[2020] UKFTT 0117 (TC)

TC07611

PROCEDURE – preliminary issue – marketed tax avoidance scheme – whether the FTT has jurisdiction to determine if HMRC is entitled to exercise discretion under s 684(7A) ITEPA 2003 to disapply PAYE regulations – Regulation 185 PAYE Regulations – Regulation 188 PAYE Regulations – s.23 TMA 1970 – s.59B TMA 1970 – Hoey v HMRC *considered – FTT does not have jurisdiction*

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2018/05042 and others

BETWEEN

PHILIP HIGGS
TERENCE ASTON
STEPHEN CLEE
CAROLINE CAHILL
MICHAEL DORAN
and
OTHERS

(APPELLANTS IN THE EDGE SCHEME LITIGATION) **Appellants**

-and-

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

TRIBUNAL: JUDGE JAMES AUSTEN

Sitting in public at Taylor House, 88 Rosebery Avenue, London EC1R 4QU on 26 July 2019 (with further written submissions received from the parties dated 14 August 2019 and 15 August 2019).

Mr Keith Gordon of counsel instructed by Stratax LLP, trading as Strategic Tax Planning, for the Appellant

Mr Akash Nawbatt QC and Mr Sebastian Purnell of counsel instructed by HM Revenue & Customs Solicitor's Office and Legal Services for the Respondents

DECISION

INTRODUCTION AND BACKGROUND

1. This decision results from directions made by Judge Greg Sinfield CP dated 3 May 2019 on an application by HMRC to determine whether the first of 10 substantive issues agreed between the parties – concerning the Tribunal's jurisdiction – should be dealt with at a preliminary hearing. Judge Sinfield directed that it should. I heard the resulting preliminary issue hearing on 26 July 2019 and subsequently received written submissions dated 14 and 15 August 2019 in response to my post-hearing directions of 6 August 2019.

2. I have decided that the Tribunal does not have the jurisdiction in question.

3. The appellants are the lead appellants in the litigation between HMRC and the users of a tax avoidance scheme marketed by Edge Consulting Ltd (the **Edge Scheme Litigation**). This scheme was designed to minimise its users' income tax liability by splitting the remuneration for their work for third parties into two components: (1) payment of a minimum wage via an offshore company; and (2) payment of sums through an Employee Benefit Trust which purported to be discretionary loans.

4. I am told that the scheme in question was used between tax years 2005/6 and 2010/11. The number of scheme users varied from year to year from between 576 and 1,648. The approximate amount of tax in dispute is £38 million.

5. By way of background, the intended operation of the scheme was conveniently described in HMRC's Statement of Case as follows:

> **The Scheme in Outline**
>
> 11. The Scheme was set up by [Edge Consulting Ltd (**ECL**)] in or around 2005. By April 2005, ECL had an EBT in place in the Isle of Man. Tenon (Isle of Man) Ltd was initially appointed as the trustee of the EBT but was subsequently replaced as trustee by Mapatui Ltd.
>
> 12. The Scheme operated as follows. Scheme users (generally, individual contractors) entered into contract of employment with ECL in the Isle of Man. ECL entered into contracts with at least one UK intermediary (typically Norla Consulting Ltd) which, in turn, contracted with an employment agency and all and user for the provision of the individual contractors' services.
>
> 13. Rather than directly receiving pay for the services the individual contractors provided to end-users, the following arrangements would be put in place:
>
> a. The individual contractor would cause the intermediary (either by submitting a timesheet or requesting the issue of an invoice) to invoice the end user.
>
> b. The end user would pay the intermediary.
>
> c. The intermediary would pay ECL, subject to its fees or commission.
>
> d. ECL would pay a minimal wage (typically based on the National Minimum Wage) to the individual contractor, on which voluntary PAYE and NICS deductions were operated.
>
> e. ECL would contribute the balance of the cash sums received from the end-user to the Edge EBT, subject to its own fees or commission.
>
> f. The individual contractor would enter into a loan agreement with Tenon, as trustee of the edge EBT, which provided for discretionary loans to be made to Scheme users.

> g. Tenon would receive a "letter of wishes" from ECL nominating the Scheme user for a payment as the beneficiary of the trust. The Edge EBT would then make loans to Scheme users out of the amounts it received from ECL.
>
> h. Loans were typically made to Scheme users approximately every six weeks by the Edge EBT. These loans were interest-free, unsecured and said to be repayable on demand.
>
> i. After administration costs and fees, the individual contractor would typically end up with in excess of 82% of the amount paid by the end user the provision of the contractor's services.

