[2017] UKFTT 846 (TC)

TC06241

Appeal number: TC/2016/02416

Income Tax /Corporation Tax –amortisation on goodwill charged for full year rather than pro-rated - interpretation of conclusion stated in closure notice and scope of appeal disputed – appellant arguing conclusion restricted to amortisation method whereas HMRC arguing conclusion extended also to valuation of goodwill upon which amortisation charged – appellant's application allowed

FIRST-TIER TRIBUNAL
TAX CHAMBER

TOWERS WATSON LIMITED **Appellant**

- and -

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

TRIBUNAL: JUDGE SWAMI RAGHAVAN

Sitting in public at Taylor House, London on 27 July 2017

David Yates, counsel, instructed by Simmons & Simmons for the Appellant

Michael Jones, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. The appellant appeals against an amendment made to its corporation tax self-assessment return for the period ending 30 June 2011 resulting in an additional tax due of £1,641,464 related to its amortisation of goodwill. The goodwill was attributable to an acquisition the appellant made on 1 February 2011.

2. The substantive appeal remains to be determined. This decision concerns the appellant's application to determine the scope of the appeal. The appellant argues the conclusion in HMRC's closure notice, and therefore the scope of the appeal, only covers the *method* of amortisation, and in particular the question of whether it was correct, to charge a full year's amortisation in the year of acquisition as opposed to, as is HMRC's case, 5/12ths worth representing the five month period the goodwill was owned, enjoyed and depleted ("the 5/12ths issue"). In the course of producing expert evidence, as permitted and directed by the tribunal, HMRC's expert, as well as covering the method of amortisation, put forward his view that the *value* of the goodwill amortised was overstated in the accounts by £41,034,013. HMRC maintain the conclusion in the closure notice, and therefore the scope of the appeal, is broad enough to encompass this issue of valuation. The appellant disagrees.

Background facts

3. The background facts, were not in dispute, and were helpfully set out in the appellant's skeleton. I gratefully adopt this summary with minor modifications. The appellant is part of the Willis Towers Watson group ("the Group"). The principal activities of the appellant are the provision of actuarial services, advice on employee benefits and human capital strategies, benefits administration, investment consulting and insurance and financial services consulting.

4. On 1 February 2011, the appellant acquired the trade and assets of EMB Consultancy LLP and EMB Software Managements LLP (the "EMB LLPs") for cash consideration of £57,094,000 as part of the Group's acquisition of the EMB Group worldwide.

5. This transaction was recorded in the financial statements of the appellant for the year ended 30 June 2011. As was set out in notes 8 and 22, the goodwill attributable to the acquisition of the EMB LLPs was £51,157,000. Note 1 to the accounts provided that an amortisation rate of 20% would be applied to the goodwill arising from the acquisition of the EMB LLPs. The accounts were prepared on the basis of a 20% amortisation charge of the figure of £51,157,000 – i.e. £10,232,001.

6. Goodwill amortisation was permitted as an eligible deduction for corporation tax purposes; initially under Schedule 29 to Finance Act 2002 and then under Part 8 of the Corporation Tax Act 2009.

The enquiry, closure notice and correspondence

7. Following the filing of the appellant's corporation tax self-assessment return for the period ending 30 June 2011, HMRC gave notice of their intention to enquire in a letter dated 13 June 2013. The letter stated:

> "I only intend looking at some aspects of the return. However, when I look at these aspects I may find that I need to extend my check. If this happens I will let you know.
>
> …
>
> 1) EMB Acquisition
>
> The accounting policies state that the goodwill arising on the EMB acquisition is amortised at a rate of 20% per annum. It is stated in the accounts that the acquisition was completed on 1 February 2011.
>
> It appears that a full year's amortisation has been charged despite the post acquisition period only covering five months of the period to 30 June 2011.
>
> Do you agree that only 5/12 of the annual charge should have been charged?
>
> If you do not agree may I please have your explanation as to why you consider it correct to charge a full year's amortisation."

8. Mr Yates, for the appellant, referred me to numerous exchanges of correspondence starting with the appellant's letter of 27 September 2013 and ending with the appellant's letter of 4 December 2015. While it is not necessary to describe the train of correspondence in detail, as explained later, the enquiry provides context for the tribunal's task in construing what the conclusions stated in the closure notice were, and with that in mind, it is necessary to summarise the nature of the exchanges and the themes raised. While some explanation was given, for instance in the appellant's letter of 30 January 2015, as to the circumstances underpinning the view that taking a full year's amortisation better reflected the expected pattern of economic depletion, the protracted period of correspondence reflected the repetitive nature of the HMRC's queries and the appellant's responses: HMRC had specific questions about the amortisation method deployed but were not content with the responses received that the appellant's stance was simply that it considered that it had acted in a GAAP compliant way.

