TC02290

Appeal number: TC/2011/05912

APPLICATION FOR ALLOCATION TO COMPLEX CATEGORY — Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 rule 23 — whether criteria met —* Capital Air Services *considered — application refused

FIRST-TIER TRIBUNAL
TAX CHAMBER

DREAMS plc **Appellant**

- and –

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

TRIBUNAL: JUDGE COLIN BISHOPP

Sitting in London on 17 August 2012

Ms Liesl Fichardt, solicitor, for the Appellant

Mr Alan Bates, counsel, for the Respondents

REASONS FOR DIRECTION

1. The appellant, Dreams plc ("Dreams") is a well-known high-street retailer of beds and bedding. The matter for determination in this appeal is the correct VAT treatment of certain of the beds it sells. They may be adjusted either mechanically or electrically, depending on model. Dreams maintains that they are zero-rated because they fall within Item 2(b) of Group 12 to Sch 8 of the Value Added Tax Act 1994, as they are designed for invalids and are supplied to handicapped persons. HMRC's case is that the conditions for zero-rating are not all met and that the beds are, in consequence, standard-rated.

2. Dreams has appealed against decisions based upon HMRC's view, contained in three letters, following review, of 8 April, 30 June and 1 December 2011, and against various assessments for output tax for which HMRC say Dreams should have accounted. The grounds of appeal also argue that the assessments were made out of time, and that Dreams had a legitimate expectation that its supplies of the relevant beds would be treated by HMRC as zero-rated.

3. I am not concerned at this stage with the merits of the appeal, but only with the question of its allocation to one of the four categories for which rule 23 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 provides. Those categories are (in the order in which the rule deals with them) "Default Paper", "Basic", "Standard" and "Complex". It is common ground that the first two are not appropriate to this case.

4. Rule 23 is as follows:

> "(1) When the Tribunal receives a notice of appeal, application notice or notice of reference, the Tribunal must give a direction allocating the case to one of the categories set out in paragraph (2).
>
> (2) The categories referred to in paragraph (1) are—
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> (a) Default Paper cases, which will usually be disposed of without a hearing;
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> (b) Basic cases, which will usually be disposed of after a hearing, with minimal exchange of documents before the hearing;
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> (c) Standard cases, which will usually be subject to more detailed case management and be disposed of after a hearing; and
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> (d) Complex cases, in respect of which see paragraphs (4) and (5) below.
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> (3) The Tribunal may give a further direction re-allocating a case to a different category at any time, either on the application of a party or on its own initiative.
>
> (4) The Tribunal may allocate a case as a Complex case under paragraph (1) or (3) only if the Tribunal considers that the case—
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> (a) will require lengthy or complex evidence or a lengthy hearing;
>
> (b) involves a complex or important principle or issue; or
>
> (c) involves a large financial sum.
>
> (5) If a case is allocated as a Complex case—

(a) rule 10(1)(c) (costs in Complex cases) applies to the case; and

(b) rule 28 (transfer of Complex cases to the Upper Tribunal) applies to the case."

5. Dreams has, in fact, lodged three appeals, covering the various decisions and assessments which are in dispute, and those appeals have been consolidated. When first received by the tribunal they were allocated, administratively, to the Standard category but later a judge (thinking the parties had agreed on the matter) directed that they should be re-allocated to the Complex category. The parties accept that he was mistaken about the supposed agreement and that I should revisit the matter afresh, and unburdened by what has happened in the past.

6. Plainly the first task is to identify the correct approach. It is apparent from perusal of rule 23 that, while allocation to one or other category is mandatory, the tribunal has a discretion in relation to the choice of category. The discretion whether to allocate an appeal to the Complex category arises, as the rule makes clear, only when one or more of the conditions specified by sub-rule (4) is satisfied; but it is apparent from the manner in which the rule is drafted that, even if that hurdle is overcome, the tribunal is still required to exercise a discretion. The rule states that the tribunal may allocate an appeal to the Complex category only if one or more of the conditions is satisfied; it does not state that it must do so. Thus it is possible for the tribunal to refuse allocation to the Complex category even if that threshold requirement is satisfied; and the question correspondingly arises, in what circumstances should it so refuse?

7. In most cases the question poses no difficulty, either because the parties agree on the allocation (and the tribunal, as a general rule, respects such an agreement) or because the appeal obviously is, or is obviously not, suitable for such allocation. In a relatively small number of cases, of which this is one, the parties disagree: Dreams says the appeal should be allocated to the Complex category, HMRC argue for the Standard category.

