[2015] UKFTT 0249 (TC)

TC04443

Appeal number: TC/2014/01237

Income tax- whether termination payment fell within s 406 ITEPA as made on account of disability. Capital gains tax- whether deductions available under s38(1)(a) or (b) TCGA in calculating gain on sale of shares for certain expenditure on business assets and on meeting bad debts- whether loss available. Penalty under s 95 TMA- whether negligent.

FIRST-TIER TRIBUNAL
TAX CHAMBER

DR AG FLUTTER — **Appellant**

- and -

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

TRIBUNAL: JUDGE SARAH FALK
IAN MENZIES-CONACHER

Sitting in public at The Royal Courts of Justice, Strand, London on 6 May 2015

Carl Fender for the appellant

Graham Conway, Officer of HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. This is an appeal by the appellant against amendments to his self assessment tax return for the year 2007-08, and against a penalty imposed for negligence in completing the return.

2. The issues in dispute relate to the sale of shares in NC Graphics (Cambridge) Limited ("NCG Ltd"), a company formed by the appellant and majority owned by him at the time of sale, to a subsidiary of a US corporation, Parametric Technology Corporation Inc ("PTC"), and to the subsequent termination of the appellant's employment contract with PTC's UK subsidiary Parametric Technology (UK) Limited ("PTC UK"). In summary:

> (a) The appellant contends that part of the amount received following termination of his employment is exempt from tax pursuant to s 406 Income Tax (Earnings and Pensions) Act 2003 ("ITEPA").
>
> (b) The appellant claims certain disputed deductions in computing the capital gain on the sale of his shares and/or an offsetting allowable loss. A number of different deductions were initially claimed, reflecting the fact that as part of the preparations for sale the appellant undertook a number of steps at his own cost. Shortly before the hearing some of the claims were dropped and at the date of the hearing only two matters remained in dispute. First, the appellant claimed that he had incurred expenditure on certain business assets that he had transferred to NCG Ltd at or shortly before the time of sale, and should be entitled either to an additional deduction in computing the gain on the sale of his shares for the cost of those assets, or a capital loss on their disposal to the company. Secondly, he claimed a deduction in computing the gain on the sale of the shares for the costs he had incurred in clearing some of the company's own debts, as he felt obliged to do by reference to warranties included in the terms of sale.
>
> (c) The appellant also claims that HMRC wrongly imposed a penalty for negligence for failing to take account of a previous rollover claim in calculating the allowable cost of his NCG Ltd shares.

3. The three issues raised are fairly distinct, so after making some comments on the general background we have dealt with our findings in relation to each in turn.

4. A preliminary procedural point should be mentioned. The Tribunal was concerned that the appellant's hearing loss could prevent his full participation in the proceedings. However, the appellant confirmed through his Counsel that this was not the case, and that he would indicate if he had difficulty at any point. No such difficulty was indicated during the course of the proceedings.

Evidence

5. Documentary evidence provided included:

(1) the appellant's 2007-08 tax return and certain other tax return information, including evidence of a previous rollover claim,

(2) correspondence between the parties including the closure notice and conclusions of the review that followed it,

(3) documentation in relation to the sale of NCG Ltd, the appellant's employment with PTC UK and its subsequent termination, including the Sale and Purchase Agreement, contract of employment, Compromise Agreement, payroll information and certain notes compiled by the appellant around the time of these events, and

(4) correspondence between HMRC and PTC UK in the form of a third party information notice dated 13 February 2013 and PTC UK's response dated 21 March 2013.

We also had the appellant's grounds for appeal and statements of case and skeleton arguments for each party.

6. The appellant provided a witness statement and was cross examined by Mr Conway. He also answered a number of questions from the Tribunal. We found the appellant to be an honest witness, and to the extent that his evidence comprised matters of fact rather than opinion or legal conclusion we accepted it, except for some details where the appellant's recollection may have been incomplete and other evidence was available to clarify the position.

Findings of fact: general background

7. The appellant started his own business, NC Graphics, as a sole trader in the 1970s, developing and selling systems of computer aided design and manufacture that he had originally designed whilst studying and working at Cambridge University. In 1984 the appellant formed NCG Ltd with another individual, but became the sole shareholder in 1987. Initially the unincorporated business remained active, with its own VAT registration and payroll, but by 1989 at the latest all the royalties from the business were received by NCG Ltd and the appellant's personal tax returns showed only employment income rather than income from self-employment. The separate payroll and VAT registrations also ceased.

8. The business was carried on at premises in Cambridge owned by the appellant. At the time of the sale in 2007 there was a formal lease of the premises to NCG Ltd which continued for a period following the sale. Capital required for the business was also provided by the appellant, largely funded by bank loans made to the appellant personally. At the time of the sale the outstanding loans totalled £556,000. Capital expenditure included amounts required to construct workshops, purchase machinery and equipment and provide seed capital to overseas agents.

9. In the years leading up to the sale interest payable on the bank loans was reimbursed to the appellant by NCG Ltd, as a form of “rent” for use of the property. The appellant’s claim to deduct the interest for personal tax purposes was the subject of a separate enquiry which settled in his favour. Although the appellant claimed that this showed he was still carrying on the unincorporated business, we find that interest relief was agreed on the basis that it was offset against income of a property business. HMRC confirmed this at the hearing and it is consistent with the contents of the appellant’s 2007-08 return.

10. NCG Ltd was wholly owned by the appellant between 1987 and 1992, but thereafter shares were acquired by certain other employees (also funded by loans from the appellant). By the date of the sale in 2007 the appellant owned just under 70% of the shares (590 out of a total of 845).

11. In 1987 the appellant was diagnosed with Menieres disease, which ultimately led to significant permanent hearing loss in both ears. Whilst the appellant continued to be able to participate fully in the business his hearing loss made phone calls (as opposed to face to face interactions) difficult.

12. In August 2006 the appellant received an offer from PTC to buy the business for \$5m, an offer subsequently increased to \$7m. The appellant decided to sell since he was approaching 60, he believed the offer to be a good one, it might be hard to find another good offer when he retired and he wished to repay the loans which were secured against his properties.

13. Preparations for the sale and discussions with PTC took some months. They culminated in a sale and purchase agreement dated 2 May 2007 under which all the shares in NCG Ltd were sold to a Dutch subsidiary of PTC, Parametric Technology Europe BV. Completion occurred on the same date as the agreement.

