# TC07801

*VALUE ADDED TAX – Food takeaway - Sale of business by First Appellant to Second Appellant - Was Second Appellant's turnover in excess of registration threshold? - Best judgment - Yes - Was HMRC's registration of NNS correct? - Yes - Was this a Transfer of a Going Concern from First Appellant to Second Appellant? - Yes - Back calculation of Second Appellant's turnover to First Appellant - Was this to best judgment? - Yes - Was First Appellant Liable No Longer Liable? - Yes - Should First Appellant's appeal against the Assessment be struck out in the absence of First Appellant making a return: VAT Act 1994 section 83(1)(p)(i)? - Yes - Appeal of First Appellant against Registration Decision dismissed - Appeal of First Appellant against Assessment struck-out (but, if not struck-out, would nonetheless have been dismissed) - Appeal of Second Appellant against Registration Decision dismissed*

**FIRST-TIER TRIBUNAL**
**TAX CHAMBER**

**Appeal numbers: TC/2018/05335**
**TC/2018/07781**

**BETWEEN**

**(1) WITHINGTON KFC SERVICES LTD**
**(2) NNS SERVICES LTD**
**(TRADING AS 'FINGER LICKING CHICKEN')** **Appellants**

**-and-**

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

**TRIBUNAL: JUDGE CHRISTOPHER MCNALL**
**MISS SUSAN STOTT FCA CTA**

**Sitting in public at Tribunals Service, Alexandra House, 14-22 The Parsonage, Manchester M3 2JA on 7 and 8 January 2020**

**Mr Philip Rayner of Portcullis VAT Consultancy, Leeds appeared for the Appellants**

**Mr Andrew Cameron and Mrs Elizabeth McIntyre, HMRC Litigators, of HMRC Solicitors' Office and Legal Services, for the Respondents**

## DECISION

**INTRODUCTION**

1. The First Appellant, Withington KFC Services Ltd ('**Withington**'), owned and operated a takeaway business (known, at all times material to these appeals, as 'Finger Licking Chicken') in a busy area of south Manchester with a significant student population.

2. Withington was not registered for VAT. In June 2016, Withington transferred its business to the Second Appellant ('**NNS**'): **'the 2016 Transfer'**. The transfer was said to have been done by way of a sale.

3. NNS was not registered for VAT either. But, a few months later, in the circumstances described more fully below, HMRC came to form the view that NNS's turnover was such that it should have been registered for VAT.

4. On the footing that the 2016 Transfer was a Transfer of a Going Concern ('TOGC') HMRC, having calculated NNS's turnover on a best judgment basis, then back-calculated that turnover into the period of Withington's earlier ownership (i.e., pre-June 2016). Having done so, HMRC formed the view that Withington too should have been registered for VAT, but (having ceased to trade) was no longer liable (Liable No Longer Liable: 'LNLL').

5. That is the underlying, simple, structure of these appeals, which the Tribunal directed should proceed and be heard together.

6. This simplicity has to some extent occluded by a number of other issues, both procedural and substantive:

(1) Whether the 2016 Transfer was a Transfer of a Going Concern;

(2) Whether HMRC was entitled, as a matter of law, to issue a Certificate of Registration to NNS in the way that it did;

(3) Whether NNS could appeal (and, if so, what it could appeal) when it had not been assessed.

7. Underneath most of this lies the conventional issue - the mainstay of this appeal - of whether the assessment against NNS, being made in the absence of any return from NNS, was made to best judgment; and, if it was, whether it could be back-calculated to the period of Withington's operation of the business.

**Withington's Appeal**

8. Withington's appeal is made by way of a Notice of Appeal dated 2 August 2018 against HMRC's decisions (made on 27 February 2018):

(1) That Withington should have been registered for VAT with effect from 1 May 2013, and needed to be registered for the period from 1 May 2013 to 31 May 2016 (**'the Withington Registration Decision**'); and

(2) To issue an assessment for VAT, pursuant to section 73(1) of the *Value Added Tax Act 1994*, in the sum of £52,380.54 (**'the Withington Assessment'**).

9. The Withington Assessment was a 'best judgment' assessment.

10. On 3 September 2018, HMRC issued a Personal Liability Notice of £32,999.74 against Withington's sole director, Dr Abood, geared at 63% of Potential Lost Revenue, for the period 1 May 2013 to 31 May 2016. But at the beginning of the hearing, Mr Rayner helpfully confirmed that there was no appeal against this penalty.

**NNS's Appeal**

11. NNS's appeal is made by way of a Notice of Appeal dated 18 November 2018 against HMRC's decision of 22 May 2018 (upheld at departmental review on 25 October 2018) that NNS was and remains registrable for VAT: **'the NNS Registration Decision'**.

12. The NNS Registration Decision has the following background:

(1) On 6 February 2018, HMRC issued NNS with a Certificate of Registration for VAT (a Form VAT 4) with, on the face of it, an Effective Date of 1 June 2016 ('**the First Certificate**');

(2) NNS sought a review of the decision to issue the First Certificate;

(3) On 11 May 2018, a Review Officer in HMRC's Solicitor's Office and Legal Services wrote a review conclusion letter:

(a) Concluding that the decision to register with effect from 1 June 2016 'should be withdrawn on a technical matter' (sic);

(b) Expressing the 'identification' that 'the decision to register [NNS]' from 1 June 2016 'is invalid'; and

(c) Concluding that the decision to register with effect from 1 June 2016 was withdrawn, albeit without prejudice to any further action which HMRC may take;

(d) Re-referring the file to the decision-making officer, Officer Royle;

(4) On 22 May 2018, Officer Royle wrote, expressing what he described as an 'amended decision', being that NNS should have been registered with an effective date of 6 June 2016 rather than 1 June 2016. He also calculated VAT due of £37,549.37 for the period 6 June 2018 to April 2018. He expressed the conclusion that he intended to register NNS with an effective date of registration of 6 June 2018;

(5) On 16 July 2018, HMRC issued NNS with what was described as an 'Amended' Certificate of Registration for VAT with an effective date of 6 June 2016. It is 'amended' by virtue of the insertion of the typed word 'Amended' and the statement of the effective date of registration as 6 June 2016 rather than 1 June 2016 ('**the Second Certificate**');

(6) On 17 July 2018, an officer of the VAT Registration Service wrote to NNS that he had been asked to change the EDR, and had done so. The letter went on to set out options as to 'What you can do if you disagree with my decision';

(7) On 2 August 2018, NNS wrote to ask for a statutory review of what was described as being HMRC's 'new decision' to register NNS for VAT with an EDR of 6 June 2018. That letter was acknowledged on 9 August 2018. NNS chased on 27 September 2018. The review conclusion letter dated 25 October 2018 upheld the decision to register NNS with an EDR of 6 June 2018.