8. How the discretion should be exercised, and in particular what are the relevant criteria when deciding between the Standard and Complex categories, are points dealt with in detail by the Upper Tribunal (Warren J, President of the Tax and Chancery Chamber of the Upper Tribunal and Sir Stephen Oliver QC, then President of this Chamber) in *Capital Air Services Ltd v Revenue and Customs Commissioners* [2010] STC 2726, the leading authority on the topic. However, although the decision deals with many of the difficulties which arise, and I draw extensively from it below, it did not give, or purport to give, comprehensive guidance and it did not, save in a very general sense, answer the question which arises in this case. I have come to the conclusion, in those circumstances, that it is necessary to engage in some analysis of the decision before I come to apply it to the circumstances of this case.

9. The Upper Tribunal said, at [6], that the use of the words "will usually" in the rule "demonstrates that there is an element of flexibility about categorisation". It also examined the ordinary meaning of the word "complex" before deciding that, although it offered some guidance to what is meant by the use of the word in the rules, it is the rule 23(4) gateways, and not the ordinary meaning of the word, which are of greater importance and usually determinative. It might be unusual, and perhaps unintended, for a case which is not "complex" in the ordinary sense of that word to qualify for allocation to the Complex Category; but if complexity in the ordinary sense is not a

requirement the possibility that it might occur remains. The Upper Tribunal dealt with the point in this way:

> "[9] We cannot, however, dismiss the possibility of a case which is not complex within the ordinary meaning of that word and yet is one which satisfies one or more of the criteria in rule 23(4). Thus a case might involve no lengthy or complex evidence and may be capable of being dealt with in a short hearing; it might involve no complex or important principle or issue. It might, however, involve what is, on any view, a large financial sum. But the case would not by reason of its high value alone be seen as 'complex' within the ordinary meaning of that word.
>
> [10] The question then is whether the case can, or should, be allocated as a Complex case. The argument here is that a case which satisfies any of the criteria is at least capable of being allocated as a Complex case; on this approach, the criteria are not simply gateways through which a case must pass before it can be allocated as Complex, but are part of the defining architecture by which the class of Complex cases can be identified. We consider this aspect further at paragraph 29 below."

10. At [29] the tribunal expanded on those points:

> "The existence and scope of [the] discretion is linked with what satisfies the criteria for allocation as Complex in the first place. Take the following example. A case may be very straightforward, involving no complexity and no lengthy hearing. It may, nonetheless, involve a large amount of tax. It may well not be appropriate to allocate such a case as Complex. But whether this is because the case does not fall within the criteria for allocation (on the basis that a case must be complex in the ordinary sense of the word before it can be categorised as Complex), or whether it is because the Tribunal has a discretion not to allocate it as Complex, is not clear. If fulfilment of *any* of the criteria set out in rule 23(4) is sufficient to qualify the case as Complex, then it can only be by exercise of a discretion that the case could be allocated other than as Complex. In contrast, if a case has to be 'complex' as that word is ordinarily understood before it can be allocated as Complex, then the case in this example is not capable of allocation as Complex and no question of the exercise of a discretion arises. We do not consider that it is necessary to resolve this issue in order to determine the present appeal; and we do not consider it appropriate to form a view in order to give more general guidance." [original emphasis]

11. However, and importantly, the tribunal added, at [30], that

> "… if the tribunal does have a discretion to allocate other than as Complex a case which is capable of being allocated as Complex, it must be a discretion of limited scope. The general rule should, we consider, be that a case capable of being allocated as Complex ought to be so allocated. Any discretion to allocate other than in accordance with that general rule should be exercisable only in the light of special factors."

12. As the tribunal recognised, it was grappling with a difficulty for which the rules do not provide. As I have said, they lay down the conditions which must be satisfied—the gateways—if a case is to be allocated to the Complex category, but do not make it clear whether merely passing through one or other of the gateways is enough, or a litigant wishing to have his case so classified must establish something else (and if so what) in addition. The Upper Tribunal did not feel it necessary to resolve that issue for the purposes of the case before it, as [29] shows, but it nevertheless appears, in [30], to

have decided that if a case can be allocated as Complex—by which I take it to have meant that it passes through one or other of the gateways—it should be so allocated unless there are "special factors" dictating otherwise. In other words, if this proposition can be taken at its apparent face value, there is no additional criterion, and the burden must be on a party resisting allocation as Complex of a case which has passed through a gateway to demonstrate the "special factors". I shall return to this point later.