9. By 14 May 2015 the appellant's stance grew firmer, emphasising in response to HMRC's request for information on the underlying calculations and rationale for the amortisation of the EMB intangibles, that the only legally permissible way that the appellant or HMRC could use an amount other than the amount deducted in the accounts was if the accounts were not GAAP compliant accounts. Little real progress was made, and matters came to a head when HMRC issued a statutory information notice on 6 November 2015. The letter stated the information and documents requested were needed to "ascertain that the amortisation charged in the accounts is in accordance with FRS10". There were five questions, three of which concerned the method of amortisation of the goodwill (the other two concerned whether any impairment of goodwill had been made – which HMRC thought had been indicated

by an earlier letter of 30 January 2015 from the appellant – and if so queried further details and documents in relation to that). The appellant responded on 4 December 2015 setting out why it thought adequate responses had already been provided but also providing its responses to HMRC's information request. These in essence confirmed that a straight line method that took a full year's amortisation in the period of acquisition was used, that the method was chosen because the accounting team, using their professional judgment, believed it to be most appropriate, and that no other documentation or evidence was available. HMRC's fifth question had asked for the details of the amortisation method used in the group accounts and the appellant explained where such accounts could be found. As to the impairment issue the appellant responded that no explicit impairment of the EMB name was made.

10. As Mr Yates fairly summarised, the correspondence was principally concerned in one shape or another with the 5/12ths issue. This was well-illustrated by HMRC's own summary in its e-mail of 23 December 2014 to the appellant which described the issue in such terms in relation to the then open enquiry for APE 30 June 2011.

The closure notice and preceding letter

11. On 16 February 2016 HMRC issued the closure notice which set out the following narrative:

> "I have completed my enquiries into the company tax return and show my conclusions in the following figures and computation of tax payable. This notice amends the return to give effect to my conclusions."

12. The closure notice was preceded by a letter of 15 February 2016 which set out HMRC's conclusion (and was intended to be read with the closure notice). As the main point of contention in the application before me centres on the interpretation of that letter, I set it out in full:

> "**Towers Watson Ltd – Accounting Period Ending 30 June 2011**
>
> **Goodwill Amortisation**
>
> Thank you for your letter of 4 December 2015, please accept my apologies for the delay in responding.
>
> I have taken further advice from our Accountants and in their opinion the company's accounts for the accounting period ending (APE) 30 June 2011 have not been prepared in accordance with UK GAAP, in respect of the amortisation charge.
>
> You confirmed that a straight line method of amortisation without monthly apportionment was used and that no impairment to the goodwill has been charged. Your accounting policy note advises that the straight line basis was adopted.
>
> It is the view of our Accountants that charging a full year's amortisation in the year of acquisition and none in the final year is not appropriate as it represents neither the period in which the goodwill is

depleted nor the period over which the company can expect to derive economic benefit, FRS10 refers.

The goodwill was acquired on 1 February 2011 as part of the purchase of EMB from a third party in 2011, this is post 2002, meaning it falls under part 8 CTA09, this part is given priority by s906 CTA09.

S715 CTA09 applies part 8 CTA09 "to goodwill as it applies to an intangible asset"

S716 provides the accounting rules for "recognised amounts" in GAAP compliant accounts and defines GAAP compliant accounts.

However s717 instructs: (1) If a company a. Draw up accounts that are not GAAP compliant accounts,… This part applies as if GAAP-compliant accounts had been drawn up.

Given our view is that the accounts are not GAAP-compliant in respect of the amortisation charge, they should be adjusted for tax to reflect our view of how the amortisation should have been treated if GAAP-compliant accounts had been drawn up.

As a result, it is appropriate for the amortisation charge to be restricted to the five months period the goodwill was owned, depleted and during which the company derived economic benefit. It therefore follows that the amortisation charge should be reduced by the excess seven months charge of £5,968,666

(£10,232,000 x 7/12).

To give effect to this, I have issued a formal closure notice reducing the amortisation charge to £4,263,333, by adding £5,968,666 to the trading profits for APE June 2011.

