[2016] UKFTT 0791 (TC)

TC05516

Appeal number:TC/2013/00737

INCOME TAX – bad debt relief – sole trader – writing off loans to father's company – whether loans made – quantum of loans – claim to discharge tax under Schedule 1AB TMA 1970 – whether loans were bad or estimated to be bad – whether loans were capital or revenue in nature – whether loans were made wholly and exclusively for the purposes of the sole trader business – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

JAMIE WHITE **Appellant**

- and -

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

TRIBUNAL: JUDGE JONATHAN CANNAN
MR JOHN WILSON

Sitting in public in Manchester on 4 April 2016 and 21 June 2016

Mr Harry Hodgkin of counsel instructed under Direct Access for the Appellant

Mr Alan Hall of HM Revenue & Customs for the Respondents

DECISION

Background

1. The Appellant is Mr Jamie White ("Mr White") and he has been in the business of skip hire since 1999 as a sole trader. On 30 October 2012 he wrote to HMRC seeking to correct his self assessment tax returns for 2008-09, 2009-10 and 2010-11 pursuant to Schedule 1AB Taxes Management Act 1970 ("TMA 1970"). The corrections related to relief for what were described as irrecoverable debts in connection with loans he had made to M White Limited ("MWL").

2. HMRC rejected the corrections on the basis that the irrecoverable debts were not allowable for income tax relief because:

(1) the loans were capital investments, and

(2) the loans were not wholly and exclusively laid out for the purposes of the trade.

3. Mr White appealed to the F-tT. His appeal was dismissed in a decision released on 6 January 2014, but the Upper Tribunal subsequently granted him permission to appeal that decision. Following the grant of permission to appeal the parties, at the invitation of the Upper Tribunal, agreed that the appeal should be remitted to the F-tT for re-hearing by a different panel. In re-hearing the appeal we have completely disregarded the original findings of the F-tT.

4. In closing submissions before us the issues were as follows:

(1) Was there a debt to write off in the years of assessment, and if so what was the amount of that debt?

(2) Were the debts bad or estimated to be bad in the years of assessment, and if so to what extent?

(3) Were the underlying loans capital or revenue in nature?

(4) Were the underlying loans made wholly and exclusively for the purposes of Mr White's trade?

5. We set out below the legal framework and our findings of fact. We then set out reasons for our decision.

Legal Framework

6. Mr White's claim was made pursuant to Section 33 TMA 1970 and Schedule 1AB TMA 1970 which apply to claims made on or after 1 April 2010. Paragraphs 1 and 2 of Schedule 1AB so far as relevant provide as follows:

"1 (1) This paragraph applies where–

(a) a person has paid an amount by way of income tax or capital gains tax but the person believes that the tax was not due, or

(b) a person has been assessed as liable to pay an amount by way of income tax or capital gains tax, or there has been a determination or direction to that effect, but the person believes that the tax is not due.

(2) The person may make a claim to the Commissioners for repayment or discharge of the amount.

(3) Paragraph 2 makes provision about cases in which the Commissioners are not liable to give effect to a claim under this Schedule.

…

2 (1) The Commissioners are not liable to give effect to a claim under this Schedule if or to the extent that the claim falls within a case described in this paragraph (see also paragraph 4(5)).”

7. Paragraph 2 goes on to specify eight cases (A – H) where HMRC are not liable to give effect to a claim under Schedule 1AB. Initially the Respondents contended that the circumstances of the present claim fell within Cases A, B and C. However, those objections were not maintained and we need say no more about them.

8. Prior to April 2010, section 33 gave relief for tax charged which was excessive by reason of some “error or mistake”. The present regime does not expressly refer to error or mistake but it does apply to a situation where tax was not due because of an error or mistake.

9. Relief for bad and doubtful debts is provided by section 35 Income Tax (Trading and Other Income) Act 2005 (“ITTOIA”) which provides as follows:

“ 35 (1) In calculating the profits of a trade, no deduction is allowed for a debt owed to the person carrying on the trade, except so far as–

(a) the debt is bad,

(b) the debt is estimated to be bad, or

(c) the debt is released wholly and exclusively for the purposes of the trade as part of a statutory insolvency arrangement.

(2) If the debtor is bankrupt or insolvent, the whole of the debt is estimated to be bad for the purposes of subsection (1)(b), except so far as any amount may reasonably be expected to be received on the debt.”

10. No submissions were addressed to us as to what is a bad debt or a debt estimated to be bad. We take the term ‘bad debt’ to refer to a debt that has been written off as irrecoverable in the creditor’s accounts. A debt that is ‘estimated to be bad’ refers to a debt for which a specific provision has been made in the creditor’s accounts because it is likely to be irrecoverable.

11. Relief for bad debts is not available where the underlying loans are capital in nature and where they are not incurred wholly and exclusively for the purposes of the trade. Sections 33 and 34 ITTOIA provide as follows:

> " 33 In calculating the profits of a trade, no deduction is allowed for items of a capital nature.
>
> 34(1) In calculating the profits of a trade, no deduction is allowed for–
>
> (a) expenses not incurred wholly and exclusively for the purposes of the trade, or
>
> (b) losses not connected with or arising out of the trade.
>
> (2) If an expense is incurred for more than one purpose, this section does not prohibit a deduction for any identifiable part or identifiable proportion of the expense which is incurred wholly and exclusively for the purposes of the trade."

12. These provisions and their predecessors are the subject of various authorities which were referred to us. We consider the application of these authorities to the facts of the present case in our reasons below. For present purposes the following review is sufficient.

13. In relation to section 33 ITTOIA, there are a number of authorities concerned with the distinction between capital and revenue transactions.

14. In *Reid's Brewery Company Ltd v Male [1891] 2 QB 1*, a brewery deducted a large sum for bad debts in arriving at its profit for income tax purposes. The bad debts included losses on loans advanced by the brewery to its customers on the security of public houses. When a public house was sold, if the security did not realise the amount advanced then the balance was written off as a bad debt. It was the usual practice and custom of manufacturing brewers in London to carry on the business of bankers and moneylenders as an adjunct to their brewing business and strictly with their customers and other connections. That involved receiving deposits from customers and making loans to customers. It was found as a fact that loans and advances were not made by way of permanent investments but only in connection with current dealings and transactions of the customers. In the event of those dealings terminating the loan was repayable and the account closed.