13. I need also to deal with another matter to which the Upper Tribunal drew attention. It pointed out, at [28], that the Complex category is a sub-set of the Standard category in that appeals allocated to it will also "be subject to more detailed case management and be disposed of after a hearing". What differentiates the two categories is spelt out by sub-rule (5): the costs-shifting provisions of rule 10(1)(c) are engaged (subject to taxpayer opt-out) and the appeal becomes eligible, subject to its satisfying other conditions, for transfer to the Upper Tribunal. How it viewed the impact of the costs-shifting régime on the exercise of the discretion was set out at [20]:

> "It would be wrong … for a judge of the Tax Chamber to assess whether a case should be allocated as Complex by reference to his or her own subjective view about whether the case is one where there should be power to award costs. That would be to put the cart before the horse. The Rules have been drafted on the footing that certain sorts of case—namely cases which are appropriate for allocation as Complex—are to have applied to them a certain costs regime. It is not the function of the Tribunal judge to pre-judge, as it were, whether a case which is, objectively, appropriate for allocation as Complex should nonetheless be taken out of the costs regime which the Tribunal Rules Committee has thought it right to adopt. The costs regime which applies to Complex cases applies *because* the case is Complex; the decision to categorise a case as Complex is not to be made simply because a judge thinks that a cost-shifting regime should be available." [original emphasis]

14. At [21] it dealt with the possibility of transfer to the Upper Tribunal:

> "We wish to emphasise the obvious point that not every case allocated as Complex is suitable for transfer to the Upper Tribunal. For instance, a very long Missing Trader Intra-Community case taking many weeks to hear may be inappropriate for transfer (even if it is very complex in nature) for the very reason that its length makes it inappropriate to be heard by the Upper Tribunal having regard to its judicial, estate and financial resources. It would not, therefore, be right to say that before a case could be allocated as a Complex case it must be one which is suitable for transfer to the Upper Tribunal."

15. Then, at [22], it added a qualification:

> "Notwithstanding the observations in the preceding two paragraphs in relation to costs and transfer, it would not be right to dismiss altogether the consequences of allocation as irrelevant to the meaning of rule 23. The availability of a costs-shifting regime in all cases allocated as Complex and the availability of a transfer to the Upper Tribunal in some cases allocated as Complex (and only in cases so allocated) each inform the interpretation of what is to be seen as appropriate for allocation as Complex. A judge of the Tribunal is entitled to view the case in the round in deciding how to allocate although whether this is part of the exercise of deciding what is capable of being allocated as Complex or is done in the context of the exercise of a discretion to decline to allocate a qualifying case is not clear. For instance, the judge might conclude that the case is the sort of case for which the

> Upper Tribunal would be an appropriate forum in the light of its legal complexity, recognising at the same time that it might not actually be appropriate to transfer it to the Upper Tribunal for instance because of the length of the hearing required. Or the judge might consider that a case raises a very important issue (bringing the case within rule 23(4)(b)) but conclude that the point is a short one and that not much money is involved (so that the case is not within rule 23(4)(a) or (c)). In deciding whether or not to allocate the case as Complex, we consider that the judge would be entitled to take account of the costs implications of allocating as Complex and to ask himself whether it is really the sort of case where a costs-shifting regime should be available."

16. Dreams does not seek transfer to the Upper Tribunal, recognising that the appeal does not satisfy the conditions for transfer, and I shall not deal further with that point. However, while the transfer to the Upper Tribunal of a Complex appeal can be effected only with the consent of the parties and of the Presidents of this Chamber and of the Tax and Chancery Chamber of the Upper Tribunal, the costs provisions of rule 10(1)(c) are automatically engaged. The taxpayer may, if he wishes, opt out of the régime in accordance with rule 10(1)(c)(ii); HMRC may not. With those considerations in mind I respectfully agree with the proposition that, although the costs consequences of allocation to the Complex category are not the determining factor, they cannot be left out of account when a judge of this Chamber decides whether or not a case should be so allocated. In practice, unless the parties are agreed on a transfer (subject to consent of the Presidents) to the Upper Tribunal, it is likely to be an appellant who seeks allocation to the Complex category, and he may (indeed probably will) be motivated, at least in part, by the availability of a cost-shifting régime. I do not say that by way of criticism since I see nothing inherently wrong in an appellant's seeking to bring himself within such a régime (there was, and still is, intense debate about whether a cost-shifting régime should be more widely available in appeals before the Tax Chamber) but to record my view that HMRC's resistance to such allocation, on the grounds that it exposes them to a costs risk, must also be given due weight.

