October 2018 stated that:

The fine outlined amount of £500 for a cancelled show is a contractually negotiated and mutually agreed amount based on the per show value. Any such fine, would it need to be actioned, would be in my opinion credited against the regular running cost invoice for the month of cancellation.

12. Where water temperature or wind conditions did not permit the safe performance of a show involving stunts into water, a modified dry performance was to take place if this could be performed safely. Other weather conditions (such as lightning) could require the postponement or cancellation of a performance.

13. The Appellant agreed to perform varying numbers of live performances each day, depending on whether it was low season, high season or certain specified bank holidays and, in low season, whether it was a week day or the weekend. The number of stunt shows ranged from 3 per day on a low season weekday, to five per day in high season. The number of puppet shows ranged from four on a low season weekday to seven in high season. Any additional shows (over an agreed allocation) were charged by the Appellant at £450 per stunt show and £200 per puppet show.

14. In return for the performances, Legoland Windsor paid the Appellant an operating budget and (on a monthly basis) the Appellant’s operating costs. For 2014,

the production costs for the puppet show were agreed to be £17,900, and for the stunt show £55,000. The running costs across 2014 were agreed to be £506,170 plus VAT. There was a breakdown which showed how this figure had been arrived at and the amount agreed for each component part; for example, for 2014, £2,500 was allocated for repainting existing set pieces for the puppet shows, and £10,000 was allocated to costume manufacture for the stunt shows. The Appellant's total running costs in respect of the stunt and puppet shows were agreed at £7,547 for January 2014 but rose as high as £65,062 for July 2014.

15. On 27 January 2015, a new contract (the "2015 contract") was agreed between Merlin Attractions Operations Limited ("Merlin") (a company in the same company group as Legoland Windsor) and the Appellant, for the creation and performance of a new live performance show based on Lego Friends characters, to be performed at the Legoland Windsor park site from March 2015. The new show included hydraulic lifts to raise a performer and a piano, had water fountains with lights, and required the performers to sing and dance on stage. The contract provided that if the new show was not ready by the agreed date, the Appellant would pay Merlin liquidated damages of £5,000 per week that the show was delayed.

16. The fee to be paid to the Appellant under the 2015 contract was £661,776 plus VAT, paid in instalments with each instalment to be paid after the completion of each project milestone. The works schedule showed the initial payment to the Appellant was due in December 2014 for the purchase of the hydraulic lifts and the equipment necessary for the installation of the water fountains and lighting. Further payments were due in January, February and March 2015 following installation and snagging, and once the performer rehearsals had been signed off. A penultimate payment was due in June if there had been no issues with the new show by the end of the May half term holiday, and the final payment was due in November if there had been no issues with the show during its first six months of performances.

17. In neither of these contracts were any of the payments to the Appellant dependent upon, or related to, the number of visitors to the park site watching the live shows performed by the Appellant. Even if no visitors to the Legoland Windsor park site had chosen to watch any of the Appellant's performances, the amount paid to the Appellant would have remained the same.

#### The Appellant's contracts in respect of shows at the Whipsnade Zoo site

18. Two contracts have been provided for the arrangements at the Whipsnade Zoo site. However, neither is signed on behalf of Whipsnade Zoo. The apparently earlier of these draft contracts (April 2015) is said to be in respect of arrangements that ended on 21 February 2014 and so before the accounting period under appeal or the availability of Tax Theatre Relief; the latter of the draft contracts (8 May 2015) is said to be in respect of services to be provided by the Appellant between 23 and 31 May 2015.

19. Under the second draft contract the Appellant was due to perform five live performance shows on each of three consecutive days, and to install a trail in

Whipsnade Zoo that would be in place for nine consecutive days. A fee of £16,080 was payable to the Appellant for these services. This fee comprised costs such as the hire of a sound system for a week, costumes, rehearsal costs, performer and crew costs, project management and the cost of certain props. No amount of the fee was dependent on visitors to Whipsnade Zoo choosing to see the live shows or visit the trail.

20. In the absence of the final agreed contracts, I am not able to make findings about the final terms that were eventually agreed between the Appellant and Whipsnade Zoo.