Findings of fact: employment issue

Employment with PTC

14. Under the terms of sale, the appellant and certain other employees entered into employment contracts with lengthy notice periods with PTC UK. The appellant’s contract, entered into on the same date as the sale, was the longest with what was initially an 18 month notice period, reducing by one month each month down to three months after 15 months. Certain other employees had similar arrangements although the initial notice periods were shorter.

15. The appellant’s role was to act as Vice President (“VP”) in relation to NCG Ltd’s product, reporting to a Senior Vice President of the group based in the US, Michael Brook. PTC had indicated to the appellant that it would “rely on your leadership as a critical member of PTC’s manufacturing team”.

16. PTC UK was based in Hampshire at an office the appellant never visited. The appellant explained that reporting lines were organised on a group basis. PTC set up

local subsidiaries such as PTC UK largely to manage payroll. PTC UK's staff mainly worked in HR with a few working in accounting.

17. During the first few weeks after the sale the appellant took up his new role. However, it soon became apparent that things were not going well. PTC employed large numbers of staff in India and Israel at a significantly lower cost than in the UK, and wished to use non UK teams for at least some of the work. Mr Brook also had weekly communications with VPs by conference call. Any aspects of the role that involved increased telephonic communication were problematic. The appellant had never previously had to supervise non-UK based staff. Previously he had been able to supervise his staff face to face in Cambridge.

18. It is clear from the appellant's evidence that his hearing disability was causing difficulties and that the overseas travel the appellant undertook to meet Mr Brook and others in person was proving expensive and unsatisfactory.

19. The appellant's notes of a series of meetings with Mr Brook in June 2007 indicate his fears and the impression he gained that Mr Brook's plan may be to ask one of his other VPs to manage the team in place of the appellant (which in fact occurred). The notes- which the appellant confirmed were written in the nature of a personal diary, put together relatively contemporaneously from his manuscript notes- record his own thoughts that it was possible that his hearing disability could be the underlying reason, because his difficulty participating in calls might make it impossible to perform his VP role in a US based group. However, they also record his concerns that Mr Brook seemed uninterested in the rest of the Cambridge based staff who could be replaced more cheaply elsewhere, and that what NCG had really bought was the software: the staff were dispensable and there seemed to be no real on-going plans for NCG. They also indicate the appellant's impression that Mr Brook "suggested nothing that comprises a VP's job" for the appellant, a suggestion of personality issues and an indication from Mr Brook that PTC would pay compensation if any of the team (including the appellant) became redundant. The notes go on to say that Mr Brook seemed to make a point of saying that the appellant would be compensated "considering all the circumstances", which the appellant noted was cryptic but might refer to his hearing difficulty or to the plan to move development to Israel or India. He was also told that there was no need for him to participate in the weekly conference calls.

20. Further meetings and calls occurred over a few days in late July and early August. The appellant's diary notes for these record an announcement on the PTC intranet that the US board had set aside a further $500,000 for the NCG acquisition, and speculation that this was for redundancies. They also record that Ms Debi Myland, HR director at PTC UK, met the appellant on Friday 27 July together with another individual from HR and said that he would be getting a call from Mr Brook.

Termination of employment

21. Also on 27 July, Mr Brook phoned and told the appellant that his employment was being terminated. The appellant's notes state that Mr Brook "passes on the now

obvious news that I am being made redundant" and that he also referred to a corporate decision to cut costs (which the appellant thought incorrect in view of his fixed contract, although Ms Myland explained it in terms of compensation being from a different budget to payroll). The notes go on to record that PTC would be arranging a generous compensation package and that this "will be enhanced because of my hearing disability".

22. HMRC produced a copy of a letter they had obtained from PTC UK to the appellant. This letter was also dated 27 July and was from Ms Myland. The letter is in terms of confirming a prior conversation that the appellant's role was being considered for redundancy, since the company had to reduce expense and might no longer need a VP role to support the development team at NCG. It also indicated that they had considered alternative employment but had not identified anything suitable.

23. The appellant stated in evidence that he did not believe he had received this letter. We are prepared to accept this but find that the letter was written by PTC UK at the time, even if not received.

24. The same set of notes describe how the appellant was expected to vacate his office on the following Tuesday (31 July), his belief that he was being unlawfully dismissed rather than made redundant and being told by another PTC staff member that "PTC did this all the time".

25. Further meetings then occurred to discuss a draft Compromise Agreement between PTC UK and the appellant. Representing PTC UK were Ms Myland and an in house lawyer (also based at PTC UK's Hampshire office) Mr Dunn, with whom the appellant had also dealt at the time of the acquisition. The appellant was represented at these meetings by a lawyer paid for by PTC, and also briefly took separate advice from a lawyer at another firm. The advice was consistent from both: he had been unfairly dismissed but the compensation package was generous and he should sign. The reference to redundancy in the agreement could be read in a generic way. The appellant said he also challenged the PTC UK representatives on the question of redundancy, but they would not change their approach. His legal advice was that they would not be prepared to change the wording because that could expose PTC UK to unlimited damages for discrimination.

The Compromise Agreement

26. The Compromise Agreement was finally signed on 24 September 2007. It recites that the appellant's employment was terminated by redundancy on 2 August. The operative provisions state that its terms are in full and final settlement of all employment related claims, "including" a long list of items such as pay in lieu of notice, redundancy, breach of contract, unfair dismissal and any complaint under discrimination or employment legislation. The specific legislation referred to included the Disability Discrimination Act 1995 as well as race relations, harassment and sex discrimination legislation.

27. The Compromise Agreement provided for the following payments:

(1) all sums owed up to the termination date;

(2) £116,350 in lieu of 15 months' notice;

(3) amounts reflecting the fact that the appellant would have been entitled to receive bonuses under the PTC UK's Management Incentive Plan for the financial years 2007 and 2008 up to a maximum of £12,833 and £30,800 respectively;

(4) £9,145 "statutory redundancy"; and

(5) £83,451 "compensation for loss of employment".

28. The dispute relates to items (3), (4) and (5). The appellant claims that all these amounts were paid to him on account of his hearing disability. However, he also gave evidence that he thought that personnel at PTC UK (which would have included both Ms Myland and Mr Dunn) were probably not aware of his disability, and he did not choose to highlight its existence.

