TC02282

Appeal number: TC/2010/01728

PROCEDURE – Application to reinstate appeal out of time- whether Appellant satisfied the Tribunal there are good reasons to reinstate the appeal out of time – NO – Application dismissed.

FIRST-TIER TRIBUNAL
TAX CHAMBER

MOHAMMAD JAN **Appellant**

- and -

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

TRIBUNAL: JUDGE TIMOTHY HERRINGTON

Sitting in public at 45 Bedford Square, London WC1 on 30 August 2012

Miss Marion Lonsdale, Counsel, for the Appellant

Mr Philip Shepherd, Officer, HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. This decision relates to an application out of time by the Appellant, Mohammad Jan ("Mr Jan"), to reinstate his appeal against the decision of the Respondents ("HMRC") to deny Mr Jan a credit of input tax of £9,085.11. HMRC oppose the application.

2. The proposed appeal relates to an invoice issued by Mr Huseyin Akici ("Mr H Akici") in respect of a sale to Mr Jan of a business known as Master Kebab in Banbury, Oxfordshire completed on 31 October 2008. The invoice, dated the same date, stated a sale price of £51,914.89 plus an addition of VAT of £9,085.11, giving a total price of £61,000. HMRC denied the claim by Mr Jan in his VAT return for the tax period of 06/09 for the recovery of the amount stated as charged in respect of VAT on the basis that the supply concerned was the transfer of a business as a going concern so that the supply was outside the scope of VAT. As a consequence, HMRC decided that as VAT has been charged when it should not have been Mr Jan, as the purchaser of the business, was not able to reclaim this amount as input tax as there was no taxable supply.

The facts

3. The facts as to the sequence of events since the decision to deny the claim for recovery of input tax was notified by HMRC to Mr Jan in a letter of 12 January 2010, (confirming an earlier decision which was set out in a letter dated 9 November 2009) are largely undisputed. The area of dispute concerns the reasons why Mr Jan, having appealed to this Tribunal against HMRC's decision, withdrew the appeal on 16 March 2011 and now applies to have that appeal reinstated. That application was made on 26 July 2012, some fifteen months after the last date on which it needed to be submitted to be within the statutory time limit in that regard. I heard submissions from Miss Lonsdale on the reasons why the appeal was withdrawn and is now sought to be reinstated but no evidence from Mr Jan or his representative Mr L.A. Khan ("Mr Khan") of AKA, Chartered Accountants who it is alleged was misled by HMRC into withdrawing the appeal.

4. From the material submitted as to the events since HMRC's decision of 12 January 2010 I make the following findings of fact.

3. 5. On 31 October 2008 Mr Jan entered into an Agreement (the "Agreement") with Mr H Akici for the purchase by Mr Jan of a hot food takeaway business known as Master Kebab, which operated from premises in Banbury, Oxfordshire ("the Business"). By Clause 2.1 of the Agreement the Business was to be purchased as a going concern, the purchase comprising the goodwill and the stock of the Business. Clause 3.1 of the Agreement stated that the purchase price was to be the sum of £61,000. This was apportioned between the goodwill and the stock, and in both cases the sum apportioned was expressed to be "inclusive of any Value Added Tax". However, Clause 3.2 of the Agreement stated:

"Each party undertakes with the other to use reasonable endeavours to satisfy HM Customs & Excise that the sale hereby effected is that of the business sold as a going concern. In the event that any VAT shall be payable on any item sold as supplied under this Agreement as a result of the Purchasers' business activity after completion but not otherwise the Vendor shall pay such VAT incurred by the Vendor"

6. It is clear from the first sentence of this clause that the parties contemplated that the sale would be treated as the sale of a going concern for VAT purposes, with the consequence that the purchase price would not bear VAT. In any event, even if the transfer were not treated as the sale of a going concern, the purchase price was expressed to be inclusive of any VAT payable. Consequently, the liability of the purchaser was limited to £61,000, which was the sum payable regardless of whether the purchase price was liable to carry VAT or not, unless any VAT became payable as a result of the way the Business was carried on after completion in which case the second sentence of clause 3.2 of the Agreement would apply.