13. The basis of the NNS Registration Decision was said to be that NNS had purchased Withington's business on 6 June 2016 and should have been registered from that date under the Transfer of Going Concern (TOGC) rules: see section 49 of the VAT Act 1994 and Schedule 1 of the VAT Act 1994.

14. HMRC has not issued any assessment against NNS.

15. According to its Statement of Case, HMRC have also issued a penalty against NNS under Schedule 41 of the Finance Act 2008 in the amount of £17,742. That is not referred to in the Notice of Appeal, and HMRC do not refer to it further in their Statement of Case. It was issued on 5 September 2018, geared at 47.25% of Potential Lost Revenue of £37,549.37 for the period

6 June 2016 to 30 April 2018. At the beginning of the hearing, Mr Rayner helpfully confirmed that there was no appeal against this penalty.

## THE GROUNDS OF APPEAL

### Withington's Grounds of Appeal

16. Withington's Grounds of Appeal are, in full, as follows:

> "The decisions relied on the registration of the buyer of the business [NNS]. That registration was fundamentally flawed, and consequently that of the Appellant [Withington], on the following grounds:
>
> 1. The original registration of the buyer NNS made on 8 February 2018 was found to be invalid
>
> 2. That original registration of NNS although invalid, was amended and is under review
>
> 3. HMRC's estimated turnover of NNS calculated from the purchases of supplies, invigilations and seasonal fluctuations was statistically incompetent
>
> 4. The argument is that because the buyer (NNS) was registrable the Appellant was registrable and because the Appellant was registrable the buyer was registrable (TOGC) ('Transfer of Going Concern'). This argument is circulatory (sic) and either unlawful or unreasonable in the sense of being illogical."

17. The outcome which Withington seeks is either that the Withington Registration Decision is invalid, or the Withington Assessment is excessive.

18. HMRC's response to Withington's Appeal is contained in HMRC's Statement of Case dated 1 November 2018. In short, HMRC contends that Withington was liable to be registered for VAT from 1 May 2013 to 31 May 2016 'as his [sic] turnover has far exceed [sic] the VAT registration threshold in this period'. HMRC contend that Withington had not provided HMRC with any business records for this period to demonstrate its turnover; and that the back-calculation from NNS' turnover was appropriate as NNS had continued the same business from the same premises with the same staff with 'a gap of just two days.'

19. HMRC also argues that the Withington Assessment is, in any event, not an appealable matter since Withington has not filed a VAT return: see section 83(1)(p)(i) of the VAT Act 1994.

### NNS's Grounds of Appeal

20. NNS's Grounds of Appeal are set out more extensively. In summary, these are:

(1) The First Certificate was unlawful;

(2) The Second Certificate is void, because "the act of entering a trader on the register is a legal procedure and can only be cancelled and not amended";

(3) There were various defects with a visit by HMRC on 5 October 2016;

(4) The decision that Withington was registrable postdated the first registration of NNS: "The regulations required Withington to be registered to enable a TOGC to be lawful. The registration of Withington relied on the registrability of NNS which relied on calculated turnover in May 2017. Registrability of NNS depended on Withington's registration at the time of transfer. This is circulatory and unimpressive, each relying on

the other. NNS was first registered before Withington's registration which suggests duplicity";

(5) The May 2017 turnover calculation is defective because it uses invigilations and the purchase of chickens, but does not use other purchases such as chips, buns, salad and drinks.

21. HMRC's response to NNS's Appeal is contained in HMRC's Statement of Case dated 1 February 2019. This is rather an unrevealing document. After giving a lengthy (and not unhelpful) chronology and (less helpfully) setting out the Appellant's contentions in their entirety, HMRC's contentions are simply that HMRC considers NNS is required to be registered for VAT on a TOGC from Withington, and that the Effective Date of Registration of 6 June 2016 is correct. That is to say, there is little to no substantive engagement at all by HMRC with the procedural matters or arguments which are raised by the Appellant.

**THE EVIDENCE**

22. We considered the bundle of papers placed before us for the hearing, which was supplemented by other papers handed up during the course of the hearing.

23. For the Appellants, there were short witness statements from:

(1) Mr Nizar Askander (the Managing Director of NNS) dated 6 August 2019;

(2) Dr Samir Mohammed Ali Abood Al-Nawassri (the Managing Director of Withington) dated 6 August 2019; and

(3) Mr Akhtar Malik (an accountant at Sam & Co, and the accountant for NNS since June 2016) dated 25 September 2019.

**Mr Askander's evidence**

24. Mr Askander's written evidence is very brief. He says that he owned the takeaway from 2003 to 2013 (when it was owned by a company called Crowncross Ltd: Crowncross Ltd was dissolved in July 2014).

25. When he took over Withington in 2016 it was a failing business but he thought he could improve it because he intended changing the menu, charging more, attracting customers other than students (e.g. the local workforce) and thereby increasing turnover. He succeeded bit by bit but it took a long time. The main problem was that the business relied too much on students, who were away 'for half the time', and only really come to takeaways when they have been drinking, which they tend not to do before exams.

26. His oral evidence went significantly further than his written evidence. He sold the business to Dr Abood in May 2013 and then bought it back from Dr Abood in June 2016. He started trading again on 6 June 2016.

27. He worked regularly in the takeaway, and accepted that he controlled it, and took a regular wage.

28. When he reacquired the business in 2016, the business was not very good. For 6 months of the year the business was really quiet, including exam periods, New Year, Easter, and Ramadan. However, the whole of Ramadan was not very quiet - only the first week or two. After that, people got fed up of cooking for themselves at home, and started having takeaway.

29. When he took over the business, the road outside was dug up for gas works for 6-8 months, meaning that people could no longer park as they wished, but only for loading. The general value of properties in the area had increased so that it was now expensive, and no longer quite so busy. There were only 2-3 staff including him. There tended to be one member of staff on duty in the day, and two in the evening. The business was not so busy as to employ 5 people.

30. In the first few months, he had tried everything, including improving the quality (but making everything fresh had led to increased food waste) and putting up prices by 30-50p per meal. He assessed these changes to have been partly successful. He said that change took time, and can't be done in one night.