29. All the amounts due under the Compromise Agreement were payable within seven days, except for item (3). The amounts in item (3) were stated to be payable before 30 November 2007, although in the case of the 2008 amount we think this is an error and was intended to refer to November 2008 (when payment in fact occurred). One issue was whether these bonus related amounts were payable pursuant to the terms of the appellant's employment contract and taxable on that basis. This is discussed below but we find that the contract expressly referred to there being no right to receive payment under any particular version of the incentive plan, payments being conditional on PTC meeting its targets and individual performance goals being met, with the company have the right to change the terms of the incentive plan at any time. (No evidence was provided as to the terms of the plan itself.) In the event £11,511 was paid on 30 November 2007 (slightly less than the maximum) and £30,800 in November 2008. The second of these payments falls into the 2008-09 tax year and so cannot be the subject of this appeal.

30. During the course of the enquiry HMRC served a third party information notice on PTC UK pursuant to paragraph 2 Schedule 36 Finance Act 2008. They produced a copy of a letter from Ms Myland setting out the information requested and enclosing copies of additional documents. This letter, dated 21 March 2013, clearly states that the payments were made on redundancy and also expressly confirms that none of the payments were made in respect of disability. It confirmed that the appellant was initially regarded as a critical part of the organisation but matters changed and there was a decision that his VP role was no longer required. Other redundancies were also carried out within the wider business.

31. Ms Myland's letter describes how each of the payments was calculated. In particular, it stated that the statutory redundancy amount was calculated using guidelines available at the time. In relation to the compensation for loss of office it stated that it was "the company's practice to compensate employees terminated in such situations by recognising length of service and actual salary of the individual". This payment was calculated by reference to (a) a formula that topped up the statutory redundancy amount by reference to actual salary (resulting in an amount of £41,913)

and (b) added a service payment of one week per year of service (£41,538 in this case). For these purposes the appellant had 24 years of service. The letter indicates that the appellant was entitled to certain bonus payments if targets were met, that the targets were met and payments made. (There is a slight discrepancy in that the amount of the first bonus payment made is stated in Ms Myland's letter to be £12,833 whereas in both the attachment to the letter and the relevant payslip the actual payment is shown as £11,511, the explanation in the attachment being that 90% of the target was met.)

32. The reference to 24 years' service is explained by the inclusion of the appellant's period of employment with NCG Ltd, which is recorded in his employment contract with PTC UK as part of his continuous employment.

33. We heard no direct evidence from anyone at PTC UK. In response to a question, the appellant's gave evidence that following his termination it would have been difficult for him to request any assistance from PTC UK to support his submission that payments were in fact made on account of disability. He had started another business that was operating in the same area which made any approach difficult.

Other Cambridge based employees

34. Whilst the appellant's employment contract was the first to be terminated, others followed starting in spring 2008, and within around a year or so the Cambridge operation was shut down. The appellant's evidence, which we accept, was that redundancy procedures were followed in other cases (in contrast, he believed, to his own). The individuals involved included the appellant's own son. In that case the procedures included trying to find another job for him within PTC. The appellant also confirmed that he was aware that his son had received a redundancy payment calculated using the same formula is that described in Ms Myland's letter to HMRC. But he commented that he was sure that no employee apart from himself had received a six figure sum.

Employment issue: the legislation

35. Chapter 3 of Part 6 of ITEPA deals with payments on termination of employment. At the relevant time section 401(1) to (3) provided as follows:

> "(1) This Chapter applies to payments and other benefits which are received directly or indirectly in consideration or in consequence of, or otherwise in connection with-
>
> (*a*) the termination of a person's employment,
>
> (*b*) a change in the duties of a person's employment, or
>
> (*c*) a change in the earnings from a person's employment,
>
> by the person, or the person's spouse or civil partner, blood relative, dependant or personal representatives.
>
> (2) Subsection (1) is subject to subsection (3) and sections 405 to 413 (exceptions for certain payments and benefits).

> (3) This Chapter does not apply to any payment or other benefit chargeable to income tax apart from this Chapter."

36. Section 403 (1),(2) and (4) provide:

> "(1) The amount of a payment or benefit to which this Chapter applies counts as employment income of the employee or former employee for the relevant tax year if and to the extent that it exceeds the £30,000 threshold.
>
> (2) In this section "the relevant tax year" means the tax year in which the payment or other benefit is received.
>
> ….
>
> (4) For the purposes of this Chapter the amount of a payment or benefit in respect of an employee or former employee exceeds the £30,000 threshold if and to the extent that, when it is aggregated with other such payments or benefits to which this Chapter applies, it exceeds £30,000…"

37. Section 406 provides:

> "This Chapter does not apply to a payment or other benefit provided-
>
> (a) in connection with the termination of employment by the death of an employee, or
>
> (b) on account of injury to, or disability of, an employee."

Employment issue: discussion

Chapter 3 Part 6 ITEPA

38. As already indicated, there was no dispute about the tax treatment of items (1) and (2) referred to at [27] above. The dispute related to items (3), (4) and (5), namely the bonus related amounts, the "statutory redundancy" and the compensation payment. The appellant maintained that each of these was exempt from tax under s 406 ITEPA. HMRC argued that none of them were and that they were fully taxable subject only to the £30,000 threshold.

39. In order for s 406 to come into play, it is first necessary to conclude that the amount in question falls within Chapter 3 of Part 6. This is determined by s 401. Section 401(1) is in very broad terms (see in particular the reference to "in connection with") and there can be no doubt that it is wide enough to apply to the payments made in this case unless taken out by one of the exceptions.

40. One of the exceptions is s 401(3), which disapplies Chapter 3 if an amount is chargeable to income tax apart from that Chapter. HMRC argued that this applied to the bonus amount in dispute of £11,511 on the basis that the appellant had a contractual right to the bonus payments under his contract of employment and therefore that they were taxable as general earnings under Part 3 ITEPA. Although we do not think it makes a difference to the outcome of this case in terms of the overall tax payable, we do not agree with HMRC's argument on this point. Our reading of the

appellant's employment contract and the Compromise Agreement do not indicate a clear contractual right under the contract of employment to participate in the bonus scheme at all, and still less following termination of employment. There is certainly no suggestion that any entitlement to bonuses would continue even if the appellant had left his employment, in contrast to the express contractual provision for pay in lieu of notice. The drafting of the Compromise Agreement is unclear but overall it is consistent with there being no contractual right to the payments under the appellant's employment contract, rather the effect of the Compromise Agreement was to confer an entitlement to the bonuses that the appellant would have received if he had remained in employment and PTC met its targets. PTC UK effectively agreed to continue to apply the bonus arrangement despite the termination, as if the appellant had continued to be employed for the remainder of his notice period.

