



**TC05389**

**Appeal number: TC/2015/02304**

*PROCEDURE – corporation tax appeal – deductibility question – payments to Employee Benefit Trust – possibility of application for rectification of trust deed – application by Respondents for notifications concerning possible rectification proceedings – Tribunal Rule 5(2)(d) – whether in interests of justice to grant Respondents’ application – consideration of implications for appeal proceedings of rectification being or not being sought – held, directions should be granted*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**YELKAR LIMITED**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE JOHN CLARK**

**Sitting in public at Fox Court, 30 Brooke Street, London EC1N 7RS on 15  
September 2015**

**Alexander Halban of Counsel, instructed by Buckingham Wealth Ltd, for the  
Appellant**

**Aparna Nathan of Counsel, instructed by the General Counsel and Solicitor to  
HM Revenue and Customs, for the Respondents**

## DECISION – REASONS FOR DIRECTIONS

1. In relation to the appeals by the Appellant (“Yelkar”) against decisions of the Respondents (“HMRC”) to disallow contributions made by Yelkar to an Employee Benefit Trust, HMRC applied for Directions concerning any possible application by Yelkar to the High Court for rectification of a Trust Deed. I have made such Directions. For drafting reasons, these are in a form slightly amended from that requested by HMRC. As Yelkar considered that the proposed Directions raised questions of principle, I informed the parties at the hearing that I would issue a decision setting out my reasons for making the Directions.

### *Background to the application*

2. The following background is set out for explanation purposes. I emphasise that I am not making findings of fact. Issues concerning the facts will require to be considered in a substantive hearing.

3. The contributions by Yelkar to the Employee Benefit Trust (“EBT”) set up by means of a Trust Deed in December 1997 were made in three accounting periods, to 31 March 1998, 31 March 2001 and 31 March 2003. On 30 September 2005 a Deed of Amendment was executed, designed to rectify the Trust Deed by inserting a clause preventing the trustees from having power to pay emoluments or potential emoluments.

4. Following enquiries into Yelkar’s corporation tax returns for those periods, but delayed pending the outcome of a test case which did not proceed to litigation, decisions in various forms (including a review decision in respect of the first accounting period) were issued by HMRC in February 2015. The effect of these decisions was to treat the deductions claimed for each of the contributions as not being allowable for tax purposes.

5. Yelkar’s appeal against the review decision was notified to HM Courts and Tribunals Service (“HMCTS”) in March 2015, and its appeal in relation to the other accounting periods was notified in August 2015.

6. On 5 October 2015, Yelkar’s appeals were consolidated.

7. In December 2015, a Reply to HMRC’s Statement of Case was served in Yelkar’s behalf. In that Reply, Yelkar referred to the 2005 Deed of Amendment, which purported to effect the rectification of the 1997 Trust Deed. Yelkar accepted that rectification is a remedy that can only be awarded by a court of equity and indicated that an application to the High Court was therefore necessary. A stay in the Tribunal proceedings was requested in order to make that application.

8. In January 2016, Yelkar and HMRC agreed that Yelkar’s consolidated appeal should be stayed behind three other appeals to the Tribunal, pending the hearing of those three appeals. They notified HMCTS accordingly.

9. On 10 February 2016 HMRC wrote to Yelkar’s representative, asking that if Yelkar did commence rectification proceedings, it should inform HMRC when the application was made, and should provide HMRC with the Court reference number and any hearing date so that HMRC would have the opportunity to consider whether they ought to be joined in the action.

10. On 16 February 2016, HMCTS notified the parties of the Tribunal’s consent to the stay behind the three other appeals.

11. On 2 March 2016, HMRC applied to the Tribunal for a direction to the effect that Yelkar should inform the Tribunal and HMRC of the details of its application to the High Court. HMRC explained that Yelkar had not responded to their request dated 10 February 2016. HMRC stated:

“The outcome of the Appellant’s application to the High Court is relevant to this Appeal because this Appeal concerns the tax treatment of contributions made into the trust created by the Trust Deed.”

12. On 22 June 2016, notice was given of the hearing on 15 September 2015.

*Arguments for HMRC*

13. Ms Nathan submitted that the application should be granted. The purpose of the proposed Directions was to inform the Tribunal and HMRC of the commencement of rectification proceedings and to provide information about any hearing. If Yelkar did not proceed with an application for rectification, it should tell the Tribunal and HMRC. She submitted that the proposed Direction did not involve anything “heart rending” or onerous. The information concerned fell within Tribunal Rule 5(3)(d).

