Neutral Citation: [2023] UKFTT 543 (TC)

Case Number: TC08843

FIRST-TIER TRIBUNAL
TAX CHAMBER

Location: Decided on the papers

Appeal reference: TC/2021/10956

Value Added Tax – whether assessment made to HMRC's best judgement – section 73(1) Value Added Tax Act 1994 – yes – withdrawal of taxpayer's authorisation to use flat rate scheme – regulation 55P, Value Added Tax Regulations 1995 - whether decision one for which HMRC could not reasonably have been satisfied that there were grounds – yes – appeal allowed in part

Judgment date: 22 June 2023

Decided by:

TRIBUNAL JUDGE MARK BALDWIN

Between

PIERRE ANDRE DIVISIA

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

The Tribunal determined the appeal on 22 May 2023 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 3 September 2021 (with enclosures), HMRC's Statement of Case (with enclosures) dated 5 July 2022 and the Appellant's Reply dated 3 February 2023. The Tribunal also considered a "court bundle" running to 447 pages and two large bundles of documents.

DECISION

INTRODUCTION

1. The Appellant, Pierre Andre Divisia ("PAD") appeals against an assessment to Value Added Tax ("VAT") made under section 73 of the Value Added Tax Act 1994 ("VATA") and issued on 14 September 2020 for the VAT periods 04/18 to 04/20 for £7,612.00.

2. PAD's Notice of Appeal is given out of time; it should have been given within 30 days of the VAT assessment or the date HMRC gave notice of their conclusion of the review. The Respondents ("HMRC") do not object to PAD being allowed to appeal out of time and I give permission for him to do so under section 83G, VATA.

3. At all relevant times, PAD was an Amazon trader based in France – selling products via the Amazon retailer website.

4. PAD was registered for VAT and authorised to account for VAT under the Flat Rate Scheme ("FRS") for small businesses in regulations 55A-55V of the Value Added Tax Regulation 1995 (the "VAT Regulations") from 28 February 2018.

5. In the Summer of 2019 there was correspondence between PAD and HMRC about his UK VAT liability. In the course of this PAD explained that from 2019 onwards some goods for sale were stored in the United Kingdom (UK) by Amazon in warehouses. However, PAD did not have any say over this, and Amazon arranged this of their own accord. Communication between HMRC and PAD continued regarding the FRS and how to fill out VAT returns.

6. On 11 July 2019 HMRC provided a response to PAD's questions and spoke about import VAT, place of supply of goods, despatches, distance sales and the FRS.

7. On 31 July 2020 HMRC commenced an online selling compliance check of PAD and on 14 August 2020 HMRC wrote asking for various documents and PAD responded on 16 August 2020 and his reply included a statement that "I do not sell anywhere else in the UK. Only Amazon.co.uk marketplace." and that, when the customer makes an order, the goods are located at 1 Rue Amazon, 59553 Lauwin-Planque, France (Amazon warehouse).

8. On 03 September 2020 PAD sent in monthly transaction reports.

9. On 14 September 2020 HMRC sent the assessment for £7,612.00 VAT to PAD and also terminated his authority to use the FRS. In October 2021 HMRC raised a further assessment (for £16,151) on PAD for the earlier period 30 January 2015 to 27 February 2018. This is not the subject of this appeal.

10. On 20 September 2020 HMRC informed the Appellant that an officer not previously involved in the case would be reviewing the decision to issue the assessment. On 12 April 2021 a review conclusion letter was issued upholding the assessment.

HMRC'S CASE

11. Pursuant to paragraph 1 of Schedule 1A to VATA a person becomes liable to be registered for VAT if the following conditions are met:

> (1) The person makes taxable supplies, or (b) there are reasonable grounds for believing that the person will make taxable supplies in the period of 30 days then beginning.
>
> (2) Those supplies (or any of them) are or will be made in the course or furtherance of a business carried on by the person.

(3) The person has no business establishment, or other fixed establishment, in the United Kingdom in relation to any business carried on by the person.

(4) The person is not registered under this Act.