7. The Agreement was completed on 31st October 2008 and Mr Jan paid the full purchase price of £61,000 on that date. Mr H Akici issued an invoice to Mr Jan on that date in respect of the sale of the Business. That invoice, dated 31st October 2008, quoted a VAT number as if it were a VAT invoice and broke down the agreed sale price to show a net sum of £51,914.89 as the sale price and a separate sum to be added in respect of VAT of £9,085.11 to give a total of £61,000. The Agreement made no provision for the issue of a VAT invoice, as was to be expected as Clause 3.2 of the Agreement envisaged that the sale would be treated as the transfer of a going concern, and there was no evidence before me of any discussions between the parties that led to the issue of this invoice. On the face of it, the issue of the invoice and the breakdown of the purchase price to show a VAT element was inconsistent with the terms of the Agreement.

8. It would appear that in due course Mr Jan was advised by an accountant that he should be registered for VAT purposes in respect of the Business. Mr Jan's application for registration was dated 31 March 2009. It disclosed that he was registering because he had taken over a business as a going concern and that the transfer of the business took place on 1 November 2008, which consequently, as stated on the registration form, became Mr Jan's effective date of registration. The application also disclosed that the previous owner of the Business was a company called Azwood Limited, not Mr H Akici, but did not enter a VAT registration number for Azwood, although Mr Jan indicated on the application form that he did not wish to keep Azwood Limited's registration number.

9. There was no evidence before me as to why Azwood Limited was disclosed as the previous owner when the vendor of the Business under the Agreement was Mr H Akici. In HMRC's Statement of Case in relation to Mr Jan's appeal it is stated that Companies House records show that Azwood Limited's registered office was at 46 High Street, Banbury, the address of the Business. The Statement of Case also discloses that Azwood Limited was previously registered for VAT purposes but it was dissolved with effect from 14 April 2009. Amongst the material disclosed to the Tribunal by HMRC was an application for registration for VAT purposes by a

company called Acran Limited, dated 1 November 2007. This application discloses that was in respect of the Business, as carried on from 46 High Street, Banbury and that the application was made because Acran was taking over the business as a going concern with effect from 1 November 2007. It disclosed that the previous owner of the Business was Azwood Limited and Azwood's VAT registration number, and that Acran Limited did not wish to take over Azwood Limited's VAT number. HMRC's Statement of Case stated that Acran Limited was deregistered for VAT purposes with effect from 26 October 2008 and was dissolved on 15 September 2009. The Statement of Case also disclosed that Mr Gokhan Akici (who signed Acran Limited's VAT registration application) was a director of Acran Limited and Mr H Akici was its Company Secretary. It also disclosed that Mr H Akici was himself registered for VAT with effect from 13 October 2005 under registration number 866938950 and that he was deregistered with effect from 1 October 2008. This VAT number is the one that Mr H Akici used on the invoice for the sale of the Business to Mr Jan referred to in paragraph 7 above, so I find that at the time this invoice was issued on 31 October 2008 Mr Akici was not registered for VAT purposes and therefore was not entitled to issue a VAT invoice.

10. I conclude from the foregoing that Mr Jan was incorrect to state on his application for registration that he acquired the business from Azwood Limited and there is no evidence to show why he said that this was the case. The evidence shows that Azwood Limited had transferred the Business to Acran Limited on 1 November 2007. There is no evidence to show whether the Business was in fact transferred from Acran Limited to Mr H Akici before Mr H Akici sold the Business to Mr Jan, but it is clear that at the time of the transfer to Mr Jan, whether the vendor was in fact Acran Limited or Mr Akici himself, the vendor was not registered for VAT purposes.

11. On his VAT return for the period from 1 November 2008 to 30 June 2009, Mr Jan entered a claim for input tax of £9,085.11 in respect of the VAT element shown in Mr Akici's invoice of 31 October 2008. This amount was duly recovered by Mr Jan. On 9 November 2009 HMRC wrote to Mr Jan stating that in their view this sum should be disallowed on the grounds that the invoice related to a transfer of a going concern and therefore there was no taxable supply. The letter pointed out that the transfer of going concern provisions were compulsory and Mr Jan could not choose to opt out of them. Consequently the letter informed Mr Jan that the VAT return concerned would be amended to reduce the claim for recovery of the input tax with the result that net tax of £4,653.22 became payable.