The amendment will result in an additional £1,641,464 in tax for the period, as shown in the attached calculation, interest will also accrue until payment is made."

13. The appellant appealed to HMRC on 9 March 2016 and to the tribunal on 4 April 2016. Following HMRC's Statement of Case on 6 July 2016, the Tribunal made various directions permitting the parties to rely on expert evidence, setting deadlines for each party to produce their expert report and for a subsequent joint meeting. Steven Brice wrote the appellant's report, Matthew Dobby wrote HMRC's. Mr Dobby's report addressed what he termed "other issues" – i.e. issues separate from the 5/12ths issue. He sought to raise questions in relation to (a) allocating the total cost of acquisition, (b) deferred consideration and (c) consideration in the form of common stock. The new issues raised by Mr Dobby then appeared in the draft joint statement of the experts. According to Mr Brice the new issues fell outside the scope of the appeal; they concerned the value of goodwill in the accounts not the amortisation charge.

14. The draft statement was initially produced by Mr Brice on 16 January 2017 and then amended by Mr Dobby on 1 February 2017. Finally an unsigned version was produced on 3 February 2017. Notwithstanding Mr Brice's views that the new issues were out of scope, he engaged with the other matters to the extent that he was able to. No agreement was reached on (a) (allocating the total cost of acquisition). On (b)

(deferred consideration) Mr Dobby accepted that the approach adopted in the accounts was acceptable but subject to his views on correct allocation. Mr Dobby agreed that the issue of (c) (common stock) had been correctly accounted for. The issue between the experts in terms of valuation is whether the goodwill recognised in the accounts on acquisition of the EMB LLPs should have been £51,157,000 (according to Mr Brice) or £10,122,987 (according to Mr Dobby).

Law

15. The enquiry was opened under Paragraph 24(1) Schedule 18 Finance Act 1998. The closure notice was issued under paragraph 32 of that Schedule which provides, so far as relevant:

> "an enquiry is completed when an officer of Revenue and Customs by notice (a "closure notice") informs the company they have completed the enquiry and state their conclusions."

16. Under Paragraph 34, where a closure notice is given:

> "(2) The closure notice must –
>
> state that, in the officer's opinion, no amendment is required of the return that was the subject of the enquiry, or make the amendments of that return that are required (i) to give effect to the conclusions stated in the notice,…"

17. Sub-paragraph 3 of that paragraph, provides that an appeal may be brought against such amendments.

Case-law on closure notices

18. It was common ground that the scope of the appeal was governed by the principles regarding closure notices which emerged from the judgments of Henderson J, Moses LJ and Lords Hope and Lord Walker in the appeals culminating with *Tower MCashback LLP1 v Revenue and Customs Comrs* [2011] UKSC 19 and which were summarised by Kitchin LJ in *Fidex Ltd v Revenue and Customs Comrs* [2016] EWCA Civ 385 at [45] of the Court of Appeal's decision:

> "In my judgment the principles to be applied are those set out by Henderson J as approved by and elaborated upon by the Supreme Court. So far as material to this appeal, they may be summarised in the following propositions:
>
> (i) The scope and subject matter of an appeal are defined by the conclusions stated in the closure notice and by the amendments required to give effect to those conclusions.
>
> (ii) What matters are the conclusions set out in the closure notice, not the process of reasoning by which HMRC reached those conclusions.
>
> (iii) The closure notice must be read in context in order properly to understand its meaning.

> (iv) Subject always to the requirements of fairness and proper case management, HMRC can advance new arguments before the FTT to support the conclusions set out in the closure notice."

19. Kitchin LJ went on to give further guidance on how to construe a closure notice at [51] of *Fidex:*

> "The UT went on to express the view, with which I agree, that it is not appropriate to construe a closure notice as if it is a statute or as though its conclusions, grounds and amendments are necessarily contained in watertight compartments, labelled accordingly. It also emphasised, again rightly in my judgment, that while there must be respect for the principle that the appeal does not provide an opportunity for a new roving enquiry into a company's tax return, the FTT is not deprived of jurisdiction where it reasonably concludes that a new issue raised on an appeal represents an alternative or an additional ground for supporting a conclusion in the closure notice."