6. These details are not relevant to the preliminary issue I have to decide and they are mentioned only for completeness. I have disregarded them when reaching my decision.

7. Inter alia, the appellants wish to pursue an argument before this Tribunal that they are entitled to a credit for income tax that *should* (they say) have been deducted by their employers (or, rather, the intermediary, which, they now accept, was a UK-resident party in the contractual chain liable to deduct tax under the Income Tax (Pay As You Earn) Regulations 2003 (as amended) (the **PAYE Regulations**)). As a result of the operation of the PAYE Regulations as contended for, this credit would arise irrespective of the fact that tax was not in fact deducted at source through PAYE. The credit, should it exist, would serve to reduce the amount of additional tax sought from the appellants under the assessments/closure notices issued by HMRC.

8. Pursuant to Judge Sinfield's directions, the preliminary question for this Tribunal to decide is as follows:

> "1. Does the First-tier Tribunal have jurisdiction to consider Questions 2 to 3 below?
>
> 2. Was the end user or any other person in the contractual chain (other than the Appellant) under an obligation to deduct and/or account for income tax from the employment income prior to payment in accordance with the PAYE Regulations?
>
> 3. Given that no income tax was in fact deducted nor accounted for in respect of those amounts, are the appellant's entitled to a credit under the PAYE regulations for the income tax that should have been (but which was not) deducted and/or accounted for?"

9. I had the benefit of detailed written and oral submissions from Mr Nawbatt QC and Mr Gordon, to both of whom I was most grateful.

10. I have given full reasons for my decision so far as necessary to dispose of the issues. In doing so, I have dealt with those submissions which I found particularly useful or important or which were essential in disposing of the issues before me; I have not, however, dealt with every submission where it was unnecessary for me to do so.

Hoey

11. After the hearing on 26 July 2019, having begun my consideration of the issues but before finalising my decision, this Tribunal (Judge Philip Gillett) issued its decision in *Hoey v HMRC* [2019] UKFTT 489 (TC). That decision covered substantially more ground than the short point before me, but paragraphs [119] to [139] of the decision are relevant to this preliminary issue.

12. As a decision of this Tribunal, *Hoey* is not binding on me (*Hampshire County Council v JP* [2009] UKUT 239 (AAC) at [15]; *Secretary of State for Work and Pensions v AM (IS)* [2010] UKUT 428 (AAC) at [51]). Because the hearing in this case took place before the *Hoey* decision was published, I had already begun to consider the matter afresh for myself and this

decision reflects that. I have not simply followed *Hoey*. Nevertheless, that decision is clearly relevant to my conclusions and so I directed on 6 August 2019 that the parties should supply written submissions on the relevant paragraphs of that case, which were subsequently provided. I read and considered the parties' further submissions.

13. In briefest summary (and insofar as relevant), the Tribunal in *Hoey* decided as follows:

(1) This Tribunal does not have a general jurisdiction to consider matters of public law;

(2) That includes the PAYE Regulations;

(3) *Hoey* was not a case which required the Tribunal to consider public law points in order to enable it to consider issues which were within its jurisdiction;

(4) It followed that the Tribunal could not consider the question of whether any exercise by HMRC of – or purportedly of – any discretion under s.674(7A) was lawful;

(5) The Tribunal could, however, consider whether or not the effect of the discretion which HMRC claimed to have exercised was genuinely as described.

(6) Having considered s.674(7A), the Tribunal decided that it did grant a very wide discretion to HMRC, which HMRC had exercised in that case, and which the Tribunal had no jurisdiction to disturb.

14. I understand that both parties in *Hoey* have been given permission to appeal to the Upper Tribunal. My decision in this case might have relevance to aspects of that appeal. Meanwhile, the outcome of the further appeal in *Hoey* is undoubtedly pertinent to this case. I understand that other appeals on the same or similar issues are also pending before this Tribunal.

Rangers

15. By the time of the hearing before me, the appellants accepted that the payments made in respect of their work constituted employment income as a result of the decision of the Supreme Court in *RFC 2012 PLC (in liquidation) (formerly The Rangers Football Club PLC) v Advocate General for Scotland* [2017] UKSC 45.

