[2016] UKFTT 443 (TC)

TC05196

Appeal number: TC/2013/09487

Value added tax - input tax - supplies directly referable to out of scope income which formed part of taxpayer's "business" income - whether recoverable - no - income based apportionment necessary - appeal refused

FIRST-TIER TRIBUNAL
TAX CHAMBER

VEHICLE CONTROL SERVICES LTD **Appellant**

- and -

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

TRIBUNAL: **JUDGE MICHAEL S CONNELL**
MEMBER PETER WHITEHEAD

Sitting in public at Manchester Tribunals Service, Alexandra House, The Parsonage, Manchester on 3 November 2014

Lord Marks QC for the Appellant

Ms Erica Carroll, Officer of HM Revenue and Customs, for the Respondents

DECISION

1. This is an appeal by Vehicle Control Services Ltd ('VCS') against HMRC's decision to deny a VAT credit in respect to the period 1 February 2013 to 30 April 2013 (04/13), on the basis that input VAT incurred must be apportioned between taxable supplies and costs relating to activities which are not within the scope of VAT.

Background

2. VCS carries on business, as a provider of parking, wheel clamping and security services, from 2 Europa Court, Sheffield S9 1XE. The Company has been registered for VAT since 1 September 1990 under VAT registration number 755 7800 06. Its clients are the owners of the car parks which VCS supervises and operates. VCS enters into a contract with the client, in return for which VCS:

i. provides a parking control service;

ii. provides signage at its discretion;

iii. supplies to the client (at a fee) parking permits for the client to issue to those people the client wishes to be allowed to park in its car park; permit instruction sheets are also supplied by VCS; permits are, on their face, issued by VCS, so that the distribution by the client is an onward issue by the client of VCS's permits;

iv. is given exclusivity in managing the car park; the agreement is for a fixed one year initial term, but extends automatically and is fully assignable by VCS without the client's consent.

v. has a total discretion as to what enforcement action should be taken in the event of contraventions by car park users.

3. In practice, most of VCS's income is derived not from parking permits but from parking charge notices (PCNs) which it issues to motorists who are in breach of the rules for parking in the clients' car parks. This includes clamping and tow-away charges, which were charged to motorists prior to such charges being outlawed under the Protection of Freedoms Act 2012.

4. On 13 March 2013, the Court of Appeal decided that the PCN income, was not subject to VAT. This was because the income from PCNs was not earned in respect of supplies of services liable to VAT. Rather, the PCN income represented damages for trespass by the motorists or damages for breach of the contracts between the motorists and VCS and was therefore outside the scope of VAT

5. On 6 June 2013, VCS submitted a repayment return for VAT period 04/13 in the sum of £78,077. The return excluded £363,059 of 'sales' (PCN income) that in previous quarters would have been declared as taxable sales but were now treated as

outside the scope of VAT. The return included input VAT on monthly management charges from an associated company Excel Parking Services Ltd for a share of head office overheads and directly attributable costs.

6. HMRC rejected the return advising VCS that the supplies which had been determined by the Court of Appeal to be outside the scope of UK VAT were non-business supplies and that input VAT was only recoverable in so far as it related to taxable supplies. Accordingly there would have to be an apportionment using a fair and reasonable calculation to establish the Appellant's input tax.

7. VCS disagreed with HMRC's view that there needed to be an apportionment of VAT incurred and argued that all of the VAT incurred related to business and accordingly was fully recoverable as input tax

8. In order to progress the 04/13 repayment return HMRC calculated an income based apportionment of the VAT claimed, informing VCS that they would be prepared to revisit the apportionment on receipt of an acceptable alternative method.

9. The apportionment based on income was as follows:

Total non-business income received from PCN's £435,669

Total taxable income £34,335

Total income £470,004

Total non-business income £435,669 x 100 = 92% non-business income

Total income £470,004

Input VAT claimed = £78,077.32

£78,077 x 92% = £71,830 non business VAT

Revised Input tax = £78,077.00 - £71,830 = £6,247.00

10. HMRC denied the VAT credit in the VAT return and issued an assessment in accordance with s 73 of the VAT Act 1994 in the sum of £630.01, because the VAT return had been amended from a repayment to a payment return. HMRC also requested that VCS provide a non-business apportionment (by VAT periods) for the previous four years.

11. VCS wrote to HMRC on 16 August 2013 to request a statutory review of the decision to require an apportionment of the VAT incurred by the company. VCS asserted that the income derived from PCNs was a by-product of the main operation of VCS and accordingly, although outside the scope of VAT, should be classed as business.

12. HMRC upheld their decision of 18 July 2013. The proposed method of apportionment based on income was also upheld, VCS not having submitted any alternative method of apportionment for consideration.

13. VCS appealed to the Tribunal on 11 December 2013.

Hearing bundle

14. The hearing bundle included the Appellant's VAT returns for the years 2001-14, copy correspondence between the parties, including HMRC's decision and its review, the Notice of Appeal, relevant legislation, case law authorities including the Court of Appeal judgement relating to the categorisation of the PCN income, and a witness statement by Robert Rideout, (the Financial Controller of VCS).

Relevant legislation

15. Article 2(1) of the Directive 2006/112 provides:

> "The following transactions shall be subject to VAT:
> (c) the supply of services for consideration within the territory of a Member State by a taxable person acting as such..."

16. Article 9 of the Directive provides:

> ""Taxable person" shall mean any person who, independently, carries out in any place any economic activity, whatever the purposes or results of that activity..."

17. Article 17(2) of the Sixth Directive provides:

> "(2) In so far as the goods and services are used for the purposes of his taxable transactions, the taxable person shall be entitled to deduct from the tax which he is liable to pay:
>
> (a) value added tax due or paid within the territory of the country in respect of which goods or services supplied for to be supplied to him by another taxable person...
>
> (5) As regards goods and services to be used by a taxable person both for transactions in respect of which value added tax is deductible and for transactions in respect of which value added tax is not deductible, only such proportion of the value added tax shall be deductible as is attributable to the former transactions."