15. The issue for the High Court was whether the money expended by the brewery by way of loans was capital or revenue in nature. In the former case no deduction was permitted. It was held that the loans did not amount to capital investments. Pollock B stated as follows:

> " It is capital used by the Appellants, but used only in the sense that all money which is laid out by persons who are traders, whether it be in the purchase of goods be they traders alone whether it be in the purchase of raw material be they manufacturers, or in the case of money lenders, be they pawnbrokers or money lenders, whether it be money lent in the course of their trade, it is used and it comes out of capital, but it is not an investment in the ordinary sense of the word."

16. In *English Crown Spelter Co Ltd v Baker 5 TC 327* loans were made by the taxpayer company to a subsidiary. The taxpayer carried on a business of zinc smelting, for which it required large quantities of zinc ore known as "blende". The subsidiary was formed to acquire various mining leases and to supply blende to the

taxpayer. The taxpayer assisted the subsidiary financially when necessary making advances "against blende to be delivered". The advances were made by way of loan at interest rather than against specific parcels of blende. In the event the supplies of blende were not what had been hoped for, the taxpayer called in the loan and the subsidiary was placed into liquidation. The total blende delivered to the taxpayer had an invoice value of £5,826 whilst the advances made by the taxpayer totalled £44,124.

17. The Special Commissioners held that the appellant company did not carry on a business of moneylending as part of or in addition to its business of smelting so that relief for the bad debt was not available. There was no custom in the trade such as that in Reid's Brewery. Further they held that the advances were not wholly and exclusively laid out for the purposes of the Appellant's business because the business did not include moneylending; and that the advances were an employment of capital in a separate concern.

18. Bray J considered only whether the advances were capital invested. He did not regard the Special Commissioners finding of fact that the advances amounted to capital employed in a separate concern as conclusive of the issue. He looked to see whether there were materials on which they could make that finding. He found that there were, in particular that this was not an ordinary business transaction of an advance against goods to be delivered. He stated as follows:

> " I can come to no other conclusion but that this was an investment of capital in the Welsh Company, and was not an ordinary trade transaction of an advance against goods. It was pressed upon me that it is quite sufficient to say that the main object of this advance was to enable the English Company to carry on their business more profitably, by being able to obtain blende. I dare say that was one of the objects, and very likely the main object; but if it really is an investment of capital, that is not sufficient."

19. In *Lawson v Johnson Matthey Plc [1992] AC 324* the House of Lords was concerned with the distinction between capital and revenue payments. The taxpayer company carried on business of refining and marketing precious metals. A subsidiary of the taxpayer company carried on a business of banking together with bullion and currency trading. The subsidiary got into financial difficulties and it was concluded that it was insolvent and would have to cease trading. The implications of a bank failure led the Bank of England to offer to purchase the banking subsidiary and provide financial support to the taxpayer company provided that the taxpayer company injected £50m into the subsidiary prior to the sale. The question was whether the £50m was capital or revenue in nature.

20. The House of Lords held that the payment was revenue in nature. It was paid as a contribution towards the rescue of the subsidiary. The taxpayer company made the payment to save its own platinum trade from collapse and to be able to continue in business. The payment could not be described as money paid for the taxpayer to divest itself of the shares in the subsidiary, which it was accepted would have been a capital payment.

21. A summary of the reasoning of the House of Lords can be taken from the speech of Lord Templeman at pp 74G to 75C where having reviewed various authorities he stated:

> " Finally, in Tucker v Granada Motorway Services Ltd. [1979] 1 WLR 683 the price paid by the taxpayer for procuring a reduction in the rent payable under a lease for the unexpired term of 40 years was held to be a payment attributable to capital. Lord Wilberforce at page 686 said:
>
> > 'It is common in cases which raise the question whether a payment is to be treated as a revenue or as a capital payment for indicia to point different ways. In the end the courts can do little better than form an opinion which way the balance lies. There are a number of tests which have been stated in reported cases which it is useful to apply, but we have been warned more than once not to seek automatically to apply to one case words or formulae which have been found useful in another…. Nevertheless reported cases are the best tools that we have, even if they may sometimes be blunt instruments. I think that the key to the present case is to be found in those cases which have sought to identify an asset. In them it seems reasonably logical to start with the assumption that money spent on the acquisition of the asset should be regarded as capital expenditure. Extensions from this are, first, to regard money spent on getting rid of a disadvantageous asset as capital expenditure and, secondly, to regard money spent on improving the asset, or making it more advantageous, as capital expenditure. In the latter type of case it will have to be considered whether the expenditure has the result stated or whether it should be regarded as expenditure on maintenance or upkeep, and some cases may pose difficult problems.'
>
> In the light of the authorities it seems that if the £50m were paid to procure the transfer of the shares in JMB to the Bank of England, the payment is attributable to capital. If, on the other hand, the £50m were paid to remove the threat posed by the insolvency of JMB to the continuation in business of the taxpayer, it seems that the payment is attributable to revenue. In agreement with the General Commissioners and with the submissions forcefully made by Mr. Park on behalf of the taxpayer I have come to the conclusion that the £50m were paid, and paid solely, to enable the taxpayer to be able to continue in business. The shares in JMB were fully paid and worthless. The shares were freely transferable and did not constitute a threat to anybody. The insolvency of JMB was a threat to the taxpayer and £50m were paid to remove that threat."

22. The short point therefore was whether the £50m was paid to dispose of the shares in the subsidiary, a capital payment, or to enable the taxpayer to continue trading by removing the danger of the subsidiary's insolvency, a revenue payment.

23. In relation to s 34 ITTOIA we were referred to *Odhams Press Ltd v Cook 56 TLR 704* where the House of Lords considered whether certain losses were incurred wholly and exclusively for the purposes of the company's trade or business. Again, the case involved advances by the appellant taxpayer to a subsidiary company with which it also had a trading account providing printing, engraving and publishing services to the subsidiary. The subsidiary made a net loss in one financial year and the taxpayer wrote off an equal amount in the subsidiary's trading account so that the subsidiary would not be weighed down by debts. The Special Commissioner had found that the sum was not written off wholly and exclusively for the purpose of the

appellant's trade. The appellant as shareholder intended to benefit the subsidiary, and it wrote the sums off to enable the subsidiary to continue trading. The appellant may also have had an interest in the subsidiary carrying on business, namely the obtaining of printing orders but that was not the only purpose for which the 'payment' was made. The Court of Appeal and the House of Lords upheld that finding.