31. In June 2016, he did not change the equipment, or the facilities for customers, who could eat in or eat out for the same price. He retained 4 staff members, and used the same accountant as Withington. There was no banner or poster saying 'under new management'.

32. He had since (in August 2019) sold the business to a Mr Karim (from whom there was no evidence) who had approached him to ask him to buy it. Mr Askander had said that Mr Karim could take over. It was sold to pay outstanding bills.

**Dr Abood's evidence**

33. Dr Abood's written evidence is very brief. He says that he took over Withington in 2013 from Mr Askander, having known each other for a long time and worked in takeaways. Withington's weekly income was about £1500 when students were around, but only about £600 at other times (e.g. vacations, and Ramadan). The business started making a loss and Mr Askander agreed to take it back. The takings were never enough to pay VAT.

34. There is also a note of a meeting which Dr Abood had with HMRC on 20 July 2017 which adds a lot of detail. He bought the business in May 2013 for £6,000, which was paid over a year. The turnover during his time was £74,000 - £76,000 (when thresholds were from £79,000 to £82,000). His weekly turnover was £1400-£1600 when students were round, and £900 when they weren't; but he did not keep a rolling turnover, took no card payments; the business was entirely cash. The till was broken and used as a cash drawer. Staff and suppliers were paid in cash. He banked £600 a week. He sold the business for £10,000 in June 2016, but (as of July 2017) had not been paid anything.

35. In oral evidence, Dr Abood told us how in 1976 he fled from tyranny and persecution in Iraq and came to study in the United Kingdom. He acquired expertise and qualifications in ballistic and mechanical engineering, but eventually drifted into working and operating takeaways. This was unsatisfactory work due to the long hours, the stress of dealing with staff and customers. His evidence was that he had been to the takeaway 2-3 times a week after Mr Askander took over, and the prices had increased by about 15% overall: for instance, chips had increased from 90p to £1.10; and meals which had cost £3.20 or £3.30 were now £3.80 or £3.90.

**Mr Malik's evidence**

36. Mr Akhtar Malik's written evidence is that he has been the accountant for NNS since June 2016. He disputes the basis of turnover calculated by HMRC, on the basis that this was a straight line calculation with only an adjustment for RPI. He says that his analysis of the purchases shows 'in general an increasing trade'. He challenges the accuracy of the Business Economic Exercise, the number of staff and an incorrect cost. He says that there is mention of chicken purchases at £1100 per month which he says are not supported by the documents.

37. His oral evidence was that he had been Withington's accountant since May 2013. Although he did not agree with HMRC's straight line adjustment, he had not produced a competing calculation of his own. His view was that the business had improved since NNS had taken it over.

**Mr Royle's evidence**

38. For HMRC, there was a witness statement from Damien Royle, a case worker in the Hidden Economy Unit, dated 16 July 2019, to which was exhibited a number of documents.

**THE FACTS**

39. On the basis of the evidence which we have read and heard, we make the following findings of fact.

40. Withington was incorporated on 10 May 2013. This was done to run the business. Its sole director and shareholder was Dr Abood. Its last filed abbreviated accounts (for the year ending 31 May 2016) (approved by Dr Abood on 1 December 2016) show tangible assets of £3,070 and stocks of £250. It has not filed any further accounts and is presently subject to an active proposal to strike it off the Register. Its registered address is, and always has been, 422 Wilmslow Road.

41. 422 Wilmslow Road is the principal place of business (PPOB).

42. On 11 April 2016, NNS was incorporated. Its sole director and shareholder was Mr Askander. On 30 April 2017, its filed accounts (approved by Mr Askander on 2 March 2018) show tangible assets of £3,400 and stock of £450. It has not filed any further accounts and is presently subject to an active proposal to strike it off the Register. Its registered address is, and always has been, 422 Wilmslow Road.

43. On 6 June 2016, NNS acquired the business, known as 'Finger Licking Chicken', from Withington. There is no written contract, and no other documentary evidence speaking to, or corroborating, the acquisition. The acquisition does not seem to have involved legal or financial professionals. It seems to have been done on no more than a handshake from Dr Abood to Mr Askander. The price was said to have been £10,000, although no part of the price was paid at the time, and had not been paid several months later.

44. On 24 August 2016, HMRC made an unannounced visit. Trading was going on, albeit there was confusion as to the legal person conducting this trading. HMRC believed, and were not told otherwise, that the trading was being conducted by Withington.

45. Shortly thereafter, on 1 September 2016, prompted by and in response to that visit, HMRC were told by Sam and Co, Accountants, that NNS, and not Withington, was now operating the business. Insofar as HMRC was advised by anyone in August or September 2016 that Withington had been dissolved (and insofar as that may be material to our decision) that cannot have been, strictly speaking, true. Although there is an active proposal to strike-off, as set out above, Withington still has not been dissolved.

**The meeting of 5 October 2016**

46. On 5 October 2016, a pre-arranged meeting took place between HMRC and Mr Askander at 422 Wilmslow Road. Mr Akhtar Malik and Mr Safdar Malik from Sam & Co were also present. We accept HMRC's visit report of that meeting as accurate and complete. The meeting lasted for just over an hour. It was not perfunctory, and it is clear that all participants were taking it very seriously.

47. Mr Askander confirmed that he had bought the business and agreed to pay £10,000 for it, although none of that money had (four months or so after the deal) been paid. It was to be paid with effect from June 2017, in instalments. He had worked previously at Withington, but only for a month or so, and there had only been a two day gap when the takeaway was closed. There were four members of staff, including Mr Askander. All had been retained from Withington.

48. NNS had taken over the contents of the property, including the equipment, furniture and fittings. The premises were being rented for £900 a month, but Mr Askander did not know the identity of the landlord, and there was no written lease. NNS and/or Mr Askander had simply taken the lease over from Withington and/or Dr Abood.

49. The best selling item was said to be a chicken sandwich meal, priced at £3.80, and selling 150 or so a week (or £532 a week).

50. HMRC was told that the weekly turnover was £1200 to £1500 (giving a range of £62,400 to £78,000: the registration threshold at the time was £83,000). HMRC was told that the business was a cash-only business. Mr Askander confirmed that no meal slips were created when food was ordered.

51. A series of A4 hand-written daily takings schedules was supplied. The first entry is 6 June 2016 (£180). We are satisfied that the business was open, without any interruption at all, from 6 June 2016. In 2016, Ramadan began on Monday 6 June 2016.