12. HMRC observe that, in his answers to the questionnaire, PAD stated that he does not consider that he is making supplies from the UK. However, the transaction reports which he provided, which are obtained from Amazon, confirm that goods are being supplied from the UK, either to UK customers, or to EU consumers (not a taxable person in their Member State), or he is transferring his own goods to other EU Member States. Therefore, from the evidence he saw, the HMRC officer was satisfied that PAD was liable to be registered under Schedule 1A. PAD was making taxable supplies of goods held in the UK in the course or furtherance of a business and had no business establishment in the UK.

13. Sales of goods in the UK to UK customers are taxable transactions subject to UK VAT, as they are treated as taking place in the UK. Distance sales from the UK (sales of goods sent from the UK to EU non-business customers) gave rise to UK VAT where the sales fell below the relevant threshold unless the taxpayer had notified HMRC of its option to tax in the destination country. Here this meant that VAT would be due on goods sold to customers in other EU countries and satisfied by deliveries from the UK. HMRC included all these transactions in their calculation of PAD's outputs, but they did not include PAD's distance sales to the UK, where the goods went sent from France, as those supplies were under the UK threshold for distance sellers. As PAD was VAT registered, this may be an error in his favour.

14. Movements of goods from the UK to other Amazon warehouses elsewhere in the EU would be subject to VAT unless PAD was registered in the other EU state in question, even though they were not sales. PAD was not VAT registered in any other EU jurisdiction.

15. HMRC calculated PAD's VAT liability by looking at VAT on declared sales of goods in the UK (£5,853) and intra EU movement of goods from the UK (£1,803) and deducting the £44 of VAT paid under the FRS. HMRC had clarified when goods moved from the UK, bearing in mind PAD's initial submission that all goods were stored in France. Their calculations were based on Amazon VAT transaction reports provided by PAD. We can see this explored in the review analysis – for example, the court bundle at pages 206-214, which contains copies of HMRC's internal emails between Harriet Jeffreys and Mark Bates in which PAD's UK VAT liability is carefully questioned by Mr Bates and explained by Ms Jeffreys.

16. PAD was registered for VAT under the Flat Rate Scheme ("FRS"). Regulation 55P of the VAT Regulations allows HMRC to terminate a person's inclusion in the FRS at any time if "they consider it necessary to do so for the protection of the revenue". HMRC explain the removal of PAD from the FRS as follows:

> "The reason for the removal is that the Appellant has only declared £44.55 in output tax since the time that he started selling in the UK. The Appellant has not applied the FRS percentage correctly or complied with the scheme. Amazon reports show a significant amount of pre-registration liability. In addition, The Appellant has declared outputs on the returns but no output tax, apart from on the 07/18 return. Amazon reports also show that the actual taxable supplies made by the Appellant are significantly higher than the amounts declared on your returns. It therefore seems reasonable to remove the Appellant from the Flat rate Scheme"

PAD'S CASE

17. PAD criticises some of the transaction records HMRC have used. He says that some records relate to periods outside the assessment period (or at least the period of the assessment in issue in this appeal). In his Reply he says that:

> "Based on this bundle, I now realize that the method and basis by which HMRC assessed a due total of £7,612.00 on 14 September 2020 was not included in this set of documents, and that no other revenue document can be referred to for the period in those 742 pages from HMRC. Consequently, as the bulk of the source data included does not correspond to the intended dates in the assessment, above and beyond any other consideration, it therefore appears likely that HMRC's best judgment Value Added Tax assessment for the period 01 January 2018 to 30 April 2020 for £7,612.00 can be questionable in the first place."

18. He refers to pan-European transactions in HMRC's bundle and observes "what is unclear is if such report shows for instance, a delivery to Germany from the UK, or a locally fulfilled German sale that has no relation with HMRC altogether". He also observes that "There are also many mentions of movements, labelled FC TRANSFERS (which I understand to mean Fulfillment Center Transfers), for instance, B2 P74 / D270: … In this example, it seems to be either a product from France that moved to the UK, or from the UK to France. Why otherwise use a French description and a UK postcode? Either way, this would also not be of concern to HMRC in the assessment of my UK VAT obligations. Those 16 pages make 18 mentions of transfers (as opposed to sales, returns and refunds), and if anything, this only proves the extent of Amazon movements of goods across the EU by means of sales fulfillment or transfer within different Amazon fulfillment centers."