24. We were also referred to a decision of a Special Commissioner (Mr Michael Tildesley) in *Thompson v Commissioners of HM Revenue & Customs [2005] STC (SCD)*. The case is not binding upon us but it is persuasive. It concerned an application for error and mistake relief under section 33 TMA 1970, the predecessor to Schedule 1AB. Much like the present case the error relied upon was a failure to deduct doubtful debts from the profits subject to income tax in a tax return. The issue for determination was described at [44] of the decision as "when did the debts identified by the Appellant become bad debts?". The Special Commissioner was not satisfied by reference to the evidence available at the time the profit and loss accounts were submitted that the debts were bad or doubtful. He went on to find at [50] that it was not permissible to use hindsight in determining whether debts were bad and doubtful subsequent to submission of the tax return:

> " 50. The use of hindsight as the method for determining bad or doubtful debts does not fit with the construction of s 74(1)(j) of ICTA 1988 [now section 35 ITTOIA]. That section requires the taxpayer to make a judgement of whether a debt is bad or doubtful based upon the facts known to him at the time of drawing up his profit and loss account for the purposes of his Sch D tax computation. The appellant gave evidence that he applied his commercial judgment about whether his clients 'were good for the money' when drawing up his accounts for the years in question. The appellant decided that they 'were good for the money' and the debts were, therefore, sound. The fact that his commercial judgment has proved to be wrong by subsequent events does not entitle him under s 74 to go back and revisit his Sch D tax computation for the years in question. Instead s 74 enables him to claim relief for those debts in the accounting years when evidence comes to light to substantiate a judgment that the debts have become bad…"

25. It is a long standing principle that hindsight cannot be used to estimate bad and doubtful debts, either by a taxpayer seeking to obtain relief in an earlier period or by HMRC seeking to claw back relief given in an earlier period (see for example *Anderton and Halstead Ltd v Birrell [1932] 1 KB 271*).

The Evidence and our Findings of Fact

26. We heard oral evidence from Mr White who produced two witness statements dated 7 January 2016 and 29 April 2016. The second witness statement was produced after his cross examination but before closing submissions. Mr Hall did not suggest there would be any prejudice if we admitted the second witness statement. We decided to admit it in evidence and Mr White was cross examined on it. We set out our findings of fact in the light of Mr White's oral evidence and the documentary evidence before us both in this section and in our section below on reasons.

27. MWL was a company owned by the Appellant's father, Mark White. It commenced operating a skip hire business in 1998 from a yard near Sheffield. Mark White was the sole director. His daughter Fiona, Mr White's sister, was the Company Secretary.

28. Mr White purchased two skip hire businesses known as BP Skips and LJ Skips in 1999 and 2000 respectively. He operated those businesses as a sole trader. BP Skips and LJ Skips were treated by Mr White as separate businesses. He maintained separate bank accounts for each business and separate telephone numbers were advertised to customers. Mr White also used separate self-employment pages for each business when completing his self-assessment tax returns.

29. Mr White gave evidence in general terms as to how his skip hire businesses operated, and we accept that evidence. Mr White owned the skips. MWL provided him with all the facilities and services that he would otherwise require to run the businesses including the following:

- Licences and permits;
- Access to the yard for tipping skips, including security;
- Labour for processing waste;
- Disposal of unrecyclable waste at landfill;
- Telephone answering and ordering service;
- Lorries for delivery and collection of skips, including fuel and maintenance;
- Plant and machinery;
- Office premises and equipment.

30. In consideration for providing all those facilities and services Mr White paid MWL 35% of the sales revenue of his businesses. Mr White also provided administrative services and worked generally on behalf of MWL. He would plan journeys for lorries, occasionally work in the yard, operate the bank account and organise loans, finance and substantial transactions on behalf of MWL. He did not regard himself as an employee of MWL and was not paid or treated as such by MWL. He was not a shareholder or a director of MWL at any material time, although he did become a director in September 2014 in order to represent the company before the court in certain winding up proceedings referred to below. MWL also traded as a skip hire business with third parties other than Mr White. The income of MWL from third parties was much greater than its income from Mr White.

31. Initially Mr White simply paid MWL what was owed pursuant to their trading arrangement. MWL invoiced BP Skips and LJ Skips on a monthly basis. Mr White's case was that from April 2002 onwards he made loans to MWL on an ad hoc basis in order to help it to pay its bills, such as wages, suppliers and tax bills. Mr White said that when this first started he paid sums representing specific bills to MWL but later money was paid which didn't relate to specific bills. No interest was charged but it was always understood that the money would be repaid by MWL.

32. Mr White's evidence was that the loans were necessary because MWL was suffering financial difficulties. It would have been in serious difficulties if a winding up petition had been presented at any stage because that would have been a ground on which the freehold owner of its yard could have forfeited MWL's lease resulting in the collapse not only of MWL's business but also Mr White's businesses. The yard was owned by the pension scheme of Aaron White Ltd ("AWL"). AWL was a family company started by Mr White's grandfather. It was partly owned by Mark White together with other family members but there was bad blood between them.

33. The existence of these loans and the reasons they were made is one of the principal issues on the appeal. We deal with our findings of fact in relation to the existence and extent of the loans below.

34. Mr White produced a schedule which showed that by the end of tax year 2009-10 the amount outstanding by way of loans was £354,990 ("the Schedule"). He calculated this by looking at the amounts invoiced to BP Skips and LJ Skips by MWL and comparing those amounts to the amounts he paid to MWL in each tax year from 2002-03 onwards. The payments made by Mr White came from the bank accounts of BP Skips, LJ Skips and from his own personal account. He said that it did not really concern him which bank account the funds came from because he was a sole trader. Some payments were made to the bank account of MWL and others were made to Mark White's personal account. Mr White said this was because MWL was in financial difficulties. In Mr White's words, his father's account became a "second company account" and Mark White himself lent a substantial amount to MWL.

35. We can summarise the contents of the Schedule as follows:

Tax Year	**Amounts invoiced by MWL £**	**Bank Transfers to MWL £**	**Amount said to be loaned £**
2002-03	19,246	59,589	40,343
2003-04	27,589	88,607	61,017
2004-05	30,420	69,890	39,469
2005-06	42,834	94,380	51,545
2006-07	32,976	51,395	18,418
2007-08	49,326	109,720	60,393
2008-09	37,571	88,650	51,078
2009-10	39,273	71,998	32,724

36. The Schedule did not include figures for amounts invoiced by MWL in 2010-11, although it is not clear why. We have therefore left 2010-11 out of our summary.