52. The schedules are monthly, from 6 June (part month) with whole months thereafter to November 2016, and a part month (ending on 7 December) for December 2016. There is no apparent change or break in the schedules generally, or in the October 2016 schedule in particular, to take account of, or to reflect the information imparted, by HMRC's visit on 5 October 2016. That is significant.

53. The daily totals in all these Schedules were all given as round figures, without any pennies. The total takings for June 2016 was shown as £4,817 (equating to a daily average - over 25 days - of £192) with figures for Fridays and Saturdays exceeding, although not substantially, the figures for other days. The total takings for July 2016 are shown as £6512 (equating to an average of £210 per day) again with Friday and Saturday figures being generally greater than for other days, although some Monday figures are also high.

54. In our view, there are significant difficulties with all these schedules, and we decline to accept them as reliable evidence of the true takings of the business. The main difficulty is simply no evidence to back up how the figures have been arrived at. There is nothing to differentiate (e.g.) sales of different types of food, or food from drink. There are no till records, and no meal slips.

55. These were working documents, but the documents (even in a photocopied form) seem to us to be far too neat and tidy to have been compiled day-on-day: there are no scribbles, crossings-out or alterations.

56. On the face of it, these records in this summary form continued to be compiled after HMRC's visit on 5 October 2016. The figures post-visit show a slight, but definite, upward trend. By way of illustration, the highest daily figure in October 2016 is £310 (Saturday 29 October); in November that figure is equalled or exceeded on 6 days, with a highest figure of £401 (Saturday 12 November).

57. It is significant that no meal slips were kept even after the visit on 5 October 2016. Those would (at least, potentially) have permitted the recorded daily gross takings to be cross-checked against the actual orders.

58. Likewise, the absence of a working till means that there is no till record, whether electronic or paper, to allow the daily figures to be cross-checked. The situation - being a matter entirely within NNS's control - is highly unsatisfactory. NNS' own action / inaction means that NNS faces (in common with other cash businesses which do not have a working till) a difficult struggle to contradict HMRC's figures as to its turnover by means of contemporary records. If the till does not work, it cannot be interrogated.

59. Business records, including Daily Gross Takings, bank statements, and copy purchase invoices were requested from Sam & Co on 23 November 2016 and some records were supplied in December 2016.

**The invigilation exercises**

60. There is a daily takings sheet from 27 March 2017 to 8 May 2017. It is a summary compiled on the basis of a series of self-invigilation sheets which were handed up to us during the hearing.

61. The reliability and integrity of those self-invigilation sheets can be tested alongside the officer invigilation exercise which took place in March April and May 2017. Test purchases were made by HMRC officers, as 'mystery shoppers', on six separate occasions - 29 March 2017; 7 April 2017 (2 officers); 10 April 2017; 18 April 2017; 22 April 2017; and 30 April 2017.

62. Comparison of the test purchases with the self-invigilation sheets shows that the self-invigilation sheets cannot be relied on as a true or accurate record of sales. Many of the test purchases were not recorded at all:

(1) On 29 March 2017, Officer Adams bought 1 chicken wings meal and 4 chicken strips for £6.20 at 15.31;

(2) On 7 April 2017, Officer Archer bought a Pepsi for 60p;

(3) On 7 April 2017, Officer Khan bought a chicken sandwich meal and chicken strips for £2.70 and £3.80 at 18.58. These are not recorded on the self-invigilation sheet (which records no sales from between 17.46 and 20.03);

(4) On 10 April 2017, Officer Mawson bought a chicken strips meal with an extra drink for £4.10 at 3.10pm. There is no such entry on the self-invigilation sheet;

(5) On 18 April 2017, Officer Patel bought a chicken nugget meal for £3.60. There is no such entry, although there is an entry for £3.50. He bought a Rubicon Mango drink at 17.01 which is not recorded at all;

(6) On 22 April 2017, Officer Rogers bought a chicken burger meal for £3.80 at 14.20. This is not recorded.

63. A series of other factors emerge from the reports of the test purchases:

(1) No meal slips were prepared;

(2) The till used as a cash drawer only (on some occasions, a calculator being used to calculate the price)

(3) The business was sometimes opening before noon, and was often closing in the early hours of the morning, well after what HMRC had been told were the opening hours;

(4) There are gaps in the trading - for example from 17.10 to 19.00 on 6 May 2017; and 18.08 to 20.21 on 15 April 2017 - which, when asked about, Mr Askander was unable to explain.

64. HMRC had already given NNS two chances to improve its record-keeping: following the meeting on 5 October 2016, and the self-invigilation exercise. Nonetheless, and dissatisfied (reasonably) with accuracy of the March to May 2017 self-invigilation sheets, HMRC afforded NNS a third opportunity to produce an accurate record of its takings.

65. Throughout the whole of trading on Tuesday 16 May 2017, two detailed takings sheets were compiled, in parallel, by two employees (one by a Mr Bakr, one not named). HMRC officers were present in the shop throughout. Mr Askander was not present. They show transactions from just before noon to just past one the following morning. They each show total takings of about £380. There is a discrepancy of about £20 between the two sheets. When compared, it appears that there are significant disparities between the sheets, in terms of times

and amounts. Each sheet fails to record about 10% of the meals. That is to say, even when the staff knew of the exercise, and its importance, the record-keeping was still materially defective, but resulted (in the case of each of the two sheets) in approximately (at least) a 10% undercount in the number of meals recorded. 10 meals (value £37.20) are recorded on sheet A (pages B28/29) but are not on sheet B (page B30); and 9 meals (value £63.65) are recorded on Sheet B but not on Sheet A.

66. Throughout the whole of trading on Saturday 20 May 2017, two further detailed takings sheets were compiled, in parallel, by two employees (one not named, one a Mr Al Zubaidi). HMRC officers were present throughout. Mr Askander was not present. They each show transactions from 12.02 (noon) to past 2 on the following morning. They show total takings of £586.06 (there is a minor discrepancy on one sheet resulting in a total there of £582.60) but both agree total till takings of £632.

67. The 16 May 2017 figures are very substantially in excess the other Tuesday figures (28 March, £220; 4 April £132; 11 April £276; 18 April £155; 25 April £151; 2 May £191).

68. There is no good explanation for this disparity. We reject Mr Askander's suggestion in his oral evidence (but not previously advanced to HMRC) that there was 'maybe a festival', or 'a local party' which accounted for what he said were the level of takings.