14. The Tribunal could only exercise its powers so as to give effect to the overriding objective in Rule 2, namely to deal with case fairly and justly. Rule 2(3)(a) was engaged, concerning proportionality, as well as Rule 2(3)(e) concerning the avoidance of delay.

15. The points involved in the appeal were complex, the authorities being *MacDonald v Dextra Accessories Ltd* [2005] UKHL 47 and *Sempra Metals Ltd v Revenue and Customs Commissioners* [2008] STC (SCD) 1062.

16. One case concerning these issues had been settled and disappeared. There were now three lead cases, and Yelkar’s case was stayed behind these. All three were rectification cases. In the first, *Alway Sheet Metal Limited v Capco Trust Jersey Limited* [2014] EWHC 2394 (Ch), rectification had been sought and was not granted by Nugee J. At present, it was unknown whether an application for rectification would be made in Yelkar’s case. There would be differences between the outcomes for the purposes of the appeal before the Tribunal if Yelkar either did proceed with a successful application for rectification or did not. Thus, in order to identify the relevant issues for the purposes of the Tribunal appeal, it was necessary for the Directions to be given.

17. Put simply, the issue with rectification was this. If Yelkar was to decide to proceed with an application for rectification, it was necessary to know for the purposes of the tax appeal what the outcome of the rectification proceedings was.

18. In the context of Rule 2(3)(e), it was sensible to establish the position in the run-up to the hearing of the three lead cases. Then all the circumstances would be known in relation to Yelkar. If the matter was deferred and allowed to slip, so that Yelkar was either allowed or able to deal with the question of rectification only once the three lead cases had been determined, this would lead to delay because of the need to await the outcome of the rectification proceedings.

19. In asking for the Directions, HMRC were not asking for anything unusual. Ms Nathan referred to the Guernsey case *HM Revenue and Customs v Gresh and RBC Trust Company (Guernsey) Limited* (Guernsey Law Reports 2009-10 GLR 239). She submitted that the effect of the outcome of rectification proceedings was the same as the description of the issue in *Gresh* at [19]:

“There are a number of possible permutations, but, in essence, whichever way one regards the issues that have arisen between HMRC and Mr Gresh, we take the view that the primary question that needs to be resolved between them is whether the distribution is valid or void. That is the essential precursor to any liability to UK tax. If the distribution is void, there will be no UK tax on it. If it is valid or voidable, there will or may be such a charge to UK tax.”

20. The effect of the separate document (ie the 2005 Deed of Amendment) in Yelkar’s case might also give rise to separate tax law questions.

21. Ms Nathan made other detailed submissions based on *Gresh*. She argued that in Yelkar’s case, the effect of dealing with the matter through rectification proceedings would be to determine whether payments were to be made to employees. HMRC had a direct interest in this issue, as it affected the tax liability that would apply.

22. Ms Nathan referred to the Jersey case *In the matter of R* [2011]JRC117. At [18] the Jersey Royal Court indicated that it was satisfied that it had been unnecessary to adjourn and convene HMRC. The reason was that no tax was at stake. The Court commented that it would have been desirable to notify HMRC of the application. In the case of Yelkar, HMRC were asking to be informed so that they could decide whether to be joined in the rectification proceedings. At present it was not known whether or not rectification proceedings would take place.

23. In its written submissions made following HMRC’s application, Yelkar had resisted that application on two grounds. The first was that HMRC had no legitimate interest in any rectification proceedings. The second was that it was not necessary to grant HMRC’s application to deal with Yelkar’s case.

24. In relation to the first, Ms Nathan referred to CPR Rule 19.2, and submitted that either or both limbs of Rule 19.2(2) were engaged. HMRC did not know whether Yelkar would be making an application for rectification. If HMRC were informed of proceedings, it would be open to the m to apply to be joined. This was desirable for

the same reasons as in *Gresh*; there were consequences attendant on rectification arrangements. The argument as to non-recognition of the 2005 Deed of Amendment was likely to be run before this Tribunal, which was not a forum used to dealing with rectification proceedings. It was better for the matter to be tested in the Chancery Division. This could be done either through provision by HMRC of written submissions, or by full joinder in order to provide the full context of the rectification proceedings.