19. PAD submits that "As consistently declared by me to HMRC, upon import into the EU, I delivered all my goods to Amazon in France (Lauwin Planque) - ref. Bundle 2, page 98 / D285. From there, I have had zero control as to where goods may have ended up being re-distributed across Europe thereafter." He observes about 1,200 different transfers of goods between the UK and other EU countries and comments that "Non-sales transfers are of no use to assess due VAT in the UK."

20. Just pausing here, as we have already noted, intra-EU movements of own goods (where the business is not VAT registered in the destination country) can give rise to a VAT liability under the rules for intra-EU movement of goods, so the fact that goods moved from the UK as part of Amazon's stock-holding strategy (and not on a sale) does not mean that there was no VAT. The fact (if this is the case) that Amazon moved stock without asking PAD first does not affect the VAT position.

21. PAD explained that he was a self-employed person in France, not required to be VAT registered. He was sure that he met all the UK VAT requirements up to 2018 and did not need to VAT register in the UK. Amazon forced him to register in the UK from February 2018 and he reported his sales activity as required by Amazon until April 2020, when he stopped all commercial activity.

22. In this period he thought he could use the FRS (he used a similar system in France), but realised that would create a UK VAT liability where UK sales were fulfilled from the EU to the UK. He realised that, if he pulled his entire inventory from the UK, it would be more advantageous for him; he would only need to account for VAT if his distance sales went over the threshold. However, he later found out "that Amazon [was] continuously moving a large part of my inventory from France to the UK, and actually constantly moving inventory across Europe between fulfillment centers or for customer deliveries including UK to EU (which was always done by Amazon's internal decision and without informing me). This changed

the intended setup. I presume this was the trigger behind HMRC's decision to re-assess my VAT obligation over the period." This has put PAD in a bad position as far as VAT is concerned. He paid VAT when he imported goods into France and then (as he explained the position),

> "I am an auto-entrepreneur, which means I am not subject to VAT rules and therefore do not declare sales VAT to the French authorities, just paying a flat rate tax on my overall turnover. I am not allowed to deduct anything from this turnover, no fees, no expenses, and no paid VAT at import or purchase. Consequently, if I was to declare and pay VAT to the UK authorities in addition, I would not be refunded for the VAT paid at purchase or entry into the EU, and this would mean that I would be supporting a double VAT taxation (one in France, one in the UK), which I believed would be fundamentally unfair."

BEST JUDGMENT ASSESSMENTS

23. There was no dispute before me as to the relevant law on best judgment assessments, which is settled and well-known and which I summarise briefly below.

24. As noted above, the starting point is section 73 (1) VATA, which provides that, where a person has not made any returns required to be made under that Act or it appears to HMRC that such returns are incomplete or incorrect, they may assess the amount of tax due from that person "to the best of their judgment" and notify the assessment to that person.

25. The leading authority on "best judgment" is *Van Boeckel v CCE,* [1981] STC 290, where Woolf J addressed the principles inherent in the requirement that HMRC should exercise their best judgment, which he considered to be:

> (1) "[T]he Commissioners are required to exercise their powers in such a way that they make a value judgment on the material which is before them. Clearly they must perform that function honestly and bona fide";
>
> (2) "[T]here must be some material before the Commissioners on which they can base their judgment".
>
> (3) "[T]he Commissioners should not be required to do the work of the taxpayer in order to form a conclusion as to the amount of tax which, to the best of their judgment, is due. In the very nature of things frequently the relevant information will be readily available to the taxpayer, but it will be very difficult for the Commissioners to obtain that information without carrying out exhaustive investigations. In my view, the use of the words 'best of their judgment' does not envisage the burden being placed on the Commissioners of carrying out exhaustive investigations."; and
>
> (4) "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."

26. This discussion has been developed in a number of cases. In *Rahman t/a Khayam Restaurant v CCE*, [1998] STC 826, Carnwath J considered Woolf J's comments in *Van Boeckel*. He observed that:

> "I have referred to the judgment [of Woolf J] in some detail, because there are dangers in taking Woolf J's analysis of the concept of "best judgment" out of context. The … Tribunal should not treat an assessment as invalid

> merely because they disagree as to how the judgment should have been exercised. A much stronger finding is required: for example, that the assessment has been reached "dishonestly or vindictively or capriciously"; or is a "spurious estimate or guess in which all elements of judgment are missing"; or is "wholly unreasonable". In substance those tests are indistinguishable from the familiar *Wednesbury* principles […] Short of such a finding, there is no justification for setting aside the assessment."