69. The 20 May 2017 figures are very substantially in excess - about double - the other Saturday figures.

70. There is no good explanation for this disparity. Ramadan began on 24 May 2017. We accept that the last Saturday before Ramadan might have been unusually busy, but we do not consider that this can satisfactorily explain the 20 May 2017 figures (we cannot compare to any recorded figure for the Saturday preceding Ramadan in 2016, because in 2016 Ramadan began on 6 June 2016).

71. We also note that the business, on both a Tuesday and a Saturday, was operating for much longer hours than HMRC had been told on 5 October 2016. On 5 October 2016, HMRC was told (by Mr Askander) that the opening hours Monday to Friday was noon-11pm; and at the weekends from noon-midnight. But the invigilation sheets record sales on 16 May 2017 as late as 1.15am and on 20 May 2017 as late as 2.48am. The takeaway was open on Tuesday 16 May 2017 for 2.25hrs (or 20% longer) than HMRC had been told (13.25hrs/11hrs), and on Saturday 20 May 2017 for 2.75hrs (or 23% longer) than HMRC had been told (14.75hrs/12hrs). 'After hours' sales on both days amounted to a significant proportion of the overall recorded takings.

72. When asked by the Tribunal during his oral evidence, Mr Askander was unable to explain why the takeaway was still open to those hours. In re-examination, Mr Askander explained that staff had discretion to open for up to an hour when things were busy. But even this still does not explain the trading hours recorded. The takeaway was open for much more than an hour after what HMRC had been told were the usual closing times.

73. On 26 June 2017, HMRC wrote a letter setting out its findings based on test purchases, officer invigilation, and self-invigilation, and concluding that the turnover was £128,499. That exceeded (significantly) the VAT registration threshold then in force. The £128,499 figure was based on:

(1) £320.30 taken on a 'quiet day' (Sunday to Thursday) x 5 = £1600

(2) £500.60 taken on a 'busy day' (Friday and Saturday) x 2 = £1000

(3) £1600 plus £1000 equals £2,600 per week x 52 = £135,262 / 12 = £11,272 per month

(4) Discount monthly figure of £11,272 by 15% during four months students away - April, July, August, and December.

74. It is notable that HMRC's £320 (quiet)/£500 (busy) baselines were each already significantly lower than the 16 May 2017 (quiet) and 20 May 2017 (busy) figures recorded on the detailed takings sheets referred to above. That is to say, HMRC has already applied a significant discount, in the trader's favour, to arrive at its baseline figure.

75. To some extent, this can be cross-checked. Chicken is a key commodity for this business. Chicken purchases in October and November (both treated by HMRC - correctly - as student presence months) were about £2250; those were somewhat higher than chicken purchases in July and August (both treated by HMRC - correctly - as student absence months) of £1909. These two figures - £1909/£2250 x 100% - gives 85%. That is supportive of and consistent with HMRC's application of a 15% (but no greater) monthly discount to quiet months.

76. The turnover of £128,499 was latterly (in November 2017) adjusted to £127,458. The adjustment was made to take into account the student presence on Wilmslow Road (i.e., more presence during terms; less presence during vacations) and was done in response to seminar dates for Manchester University which had been provided. The adjustment was modest, and still leaves NNS's turnover as very substantially in excess of the VAT registration threshold.

**DISCUSSION**

**NNS' turnover**

77. The best place to start is HMRC's assessment of NNS's turnover.

78. On 5 October 2016 (four months after it began trading) NNS did not have a working till. It was using its till simply as a cash drawer. Even in May 2017 (11 months after it began trading), it was not keeping proper books and records, despite having been advised by HMRC in October 2016 as to the type of records which it needed to keep.

79. In short, NNS cannot actually demonstrate, with reference to reliable books or records, what its true turnover was. That is a very serious shortcoming, and presents serious difficulties for NNS when it comes to seeking to challenge HMRC's view of its turnover.

80. In these circumstances, the turnover comes to hinge on HMRC's view of the May 2017 takings, extrapolated and adjusted, and whether this exercise (in the absence of any returns by NNS) was made to best judgment.

81. Here, the burden is on NNS to show (albeit only to the appropriate standard, namely the balance of probabilities) that the assessment was not made to best judgment.

82. It is not in dispute that the law is correctly set out by the Court of Appeal in *Customs and Excise Commissioners v Pegasus Birds Ltd* [2004] EWCA Civ 1015 at Para [10] ('best judgment' simply means *'to the best of their judgment on the information available'*) or by Woolf J (as he then was) in *Van Boeckel v Customs and Excise Commissioners* [1981] STC 290:

> "What the words 'best of their judgment' envisage, in my view, is that the Commissioners will fairly consider all material placed before them and, on that material, come to a decision which is one which is reasonable and not arbitrary as to the amount of tax which is due. As long as there is some material on which the Commissioners can reasonably act then they are not required to carry out investigations which may or may not result in further material being placed before them" (at p 292)

83. As the Tribunal (Judge McNall and Mrs Ainsworth) remarked in *Chun Wah Lok (trading as New Lane House Fish and Chips) v HMRC* [2017] UKFTT 169 (TC) at Para [84]:

> "The element of guess-work and the almost unavoidable inaccuracy in a properly made 'best of judgment' assessment, as the cases have established, do not serve to displace the validity of the assessments, which are prima facie right and remain right until the taxpayer shows (i) that they are wrong and also (ii) shows positively what corrections should be made in order to make the assessments right or more nearly right."

84. In a case of this nature, the Appellant bears the burden of showing (albeit, as we have said, only to the civil standard - the balance of probabilities) that the best judgment assessment was not arrived at using best judgment, but can be shown to have been arrived at arbitrarily or was in some way tainted by bad faith or dishonesty.

85. We are satisfied that the totality of the information and material before HMRC was evidentially sufficient (in our view, more than sufficient) for HMRC to form a view as to NNS's takings so as to register NNS. In our view, and on the basis of the evidence, the assessment was made to best judgment. It was not arrived at arbitrarily or was in some way tainted by bad faith or dishonesty. This is for the following reasons.

**The daily figures**

86. We have already set out our views on the recorded daily takings figures for Tuesday 16 May 2017 and Saturday 20 May 2017. In our view, working from those figures was rational. They were the best figures available. No better or more reliable figures have been provided by NNS.

