[2016] UKFTT 101 (TC)

TC04892

Appeal number: TC/2014/04206

VAT – hardship – application refused – appeal to be struck out unless disputed VAT paid or deposited with HMRC

FIRST-TIER TRIBUNAL
TAX CHAMBER

LUXUR PLC **Appellant**

-and-

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

TRIBUNAL: **JUDGE KEVIN POOLE**
ALBAN HOLDEN

Sitting in public in Centre City Tower, Birmingham on 2 February 2016

Susan Sims-Steward, Solicitor, for the Appellant

Helena Perrett, Presenting Officer of HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. This decision concerns an application by the appellant that it would suffer hardship if it were required to pay or deposit with HMRC the sum of £51,462 and that accordingly its appeal should be entertained by the Tribunal without such payment or deposit being required.

The facts

Introduction

2. We received various bundles of documents in evidence, and we also heard oral evidence from Mr Mainak Roy, the appellant's accountant. He described himself as a part-qualified chartered accountant, up to intermediate level, holding an MBA in Finance from Birmingham University and with over 15 years' experience in industry (five of them with the appellant).

Circumstances leading up to the disputed assessment

3. The history of the underlying assessment is only peripherally relevant to the appellant's hardship application, accordingly we set out only short details of it.

4. The appellant was registered for VAT with effect from 1 February 2010, having stated its intention of making taxable supplies estimated at £200,000 over the following twelve months. In its application, its description of its intended business activities was "retail of luxury items on websites such as watches, handbags, electrical items".

5. On 13 May 2011, the Appellant's directors signed off on its accounts for the period from 1 June 2009 to 30 November 2010, stating that it remained (as it had been since its incorporation on 30 May 2008) dormant and had no assets or liabilities other than its £50,000 of share capital, of which £12,500 was represented by cash and £37,500 was represented by "unpaid share capital" under "current assets".

6. The earliest VAT accounting period for which we were provided with any detailed information was the period 03/11 (i.e. the three months ended on 31 March 2011). However, from HMRC's later schedule of assessment, we infer that the Appellant submitted VAT returns for periods 06/10 (apparently covering the period from 1 February 2010 to 30 June 2010), 09/10 and 12/10. We infer that these returns reflected only input tax on purchases as follows:

(1) Period 06/10: £853 input tax claimed

(2) Period 09/10: £271 input tax claimed

(3) Period 12/10: £423 input tax claimed

7. Thus although the Appellant was, according to its accounts, dormant for the period up to at least 30 November 2010, it claimed input tax in respect of purchases during that period.

8. We were not provided with copies of the Appellant's accounts for the years ended 30 November 2011, 2012 or 2013.

9. The Appellant's VAT returns for subsequent periods were analysed in documents before us in a little more detail:

Period	Sales (ex VAT) £	VAT on sales £	Purchases (ex VAT) £	VAT claimed on purchases £	Net VAT reclaimed/ (due) £
03/11	46,053	0	10,919	135.80	135.80
06/11	14,724	0	20	0	0
09/11	3,514	0	1,583	316.80	316.80
12/11	63,501	0	7,916	1,583.09	1,583.09
03/12	15,458	0	1,059	211.94	211.94
06/12	48,733	6,654.99	32,794	6,558.92	96.07
09/12	33,015	6,603.18	32,781	6,556.31	(46.87)
12/12	48,108	9,168.80	48,607	9,086.34	(82.46)
03/13	117,040	19,417.78	97,833	19,358.17	(59.61)
06/13	28,772	2,340.62	24,968	2,238.03	(102.59)
09/13	44,960	3,090.12	15,289	3,057.60	(32.52)
12/13	4,060	812.03	4,087	817.45	5.42

10. HMRC contacted the Appellant by telephone to arrange a visit to check its VAT records. A visit was agreed for 22 November 2012 at 10 am and HMRC wrote to the Appellant on 20 September 2012 to confirm the arrangements. The Appellant cancelled this visit and a revised date of 23 January 2013 was agreed. HMRC wrote to the Appellant on 17 December 2012 to confirm the arrangements. The Appellant cancelled the visit.

11. HMRC next contacted the Appellant on 29 November 2013, when they sent a letter to the Appellant recording that they had not been able to contact the Appellant by telephone to agree a revised visit date. In the absence of agreement, they indicated they would attend on 13 January 2014 at 10 am. They duly attended but the visit was

unable to take place because of the absence of the Appellant's accountant due to illness.