41. In contrast, it is clear that items (1) and (2) at [27] above were paid under the terms of the appellant's employment contract, and are taxable on that basis. There was no dispute about this.

42. Apart from s 406, there was no suggestion that any other exception to s 401 was relevant. Accordingly, we conclude that s 401 applies in principle to amounts (3), (4) and (5), subject only to s 406.

Section 406

43. The test in what is now s 406 ITEPA was explained by Mr Justice Lightman in *Horner v Hasted* 67 TC 439 at page 485 in the following terms:

> "It is clear from the language … that for the exemption to be available it must be established: (1) that the disability alleged by an employee is a relevant disability, that is to say, a total or partial impairment (which may arise from physical, mental or psychological causes) of his ability to perform the functions or duties of his employment, and (2) that the person making the payment does so not merely in connection with the termination of employment (compare the language of the exemption of payment made on the death of an employee) but on account of the disability of the employee. In short, there must be established as an objective fact a relevant disability and as a subjective fact that the disability is the motive for payment by the person making it."

44. No other cases were cited to the Tribunal and both parties accepted Lightman J's description of the test to apply. We note that there has in fact been some more recent discussion of the test both in the Employment Appeal Tribunal and the Tax Chamber of this tribunal, but that discussion focussed on whether there was an injury for s 406 purposes in the case of injury to feelings, which is not in question in this case (*Timothy James Consulting v Wilton* [2015] UKEAT 0082 140503; *Moorthy v HMRC* [2014] UKFTT 834 (TC)).

45. HMRC accepted, and we have no doubt, that the appellant's hearing loss constitutes a disability for s 406 purposes. The sole question is whether the amounts in question were paid "on account of" that disability.

46. The appellant's case can be summarised as follows:

(a) He did not believe that he was made redundant: as far as he was concerned the proper procedure had not been followed and this was not a redundancy.

(b) He was terminated when he was because his hearing difficulty made it difficult or impossible to perform his role at PTC, in particular given the significance of conference calls to the VP role.

(c) Mr Brook, the person he reported to and had all material dealings with, had informed him that his termination package would be enhanced due to his hearing disability; Mr Brook's motive was the critical one.

(d) The appellant had discussed his medical condition with management at PTC and believed the US board therefore became aware of it; Mr Brook also said at the time of termination that he would discuss it with US colleagues and the appellant linked this to his understanding that the US board had set aside a further $500,000 in respect of the acquisition.

(e) If it was a redundancy then there was no need to pay more than the statutory amount.

(f) The bonuses were not merited: bonuses were only paid to employees who achieved specific performance targets, which he had not, and he did not think he was participating in a bonus scheme.

(g) The expression "compensation for loss of employment" was generic and not inconsistent with adding "…arising from hearing disability".

(h) PTC UK was not prepared to admit that the payments were on account of disability because, although there would have been no legal risk in confirming the position well after the date the Compromise Agreement was signed, PTC UK would still have reputational concerns in accepting that his termination had anything to do with disability.

(i) No one else was terminated at the same time and, when they were, their termination packages were much less generous.

47. We did not hear any detailed argument about whether the appellant's termination of employment constituted redundancy as a matter of law. It certainly does appear that the procedures normally associated with redundancy as understood under English law may not have been followed. It is also not clear whether the appellant's position was actually redundant in legal terms (the appellant considered it was not because he was replaced by another VP, although we heard no evidence as to whether that VP simply added to his existing responsibilities). However, we do not think it necessary to decide whether there was a redundancy as a matter of law, and neither party argued otherwise.

48. We also do not think it strictly necessary to decide whether the appellant's hearing loss triggered the termination. However, in case that is considered relevant in any appeal, our conclusion is that it is more likely than not that it was at least a significant contributory factor to the timing of termination. The appellant's oral

evidence and his notes of meetings do indicate that it quickly became apparent that the appellant's disability was problematic given the way PTC used conference calls and was also looking at moving work to Israel or India. It is not clear however that it was the only factor, and indeed there are suggestions in the appellant's own notes to this effect.

49. Ultimately, however, the cause of the termination and whether there was a redundancy are not the tests we need to apply. As Lightman J made clear in *Horner*, we must consider the subjective motive for the payment by the person making it.

50. The appellant's employer, and the person making the payment, was PTC UK. We must therefore determine PTC UK's motive. Applying that test, we cannot see any basis on which we can conclude that the appellant has discharged the burden of proof in showing that the payments in question were on account of disability. On the contrary the evidence available indicates that they were not. In particular:

(a) Although we accept that the appellant's meeting notes show at one point that Mr Brook indicated that the payment would be enhanced due to disability, there are no other references to it, the other conversation about compensation not mentioning it and (as the appellant accepted) being rather cryptic.

(b) Even if disability was mentioned by Mr Brook in one conversation, he (and indeed PTC) was not the appellant's employer. PTC UK was, and was represented by senior employees, Ms Myland and Mr Dunn, in negotiating the Compromise Agreement. We have no evidence as to what went on between Mr Brook's last phone call and the Compromise Agreement being tabled, but whatever did there seems to have been no further mention of the appellant's disability.

(c) Most significantly, PTC UK has responded to a formal third party notice from HMRC. The notice explains on its face that penalties can apply if there is an inaccurate response and we have no doubt that PTC UK would have taken this into account in preparing its reply. Ms Myland's letter of 21 March 2013 clearly sets out that the payments were made on the appellant's redundancy and that none of the payments was made in respect of disability.

(d) Furthermore, each amount paid pursuant to the Compromise Agreement was clearly explained in Ms Myland's letter to HMRC. It is perfectly apparent that, even if there was no redundancy as a legal matter, PTC UK was proceeding on the basis that there was and was paying precisely the amounts it would pay on an actual redundancy, both as statutory redundancy pay and under the company's normal severance arrangements.