37. Mr White said that the reason he lent the money to MWL was because it had difficulty obtaining finance from its bank. He needed to ensure that MWL continued to be in a position to provide its facilities and services to his businesses otherwise he would not be able to continue those businesses. He regarded the arrangement he had

with MWL for the provision of its facilities as a "lucrative business model" which allowed him to make "unusually large profits". If he had to obtain for himself all the facilities provided by MWL it would cost him much more than the 35% of turnover he paid to MWL. The beneficial nature of the arrangement meant that he was prepared to work on behalf of MWL and also help out providing the loans.

38. Mr Hall also produced a schedule in which he compared the amounts paid by BP Skips and LJ Skips to MWL against the amounts invoiced to BP Skips and LJ Skips by MWL. Mr Hall's schedule showed the following:

Net Amounts paid by: **Tax Year**	**BP Skips** **£**	**Cumulative** **£**	**LJ Skips** **£**	**Cumulative** **£**
2002-03	(316)	(316)	(630)	(630)
2003-04	1,303	986	(760)	(1,390)
2004-05	8,347	9,334	1,791	400
2005-06	16,607	25,941	(882)	(481)
2006-07	3,345	29,287	3,503	3,022
2007-08	(7,636)	21,650	2,794	5,816
2008-09	43,244	64,895	(2,145)	3,671
2009-10	17,851	82,746	2,412	6,083
2010-11	(1,566)	81,180	(7,690)	(1,606)

39. Figures in brackets indicate that the amount invoiced by MWL exceeded the amount paid out of the BP Skips account or the LJ Skips account. Figures without brackets indicate that the amount paid out of the BP Skips account or the LJ Skips account exceeded the amount invoiced by MWL. It is the latter figures which on Mr White's case are loans by him to MWL.

40. It can be seen therefore that by the end of the 2008-09 tax year sums paid to MWL out of the BP Skips account exceeded the amounts owed by Mr White in respect of MWL's invoices to BP Skips by 64,895. For LJ skips the excess was £3,671. By the end of 2010-11 the excess for BP Skips was £81,180 although for LJ Skips the invoices had exceeded the amount paid by £1,606.

41. Mr Hall's schedule did not include a similar exercise for Mr White's personal account but we were invited to infer and we do infer that if such an exercise was done then it would provide the balancing figures between Mr Hall's schedule and the Schedule. For example, for 2006-07 the amount Mr White claimed was loaned during that tax year was £18,418. That would be comprised £3,345 from BP Skips, £3,503 from LJ Skips and a balance of £11,570 from Mr White's personal account.

42. During the course of his oral evidence Mr White was taken to the bank statements he had disclosed for BP Skips, LJ Skips and his own personal account. We were also taken to invoices from MWL to BP Skips and LJ Skips and to the annual accounts of MWL. Mr White had produced separate schedules of the invoices and the

payments made to MWL. Mr White used this documentation to support the Schedule. It was also used by Mr Hall to support his schedule. It was possible to reconcile the figures for each tax year in both schedules to the invoices from BP Skips and LJ Skips and to specific transfers from Mr White's various bank accounts.

43. It was accepted that both the Schedule and Mr Hall's schedule were correct but only to the extent that the figures had been extracted from the underlying evidence in accordance with assumptions made by each party. In other words they were mathematically correct. Unfortunately, as Mr Hall pointed out, all the analysis in the Schedule and in his own schedule was based on incomplete material. We did not have a complete set of bank statements. For each account the bank statements covered a period from approximately April 2002 to April 2011. As appears from the following table a significant number of statements were missing:

Bank account of:	**BP Skips**	**LJ Skips**	**Personal**
Pages for period covered:	139	133	244
Pages absent:	32	68	85

44. It can be seen therefore that approximately a quarter of the statements were missing for BP Skips, a half for LJ Skips and a third for Mr White's personal account.

45. It was apparent from Mr White's evidence that his recollection of certain points of detail was not reliable. Mr White also had a tendency to state as fact, matters which later turned out to be incorrect. We put that down not only to a combination of understandable difficulties of recall and a lack of attention to detail, but also to a desire on Mr White's part to state as fact matters which he thought would support and embellish his case. We are therefore cautious in accepting his uncorroborated evidence.

46. For example, when Mr White was asked whether the Schedule provided a true history of the dealings between himself and MWL he stated that in fact the loan was probably more than was shown on the Schedule. He pointed to an entry in his bank statements on 27 February 2009 showing a payment of £1,046.50 to a supplier which he said was a purchase he had made on behalf of MWL. He said this was a debt from MWL to him which had not been included on the Schedule He gave other examples including some £1,600 paid by him for spare parts for a crusher machine belonging to MWL. In fact the payment of 1,046.50 was matched by a sum paid in to Mr White's bank account a few days earlier from MWL and could not have been part of the loan. Further it turned out that the sum of £1,600 should have been £1,750 and again an equivalent sum was introduced into his bank account a few days earlier from Mark White.

47. It was also apparent that Mr White failed to include in the Schedule any repayments by MWL and/or Mark White into the accounts of BP Skips, LJ Skips and Mr White's personal account. In evidence Mr White said that he was certain he had provided for money "going the other way", but that if he hadn't then it would be small

amounts. It was put to Mr White that he had borrowed money from MWL to pay some of his own tax bills. He accepted that was the case and that the tax bill was about £25,000. The payment did not appear on the Schedule which Mr White described as "a mistake". He later said that in fact the money was paid by MWL to Mark White and that it was a loan from his father to himself which was why it did not appear on the Schedule. The circumstances in which Mr White came to explain these payments as loans from his father and our view of his evidence generally led us to conclude that his explanation was not reliable and we do not accept it.

48. It was put to Mr White that there were a number of amounts identified in his bank statements with the narrative "Ref: Temp Loan Pay-Back". They were not included on the Schedule, and Mr White described them as being "very rare". In fact there were numerous such amounts on the bank statements available to us. Again Mr White said that they should have been described as money from his father, rather than as a repayment of monies by MWL. We do not accept that evidence.