12. On 15 January 2014, therefore, HMRC sent a formal notice under Schedule 36 Finance Act 2008 requiring the Appellant to deliver most of its statutory records to them by 11 February 2014 so they could complete their inspection.

13. On 11 February 2014, HMRC received an email from the Appellant's accountant Mr Roy, requesting an extension of time until 31 March, on the basis that "there is bereavement in family". On 12 March 2014 HMRC issued a penalty of £300 to the Appellant and warned that further daily penalties would be charged unless the required documents and information were delivered by 31 March 2014.

14. In addition, on 24 March 2014 HMRC notified a VAT assessment to the Appellants reflecting the disallowance of all the input tax claimed by the Appellant since its first return, totalling £51,462.

The appeal

15. For reasons that were not explored before us, the appellant only notified its appeal to the Tribunal on 4 August 2014 (its notice of appeal being dated 28 July 2014), citing the HMRC decision appealed against as one dated 21 July 2014 (the copy of which attached to the notice of appeal being simply a notice of assessment of further interest in respect of the original assessment).

16. On 25 September 2014, HMRC notified the Tribunal that "the Appellants have applied to bring the appeal without payment of the disputed sum and that hardship is being considered by the Respondents"; they therefore requested a stay of all time limits pending consideration of the hardship application. On 24 October 2014 the Tribunal forwarded this application to the appellant, confirming the stay. On 3 November 2014 the appellant replied, stating that the hardship application was "receiving urgent attention within this office".

17. In the meantime, on 20 October 2014, HMRC had written to the appellant pointing out the requirement either to pay or deposit the disputed tax or to make an application for hardship, neither of which had been done up to that time by the appellant. HMRC therefore sought either payment of the disputed amount or a proper application for hardship, along with a list of information and documents which HMRC would require, by 12 November 2014, in support of any application for hardship.

18. Having heard nothing in reply, HMRC followed up that letter by a further letter dated 18 November 2014, in which they said that in the absence of any reply they could not accept that the appeal should proceed; they gave the appellant until 2 December 2014 to "confirm your intentions in respect of this appeal".

19. By letter dated 1 December 2014, the appellant said that "it sees no reason why it should make a hardship application, when it is quite apparent that the calculations on which HMRC seeks to rely are ill-conceived…" Various documents

were sent with this letter, including a "dormant company" balance sheet for the appellant as at 31 May 2009 and accounts for the appellant for the period 1 June 2009 to 30 November 2010. Also enclosed was an analysis of the appellant's VAT returns prepared by Mr Roy. HMRC were invited to "confirm that Mr Roy's figures are agreed and that Luxur plc has no indebtedness to VAT, whence this appeal will come to a close."

20. In reply, HMRC said in their letter dated 22 December 2014 that based on the limited information provided (essentially the appellant's balance sheet at 31 May 2009 and its accounts for the period 1 June 2009 to 30 November 2010), HMRC did not accept that the appellant would suffer hardship as a result of paying or depositing the disputed tax. By notice to the Tribunal dated 23 December 2014, HMRC confirmed that no formal application for hardship had been made, and they applied for the appeal therefore to be struck out. On the same day, they sent a letter to the appellant as follows:

> "I have considered the information contained in your letter and enclosures dated 1 December. However you have not supplied the relevant records as requested in my letters dated 15 January and 12 March 2014.
>
> Additionally I should remind you that our requests for such records was issued following my visit to your offices as previously arranged only to be told that your book-keeper was unavailable and that no one else would be able to assist me with the VAT inspection.
>
> In the light of the above I have no alternative but to stand by my original decision."

21. The appellant replied to this letter on 23 December by a letter bearing the same date. It was claimed that after a search of the appellant's records, no trace could be found of HMRC's letters dated 15 January and 12 March 2014 referred to above (though of course the appellant was clearly aware of at least the first of those letters, as Mr Roy replied to it on 11 February 2014 – see [13] above). It was asserted that the first the appellant knew of HMRC's request for the supply of records was "when you made an unannounced visit to the offices of the company and progress could not be made at that time as the company accountant was absent from work for reasons of ill-health and Mr Kewal Banga was seriously ill after suffering from a stroke; he passed away in April 2014".