(e) The position in relation to the bonus payments is slightly less clear. However, the bonus amounts and payment dates are also clearly derived from the terms of the incentive plan and the company's performance. The fact that the appellant would not have received them if targets had not been met suggests that they were not paid on account of disability. In addition, Ms Myland's letter to HMRC states that the appellant was entitled to certain bonus amounts if the company met its targets. We conclude from this that the company was proceeding on the basis that there was a contractual entitlement and that was the motive for the payments. In any event, as noted above the letter makes clear that none of the payments were made in respect of disability.

(f) The appellant's own evidence confirmed that at least one other Cambridge based employee received compensation calculated in a similar way on their redundancy. Although no other employee received a six figure sum that is readily explained by the fact that terminations occurred later, so that payments in lieu of longer notice periods put in place at the time of the sale would have been lower as those notice periods reduced. It is also likely that other employees had lower salaries, and quite possibly fewer years' service.

51. We note that the appellant's evidence that personnel at PTC UK were probably not aware of his hearing disability. We have not relied on this in reaching our conclusion but note that if it were correct it would clearly be impossible for PTC UK to have a motive of paying an amount on account of that disability.

Capital gains tax ("CGT") issues: findings of fact

52. We have set out the relevant background in our findings on the employment income issue at [7] to [13] above.

The SPA

53. Under the sale and purchase agreement ("SPA") dated 2 May 2007, the appellant and the other shareholders agreed to sell all the issued shares in NCG Ltd. The aggregate consideration was £3,490,053 and was apportioned pro rata among the shares sold.

54. The vendors each gave a substantial number of warranties. These included various warranties in relation to bad or doubtful debts, one of which provided that no debt which had arisen in the ordinary course of business was overdue by more than eight weeks and that so far as the vendors were aware such debts (less the amount of any provision) would be recoverable in full in the ordinary course of business, and in any event no later than eight weeks after completion.

55. Other warranties included a warranty that NCG Ltd had good title to the assets included in its accounts, and warranties that it had not acquired or disposed of assets since its last accounts date (31 December 2006).

56. In addition, clause 11 of the SPA provided as follows:

> "To the extent that a Vendor owns or has an interest in any asset used wholly or materially in or for the purposes of the Business, that Vendor

> shall to the extent that it is lawfully able so to do promptly and in any event within 7 days of receipt of written demand so to do from the Purchaser transfer to [NCG Ltd] at no cost such asset or his interest therein. For the avoidance of doubt this provision does not apply to [the appellant's] interest in a)…,b)… or c) the freehold interest of [the property where the business was carried on]."

57. As previously mentioned, the appellant incurred a number of costs in connection with preparations for the sale. These included costs involved in closing non UK operations, legal costs in arranging for a buyback of shares held by two dissident shareholders, and the cost of meeting certain debts owed to NCG Ltd. The appellant also maintained, though this was disputed by HMRC, that he had transferred certain IP and valuable business assets to NCG Ltd prior to the sale. A number of the arguments raised and included in the skeleton arguments were not pursued at the hearing, and the only capital gains issues remaining at that time related to the business assets and the debts met by the appellant.

58. There was no dispute that, despite the additional costs incurred by the appellant personally, each shareholder received the same amount per share on the sale. Although the appellant was not the sole shareholder it was clear from the appellant's evidence that he led the process on the seller side that led to the sale. He regarded the minority shareholders who also benefitted from the sale as employee shareholders whose investments he had funded by loans which were repaid after the sale: in his view he had effectively given them the shares and the proceeds they received reflected their contribution to the business. The correspondence also suggests that the other shareholders were unwilling to proceed if PTC ended up paying less than $7m. Viewed this way, there was nothing odd from the appellant's perspective in incurring costs on his own account in preparing for the sale, even though other shareholders might be seen to benefit.

The business assets

59. In computing the capital gain on the sale of his NCG Ltd shares the appellant claimed deductions in respect of the costs of certain business assets that he said he had purchased for business purposes. At the hearing the specific items remaining in dispute were as follows:

Description	**The appellant's claim (£)**	**Category (see below)**
Installation (half)/removal of air conditioning	25,000	a
Installation (half)/removal of security systems	10,000	a
Machine shop	20,000	a
Workshops	20,000	a
Pre-fab garages for pool vehicles	8,500	a
Disabled facilities	7,000	a

(lavatory, fire doors etc)		
Temporary storeroom	12,000	a
Furnishings to 15 offices @£5,000 each	75,000	b
4 fire-safe cabinets @£500	2,000	b
2-ton manual arch press	200	b
Compressor	2,000	b
Mechanical digitiser	14,000	b
Various other equipment and tools	1,000	b
DMG 5-axis machine tool	110,000	b
Total	**306,700**	

60. The appellant claimed that he had incurred the relevant expenditure on both these and other items, in many (but not all) cases funded by bank loans made to him personally. He also claimed that he had transferred the items listed above to the company for no consideration, although he estimated their value to be £100,000 at the time of the sale. He referred to clause 11 of the SPA as the basis for the transfer (see [56] above). The precise date of the transfer that the appellant claimed had occurred was not clear. His Statement of Case specified 30 April 2007 but correspondence with HMRC during the enquiry suggested the date of the sale, 2 May.

61. We find as facts that the appellant had personally incurred expenditure in connection with the acquisition of various business assets, and that this expenditure was at least partly funded by loans made to the appellant. This method of funding was the approach the appellant initially adopted before the business was incorporated, and he continued with that approach following incorporation. However we do not accept that the appellant has discharged the evidential burden of showing, on a balance of probabilities, that he transferred any business assets to NCG Ltd at or around the time of sale. The reasons for this are as follows:

(1) No assignment documentation, or any documentation at all, has been produced to indicate that any assets were transferred. Indeed in his evidence the appellant confirmed that there had been no such documentation.

(2) HMRC's argument that NCG Ltd's accounts showed no additions to reflect the transfer of any business assets to it was not challenged or disputed.

(3) Clause 11 of the SPA is very much in the nature of a "further assurance" clause, intended to cover unexpected omissions from the company's assets. Bearing in mind that completion was to occur immediately, it is also worded on the basis of transfers being made following the sale if it then appeared that assets were held outside the company, rather than as the appellant argued a condition of the sale occurring. If significant business assets were to be transferred as part of the sale we would have expected to see a more specific provision. In addition, the existence of warranties to the effect that assets had not been acquired since the accounts date also suggests that assets were not

transferred either shortly before or indeed at the time of the sale when the warranties were given.