49. Mr White produced three pages of statements from his father's bank account covering September 2003, November 2010 and June 2012. There were entries in Mark White's statements showing money coming in from Mr White described as "Temporary Loan" and money going out to Mr White described as "Temp Loan Pay-Back". Mr White arranged these payments, both in and out. He could make payments from his father's account through online banking, indeed Mr White said and we accept that he was solely responsible for operating Mark White's account. Payments for wages were also made from Mark White's account. For example, on 25 November 2010 wages were paid to 7 employees totalling £1,672. On the same date there was a transfer in to the account from Mr White in the sum of £1,670 referred to as "Temporary Loan". Mr White would tell his sister the hours worked by each employee and his sister would produce the wage slips. Mr White then made arrangements to pay the wages. He kept a close eye on his own bank accounts and also the accounts of his father and MWL.

50. Mr White maintained that the Schedule was "broadly accurate" and that it disclosed a "huge amount of debt" owed to him by MWL. We simply cannot accept that evidence in the light of the repayments not included in the Schedule and the incomplete records produced to support it. There is however further evidence as to the existence and quantum of loans by Mr White to MWL:

(1) The bank statements themselves have a narrative for a large number of payments from Mr White's accounts to the account of Mark White in particular described as "Temporary Loan"; and

(2) MWL's annual accounts do show loans from Mr White to MWL, although not approaching the level claimed by Mr White.

51. The accounts for MWL were prepared by Hart Shaw LLP until 2011. We note that they were unaudited accounts, although we recognise that there was no requirement for them to be audited. The result however is that their reliability will depend on the information provided to Hart Shaw by Fiona. It was Fiona who was MWL's bookkeeper and she did all the invoicing and dealt with Hart Shaw. Mr White

had no dealings with Hart Shaw and did not attend meetings with them. The accounts contain a disclaimer from Hart Shaw in standard form as follows:

> "… we have not verified the accuracy or completeness of the accounting records or information and explanations you have given to us and we do not, therefore, express any opinion on the financial statements."

52. Accounts were prepared for the year to 31 January. We can summarise the contents of the accounts as follows:

Year end	Profit/(Loss) before tax	Total Assets/Deficit	Creditor (Mark White)	Creditor (BP Skips)	Creditor (LJ Skips)
2004	(56,449)	(66,883)	274,644		
2005	(71,856)	(138,739)	331,002		
2006	n/a	n/a	n/a		
2007	(11,335)	(149,786)	498,196		
2008	52,694	(97,092)	517,677	10,657	
2009	(49,113)	(146,205)	480,308	63,256	4,014
2010	(151,258)	(297,463)	430,291	106,761	17,668
2011	(92,880)	(390,343)	385,836	138,612	24,350
2012	(119,547)	(472,251)	413,472	148,162	21,709
2013	39,268	(432,983)	250,948		

53. Figures for 2006 were not available in the evidence before us. We have separated the accounts for 2012 and 2013 because Hart Shaw did not prepare them, as appears below. Mark White was shown as a creditor for amounts falling due both within one year and after one year until 2012 when all his debt was shown as falling due after one year. The 2009 accounts did not include reference to any amount owed to LJ Skips but the amount in the table was included as a comparative figure in the 2010 accounts.

54. In the 2013 accounts there was no split between the amounts said to be owned to BP Skips and LJ Skips. Instead the accounts stated that there was a sum of £423,847 owed to Mr White, trading as BP Skips and LJ Skips. The comparative figure for 2012 was put at £387,404 which was significantly more than the amount said to have been owed to BP Skips and LJ Skips together.

55. It can be seen from the accounts that apart from 2008 and 2013, MWL made losses for every year since 2004 for which figures were available. As a result it also had a net deficit that steadily increased between 2004 and 2012.

56. We accept Mr White's evidence that the loss of £151,258 incurred in year ended 31 January 2010 was a result of the financial crisis and the recession in 2008 and 2009. We also accept his evidence that the work decreased dramatically in 2010. The accounts show turnover dropping from £412,056 in 2009 to £262,677 in 2010.

MWL's customers were not paying and employees were working slowly and inefficiently to increase their hours.

57. Note 11 to the accounts for 31 January 2009 includes the following under the heading related party transactions:

> " Included in other creditors is an amount of £63,256 (2008: £10,657) owed to BP Skips Limited, this company being owned by the director's son."

58. The comparable note for 2010 states as follows:

> " During the year the company made sales amounting to £ Nil (2009: £24,456) and at the year end an amount of £106,761 (2009: £63,256) was owed to BP Skips Limited, this company being owned by the director's son.
>
> During the year the company made sales amounting to £ Nil (2009: £9,091) and at the year end an amount of £17,668 (2009: £4,014) was owed to LJ Skips Limited, this company being owned by the director's son."

59. The comparable note for 2011 states as follows:

> " At the year end an amount of £138,612 (2010: £106,761) was owed to BP Skips Limited, this company being owned by the director's son.
>
> At the year end an amount of £24,350 (2009: £17,668) was owed to LJ Skips Limited, this company being owned by the director's son."

60. It is clear and both parties accept that BP Skips and LJ Skips have never been incorporated. It is also curious that in 2010 the accounts identified sales to BP Skips and LJ Skips as nil, but we have seen invoices for significant sales in that year.

61. Mr White himself questioned the reliability of the accounts drawn up by Hart Shaw. In particular, he claimed that they significantly understated the amount of MWL's indebtedness to him. The 2011 accounts were the last accounts prepared by Hart Shaw. Hart Shaw resigned in the middle of 2012 because of unpaid fees and in October that year the accounts were prepared by Mr White and Fiona using the same format. The references to BP Skips Limited and LJ Skips Limited were replaced with references to BP Skips and LJ Skips, although both were still referred to as companies. Mr White corrected what he viewed as errors in the related party transaction note. He maintained that Hart Shaw had got the amount of the indebtedness wrong. He also re-classified some of the loans from Mark White that had been included in creditors due within one year to creditors due after one year. The 2012 accounts were signed by Mark White on 30 November 2012 and included the following note for related party relationships and transactions:

> " Included within creditors are £0 (2011: £35,836) owed within one year and £413,472 (2011: £350,000) owed after more than one year to M White a director. Interest is not paid on this amount and there are no agreed terms for repayment.
>
> …

> At the year end an amount of £148,612 (2011: £138,162) was owed to BP Skips, this company being owned by the director's son.
>
> At the year end an amount of £21,709 (2010: £24,350) was owed to LJ Skips, this company being owned by the director's son."