22. On 9 January 2015 the appellant wrote to the Tribunal, applying for a ruling that it would suffer hardship if required to pay or deposit the disputed tax. The basis of this application was somewhat unclear, but essentially it was founded on an assertion that the assessment was "not based on a detailed inspection of the records of the appellant, by way of visits, or compliance checks, but one that appears to have been plucked from thin air with no firm evidential basis"; in the light of this, the application to strike out was "heavy handed and disproportionate", and "an abuse of process". It was said that the appellant was being "singled out" by HMRC with a view to putting it out of business.

23. On 31 March 2015 the Tribunal issued case management directions to bring the hardship application to a hearing.

24. The appellants complied with the first direction – to deliver a list of the documents they intended to rely on at the hearing of the hardship application – on 19 April 2015. Apart from the accounts, schedule of VAT and VAT summary previously provided, the only documents listed were links to web pages (either archived or current) on the "gov.uk" website concerning the definition of "potential lost revenue", the basis of calculation adopted by HMRC in relation to penalty percentages, penalty suspension conditions, Article 6 of the European Convention on Human Rights (and related penalties) and compliance checks (an overview for agents and advisers). None of the financial and other information previously requested by HMRC was included on the list.

25. HMRC subsequently made an attempt to persuade the Tribunal that matters should not proceed to a hearing of the hardship application as no such application had properly been made. Upon being informed that this argument would, if continued with, be heard by the Tribunal at the start of the hearing, HMRC fell into line and complied with the directions themselves, albeit slightly belatedly.

26. The hardship application was formally listed for hearing on 19 August 2015 in Birmingham. Upon an application for postponement made by HMRC (not objected to by the appellant) the hearing was put back to 20 October 2015. There was some confusion caused by the Tribunal's notification of hearing letter being in an incorrect form, giving rise to the suggestion that the hearing would address the substantive appeal, but this was corrected by the Tribunal by letter dated 6 October 2015.

27. HMRC served their bundle for the hardship hearing one day late, but this was in any event overtaken by events at the hearing. The appellant requested a postponement of the hearing on 12 October 2015, an application which was refused by Judge Kempster on 14 October 2015, the reasons for his refusal being given in that decision.

The original hardship hearing and subsequent events

28. The hardship application came before Judge Kempster on 20 October 2015. The appellant arrived with a significant bundle of new information not previously provided. Judge Kempster adjourned the hearing, issuing directions on 23 October 2015 for the appellant to deliver to HMRC and the Tribunal, no later than 3 November 2015, "a further copy of its bundle of financial information presented for the 20 October hearing but to include the statutory accounts of the Appellant for the period ended November 2014". He also directed that HMRC should deliver, no later than 5 January 2016, a "written statement of any questions or objections they intend to raise at the continuation hearing of the hardship application".

29. The appellant duly delivered a bundle of documents to HMRC and on 7 December 2015 HMRC wrote a letter to the appellant specifically setting out, as

required, the questions and objections they intended to raise at the hearing (which had by now been listed for 2 February 2016).

30. On 14 January 2016 the appellant wrote to HMRC, sending a copy of their letter dated 7 December 2015 with responses annotated beneath each of the bullet point questions raised by HMRC. The questions, and associated responses, were as follows (the italicised notes in square brackets representing our comments on the responses, where relevant):

> Q: "The decision in contention was issued on 1 May 2014. Please explain what steps or action you have taken to try and raise the necessary funds to settle the tax since this issue of this decision with the relevant evidence to support your response as appropriate."
>
> A: "Please see the covering letter." *[The covering letter did not address the point]*
>
> Q: "Copies of the Business Current Account Bank Statements have been provided for the period 01 January 2015 to 14 October 2015. Please supply copies of the Business Current Account Bank Statements for the period 01 May 2014 to 31 December 2014."
>
> A: "Please see the covering letter." *[The covering letter did not address the point, but the appellant brought to the hearing copy bank statements for the period 14 October 2015 to 28 January 2016, and Mr Roy explained that the earlier statements had not been provided because they were not considered to be relevant.]*
>
> Q: "Please confirm whether or not you hold any other bank or financial institution accounts for Luxur PLC and if so provide copies of the statements for the period 01 May 2014 to 31 December 2014 plus the latest statements."
>
> A: "I can confirm that Luxur plc holds no other bank or financial institution accounts with any bank or financial institution."
>
> Q: "Please advise if you have a bank overdraft facility and, if applicable, submit a copy of the latest facility agreement."
>
> A: "The business current account of Luxur Plc has no 'overdraft facility'".
>
> Q: "Have you approached your bankers for financial assistance to pay this tax under appeal? If so what was their response? If you have not approached your bankers please explain the reasons why."
>
> A: "Please see the covering letter." *[The covering letter did not address the point.]*
>
> Q: "Included in your bundle was some documentation for two associated businesses B4U Telecom Limited and KSB Trading Limited

including inter-company transactions. Please explain the nature of these inter-company transactions and the agreed payment terms."