(4) The appellant also placed reliance on the fact that, following an enquiry, HMRC had allowed his claim for interest relief on his business loans, and that this demonstrated that he was effectively still running part of his previous sole trader business by holding some of the business assets, although the unincorporated business was otherwise inactive. However, interest relief was in fact allowed on the basis that it was offset against rental income received on the property the appellant owned and leased to NCG Ltd. In any event it is difficult to see how the point is relevant to the matter in question since it would not prove that the appellant owned the assets and transferred them.

(5) All items marked as category a on the list above are in the nature of property improvements or alterations (including in some cases the cost of removing previous alterations). The appellant would have owned these items by virtue of being the freehold owner of the property, and absent physical separation from the property would not have been in a position to transfer them to NCG Ltd. Indeed, the appellant confirmed in evidence that these items generally remained in place at the property when the PTC group vacated it a year or so after the sale. As well as the workshops, machine shop and garages listed (which were prefabricated units) this included most of the air conditioning.

(6) Whilst the appellant claimed in cross examination that he was the "beneficial owner" of the assets, he accepted that some of the assets marked as category b on the list were included in NCG Ltd's books so that it could reclaim VAT and claim capital allowances- which would indicate both that those assets were supplied to NCG Ltd and that it and not the appellant was the real owner. In particular, HMRC produced previous correspondence from the appellant specifically stating that the final item on the list was owned by NCG Ltd and reflected in its accounts as plant and machinery. Other correspondence also confirms that capital allowances were claimed by NCG Ltd on some of the assets. And the appellant accepted that whilst in the first few years after incorporating NCG Ltd he had continued also to operate NCG as an unincorporated business, by 1989 he no longer maintained a separate asset register (or separate payroll or VAT returns) for the unincorporated business.

62. We have considered, although it was not argued, whether any of the business assets in category b in the list above could have been transferred to the company by the appellant at an earlier date. We heard no evidence of what assets were held in NCG Ltd's books or how they were funded. However, we consider it more likely than not that any assets in category b acquired before NCG was incorporated, or after that time but during the period when the appellant was maintaining separate VAT registrations and asset registers, were purchased by the appellant personally and contributed to NCG Ltd at a later date prior to the sale. Once a separate VAT registration was no longer maintained for the unincorporated business and the appellant was no longer recording income from self-employment, and bearing in mind that we do not think the appellant was arguing that NCG Ltd had made incorrect returns, it is more likely than not that the assets were supplied to and/or or expenditure

was incurred directly by NCG Ltd. This is consistent with a comment the appellant made in correspondence with HMRC to the effect that where NCG Ltd could claim capital allowances "it usually assumed ownership". Where the appellant took on personal loans to fund the expenditure or otherwise provided funding himself the effect must have been in the nature of a capital contribution by the appellant to the company, since it seems that no debt was recorded in the company's books and no shares were issued.

The bad debts

63. It is not in dispute that, at some point prior to the sale, the appellant incurred expenditure of £231,546 in making a payment to NCG Ltd to clear certain unpaid debts. The appellant's evidence, which we accept, was that the payment was made to enable him to sign the SPA, containing as it did various warranties about the company's debts and in particular the warranty referred to at [54] above. The appellant had gone through the company's books and identified all significant debts which had been outstanding for at least eight weeks, and where he thought they would not be paid he had paid them off to the company himself.

64. We accepted the appellant's explanation that he was unwilling to sign an SPA that contained an untrue statement, that PTC's increased offer of $7m had been made on the basis that there were no issues of concern, and that the amounts in question had not been shown as bad debts in the December 2006 accounts. For these reasons the appellant did not regard inclusion of disclosure against the relevant warranty as an option, and he was also having difficulties in getting the minority shareholders to accept they should give warranties: any risk of a real warranty claim would have caused additional difficulties at a time when he was trying to get their co-operation.

CGT issue: the legislation

65. Section 38(1) and (2) Taxation of Chargeable Gains Act 1992 ("TCGA") provides:

> "(1) Except as otherwise expressly provided, the sums allowable as a deduction from the consideration in the computation of the gain accruing to a person on the disposal of an asset shall be restricted to-
>
> (a) the amount or value of the consideration, in money or money's worth, given by him or on his behalf wholly and exclusively for the acquisition of the asset, together with the incidental costs to him of the acquisition or, if the asset was not acquired by him, any expenditure wholly and exclusively incurred by him in providing the asset,
>
> (b) the amount of any expenditure wholly and exclusively incurred on the asset by him or on his behalf for the purpose of enhancing the value of the asset, being expenditure reflected in the state or nature of the asset at the time of the disposal, and any expenditure wholly and exclusively incurred by him in establishing, preserving or defending his title to, or to a right over, the asset,
>
> (c) the incidental costs to him of making the disposal.

(2) For the purposes of this section and for the purposes of all other provisions of this Act, the incidental costs to the person making the disposal of the acquisition of the asset or of its disposal shall consist of expenditure wholly and exclusively incurred by him for the purposes of the acquisition or, as the case may be, the disposal, being fees, commission or remuneration paid for the professional services of any surveyor or valuer, or auctioneer, or accountant, or agent or legal adviser and costs of transfer or conveyance (including stamp duty or stamp duty land tax) together-

(a) in the case of the acquisition of an asset, with costs of advertising to find a seller, and

(b) in the case of a disposal, with costs of advertising to find a buyer and costs reasonably incurred in making any valuation or apportionment required for the purposes of the computation of the gain, including in particular expenses reasonably incurred in ascertaining market value where required by this Act."

66. Section 262(1) and (3) TCGA provide as follows:

"(1) Subject to this section a gain accruing on a disposal of an asset which is tangible movable property shall not be a chargeable gain if the amount or value of the consideration for the disposal does not exceed £6,000.

(3) Subsections (1) … above shall not affect the amount of an allowable loss accruing on the disposal of an asset, but for the purposes of computing under this Act the amount of a loss accruing on the disposal of tangible movable property the consideration for the disposal shall, if less than £6,000, be deemed to be £6,000 and the losses which are allowable losses shall be restricted accordingly."

67. We were also referred to section 45 TCGA. Section 45 contains an exemption from CGT for assets that are tangible movable property and wasting assets, subject to certain carve outs for assets that have qualified for capital allowances. Section 44 essentially defines a wasting asset as one with a predictable life not exceeding 50 years, and deems plant and machinery to satisfy this test.