12. According to HMRC's Statement of Case, Mr Jan's accountants asked for a review of this decision on the grounds that Mr Jan had provided a genuine invoice, that the seller was VAT registered, that he had contacted the seller after being notified of HMRC's decision and that the seller had stated that the VAT shown as payable had been accounted for to HMRC.

13. The conclusion of the review, communicated in a letter dated 12 January 2010 to Mr Jan's accountants, was to uphold the decision to reject the claim for input deduction on the grounds that the supply concerned constituted a transfer of a going concern.

14. Mr Jan subsequently exercised his right to appeal against this decision to the Tribunal. In due course he received HMRC's Statement of Case, which was dated 28 April 2010 and which disclosed the details set out in paragraph 9 above regarding the history of the VAT registration details for Azwood Limited, Acran Limited and Mr Akici together with details of who had been registered for VAT purposes in respect of the Business at the relevant times.

15. The appeal was listed to be heard on 24 February 2011 but the listing was vacated following HMRC notifying the Tribunal that the date was inconvenient.

16. AKA Accountants, who were now acting for Mr Jan, expressed their dissatisfaction with the delay that was caused by the Tribunal agreeing to HMRC's postponement request. They wrote to the Tribunal on 16 March 2011 in the following terms:

"We refer to our letter dated 17 February 2011 in respect of our disagreement to the request of HM Revenue & Customers for change of the hearing date scheduled for 24 February 2011 (copy letter enclosed for the ease of reference). We wanted to finalise this matter as soon as possible in order to keep costs as low as possible. However HM Revenue & Customs have unnecessarily dragged on this case and caused considerable delay, which our client feels was unreasonable and has disadvantaged him in this matter.

We believe that old system of Commissioners was more helpful for people to have fairness and justice. Costs under the new system are stopping people to go to Tribunals for justice especially in the current financial difficulties. Whilst on the other hand such costs for HM Revenue & Customs are negligible and they can even fight cases without any merit. They like to drag on as they are not worried about the costs but on the other hand small traders cannot afford such costs.

In the light of our above comments we with to withdraw our appeal, as the costs will be disproportionate in this matter and therefore we would be grateful if you would accept our request and order for each party bearing their costs to date.

Thank you in anticipation of your kind understanding and assistance in this matter"

17. It is therefore clear at this stage that the reasons expressed for the decision to withdraw the appeal were the length of time the process was taking and the potential costs involved.

18. It subsequently appears that Mr Jan sought to pursue Mr H Akici and his solicitors in respect of the input tax denied. This was unsuccessful and in a letter dated 2 February 2012, over nine months after the appeal was withdrawn, AKA wrote to HMRC and stated that they had now received advice to the effect that HMRC had wrongly stated that the transfer of going concern provisions applied when, to quote from this letter:

"(a) HMRC knew that they could not apply because the transfer was from Mr Akici to our client and (unbeknown to our client but known to HMRC) Mr Akici was deregistered one month before the transfer from him to our client, therefore the TOGC precondition that the transferor was registered was not met; and

(b) therefore, the TOGC provisions could not apply to the transfer effected and HMRC had no power to re-characterise the transaction which took place to bring the transaction within them; and

(c) HMRC had an obligation to consider whether Mr Akici was properly deregistered having regard to the £61,000 transfer which he effected; and

(d) whatever the answer to those questions, HMRC had an obligation to recover under schedule 11, paragraph 5(2), the VAT due on the invoice raised by Mr Akici to our client"

The letter went on to say that AKA considered that they had been seriously misled to Mr Jan's detriment, by the way that matters were being put before the Tribunal by HMRC. They requested that the matter be reopened and further considered by HMRC.

19. HMRC responded in a letter dated 7 February 2012 by stating that it was not clear how Mr Jan had been misled because the Statement of Case set out clearly the position of the bodies concerned, namely Mr H Akici, Azwood Limited and Acran Limited.

20. AKA responded in a letter dated 14 March 2012 in which they stated

"It was our misunderstanding of the HMRC Statement of Case to read it as including matters which were thought to be in the knowledge of Mr Jan about Mr Akici and his companies. We therefore misunderstood what was being said as seeming to indicate that our client knew of them and was party to them. We now realise that was a misapprehension on our part."