16. However, in *Rangers*, the appeals concerned the employer and not the workers. In the present case, the appellants are the workers and so the existence or otherwise of the PAYE credit arises for consideration here, where it did not in *Rangers*.

Birkett

17. Neither the skeleton argument of Mr Gordon nor that of Mr Nawbatt and Mr Purnell dealt with the case of *R & J Birkett v HMRC* [2017] UKUT 89 (TCC). I asked Mr Gordon and Mr Nawbatt at the beginning of the proceedings whether they wished to address the Tribunal about the discussion in that case on the extent of this Tribunal's public law jurisdiction. Neither did. However, submissions on *Birkett* had evidently been made in *Hoey*, and they were considered in the Tribunal's decision in that case. Mr Gordon's post-hearing written submissions touched on those. HMRC equally had the opportunity to make relevant submissions at that stage, but did not do so. As a result, and as the decision of the Upper Tribunal in *Birkett* has undoubted pertinence to the issues before me, I have considered it proper to address it in my discussion below where relevant.

Evidence

18. The hearing was concerned solely with points of law and neither party found it necessary to adduce any factual evidence. It follows that there are no facts for me to find in relation to the questions before me and this decision deals only with legal issues.

SUBMISSIONS

19. Mr Gordon and Mr Nawbatt approached the questions for this Tribunal to determine entirely differently: the structure they gave to their respective arguments supported the conclusions they asked the Tribunal to reach.

(1) Mr Gordon began by examining what he described as the "effect" (or, as he would have it, the non-effect) of HMRC's decision in 2018 that purported retrospectively to disapply to the appellants the provisions of the PAYE Regulations pursuant to s.684(7A)(b) Income Tax (Earnings and Pensions) Act 2003 (**ITEPA**). Mr Gordon went out of his way to explain that he was not asking the Tribunal to decide on the validity of the purported decision. He then went on to consider Rule 188 and Rule 185 of the PAYE Regulations and related matters in the context of what he considered to be their justiciability in this Tribunal. The same primary emphasis on the effect of s.684(7A)(b) was apparent in Mr Gordon's post-hearing written submissions on the *Hoey* decision.

(2) Conversely, Mr Nawbatt began by drawing a distinction between matters of assessment in respect of which this Tribunal undoubtedly had jurisdiction, and matters of collection, in which it did not. In Mr Nawbatt's submission, the appellants' case in this matter related wholly to the latter. As a result, Mr Nawbatt considered first Rules 188 and 185 of the Regulations – and sections 59A and 59B of the Taxes Management Act 1970 (**TMA**) – only latterly moving on to deal with HMRC's s.684(7A)(b) decision for completeness. HMRC's written submissions on *Hoey* briefly confirmed its reliance on the same arguments put forward in that case and this, and upon the reasoning and conclusions of the Tribunal in *Hoey* at paragraphs [122], [128], [138] and [139].

Mr Gordon's Submissions

Section 684(7A) (b)

20. As noted above, Mr Gordon began his submissions by examining HMRC's s.684(7A)(b) ITEPA decision. Insofar as relevant, the full provision states:

> Nothing in PAYE regulations may be read –
>
> (a) [not relevant]
>
> (b) as requiring the payer to comply with the regulations and circumstances in which an officer of Revenue and Customs is satisfied that it is unnecessary or not appropriate for the payer to do so.

21. Mr Gordon's skeleton argument noted:

> 14. HMRC's argument is based on the assumption that the exercise of a public law discretion may be challenged only by way of judicial review. It is recognised that this is the current state of the authorities even in cases where the challenge to the public law decision is collateral to an appeal within the Tribunal.
>
> 15. The Appellants reserve the right to argue on any further appeal that collateral public law challenges *may* be made in the tribunal if (as in this case) it is in the context of (and relevant to the outcome of) an appealable matter. However, in the light of the current case law, the appellants do not propose to pursue that argument at the present stage.
>
> 16. Accordingly, for the purposes of this hearing, the Appellants will concur with HMRC's assertion that "the FTT has no jurisdiction in a statutory appeal to review the exercise of discretion under s.684(7A)(b) and the Appellants are now out of time to challenge HMRCs exercise of discretion by way of judicial review proceedings".