25. In *Alway*, at [8], Nugee J had referred to the absence of the Revenue before him. Ms Nathan argued that it would have assisted him to have had HMRC as a party. This would have ensured that the totality of the context of the application for rectification was before him. In her submission, the same was true in Yelkar's case in respect of any submissions that HMRC might wish to make in any rectification proceedings by Yelkar. The result would be that the High Court Judge would understand the relevance of the tax principles, and also the impact on the general deductibility of payments made to a trust from which employees were excluded. It was desirable for the Judge to have the benefit of HMRC's submissions. Thus the requirement in CPR Rule 19.2(2)(a) was made out.

26. Ms Nathan submitted that Rule 19.2(2)(b) was also made out. If HMRC were not aware of the proceedings and were not joined, they would not be bound. The issue would then have to be debated in the Tribunal, resulting in delay and costs. Joinder would ensure that the outcome of the issue of rectification would dispose of that aspect.

27. Yelkar relied on the absence of HMRC in *Alway*, presumably in support of its assertion that it was not appropriate to add HMRC as parties to rectification proceedings. If that reading of Yelkar's submissions was correct, the argument was unsustainable. This did not determine whether HMRC should be added to any proceedings that Yelkar might institute.

28. It was difficult to see why HMRC should not be added as a party if they wanted to be, given what was said by Nugee J in *Alway* at [8]. The Judge in such circumstances could not be sure that his analysis was correct, given the use of such words as "probably" and "presumably".

29. It was not surprising that HMRC had not been a party in that case, given that they had not been informed of the proceedings.

30. Ms Nathan submitted that where HMRC had a direct interest in a case involving rectification, their application to be joined in those proceedings was likely to be granted. She referred to *Re Vandervell's Trusts (No 1)* [1971] AC 912, which had been decided at a time when the Revenue could not be joined as a party.

31. Joining HMRC as a party to rectification proceedings would have the benefit of binding the parties. This would prevent the relevant issues from being raised in the Tribunal.

32. On Yelkar's second contention that it was unnecessary to grant HMRC's application, this raised the prospect that Yelkar would seek to re-litigate the matter before the Tribunal once rectification proceedings had successfully been pursued. Ms Nathan argued that any Tribunal would hold up the Tribunal proceedings in such circumstances. This was such a fundamental issue that it would make no sense to proceed with the tax appeal. Any litigation would have to be stayed pending the rectification proceedings.

33. To ensure that the tax appeal dealt with all the correct tax issues, dealt with them at the same time, and dealt with them with a minimum of delay, HMRC asked that the Directions which they were seeking should be granted.

34. Ms Nathan referred to the commentary in Part 19 of the CPR at p 560, dealing with Rule 19.4(2) and referring to Rule 19.2(2). She argued that there were good grounds for HMRC to apply for joinder, but that they could only do so if they were informed. It was likely that any application by HMRC would be seen to have benefit. However, HMRC needed to be told that proceedings were being pursued, and informed of hearing dates. Finally, HMRC needed to be told if an application was not going to be made.

#### *Arguments for Yelkar*

35. Mr Halban referred to the point of the Tribunal's power under Rule 5(3)(d), and argued that it could not and should not be used. The power was to be exercised judicially and in accordance with the overriding objective. The requirement was to deal with the present appeal fairly and justly.

36. If Yelkar were simply being asked to provide notice of rectification proceedings, this would be innocuous. HMRC's letter dated 10 February 2016 appeared to suggest merely this. However, as matters had developed, it appeared that HMRC were considering whether they wanted to be joined in any rectification proceedings. In Mr Halban's submission, the Tribunal needed to have in mind that there was only one reason why HMRC wished to be informed of any rectification proceedings; this was so that they could seek to interpose in them or otherwise influence their outcome. Ms Nathan had referred to res judicata. In Yelkar's view, HMRC wished to influence the result of any such proceedings.

37. There was a difference between being joined as an amicus and being joined with a direct interest. Mr Halban stressed his reference to the present appeal; he argued that HMRC were seeking to use the procedure for collateral advantage. There was no procedure to force a decision as to their involvement in any rectification proceedings. This was a matter for the Chancery Judge.