#### Entry to Legoland Windsor

21. I have been provided with a copy of the terms and conditions of entry set down by Merlin but these terms were printed in 2021, and are the post Covid-19 pandemic terms and conditions. It is unclear to what extent these terms have changed since 2015. Therefore, while I make findings in respect of these terms, there is no evidence that the same terms were in place during the accounting period under appeal or of any significant changes that may have been made.

22. The 2021 terms and conditions provide that a person complying with those conditions is permitted entry to the “Attraction”, defined as the Legoland Windsor site park. The terms provide:

Merlin will endeavour to ensure that as many rides and attractions as possible are available for use by guests at the Attraction. However, Merlin reserves the right, without prior notice, to close and change the programme of rides and attractions and/or the Attraction’s operating hours. Merlin in its absolute discretion reserves the right to close the whole or any part of the Attraction at any time or to restrict the number of persons having access to the Attraction. The reason for any closure or restriction provided by this condition may include technical or operational reasons, capacity, inclement weather, special events or to ensure the safety and security of guests or if Merlin reasonably considers the circumstances so require. For Tickets purchased in advance, if the whole Attraction is closed for any of the reasons set out above, Merlin may offer replacement Tickets for admission to the Attraction on an alternative date in substitution for any other form of redress.

...

**THE ATTRACTION IS PRIVATE PROPERTY.** All persons entering the Attraction must pay for admission or hold a valid Ticket which has been obtained from Merlin, the Attraction, the Attraction’s website, or a third party authorised by Merlin to sell tickets. ...

Tickets purchased are only valid on the date printed on the Ticket. Please check the Attraction’s operating calendar for opening dates and times. Tickets may not be valid for special events or concerts which may attract a separate

admission fee. Tickets will only be exchanged or refunded if Merlin, in its absolute discretion, chooses to do so.

23. Further terms provide for the admission of season ticket holders and the holder of tickets under various reduced price schemes, including a scheme where a child would be admitted for free if accompanied by an adult paying the full ticket price.

24. There is no evidence before me as to the price of entry to the parks in any period or whether price was, as seems likely, determined by season and whether it was a weekday or the weekend. However, the online documents provided by the Appellant include a link to 21,492 reviews (in English) of various aspects of the Legoland Windsor park site on the TripAdvisor website. In the sample of reviews that I viewed (approximately 200 of the approximately 7,600 reviews left up to 10 August 2015), some of the people leaving reviews suggested that there was pricing differential on different dates, with low season being less expensive, and I find that this was the case.

25. As might be expected, the 200 sample TripAdvisor reviews from 2015 varied in the assessment of Legoland Windsor. The majority of the reviews included complaints about the prices charged, including additional charges imposed for admission to certain attractions within the park site or to buy a “Q-Bot” (that would avoid the holder having to queue); some people complained that they had been unable to access certain rides on the day they had visited because those rides were closed. In a minority of reviews, people had enjoyed their visit and spoke of their intention to return. The live performance shows were rarely mentioned in the sample of 200 reviews which I viewed. On the handful of occasions when the live shows were mentioned, the reviews of the pirate show were largely positive whereas the reviews of the Lego Friends show were more mixed. There was no mention of the puppet show in any of the reviews I viewed.

26. There was no evidence, from these 2015 reviews, or in the 2021 terms and conditions of entry, that any person who had complained about being unable to access a specific ride or attraction had been offered a (full or partial) refund of the price paid for an admission ticket.

#### Entry to Whipsnade Zoo

27. The Appellant provided a link to the home page of the website of Whipsnade Zoo. Although there is a link from this home page to the current terms of admission to the zoo, the Appellant did not provide a copy of the terms and conditions of entry as they applied in 2015. The current terms and conditions available on the Whipsnade Zoo website are heavily influenced by the changes brought about by the Covid-19 pandemic (this is more obvious than the similar terms for admission to the Legoland Windsor park site). For example, the current term and conditions require a visitor to book a ticket for admission in advance (“walk-up entry” is not permitted). It seems unlikely that this was a requirement in 2015.

28. In the current terms and conditions, there is reference to certain events (“Zoo Nights”) for which an additional charge will be made. There is also reference to

“Experiences, accommodation and events” all of which incur an additional charge above the price charged for admission to the zoo. The current terms and conditions make clear that there is no guarantee that all animals will be on show throughout the day but there is no reference to live performance shows.