21. In further correspondence between AKA and HMRC, AKA pressed HMRC for an answer to the question as to who HMRC were saying was the VAT registered seller who made the transfer to Mr Jan. This request was made on the premise that AKA believed, on advice, that for the transfer of going concern provisions to apply the seller had to be registered for VAT purposes at the time of the sale. It was alleged in the course of this correspondence that AKA and Mr Jan had been misled by HMRC in its Statement of Case because when AKA agreed to withdraw the appeal they were unaware that HMRC were not able and willing to contend which entity was making the transfer of a going concern. HMRC did not answer the question posed, but maintained their position that it was clear that there had been a transfer of the business to Mr Jan and that transfer constituted the transfer of a going concern.

22. HMRC declined to enter into further correspondence on the issue as a consequence of which on 26 July 2012 AKA, on behalf of Mr Jan, applied to the Tribunal for the appeal to be reinstated, on the grounds that when they withdrew the appeal they had been misled by HMRC as to the applicability of the transfer of going concern provisions, as set out in HMRC's Statement of Case, which had failed to identify the taxable person who they maintain effected the transfer.

The Law

23. Mr Jan's application is made under Rule 6 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (the "Rules") for the Tribunal to exercise its powers under Rule 5(3)(a) of the Rules to extend the time for compliance with Rule 17(4)(a) of the Rules. The latter rule prescribes that any application to reinstate an appeal that has been withdrawn must be made within 28 days of the receipt of the notice of withdrawal by the Tribunal.

24. It is well established that time limits having been prescribed by Parliament, it is for the appellant to show a good reason why the Tribunal should exercise its discretion to allow an appeal to be made outside those time limits. The exercise of such discretion should be exceptional as it extends the jurisdiction of the Tribunal beyond what it would otherwise have.

25. In the recent Upper Tribunal case of *Data Select Ltd v HMRC* (2012) UK 187 (TCC) it was stated in paragraph 34 of the decision as follows:-

"As a general rule, when a court or tribunal is asked to extend a relevant time limit, the court or tribunal asks itself the following questions: (1) what is the purpose of the time limit? (2) how long was the delay? (3) is there a good reason for the delay? (4) what will be the consequences for the parties of an extension of time? and (5) what will be the consequences of the parties of a refusal to extend time? The court or tribunal then makes its decision in the light of the answers to those questions."

26. Those questions should be considered in conjunction with the overriding objective of the Tribunal as set out in Rule 2 of the Rules to deal with cases fairly and justly. It is also established that the merits of the underlying case is also a material factor: See *Ogedegbe v HMRC* (2007) UK FT 364 (TC) where the Tribunal said:

> "While this Tribunal has got power to extend the line for making an appeal, this will only be granted exceptionally. Moreover, there must be at least an arguable case for making the appeal. In the present circumstances I cannot see the Appellant has an arguable case"

27. In relation to the merits of Mr Jan's case the following provisions of the Value Added Tax Act 1994 ("VATA") are relevant:

(1) Section 4(1) VATA which sets out the scope of VAT on taxable supplies and parties:

> "VAT shall be charged on any supplies of goods or services made in the United Kingdom, where it is a taxable supply made by a taxable person in the course or furtherance of any business carried out by him"

(2) Section 49 (1) (a) of the VATA which provides:

" (1) where a business or part of a business carried out by a taxable person is transferred to another person as a going concern, then;

(a) for the purpose of determining whether the transferee is liable to be registered under this Act he shall be treated as having carried on the business (or part of the business before as well as after the transfer and supplies by the transferor shall be treated accordingly"

(3) Schedule 1(2) (a) which provides:

"where a business or part of a business carried on by a taxable person is transferred to another person as a going concern, the transferee is UK established at the time of the transfer and the transferee is not registered under this Act at that time, then,subject to sub-paragraphs (3) to (7) below, the transferee becomes liable to be registered under this Schedule at that time if-

(a) the value of his taxable supplies in the period of one year ending at the time of the transfer has exceeded £77,000;….."