20. The above case-law principles and approach to construction were also set out in *B & K Lavery Property Trading Partnership v Revenue and Customs Comrs* [2016] UKUT 525 (TC), where the Upper Tribunal, having regard to Henderson J's decision in the High Court in *Tower MCashback* [2008] EWHC 2387 (Ch) at [120] also adopted and applied a test of what a closure notice would convey to a "reasonable recipient", (see [27] and [42]).

21. I note that the appeal provisions (s31(1) Taxes Management Act 1970) under consideration in *Tower MCashback* and *B & K Lavery* which provided that "an appeal may be brought against-…(b) any conclusion stated or amendment made by a closure notice…". While this may be contrasted with the appeal provision relevant to Schedule 18 in Paragraph 34(3) which states "an appeal may be brought against an amendment of a company's return" and which does not therefore specifically mention the appeal being brought against the conclusion stated, this distinction did not prevent the Court of Appeal in *Fidex,* the facts of which, as with this case, concerned the appeal provision in Schedule 18, from adopting and applying the above principles from *Tower MCashback* the same way to issues of scope for the purposes of appeals relating to Schedule 18. I therefore proceed on the basis those principles are just as applicable to this case.

22. I deal with the further points of law which arose between the parties on the relevance of the tribunal's power to change assessment figures to establish the right amount of tax and the significance of the particular amount effected by the amendment to an assessment below.

Discussion

23. The appellant's application turns on ascertaining what the conclusion expressed in the closure notice was, and what it covered. Was the conclusion restricted to the method of amortisation and in particular the 5/12ths issue as the appellant argues? Or, was that issue simply one of the reasons to a broader conclusion, that the appellant's 2011 account had not been prepared in accordance with GAAP in respect of the

amortisation charge, so as to allow the issue of valuation of goodwill to form part of the subject matter of the appeal?

24. While the parties disagree as to the subject matter covered by the conclusions stated in the closure notice, both parties agree that it is HMRC's letter of 15 February 2016 which is crucial, and furthermore accept, albeit that the appellant emphasises this factor more, that the context to that letter must be taken account of too.

25. Both parties accept that the question of what fell within or outside the conclusion in the closure notice (as distinct from whether reasons for that conclusion were new and could be pursued, subject to appropriate case management to avoid concerns over a party being ambushed) was a question of construction rather than discretion. As to the timing of the appellant's application at this stage in the proceedings, I agree it is proper in this case that the issue of the scope of the appeal should be broached now to avoid costs and time being unnecessarily incurred on a contested issue that may prove to be out of scope of the tribunal's jurisdiction in the appeal. As the appellant made clear in their submissions they do not accept HMRC's arguments on the valuation of goodwill.

26. Turning then to the interpretation of the closure notice conclusion, it became clear in the course of the hearing that both parties were in agreement that the particular amount the assessment was amended to, did not assist. The fact an amendment effected by a closure notice was predicated on one reason for the conclusion did not prevent HMRC putting forward alternative or additional reasons for the conclusion stated which gave rise to a different assessment figure. My discussion of the case-law in the section above has not recounted the particular facts of the cases because it is clear the construction of the closure notice will, in each case, turn on its own particular facts. The relevance of the cases above is in the principles they put forward. It is worth mentioning however certain factual features of the FTT's decision in *BNP Paribas SA (London Branch) v HMRC* [2017] UKFTT 487 (TC) which I was referred to. As Mr Jones, for HMRC notes, there, not only was the particular amendment made by the closure notice inconsistent with the argument that HMRC subsequently sought to run, but in the letter accompanying the closure notice, HMRC had expressly said they were not relying on such an argument. The FTT nevertheless held that the scope of the closure notice was broad enough to encompass the new argument (at [561] to [566]). While on the facts of this case the amendment made, predicated as it was on an amortisation charge based on particular valuation amount of goodwill, is not consistent with the goodwill valuation HMRC now argue is correct, that inconsistency cannot be taken to point towards the valuation of goodwill being out of scope.

27. Related to the subject of amount, the figure stated in an assessment under appeal to the tribunal is not of course determinative in that the tribunal has power to vary the amount of the assessment (as set out s50(6) and (7) Taxes Management Act 1970). As highlighted by Mr Jones, this power was referred to in Henderson J's judgment in *Tower MCashback*. Mr Jones also referred to the following extract from Lord Hope's judgment in the Supreme Court's decision where it was stated at [84]:

> "…Furthermore, while the scope and subject matter of the appeal will be defined by the conclusions and the amendments made to the return, section 50 of TMA does not tie the hands of the Commissioners (now the Tax Chamber) to the precise wording of the closure notice when hearing the appeal."