38. It was inappropriate to allow anything more than a requirement to give information as to any rectification proceedings. To do more would go beyond the purpose of the Tribunal Rules.

39. There were two fundamental reasons why it was not appropriate to give notice of such proceedings. The first was that HMRC had no legitimate interest in any rectification proceedings. The second was it was not necessary, fair or just to give such notice in order to resolve this appeal before the Tribunal.

5 40. The remedy of rectification was for the correction of a written document which did not reflect the intention of the parties to it. This was a question for a Chancery Judge; what had Yelkar understood itself to be agreeing. HMRC could have no knowledge or even submissions to make on that point. HMRC had to be able to contribute something to the rectification proceedings. What rectification achieved was  
10 only to change relations as between the parties to the document.

41. Mr Halban referred to *In re Colebrook's Conveyances* [1972] 1 WLR 1397, in which the Revenue had chosen not to be joined, as long as the case of *Whiteside v Whiteside* [1950] Ch 65 was mentioned. He commented that the question of joinder was a matter for the Chancery Judge, within the latter's case management powers. He  
15 submitted that in the present case HMRC were asking for a pre-judgment of what the Chancery Division would do. *Colebrook* was helpful; it showed that rectification proceedings only concerned the parties to the document.

42. It was not appropriate to join HMRC as a party with an interest. If this were permitted in any case where there was a tax consequence, the use of rectification  
20 proceedings would become widespread. As an example, parties to a contract for the supply of goods where the price had been shown incorrectly might apply for rectification. It would not be appropriate to join HMRC, even though rectification would have an effect on the corporation tax liability of each party.

43. A similar position could arise in a dispute as to whether there was a gift, a loan  
25 or a resulting trust. The question would be the intention in handing over the money. Again, such a dispute would be one as between the parties. Mr Halban submitted that it was unlikely that a Judge would agree a joinder.

44. It was a matter for the trial judge whether HMRC would be likely to be joined. Yelkar's submission was that HMRC should not be able to interpose itself in  
30 rectification proceedings.

45. Mr Halban argued that HMRC had mis-stated the test that the Court would apply on joinder. He referred to CPR 19.2(a) and (b). The reference in each of these to "in the proceedings" was to the rectification proceedings.

46. If HMRC were to be joined under CPR 19.2(a), their role would be half way  
35 between an amicus and a litigating party. It would be misleading to say that interposition of HMRC would be neutral, as they were interested in the proceedings. Mr Halban submitted that the reading of *Alway* at [8] as indicating that it would have been useful to have HMRC present was incorrect; the position was to the contrary. Nugee J was saying that it would be useful for background to have had HMRC  
40 present, and referred to the pending proceedings before the Tribunal in that case. Mr Halban submitted that the result of having HMRC present would have been to give

the Court fuller background, but it would not have resolved the issues to be determined by the Tribunal.

47. Mr Halban argued that if the issue in Yelkar's case was the tax effectiveness of the rectification document, this would be addressing the tax consequences of that document. This came near overstepping the line between the Chancery Division and the Tribunal. The tax consequences of the rectification would be considered in the Tribunal. If the appeal was stayed for the rectification proceedings, the High Court would not resolve the question of tax referable to a rectification, because that would fall outside the claim before the High Court, which would be addressing the question of the intention of the parties.

48. Mr Halban made a series of submissions concerning the authorities cited by Ms Nathan. I refer as necessary or appropriate to such submissions in the following section of this decision.

49. In relation to *Gresh*, Mr Halban submitted that the involvement of HMRC had been in the context of a question of law. In the present case, the question was one of fact, as to the intentions of the parties. Even if it was appropriate to join HMRC as a party for a question of law, it was not appropriate to do so where the question at issue was one of fact.

50. He argued that *In the matter of R* at [17]-[18] supported his argument; if the Court considered it appropriate to involve HMRC, it could adjourn in order to join HMRC as a party.

51. If the present proceedings before the Tribunal were not going on, HMRC would not know about any question of rectification proceedings. HMRC were not entitled to have more knowledge than they would otherwise have.

52. Mr Halban stated that if, as a result of rectification proceedings the Court were to decide to grant rectification of the 2005 Deed, Yelkar would notify the Tribunal.