62. The related party transactions note in the 2013 accounts refers to both Mark White and Mr White signing declarations on 9 June 2011 subordinating their debt to all other company debt. This was because MWL was in difficulties in 2011 when HMRC presented a winding up petition in respect of a debt of approximately £70,000. Mr White helped MWL obtain loan finance to pay the debt. It was stated to be part of the agreement for the finance that the loans of Mr White and his father were subordinated to the other creditors.

63. Mr White stated that this "brush with insolvency" further cemented in his mind that his "£400,000 (or so) loans were not about to be repaid, and most likely never would".

64. It is clear that there were errors in the accounts drawn up by Mr White and Fiona. It was pointed out to Mr White that in the 2012 accounts a schedule of administrative expenses totalled £108,296 and included directors' remuneration of £4,800 and rent of £18,000. The 2013 accounts included comparative figures for 2012 totalling £85,496 and showed no directors' remuneration and no rent being paid. Mr White accepted this was a mistake. There was a similar error in the note for "other debtors" between the two sets of accounts. Mr White explained that he did not check the accounts exhaustively and that they were "as accurate as could be done". He suggested that "Fiona's adding up" may be to blame.

65. We appreciate that Mr White is not an accountant, but this is a further illustration of errors in figures for which Mr White took at least joint responsibility with his sister. Indeed, he described Mark White and Fiona as "not well educated" which suggests that the responsibility really lay with him.

66. All sets of accounts until 2013 expressed Mark White's view as the sole director that MWL continued to be a going concern.

67. MWL ceased trading in 2014 following a winding up order on a petition presented by HMRC. The winding up order is apparently the subject of an appeal, but the business of MWL has been run by another company since then, M White (Skips) Limited. Mr White explained the circumstances in which M White (Skips) Ltd was able to continue operating, and described an ongoing dispute with the Environment Agency concerning MWL's waste management licence. In closing, however Mr Hall did not take any point that if Mr White could continue to operate his businesses after the winding up of MWL then it cast doubt on the need for Mr White to make loans to MWL. In those circumstances we do not need to make findings of fact in relation to the operation of the various businesses after 2014.

68. Mr White made his claim for relief under Schedule 1AB on 30 October 2012. He sought to correct his self-assessment tax returns to recover "overpaid tax". The

corrections were to "write down a loan made to M White Ltd" by the following amounts:

Tax Year	Amount £
2008-09	45,950
2009-10	50,050
2010-11	51,330

69. Mr White's intention in identifying those figures for the amounts written down was to reduce to nil the amount of income tax payable by him in each of the tax years. At the end of tax year 2008-09 the loan said to be outstanding from Mr White to MWL was £322,263.

70. Mr White acknowledged that he could have written off the loans to MWL or at least some of those loans earlier than he did. The reason he didn't do so until 2012 was because it was only then that realised he could do so and obtain tax relief. Mr White conceded in cross-examination that the mechanism by which he sought to claim bad debt relief did not reflect the strict basis on which it ought to have been claimed. In particular, he stated in his witness statement that by October 2012, when he made the claim, the entire loan account was a bad debt and he should have recognised it as such. At the end of 2008 and the beginning of 2009 he first had doubts as to whether the loan would be repaid. As the years went by, his doubts became a certainty when the financial position of MWL worsened.

71. In cross examination Mr White stated that in fact he considered 80% of the loan to be a bad debt. The basis on which he came to the figure of 80% was not explained. However, he contended that in any event because of the size of the loan by 2009 the sums claimed in relation to each tax year were clearly allowable.

72. Mr White told us that he did not address his mind to whether the debt was bad at the time he submitted his self-assessment tax returns for 2008-09, 2009-10 and 2010-11 because he was unaware that he could obtain relief. He stated that it was only in 2012, when HMRC presented a bankruptcy petition against him, that he realised he could write off the loan and claim relief for the bad debts. He researched the position on the Internet and discovered he could make a claim under Schedule 1AB. We accept that evidence.

73. Mr White 's self-assessment tax returns did include small amounts by way of bad debt relief. For example, in 2008-09 there was a sum of £169 for bad debt relief relating to customers of BP Skips. Mr White explained and we accept that this related to bounced cheques. We also accept his evidence that until 2012 his understanding had been that his entitlement to an allowance for bad debt relief was restricted to such items.

Reasons

74. We have set out above the issues which we have to decide and we shall deal with each in turn. For the sake of convenience we repeat them here:

(1) Was there a debt to write off in the years of assessment, and if so what was the amount of that debt?

(2) Were the debts bad or estimated to be bad in the years of assessment, and if so to what extent?

(3) Were the underlying loans capital or revenue in nature?

(4) Were the underlying loans made wholly and exclusively for the purposes of Mr White's trade?

The Existence and Amount of any Debt

75. The burden of establishing the existence and quantum of the debt lies on Mr White. For the reasons given above we do not consider that the Schedule and the supporting evidence is a reliable basis on which to find the existence of the loans set out in the Schedule. There is however clear evidence to corroborate the fact that from April 2002 onwards Mr White was making payments to or for the benefit of MWL. We accept Mr White's evidence that the reason he made those payments was to provide financial assistance to MWL to enable it to pay its wages, suppliers and tax bills. It is clear that MWL required a significant amount of support given the amount disclosed in the accounts as owed to Mark White.

76. We are satisfied that at least some amounts provided by Mr White to or for the benefit of MWL were indeed loans. No interest was payable, and in the absence of any express terms as to repayment they were repayable on demand. However, we cannot be satisfied as to what sum was outstanding by way of loan at any particular time. The loans appear to have been in the nature of a running account, but the oral evidence of Mr White and the incomplete bank statements are not sufficiently reliable to support the Schedule.

77. Mr Hall submitted that the evidence was that any loans by Mr White were in fact made to Mark White rather than MWL. We had no separate analysis of the extent to which payments from Mr White's accounts were made either direct to suppliers of MWL, to MWL or to Mark White. There were payments in each of those categories.

78. We are not satisfied that all the loans were made to MWL. We cannot accept that sums paid to Mark White were really loans to MWL. They may well have been loans to Mark White in a personal capacity. We do not accept that we should simply treat Mark White's account as a second company account.

79. We must consider whether there is any other reliable evidence from which we can identify the amount outstanding at any particular time, or possibly the minimum amount outstanding at any particular time.