27. In *Commissioners of Customs & Excise v Pegasus Birds Ltd*, [2004] STC 1509, Carnwarth LJ observed that:

> "The statutory words 'to the best of their judgment' are used in a context where the taxpayers' records may be incomplete, so that a fully informed assessment is unlikely to be possible. Thus the word 'best', rather than implying a higher than normal standard, is a recognition that the result may necessarily involve an element of guesswork. It means simply 'to the best of (their) judgment on the information available'."

28. Even if it finds an assessment was not made to best judgement a tribunal is not bound to reject an assessment. In *Pegasus Birds,* Carnwath LJ said:

> 'Although the Tribunal's powers are not spelt out, it is implicit that it has power either to set aside the assessment or to reduce it to the correct figure… In my view, the Tribunal, faced with a "best of their judgment" challenge, should not automatically treat it as an appeal against the assessment as such, rather than against the amount. Even if the process of assessment is found defective in some respect… the question remains whether the defect is so serious or fundamental that justice requires the whole assessment to be set aside, or whether justice can be done simply by correcting the amount to what the Tribunal finds to be a fair figure on the evidence before it. In the latter case, the Tribunal is not required to treat the assessment as a nullity, but should amend it accordingly.'

29. This view was followed in *Mithras (Wine Bars) Ltd v HMRC*, [2010] UKUT 115 (TCC), where the Upper Tribunal, in remitting the case to the First-tier Tribunal, said 'the Tribunal is not restricted to any kind of quasi-supervisory function which involved referring to the Commissioners' judgment on quantum at the time the Commissioners made their assessment. The Tribunal's function is truly appellate, in that it can consider further information or argument at the hearing of the appeal and reduce the amount of the assessment, thereby substituting its own view on quantum for that of the Commissioners.'

30. From all this I conclude that, unless I conclude that HMRC has made a very serious defect which calls the whole basis of the assessment into question, my task is to determine the correct amount of VAT due.

31. I have a great deal of sympathy for the position PAD finds himself in, at least if I understood it correctly. He imported goods into France from outside the EU and paid import VAT, which (because of his special French VAT position) he could not recover. Had the goods stayed in France and been sent to the UK only to fulfil orders from UK customers, PAD would have had no UK VAT liability (as his "distance sales" to the UK would be below the threshold). However, goods were brought to the UK and stored in a warehouse here. This created a VAT liability, where such goods were sold to UK customers or to non-business customers in other EU states or moved to warehouses in other EU member states. PAD had (he says) no control over this at all. Amazon moved his goods around between warehouses and, to the extent Amazon brought goods to the UK, this brought transactions in,

or movements of, goods into the scope of UK VAT. As Amazon forced him to register for VAT in the UK, it brought his distance sales to the UK into the charge for VAT.

32. Whilst I am sympathetic to PAD's position, that is not the question before me. The question for me is whether the assessment before me was raised by HMRC to best judgement. I have set out HMRC's explanation of how they calculated PAD's liability in this decision notice. They used material submitted by PAD and there is evidence of their methodology being carefully reviewed internally.

33. It is clear (I can see that myself from the document bundles) that some of the reports contain details of events in periods outside the period to which this assessment relates, but there is no reason to think that HMRC did not realise this or that they did not exclude irrelevant data from their calculation. PAD has access to the relevant reports (he submitted them). If there was any substance in the suggestion that HMRC's calculation of his VAT liability was based on wrong data (numbers for periods outside those with which we are concerned), he should have carried out and submitted an alternative (even if rudimentary) calculation which shows this to be a real risk.

34. If I apply the *Van Boeckel* tests to this case, I observe:

(1) There are some comments by PAD in his Reply about erroneous or misleading statements by HMRC but there is no serious/substantiated suggestion that HMRC did not carry out their review honestly and bona fide.

(2) There must be some material on which HMRC can base their judgment. HMRC had the materials submitted by PDA, which confirmed that goods were being supplied from the UK to UK or EU non-business customers or moved to warehouses in other member states. They have explained that their calculations are based on material PDA submitted. PDA has pointed to extraneous materials in bundles of documents supplied to him, but has not explained whether/how they impacted on HMRC's conclusions.