29. There is reference to an Adventure Play area for small children having been re-opened (presumably after closures caused by Covid-19 pandemic measures) and that admission to the play area is included in the price of admission to the zoo. However, it is unclear whether live theatrical productions are still performed. In the circumstances it is not possible to make meaningful findings in respect of the terms and conditions that would have applied during late May 2015 when (I assume) the Appellant performed live shows on three days in accordance with the terms of a finalised version of the second draft contract that has been provided.

### **Legislation**

30. The parties are agreed on the legislation that is relevant to this appeal. The relevant part of Section 1217G of the Corporation Tax Act 2009 (“CTA 2009”), inserted by the Finance Act 2014 with effect from 1 September 2014, provides:

- (1) A company qualifies for relief in relation to a theatrical production if –
  - (a) it is the production company in relation to the production, and
  - (b) the commercial purpose condition (see Section 1217GA) and the EEA expenditure condition (see Section 1217GB) are met.

31. The relevant part of Section 1217GA CTA 2009 provides:

- (1) The “commercial purpose condition” is that at the beginning of the production phase the company intends that all, or a high proportion of, the live performances that it proposes to run will be –
  - (a) to paying members of the general public, or
  - (b) provided for educational purposes.

32. The Respondents agree that the Appellant meets all the requirements for theatrical production relief except the “commercial purpose condition”.

33. The Appellant argues that this condition is also met, and that it qualified for Theatre Tax Relief in 2015 as it intended its performances in the parks to be to paying members of the general public. The Respondents argue that the “commercial purpose condition” is not met as the customers of each park are not paying members of the public in relation to the live shows performed by the Appellant.

### **The parties’ submissions**

34. The Appellant’s case is that the ticket price that customers pay to enter either the Legoland Windsor park site or the Whipsnade Zoo site, is a composite fee that also enables them to watch the theatrical productions that take place within the sites,



and so those customers who watch those live shows are paying members of the general public. In its correspondence with the Respondents, the Appellant has expressed the view that the legislation is sufficiently wide that it does not matter what those members of the public are paying for, how payment is made or who payment is made to providing that the people who make payment are members of the public.

35. The Respondents' view is that people who pay to enter either park are paying to use all of the facilities and attractions within, but that the ticket price is not capable of being apportioned and so the performances are not to paying members of the public.

### **Discussion and decision**

36. Theatre Tax Relief is a relatively new relief, first announced in 2013. A consultation paper was issued in 2014 seeking views on the proposed relief and how it would be administered. As set out in that consultation paper, the policy aim behind the new relief was expressed to be to support and encourage UK theatre producers to continue to develop across the UK. Theatre Tax Relief was set in the context of support for the creative industries which had been identified as having the potential to drive economic growth. An enhanced rate for touring productions was specifically intended to incentivise companies to undertake such productions and so take theatrical productions to under-utilised areas of the country.

37. I agree with the parties that the key to this dispute is the interpretation of the commercial purpose condition for Theatre Tax Relief.

38. The ordinary principles of statutory construction apply when interpreting the commercial purpose condition in Section 1217GA CTA 2009. As stated by the Upper Tribunal in *Reeves v HMRC* [2018] UKUT 293, at paragraph 34:

In the well-known case of *Barclays Mercantile Business Finance Ltd v Mawson (Inspector of Taxes)* [2004] UKHL 51, [2005] STC 1, [2005] 1 AC 684 (*'Mawson'*) the House of Lords held that a taxing statute is to be applied by reference to the ordinary principles of statutory construction, ie by giving the provision a purposive construction in order to identify its requirements and then deciding whether the actual transaction answers to the statutory description. The question is always whether the relevant provision of the statute, upon its true construction, applies to the facts as found.

39. I have given this careful consideration and borne in mind the conflicting interpretations urged by each of the parties. I consider that the natural and ordinary meaning of "paying members of the general public" should, in the context of Theatre Tax Relief, be understood as meaning that the relevant members of the public have made a payment that is referable specifically to the theatrical production in respect of which a claim for relief is made. I consider that any less close link between "paying" and the production would undermine the requirement that the members of the public be "paying". I consider that the payment made must be for the specific purpose of accessing the live performance.