18. Article 168 provides so far as material that:

> "..insofar as the goods and services are used for the purposes of the taxed transaction of a taxable person, the taxable person shall be entitled…to deduct the following from the VAT which he is liable to pay:
>
> (a) the VAT due or paid…in respect of supplies to him of goods or services carried out or to be carried out by another taxable person.
>
> ……

19. Article 173 provides so far as material that:

> "..in the case of goods or services used by a taxable person both for transactions in respect of which VAT is deductible pursuant to article 168…and in respect of which VAT is not deductible, only such proportion of the VAT as is attributable to the former transactions shall be deductible.
>
> The deductible proportion shall be determined, in accordance with Articles 174 and 175, for all the transactions carried out by the taxable person."

20. VATA 1994 provides so far as material as follows:

"4 (1) VAT shall be charged on any supply of goods or services made in the United Kingdom where it is a taxable supply made by a taxable person in the course or furtherance of any business carried on by him.

(2) A taxable supply is a supply of goods or services made in the United Kingdom other than an exempt supply.

5 (1) Schedule 4 shall apply for determining what is or is to be treated as a supply of goods or a supply of services.

(2) subject to any provision made by that Schedule..

(a) "supply" in this act includes all forms of supply, but not anything done otherwise that for a consideration:..

24 (1) Subject to the following provisions of this section "input tax", in relation to a taxable person means the following tax, that is to say-

(a) VAT on the supply to him of any goods or services:..

being (in each case) goods or services used or to be used for the purpose of any business carried on or to be carried on by him.

(2) Subject to the following provisions of this section "input tax" in relation to a taxable person, means VAT on supplies which he makes…

(5) Where goods or services supplied to a taxable person…are used or to be used partly for the purposes of a business carried on or to be carried on by him and partly for other purposes

(a) VAT on supplies, acquisitions and importations shall be apportioned so that so much as is referable to the taxable person's business purpose is counted as that person's input tax,...

(b) the remainder of the VAT ("the non-business VAT") shall count as that person's input tax only to the extent (if any) provided for by regulations under subsection (6)(e).

(6) Regulations may provide:

(e) in cases where an apportionment is made under subsection (5), for the non-business VAT to be counted as the taxable person's input tax for the purposes of any provision made by or under section 26 in such circumstances, to such extent and subject to such conditions as may be prescribed.

26 (1) The amount of input tax for which a taxable person is entitled to credit at the end of any period shall be so much of the input tax for the period (that is input tax on supplies, acquisitions and importations in the period) as is allowable by or under regulations as being attributable to supplies within subsection (2) below.

(2) The supplies within this subsection are the following supplies made or to be made by the taxable person in the course or furtherance of his business—

(a) taxable supplies;

(b) supplies outside the United Kingdom which would be taxable supplies if made in the United Kingdom;

(c) such other supplies outside the United Kingdom and such exempt supplies as the Treasury may by order specify for the purposes of this subsection.

(3) The Commissioners shall make regulations for securing a fair and reasonable attribution of input tax to supplies within subsection (2) above, and any such regulations may provide for—

(a) determining a proportion by reference to which input tax for any prescribed accounting period is to be provisionally attributed to those supplies;

……

21. Section 100 of the Value Added Tax Regulations 1995 states :

"Nothing in this Part shall be construed as allowing a taxable person to deduct the whole or any part of VAT on the... acquisition by him of goods or the supply to him of goods or services where those goods or services are not used or to be used by him in making supplies in the course or furtherance of a business carried on by him."

22. Section 101 of the Value Added Tax Regulations 1995 states :

(1) Subject to regulation, [102, 103A, 105A and 106ZA] the amount of input tax which a taxable person shall be entitled to deduct provisionally shall be that amount which is attributable to taxable supplies in accordance with this regulation.

(2) In respect of each prescribed accounting period—

(a) goods imported or acquired by and, subject to paragraph (5) below, goods or services supplied to, the taxable person in the period shall be identified,

(b) there shall be attributed to taxable supplies the whole of the input tax on such of those goods or services as are used or to be used by him exclusively in making taxable supplies,

(c) no part of the input tax on such of those goods or services as are used or to be used by him exclusively in making exempt supplies, or in carrying on any activity other than the making of taxable supplies, shall be attributed to taxable supplies, and

(d) there shall be attributed to taxable supplies such proportion of the input tax on such of those goods or services as are used or to be used by him in making both taxable and exempt supplies as bears the same ratio to the total of such input tax as the value of taxable supplies made by him bears to the value of all supplies made by him in the period."

and Regulation 102 states:

"… the Commissioners may approve or direct the use by a taxable person of a method other than that specified in Regulation 101."

The Appellant's case

23. The Appellant's case, as initially disclosed by its (amended) Notice of Appeal dated 11 December 2013 was that:

"We believe we are entitled to reclaim, as input tax, the amount disallowed by Mr Hogan, the Local Compliance Officer, as this input tax relates to the taxable business activities of car park management services. VAT is charged on Vehicle Control Services Ltd's invoices for a registration fee and for the provision of warning signs and permits, to allow authorised vehicles to use the car park. If all motorists comply with the parking regulations then all income is subject to VAT.

> Parking Charge Notices (PCN), are outside the scope of VAT, but we do not incur any purchases/expenses in respect of PCN's, they are simply a by-product of our taxable business. If all motorists comply with the regulations, we do not receive any income which is outside the scope of VAT but our purchases and expenses remain unchanged."

24. Lord Marks on behalf of VCS expanded the company's position saying that HMRC's assertions that:

i. supplies which are outside the scope of VAT (PCN income) are non-business supplies, and

ii. VAT on the proportion of VCS's overheads which relates to activities which are out of the scope of VAT cannot be recovered as input tax.

are both incorrect, and that:

i. all VCN's income from PCNs is in fact business income as it derives from its economic activities;

ii. all VAT on supplies to VCS of goods and services is input tax;

iii. apportionment under s 24(5) of the 1994 Act does not arise, because all VCS's income, whether from PCNs or taxable supplies, is business income, and

iv. that accordingly all input tax is recoverable, provided only that in respect of such input tax there exists sufficient linkage between the input tax incurred in respect of supplies to VCS and taxable supplies made by VCS to its clients.

25. Lord Marks dealt with each of these contentions in turn:

i. <u>All VCN's income from PCNs is business income</u>.

a) HMRC's position appears to be based on the fallacy that the distinction between business and non-business income, that was drawn by both Mr Hogan, who made the Original Decision on 18 July 2013, and the Officer, who made the Review Decision dated 11 November 2013, is relevant in this case. It is self-evident that all VCS's income, whether within the scope of VAT or PCN income, is in fact business income. It all derives from and is generated for, the purpose of VCS's economic activities. It has no other origin or purpose. In paragraph 30 of his judgment in the Court of Appeal Lewison LJ said (page 25):

> "I accept, of course, that VCS is in business to make money. But it does not follow that VCS expected to make money by being paid by the landowner. What it obtained under the contract (apart from the small fees charged for permits and signage) was the right to exploit the opportunity to make money from the motorists."

