



TC05082

Appeal number: TC/2015/03248

Excise and Customs Duty - importation of tobacco products - appeal against penalties - whether dishonest - yes - whether penalty correctly assessed - appeal disallowed

FIRST-TIER TRIBUNAL

TAX CHAMBER

SABAH BENKADOUR

Appellant

- and -

HM REVENUE AND CUSTOMS

Respondents

**TRIBUNAL: JUDGE: MICHAEL CONNELL
MEMBER: CLAIRE HOWELL**

Sitting in public at Fox Court, Brooke Street, London on 11 January 2016

The Appellant did not attend and was not represented

Mr Thomas Chacko, Counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. This is an appeal by Mrs Sabah Benkadour (“the Appellant”) against a decision by HM Revenue and Customs (“HMRC”) in a letter dated 6 November 2014, to issue Excise and Customs Civil Evasion Penalties in the total sum of £562 under s 25(1) of Finance Act 2003 for the evasion and/or attempted evasion of Customs Duty, and under s 8(1) of Finance Act 1994 for the evasion and/or attempted evasion of Excise Duty.
2. The Penalty includes a reduction given for the Appellant’s co-operation, in accordance with sections 8(4) Finance Act 1994 and s 29 (1) Finance Act 2003
3. The Appellant did not attend the hearing. The Appellant had been given notice of the time, date and venue of the appeal hearing and the Tribunal therefore decided that it was in the interests of justice to proceed.

Background

4. On 4 March 2014 the Appellant arrived at Gatwick Airport having travelled from Dubai, the United Arab Emirates. The Appellant was stopped and questioned by a UK Border Force Officer on entering the Green ‘nothing to declare’ Channel indicating that she had nothing to declare.
5. UK Border Force Officer Gary Lockett asked the Appellant whether she had packed her bags herself. She replied that she had and that she was aware of her bags’ contents. When questioned by the officer, she stated that she had no cigarettes or tobacco products
6. The Appellant’s baggage was searched, revealing a quantity of 900 cigarettes and 16 Kg of Al Fakher flavoured shisha tobacco (“the goods”). The quantity of cigarettes significantly exceeded the personal allowance for a person travelling outside the EU as set out in the Travellers’ Allowances Order 1994 (as amended). The United Arab Emirates is a “third country” from which there is a personal allowance of 200 cigarettes or 250 grams of smoking tobacco for returning travellers.
7. Officer Lockett advised the Appellant that the goods would be seized as liable to forfeiture under s 139 of the Customs and Excise Management Act 1979 (“CEMA”) and issued her with Public Notices 1 and 12A, being Seizure Information Notice BOR156 and Warning Letter BOR 152, both of which the Appellant signed.
8. The legality of seizure was not challenged in the Magistrates’ court and the seizure was deemed to be legal pursuant to paragraph 5 schedule 3 CEMA.
9. On 14 October 2014 Compliance Officer Taggart of HMRC wrote to the Appellant notifying her of HMRC’s intention to investigate the Appellant’s conduct surrounding the smuggling or attempted smuggling of tobacco into the UK, with a view to establishing whether the Appellant’s conduct was dishonest and therefore whether it was appropriate to issue a Civil Evasion Penalty under s 25(1) of the Finance Act 2003 and under s 8(1) of the Finance Act 1994 for the evasion of Excise Duty. The Appellant was invited to co-operate with the enquiry and advised as to the actions she could take to reduce any potential penalty. The letter enclosed Public

5 Notice 300 in respect of Customs Duty and Import VAT and Public Notice 160 in respect of Excise Duty and invited any disclosure by the Appellant. The letter made it clear that any reduction in the penalty was contingent on response and co-operation with HMRC's enquires. The Appellant was given the opportunity to provide any relevant information which she thought should be taken into account in calculating the amount of penalty.

10 10. On 25 October 2014 the Appellant wrote to Officer Taggart. The Appellant stated that she was shocked to hear that shisha contained some tobacco and was therefore not allowed. The Appellant stated that she would never put herself in a situation where she knew that something was not allowed. She said that she was informed that as this was the first time she had been stopped, she would be issued with a warning.

15 11. The Appellant stated that the contents of her bag consisted mostly of presents for friends and family, including two packs of cigarettes and the shisha. She stated that the only reason she brought back about 15 packs of shisha was because she knew she would not be going back to Dubai.