40. That does not mean that the payment for the performance is required to be direct from the member of the public to the production company. I agree with the Appellant that the payment can be via a third party, for example a ticket agent or the owner of an amusement park. However, to be a “paying member of the general public” in relation to a theatrical production, I consider a person must be making a payment that is specifically for the purpose of attending a live performance of that theatrical production. If the payment were for another reason, the purpose of the legislation would be defeated as there would be insufficient connection between the payment and the production. For example, a member of the public who paid to travel to a free theatrical production would have made a payment, and that payment would not have been incurred but for the person’s attendance at the production. But that person would not be a paying member of the public in respect of that theatrical production.

41. In this case I conclude that the ticket price paid by a person entering either the park or the zoo is paid to enable that person to gain admission to the park or zoo. That is clear from the 2021 terms and conditions of the Legoland Windsor park site, to which I was referred. No evidence has been produced to indicate that the people entering either of the parks are paying specifically to see a theatrical production. The terms and conditions governing admission refer only to admission to the park or zoo, as relevant.

42. The 2021 terms and conditions for the Legoland Windsor park site provide that one or more of the attractions in the park may be unavailable at any given time. Those attractions include the live performances. There is no evidence that any person has ever been given a refund (in whole or in part) of their park admission ticket if a live performance did not take place but the rest of the park remained open. Although the Appellant was obliged to pay £500 to Legoland Windsor if it was responsible for the performance of a stunt show being cancelled, Legoland Windsor explained (in its 2018 email to the Appellant) that this sum reflected the “per show value” to them of the production. There was no further explanation of this term. “Per show value” could have a wide range of meanings, such as the cost to Legoland Windsor of handling potentially increased complaints from customers, or the potential for customers to consider that the Legoland Windsor park offered less value for money in the absence of that live performance, thus affecting the likelihood of a return visit. There was no suggestion by Legoland Windsor in that email that they required the £500 fine so that they could reimburse customers who had paid to enter the park for the specific purpose of seeing a live performance or who had complained that there was no live performance. I conclude that this payment was intended to act as a deterrent to the Appellant, not to enable Legoland Windsor to offer any compensation to its customers.

43. There is some evidence, from the many reviews on the TripAdvisor website, that a few of the attractions within the Legoland Windsor park site had a separate cost in addition to the ticket price for admission to the park (a driving school for children was specifically mentioned at an additional cost of £10). Therefore, it would have been possible (at least in theory) for the theatrical stage on which the Appellant conducted its live performances to have been cordoned off, and a separate fee charged for park visitors to attend those theatrical productions. If a separate fee had been

charged, whether by Legoland Windsor or by the Appellant, then it would have been clear that the people who paid that additional charge for admission to the shows were paying members of the general public in relation to those shows. However, there is no evidence that any separate fee was ever charged to the park visitors for any of the Appellant's shows.

44. I consider that visitors entering the park would not consider themselves to be paying for a theatrical production when they buy their ticket for admission to the park. Instead, the park visitors would consider themselves to be paying for entry to a park with an array of free facilities and attractions. This is supported by the evidence of the TripAdvisor reviews in 2015. I conclude that the people entering the park are not "paying members of the general public" with regard to the theatrical productions.

45. I agree with the Appellant that a customer of the park, if he or she thought about it, would conclude that the price paid for entry must cover the cost to Legoland Windsor of providing the attractions, including the stunt shows and the puppet shows. But, on the evidence before me, I cannot conclude that such a person would form the opinion that a part of their entry fee was for a theatrical production, any more than that person would conclude that part of their entry fee was for staff costs or soft drink refills. There are undoubtedly many component costs of the price charged by Legoland Windsor, but the admission fee paid is for the whole array of attractions in the parks and the overall experience, not for one single element. Although there was evidence before me about special offers relating to the price of general admission (both in the bundles in respect of 2021 offers and in the TripAdvisor reviews in respect of 2015 offers), I was not referred to any evidence about the pricing structure for admission to the Legoland Windsor park at any time, or how that price for admission was calculated. I agree with the Respondents that no proportion of the admission price charged by Legoland Windsor can be attributed to the live shows.

46. I conclude that the price paid by a customer of the Legoland Windsor park site was a single price to enter the park and gain admission to all the facilities and attractions in the park (or, at least, all the facilities and attractions for which there was not a separate charge). No part of the park admission ticket price was attributed specifically to the live shows, or to any other facility or attraction. It was not possible for a customer to pay a reduced entry price to see only the theatrical production or to only access any of the other attractions available. I have concluded that, on the facts of this case, the Respondents are correct to analyse the fee paid by people entering the park as being a price paid for admission to the park and to access the facilities available in that park. The majority of those entering the parks may know that a theatrical production is available, but those people also know that they must pay the same park admission price whether or not they chose to see a live show, and whether or not the stunt shows or puppet shows are their prime motivation for entering the park or are even available on the day of their visit.

