TC03221

Appeal number: TC/2012/10319

INCOME TAX – PAYE- Whether should have been deducted? - On facts yes – Penalty for not filing "P35" - Whether reasonable excuse? No on the facts - Appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

ABDULLAH IBRAHIM **Appellant**

- and -

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

TRIBUNAL: JUDGE ADRIAN SHIPWRIGHT
MRS BEVERLEY TANNER

Sitting in public at Nottingham MJC, Carrington Street, Nottingham NG2 1EE on November 2013

Mohammed Rashid, Accountant, for the Appellant

Joanna Bartup of HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. This is an appeal by Mr. Abdullah Ibrahim ("the Taxpayer") against:
   (1) Two Determinations issued by the Respondents ("HMRC") under Regulation 80 Income Tax (PAYE) Regulations 2003 (together "the Regulation 80 Determinations"); and
   (2) Two Notices of Penalty issued by HMRC under section 98 TMA (together "the Penalty Notices").
2. The Regulation 80 Determinations were issued on 22 May, 2012**.** They were for:
   (1) £ 988.00 in respect of the year of assessment 2009-2010;and
   (2) £1672.00 in respect of the year of assessment 2010-2011.

They were in relation to PAYE which HMRC said should have been deducted and accounted for (and the relevant returns filed) but were not.

3. The Penalty Notices were issued on 24 May, 2012 and were for failure to file "P35's" for the periods in question. The penalties were for;
   (1) £ 988.00 in respect of the year of assessment 2009-2010; and
   (2) £ 900.00 in respect of the year of assessment 2010-2011.

They were also, like the Regulation 80 Determinations, in respect of PAYE which HMRC said should have been deducted and accounted for (and the relevant returns filed) but were not.

4. It is arguable that the appeal was made out of time. HMRC confirmed to us that they did not wish to take any point on this. To the extent necessary to allow the appeal to continue we gave permission for the appeal to be made out of time.

The Issues

5. There are two issues in this appeal but the second issue is very much dependent on the first.
6. The first issue is whether the Regulation 80 Determinations were properly made.
7. If the Regulation 80 Determinations were properly made then the question arises whether the Penalty Notices were properly imposed.

Abbreviations and Dramatis Personae

8. The following abbreviations and references to persons are used in this decision but as ever are subject to the requirements of the context.

"the Bundle"	the bundle of documents referred to at paragraph 15
"HMRC"	the Respondent
"the Regulation 80 Determinations"	the determinations referred to at paragraph 1 above
"the Penalty Notices"	the penalty notices referred to at paragraph 3 above
"the Regulations"	Income Tax (PAYE) Regulations 2003
"the Taxpayer"	the Appellant
"TMA"	Taxes Management Act 1970

The Law

9. The law in this area is well known and is essentially found in Regulation 80 Income Tax (PAYE) Regulations 2003 and section 98A TMA. For convenience these two matters are set out in the following paragraphs.
10. Regulation 80 of the Regulations is headed "Determination of unpaid tax and appeal against determination. It provides (so far as is relevant):

> "80.—(1) This regulation applies if it appears to the HMRC that there may be tax payable for a tax year under regulation 67G… or 68 by an employer which has neither been—
> (a) paid to HMRC, nor
> (b) certified by HMRC under regulation 75A, 76, 77, 78 or 79. …
> (2) HMRC may determine the amount of that tax to the best of their judgment, and serve notice of their determination on the employer. …."