#### *Consideration and conclusions*

53. I am conscious of the need to take account of the clear demarcation between the jurisdiction of these Tribunals and that of the higher courts. What I am concerned with in the context of HMRC's application is the conduct of the proceedings in Yelkar's appeal before the First-tier Tribunal. Thus questions as to the propriety or otherwise of HMRC possibly seeking to become involved in any rectification proceedings brought by Yelkar before the High Court are not questions for this Tribunal. Rule 2(1) of the Tribunal Rules states that the overriding objective of those rules is to enable the Tribunal to deal with cases fairly and justly. Rule 2(3) requires the Tribunal to seek to give effect to that objective when it exercises any power under the Rules or interprets any rule or practice direction.



54. The question of the effect of the 2005 Deed was raised in HMRC's Statement of Case. HMRC set out their argument that it was not possible for a deed to be rectified by the consent of the parties; only the High Court could order rectification.

5 55. In Yelkar's Reply to the Respondents' Statement of Case, it accepted that rectification is a remedy that can only be awarded by a Court of equity and that an application to the High Court was therefore necessary. Yelkar therefore sought a stay in proceedings to make that application.

56. Thus the parties have each raised the question of rectification in the course of the proceedings before the Tribunal.

10 57. In relation to Yelkar's appeal, the implications of the rectification issue need to be examined. In doing so, I should emphasise that nothing in this decision should be taken as pre-judging that issue. It, together with various other issues referred to in Yelkar's Reply to HMRC's Statement of Case, remains to be considered when the substantive appeal is heard. What is necessary for the purposes of deciding whether to  
15 allow HMRC's application is to examine the potential implications in the various possible circumstances which might arise.

58. The first possible circumstance is that the substantive appeal is heard without any further consideration being given to the pursuit of rectification proceedings in the High Court. The Tribunal would need to decide on the outcome of the appeal on the  
20 basis of the documentation as it currently stands. It may be persuaded by HMRC's argument that the 2005 Deed is not effective to rectify the Trust Deed. Putting aside any of the other issues raised by Yelkar, the Tribunal might in those circumstances decide to dismiss Yelkar's appeal.

59. Any such determination by the Tribunal would be final and conclusive. With the  
25 exception of Rule 38 of the Tribunal Rules, which gives power to the Tribunal to set aside a decision in certain limited circumstances, there would appear to be no mechanism for reopening an appeal. To use the unfashionable Latin tag, once the final decision has been made, the Tribunal is *functus officio*.

60. The effect would be that, even if a subsequent application to the High Court for  
30 rectification was successful, the rectification of the Trust Deed could not affect the outcome of Yelkar's appeal to the Tribunal.

61. Given that potential result, it is, as Ms Nathan submitted, highly unlikely that the Tribunal would agree to proceed with the appeal on the assumption that the Trust Deed had not been rectified. The parties have each raised the question of rectification,  
35 and the Tribunal would wish to avoid dealing with the appeal in a way which might not be seen to be appropriately fair and just. In all probability, the Tribunal would stay the appeal, but would need to be kept informed as to the progress of any rectification proceedings or any decision by Yelkar not to pursue such proceedings.

62. The second possible circumstance is that the hearing of Yelkar's substantive  
40 appeal is deferred while it makes an application to the High Court for rectification of the Trust Deed, and HMRC decide not to have any involvement in the High Court

proceedings. If the High Court were to grant Yelkar's application for rectification, it is clear from *Vandervell*, in particular from the passage cited by Lord Reid at p 929 from *Asher v London Film Productions Ltd* [1944] KB 133 at 133-138, that HMRC would not be bound by the result of Yelkar's application:

5                    "I have often thought that in cases of this kind it is extremely  
inconvenient that the Crown (which is vitally interested) cannot, under  
the existing procedure, be made a party or otherwise appear. The result  
is that the Crown is technically not bound by any decision which may  
be pronounced in its absence."

10        63.    The procedure in the High Court has since been changed to permit the Crown to  
be joined as a party to the proceedings if the Crown so chooses and the High Court  
agrees to the joinder. Mr Halban referred to *In re Colebrook's Conveyances* as an  
example of a case in which the Revenue had chosen not to appear. I accept that in that  
15        case the Revenue took that view, and confirmed that they would regard themselves as  
bound by the decision of the court provided that the case of *Whiteside v Whiteside*  
was considered. However, the position was that the tax was due; the dispute was as to  
which party was responsible for the payment of that tax. In Yelkar's case, the issue is  
whether or not its corporation tax liability is to be increased as a result of the  
20        disallowance of its contributions to the EBT. It cannot automatically be assumed that  
HMRC, if not a party to the rectification proceedings, will agree to be bound by the  
outcome of those proceedings.