12. The Appellant stated that she had wanted to keep some shisha and give some out to friends and family.

13. The Appellant stated that if she was trying to purposely smuggle she would have packed it differently and maybe made it more discreet and less noticeable.

20 14. On 6 November 2014, Officer Taggart issued civil evasion penalties to the Appellant totalling £562. The penalties took into account the 200 cigarettes personal allowance. The evaded duties were calculated as: Excise Duty of £427, Customs Duty of £135. This took account of a 75% reduction for disclosure and cooperation.

25 15. On 1 December 2014 HMRC received the Appellant's request for review. The Appellant stated the following grounds for review:

- (a) the Appellant was unaware that shisha contained substances of tobacco,
- (b) it was her first time travelling to Dubai,
- (c) it was for personal use,
- 30 (d) the Appellant has been wrongly victimised and ordered to pay for products taken from her,
- (e) the Appellant is not generating any profit from the goods,
- (f) at the airport the Appellant signed a document that products found in her suitcase have been removed and that nothing else would happen
- 35 from that day forward,
- (g) the Appellant fails to comprehend why she is being subjected to pay excessive taxes nine months later,
- (h) the Appellant has been caused a great deal of stress and anxiety from the day she received HMRC's letter,

- (i) the Appellant's economic circumstances mean that she is not in a position to pay the penalty,
- (j) the Appellant feels like she is illegally being bullied indirectly to pay for these costs,
- 5 (k) the Appellant stated that she is a law abiding citizen who helps people when they need support and this is affecting her ability to perform her duties as a carer for her mother who is disabled.

10 16. On 7 January 2015 Officer Farrell received information from the Appellant regarding her mental health. Officer Farrell wrote to the Appellant extending the review period to allow Officer Taggart to investigate the Appellant's claims.

15 17. On 8 January Officer Taggart wrote to the Appellant requesting evidence regarding the Appellant's condition on the day/days leading up to the seizure and how this prevented her from complying with her obligation to declare the goods in excess of her allowances and also requested details of the traumatic event to which the Appellant had referred to in earlier correspondence.

20 18. On 16 January 2015 the Appellant wrote to Officer Taggart. The Appellant referred to the stress she had been experiencing since she received HMRC's letter on 18 October 2014 and how her condition had worsened. The Appellant explained that the event she referred to was a fire in her flat on 16 October 2014 which caused extensive damage and required the replacement of a number of household items. The Appellant stated that she was not at home at the time of the fire but considers herself lucky not to have been. The Appellant stated that the combination of events has caused her much stress affecting her eating and sleeping and that she is currently on
25 prescribed drugs.

19. On 26 January Officer Taggart emailed Officer Farrell stating that the additional information received from the Appellant did not change her decision to issue the civil evasion penalty.

30 20. On 10 February 2015 following the review, Officer Farrell wrote to the Appellant to inform her that the decision to issue her with a civil evasion penalty was to be upheld with a 75% reduction.

21. On 14 May 2015 the Tribunal Service received a Notice of Appeal dated 30 April 2015.

The Law

35 22. The legislation relevant to this appeal is:

Finance Act 1994, Sections 8(1) and 8(4):

Penalty for evasion of excise duty.

(1) Subject to the following provisions of this section, in any case where –

- (a) any person engages in any conduct for the purpose of evading any duty of excise, and
 - (b) his conduct involves dishonesty (whether or not such as to give rise to any criminal liability),
- 5 that person shall be liable to a penalty of an amount equal to the amount of duty evaded or, as the case may be, sought to be evaded.
- (4) Where a person is liable to a penalty under this section—
- (a) the Commissioners or, on appeal, an appeal tribunal may reduce the penalty to such amount (including nil) as they think proper; and
 - 10 (b) an appeal tribunal, on an appeal relating to a penalty reduced by the Commissioners under this subsection, may cancel the whole or any part of the reduction made by the Commissioners. (...)

Finance Act 2003, Sections 25(1) and 29(1)(a):

s 25 Penalty for evasion.