87. Mr Askander accepted in cross-examination that both the £500 and £320 figures had been agreed as correct by the employee(s) on duty at the time, Mr Askander not being present on either date. The figures were set out in HMRC's letter to Mr Askander of 26 June 2017, and were not challenged by him. Although before us he accepted the figures, he nonetheless refused to accept the inevitable arithmetical outcome of those figures, which was an annual turnover in excess of £120,000. His view was that the figures were 'not quite right' and that 'something is missing' and that those were not 'the actual takings'. But that was not a view which he had set out at the time.

88. We refuse to accept his evidence on this point. No good reason has been demonstrated to us why HMRC's figures should be treated as unrepresentative at all. Mr Askander asserts that the annual turnover cannot be calculated from two days' figures. We disagree.

89. Firstly, he has not put forward any reliable figures of his own, and the figures from the self-invigilation exercise in March-May 2017 are demonstrably inaccurate, and (in omitting test purchases) materially under-state the true takings.

90. Secondly, it is significant that figures both for a quiet day and a busy day both significantly exceed the daily (unparticularised) figures for like periods on the monthly takings sheets. We are not satisfied that there was a significant difference between the business as conducted between June and December 2016. The only reason put forward (in his oral evidence, but not in his witness statement) relates to parking restrictions (to loading only) said to have been due to work on a gas main. But a Google Street View image capture from April 2016 (ie. before June 2016) shows parking outside marked as 'Loading Only'.

91. In general terms, we do not accept that this is an area to which people drive to eat (especially students). People walk, cycle, or use public transport (with which it is very well served). Even if someone had driven to this takeaway, there would still been on-street parking available nearby, even if not immediately outside the takeaway.

**The 15% discount to certain months**

92. HMRC then went on to apply a 15% discount to quiet months. The 15% discount applied to quiet months was rational, and reflective of the best evidence available. HMRC took proper account of the fact that there are seasonal fluctuations in this business. As we apprehend it, and insofar as the Appellants invite us to apply a greater discount than 15%. We refuse to do so. There is no good evidence that we should.

93. Insofar as the Appellants invite us to more than four months of the year as quiet months, the semester dates for Manchester University for 2016/17 were placed before us. Manchester has two semesters (rather than the more traditional three terms), which ran from 19 September-16 December 2016, 16 January-29 January 2017, and 30 January-31 March 2017, 24 April-9 June 2017. These amount to 211 days (30 weeks, 57% of the year, or 7 months). HMRC initially treated 8 months of the year as busy, and not 7. But that does not undermine the overall validity of their initial approach. Moreover, HMRC latterly (on 1 November 2017) recalculated the turnover figures to reflect the Manchester University dates with which they had been supplied (albeit using 32 weeks and not 30). The recalculation still resulted in a turnover of £127,458, which is still well in excess of the registration threshold. The approach is sound, and has been adjusted to reflect the Appellant's evidence.

94. In any event, we are sceptical whether HMRC really did need to make the adjustment which it did in November 2017. Although universities have terms/semesters, these simply relate to the dates during which formal undergraduate teaching and examinations take place. The end of term/semester does not lead to a wholesale desertion by the students. Universities continue to offer study facilities (e.g. libraries and laboratories), sporting, and social facilities, and continue to function, outside term/semester dates. Students (especially those who are living out, and not in Halls of Residence) are paying for accommodation all year round, and (we can take as a matter of judicial notice) are present in that area of Manchester in large numbers all year round. Many students may be graduate students, whose presence may not be determined by semester dates at all anyway.

95. The chicken purchase figures already referred to above support and are corroborative of HMRC's approach - they themselves demonstrate only a modest (15%) drop in business during quiet months.

96. We are satisfied that HMRC's figures in relation to NNS are sound and to best judgment. We are satisfied that HMRC in reality gave NNS the benefit of considerable doubt when it came to daily figures, the 15% reduction, and the period to which the 15% reduction was applied.

**TRANSFER OF A GOING CONCERN**

97. We are entirely satisfied that this was a Transfer of a Going Concern by Withington to NNS in June 2016 within the meaning and effect of the relevant legislation.

98. The right approach is to look at substance rather than form: see (for example) the decision of the Divisional Court in *Kenmir Ltd v Frizzell and others* [1968] 1 WLR 329. There, as Widgery J (with whom Lord Parker CJ and Chapman J agreed) remarked, at the end of the day, the vital consideration is whether the effect of the transaction was to put the transferee in possession of a going concern the activities of which he could carry on without interruption.

99. This was the case here. We can only look at substance because there is no form - i.e., there is nothing at all in writing about the transfer. But it is clear to us that the business, before and after, was the same business. It was in the same premises, used the same equipment, with the same front of house set-up, and the same staff. It was trading under the same name ('Finger Licking Chicken') with the same street frontage. Thus, and to all outward appearances, the

'offering' of this business - both before and after 6 June 2016 - was exactly the same. It was a takeaway, with some sit-down space, primarily (as its name suggests) offering chicken. There was nothing to indicate that it was under new management, or that its offering was changing to any significant degree. There was no refurbishment.

100. As already set out, and on the basis of the Appellant's own monthly taking sheets, the business began to trade on 6 June 2016. That is to say, there was barely (if indeed any) break or interruption in continuity of trading. If there was a break, it was a matter of no more than two days.

101. Mr Askander was also a common element of both businesses, having worked for Withington before he took over the business.

102. Mr Askander did not accept HMRC's suggestion, put to him in questioning, that customers would not have known, after 6 June 2016, of the change of legal entity. His evidence on this point - which we do not accept - was that he would 'explain to customers'. It is manifestly implausible that any customer of this takeaway would have been even remotely concerned as to the precise legal entity from whom they were buying their takeaway food; let alone that Mr Askander (or anyone else working there) would explain anything of this nature to customers.

103. Contrary to the assertion by Mr Rayner in his letter of 15 September 2017, we disagree that any increase in the purchases of drinks and buns between December 2016 and May 2017 'must throw doubt as to a TOGC'. The dates given both postdate the 2016 Transfer. We also disagree that businesses 'under new management' (which this one was not advertised as being) attract increased customers. There is simply no reliable evidence of this.

**THE BACK-CALCULATION TO WITHINGTON**

104. Our conclusions above then permits back-calculation to the period of Withington's ownership.

105. When it comes to the back-calculation of those figures to Withington, HMRC has applied an RPI adjustment (or a 'roll-back') to the NNS adjusted turnover figure of £127,458: see page B55 of the bundle. Even then, the turnover figures are £117,520 (2013/14); £120,440 (2014/15); £121,523 (2015/16); £123,125 (2016/17). All are significantly in excess of the registration thresholds for those years.