11. Regulation 80 also provides for the usual appeal provisions to apply.
12. Regulation 68 of the Regulations provides:
"(1) This regulation applies to determine how much an employer must pay or can recover for a tax period.
(2) If A exceeds B, the employer must pay the excess to the Inland Revenue.
(3) But if B exceeds A, the employer may recover the excess either—
(*a*) by deducting it from the amount which the employer is liable to pay under paragraph (2) for a later tax period in the tax year, or
(*b*) from the Board of Inland Revenue.
(4) In this Regulation—
A is—
(*a*) the total amount of tax which the employer was liable to deduct from relevant payments made by the employer in the tax period, plus
(*b*) the total amount of tax for which the employer was liable to account in respect of notional payments made or treated by virtue of a retrospective tax provision as made, by the employer in that period under regulation 62(5) (notional payments);
B is the total amount which the employer was liable to repay in the tax period.
(5) Paragraphs (2) and (3) are subject to regulation 71 (modification in case of trade disputes).
(6) Paragraph (2) is also subject to regulation 78(11) (entitlement to set off excess payments).
(7) In the application of paragraph (4) to notional payments arising by reason of the coming into force of the Finance Act 2006, the reference to section 710(7A)(*a*) of ITEPA 2003 shall be modified as mentioned in section 94(5)(*c*) of the Finance Act 2006".
13. Section 98A TMA is headed "Special penalties in the case of certain returns". It provides (so far as is relevant):
"(1) PAYE regulations or regulations under section 70(1) (a) or 71 of the Finance Act 2004 (sub-contractors) may provide that this section shall apply in relation to any specified provision of the regulations.
(2) Where this section applies in relation to a provision of regulations, any person who fails to make a return in accordance with the provision shall be liable–
(a) to a penalty or penalties of the relevant monthly amount for each month (or part of a month) during which the failure continues, but excluding any month after the twelfth or for which a penalty under this paragraph has already been imposed, and
(b) if the failure continues beyond twelve months, without prejudice to any penalty under paragraph (a) above, to a penalty not exceeding
(i) in the case of a provision of PAYE regulations, so much of the amount payable by him in accordance with the regulations for the year of assessment to which the return relates as remained unpaid at the end of 19th April after the end of that year, or
(ii) in the case of a provision of regulations under section 70(1)(a) or 71 of the Finance Act 2004, £3,000
(3) For the purposes of subsection (2)(a) above, the relevant monthly amount in the case of a failure to make a return–
(a) where the number of persons in respect of whom particulars should be included in the return is fifty or less, is £100, and
(b) where that number is greater than fifty, is £100 for each fifty such persons and an additional £100 where that number is not a multiple of fifty…".
14. Regulation 73 provides for PAYE returns to be made before 20 May following the end of the year of assessment in question. By regulation 73(10) section 98A TMA is applied.

Evidence

15. We were provided with a bundle of documents ("the Bundle"). No objection was taken to any of the documents in the bundle and they were all admitted in evidence.

16. The Bundle included number of witness statements. These were from:
    (1) Ali Mohammed Zana
    (2) Hejar Qadir
    (3) Kavan Mohammedi
    (4) Salam Mohammed
    (5) Steve Rawlings
    (6) John Groves
17. Only Mr. Rawlings and Mr. Qadir gave oral evidence. The other persons providing witness statements did not.
18. Mr. Qadir had the assistance of an interpreter. The interpreter was sworn in the usual way and was most helpful. We are most grateful to him.
19. Both Mr. Rawlings and Mr. Qadir were cross examined.
20. The other persons who had provided witness statements did not give oral evidence and were not cross examined. It is hard to give untested evidence significant weight in many circumstances. It is even harder here for the reasons discussed below.
21. The Taxpayer decided not to give evidence on his own behalf. We found this surprising but acknowledge that he has every right not to give evidence.
22. HMRC did not accept matters given in the witness statements provided on behalf of the Taxpayer (i.e. (1) – (4) in the list in paragraph 16).
23. This raises the question as to what weight we should give to the witness statements not tested by cross examination provided on behalf of the Taxpayer and by HMRC. As they have not been tested by cross examination they have not been accorded any great weight where the evidence in question has not been tested.
24. The witness statements provided by HMRC whose authors were not subject to cross examination did not go to the heart of matters in the way that those provided on behalf of the Taxpayer did. Accordingly, they have not been accorded any great weight.
25. HMRC asked us to note that the witness statements provided on behalf of the Taxpayer (i.e. (1) – (4) in the list in paragraph 16) were all in similar format. We do so and specifically take note of that matter as a fact.
26. Those witness statements are in the same format as Mr. Qadir's and were in English.
27. Mr. Qadir told us that he had not written his witness statement but that Mr. Rashid had done so from answers Mr. Qadir gave to questions posed by Mr. Rashid. Mr. Qadir told us that he did not read English but had nevertheless signed his witness statement which was in English.
28. We have no reason to believe that this is not true of the other witness statements proffered on behalf of the Taxpayer which are in the same format. This makes it very difficult to give much if any weight to that evidence particularly when they have not been tested by cross examination.
29. We found Mr. Rawlings to be a helpful, truthful and honest witness who was trying to assist the tribunal. We accept his evidence.
30. There was a witness statement from Mr. Groves in the bundle tendered on behalf of HMRC. He did not give oral evidence and was not cross examined. Accordingly, it is hard to give this evidence much weight.
31. We did not have the benefit of a site visit to either of the locations in question.
32. Unredacted Forms P14 were produced at the hearing in respect of Salam Mohammed for 2009-10 and 2010-11. They were not objected to and were admitted in evidence.