It is clear from that passage that the Court of Appeal considered that VCS's PCN income was business income. To construe it otherwise would be absurd.

b) The distinction between business and non-business income is only properly drawn when some of the income of an individual or organisation derives from business activity and some from non-business activity. More usually, the distinction will be drawn between business expenses (incurred in the generation of business income) and non-business expenses (incurred for some other purpose, most commonly the private or charitable purposes of the individual or organisation concerned). This follows from s 24(5) of the VAT Act 1994, which is the section that gives rise to apportionment between business and non-business supplies to a taxable person.

c) Business expenses are, quite simply, those expenses which are "referable to the taxable person's business purpose" (see s 24(5)(a) above). This is as one would expect: the statutory definition accords with ordinary English usage.

d) There is no proper basis for equating income that is outside the scope of VAT, because it does not derive from making taxable supplies, with non-business income, as HMRC assert. PCN income is business income, notwithstanding that it is out of scope. In their Statement of Case, HMRC appear to fall into the same fallacy when they rely on s 24(5) of the VAT Act 1994 above as supporting an apportionment of expenses between the expenses incurred in earning taxable income and those incurred in earning out of scope income as if it were an apportionment between business and non-business supplies.

ii. <u>All VAT on supplies to VCS of goods and services is input tax</u>.

Section 24(1) of the VAT Act 1994 ("the 1994 Act") provides that input tax in relation to a taxable person, means VAT on the supply to him of any goods or services, being (in each case) goods or services used or to be used for the purpose of any business carried on or to be carried on by him. It follows that effectively all VAT paid on business expenditure is within the definition of "input tax".

iii. <u>Apportionment under Section 24(5) of the 1994 Act does not arise</u>.

a) All VCS's income, whether from PCNs or taxable supplies, is business income. It follows that no question of apportionment under s 24(5) can arise at all, because that section, which is the section in the statute which gives authority for apportionment between expenses, is only concerned with apportionment between VAT on expenditure referable to the taxable person's business and VAT on other expenditure ("the non-business VAT").

b) In the ECJ case of *Securenta Gottinger Immobilienanlagen and Vermogensmanagement AG v Finanzamt Gottingen*, [C-437/06] it was made clear that apportionment is relevant where there is a distinction to be drawn between economic and non-economic activity. That is not the case here. All the relevant activity of VCS is economic.

iv. <u>All input tax is recoverable provided only that in respect of such input tax, there exists sufficient linkage between the input tax incurred in respect of supplies to VCS (the inputs) and taxable supplies made by VCS to its clients.</u>

a) It follows from the provisions of s 26 (1) and (2) that credit is due in this case in respect of input tax that is "allowable as being.... attributable to .... taxable supplies" under s 26(2)(a).

b) The relevant regulations are the Value Added Tax Regulations 1995 regs 100 and 101. However, the Regulations do not answer the question whether or not supplies are business supplies, and is solely concerned with the question of whether or not input tax is attributable to supplies within the scope of VAT.

c) Articles 168 and 173 of the Principal VAT Directive do not greatly assist. Article 17(2) is to similar effect, but also leaves unanswered the question as to the degree to which transactions must be attributable to taxable outputs in order to qualify for deduction.

d) The authorities establish that the right to deduct input tax depends upon establishing that the costs of the supplies acquired in connection with the operation concerned are a component part of the price of the organisation's products. If there is a direct link between the costs of the supplies to the taxable person and the taxable supplies made by the taxable person, then the input tax is deductible. This is because in those circumstances the input tax is attributable to the making of taxable supplies by the taxable person. The question is however whether or not the input tax is incurred in respect of the overall economic activity of the taxable person, provided that such economic activity involves making taxable supplies. The central point to be derived from the authorities is that where input tax is at least partly attributable to the making of taxable supplies and is fully attributable to the overall business or economic activity of the taxable person (so that there is no apportionment in respect of non-business supplies), then the input tax is deductible in full.

26. Lord Marks for VCS and Ms Carroll for HMRC referred us to various case law authorities in support of their respective submissions.

27. In the case of *Kretztechnik AG v Finanzamt Linz* [C-465/03] the tax-payer was an Austrian company which, with a view to raising capital from a share issue, applied for admission to the Frankfurt stock exchange. The capital was required to assist the

company's objects, which were the development and distribution of medical equipment. The issue of shares was an exempt supply under national law, and so the tax authority disallowed the company's deduction of input tax on supplies obtained in connection with the share issue. The company did not agree that the share issue was an exempt supply. It argued that the input tax on the costs associated with the share issue should be treated as part of its general overheads. The ECJ agreed with the tax-payer, and that because the aim of the issue was to raise capital it followed that the share issue did not constitute a supply of services within Article 2(1) of the Sixth Directive.

28. AG Jacobs in his opinion in Kretztechnik said that where a tax-payer sells a share, that is a supply of services in the form of an assignment of existing and tangible property within the meaning of article 6(1) of the Sixth Directive. However, when a company issues new shares, it is not selling any existing property, it is increasing its assets by acquiring capital and that such a step defies categorisation as a supply of services by the company. From its point of view, there is an acquisition of capital not a supply and thus no transaction capable of being taxed or exempted from VAT. AG Jacobs therefore concluded that an issue of new shares by a company is not a supply by the company at all and/or that is it a transaction of a type with which VAT is not concerned.

29. In his opinion AG Jacobs also says:

> "74. Thus if the transaction with which the input is most closely linked is one which falls entirely outside the scope of VAT because it is in any event not a supply of goods or services, it is irrelevant for the purpose of determining deductibility. What matters is the link, if any, with…output supplies…" and
>
> 76. It seems likely that the use of the capital and the services connected with the raising of that capital cannot be linked to any specific output transactions but must rather be attributed to the companies' economic activities as a whole. There can be no reasonable doubt that a commercial company which raises capital does so for the purpose of its economic activity."