A: "Please see the covering letter." *[The covering letter did not address the point.]*

Q: "The B4U Telecom Limited Report of the Directors and Financial Statements for the year ended 31 March 2015 showed in the Report of the Directors that the beneficial interests in the issued share capital included 26% held by B4U Group PLC. We understand that there are common directors. Kewal Ravi Banga is a director of Luxur PLC, B4U Telecom Limited, KSB Trading Limited and B4U Group Public Limited Company. Have you approached any associated businesses including the last three aforementioned for help to settle the tax and if so what was the response?"

A: "The associated companies are not in a position to help to settle the tax. Please see the covering letter." *[The covering letter did not address the point.]*

Q: "In addition after considering the entries in the Financial Statements for the period 01 December 2013 to 30 November 2014 please answer the points as stated below:-

> "The Profit & Loss Account showed there was a retained profit carried forward of £285,488 as at 30 November 2014. Please explain how these funds have been appropriated within the business since that date."
>
> A: "Please see the covering letter." *[The covering letter did not address the point.]*
>
> Q: "The Balance Sheet showed in Current Assets that for periods ended 30 November 2013 and 30 November 2014 there was a figure of £37,500 described as Unpaid Share Capital. Please explain in more detail to what this amount relates and why it is unpaid."
>
> A: "Please see the covering letter." *[The covering letter did not address the point.]*
>
> Q: "In the same heading as at 30 November 2013 there was an amount for Debtors of £64,987. As at 30 November 2014 the figure for Debtors was nil. Please detail what payment(s) were received for this Debtors' figure to reduce it to nil and confirm whether any provision could have been made to settle the VAT from these payment(s)."
>
> A: "Please see the covering letter." *[The covering letter did not address the point. At the hearing, Mr Roy said the reduction was due to a lost order from a customer.]*

Q: "Under the same heading of Current Assets was a stock figure of £195,242 as at 30 November 2014. In the previous year the stock as at 30 November 2013 was £82,144. Please explain why there was a larger increase in stock holding as at 30 November 2014 than the previous year and what this stock was."

A: "Please see the covering letter." *[The covering letter did not address the point. Mr Roy stated at the hearing that the increase in stock related to customer orders that were subsequently cancelled.]*

Q: "In the Notes to the Financial Statements Number 5 Intangible Assets the figure for Trademark as at 01 December 2013 was £1,012,120. The Revaluations figure under Trademark was £1,453,550 giving a closing balance total figure of £2,465,670 as at 30 November 2014. Please explain in more detail exactly what the amount of £2,465,670 relates to."

A: "Please see the covering letter." *[The covering letter did not address the point. At the hearing, Mr Roy explained that the appellant owned the trademark "Continental" in connection with its business, and the figure in the accounts represented the appellant's valuation of that trademark.]*

31. In short, it can be seen that no material attempt was made to answer many of the points raised by HMRC.

The continued hearing

32. The continuation of the application came before us on 2 February 2016. Judge Kempster had directed that as the hearing on 20 October 2015 had not started to consider the substantive issues before it, there was no need for the same panel to sit on the adjourned hearing.

33. At the hearing, Mr Roy gave some background to the business of the appellant. As described by him, its business involved buying iPhones and precious metal or jewelled replacement parts (especially cases) on consignment from suppliers; it then replaced the manufacturer's standard parts with the expensive enhancements, or otherwise customised the phone (e.g. by enhancing the "Apple" logo with precious stones) and sold the enhanced products on consignment terms to well-known luxury retailers, mainly in London. If the goods were sold within (typically) 90 days then the appellant would be paid for them; otherwise they would be returned to it and it would reverse the enhancements it had made and return both the iPhones and the replacement parts to its own suppliers, with whom it also dealt on consignment terms. The typical retail value of the customised products was in the region of £6,000 to £6,500 per item.

34. During 2014, he explained that the appellant had experienced problems with a salesman, who had effectively hijacked the relationships with the customers, as a

result of which the customers had been persuaded to retain the appellant's products for the full consignment term and then return them to the appellant for refund. This had effectively brought the business to a near halt. Litigation with the former employee had resulted.