CGT issue: discussion

68. It is worth making a preliminary point. As explained above, we have no doubt that the appellant did incur significant expenditure both in relation to the business assets and bad debts, and indeed in relation to other matters for which deductions were originally claimed in his CGT computation. However, we have to apply the law. Section 38 only allows limited categories of expenditure. In addition, various other provisions, including specific rules for tangible movable property, can restrict or prevent a loss being claimed even though, in fact, a loss may have arisen. It is also often the case that, if matters had been organised another way, the result would have been different. However, we have to apply the law to what actually happened.

Business assets- the arguments raised

69. At the hearing the appellant's argument in relation to the business assets focussed on s 38(1)(a) and (b) TCGA. Prior to the hearing the appellant had also pursued a different argument to the effect that part of the sale price for the shares should be apportioned to the business assets, and a further part to intellectual property that was transferred to NCG Ltd at the time of the sale.

70. None of the apportionment related arguments were pursued at the hearing, but in view of their potential relevance to the analysis that we do need to consider we should briefly explain that we do not accept them. The SPA is very clear: the appellant and the other shareholders sold shares and the entire consideration was paid for the shares. We do not see any basis to conclude that the purchaser paid any part of the consideration in exchange for the appellant transferring assets to NCG Ltd. The situation is very different to that considered by the House of Lords in *Aberdeen Construction Group Ltd v Commissioners of Inland Revenue* 52 TC 281, where it was found that the consideration was paid both for shares and for something else, in that case the waiver of a loan the seller had made to the company. See also *EV Booth v Buckwell* 53 TC 425 where the High Court refused to permit a reallocation of consideration for tax purposes where the original allocation had been contractually agreed. We also do not accept the argument made that s 17 TCGA (deemed market value consideration for certain non-arm's length transactions) could assist the appellant. On the contrary, that provision could only have the effect of increasing the overall amount the appellant received for CGT purposes, by deeming consideration to be paid on the transfer of assets to the company in addition to the price paid for the shares.

Section 38(1)(b)

71. Turning to s 38, we consider first s 38(1)(b). In essence the appellant argued that the company and its business were inseparable. The value of the shares reflected the business and was linked directly to the assets of the business. Expenditure incurred on the relevant business assets was therefore directly reflected in the shares. The business could not operate without these assets.

72. We cannot accept this argument. Whilst a transfer of business assets to the company could increase the value of the shares to reflect the value of the assets transferred at the time of the transfer (a value which, as the appellant agreed, would not in any event be the same amount as the original acquisition cost of those assets), that does not mean that expenditure is incurred on the shares and reflected in the state or nature of the shares at the time of disposal, as s 38(1)(b) requires. As the Lord President (Lord Emslie) made clear in the Court of Session decision in *Aberdeen Construction* (at page 290) when considering the application of the predecessor to s 38(1)(b) to the loan waiver, that waiver enhanced the value of the shares but what is required is:

> "…an identifiable change for the better in the state or nature of the asset, and this must be distinct from the enhancement of value."

73. As a matter of law, the shares are separate from the business assets. This legal separation also clearly applies for CGT purposes: there are numerous examples throughout the legislation where this is apparent. If an example was needed, one could readily be found in the taper relief legislation that the appellant also relied on to reduce the gain on selling his shares: Schedule A1 TCGA dealt separately with shares in paragraph 4 and assets used in the business of a company in paragraph 5. The appellant owned ordinary shares in NCG Ltd both before and after any transfer of assets he made to the company, and none of the share rights- or indeed the number of shares he held- changed as a result. An increase in value is not sufficient. This is the case whether the full increase in value flows into the value of the shares (as may have been the case if the appellant had owned 100% of the shares) or, as would have been the case here if assets were transferred, flows into shares owned by the appellant and also other shares. The only difference is that in the latter case it is even more apparent that the conditions of s 38(1)(b) are not met: the appellant's shares were not given any new rights to reflect the fact that he alone had transferred assets.

74. We are not aware of any subsequent case that has cast doubt on Lord Emslie's comments. What is now section 38(1)(b) was considered by the House of Lords in *Garner v Pounds Shipowners and Shipbreakers* [2000] STC 240 in relation to the grant of an option over land which included an obligation to use best endeavours to obtain the release of restrictive covenants over the land. The House of Lords held that the obligation was incurred at the same time as the disposal of the option and so for that reason could not be reflected in its state or nature, but also commented that the grantor would have had grounds to claim a deduction for the costs incurred in releasing the covenants on a disposal of the land, but not on the disposal of the different asset, namely the option, that was under consideration in that case. Although addressing on a different point, the approach taken is consistent. Recent cases considering s 38, *Drummond v HMRC* [2009] EWCA Civ 608 and *Price v HMRC* [2015] UKUT 164, focus on s 38(1)(a) and the question what expenditure is incurred on, so are not directly relevant here.

75. Exactly the same principle applies if the appellant had transferred business assets to NCG Ltd at earlier times, or effectively made capital contributions to the company to fund the purchase of assets as discussed at [62] above. In either case there may well have been an increase in value, but no shares were issued and there was no change in the state or nature of the shares.

Section 38(1)(a)

76. Turning to s 38(1)(a) the appellant's Counsel pursued a rather different line of argument to those developed before the hearing. This was that the £306,700 of expenditure in dispute was incurred wholly and exclusively to acquire the business assets (and not the shares or a single asset comprising the shares and the business) and that these assets were disposed to the company for no consideration. In those circumstances the argument was that the appellant had realised a loss of £306,700 which could be set against his gain on the shares.

77. We cannot accept this argument. As explained above, the appellant has not discharged the evidential burden of demonstrating that he incurred £306,700 on the acquisition of business assets by him which he subsequently disposed of to NCG Ltd.

78. We should note that HMRC indicated that they did not wish to pursue an argument that any such disposal would have been a disposal to a connected party. This appeared to be largely on the basis that they had not pursued the point during the enquiry, and in the circumstances were prepared to proceed at the hearing on the assumption that any disposal was made simultaneously with completion of the share sale, and that such a disposal was not a disposal to a connected party. However, we do not think we should ignore the fact that the appellant has not demonstrated the date on which assets were transferred (and on at least occasion has claimed that the transfer preceded the shares sale). To the extent any transfer of business assets did occur either shortly before the sale or at some earlier time as suggested at [62] above the appellant would undoubtedly have been connected with NCG Ltd as the controlling shareholder. This would mean both that a market value consideration would be imputed for the disposal under s 18 TCGA (if not otherwise imputed under s 17 TCGA), and any loss arising could not be offset against the gain on the shares due to the effect of s 18(3) TCGA.