28. However, taking into account what is said elsewhere (for instance see the extract at [36] below from Moses LJ's judgment whose reasoning the Supreme Court endorsed as identified at [28] of the UT's decision in *B & K Lavery*) Lord Hope's view that the tribunal is not tied to the precise wording of the notice reflects the fact the tribunal is not restricted to evidence or law pertaining to the reasons for the conclusion that are set in the closure notice but can consider additional or alternative reasons that were not expressed in the notice. The extract from Lord Hope's judgment was not, in my view, an invitation to the tribunal to disregard the scope and subject matter of the appeal as set by the conclusions expressed in the closure notice (construed by reference to their context). While it is correct the tribunal might for instance alter an assessment according to a "third way" (i.e. one that neither expert suggests) it can by definition only do that in relation to matters which are within the scope of the appeal before it.

29. Applying the legal principles to the facts Mr Yates submits that, from the viewpoint of a reasonable recipient, looking at what was said in the letter of 15 February 2017, taking into account its context (an enquiry that only ever addressed the 5/12ths issue) a reasonable recipient would not understand the conclusion stated to be a general challenge to the amortisation charge where the 5/12ths issue was one of the points underpinning the conclusion. The conclusion expressed was manifestly inconsistent with a separate challenge to goodwill.

30. Mr Jones emphasised that, as the appellant had itself identified in its correspondence, the only way for HMRC to go behind the debits in the accounts was to say the accounts were not compliant with GAAP. It was the conclusion which mattered, not the process of getting to conclusion. The conclusion was a generic attack on the GAAP compliance of the accounts. The argument that the method of amortisation was not GAAP compliant led to the conclusion the accounts were not prepared in accordance with GAAP in respect of the amortisation charge. This was consistent both with arguing the method of accounting was not GAAP compliant and the alternative argument that the amount recognised in respect of amortisation of goodwill was incorrect. On the question of what GAAP required, it was open for the tribunal to conclude that this was something other than what is proposed by either side. Given that, it would be odd if the tribunal could not take into account other matters relevant to question such as appropriate value. That was just as much an aspect of GAAP and the necessity to present a true and fair view.

31. In my view the terms of the letter made clear HMRC had concluded that the accounts had not been prepared in accordance with UK GAAP in respect of the amortisation charge. The conclusion did not however stop there but, reading the letter as whole, extended to the statement which followed that "…charging a full year's amortisation in the year of acquisition and none in the final year is not appropriate". The letter then went on to set out the reason for why the full year charge was not

appropriate (because it represented "neither the period in which the goodwill is depleted nor the period over which the company can expect to derive economic benefit…" and to provide the explanation for the amendment (the amortisation reduction of £5,968,666 representing 7/12ths of goodwill of £10,232,000 being the excess seven months). I cannot accept HMRC's argument that the conclusion expressed, encompassed the view that the headline amount of goodwill upon which the amortisation is based was incorrect. That is not, in my judgment, how a reasonable recipient of the notice would have understood the conclusion. A reasonable recipient considering the letter and the context of the correspondence would in my view quite properly assume the conclusion was concerned with questions of the GAAP compliance of the amortisation amount, in so far as it related to the method by which that amortisation amount had been calculated.

32. The context provided by the enquiry (which as set out above was focussed on the 5/12ths issue) is consistent with that conclusion. However the importance of the scope of the enquiry should not be overstated as there may well be cases where, despite a narrower enquiry, the conclusion in fact is expressed in broader terms. As a matter of practicality the very cases where the issue of scope is in contention will likely include those where something was not raised in the enquiry. But it is clear that that factor does not necessarily mean the issue cannot be an additional or alternative reason for the conclusion. Taking into account the particular context of the enquiry in this case, a conclusion that would cover the valuation of goodwill would need to at least extend to making it clear that the goodwill amount was not considered to be in accordance with GAAP.