106. We reject Withington's challenge made to the 12 month rolling turnover figures set out at B57B and B57C. This is a conventional analysis in accordance with Schedule 1 of the VAT Act 1994. Although it is correct that HMRC have, when it comes to Withington, simply divided the annual figures by 12 to produce monthly turnovers, and have not then gone on to apply a further 15% discount to each 'quiet' month, this does not make a material difference. There are three reasons: (i) the baseline annual figure already takes account of NNS' 15% discount; (ii) there are no countervailing calculations to show that a 15% discount would have kept Withington below the registration threshold until some different, or later, date; (iii) even applying a 15% discount to the RPI roll-back figures produces figures well in excess of the registration thresholds.

107. Despite requests on 20 July 2017, and 2 November 2017, Withington did not provide HMRC with any business records to demonstrate the turnover from May 2013 to May 2016. Dr Abood was unable in his oral evidence to provide us with any satisfactory explanation of why records had not been made available to HMRC; nor why records (except for two summary sheets of staff payments) were not made available to the Tribunal hearing the appeal. At the very least, Withington's bank statements should have been readily available to Dr Abood, but none were put forward in evidence.

108. Dr Abood's explanation was that he was aware of what HMRC was asking for, and had discussed matters with his accountant, but did not think that he needed to 'go into details'. We do not consider that evidence satisfactory or credible. Dr Abood struck us as an intelligent and highly educated individual. As already set out, he has higher degrees in a scientific, empirical, discipline. We do not believe that he can ever genuinely have believed that contemporary, documentary, financial evidence would not have been of use to HMRC or the Tribunal in assessing or establishing the turnover of Withington in the years leading up to the 2016 Transfer. It was Dr Abood's position that the turnover was below the registration threshold (although, on his evidence, not by much). The best explanation is that the information has not been provided either (i) because no accurate financial information as to takings was actually kept; or (ii) the information was accurate but does not support Dr Abood's position.

109. A further deficiency which significantly impairs Withington's overall position in its appeal is the absence of a worked-out, documented, competing calculation. None was provided to HMRC, and none was provided to us, even by the accountant Mr Malik.

110. In the absence of records, HMRC have used invigilation techniques on the current trader, NNS, and have established what we consider to be an evidentially sound and defensible turnover figure for NNS. HMRC have then applied this making adjustments for the Retail Price Index to Withington. We consider that to have been a fair and rational exercise, and one which reflected best judgment.

**The Business Economic Exercise for Withington**

111. On 3 November 2017, HMRC conducted a business economic exercise for Withington. This was based on information provided to HMRC by Dr Abood at its meeting with him and the purchase invoices and utility bills for NSS (on the footing, which we consider rational, that these should have been in line with the figures applying to Withington).

112. That exercise is to some degree only an estimate. Its aim was to give some indication of the level of income which would have been needed to operate Withington. It is outgoings-focussed, and does not have any regard to the actual takings made.

113. These were the factors used:

(1) Dr Abood told HMRC that he banked £600 a week from the takings. We have not seen any bank statements. HMRC calculated this at 48 weeks (and not 52) giving a total of £28,800 (and not £31,200).

(2) The rent was paid in cash from non-banked income. HMRC were told that it was £900 a month = £10,800 a year.

(3) The average chicken purchases (paid in cash from non-banked income) were £1100 per month x 12 = £13,200

(4) 1 FT staff (37 hrs per week) x £6.31/hr = £233.47 x 4 = £933.88 x 12 = £11,206.56 (again, this was calculated by HMRC as 48 weeks, and not 52 weeks);

(5) 5 PT staff, based on 20 hrs per week (or 4 hrs per day) = 5 staff x 20 hrs x £6.31 - £631 x 4 = £2545 per month x 12 = £30,288 (again, 48 weeks)

(6) Other purchase expenses and utilities = £16,456.60 per year.

114. These amount to approximately £110,750. Even if the purchase expenses and utilities were paid from banked takings and not cash, the income is still well in excess of the registration threshold. Something would have had to have gone very seriously wrong with these figures to bring them below the registration threshold. Withington has not shown us that there is something seriously wrong with these figures.

115. We accept HMRC's note of the meeting with Dr Abood, especially where it conflicts with the oral evidence of Dr Abood. Dr Abood told us that the £600 per week banked was to cover rent and utilities, but this is not what he is recorded as having told HMRC, and we were not provided with any documents to show the movement of moneys into or out of Withington and/or (if different) Dr Abood's accounts to corroborate what he was saying. Mr Malik told us that the rent was paid by direct debit but (again) no evidence was put forward to support what he said.

116. This means that the best evidence which was available to HMRC was what Dr Abood told HMRC, which was that the rent was being paid from cash. As already explained, the burden is on the Appellant taxpayer in seeking to displace a best judgment assessment.

117. Withington's own employee pay totals for June 2015 to May 2016 (the only records provided by Withington) show total payments (including Employer's NI) of £35,665. This is broadly consistent with the business economic exercise. We disagree with Mr Malik's critique of the business exercise. We do not agree that there is a difference in salaries so large as to substantially undermine the integrity of that exercise, or its conclusion that the amount of money needed to run the business would have been well in excess of the registration thresholds in force from time to time. The difference is £41,494 - £35,655 = £5,839.

118. These figures are also broadly consistent with HMRC's assessment of NNS's turnover - and get even nearer when the figures for banked takings, and staff, are calculated at 52 weeks and not 48. All the figures are significantly in excess of the registration thresholds in force at the relevant times. None are even remotely marginal, or outliers which stand out and call for further investigation.

**CONCLUSION IN RELATION TO THE WITHINGTON REGISTRATION DECISION**

119. We are therefore satisfied that HMRC's decision to register Withington as Liable no Longer Liable for the period 1 May 2013 to 31 May 2016 was correct, and Withington's appeal in that regard must be dismissed.

**THE WITHINGTON ASSESSMENT, AND WHETHER THERE IS AN APPEALABLE MATTER**

120. HMRC's position is that the Withington Assessment is not an appealable matter since Withington has not filed a VAT return: see VAT Act 1994 section 83(1)(p)(i) ('an assessment - under section 73(1) or (2) in respect of a period for which the appellant has made a return under this Act').