(3) HMRC are not required to do the taxpayer's job for him. If he considered that there was an error in HMRC's conclusions and calculations, PDA should have particularised this and drawn it to HMRC's attention or the tribunal's.

35. I am satisfied that HMRC raised their assessment to the best of their judgment as that term is understood in the light of *Van Boeckel* and subsequent cases. That is not the end of the matter, as it is clear that I should go on to consider whether the amount of the assessment is correct. The burden of proof is on PAD to show that the amount assessed is incorrect. He has cast aspersions on HMRC's calculations, but he has come nowhere near satisfying me (on the balance of probabilities) that HMRC's calculation is incorrect.

36. That, however, is not the end of the matter. HMRC calculated PAD's VAT liability in the light of their decision to withdraw his authorisation to use the FRS with effect from the time he was VAT registered and the second issue in this appeal is whether that decision can be impugned. It is to that question that I now turn.

THE FLAT RATE SCHEME

37. The FRS was introduced with effect from 25 April 2002. The scheme is a simplification measure, allowing taxpayers within specific turnover limits to pay VAT as a percentage of turnover instead of working out the VAT on sales and purchases (normal VAT accounting). PAD applied to join the FRS and was authorised to account for VAT under it from 28 February 2018

38. The legislative authority for the FRS is section 26B VATA 1994 which enables HMRC to make regulations dealing with the operation of the scheme. The relevant regulations are regulation 55A to 55V of the VAT Regulations.

39. Regulation 55P provides that

> "The Commissioners may terminate the authorisation of a flat rate trader at any time if
>
> (a) they consider it necessary to do so for the protection of the revenue
>
> (b) a false statement was made by, or on behalf of, him in relation to his application for authorisation."

40. Where HMRC terminate a taxpayer's authorisation to use the FRS, the date on which their authorisation ceases is the date of issue of a notice of termination by HMRC or such earlier or later date as may be specified in the notice of termination; regulations 55Q(1)(f) and 55M(1)(h).

41. Section 83(fza) VATA gives the taxpayer a right of appeal to the Tribunal in respect of a decision of HMRC refusing or withdrawing authorisation to use the FRS. Under section 84(4ZA) VATA 1994 the Tribunal's jurisdiction on such appeals is limited to examining the reasonableness of HMRC's decision. Section 84(4ZA) provides

> "Where an appeal is brought –
>
> (a) against such a decision as is mentioned in section 83(fza), or
>
> (b) to the extent that is based on such a decision, against an assessment,
>
> the tribunal shall not allow the appeal unless it considers that the Commissioners could not reasonably have been satisfied that there were grounds for the decision."

42. On 14 September 2020 HMRC wrote to PAD terminating his authorisation to use the FRS pursuant to regulation 55P with effect from the start of the VAT accounting period ending 04/18. The reason given was that "Our compliance check has identified errors that you have made on your VAT returns". The effect of this was that VAT was due at 20% on supplies made in the period since that date, although PAD may be entitled to credit for input tax.

43. There was no discussion in the papers before me of the meaning of the phrase "for the protection of the revenue" in the FRS rules. There has, of course, been significant discussion of that term in the VAT grouping rules. In *Xansa Barclaycard Partnership Ltd v HMRC* (LON/03/422, (2004) VAT Decision 18780) the VAT Tribunal discussed the alternative approaches to the meaning of this phrase (that it is confined to "abusive" cases or that it can cover straightforward cases) and commented (at [44]):

> " … we do not consider that the power in section 43C(1) and (2) [to terminate a company's membership of a VAT group if HMRC consider it "necessary for the protection of the revenue"] is limited to "schemes that abuse grouping" although it clearly does encompass artificial avoidance schemes. But we feel that the phrase … that "it also covers a straightforward case which would not be characterised as avoidance or as abusive" if read without more and in isolation from its context in the decision, is open to interpretations that do not reflect fully the need for the proper balance of factors relevant to the section 43C power parallel to that stated by the tribunal in [*National Westminster Bank Plc v CCE*, [1999] V&DR 201, at] paragraph 74. Without seeking to lay down a general rule, we consider that the somewhat narrower approach adopted by the Commissioners, as