30. In its Judgement the ECJ said:

> "36. In this case, in view of the fact that, first, a share issue is an operation not falling within the scope of the Sixth Directive and, second, that operation was carried out by Kretztechnik in order to increase its capital for the benefit of its economic activity in general, it must be considered that the costs of the supplies acquired by that company in connection with the operation concerned, form part of its overheads and are therefore, as such, component parts of the price of its products. Those supplies have a direct and immediate link with the whole economic activity of the taxable person.
>
> 37. It follows that, under art 17(1) and (2) of the Sixth Directive, Kretztechnik is entitled to deduct all the VAT charged on the expenses incurred by that company for the various supplies which it acquired in the context of the share issue carried out by it, provided, however, that all the transactions carried out by that company in the context of its economic activity constitute taxed transactions. A taxable person who effects both transactions in respect of which VAT is deductible and a transaction in respect of which it is not may, under the first sub-paragraph of art 17(5) of the Sixth Directive, deduct only that proportion of the VAT which is attributable to the former transactions."

31. We were also referred to *Church of England Children's Society v HMRC* [2005] EWHCC 1692, In that case, the issue was whether input tax could be deducted on charges levied by face-to-face professional fundraising organisations and on newsletters (activities out of scope of VAT) to the extent that they are attributable to the tax payers general economic activities. Following *Kretztechnik* at Paragraphs 28 and 29 Blackburne J said:

> "[28] ……It does not follow, that because the soliciting of donations to which, in the Tribunal's view, the fundraising services related (i.e. to which they were linked) was not a supply at all (let alone a taxable supply), input tax on the cost of those services was not recoverable. As Kretztechnik makes clear, once it is established that the transaction with which the fundraising services are most directly and immediately linked is not a supply at all, that link is irrelevant for the purpose of determining deductibility. What matters, is the link, if any, which the output supplies made by the Society have with the fundraising services and, if there is such a link, whether that supply is taxable or exempt. In other words, were the funds that were raised, i.e. the donations, used to any extent for the purposes of any taxable output transactions by the Society? If and to the extent that they were, the input tax on those services is deductible."

32. The Court therefore followed *Kretztechnik* and held that input tax on fundraising, where fundraising was outside the scope of VAT, was partly recoverable as the fundraising related to the Society's wider activities, which included the making of taxable supplies.

33. In *AB SKF* [C29/08], the raising of capital involved the disposal of shares rather than issue of shares. As in *Kretztechnik* and *Securenta* the purpose of the disposals was to finance other activities of the group. The company applied for a preliminary ruling from the ECJ on whether it was entitled to reclaim input tax on the services relating to share valuations, legal advice and disposals, which would all be subject to VAT. The ECJ held that the disposal of shares was an exempt supply under Article 13B(d)(5). However, where a disposal of shares was "equivalent to the transfer of a totality of assets or part thereof of an undertaking", within Article 5(8) of the Sixth Directive, and where the member state concerned had chosen to exercise the option provided for by that provision, then the disposal did not constitute an economic activity subject to VAT. The ECJ went on to say that there was a right to deduct input tax paid on services supplied for the purposes of a disposal of shares if there was a direct and immediate link between the costs associated with the input services and the overall economic activities of the taxable person. It was for the national court to take account of all the circumstances surrounding the transactions at issue in the main proceedings and to determine whether the costs incurred are likely to be incorporated in the price of the shares sold, or if they are among only the cost component of transactions within the scope of the taxable person's economic activity.

34. In *University of Cambridge v HMRC* (FTT) TC/10/06359, a university, which was partly exempt and had agreed a special method for attributing its input tax, reclaimed input tax on professional fees relating to the management of an endowment fund which invested donations received by the university and which was used to finance both taxable and exempt activities. HMRC rejected the claim on the basis that the university's investment activities were not an economic activity (and if it had been an economic activity, the fees would have related to exempt supplies). The First-tier Tribunal allowed the university's appeal, holding that the input tax should be treated

as residual and as partly recoverable under the university's special method. The Tribunal specifically rejected HMRC's contention that 'overheads relating to a non-economic activity undertaken for the purchase of an economic activity should not be regarded as recoverable'.

35. Lord Marks therefore says it follows that all input tax paid by VCS is deductible where there is a direct link between the input tax paid and the generation of income, which includes income from taxable supplies, even if it also includes incidental PCN income; in respect of such input tax the test for deductibility is met in full and the whole of the input tax is deductible, even if the inputs are not solely attributable to making taxable supplies.

Costs that are Directly Attributable Only to Generating PCN Income

36. Lord Marks said that Mr Ridout on behalf of VCS recognises a distinction between, on the one hand, those costs which are attributable only to the generation of PCN income and which contribute nothing to VCS making taxable supplies and, on the other hand, VCS's other inputs, comprising both those which are fully attributable to VCS's taxable supplies to its clients and those, generally VCS's overheads, which are attributable both to the generation of PCN income and to making taxable supplies to clients.

37. It is conceded, he said, that the input tax paid in respect of those costs, which are directly and only attributable to the generation of PCN income is not deductible as input tax, because there is insufficient linkage between the input tax concerned and the taxable supplies made by VCS.

38. Mr Ridout assesses the input tax paid in respect of those costs, which are directly and only attributable to the generation of PCN income for 2013-14 as 31.2% of the whole and that these are non-deductible. This represents a considerable concession from the position originally taken by VCS, although there is still a substantial difference between the parties' respective positions, in financial outcome as well as in principle.

39. Mr Ridout assesses the deductible input tax in respect of costs directly attributable to taxable supplies alone as 1.3% of the whole for the same period. He assesses the balance of VCS's costs, being those costs attributable both to taxable supplies and to PCN (out of scope) income, as 67.5% of the whole of VCS's expenditure, also for 2013-14.

40. VCS therefore claims to be entitled to deduct 68.8% of its input tax, (1.3% and 67.5%). It accepts that the balance of 31.2% is input tax that is directly and only attributable to PCN income and is not deductible.

VCS's fall-back Position on Apportionment

41. In the event that VCS's primary contention of law fails, so that the input tax on the costs attributable both to generating PCN income and to making taxable supplies falls to be apportioned between the two categories, Lord Marks nonetheless submits that HMRC's proposed method of apportionment is inappropriate. He referred to Mr Rideout's witness statement in which he said:

"21. I believe HMRC's method of apportionment is inappropriate. It rests on the simple but erroneous assumption that costs may properly be divided in exactly the same proportions as those in which the income in the two categories is earned. I accept that to date VCS's case on input tax has been advanced on the basis of the issue of principle mentioned above and a more coherent method of apportionment than that advanced by HMRC has not previously been developed.