Findings of Fact

33. From the evidence we make the following findings of fact.

Mr. Ibrahim

34. Mr. Ibrahim was of Middle Eastern origin.
35. The Taxpayer came to the UK in about February 2002.
36. The Taxpayer ran a car wash business. This traded under the name Capital Car Wash.

37. The Taxpayer was registered as a sole trader for the purposes of Income Tax Self-Assessment.
38. The Taxpayer had not applied for a PAYE scheme.
The Business
39. The business consisted of cleaning and valeting cars.
40. It was seemingly a franchise business.
41. The business in the period(s) under consideration operated at two sites. These were:
(1) Long Eaton; and
(2) Leicester.
Start and main site
42. HMRC records confirmed that the Taxpayer had been trading at the Long Eaton site since 2009.
43. The turnover had been in the high tens of thousands.
44. The Taxpayer had a franchise from Capital Car Washes, a national car wash franchise. It seems he acquired the site through the franchisor.
Further site - Leicester
45. The Leicester site was leased from Bradgate Estates Limited by Safiya Haji Hasan Hasan.
46. The lease was for a term of three years beginning on 20 August 2010 (a Friday) and "including the date of this lease".
47. It was also provided in the lease "Permitted Use: Not to use the Property other than as a hand car wash".
48. The Annual Rent initially reserved in the lease was £18,900 exclusive of VAT. By clause 5 of the lease the rent was payable in 12 monthly instalments in advance. This is £1,525 per month exclusive of VAT. The rate of VAT was 17.5% till 4 January 2011. Thereafter it was 20%. This is £1830 pm.
49. The rent was subject to rent review and seemingly only an upwards review (see Clause 2 of the Schedule to the lease).
50. Safiya Haji Hasan Hasan was (and we believe is) the wife of the Taxpayer.
51. There was some controversy as to when business started on this site.
52. It was suggested that there had been a fire at the site which delayed the start of operations at the site.
53. HMRC disputed that there had ever been a fire. Accordingly, the onus of proof to show that there was a fire was on the Taxpayer. The Taxpayer has failed to discharge the burden of showing that there was a fire.
54. There was no independent evidence of such a fire before us.
55. There was no Fire Brigade record of a fire, no local newspaper report, no insurance claim or similar matters. It was suggested that the fire had damaged equipment but there was no evidence such as invoices for replacement equipment and similar paperwork.
56. Accordingly, we find that no fire has been shown to have taken place.
The Visits
57. HMRC visited both sites. There were several visits to each site. Meetings also took place with the Taxpayer and his accountant.
Leicester
58. Unannounced visits were made to the Leicester side by officers from HMRC and the UK Border Agency.
59. The first HMRC visit was made on 6 December 2010 and followed from information supplied to HMRC by the UK Border Agency. This was after an Enforcement Visit had been made by Immigration Officers on 21 October 2010 at the Leicester site.
60. As Mr. Rawlings could find no record of the business Mr. Rawlings applied to a senior HMRC Officer to conduct an unannounced visit under paragraph 12 schedule 36 Finance Act

2008 which deals with the carrying out of inspections. This requires written notice to be given to the occupier. We were provided with a copy of the Notice of Inspection dated 26 November, 2010. A copy was in the Bundle. It related to the Leicester site.

61. HMRC officers visited the Leicester site on 6 December, 2010. They made a further visit on 13 January, 2011.

62. HMRC officers spoke to a number of persons on the site. Some of these workers carried asylum registration cards which confirmed that the cardholder had no right to work in the UK.