- 15 (1) in any case where
- (a) a person engages in any conduct for the purpose of evading any relevant tax or duty, and
 - (b) his conduct involves dishonesty (whether or not such as to give rise to any criminal liability),
- 20 that person is liable to a penalty of an amount equal to the amount of the tax or duty evaded or, as the case may be, sought to be evaded. (...)
- 29 Reduction of penalty under section 25 or 26.
- (1) Where a person is liable to a penalty under section 25 or 26—
- 25 (a) the Commissioners (whether originally or on review) or, on appeal, an appeal tribunal may reduce the penalty to such amount (including nil) as they think proper; and
 - (b) the Commissioners on a review, or an appeal tribunal on an appeal, relating to a penalty reduced by the Commissioners under this subsection may cancel the whole or any part of the reduction previously made by the Commissioners. (...)

30 Parts of s 8 Finance Act 1994 have been repealed by paragraph 21, schedule 40 of Finance Act 2008.

The parts repealed only related to sections involving dishonest conduct which give rise to a penalty under Schedule 41 Finance Act 2008. Article 6 Finance Act 2008 and Schedule 40 of SI 2009/571 preserve the penalty under s 8 Finance Act 1994 in

35 relation to conduct involving dishonesty where the conduct does not relate to an inaccuracy in a document or a failure to notify HMRC of an under assessment. Article 4 of Finance Act 2008, Schedule 41 of SI 2009/511 preserves the penalty under s 8 Finance Act 1994 where dishonest conduct does not give rise to a penalty under Schedule 41 Finance Act 2008.

40 Section 25(1) Finance Act 2003 states:

(1) In any case where -

- (a) a person engages in any conduct for the purpose of evading any relevant tax or duty, and

(b)his conduct involves dishonesty (whether or not such as to give rise to any criminal liability), that person is liable to a penalty of an amount equal to the amount of the tax or duty evaded or, as the case may be, sought to be evaded.

Section 29 Finance Act 2003 states:

- 5 (1) Where a person is liable to a penalty under section 25 or 26—
- (a)the Commissioners (whether originally or on review) or, on appeal, an appeal tribunal may reduce the penalty to such amount (including nil) as they think proper,•
and
- 10 (b)the Commissioners on a review, or an appeal tribunal on an appeal, relating to a penalty reduced by the Commissioners under this subsection may cancel the whole or any part of the reduction previously made by the Commissioners.
- (2) In exercising their powers under subsection (1), neither the Commissioners nor an appeal tribunal are entitled to take into account any of the matters specified in subsection (3).
- (3) Those matters are—
- 15 (a)the insufficiency of the funds available to any person for paying any relevant tax or duty or the amount of the penalty,
- (b)the fact that there has, in the case in question or in that case taken with any other cases, been no or no significant loss of any relevant tax or duty,
- 20 (c)the fact that the person liable to the penalty, or a person acting on his behalf, has acted in good faith.

The Tobacco Products Duty Act 1979 s(1) states that:

1 Tobacco products

- 25 (1) In this Act “tobacco products” means any of the following products, namely –
- a) Cigarettes;
- b) Cigars;
- 30 c) Hand-rolling tobacco;
- d) Other smoking tobacco; and
- e) Chewing tobacco

(1) which are manufactured wholly or partly from tobacco or any substance used as a substitute for tobacco...

- 35 (2) [(1A) But a product is not a tobacco product for the purposes of this Act if —
- (a)The product does not contain any tobacco, and
- (b)The Commissioners are satisfied that —
- (i) The product is of a description that is used for medical purposes, and
- (ii) The product is intended to be used exclusively for such purposes.]

Travellers' Allowance Order 1994:

1. This Order may be cited as the Travellers' Allowances Order 1994 and shall come into force on 1st April 1994.
- 5 2. (1) Subject to the following provisions of this Order a person who has travelled from a third country shall on entering the United Kingdom be relieved from payment of value added tax and excise duty on goods of the descriptions and in the quantities shown in the Schedule to this Order obtained by him in a third country and contained in his personal luggage,
 - 10 (2) For the purposes of this article—
 - (a) goods shall be treated as contained in a person's personal luggage where they are carried with or accompanied by the person or, if intended to accompany him, were at the time of his departure for the United Kingdom consigned by him as personal luggage to the transport operator with whom he travelled;
 - 15 (b) a person shall not be treated as having travelled from a third country by reason only of his having arrived from its territorial waters or air space;
 - (c) "third country", in relation to relief from excise duties, shall mean a place to which Council Directive 92/12/EEC of 25th February 1992 does not apply; and, in relation to relief from value added tax, shall have the meaning given by Article 20 3(1) of Council Directive 77/388/EEC of 17th May 1977 (as substituted by Article 1.1 of Council Directive 91/680/EEC of 16th December 1991).
3. The reliefs afforded under this Order are subject to the condition that the goods in question, as indicated by their nature or quantity or otherwise, are not imported for a commercial purpose nor are used for such purpose; and if that condition is not complied with in relation to any goods, those goods shall, unless the non-compliance was sanctioned by the Commissioners, be liable to forfeiture.
- 25 4. No relief shall be afforded under this Order to any person under the age of 17 in respect of tobacco products or alcoholic beverages.