22. The method of apportionment suggested by HMRC is based on the income received by VCS from PCNs on the one hand and taxable supplies on the other. Even were that methodology right (which is disputed), it would have to be refined to exclude the costs directly attributable either to PCNs or to taxable supplies. Undertaking that exercise in respect of the period the initial draft calculation for the VAT return was made by treating all income as subject to VAT. The total income from PCNs was £435,670.32 (being £363,058.60 of PCN sales backed out of Box 6 and £72,611.72 of VAT that was backed out of Box 3). The total income from taxable supplies was £397,393.86 of sales made in the quarter less £363,058.60 of reclassified PCN sales resulting in £34,335.26 being submitted to HMRC on the VAT return as Box 6. The total income was the total income from PCNs and the total income from taxable supplies. Those costs remaining after disregarding the costs directly attributable to taxable supplies or directly attributable to PCNs which could be apportioned using HMRC's method, (resulting in 92% directly attributable to PCN income - see paragraph 9 above).

23. This method of apportionment substantially overstates the allocation of VCS's overhead costs referable to the generation of income from PCNs, because the contract costs, which are incurred in finding, making and fulfilling VCS's contracts with its clients and are therefore incurred in making taxable supplies, are far more extensive in terms of the time and cost involved than HMRC's method of apportionment.

25. VCS's business is based on its contracts with its customers. These contracts follow more or less that same format, with a fully taxable payment being made by the customer to VCS for the provision of the following services: the patrolling of sites, issuing permits, putting up and maintaining signage and enforcing the proper use of car parks through the use of PCNs. All VCS's overhead costs are incurred in support of these services.

26. I have considered three methods of allocation the time spent on generation of PCN income and on making taxable supplies (fulfilling VCS's contractual requirements):

26.1. Method 1 — Apportionment using time spent by VCS's employees on VCS sites in May;

26.2. Method 2 - Apportionment using time spent by VCS's employees and other group companies' employees on VCS sites in May;

26.3. Method 2A - Apportionment using time spent by VCS's employees and other group companies' employees on VCS sites in April (test of consistency of Method 2).

27. The analysis of each such method, and the apportionments are summarised as follows:

Input Tax Incurred for Taxable Supplies:

27.1. Method 1 59.20%

27.2. Method 2 56.60%

27.3. Method 2A 60.91%

28. Taking an average of Method 1 and the average for Method 2 and Method 2A, the percentage of inputs incurred for making taxable supplies was 58.98%."

HMRC's case

42. HMRC's contention is that input VAT on costs, which cannot be directly attributed in their entirety to specific taxable supplies, should be apportioned between costs relating to activities which are not within the scope of VAT and costs relating to taxable supplies.

43. VCS relies on s 24(1) VATA 1994 because the goods and services they incur are used "for the purposes of *any business* carried on" by them and the VAT thereon is input tax. They contend that the VAT incurred relates to the taxable supplies they make, so all input tax is claimable.

44. There is no dispute between the parties that VCS is "in business" (and conducting economic activity) and that the business encompasses both taxable and outside the scope activities. However, the issue to be determined is whether the outside the scope activity is business (or economic activity) for VAT purposes.

45. The Court of Appeal in VCS (A2/2012/1804) found that the penalty income received by VCS did not relate to taxable supplies and was outside the scope of VAT. The proceeds of the PCN were damages.

> "44. ...it is necessary for VCS to have the right to sue for trespass. If, instead of towing away a vehicle, VCS imposes a parking charge I see no impediment to regarding that as damages for trespass."

46. HMRC contend that inevitably much of the activity of staff and use of premises must be taken up with the issuing of, management and enforcement of the PCN's, which are out of scope supplies. Accordingly a restriction of the VAT incurred must be made under s 24(5) of the VAT Act 1994. Section 26 of the VAT Act 1994 determines the amount of input tax allowable under s 24(5).

47. HMRC therefore contend that there is no right to credit for input tax attributable to an activity which is not within the scope of VAT. Such outside the scope supplies do not fall within ss 26(2) of the VAT Act 1994.

48. An examination of EU law assists in the interpretation of the relevant provisions in respect to right to deduct in VATA, which are contained within Article 168 of the Principle VAT Directive (PVD) (2006/112/EC).

- Article 168 indicates that the right to deduct relates only to goods or services used for the purposes of taxed transactions of a taxable person.

- Article 173 PVD provides that only the proportion of VAT attributable to *taxable supplies* (and non-relevant supplies covered in Article 169 and 170) are recoverable.

49. In the case of *Institute of Chartered Accountants of England and Wales* [1999] UKHL 19 ("ICAEW"), it was determined that:

> "There is a difference in the wording between section 4 of the Act [VATA 1994] and...the Directive. Thus the Act refers to "taxable supply made by a taxable person in the course or furtherance of any business carried on by him". The Directive refers to the supply of services, "effected for a consideration by a taxable person" and taxable person means a person who independently carried out any economic activity, including "the activities of the professions". The Act must so far as possible be construed so as to give effect to the Directive (Marleasing S.A. v. La Comercial Internacional de Alimentacion S.A. (Case C-106/89) [1990] E.0 R. 1-4135). It does not seem to me that there is any difficulty here in doing that and one would expect the same result to follow from the application of either approach".

50. Thus 'business' in the VAT Act means the same as economic activity in the Directive. The UK rules have to be interpreted to be consistent with the Directive as far as possible.

51. The basic position set out at Article 2(1)(c) of the Directive defines the supplies which are within the scope of VAT as: "...supply of services for consideration...by a taxable person acting as such...".

52. Article 9 of the Directive determines that a taxable person shall mean: "any person who... carries out... economic activity...".

53. In the case of *Commission of the European Communities v Republic of Finland* C-246/08 it was found that:

> "37. An activity is thus, as a general rule, categorised as economic where it is permanent and is carried out in return for remuneration which is received by the person carrying out the activity (Commission v Netherlands, paragraphs 9 and 15; and Case C-408/06 Gotz 120071 ECR 1-11295, paragraph 18)."