63. There were no records at the site as to the number of cars cleaned or any other more normal "sales" records. There were no records as to the number of hours worked etc. by what persons. There were no records as to who was working on the site.

Long Eaton site

64. HMRC officers visited the Long Eaton site with the intention of meeting the taxpayer on 15 February, 2011. They were not accompanied by an interpreter.

65. The HMRC officers spoke to a number of persons on the site. This suggested that the Taxpayer should have been operating PAYE and deducting NIC in respect of payments he made.

66. The Taxpayer when spoken to said he kept the business records relating to the Long Eaton site at home.

67. A further meeting was held at the Taxpayer's home on 3 March 2011. The Taxpayer was unable to produce any records for the Long Eaton site at that meeting. The Taxpayer told the Officers that Bujar Requica, from the franchisor, had been to the site the week before and took all the business records away.

68. HMRC Officers telephoned Bujar Requica from the meeting. The Officers were told no one from Capital Car Washes had been to the Long Eaton site in months. They were also told Capital Car Washes would never ask to see or take away any records. Bujar Requica also told the Officers that the Franchise Agreement made it clear that the Taxpayer's Tax Affairs were nothing to do with Capital Car Wash Franchise HQ. We accept this evidence and find it as fact.

69. Officer Rawlings' Witness Statement continued "After this … HMRC Officer warned [the Taxpayer] that he was not being honest and truthful with HMRC. At this point the [Taxpayer] said he did not understand English very well…" We have no reason to doubt the truthfulness of this evidence and on the balance of probabilities we find it as fact.

70. A small exercise book was produced at a meeting held on 25 March 2011 which was said to contain details of daily takings and the workers and their pay for the day in question.

Persons working at the business etc.

71. The HMRC officers talked to persons at the sites when they visited.

72. The persons they talked to provided details of their earnings and periods work which showed that PAYE should have been operated but was not according to the evidence of Officer Rawlings. We accept his evidence on this matter.

73. The witness statement of Officer John Groves provides some corroboration for this but was not the subject of cross examination.

74. The Notebook with figures in it that had been produced at the meeting in respect of the Leicester site showed sales between 13 November 2010 and 26 February 2011 of £15,739. It is not clear whether or not this was the total turnover during the period of operation of the Leicester site. It does not show that the Leicester site started operations in November 2010. It is merely some evidence as to turnover etc. in the period recorded.

Work elsewhere

75. The Bundle contained various documents supplied by Laurens Patisserie.

76. These included redacted copies of P14's in respect of:

(1) Hejar Quadir for 2010 and 2011; and

(2) Salam Mohammed for 2010 and 2011.

77. We were provided at the hearing with a P14 in respect of Salam Mohammed which was not redacted. This showed that he had earned considerably more than the Lower Earnings Limit in 2011.
78. There was no reason to believe that this was not also true of Hejar Qadir. On the balance of probabilities we find this to be the case i.e. that Hejar Qadir also earned considerably more than the Lower Earnings Limit in 2011.
Mr. Qadir's evidence
79. Mr. Qadir told us he did not write his witness statement himself. Mr. Rashid wrote it. Mr. Qadir answered Mr. Rashid questions and Mr. Rashid put the witness statement together. Mr. Qadir had told us he did not read English.
80. Mr. Qadir also told us he worked nights but Laurens Patisserie. He said he had done the only one day's work it at the car wash for which he received £35.00. He said he was not an employee purchase simply helping out. As he was already working six days a week he did not have time to work as an employee at the car wash.
81. Mr. Qadir had no direct knowledge of any fire at the Leicester site.
Mr. Rawlings evidence
82. Mr. Rawlings confirmed that he had prepared his witness statement himself and that it was correct and true and contained an accurate record.
83. We found Officer Rawlings to be a reliable, truthful and honest witness. We accept his evidence and where there is any conflict with other matters we prefer Officer Rawlings' evidence.
Computation of the assessments
Officer Rawlings set out the basis of the computation of the assessments at paragraphs 16 and 22 of his statement.
84. At paragraph 16 he said in respect of the Leicester site "HMRC issued a computation for tax due on wages paid out from the commencement of the lease agreement for the 12 weeks from August 2010. The exact period being from 20 August 2010 to 12 November 2010. The computation was based on total weekly wages bill of £285 (£95 for each worker, 3 workers in total) giving a total untaxed wages bill of £3420 for 12 weeks. The PAYE Basic Rate Tax due on this figure being £684.
85. At paragraph 22 he said in respect of the Long Eaton site"… a tax computation was raised based on just one worker earning £95 wages per week across two complete tax years from April 2009 to April 2011 (104 weeks at £95 per week = £9880). The Basic Rate Tax due on these at 20% amounts to £1976 and this sum was requested formally by Regulation 80 Determination …" The amount actually assessed was less (see paragraph 1 above).
86. These seem to be determination reasonably made to best of judgement. The amount could have been higher and still been within the band of reasonable determinations.
87. We have been taken to nothing which shows that this was not the case.
88. We find that the Regulation 80 Determinations were made to the best of judgement on a reasonable, rational and fair basis.
89. **Submissions of the Parties**
90. ***The Taxpayer`s submissions in outline***
91. In essence, the Taxpayer argued that he was not required to operate PAYE and the regulation 80 determinations should not have been made. Consequently, the penalty notices should not have been issued.
92. In more detail it was contended on behalf of the taxpayer as follows.
    (1)No tax was due even if there were employees (rather than self-employed) as the people concerned were earning under the lower earnings limit and had only one job which was with the Taxpayer.
    (2)HMRC had obtained information/statements from people on the sites without offering the support of an interpreter.