121. It is common ground that Withington has not filed a return.

122. HMRC did not make any formal application for a mandatory strike-out of Withington's appeal against the Withington Assessment on the basis of the absence of jurisdiction (Rule 8(2)). That was sensible and pragmatic because it is difficult to see how the Withington Registration Decision could have been fairly and justly decided by the Tribunal without hearing evidence going to the Withington Assessment. If the assessment of Withington's turnover had been shown to be so defective that it could not stand, then (on the face of it) the decision to register would in all likelihood have fallen away.

123. We agree with HMRC that the Withington Assessment is not an appealable matter, and that it must be struck out under Rule 8(2).

124. Section 83(1)(p)(i) sets out the scope of the Tribunal's jurisdiction. That scope is clear and unambiguous. In the absence of a return by Withington, we have no jurisdiction to entertain any appeal against the Withington Assessment. We do not consider that position to be altered by section 84(5) which gives the Tribunal the jurisdiction to give a direction specifying the correct amount of a best judgment assessment. As we read it, that jurisdiction (being ancillary

to, or subordinate to, the limits on the primary jurisdiction set out in section 83) only arises where an appeal can be entertained: i.e., where a return has been made. Nor, when it comes to the Withington Assessment, do we consider that the 'prior decision' jurisdiction set out in Section 83(10) assists the Appellant here because the appeal against the Withington Registration Decision (as opposed to the Withington Assessment) is within section 83.

125. We should add that there is little by way of reported authority on the point. The only authority which we have been able to locate is the decision of the VAT and Duties Tribunal (Mr P A Ferns TD, sitting in Manchester) in *Shaft Sports Ltd v CCE* [1983] VATTR 180: see De Voil Indirect Tax Service V5-404 note 73. There, Mr Ferns arrived at the same conclusion, albeit in relation to the precursor legislation (the *Finance Act 1972*) and not the VAT Act 1984.

126. Perhaps the absence of reported authority is because appeals which fall foul of section 83(1)(p)(i) seldom (if ever) reach a substantive hearing. That this one has reached a substantive hearing is only because of the way in which the appeals by the two appellants intermesh.

**CONCLUSION IN RELATION TO THE WITHINGTON ASSESSMENT**

127. The conclusion therefore must be that the appeal against the Withington Assessment is struck-out.

128. However, and lest our conclusion on that point should fall for reconsideration, we are able to express and adhere to the clear view that HMRC's calculations as to the amount of VAT are correct, for the reasons already set out in our discussion.

**NNS'S ARGUMENT AS TO THE EFFECTIVE DATE OF REGISTRATION**

129. We have set out the narrative above. The thrust of NNS's challenge here is that the Second Certificate (which is the only extant certificate) was wrongfully issued.

130. We disagree. In our view, NNS's argument is misconceived.

131. VAT Act 1994 section 83(1)(a) permits an appeal in relation to 'the registration' of any person. The right of appeal under this heading does not extend to the length of any particular prescribed accounting period, and the fact that such information is disclosed on a certificate of registration does not make HMRC's decision a matter relating to 'registration' (or deregistration). The right of appeal does not extend to any variation in the length of an accounting period: see De Voil 5-404, cited above, and notes 2 and 3.

132. A decision was taken that NNS's turnover, as a Transfer of a Going Concern, was such that it was registrable from the very first day of its operation. We have already set out our reasons for agreeing with HMRC's calculations of NNS's turnover, and HMRC's treatment of the transfer of the business as the transfer of a going concern.

133. When NNS's argument is stripped back to its basics, the essence of the point taken by NNS is that the VAT 4 showing an Effective Date of Registration of 6 June 2016 (rather than 1 June 2016) should not have read 'Amended'. We do not see why that matters:

(1) The Second Certificate arises from and in consequence of Officer Royle's decision made on 22 May 2018. It does not matter that this happened to be his second decision in relation to the registration of NNS. It was a decision. Use of the word 'intended' in his letter is a semantic point of no substance;

(2) Although the word 'amended' is not part of the pre-printed template, but has been added, the Second Certificate of Registration is still a Certificate of Registration, i.e., it records the registration of the taxpayer;

(3) It does not seem to us that the addition of the word 'Amended' was even necessary to accomplish the purpose of stating the Effective Date of Registration to be 6 June 2016. That could have been done by issuing a Certificate without the word 'Amended';

(4) If (for the sake of argument) the Second Certificate did not have the word 'Amended' added, then the only challenge would be to the change of the Effective Date of Registration from 1 June 2016 to 6 June 2016, but that change was rational and evidentially sound;

(5) The word 'Amended' is not germane to the validity of the Certificate of Registration, in the sense that insertion of the word 'amended' does not render the certificate substantively or formally invalid. Even if the word is removed, or were not present in the first place, there would still be an extant Certificate with the EDR of 6 June 2016;

(6) It does not matter that the Second Certificate has the same registration number as the First Certificate. We have not been taken to any requirement that HMRC, having issued and then withdrawn the First Certificate, were then obliged to cancel that VAT number and allocate another one;

134. The explanation, in HMRC's letter of 17 July 2018, of what had happened as a 'change' is, strictly speaking, true. The Effective Date of Registration had changed - from 1 June 2016 to 6 June 2016. We agree that the letter of 17 July 2018 was perhaps not well-expressed because it implied that a decision of some kind was being taken by Officer Wheelband of the VAT Registration Service's 'EEE' team, when in reality Officer Wheelband was just putting into effect Officer Royle's decision.

135. For the sake of completeness, HMRC's decision not to raise a best judgment assessment against NNS does not lie within the Tribunal's jurisdiction (even its quasi-supervisory jurisdiction in relation to best judgement): see the discussion of the authorities and the refutation of the point in *Clare Gore v HMRC* [2014] UKFTT 904 (TC) (Judge Jonathan Cannan).

## OUTCOME OF THE APPEAL

### IN RELATION TO WITHINGTON:

136. Withington's appeal against the Withington Registration Decision is dismissed.

137. Withington's appeal against the Withington Assessment is struck-out (but, had it not been struck-out, would have been dismissed).

### IN RELATION TO NNS:

138. NNS's appeal is dismissed.

## RIGHT TO APPLY FOR PERMISSION TO APPEAL

139. 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.

**Dr Christopher McNall**

**TRIBUNAL JUDGE**

**RELEASE DATE: 5 AUGUST 2020**