54. In *Capernwray Missionary Fellowship of Torchbearers* [2014] UKFTT 626 the Tribunal determined that:

> "44.(2) there is a general rule: permanent activity for remuneration is economic activity;
>
> 44.(3) for these purposes "remuneration" has the same meaning as "for consideration": it requires a direct link between supply and payment..."

55. The income received from the PCNs is not received for consideration and is not a taxable supply. It is outside the scope irrespective of whether it is business income and therefore VCS cannot deduct input tax in respect of that income.

56. VCS initially asserted that the PCN income is incidental, not in terms of the amount but on the basis that:

> "if all motorists comply with the regulations, we do not receive any income which is outside the scope of VAT but our purchases and expenses remain unchanged" (paragraph 23 above),

- and therefore should be ignored for the purposes of calculating the proportion of input tax directly attributable to its generation.

57. HMRC assert that the penalty income is a supply, albeit not a taxable supply, and should be included in the denominator in order to determine the apportionment. The receipt of income from PCNs is a direct, permanent and necessary extension of the taxable activity in relation to the Appellant. In *Regie Dauphinoise-Cabinet A Forest Sari v Ministre du Budget* (C-306/94 [1996] STC 1176 the ECJ ruled that the transactions (in that case, interest) were not "incidental financial transactions" since the receipt of such interest was a "direct, permanent and necessary extension of the taxable activity of property management companies". The interest payments in that case constituted 14% of income of the Appellant. In the Appellant's case the penalty charges constitutes over 90% of the income received.

58. The case of *Customs and Excise Commissioners v Lord Fisher* [1981] 2 All ER 147 (endorsed by Lord Slynn in ICAEW) sets out six tests of business activity. One is that it is "predominantly concerned with the making of ... supplies to consumers for a consideration". If it does not involve making supplies, it is not business. In this case the Appellant undertakes an activity, which the Court of Appeal has found does not involve the making of supplies: collecting fines from those motorists not complying with the parking rules. That activity generates income for the Appellant and is the main income generator from their activity of managing car parks.

59. Article 168 of the Directive says that in so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled ... to deduct…input tax. Therefore, if costs relate to activities other than taxed transactions, deduction is not allowed.

60. In the case of *Kretztechnik* the Advocate General stated:

> "9. Because the right to deduct arises only in respect of supplies used for the purpose of taxed transactions, there is no such right if they are used only for the purpose of other output transactions, such as the exempt transactions listed in Article 13, or of supplies which fall outside the scope of VAT because, for example, they are not effected for consideration or are not made by a taxable person acting as such, in the context of an economic activity within the meaning of Article 4."

> "77. It appears to be common ground that Kretztechnik makes only taxed output supplies so that it raised the capital in its capacity as a taxable person acting as such. In that case VAT on inputs attributable as overheads to its whole economic activity would be deductible…if however, it were also to make other supplies, only a proportion would be deductible."

61. In the case of *Securenta* the tax-payer raised additional necessary capital by means of a share issue and silent partnership arrangements. It claimed input tax deduction relating to the associated costs. The tax authorities rejected its claim, but agreed to allow a percentage deduction of the company's residual input tax. The case was referred to the ECJ for rulings on the interpretation of Article 17(5) of the Sixth Directive. The ECJ effectively endorsed both BLP Group and Kretztechnik holding that where tax-payers simultaneously carry out economic activities, taxed or exempt, and non-economic activities outside the scope of the Sixth Directive, a deduction of VAT relating to expenditure connected with the company's non-economic activity (the issue of shares and silent partnership arrangements) was allowable, although only to the extent that the expenditure is attributable to the tax-payer's economic activity within the meaning of Article 2(1). The ECJ said that the method of calculation for

the purposes of determining an apportionment was a matter for the member state, providing the formula objectively reflected the part of the input expenditure actually attributable to the economic and non-economic activities. It was found that:

> "27. ...in order for the input VAT paid in respect of such a transaction to give rise to a right to deduct, the expenditure incurred in that regard must be a component of the cost of the output transactions that gave rise to the right to deduct..."

> "30. To the extent that input VAT relating to expenditure incurred by a taxpayer is connected with activities which, in view of their non-economic nature, do not fall within the scope of the Sixth Directive, it cannot give rise to a right to deduct."

> "31 ...where a taxpayer simultaneously carries out economic activities, taxed or exempt, and non-economic activities outside the scope of the Sixth Directive, deduction of the VAT... is allowed only to the extent that that expenditure is attributable to the taxpayer's economic activity within the meaning of Article 2(1) of that directive."

62. Because UK law has to be read to be consistent with EU law (per Lord Slynn in *ICAEW*), only the VAT on costs that relate to supplies is input tax and to the extent any costs relate to the activity of collecting PCN income, it is not deductible. This is a necessary consequence of the Court of Appeal finding that the damages are outside the scope of VAT.

63. The collection of the PCN income is accordingly neither business, nor economic activity for VAT purposes. No VAT can be deducted where taxed inputs are used for transactions that do not fall within the scope of VAT. Where a transaction falls outside the scope of VAT it also falls outside the deduction entitlement.

64. VCS initially asserted that they do not incur any purchases or expenses in respect of PCNs. HMRC disputed this assertion as PCNs have to be issued, administered and prosecuted as necessary to secure that income for VCS. In the witness statement of Robert Ridout, it is now both acknowledged and demonstrated in the figures provided that VCS does incur VAT in relation to their outside the scope income.

65. Article 173 of the Directive provides that only the proportion of VAT attributable to taxable supplies (and non-relevant supplies covered in Articles 169 and 170) is recoverable.

66. Therefore in summary, HMRC contend that:

i) VCS has no right to deduct VAT in relation to the outside the scope income; and

ii) VCS can only recover that proportion of the VAT, which is attributable to their taxable supplies.

iii) The penalty income is not incidental. It cannot be described as incidental when it accounts for in excess of 90% of VCS's income. It should be taken into account for attribution purposes and should be included in the apportionment.

67. In correspondence with VCS Mr Hogan, the HMRC Officer, who made the original decision, said that he had always accepted that his income based method was 'broad brush' and he had always maintained that VCS were entitled to use a more detailed method of apportionment, provided it gave a fair and reasonable VAT recovery rate. He agreed that the direct attribution of costs and their associated VAT to taxable and outside the scope supplies is a necessary first step in any apportionment method. This then left the remaining non-attributable costs.