22. However, Mr Gordon went on to note:

> "17. Notwithstanding the position as set out in paragraph 16 above, the appellant to maintain that they have every right to dispute the existence of an **effective** exercise of HMRC's discretion under section 684(7A)(b)."

23. Mr Gordon had three reasons for asserting that HMRC's s.684(7A)(b) decision did not have the effect for which HMRC contended. These were:

(1) s.684(7A) (b) could not be exercised retrospectively;

(2) even if valid and effective, that decision was only exercised "to disapply any PAYE obligation to account for PAYE on the part of **the end users** in respect of payments made for the Appellants' services". In this case, the obligation to deduct PAYE fell on the UK-based agencies which placed the Appellants with the end users; and

(3) HMRC had not even notified the end users that their obligations to comply with the PAYE regulations had been disapplied, instead only asserting as much in letters to the Appellants.

Retrospectivity

24. Mr Gordon submitted that a natural reading of s.684(7A) (b) made it clear that the provision was only intended to operate prospectively, and not retrospectively. He argued that the section contained no express power for an officer of HMRC to forgive prior non-compliance with the regulations and concluded that it was "inconceivable" that the provision could be read anyway other than providing that future compliance might be excused certain cases.

25. Importantly, Mr Gordon drew attention to how the PAYE Regulations operated in practice. Normally, where there was a failure to account for PAYE, HMRC would issue a determination pursuant to regulation 80 so as to collect the tax from the employer (being the person originally liable to pay the sums). Mr Gordon pointed to the existence of other specific provisions, at regulations 72, 72F and 81 (each of which he took me through in his oral submissions), which allowed the liability to be transferred to the employee in certain prescribed circumstances and subject to rights of appeal to this Tribunal. In Mr Gordon's submission, the notion that HMRC could in exercise of its s.684(7A)(b) discretion retrospectively exclude the application of the PAYE Regulations "undermines the careful balance within the PAYE regulations". This is because regulations 72, 72F and 81 (which included certain taxpayer protections) would be irrelevant were that so, since no statutory appeal arose in respect of s.684(7A)(b).

Subjects of the s.684(7A)(b) decision, and notice

26. Mr Gordon criticised the fact that HMRC had, in his submission, expressly restricted the exercise of its s.684(7A)(b) discretion to the end-users. This was inapt because the obligation to operate PAYE would not have fallen on those end-users but on one or more of the UK entities higher up in the contractual chain. It followed, he said, that the purported exercise of discretion by HMRC which took effect only on other entities could not prevent the availability of the PAYE credit to the appellants.

27. Additionally, Mr Gordon said it was axiomatic that, as matter of public law, if a person be made subject to – or, as here, forgiven their duty to – comply with certain obligations, they must be notified of that fact. HMRC's failure to do so in this case vitiated the effect of that decision on the appellants.

General submissions on "effect" versus "validity"

28. In his post-hearing written submissions on *Hoey*, Mr Gordon elaborated on his argument that the Tribunal was free to determine the "effect" (as opposed to the "validity") of HMRC's decisions when dealing with a statutory appeal. He wrote:

> 5. …the essence of these paragraphs (and paragraph 129 in particular) is, as the present Appellants have argued, that the First-tier is permitted to consider the effect of a section 684(7A) decision and the Tribunal is invited to follow that approach for the reasons already advanced. This is clear from *Hok* and *Noor* as summarised in the passage from *Birkett* (cited at [127], subparagraph (4)).
>
> 6. To use a further analogy, suppose HMRC had the power to display a red light or a green light (the exercise of such a power capable of challenge only by way of judicial review). If HMRC assert that they are displaying a red light, judicial review is not necessary for the taxpayer to argue that the light is in fact green.

Conclusions on s.684(7A)(b)

29. Having established, in his submission, that whatever the nature of HMRC's s.684(7A)(b) decision, no action was taken which had the effect of removing the PAYE credit to which the appellants were entitled, Mr Gordon concluded that the only remaining issue for determination was whether the PAYE credit was justiciable in this Tribunal, as he would have it, or whether it could only be considered as part of a defence to enforcement proceedings in the County Court.

Calculation of a person's income tax liability

30. Mr Gordon submitted that HMRC's characterisation of the PAYE Regulations as being a "collection issue", rather than as being "relevant to the quantum of any assessment/amendment" was misconceived.

31. He dealt first with s.29 TMA discovery assessments (and closure notices) in the context of Regulation 188 of the PAYE Regulations.