80. We have not heard any evidence from Mark White or Fiona. We acknowledge that Mr White described them as not well educated, but their evidence would have been material because they are the sole director and company secretary respectively. Further, Fiona was responsible for dealing with Hart Shaw. We have inferred that it was she who provided the documents and information for Hart Shaw to produce the accounts up to and including those for 31 January 2011.

81. The accounts for 2008 to 2011 certainly support the existence of loans from Mr White to MWL. The figures in the accounts compared to figures derived from the Schedule show loans outstanding as follows, recognising that the Schedule is to 5 April in each year and the accounts are to 31 January in each year:

Year	**Accounts (to 31/1) £**	**The Schedule (to 5/4) £**
2003	n/a	40,343
2004	Nil	101,360
2005	Nil	140,829
2006	Nil	192,374
2007	Nil	210,792
2008	10,657	271,185
2009	67,270	322,263
2010	124,419	354,987
2011	162,962	n/a

82. There is plainly a great disparity between the loans said to be outstanding to Mr White in the annual accounts and the loan said to be outstanding to Mr White in the Schedule. There has been no explanation for that disparity, other than Mr White's claim that the accounts were unreliable. It may be that Hart Shaw treated the sums paid by Mr White as loans by him to Mark White and by Mark White to MWL. On that basis they would appear in the accounts as loans from Mark White. We simply do not know, and we have not heard any evidence from Mark White or from Hart Shaw.

83. We cannot take information contained in the related party notes of the accounts at face value for the following reasons:

(1) They are unaudited and only as good as the information and explanations provided to Hart Shaw.

(2) We do not know what information and explanations were provided to Hart Shaw to support the figures identified as loans from Mr White in those accounts.

(3) No attempt has been made to reconcile the primary evidence we have seen to the figures identified in the accounts as loans from BP Skips or LJ Skips.

(4) Even Mr White says that the accounts are unreliable, albeit he says that they significantly understate the loans outstanding to him.

84. The burden is on Mr White to establish the extent of the loans. Based on the evidence before us we cannot say whether the accounts are a reliable indication as to the amount of the loans at any particular time, or indeed the minimum amount of such loans at any particular time.

85. We cannot rely on the accounts for 2012 and 2013 because Mr White prepared them. If, as seems likely, Mr White carried out a similar exercise in identifying his loans for the purpose of preparing those accounts as he did in preparing the Schedule then they are not reliable for reasons we have already given. It was not suggested that there was any other material to support the figures for loans in the 2012 and 2013 accounts; certainly no such material was before us.

86. Based on the evidence before us we are not satisfied that there was a debt from MWL to Mr White as at 5 April 2009, which was the year end of Mr White's businesses. Even if there was a debt, we cannot be satisfied as to the quantum of that debt. We reach the same conclusion in relation to 5 April in the following years.

87. For the sake of completeness we shall go on to consider the other issues, in each case as if we had been satisfied that there were significant loans outstanding to Mr White from MWL as at 5 April 2009 and in following years.

Were the Debts Bad or estimated to be Bad

88. Mr White's claim pursuant to Schedule 1AB purported to write down loans by the amounts set out in the table above for tax years 2008-09, 2009-10 and 2010-11. He did not specify the amount of the loan in his claim at any particular time, or the amount of the loan that he claimed was bad or estimated to be bad. We understand that the first time he identified the amount of the loan was at the first hearing before the F-tT.

89. The way in which Mr Hodgkin put the case for Mr White was that there was a loan of £322,266 as at 5 April 2009 and that 80% of that debt was bad or could be estimated to be bad at that time. He submitted that Mr White would have come to that conclusion at that time if he had addressed his mind to the question, relying only on evidence available to him at that time. He disavowed any reliance on hindsight and submitted that the contemporaneous evidence included:

(1) knowledge as to the severity of the recession and its effect on MWL,

(2) the history of losses which showed no signs of improving, and

(3) MWL's accumulated deficit of £146,205 as at 31 January 2009.

90. For the year ended 31 January 2008 MWL had made a profit before tax of £52,694. It had previously made significant losses, and so as at that date it had a net deficit of £97,092. There were also loans outstanding to Mark White of £517,677. Mr White did not suggest that the outlook for MWL's business at that time was poor.

91. For the year ended 31 January 2009 MWL made a net loss before tax of £49,113. It had a net deficit of £146,205 and the amount outstanding to Mark White stood at £480,308. The accounts showed that Mr White was owed £67,270 as at that date.

92. There was no suggestion of any improved trading outlook for MWL in the period between 31 January 2009 and 5 April 2009. Indeed the accounts for the year ended 31 January 2010 showed that the company's position had significantly deteriorated in that year. We have accepted Mr White's description of the effect of the recession on MWL.

93. Mr White's evidence was that 80% of the debt was estimated to be bad. That implies that 20% of the debt was recoverable. There was no explanation as to how Mr White arrived at the 80% figure. It seems to us however that when Mr White referred to 80%, it was 80% of a much larger indebtedness than appeared in the 2009 accounts.

94. Mr Hodgkin submitted that Mr White was not changing his mind with the benefit of hindsight, because he had never considered in 2008-09 whether to write off the loans. He submitted that the correct approach now, looking back to 2008-09, was to consider whether there was sufficient evidence then available to demonstrate that the debt was bad or doubtful. Mr White's error or mistake was not addressing his mind to that question at all when submitting his self-assessment tax returns.

95. Mr Hall relied on the fact that the accounts for all years up to year ended 31 January 2011 expressed the director's view that MWL was and continued to be a going concern. We do not consider that fact carries much weight in circumstances where the accounts were not audited and where Mark White appears to have had little or no involvement in the financial side of the business.

96. Mr Hodgkin submitted that relief is available under Schedule 1AB where a self-assessment is excessive by reason of an error or mistake in the return and for that purpose an error includes a misunderstanding as to the availability of bad debt relief. Mr Hall did not suggest that the appellant's failure to make an estimate of bad debts meant that he could not subsequently assert for the purposes of Schedule 1AB that if he had done so and the evidence would have resulted in an estimate that the debt was bad then relief was available.

97. On balance we are just satisfied that if Mr White had been owed £67,270 as at 5 April 2009 and had addressed his mind to whether it was likely to be recoverable he would have been entitled to estimate the debt as bad. Subject to the following issues, in those circumstances Mr White would have been entitled to relief under Schedule 1AB.

Capital or Revenue?

98. We have summarised above the authorities that we were referred to on the distinction between capital and revenue payments.