(4) Article 5(1)(a) of the Value Added Tax (Special Provisions) Order 1995 ("The Special Provisions Order") which provides:

"(1) Subject to paragraph (2) below there shall be treated as neither a supply of goods nor a supply of services the following supplies by a person of assets of his business-

(a) their supply to a person to whom he transfers his business as a going concern where-

(i) the assets are to be used by the transferee in carrying on the same kind of business, whether or not as part of any existing business, as that carried on by the transferor, and

(ii) in the case where the transferor is a taxable person, the transferee is already, or immediately becomes as a result of the transfer, a taxable person or a person defined as such in section 3(1) of the Manx Act"

Discussion

28. I turn now to consider the questions I have identified in Paragraph 25 above in the light of the submission of the parties.

What is the purpose of the time limit?

29. It is clear that the time limit in Rule 17(4) (a) of the Rules is to ensure the finality of litigation. If a party decides to withdraw his appeal, he is given a short time to reconsider his decision. If he does not do so within the time limit the other party is entitle to assume the matter is closed, store away or destroy his papers and devote his resources elsewhere. The time limit is therefore designed to strike a

balance between the interests of the appellant in being able to pursue his appeal and the interests of the respondent in knowing when his potential liabilities will cease. It is therefore a matter of importance and a discretion to extend time beyond the statutory period under this rule should only be made in exceptional circumstances rather than as a matter of course.

How long was the delay?

30. The time limit expired over fifteen months before the application to reinstate the appeal was made. This is a very significant delay and in the absence of exceptional circumstances HMRC would be entitled to assume that the matter had been finally closed.

Is there a good reason for the delay?

31. Miss Lonsdale submits that there is a good reason for the delay in that HMRC by its actions misled Mr Jan and AKA as a result of which the appeal was withdrawn. Miss Lonsdale submits that under Rule 25 of the Rules HMRC must set out its position in relation to the case. She submits that they have failed to do that as they did not disclose who they believed was the transferor of the Business. Miss Lonsdale contends that the information that was provided in the Statement of Case regarding the various individuals and companies that had been involved in the Business in the past, but which did not state clearly who the transferor was, served to confuse AKA who did not realise that HMRC were not maintaining in their Statement of Case that Alcan Limited was the transferor and in fact were not saying at all who in their view was the transferor. Miss Lonsdale submits that it has only recently become apparent that HMRC are in fact saying that they do not know who the transferor was and in the light of that new information, which indicates that HMRC have misled Mr Jan and AKA on the issue, Mr Jan should be entitled to reopen the case now he is aware of the true position.

32. Miss Lonsdale's submissions on this issue are based on the premise that Article 5(1)(a) of the Special Provisions Order only applies where the transfer concerned is made by a taxable person, that is a person who is or ought to be registered for VAT purposes, to another taxable person. It is for that reason, in her submission, that it is essential that there should have been clarity in the Statement of Case as to the identity of the transferor. She relies on section 49 of VATA, which only refers to transfers by taxable persons, and submits that Article 5 of the Special Provisions Order should be construed so as to be consistent with that provision.

33. Mr Shepherd, for HMRC, submitted that the key issue in the appeal was whether the transaction concerned was a transfer of a going concern. Article 5 of the Special Provisions Order could apply regardless of whether either the transferor and transferee were taxable persons so that HMRC's Statement of Case addressed the only relevant issue in the case – was there a transfer of the assets of the business to a person to whom the business was transferred as a going concern. That being so, there was no question of HMRC having misled Mr Jan or his advisers in the Statement of Case.

34. In my view Mr Shepherd is absolutely right that Article 5 of the Special Provisions Order can apply regardless of the status of the transferor and transferee and I reject Miss Londale's submission on this point. Section 49 of VATA is not the primary legislation which gives the authority for the making of the Special Provisions Order. It is absolutely plain that Article 5 is made under the power contained in section 5(3)(c) of VATA to provide by order with respect to any description of transaction that it is to be treated as neither a supply of goods or a supply of services. Neither Section 5(3)(c) of VATA or Article 5 of the Special Provisions Order contain any wording that restricts its application entirely to transfers by or to taxable persons. Section 49 of VATA is a stand alone provision which has application in certain circumstances which are clearly stated in plain language as only applicable to taxable persons. There are similar provisions in Schedule 1(2)(a) of VATA, as set out in paragraph 27 above. The opening words of these two provisions which confine their operation to businesses carried on by taxable persons are in sharp contrast to the opening words of Article 5 of the Special Provisions Order which have no such restriction.