The Appellant's Case

- 30 23. The Appellant's grounds of appeal are similar to her grounds for review. The Appellant stated that HMRC has not considered the following.
 - a) The Appellant has suffered health problems since receiving HMRC's initial letter some nine months after the date of the seizure. In particular she has suffered from stress and has seen her doctor regularly.
 - 35 b) The Appellant was unaware that she was not allowed to bring shisha [into the country] and she was unaware that it contained tobacco.
 - c) The Appellant knew that cigarettes contained tobacco but she was unaware of her personal allowances.
 - 40 d) The Appellant states that at the time of the seizure she was informed by the Border Force Officer that no further action would be taken.

e) The shisha was intended for gifts.

HMRC's Case

24. HMRC contends that the Appellant was stopped in the Green Channel, which automatically constituted a false declaration that she had no goods attracting Excise or Customs Duty. It is a deemed fact that the goods were legally seized and therefore that she had entered the Green Channel with goods in excess of her allowances. The Officer's notebook records that the Appellant stated that she had no cigarettes or tobacco.

25. When searched, the overall quantity of goods attracting duty found was more than sixty-seven times the personal allowance when travelling from a third country.

26. HMRC are entitled under s 8(1) of the Finance Act 1994 and s 25(1) of the Finance Act 2003 to issue the Appellant with a penalty because she acted dishonestly and deliberately took action to positively evade duty and tax.

27. The penalties under the above provisions require that the Appellant has been dishonest. The act undertaken (entering the Green Channel with an amount of cigarettes above the allowance) was dishonest by the standards of an ordinary, reasonable person. The Appellant realised that what she was doing was, by those standards, dishonest.

28. Dishonesty is a criminal law concept and its definition in relation to civil penalties is taken from the Theft Act 1968. The VAT Tribunal considered the meaning of dishonesty in the context of s 13 of the Finance Act 1985 (which is worded in a similar way to the s 8 penalty) in the case of *Ghandi Tandoori Restaurant v Customs and Excise Commissioners* (1989) VATTR 39. The Tribunal stated that there were the following two elements:

- i. The taxpayer should have done something for the purposes of evading tax; and
- ii. The taxpayer knew that according to the ordinary standards of reasonable and honest people, what she was doing would be regarded as dishonest.

29. The Tribunal in *Ghandi* found that in the majority of cases, the course of conduct adopted by the taxpayer would be such that the necessary mental element of dishonesty can be readily inferred. The Tribunal said:

“It seems to us clear that in such a context, where a person has, ex hypothesi, done, or omitted to do, something with the intention of evading tax, then by adding that the conduct must involve dishonesty before the penalty is to attach, Parliament must have intended to add a further element in addition to the mental element of intending to evade tax. We think that that element can only be that when he did, or omitted to do, the act with the intention of evading tax, he knew that according to the ordinary standards of reasonable and honest people that what he was doing would be regarded as dishonest.”

30. Dishonesty in this context followed the guidance given by the Court of Appeal in *R v. Ghosh* [1982] 1 QB 1053, CA, where a two-step test for showing dishonesty was set out:

5 “In determining whether the prosecution has proved that the defendant was acting dishonestly, a jury must first of all decide whether according to the ordinary standards of reasonable and honest people what was done was dishonest. . . If it was dishonest by those standards then the jury must consider whether the defendant himself must have realised that what he was doing was by those standards dishonest. In most cases, where
10 the actions are obviously dishonest by ordinary standards, there will be no doubt about it. It will be obvious that the defendant himself knew that he was acting dishonestly. It is dishonest for a defendant to act in a way which he knows ordinary people consider to be dishonest, even if he asserts or genuinely believes that he is morally justified in acting as he did. For example, Robin Hood or those ardent anti-vivisectionists who remove animals from vivisection laboratories are acting dishonestly, even though they may
15 consider themselves to be morally justified in doing what they do, because they know that ordinary people would consider these actions to be dishonest.”