33. Regarding HMRC's argument that the conclusion was simply that the accounts were not compliant with GAAP, as Mr Yates point out, on this basis any challenge to amount would also encompass an attack on any element of the accounts which was not GAAP compliant. The conclusion could not be that broad. But, even if, as was suggested in Mr Jones' refined submissions, the conclusion could be narrowed to GAAP non-compliance in the context of Part 8 CTA 2009 or in its treatment of the goodwill relating to the EMB LLPs, that interpretation would still not be sustainable on the facts. Read in the context of the letter and the preceding correspondence it is clear the conclusion was in relation to the GAAP compliance of the method of amortisation and was not taking any issue with the valuation of the goodwill to be amortised. Mr Jones submits the method of goodwill cannot be divorced from value being amortised, it is part and parcel of the same exercise of the GAAP requirement to produce a true and fair view (for instance the amount being amortised could affect a conclusion on whether any difference in amortisation methods amounted to a material difference for accounting purposes). But it does not follow that because the appropriateness of an amortisation method may vary according to the amount to be amortised in issue that a challenge to method should inevitably serve as a springboard to then launch a challenge to the headline amount of goodwill. HMRC's arguments presuppose the breadth of the conclusion stated is as HMRC say it is (whether the amortisation amount has been presented in a true and fair way, rather than a narrower conclusion around the appropriate method to derive that amount).

34. As to HMRC's arguments which highlighted the particular duties of experts to courts and tribunals and explained that Mr Dobby, for good reason, thought he should inform the tribunal of a relevant matter, Mr Jones in his oral submissions, rightly in my view, accepted this issue was separate from jurisdiction. As the appellant points out, an expert's duties to assist the court or tribunal cannot inform the scope of the appeal because those duties, by definition, only extend to matters which are adjudged to be within the scope of the appeal before the tribunal in the first place.

35. Mr Jones urges the tribunal not to take an overly narrow construction of the notice given the policy imperative and public interest, as set out in the case-law of establishing the right amount of tax liability. I agree the construction should not be narrow, but by the same token there is no justification to stretch it in the way entailed by HMRC's approach. The test of looking at what is communicated by HMRC from the viewpoint of a reasonable recipient will ensure a sensible construction is taken. As Mr Yates identified in his reply, the public interest in establishing the right amount of tax was not conclusive but had to be viewed alongside the countervailing objective within the self-assessment regime of achieving finality.

36. Moses LJ stated at [38] in *Tower MCashback*:

> " … I would leave it to the commissioners and now the First-tier Tribunal to identify the subject matter of the enquiry and the subject matter of the conclusions. In doing so, the First-tier Tribunal will have to balance the need to preserve the statutory protection for the taxpayer afforded by notification that the inspector has completed his enquiries and the need to ensure that the public are not wrongly deprived of contributions to the fisc."

37. This paragraph, on the limiting effect of the self-assessment regime, was also noted by the UT in *B & K Lavery* (at [40] of their decision). In my view the balance between statutory protection for the taxpayer and the public's interest in the right amount of tax being charged is reflected in the flexibility of the tribunal to determine, subject to matters of case management, additional or alternative reasons once the scope of the stated conclusion has been determined. As to the determination of the conclusion stated, as indicated above, I do not see that there is flexibility in the form of a balancing exercise at this stage to interpret the conclusion taking account of its context any other way than how a reasonable recipient would understand it and for instance to be swayed by the large amount of tax that might be put in issue if the conclusion were as broad as HMRC's case argues it is. Indeed the call to look at the issue from the perspective of a reasonable recipient, which provides the safeguard of an objective test, in my view provides precisely the means by which a tribunal can strike a fair balance between the statutory protection for the taxpayer which is provided by a closure notice and the public interest in determining a person's tax liability correctly.

Decision

38. The scope of the appeal of appeal is limited to the conclusion stated: charging a full year's amortisation in the year of acquisition did not comply with GAAP. The

conclusion in the closure notice and therefore the scope of the appeal does not extend to a conclusion that the valuation of the goodwill upon which the amortisation was carried out was not in accordance with GAAP.

39. I should record that the above statement of conclusion does not marry up to the terms set out in the appellant's application of 14 July 2017. This sought a direction which limited the scope of the appeal to two alternative and specific deduction methods. It was accepted by the appellant at the hearing that the drafting might need to be refined. In line with what is said above about it being possible, at least in principle for any tribunal hearing the substantive appeal, to reach a "third way" view on GAAP compliance as regards the amortisation method which reflects neither of the expert's views, I decline to make the direction in the precise terms sought by the appellant, but direct that the scope of the conclusion is as set out in this decision. Further case management directions are issued to the parties separately.

40. 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.

SWAMI RAGHAVAN
TRIBUNAL JUDGE

RELEASE DATE: 25 NOVEMBER 2017