35. It is true that in certain circumstances Article 5 (1)(a) of the Special Provisions Order would not apply even if the transfer were a transfer of a going concern. This would be the case if the conditions of sub paragraph (ii) of that provision were not met. So in this case, if the transfer were made by a taxable person, which would have to be Mr H Akici as it was he who issued the invoice on which Mr Jan relied to reclaim the input tax, the provision would not apply if Mr Jan did not become a taxable person as a result of the transfer. If those circumstances existed it would not avail Mr Jan as he needed to be registered for VAT purposes to claim recovery of the input tax. It follows that the Statement of Case was based on the premise that the transfer did fall within the provisions, either because the transferor was not a taxable person, in which case Article 5 (1) (a) (i) would apply, or Mr Jan needed to register as a result of the transfer. Either of those circumstances was completely plausible as none of the entities mentioned in the Statement of Case were at the time of the transfer registered for VAT purposes, as the statement itself makes clear, and Mr Jan, in his application for registration for VAT purposes, had disclosed that he was registering as the result of taking over the Business as a going concern. That being so, in my view there is nothing in HMRC's Statement of Case that could be said to have caused them to mislead Mr Jan and AKA.

37. The Statement of Case was clear in setting out the individuals and companies concerned who had been involved with the Business but the fact that it did not state who HMRC regarded as the transferor is of no consequence because, as I have concluded in paragraph 34 above, Article 5 of the Special Provisions Order would in this case apply regardless of the status or identity of the transferor. Indeed it is not surprising at all that the Statement of Case did not expressly state who the transferor was; it appears that there was no evidence before HMRC from which it could conclude with any confidence who it was and there was conflicting information as to whether it was Mr H Akici, as stated in the Agreement, Alcan Limited who HMRC's records showed to have been the last person to have been registered for VAT in respect of the Business, or Azwood Limited who Mr Jan had stated on his application for registration for VAT purposes to have been the transferor. In the light of the

information disclosed in the Statement of Case it was clearly open to Mr Jan and his advisers to make their own enquiries to establish the true position. In so far as they felt they were misled or confused by the Statement of Case this was of their own making; indeed the passage from AKA's letter of 14 March 2012 quoted at paragraph 20 above clearly shows that to be the case.

38. In any event in has not been established that the alleged confusion was what caused the appeal to be withdrawn. I heard no oral evidence on that issue. I give greater weight to the contemporaneous evidence, that is the letter of 16 March 2011 referred to in paragraph 16 above, which refers to the delays suffered and the potential costs involved.

39. I therefore have no hesitation in finding that there was no good reason why Mr Jan delayed for a period of nearly fifteen months in submitting his application to reinstate the appeal.

What will be the consequences for the parties of an extension of time?

40. Whilst the consequence of a grant of an extension will be to permit Mr Jan to pursue his appeal, it would also result in HMRC having to reopen a case they long believed was closed. In the absence of a compelling reason to grant an extension, this factor weighs strongly in favour of HMRC.

What will be the consequences for the parties of a refusal to extend time?

41. Clearly the consequences are a mirror image of those set out in answer to the previous question. In my view in the absence of a good reason and taking into account the length of the delay, Mr Jan will not suffer an injustice if the appeal is not reinstated.

Merits of the appeal

42. I indicated in paragraph 26 above that the merits of the appeal is also a relevant factor. The evidence before me points strongly towards a conclusion that Article 5 of the Special Provisions Order applies to the transfer of the Business. There is no dispute that on the facts the transfer of assets effected under the Agreement amounted to a transfer of a going concern. Mr Jan registered for VAT purposes as a result and consequently as I have found that the transferor does not need to be a taxable person for Article 5 of the Special Provisions Order to apply it does not appear that he has an arguable case.

43. Finally, I must consider whether the application of the overriding objective in Rule 2 of the Rules points to a conclusion that I should grant the extension of time. I have indicated in paragraph 38 above that in the absence of a good reason fro the delay Mr Jan will suffer no injustice if the extension is refused. HMRC would however suffer an injustice if the appeal were to be reinstated. Therefore in my view it would not be in the interests of justice for me to grant an extension of time to reinstate the appeal. Mr Jan's application of such an extension is therefore refused.

41. 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.

TIMOTHY HERRINGTON
TRIBUNAL JUDGE

RELEASE DATE: 26 September 2012