31. ‘Dishonest’ should be given its ordinary English meaning, namely ‘not honest, trustworthy, or sincere’. The correct test for establishing dishonesty as stated in the High Court case of *Sahib Restaurant v HM Revenue & Customs* (February 2008 -
20 unreported) where HH Judge Pelling QC (sitting as a Judge of the High Court) stated at para. 40 of the judgment that the correct test in relation to civil penalties was as follows:

25 “In my view in the context of the civil penalty regime at least the test for dishonesty is that identified by Lord Nicholls in *Tan* as reconsidered in *Barlow Clowes*. The knowledge of the person alleged to be dishonest that has to be established if such an allegation is to be proved is knowledge of the transaction sufficient to render his participation dishonest according to normally acceptable standards of honest conduct. In essence the test is objective — it does not require the person alleged to have been dishonest to have known what normally accepted standards of honest conduct were.”

30 32. In the case of *Barlow Clowes International Limited (in liquidation) and others v Eurotrust International Limited and others* [2005] UKPC 37 it was held that the test laid down in *Royal Brunei Airlines Sdn Bhd v Tan* [1995] 2 AC 378 was the correct test and was summarised as follows:

35 “...although a dishonest state of mind is a subjective mental state, the standard by which the law determines whether it is dishonest is objective. If by ordinary standards a defendant’s mental state would be characterised as dishonest, it is irrelevant that the defendant judges by different standards. The Court of Appeal held this to be a correct statement of the law and their Lordships agree.”

40 33. While this is in a sense an objective test, in that it does not matter whether or not the taxpayer thought they were being dishonest, it remains subjective to the extent that the taxpayer cannot be dishonest unless they understand what they are doing: the taxpayer cannot be dishonest accidentally. It is (objectively) dishonest if someone knowingly ignores the restrictions on importing cigarettes, and knowingly implies to

Border Force that they are not importing cigarettes: it is not dishonest if they do not realise that that is what they are doing.

34. Numerous notices posted around Gatwick Airport detail personal allowance limits. Clear, unambiguous signage is also present at the entrance to the channels.

5 35. The Appellant states that she was unaware that the shisha she was carrying contained tobacco but that she wished to keep some of the shisha for herself. However in her Notice of Appeal, she states, “I knew that cigarettes contained tobacco but I did not know the amount I was allowed to bring in”. Further if it was for her personal use then on the balance of probability the Appellant would have been aware that it was a tobacco product. Not all shisha contains tobacco. However from 1 January 2014 non-tobacco shisha has been liable to duty [s 1, Tobacco Products Duty Act 1979 and Excise Notice 476, s 3.2].

10 36. Furthermore, it is clear from the record of the seizure that she was not honest with the officer regarding the cigarettes that she was carrying when she stated that she did not have any.

15 37. The legislation with regards to what is considered a tobacco product is outlined in Tobacco Products Duty Act 1979 s (1) This is the current version and was in force at the time of seizure.

20 38. If the Appellant was not clear about the amount of her allowance it would have been prudent to question this when returning to the UK; especially upon noting the signs at both the baggage reclaim area and upon entering the ‘Green’ Channel. These signs are visual aids which include pictures of dutiable goods, including tobacco products and it would have been sensible for the Appellant to seek assistance from Border Force officials if there was any confusion over the signage. Choosing to ignore this signage can be considered implicit to dishonest conduct.

25 39. The Appellant states that this was the first time goods were ever brought back. However, her travel history indicates that she had travelled to and from third countries prior to the seizure on at least two previous occasions. Her travel history indicates that she would have been aware of the restrictions, import allowances and procedures when passing through customs. The volume of tobacco products brought into the United Kingdom by the Appellant was substantial. It is not credible that she thought she could import such a high quantity of tobacco, without making a declaration to customs.