17. Against that background I come to the detail of this case. Dreams argues, in relation to rule 23(4)(a), that it will be calling several witnesses, including an expert, and that the hearing will occupy two or three days; in relation to rule 23(4)(b) that its appeal is important not only for itself, but for its competitors, and that it raises issues of principle in as much as it will be necessary for the tribunal to determine not merely how the relevant legislation applies to the beds in question, but how the tribunal is to approach its interpretation, itself a matter of some disagreement. In relation to rule 23(4)(c) it says that the amount in issue, more than £5 million, is self-evidently a large financial sum.

18. Rule 23(4)(a) is satisfied if the case "will require lengthy or complex evidence or a lengthy hearing", but the rule offers no guidance on the thresholds to be applied. The Upper Tribunal touched on this point in *Capital Air Services*, and, at [24], said:

> "We accept, of course, that there are limits outside which the Tribunal cannot stray. It would be perverse to say that a hearing of ½ day could ever be lengthy or that a 3 month case was not lengthy. It would be perverse to say a case involving tax of £1,000 involved a large financial sum or that a case involving tax of £100 million did not do so. But in many cases there will a judgment to be made where different judges of the Tax Chamber might reasonably take different views. It cannot be said that there is a single 'right' answer that can be objectively ascertained as a matter

> of law. The Rules assign the task of making that judgment to the Tribunal by providing that a case can be allocated as Complex only if the Tribunal considers one or more of the criteria to be met. We do not consider that there is a single objective and correct answer to how long is 'lengthy' or how large is a 'large financial sum'."

19. In other words, it is not possible to provide comprehensive guidance, and each case has to be considered on its own merits. In my view the gateway in rule 23(4)(a) can be sensibly applied only if one starts from the proposition that a case must have some feature out of the ordinary if it is to be categorised as Complex. By that I do not mean, for example, that only hearings requiring more than a pre-determined number of days are to be regarded as lengthy; I agree with the Upper Tribunal that setting criteria of that kind in advance is neither desirable nor practical. A three-day hearing, as is suggested will be needed for this case, is by no means unusual in this Chamber. But it might nevertheless be unusual for a particular case. I take the example of a late return penalty appeal. Normally such appeals are allocated to the Default Paper category, but the parties may ask for an oral hearing. In such a case the hearing will usually be listed for an hour. If, however, the parties were to say they require three days, it would be difficult to resist the conclusion that the hearing was lengthy for that type of case. What amounts to "complex evidence", too, is not susceptible of advance definition. Again, as it seems to me, there must be something out of the ordinary—evidence of a technical nature, requiring for its understanding a judge or member with particular experience or training might be an example.

20. This point, too, was addressed by the Upper Tribunal in *Capital Air Services*. Although it dealt with issues of principle, it did so against the background of an appeal from a First-tier Tribunal judge who had refused to allocate the appeal to the Complex category, on the grounds (among others) that it was not "exceptional". At [36] the Upper Tribunal said

> "If by use of the word 'exceptional' the Judge meant no more than that the features of the case must take it out of the ordinary—ordinary in the sense of being appropriate for allocation as Standard—he cannot be criticised. However, if he meant that the case has to be exceptional by the standards of the work of the Tax Chamber as a whole, we think that that would be wrong."

21. I respectfully agree. The observation colours what the Upper Tribunal said at [16]:

> "… It might, for instance, be said that what is a lengthy hearing for a VAT case is not to be seen as a lengthy hearing in a transfer pricing case; and it might be said that what can be seen as a large financial sum in a personal income tax case might nonetheless properly be regarded as small in the context of dispute concerning petroleum revenue tax. We do not consider that it is appropriate to adopt this refinement. It will lead to complexity and opaqueness in the allocation of cases resulting in an inappropriate use of the resources of the Tribunal (both judicial and financial) with a risk of unnecessary and disproportionate satellite litigation."