68. The Appellant's proposed method of apportioning the non-attributable costs was not acceptable to Mr Hogan. Mr Rideout had proposed that a unit of 14 minutes per ticket be agreed as the time taken on 'outside the scope activity' in order to arrive at an apportionment. In Mr Hogan's view this failed to account for travelling time to and from the car parks, the time taken to walk around the car park, the time taken in the office to issue the notices or time taken chasing up debts etc. Mr Hogan's view was that if a time based method was used he:

> "would expect at a very minimum a time log of every person in the company and for them to record every 15 minutes of their day against each task they have undertaken. I would suggest this is backed up by an independent Time and Motion consultant who could verify your figures. If this is your preferred method, would also need to agree with you the length of the period the survey should cover and at what point(s) in the accounting year it should take place before it is undertaken."

And if using a cost based method:

> "I would refer you to your 2013/2014 Profit & Loss Account and the analysis of costs. The ratio between costs attributable to taxable supplies and costs attributable to total supplies is: £19369/£1500458 x 100 = 1.29%. The recovery rate used in my incomes method for the period 04.13 was 8%. The recovery rate calculated by you as part of your time based method is shown as being an average of 58.98%. This large increase in the recovery rate does not support the view that the method proposed by you would give a fair result. Regarding the non-attributable costs, until we can agree a fair and reasonable method of apportionment, I would expect you to use the incomes based method."

69. HMRC contend that the income (turnover) apportionment which they have applied is fair and reasonable and that income, which is derived from an activity, which is not within the scope of VAT must be included in the turnover based apportionment calculation. Subject to an apportionment on the basis now proposed by VCS, if accepted by the Tribunal, HMRC assert that they have fairly and reasonably applied an income (turnover) apportionment to determine the use by VCS of their VAT bearing costs.

Conclusion

70. The parties were initially at polar opposites. The Appellant's contended that there was no need for an apportionment of input VAT. It argued that all of the VAT incurred related to business and was fully recoverable as input tax. They argued that all VCS's income, whether from PCNs or taxable supplies, is business income and therefore there is no question of apportionment under s 24(5) because that section, which is the section in the statute which gives authority for apportionment between expenses, is only concerned with apportionment between VAT on expenditure referable to the taxable person's business and VAT on non-business VAT.

71. VCS argues that all input tax which it has paid is deductible where there is a direct link between input tax and the generation of income, which includes income from taxable supplies, even if it also includes incidental PCN income. They say that in respect of such input tax, the test for deductibility is met in full and the whole of the input tax is deductible, even if the inputs are not solely attributable to making taxable supplies.

72. HMRC reject this, saying that the supplies which had been determined by the Court of Appeal to be outside the scope of VAT, were non-business supplies and that input VAT is only recoverable in so far as it relates to taxable supplies. HMRC say that an apportionment is necessary using a fair and reasonable calculation to establish the Appellant's attributable input tax. For this purpose HMRC used an income based apportionment, which determined that 92% of VCS's input tax related to non-business income and only 8% related to business income. HMRC said they would be prepared to revisit the apportionment on receipt of an acceptable alternative method.

73. VCS say that HMRC's position is based on the fallacy that the distinction between business and non-business income is relevant in this case. It is self-evident, as recognised by the Court of Appeal, that all VCS's income, whether within the scope of VAT or PCN income, is in fact business income. It all derives from and is generated for the purpose of VCS's economic activities. VCS relies on s 24(1) VATA 1994 because the goods and services they incur are used "for the purposes of any business carried on" by them and the VAT thereon is input tax. They contend that the VAT incurred relates to the taxable supplies they make, so all input tax is claimable.

74. As noted in *ICAEW*, there is a difference in the wording between s 4 VATA and the Directive. Thus the Act refers to a "taxable supply made by a taxable person in the course or furtherance of any business carried on by him", whereas the Directive refers to the supply of services, "effected for a consideration by a taxable person" and "taxable person" means a person who independently carries out any economic activity.

75. Lord Marks says that the authorities establish that the right to deduct input tax depends upon establishing that the costs of the supplies acquired in connection with the operation concerned, are a component part of the price of the organisation's products. If there is a direct link between the costs of the supplies to the taxable person and the taxable supplies made by the taxable person, then the input tax is deductible. This is because in those circumstances, the input tax is attributable to the making of taxable supplies by the taxable person. The question is however, as Lord Marks acknowledges, whether or not the input tax is incurred in respect of the overall economic activity of the taxable person, *provided* that such economic activity involves making taxable supplies.

76. Article 168 of the PVD (2006/112/EC) is quite clear and states that the right to deduct relates only to goods or services used for the purposes of taxed transactions of a taxable person. Article 173 PVD provides that only the proportion of VAT attributable to taxable supplies (and non-relevant supplies covered in Article 169 and 170) are recoverable.

77. 'Business' in the VAT Act means the same as economic activity in the Directive. The UK rules have to be interpreted to be consistent with the Directive as far as possible.

78. In arriving at their decision, HMRC initially made a distinction between business and non-business activity, which is what led to the assertion by VCS that there is no proper basis for equating income that is outside the scope of VAT, because it does not derive from making taxable supplies, with non-business income. But that is not what HMRC are now saying. Section 24(5) VATA enacted in UK law, article 4 of the Sixth Directive where the reference is to "economic activity", and HMRC distinguish between taxable and outside the scope activities, in arriving at their decision that an apportionment of the input tax is necessary.

79. Case law has clarified how s 24(5) and the relevant VAT regulations are to be applied. It is clearly established that, in determining the extent to which input tax is deductible, it is necessary to assess the extent to which the outside the scope activities (and therefore the input tax on those activities) are part of the taxpayers business income. Having identified that, it is then necessary to establish how much of what is left is used in the making of taxable supplies. That involves or may involve an apportionment in accordance with Regulation 101(2)(d) with a view to securing a fair and reasonable attribution of the input tax, so far as apportioned to the taxpayers business as distinct from its non-business activities.

80. Regulation 100 makes it clear that nothing in "that part of the Regulations"` shall be construed as allowing a taxable person to deduct the whole or any part of VAT on the acquisition by him of goods or the supply to him of goods or services where those goods or services are not used or to be used by him in making supplies in the course or furtherance of a business carried on by him.

81. Regulation 101(2)(c) of the VAT Regulations provides that no part of the input tax on such of those goods or services as are used or to be used by a taxpayer exclusively in making exempt supplies, or in carrying on any activity other than the making of taxable supplies, shall be attributed to taxable supplies. The Regulation could not be any clearer.