79. In relation to items in category b in the list at [59] above, HMRC also referred to s 262 TCGA, and to an argument that the assets in question would be wasting assets of a kind which are exempt under s 45 TCGA. They did not develop their argument under s 45 and we have not considered it further, beyond noting that it is potentially applicable but would require findings about the status of the assets for capital allowances purposes that we did not hear evidence on. However, we agree with HMRC that even if the appellant otherwise succeeded in his argument that he had incurred an allowable loss on transferring the assets to NCG Ltd then s 262 would be in point to restrict the loss.

80. All except two of the items in category b are claimed to have acquisition costs of less than £6,000. It is also not disputed that they are tangible movable property. Section 262(3) makes it clear that in those circumstances no loss can arise. Of the other two items, the appellant previously accepted that the £110,000 machine tool was in fact owned by NCG Ltd. This leaves the mechanical digitiser at a cost of £14,000. We heard no specific evidence of its value but, applying s 262(3), the maximum loss would be £8,000. However, as already discussed we do not consider that the appellant has discharged the necessary evidential burden to demonstrate either (a) that he owned the asset and transferred it to NCG Ltd or (b) that any transfer was made at a time when the parties were not connected.

Bad debts

81. The appellant’s arguments on the expenditure he had incurred to meet some of the company’s debts were based on s 38(1)(b) and were the same as the argument raised under that provision in relation to the business assets, albeit that the point made that the assets were essential to the operation of the business clearly did not translate to the bad debts. The arguments fail for the same reasons. Meeting bad or doubtful

debts owed to a company can increase the value of the company's shares but, without more, is not reflected in their state or nature as the legislation requires. No shares were issued and there was no change in the rights of the shares.

82. We also considered whether the appellant could claim that the cost of meeting the bad debts was deductible under s 38(1)(c), which deals with incidental costs of disposal. However, s 38(2) sets out what kinds of expenditure can be treated as incidental costs for these purposes, and it is clear that the appellant's expenditure would not qualify.

Penalty

83. HMRC levied a penalty on the appellant in respect of one aspect of his CGT computation. It is not disputed that the appellant made an error in respect of that aspect. The error was that in determining the acquisition cost of the shares he had failed to take into account an earlier claim to CGT rollover relief which had reduced the acquisition cost for tax purposes by £245,000. An element of this was offset by an omission to claim indexation relief. As a result of these errors the acquisition cost claimed was £295,000 whereas the agreed actual cost was £50,059 plus indexation of £31,350, being £81,409. Taking account of 75% taper relief the gain understated by these errors was £53,397, and at a 40% rate the tax understated was £21,359.

84. HMRC imposed a penalty under s 95 Taxes Management Act 1970 on the basis that the appellant had negligently delivered an incorrect return. They abated the maximum penalty of 100% to 10%, allowing 20% for full disclosure, 40% for co-operation and 30% for seriousness, giving a penalty of £2,135.

85. In our view HMRC have demonstrated that the penalty was appropriate, and the level of abatement was very fair to the appellant. We are not persuaded by the appellant's arguments that he had taken great care or that it was not apparent to him from the face of the on-line self assessment return form that he was supposed to include anything other than the actual cost of the shares as the acquisition cost.

86. The CGT rollover claim in question was made by the appellant following a sale of intellectual property made in 2002. The total claim was £500,000, the balance being reinvested in other assets. The date of the signed claim is 14 September 2006, so only quite shortly before the sale of NCG Ltd. The appellant confirmed that he had had discussions with his accountant before the claim was made and that they had considered alternatives to the claim. It seems highly improbable in these circumstances that the appellant was not informed as part of that advice that the effect of a rollover claim would be to reduce the acquisition cost of the shares. The appellant also confirmed that although he had discussed various aspects of his 2007-08 return with his accountant he had not discussed what to record as the acquisition cost, believing it to be unnecessary. Given the amounts at stake and the appellant's apparent lack of familiarity with CGT principles that does not appear to us to be a reasonable approach.

87. HMRC relied on *Blyth v Birmingham Waterworks* (1856) 11 Ex 781 and the statement of Baron Alderson that:

> "Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. The defendants might be liable for negligence if, unintentionally, they omitted to do that which a reasonable person would have done, or did that which a person taking reasonable precautions would not have done."

88. The test for negligence in a tax return context has been considered more recently by Judge Berner in *Anderson v HMRC* [2009] UKFTT 206 at [22]:

> "The test to be applied, in my view, is to consider what a reasonable taxpayer, exercising reasonable diligence in the completion and submission of the return, would have done."

89. This statement was also cited by the Upper Tribunal in *Colin Moore v HMRC* [2011] UKUT 239 (TCC).

90. We have no doubt in concluding that in the circumstances the appellant was negligent in failing to take account of the rollover claim. The claim had only recently been made, the amount rolled over was substantial and the appellant was completing the capitals gains pages for the sale of shares in the company that the appellant had run for over 20 years, in circumstances where it seems he had no real knowledge of CGT. A reasonable man would have ensured that he understood the effect of the rollover claim, and either recalled or at least kept a proper record of it when preparing the tax return covering the sale of the shares. Given the significance of the share disposal a reasonable person would also have ensured that he either took adequate professional advice or at least consulted the appropriate published guidance before submitting the return.

Decision

91. We accordingly dismiss the appellant's appeals on both the employment income issue and the points in dispute on the CGT computation and confirm the amendments to the appellant's 2007-08 return made in the closure notice. This results in total taxable income from employment of £218,609 and a total taxable capital gain of £577,567 (reflecting the matters still in dispute at the hearing together with other aspects of the CGT calculation formally under appeal but not pursued at the hearing), and a total increase in tax of £168,701.60.

92. We also dismiss the appellant's appeal against the penalty determination and confirm the determination of the amount of that penalty at £2,135 as appropriate.

93. 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.

SARAH FALK

TRIBUNAL JUDGE
RELEASE DATE: 3 June 2015