22. I will return to what is meant by "large financial sum" later. At this stage I think it necessary to put the observations at [16] about the length of hearings in context. This Chamber handles appeals across a very broad range, from simple late filing penalties of £100 to disputes about sophisticated contractual arrangements, perhaps involving cross-border transactions, in which millions, even billions, of pounds are in issue. Thus some appeals do not warrant the cost to the parties, in time alone, of a hearing, and they are

dealt with in the Default Paper category. Other relatively small cases may take no more than half an hour to hear. At the other extreme, the appeals are akin to heavy commercial disputes and may take several weeks, even months, to hear. At first sight, against that background, determining what is "lengthy", and in the process using the same yardstick for all cases as the Upper Tribunal proposed, is self-evidently a difficult task.

23. However, it may not present an insuperable difficulty. I return to the example I have given of a late return penalty in which the parties ask for an oral hearing expected to occupy three days. The likely reason is not that they expect to be slow, but that an issue of principle of some difficulty has been identified. If so, it is the gateway in rule 23(4)(b) which is more likely to be of relevance to allocation of the appeal than the expected length of the hearing. That leads to the conclusion that the Tribunal Procedure Committee, which has the responsibility of drafting the rules, had in mind a pragmatic and, in modern jargon, "holistic" approach to determining allocation.

24. It follows that I do not need, even in general terms, to decide where the dividing line between "lengthy" and "not lengthy" falls, nor do I need even to identify a means of reaching such a decision. It is in my view clear that a hearing lasting three days, whether one measures that length against some objective standard or against what might be usual for a case of this kind, cannot be described as "lengthy", in the sense intended by the rule, nor that the calling of several witnesses, even including an expert, is out of the ordinary. Most cases of that character are allocated to the Standard category. The interpretation of the 1994 Act, and in particular the determination, from evidence, of the correct VAT treatment of goods is by no means an unusual task for this Chamber, and I do not perceive that in this case the issues relevant to this gateway pose any unusual difficulty. As the Upper Tribunal explained, at [23], it is for the tribunal to be satisfied that the criteria specified by rule 23(4) are met but for the reasons I have given, and despite the best efforts of Ms Liesl Fichardt, for Dreams, I was not persuaded that the description used in rule 23(4)(a) is apt in this case.

25. I was similarly not persuaded that rule 23(4)(b) is satisfied. Ms Fichardt argued that the issue in the case was difficult since it will require the tribunal to consider what is meant by the phrase "designed for invalids", and whether it imports only objective criteria, or the intention of the manufacturer, the retailer or the customer is relevant. The outcome of the appeal is, she said, of great interest in the industry, and it is in the nature of a test case. Mr Alan Bates, for HMRC, said that the issue is essentially straightforward, and largely one of fact. I can accept that the outcome of the appeal may be of great importance to Dreams, and indeed to its competitors, but I do not see how the determination of the correct VAT treatment of adjustable beds amounts to "a complex or important principle or issue". On the contrary, it is the type of issue which the Chamber resolves routinely, in appeals which have been allocated to the Standard category. If I am right in my view that something out of the ordinary must be shown I have no doubt that this appeal does not come close to passing through this gateway.

26. In saying that I have not overlooked the timing and "legitimate expectation" arguments which Dreams proposes to advance. The question whether an assessment is out of time is what might colloquially be described as "meat and drink" to this Chamber and it occurs in cases allocated to each of the four categories. Taken alone, it is most unlikely to warrant allocation to the Complex category. Whether this Chamber can give

effect to a legitimate expectation is an issue to be determined by the Upper Tribunal later this year. Subject, of course, to onward appeal, if it answers the question in the negative, there will be nothing in the argument. If it answers in the affirmative, the tribunal will be faced only with an issue of fact. I see no complexity or important principle in this argument.

27. Rule 23(4)(c) poses rather greater difficulty. The Upper Tribunal made the point in *Capital Air Services* at [24] (set out above), a point with which I respectfully agree, that there are limits outside which one should not stray, and it gave the examples of £1,000 as obviously not a "large financial sum", while £100 million equally plainly is. At [17] it said this:

> "A further question is whether it is appropriate to take account of the circumstance of the parties in assessing whether a large financial sum is involved. For instance, a given amount of VAT may be very large indeed when viewed through the eyes of a small trader with a turnover of a few hundred thousand pounds, but may be seen as almost trivial when viewed through the eyes of an international corporation with a turnover of hundreds of millions of pounds. We do not consider that, as a general rule, the circumstances of the parties should be taken into account in this way. We say that this should be the general rule because there may be special factors which take a particular case out of the ambit of this general rule. We do not consider it helpful in this decision to attempt to give examples of what might be sufficient to amount to an exception."