> explained by Mr Warr in evidence to us, expresses the width of the section as we see it. Mr Warr adopted the phrase that the revenue loss went "beyond the normal consequences of grouping". This is the wording used by the Commissioners in the formal direction issued on 16 April 2003 (set out at paragraph 3 above). We do not seek in this decision either to criticise the Commissioners' precise wording as if it were part of section 43C, or ourselves to adopt such wording. But there must, in our view, be something present other than a completely "straightforward" application of the rules before the Commissioners can act to protect the revenue under that section. In the specific context of degrouping under section 43C we would consider that a case that is entirely "straightforward" yet presents a perceived need to protect the revenue is one for legislative rather than executive intervention. For this reason, we do not consider that the wording used by the Commissioners in the formal direction on this point is either wrong in law or inappropriate."

44. At [74] and [78] the VAT Tribunal in *National Westminster Bank Plc v CCE*, [1999] V&DR 201, had observed:

> " [74] In our judgment the phrase "necessary for the protection of the revenue" must be considered as a totality and involves a balancing exercise in which the Commissioners must weigh the effect on the Appellant of refusal of grouping against the loss of revenue likely to result from grouping.
>
> …
>
> [78] While the considerations in respect of grouping are not the same as those in respect of requirements for security, we consider that the principle is the same and that before exercising their powers Commissioners must in law consider more than whether there is a risk or likelihood of loss of revenue. Put another way, the prerequisite for refusal of the application is that the Commissioners must consider refusal to be "necessary" for the protection of the revenue and that on appeal the tribunal must consider whether in forming their view that refusal was necessary the Commissioners acted unreasonably, took into account some irrelevant matter or disregarded something to which they should have given weight"

45. The question for me is whether "the Commissioners could not reasonably have been satisfied that there were grounds for the decision" to withdraw PAD's authorisation to use the FRS with effect from the date of his registration and so to require him to account for VAT at the standard rate on all his outputs in the UK. I consider that HMRC could not reasonably have been satisfied that it was necessary to do this for the protection of the revenue. (There is no suggestion that PAD made a false statement in his application for authorisation.) I have reached this conclusion for the following reasons:

> (1) It is not at all clear to me how terminating PAD's authorisation retrospectively "protects" the revenue as that term is understood in the light of the discussion in *Xansa.* It may well maximise/increase it, but terminating PAD's authorisation to use the FRS does nothing to protect the revenue from abuse or something which is not a completely "straightforward" application of the rules. This is because there is no abuse and nothing which is not straightforward going on. There would appear to be misunderstanding, confusion and compliance failure, but it is not obvious how terminating PAD's authority to use the FRS could even begin to help resolve any of this.

(2) PAD had stopped trading by the time HMRC made their decision. It is particularly hard to see how terminating PAD's authorisation could protect the revenue in these circumstances.

(3) HMRC failed to take into account the effect on PAD of excluding him from the FRS in the light of his inability to recover the VAT he had incurred in France on acquiring the goods. HMRC may have thought that terminating PAD's authority to use the FRS was reasonable in the light of his compliance failure (see [16] above), although I do not share that view, but I cannot see how they could have concluded that there was any risk or likelihood of loss of revenue which terminating PAD's authorisation would protect against and which made it "necessary" to take this step in the light of the consequences for him.

DISPOSITION

46. For the reasons I have explained:

(1) HMRC calculated PAD's outputs and assessed him to VAT to the best of their judgement,

(2) there is nothing which comes anywhere near satisfying me (on the balance of probabilities) that HMRC's calculation of PAD's outputs was incorrect, but

(3) HMRC could not reasonably have been satisfied that there were grounds for their decision to withdraw PAD's authorisation to use the FRS.

47. Accordingly, the assessment must be reduced so that it reflects PAD's outputs as determined by HMRC but calculates VAT on those amounts using the applicable FRS rate/s. The parties should endeavour to agree this amount, but there is liberty to revert to the tribunal if they are unable to do so.

48. To that extent, this appeal is allowed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

49. 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.

MARK BALDWIN
TRIBUNAL JUDGE

Release date: 22nd JUNE 2023