35. He also produced at the hearing copies of the appellant's audited accounts for the year ended 30 November 2015, signed by the Directors on 27 January 2016. He confirmed he had been involved in their preparation (indeed he had prepared accounts himself up to trial balance). They were stated to be audited by "Jon Thomson, AICPA (Senior Statutory Auditor) on behalf of Vickers, Reynolds & Co (Lye) Limited" on 28 January 2016. As mentioned in one of the notes to [30] above, he also supplied copies of the appellant's bank statements for the period from 14 October 2015 to 28 January 2016, which showed a closing credit balance of just £38.75. As neither of these documents had been produced to HMRC before, we permitted a short adjournment for them to examine them.

36. The November 2015 accounts showed turnover reduced to £37,569 (compared to £453,675 the previous year) and an overall loss of £6,205 for the year. The balance sheet showed that the appellant's net current assets had reduced from £214,859 to £37,603, as a result of the reduction of the stock figure from £195,242 to nil, the reduction in the cash at bank from £24,536 to £103 and the reduction of creditors from £42,419 to nil. Mr Roy thought these reductions could be attributed to the damage done to the appellant's business as a result of the dispute with its former employee. The notes to the accounts showed that the 2014 balance sheet figure for goodwill of £509,430 was reduced to £489,959 by reason of "amortisation" of £25,472 (though no amortisation was shown in the profit and loss account, it was simply dealt with as a reduction in the balance sheet value through a negative entry to the revaluation reserve, and Mr Roy was clear that the appellant had never paid for any goodwill, it was simply shown in the balance sheet on the basis of the Directors' valuation); the "trademark" value of £2,465,670 was similarly reduced by £246,567 of "amortisation" which again was not reflected in the profit and loss account, but simply dealt with as a balance sheet item by adjustment to the revaluation reserve. Mr Roy sought to persuade us that the brought forward profit and loss account of £285,488 shown in the accounts ought properly to be reduced by £272,039 in respect of the amortisation of the intangible assets, leaving true accumulated profits of only some £13,000, even before taking account of the net loss of £6,205 for the year.

37. It was pointed out to Mr Roy that the balance sheet showed the sum of £37,500 as a debtor, in respect of "unpaid share capital". He was not aware of any steps having been taken to call in that debt, even though it represented nearly all the appellant's net current assets (along with the £103 of cash).

38. It was pointed out to Mr Roy that the profile of payments and receipts shown in the bank statements did not really fit with the appellant's business as he had described it. There were numerous small debits and credits and only one or two larger credits which he though might be related to sales of individual phones. There were also numerous transfers of hundreds of pounds between the appellant and B4U Telecom Limited and B4U Money Limited. There were payments to

"playstationnetwork internet GB" of several hundred pounds which he could not explain.

39. He also referred to a "list of inter-company debtors and inter-company creditors" between the appellant and various other companies which were associated with it by common shareholders – mainly B4U Telecom Limited – over the period from 23 January to 28 September 2015. These showed a net amount owing to the appellant over that period of some £5,000. Mr Roy agreed that there would have been an inter-company debt owed to the appellant of some amount at 30 November 2015, and that should have been included in the November 2015 accounts but was not.

The law

40. Section 84 Value Added Tax Act 1994 ("VATA") provides, so far as relevant, as follows:

> **"84 Further provisions relating to appeals**
>
> (1) References in this section to an appeal are references to an appeal under section 83.
>
> (2) …
>
> (3) Subject to subsections (3B) and (3C), where the appeal is against a decision with respect to any of the matters mentioned in section 83(1)(b), (n), (p), (q), (ra) or (zb), it shall not be entertained unless the amount which HMRC have determined to be payable as VAT has been paid or deposited with them.
>
> (3A) Subject to subsections (3B) and (3C), where the appeal is against an assessment which is a recovery assessment for the purposes of this subsection, or against the amount of such an assessment, it shall not be entertained unless the amount notified by the assessment has been paid or deposited with HMRC.
>
> (3B) In a case where the amount determined to be payable as VAT or the amount notified by the recovery assessment has not been paid or deposited an appeal shall be entertained if—
>
> (a) HMRC are satisfied (on the application of the appellant), or
>
> (b) the tribunal decides (HMRC not being so satisfied and on the application of the appellant),
>
> that the requirement to pay or deposit the amount determined would cause the appellant to suffer hardship.
>
> (3C) Notwithstanding the provisions of sections 11 and 13 of the Tribunals, Courts and Enforcement Act 2007, the decision of the tribunal as to the issue of hardship is final.