30 40. The Appellant states that at the time of seizure, Border Force advised that no further action would be taken. However it is important to note that the Appellant was provided with and signed form BOR162, a copy of which was given to the Appellant for retention. This outlined that further action may be taken, including; “...sharing information with HM Revenue Customs who may take action against you such as issuing you with an assessment for any evaded tax or duty...”.

41. The Appellant has also stated that she has been suffering from post-traumatic stress and requires prescription drugs on account of the combined effects of the house fire and HMRC's investigation. However, the evidence provided by the Appellant only relates to stress conditions occurring after the date of the seizure, the Appellant
5 has not provided any evidence to date to show that her mental health was adversely affected on the day of the seizure or that it had any bearing on her ability to make decisions on that particular day.

42. The Appellant has also stated that she is unable to pay the liabilities imposed on her. However it is specifically stated in legislation that the ability to pay a civil
10 penalty cannot be considered in determining the liability to such penalties. The Appellant's presentation with regard to her financial position therefore cannot be considered.

43. The penalty is based on the amount of Customs Duties (and Import VAT) and Excise duty assessed as involved in the offence, and has therefore been correctly
15 calculated.

44. The Appellant has not put forward any grounds of appeal which could allow the Tribunal to reduce the penalty as assessed.

Conclusion

45. The Appellant imported shisha tobacco and cigarettes from the United Arab
20 Emirates, a non EU country and there are strict limits on the number of cigarettes that can be brought into the UK. The issue as to whether or not the cigarettes were for personal use does not arise. In any event, the facts of the matter are not in dispute and the Appellant did not challenge the legality of seizure of the goods within the statutory time limit. Where there is no timely challenge, the law provides that the
25 goods are deemed to be condemned as forfeited and what that means in practice is that, in law, the Appellant is deemed to have imported the goods for commercial use. That is a final decision and the Tribunal has no jurisdiction to consider that issue any further.

46. The issue in this appeal is whether or not the penalties which have been imposed
30 were properly imposed and for the correct amount. That raises the question of whether the Appellant has been dishonest. The test for dishonesty is an objective one and involves assessing whether the actions of the taxpayer were dishonest by the standards of ordinary and honest people. The burden of proof for dishonesty in a civil evasion penalty case is assessed on the balance of probabilities (*Sahib Restaurant v H M
35 Revenue & Customs* and *Tahir Iqbal Khawaja v HMRC* [2008] EWHC 1687 (Ch.), [2009] 1 WLR 398 at [25]).

47. In determining the Appellant's culpability we take into account that:

(i) It is well known that tax and duty is payable on imported cigarettes;

(ii) The United Arab Emirates is clearly a non-EU country and so no confusion is possible in respect of the “unlimited for own use” provisions when importing from other EU countries;

5 (iii) The Appellant stated that she did not know her allowances. However the airport has signage which described the allowances. The signage is designed to inform travellers who are not aware of importation restrictions. In any event, a reasonable person would check the allowances;

10 (iv) The Appellant appears to have been a regular traveller and would, on the balance of probabilities, have known of the allowances for importing tobacco and cigarettes.

15 48. The Appellant was dishonest if she knew: (1) that there were restrictions on the personal import of cigarettes to the UK from the United Arab Emirates; and (2) that she was carrying a greater number of cigarettes and tobacco than the permissible limit. It is inherently unlikely that the Appellant did not know or suspect that there were restrictions on such goods being brought to the UK in large quantities.

49. The Appellant’s actions demonstrate that she acted deliberately and dishonestly. She took action to positively evade duty and tax. Her attempt to clear customs without paying any duties by walking through the Green Channel and stating that she was not carrying any tobacco demonstrates her intent to positively evade duty and tax.

20 50. As the Appellant dishonestly attempted to evade import VAT, Excise and Customs Duties, a penalty is due under s 8(1) Finance Act 1994 and s 25(1) Finance Act 2003.

51. HMRC can reduce a penalty on the basis of the customer’s co-operation. The penalty includes a reduction of 75% given for the Appellant’s co-operation.

25 52. Any difficulty that the Appellant may have in paying the penalty is not a legitimate reason to reduce it: see s 29(3) FA 2003.

53. The Excise and Customs Civil Evasion Penalties in the total sum of £562 are accordingly confirmed and the appeal dismissed.

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54. 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.

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**MICHAEL CONNELL
TRIBUNAL JUDGE**

RELEASE DATE: 09 MAY 2016

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