(3)Trading did not commence on the Leicester site when HMRC said it did. It started later in November 2010 so HMRC these figures are wrong.

93. Consequently, as there was no liability to tax the Regulation 80 Determinations must be discharged.

94. Accordingly, the penalty notices must also be discharged

95. The appeal must be allowed.

HMRC`s submissions in outline

96. In essence, HMRC argued that the taxpayer had failed to comply with his obligations as an employer. Consequently the regulation 80 to terminations were properly made and must stand. No reasonable excuse having been shown the penalty notices must also stand.

97. There was no evidence that the Car Wash was the employee's main job.

98. There was good evidence that employees work elsewhere and earned more than the Lower Earnings Level.

99. The Taxpayer has not shown that the start date for the long Eaton site was other than the date HMRC said it was

100. The determinations were made to best of judgment and must stand.

101. Accordingly, the appeal should be dismissed.

Discussion

Introduction

102. We set out at the start of this Decision our view of the issues in this appeal. The first issue is whether the Regulation 80 Determinations were properly made. The second issue is if the Regulation 80 Determinations were properly made then the question arises whether the Penalty Notices were properly imposed.

Best Judgement Assessment

103. The Regulation 80 Determinations were necessarily best judgement assessments or determinations.

104. Regulation 80(2) of the Regulations provides that "HMRC may determine the amount of … tax to the best of their judgment, and serve notice of their determination on the employer". This gives authority to make such determinations.

105. Best judgement was considered by the Court of Appeal in *Pegasus Birds v CCE* [2004] EWCA Civ 1015. This related to the VAT position but the position in direct tax is essentially the same.

106. It is worth reminding ourselves of some of the comments of Lord Justice Carnwath in Pegasus. He said:

107." [10] It should be noted that the shorthand "best judgment", as used in some of the cases, may be misleading, if it is taken to imply a higher standard than usual. 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" (*Argosy Co v IRC* [1971] 1 WLR 514, 517 per Lord Donovan)".

108. He continued:

"[38.] In the light of the above discussion, I would make four points by way of guidance to the Tribunal when faced with "best of their judgment" arguments in future cases:

i) The Tribunal should remember that its primary task is to find the correct amount of tax, so far as possible on the material properly available to it, the burden resting on the taxpayer. In all but very exceptional cases, that should be the focus of the hearing, and the Tribunal should not allow it to be diverted into an attack on the Commissioners' exercise of judgment at the time of the assessment.

ii) Where the taxpayer seeks to challenge the assessment as a whole on "best of their judgment" grounds, it is essential that the grounds are clearly and fully stated before the hearing begins.

iii) In particular the Tribunal should insist at the outset that any allegation of dishonesty or other wrongdoing against those acting for the Commissioners should be stated unequivocally; that the allegation and the basis for it should be fully particularised; and that it is responded to in writing by the Commissioners. The Tribunal should not in any circumstances allow cross-examination of the Customs officers concerned, until that is done.
iv) There may be a few cases where a "best of their judgment" challenge can be dealt with shortly as a preliminary issue. However, unless it is clear that time will be saved thereby, the better course is likely to be to allow the hearing to proceed on the issue of amount, and leave any submissions on failure of best of their judgment, and its consequences, to be dealt with at the end of the hearing".