41. It is clear (and does not appear to be disputed by the appellant) that the substantive decision under appeal in this case is a decision falling within section 83(1)(p) VATA (by virtue of being a "best judgment" assessment under section 73(1) VATA in a situation where it appeared to HMRC that the appellant's VAT returns were "incomplete or incorrect".

42. Accordingly, the appeal may only be "entertained" if either HMRC "are satisfied" or, in default, the Tribunal "decides" that "the requirement to pay or deposit the amount determined would cause the appellant to suffer hardship".

43. The Tribunal can clearly only reach that decision on the basis of the evidence put before it. As it is the appellant that seeks to persuade the Tribunal that it would suffer hardship, the burden lies on it to establish the relevant facts which demonstrate that hardship. Questions about the correctness of the assessment are not to be considered at all by the Tribunal when considering hardship; if the appellant considers that HMRC are guilty of an abuse of process by raising an entirely unreasonable and unjustified assessment with the objective of putting the appellant out of business by resisting its hardship application when appealing that assessment, that is a matter to be taken up (if at all) through judicial review proceedings. This Tribunal, as a creature of statute, has no power to consider anything other than the statutory question, i.e. whether "the requirement to pay or deposit the amount determined would cause the appellant to suffer hardship".

44. There does not appear to be any definitive caselaw (and certainly neither party referred us to anything relevant) on the question of what tests or criteria the Tribunal should use when assessing the question of hardship. It is simply a matter of applying the statutory phrase, in accordance with ordinary English usage, to the facts established by evidence. What is clear, however, from the Upper Tribunal decision in *Totel Limited v HMRC* [2014] UKUT 485 (TCC) is that there is a distinction between simple inability to pay and inability to pay without suffering hardship.

Discussion and decision

45. Given that the burden lies on the appellant to establish that it would suffer hardship if required to pay or deposit £51,462 before its appeal could be entertained, an examination of the strength of the evidence put forward by the appellant is clearly required.

46. Our difficulty is that we found the case put forward by the appellant to be full of inconsistencies and entirely unconvincing. The evidence effectively took the form of some copy bank statements which showed that the appellant had very little cash, and some accounts apparently showing it had almost no assets.

47. Both documents raised as many questions as they answered. Mr Roy could give no clear and convincing explanation as to where the appellant's net current assets had gone between November 2014 and November 2015. He accepted the 2015 accounts did not include an inter-company debtor of an unspecified amount that he agreed should have been shown as an asset. His assertion that the "amortisation" of

intangible assets noted in the 2015 accounts should be deducted from the accumulated profit and loss account flew in the face of the treatment of that item in the accounts themselves. The pattern of transactions in the bank statements was entirely inconsistent with the business as he described it, and even if it were accepted that the business had reduced sharply following the difficulties with the former employee, that still did not explain the numerous small transactions (both debit and credit) shown on the bank statements, or the apparent personal expenditure shown there (on Play Station Network, or the £1,000 paid to Mr Roy as "travel cost" on 21 December 2015, which he explained as funding a flight for him to India in relation to his mother's serious illness).

48. Mr Roy was also unable to explain if any steps at all had been taken to obtain payment of the £37,500 due to the appellant from its shareholders on their shares. Nor did we have the benefit of the evidence of any Director of the appellant, who might have been able to clarify some of the issues for us.

49. In the circumstances, we do not feel there is enough evidence before us to support a decision that the requirement to pay or deposit the sum of £51,462 would cause the appellant hardship.

50. The application is therefore REFUSED.

51. Consequent upon such refusal, we DIRECT that unless the appellant pays or deposits with HMRC the sum of £51,462 so that it is received by HMRC no later than 5pm on the date 28 days after the date of issue of this decision, and informs the Tribunal that it has done so, its appeal shall be STRUCK OUT automatically and without further order.

52. This document contains full findings of fact and reasons for the decision. We note that, notwithstanding the clear terms of section 84(3C) VATA set out above, the Court of Appeal in *R (on the application of Totel Limited) v First-tier Tribunal (Tax Chamber) (HM Treasury, interested party)* [2012] EWCA Civ 1401 has confirmed that a right of appeal to the Upper Tribunal exists in relation to our decision. Accordingly, 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.

KEVIN POOLE
TRIBUNAL JUDGE

RELEASE DATE: 17 DECEMBER 2016