82. As Lord Marks says, the central point to be derived from the authorities is that where input tax is at least partly attributable to the making of taxable supplies and is fully attributable to the overall business or economic activity of the taxable person (so that there is no apportionment in respect of non-business supplies), then the input tax is deductible. That of course is the issue, but because the majority of VCS's income is from non-taxable supplies, it can only deducted in part. There is therefore a distinction between

> (a) those costs which are attributable only to the generation of PCN income and which contribute nothing to VCS making taxable supplies and,
>
> (b) VCS's other inputs, comprising
>
> > (i) both those which are fully attributable to VCS's taxable supplies to its clients and

(ii) those, generally VCS's overheads, which are attributable both to the generation of PCN income and to making taxable supplies to clients.

83. In *Kretztechnik* the right to deduct tax charged on the acquisition of goods or services presupposed that the expenditure incurred in acquiring them was a component of the cost of the output transactions that gave rise to the right to deduct input tax. In view of the fact that a share issue was an operation not falling within the scope of the Sixth Directive, and that the operation was carried out by Kretztechnik in order to increase its capital for the benefit of its economic activity in general, costs of the supplies acquired in connection with the operation concerned had to be regarded as part of its general overheads and therefore component parts of the price of its products. Those supplies therefore had a direct and immediate link with the whole economic activity of the taxable person. It followed that under article 17(1) and (2) of the Sixth Directive, Kretztechnik was entitled to deduct the tax charged on the expenses incurred for the various supplies which it acquired, in the context of the share issue, *but only to the extent that such transactions constituted taxable transactions.* It was because it only carried out taxable transactions that all of the input tax was deductible. In this case the Appellant carries out taxable and non-taxable supplies.

84. The same principles were recognised in *Securenta* where it was expressly stated that to the extent that input VAT relating to expenditure incurred by a taxpayer is connected with activities which, in view of their non-economic nature, do not fall within the scope of the Sixth Directive, it cannot give rise to a right to deduct. The ECJ said:

> "31 ...where a taxpayer simultaneously carries out economic activities, taxed or exempt, and non-economic activities outside the scope of the Sixth Directive, deduction of the VAT... is allowed only to the extent that that expenditure is attributable to the taxpayer's economic activity within the meaning of Article 2(1) of that directive."

85. In *AB SKF,* the ECJ recognised that the principle of fiscal neutrality required that the same tax treatment be allowed to a disposal classified as an exempted transaction (as one that was outside the scope of VAT) and it followed that there was a right to deduct input VAT paid on services supplied for the purposes of a disposal of shares, under Article 17(1) and (2) of the Sixth Directive and Article 168 of Directive 2006/112, if there was a direct and immediate link between the costs associated with the input services and the overall economic activities of the taxable person.

86. These principles are recognised and were applied in the other cases we have been referred to. In *Church of England Children's Society.* Blackburne J held that the charities fundraising activities were "general overheads" and "cost components" of the charity's economic activities. He remitted the case to the Tribunal "to determine the extent to which the monies raised as a result of the use of the fundraising services" were used by the charity to make taxable supplies. The Tribunal were therefore asked to determine what proportion of the charity's activities were "non-business" and thus outside the scope of VAT, and what proportion was attributable to taxable supplies.

87. Blackburne J said that in determining the extent to which the input tax is deductible it was necessary for there to be an apportionment in order to secure a fair and reasonable attribution of the input tax as between the tax-payer's taxable and other supplies. His clear conclusion was that irrespective of the fact that costs of an activity fall outside the scope of VAT, if that activity funds other activities of the tax-payer, either taxable, exempt or otherwise, the input tax on those costs is deductible as residual input tax.

88. The purpose of the PCN activity was to benefit the other economic activities of the company and therefore costs associated with that activity can be regarded as overhead costs so that the input tax on those costs is deductible in part. There is clearly a link between the Appellant's PCN activity and its overall economic activities. The costs associated with the PCN activity formed part of the component costs of the VCN's supplies. The activity was effected for the benefit of the Appellant's other activities. It was not something which was carried on for its own sake.

89. Therefore the input tax on costs associated with the PCN activity fall to be apportioned under s 24(5).

90. HMRC contend that the income (turnover) apportionment which they have applied is fair and reasonable. We agree with VCS that this method of apportionment probably overstates (but in our view not substantially) the allocation of VCS's overhead costs referable to the generation of income from PCNs, because other costs, which are incurred in finding, making and fulfilling VCS's contracts with its clients and are therefore incurred in making taxable supplies, are more extensive in terms of the time and cost involved, than HMRC's method of apportionment implies. However we do not think that VCS's proposed method of apportionment in respect of time spent by VCS's employees on VCS sites or similar methodology would produce a fair result. As HMRC point out, VCS used an arbitrary 14 minutes per ticket as the time taken on the outside the scope activity in order to arrive at an apportionment. The time spent by employees on VCS sites does not necessarily give a full picture. VCS failed to account for travelling time to and from the car parks, the time taken to walk around the car park, the time taken in the office to issue the notices or time taken chasing up debts etc.

91. As HMRC suggest in correspondence with VCS, if a time based method is to be used, at a very minimum this necessitates a time log of every person in the company and for them to record every 15 minutes of their day against each task they have undertaken. This would have to be backed up by an independent Time and Motion consultant who could verify VCS's figures. It would also be necessary to agree the length of the period the survey should cover and at what point(s) in the accounting year it should take place before it is undertaken.

92. VCS have attributed 1.3% of their overheads directly to taxable income and 31.2% to non-taxable PCN income. The balance of 67.5%, in the absence of any other suitable method of apportionment, should be subject to an income based apportionment which is easily undertaken and readily verifiable. On that basis the balance of 67.5% can be apportioned as to 62.1% to PCN income and 5.4% to taxable supplies and therefore a total of 6.7% of overheads are referable to taxable supplies. This is less than, but should be rounded up to the figure of 8% which HMRC determined was referable to taxable supplies and which in our view represents a fair

and reasonable apportionment of VCS's income as between taxable and out of scope supplies.

93. For the above reasons the appeal is refused.

94. 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.

MICHAEL S CONNELL
TRIBUNAL JUDGE

RELEASE DATE: 2 March 2015