109.The Taxpayer did not allege wrongdoing on the part of HMRC rather that they were mistaken in what they had done.

110. This was not a case where the challenge to the Regulation 80 Determinations could best be dealt with as a preliminary issue.

111. The Taxpayer's challenge to Regulation 80 Determinations essentially raised three broadly factual matters. These were (as set out above):

"(1) As no tax was due even if there were employees and (rather than self-employed) as the people concerned were earning under the lower earnings limit them have only one job which was with the Taxpayer.
(2) HMRC had obtained information/statements from people on the sites without offering the support of an interpreter.
(3) Trading did not commence on the Leicester site when HMRC said it did. It started later in November 2010 so HMRC these figures are wrong".

No tax was due as earnings under the lower earnings limit and only one job

112. The onus was on the Taxpayer to show this was the case. The Taxpayer did not discharge the burden of showing that the earnings were under the lower earnings limit and the recipients of payment only had one job.

113. The evidence before us showed that Hejar Qadir and Salam Mohammed had jobs elsewhere and earned in excess of the Lower Earnings Limit. We have no reason to believe that this was not the case for the other workers. On the balance of probabilities we find this to be the case as the Taxpayer has not discharged the burden of showing it was not so.

114. There was no evidence to show that this was not generally the case.

115. We find that the Taxpayer has not shown that "… no tax was due even if there were employees and (rather than self-employed) as the people concerned were earning under the lower earnings limit them have only one job which was with the Taxpayer".

116. To the extent we can we find this as a matter of fact.

HMRC had not offered the support of an interpreter.

117. Whilst it might have been sensible to have had an interpreter available at the time of the visits etc. we have not been shown anything that suggests that there was any prejudice to the Taxpayer from the lack of an interpreter then.

118. Every person is deemed to know the law and can obtain advice on the law.

119. Here the difficulty is not one of language but of compliance with the requirements placed on an employer.

Trading did not commence on the Leicester site when HMRC said it did.

120. We have found that the Taxpayer has not discharged the burden of showing that there was a fire at the Leicester site that delayed the commencement of business on that site.

121. The Taxpayer has not discharged the burden of showing that the commencement of business on the Leicester site was delayed.

122. It does not seem unreasonable for HMRC to assume that business commenced on the start of the lease.

123. The period for which HMRC issued the determination in respect of the Leicester site was not other than to best of judgement. We find that the Regulation 80 Determinations were made to best of judgement.

The Penalty Notices

124. The Penalty Notices must stand unless a reasonable excuse within the statutory meaning is shown by the Taxpayer, the onus being on the Taxpayer.

125. We were taken to nothing that showed such a reasonable excuse and have found nothing in the papers before us to suggest that there was.

126. We find that there was no reasonable excuse within the statutory meaning and the Penalty Notices therefore stand.

Summary

127. We find that the Regulation 80 Determinations were properly made to best of judgement.

128. The basis of computation was reasonable and has not been shown to be unreasonable.

129. No fire has been shown on the balance of probabilities to have delayed the start of business on the Leicester site.

130. It has not been shown that no tax was due as earnings of the people on site was under the lower earnings limit and they each had only one job which was with the Taxpayer.

131. Nothing else has been shown that would disturb the Regulation 80 Determinations which were properly made to best of judgement.

132. No reasonable excuse having been shown by the Taxpayer the Penalty Notices stand.

Conclusion

133. We have found that:

(1) The Regulation 80 Determinations were properly made ;

(2) The Penalty Notices were properly imposed and must stand as no reasonable excuse within the statutory meaning has been shown by the Taxpayer, the onus being on the Taxpayer.

134. Consequently, the appeal is dismissed.

135. 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.

ADRIAN SHIPWRIGHT
TRIBUNAL JUDGE

RELEASE DATE: 14 January 2014