47. I conclude that, in respect of each live performance at the Legoland Windsor park site, the customers of the parks did not make a payment in respect of that production and so those customers were not paying members of the public in respect of these performances. Therefore, in considering the commercial purpose condition

and whether, at the start of each production, the Appellant could have intended that a high proportion of the live performances of that production would be to paying members of the public, I reach the conclusion that the Appellant knew that all performances of each production would be made to customers of the park, and knew that those park customers did not pay a separate fee to enjoy the shows, and so could not have intended that all or the majority of its performances would be performed to paying members of the general public.

48. In its submissions the Appellant has argued the commercial purpose condition should not be interpreted in a way that prevents composite pricing, and refers to ticket agents who sell one ticket that entitles the holder to see a theatrical production, eat a restaurant meal and stay overnight in a hotel. The difficulty for the Appellant with this argument is that tickets for such theatrical productions are also available to be purchased without food and accommodation. If the customers of the park had been able to pay only to see the Appellant's shows (without access to the remainder of the attractions in the park) then I would have taken a different view of what those particular customers were paying for as there would have been a clear link between the payments made by those customers and the live performances. Where the component parts of a composite ticket are also available to purchase separately, then I would agree that it is acceptable to attribute a proportion of a composite price to each component. I would also agree that the members of the public who bought such composite theatre/food/accommodation tickets were paying members of the public in respect of the theatrical production to which the composite ticket related. By contrast, the visitors to Legoland Windsor could not buy tickets for admission only to the live shows, and so I do not agree that a proportion of the general admission price paid for general admission to the park can be attributed to the live shows.

49. The Appellant has also argued that the price paid for entry to the park is no different to the price paid for a weekend newspaper where the purchaser only intends to read one section and discard the others, but considers the overall price paid is an acceptable price for that one section. I agree that, if questioned, such a newspaper purchaser might well characterise their purchase as being for that one section of the newspaper rather than the newspaper as a whole. However, the onus is on the Appellant in this appeal and it has not produced any evidence that any customer of the park considered the amount he or she paid to Legoland Windsor to gain admission to the park as being the price they were prepared to pay to see the live performance. The only evidence available of the views of any customers is set out in the TripAdvisor reviews. In none of the 200 reviews I read did any customer indicate that they had paid for entry just to see the live performances or even that the shows were their priority when paying for general admission to the park.

50. Finally, the Appellant also argued that any customer who had just seen one of the live performances would, if questioned at the time, state that they had just paid to see a live performance. However, the Appellant has not produced any evidence to support this argument. On the contrary, the majority of the TripAdvisor reviews I read indicated that the reviewers (who had visited at the Legoland Windsor park site shortly before leaving their review) considered they had paid the admission price for entry to all of the park and so had free access to all of the attractions contained within

the park site. This belief appeared to be at the root of the complaints in those reviews about additional charges within the park that were perceived as being unfair given that a general admission fee had been paid.

51. This decision focusses more upon the arrangements at the Legoland Windsor park site, because there is less evidence available to me relating to arrangements at Whipsnade Zoo. It may be the case that visitors to Whipsnade Zoo were obliged to pay a separate fee to attend the Appellant's productions, just as they are now required to pay a separate fee for other experiences and events that take place at the zoo. If this was the case then it is unfortunate that no evidence of that separate fee was provided as, had there been evidence of visitors to the zoo paying a fee that was specifically referable to the live shows, then I would have agreed that the Appellant was entitled to Theatre Tax Relief. However, there is no such evidence and, on the basis that the onus is upon the Appellant to demonstrate its entitlement to any relief claimed, I conclude that the Appellant has failed to demonstrate that visitors to Whipsnade Zoo were "paying members of the general public" in relation to any theatrical production it performed at that site in 2015.

### **Conclusion**

52. For the reasons set out above, this appeal is dismissed.

53. 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.

**JANE BAILEY**

**TRIBUNAL JUDGE**

**RELEASE DATE: 08 FEBRUARY 2022**