99. In Reid's Brewery the Special Commissioners found that sums lent to publicans were lent as part of the taxpayer's moneylending activities. The High Court found that they could not be viewed as an investment in the ordinary sense of the word. The reasoning by which that conclusion was reached is not entirely clear from the report. The High Court did not expressly rely on any finding that moneylending was a part of the taxpayer's trade and indeed the custom of that trade, but we infer from the judgments that those were significant factors in reaching the conclusion. In the present case Mr White's trade did not involve moneylending, however that fact alone does not prevent the loans from being revenue in nature.

100. In English Crown Spelter the Special Commissioners and Bray J held that the transactions between the taxpayer company and its subsidiary were not advances against goods. The fact that the loans enabled the taxpayer company to carry on its business more profitably was not sufficient to make the payments revenue in nature.

101. Likewise, on the facts of the present case we are not satisfied that the payments made to MWL were overpayments of invoices due, nor that they were in any sense an advance against future supplies by MWL to Mr White. Indeed, Mr White did not make any such suggestion in his evidence. However, the mere fact that the payments were not advances against goods does not mean that they must be treated as capital payments.

102. In Johnson Matthey the House of Lords held that the payment of the £50m into the banking subsidiary was solely to enable the taxpayer company to continue in business which it could not have done if the banking subsidiary had gone into liquidation. It was not paid to procure the transfer of the shares to the Bank of England, although that was a consequence of the payment being made.

103. Mr Hodgkin argued that any loans made by Mr White to MWL were solely to enable Mr White to continue in business. Without access to the yard and other facilities on advantageous terms Mr White would not have been able to continue trading. As a matter of fact we accept the latter point.

104. Mr Hall did not suggest that Mr White had any other reason to keep MWL in business. It was not suggested that Mark White or Fiona benefitted in any way from Mr White's business. The evidence did not explore whether there were any family considerations. Looking at the matter on a strictly commercial basis, the activities of MWL and Mr White's businesses were inextricably linked. MWL needed Mr White for his contribution to its activities, not just working on a day-to-day basis but dealing with financial matters and substantial transactions on behalf of MWL. Similarly, Mr White needed MWL to provide the means to carry on his business on what were very advantageous terms, if one ignores the contribution of Mr White to MWL.

105. The facts are very different to Johnson Matthey. Any loans were made on a continuing basis akin to a running account. That suggests they may be revenue payments, even if they were not advances against future supplies. They were made to keep MWL in business and were repayable on demand. In that sense they were a

constant flow of funding for MWL in the absence of any alternative source of finance.

106. In the same way that English Crown Spelter invested in a mining subsidiary to provide a source of blende, Mr White invested in MWL to provide the means of carrying on his business. The fact that they were interest free loans does not alter that conclusion. The benefit of the loans was access to MWL's facilities. No doubt Mr White and MWL were happy with the financial aspects of their business relationship. The position can be contrasted with Johnson Matthey where the payment was made solely to avoid a threat to the business and related to a capital asset, namely the banking subsidiary. Here it was made to ensure the long term continuation of supplies. It was significant in Johnson Matthey that the payment was not made to "procure an advantage for the enduring benefit of the trade" (see Lord Templeman at p 73B).

107. As stated in Johnson Matthey, indicia may point different ways in determining whether a payment is capital or revenue. On balance, if we had been satisfied that there were loans outstanding at 5 April 2009 or subsequently, we consider that such loans were in the nature of a capital investment made to secure the long term continuation of supplies.

Wholly and Exclusively for the Purposes of Mr White's Businesses

108. Mr Hall invited us to find that any loans made by Mr White to MWL were made in his private capacity; alternatively it was only loans made through his bank accounts for BP Skips and LJ Skips where a write down could be allowable. Hence relief would be limited to writing off the sum of £68,566 which was the amount paid from those bank accounts less the invoices to BP Skips and LJ Skips as at 5 April 2009.

109. If the amounts paid to MWL are split between those paid from BP Skips account and those paid from LJ Skips and in each case set off against invoices by MWL to BP Skips and LJ Skips then the exercise carried out by Mr Hall demonstrated that in relation to LJ Skips, by the end of 2010-11 there was an amount owed by LJ Skips of £1,606. In relation to BP Skips there was a sum overpaid by BP Skips of £81,180. The balance of the overpayment or loan alleged by Mr White therefore came from Mr White's personal bank account.

110. Mr White did not dispute those figures, however he did dispute their relevance. In particular, he said that he did not distinguish between the three bank accounts for these purposes. Whichever account the payments came from was his account.

111. Mr Hodgkin submitted that it was irrelevant which bank account the money came from. They were all Mr White's accounts and he was a sole trader. We accept Mr Hodgkin's submission in principle. If Mr White lent the money wholly and exclusively for the purposes of his trade, then it matters not which bank account was used to make payment. The source of a payment may shed light on the nature of the payment and why it was being made. However, we do not consider in the present context that the source bank account sheds much if any light on the purpose for which

the monies were being lent. We do not therefore accept Mr Hall's submission that any sums paid from Mr White's personal account could not be wholly and exclusively for the purposes of his businesses.

112. It has not been suggested that there was any reason for Mr White to make the loans, other than securing the continuation of supplies to his businesses. This is not a case such as Odham's Press where there was also a benefit to the subsidiary in the loan being written off. Here, we are not concerned with companies in the same group. Nor was it suggested that Mr White's purpose was to benefit his father or sister. In those circumstances, if we had been satisfied as to the existence of the loans, we would have found that they were made wholly and exclusively for the purposes of Mr White's businesses.

Conclusion

113. For the reasons given above we must dismiss the appeal. By way of summary:

(1) Whilst Mr White did make loans to MWL, we cannot be satisfied at any particular date whether there was any debt owed by MWL to Mr White. Nor can we identify at any particular date the amount of any debt outstanding or the minimum amount of any debt outstanding.

(2) If we had been able to identify a debt in a specific or minimum amount at 5 April 2009 or in the following years, then we would have been satisfied that Mr White was entitled to estimate them as bad.

(3) No relief would have been available to Mr White on estimating those debts as bad because the underlying loans were capital in nature.

(4) Subject to that, we would have been satisfied that any such loans were made wholly and exclusively for the purposes of Mr White's businesses so his claim for relief could not have been refused on that basis.

114. 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.

JONATHAN CANNAN
TRIBUNAL JUDGE

RELEASE DATE: 02 DECEMBER 2016