28. The amount involved in this case, rather more than £5 million, is, in my view undoubtedly, a large sum for most people, and for most small traders. Mr Bates argued that, large though it may be, it is not outstandingly so, and in one sense he is right: this Chamber frequently deals with cases in which even larger sums are at stake. It has to be said, however, that many, perhaps most, of the appeals in which such sums are in issue are within the Complex category, although not necessarily because of the amount alone. Ms Fichardt told me that the assessments which are the subject of the appeal relate to only part of the period in which Dreams has been selling such beds and that the true amount in issue is greater; and if she is right that other traders will be affected by the outcome the overall amount in issue will be greater still.

29. The inference to be drawn from what the Upper Tribunal said is that laying down a guideline, even one adjusted in line with inflation, is undesirable. I agree; and I also take the view that examination of a taxpayer's accounts to see whether the sum in issue is large, by reference to its turnover, profit, net assets or some other yardstick, is neither desirable nor practical. How, then, is a judge considering the proper allocation of an appeal, left as I am in this case with only the amount in issue as the possible gateway to the Complex category, to decide whether that amount is sufficiently large and whether, if it is, that fact alone is enough to warrant allocation to the Complex category?

30. Here, I am unable to draw any further assistance from *Capital Air Services* since the amount in issue there was not the determining factor. The Upper Tribunal did make it clear that it is necessary to leave out of account the fact that (to use its own examples) a large amount in the context of income tax may be modest in the context of petroleum revenue tax. It follows from what I derive from its decision that an absolute standard, that is to say one which does not vary depending on the taxpayer or the tax, is to be adopted. That approach does not, however, indicate where the dividing line should fall. The conclusion to which I have come is that the sum should be large by comparison

with the median value of the cases which come before the Chamber and are allocated to the Standard and Complex categories. The adoption of that approach, it seems to me, represents a simple and straightforward means of applying the condition. In my judgment £5 million does meet that test, and in consequence rule 23(4)(c) is satisfied.

31. That conclusion does not quite dispose of the matter since, as I have explained, passage of an appeal through one of the gateways is what gives rise to the discretion to allocate an appeal to the Complex category: rule 23 provides that the tribunal *may* do so only if one of the gateways is passed through, not that it *must* do so. I mentioned, at para 12 above, the apparent indication by the Upper Tribunal that, absent "special factors", an appeal which passed through a gateway should be so allocated. I do not, however, think that is what the Upper Tribunal intended, at least if "special factors" is taken to imply some exceptional circumstance. It is not consistent with the manner in which rule 23(4) is drafted, as I explained it at para 6 above, and it is inconsistent with what the Upper Tribunal said in *Capital Air Services*, at [10].

32. Mr Bates did not argue that there are any "special factors" of that kind in this case (and I detect none myself), and he did not argue that exposing HMRC to a costs risk was unreasonable. He confined himself to the argument that this appeal raised no issue of great difficulty, or matter of principle, arguments with which I have already dealt, and that its value alone did not warrant allocation to the Complex category.

33. Although Ms Fichardt did not advance an argument on these lines I should, for completeness, make some further comments about the costs-shifting régime which would apply if I were to accede to the appellant's request. The general rule in this Chamber, as in others, is that costs-shifting is the exception; indeed, in some jurisdictions the tribunal has no costs power at all and in others a power which may be exercised only in very tightly limited circumstances. I mentioned above the debate about the possibility that costs-shifting should become more widely available in this Chamber. The current position, however, is that it is available only in Complex appeals. That is the policy which has been set by the Tribunals Procedure Committee, and it is self-evidently a policy which judges should respect. I have already said that an appellant's wish to bring its appeal within the Complex category in order to benefit from a costs-shifting régime is a proper motive and not a cause for criticism; but it is not a reason, by itself, which justifies such allocation.

34. In essence, this appeal raises questions which are, in my judgment, fairly routine for this Chamber. Its only distinguishing feature is that there is a sufficiently large sum in issue for it to pass through the rule 23(4)(c) gateway. Mindful though I am that the Upper Tribunal in *Capital Air Services* did not equate "complex" with "Complex", I have come to the conclusion that the amount of tax in issue does not "trump" the fact that, by reason of its failure to pass through the other gateways, the appeal is more suitable for allocation to the Standard category. In my judgment that is the category to which it should be allocated, and I so direct.

35. 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.

COLIN BISHOPP
CHAMBER PRESIDENT

RELEASE DATE: 9 October 2012