25        64.    Thus the risk in this second possible circumstance is that HMRC will not agree  
to accept that they are bound by the result of the rectification proceedings. If they do  
not, the position in respect of Yelkar's appeal proceedings would be the same as that  
in the first circumstance considered above. The rectification proceedings would bind  
only the parties to those proceedings, and would not affect the outcome of Yelkar's  
corporation tax appeal. The Tribunal would have to consider the implications of the  
2005 Deed of Amendment.

30        65.    Again, it is probable that the Tribunal would have to stay the appeal in order to  
establish to its satisfaction whether or not the rectification proceedings would be  
binding on HMRC, and whether the effect of the 2005 Deed of Amendment would  
have to be considered in the course of the appeal proceedings.

35        66.    The third possible circumstance is that the appeal proceedings before the  
Tribunal are stayed to permit Yelkar to make an application to the High Court for  
rectification of the Trust Deed, and that HMRC successfully apply to be joined as a  
party to the rectification proceedings. In that event, HMRC will be bound in the same  
way as the other parties to those proceedings. If the application for rectification is  
granted, this may have a material effect on the result of Yelkar's appeal to the  
Tribunal. If the application for rectification is refused, the position will be as  
40        described for the two possible circumstances considered above.

67.    It is clear to me that the question whether Yelkar does or does not apply to the  
High Court for rectification of the Trust Deed is highly material to the appeal  
proceedings before this Tribunal. Consideration of this matter does not amount to an

interference in the possible proceedings before the High Court. It is clearly not appropriate for this Tribunal to consider the likelihood or otherwise of the High Court agreeing to join HMRC as a party. Although I have been referred to CPR Rule 19.2, as well as various cases concerning decisions whether or not HMRC should be a party to other rectification proceedings, I have treated this as background information provided to me for the purposes of considering HMRC's application for Directions.

68. Yelkar's objections to HMRC's application appear to me to be based principally on its view that HMRC should not be permitted to interfere with its decision-making process. It appears to want complete freedom to make its own decision whether to apply to the High Court for rectification or to refrain from doing so, and to make that decision in its own time. For the above reasons, I consider that there are implications for the appeal proceedings before this Tribunal, whichever course Yelkar may choose to adopt. Its choice will affect those proceedings, and in the interests of justice I consider it essential that it should provide information as to that choice both to the Tribunal, so that it can deal with the appeal fairly and justly, and to HMRC as the other party to the appeal proceedings.

69. Yelkar's appeal is currently stayed behind three other appeals. Ms Nathan referred to these as lead cases, but it is not clear to me whether that description is appropriate, if it is intended to refer to Rule 18 of the Tribunal Rules. Whatever the position, it appears to me undesirable for the question of a possible application by Yelkar to the High Court to be deferred until the outcome of the three "lead" appeals is known. That could lead to undue delay, because the hearing of Yelkar's substantive appeal in this Tribunal would still have to await the result of any rectification application.

70. For the reasons which I have given, I agreed to make and have made Directions in the following form:

(1) In the event that the Appellant shall make an application to the High Court for rectification of the Trust Deed dated 22 December 1997, the Appellant shall within seven days of making such application confirm to the Tribunal and to the Respondents that it has made such application and shall provide the Tribunal and the Respondents with the Court reference number relating to that application within seven days of receiving it.

(2) The Appellant shall provide the Tribunal and the Respondents with the date and location of any hearing relating to the application within seven days of the application being listed for a hearing.

(3) If the Appellant does not intend to make an application for rectification, or at any time shall decide not to pursue any such application, it shall as soon as practicable, and in any event within 14 days of any such decision, notify the Tribunal and the Respondents to that effect.

*Right to apply for permission to appeal*

71. This document contains full reasons for the decision to make the Directions. Any party dissatisfied with this decision has a right to apply for permission to appeal

5 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.

10 **JOHN CLARK**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 28 September 2016**