32. Regulation 188(2)-(3), (7) provides as follows:

> **188 Assessments other than self-assessments**
>
> …
>
> (2) The tax payable by the employee is—
>
> A – (B – C)
>
> where
>
> A is the tax payable under the assessment;
>
> B is the total net tax deducted in relation to the employee's relevant payments during the tax year for which the assessment is made, adjusted as required by paragraph (3); and
>
> C is so much, if any, of B as is subsequently repaid.
>
> (3) For the purpose of determining the tax payable by the employee, and subject to paragraphs (4) and (5)—
>
> (a) add to B any tax which—
>
> (i) the employer was liable to deduct from relevant payments but failed to do so, or
>
> (ii) the employer was liable to account for in accordance with regulation 62(5) (notional payments) but failed to do so;
>
> (b) make any necessary adjustment to B in respect of any tax overpaid or remaining unpaid for any tax year; and

(c) make any necessary adjustment to B in respect of any amount to be recovered as if it were unpaid tax under section 30(1) of TMA (recovery of overpayment of tax etc) to the extent that—

(i) [HMRC] took that amount into account in determining the employee's code, and

(ii) the total net tax deducted was in consequence greater than it would otherwise have been.

…

(7) In this regulation—

"direction" means a direction made under [regulation 72(5), regulation 72F] or 81(4) in relation to the employee in respect of one or more tax periods falling within the tax year in question;

"direction tax" means any amount of tax which is the subject of a direction;

"tax payable under the assessment" means the amount of tax shown in the assessment as payable without regard to any amount shown in the notice of assessment as a deduction from, or a credit against, the amount of tax payable.

33. In Mr Gordon's submission, the amount of figure 'A' in Regulation 188(2) – the "tax payable under the assessment" meant simply the gross amount of the assessment. But the amount actually payable by the taxpayer was affected by the amount of figure 'B' ('C' was not relevant in this case).

34. Mr Gordon accepted that – at this stage – figure 'B' represented only the amount of tax (if any) actually deducted and he acknowledged that this was insufficient for his purposes. However, he pointed to Regulation 188(3), which, he argued, was the source of the credit on which he relied.

35. Mr Gordon invited the Tribunal to agree that, because the A-B calculation went to the heart of quantum of tax payable by the taxpayer, the Tribunal must have jurisdiction in respect of that calculation and the amounts on which it drew.

36. A similar argument was made as regards the Tribunal's jurisdiction over the amount of further tax to be paid pursuant to a s.29 TMA discovery assessment. Mr Gordon observed that s.49D(3) (which conferred the right of appeal to this Tribunal against a s.29 assessment) gave the Tribunal jurisdiction to decide "the matter in question." This phrase is in turn defined in s.49I TMA, as follows:

[49I Interpretation of sections 49A to 49H

(1) In sections 49A to 49H—

(a) "matter in question" means the matter to which an appeal relates…

37. Mr Gordon submitted that in the absence of any words cutting down the breadth of the phrases "the matter in question" and "the matter to which an appeal relates", both should be given their natural, wide, construction. This, combined with the similarly expansive wording of s.50 TMA in respect of the Tribunal's powers in a statutory appeal, confirmed Parliament's intention, he said, to make all matters relating to the quantum of tax payable subject to the Tribunal's jurisdiction. That included amounts under Regulation 188.

38. I was then taken to Regulation 185, which is relevant to the closure notices not subject to Regulation 188. Mr Gordon accepted that the statutory analysis which he argued was so compelling in respect of Regulation 188 was less clear as regards Regulation 185, though he submitted that a difference of treatment under the two Regulations would be undesirable. He

acknowledged that closure notices were not "assessments", and that he relied on a somewhat 'strained' meaning of "assessment" in this context. Nevertheless, he invited me to accept that a close reading of the Regulation, combined with a purposive interpretation (and an appreciation that, as secondary legislation, the Tribunal had greater freedom to ascertain the purpose in question) confirmed his view that the credit was equally available to the appellants under Regulation 185.

39. Alternatively, Mr Gordon argued that:

(1) Closure notices amended the self-assessment returns (s.28A(2) TMA) – especially the calculation in those returns (s.9(1) TMA);

(2) That required the calculation of the income tax chargeable (s.9(1)(a)), and the income tax actually payable (s.9(1)(b));

(3) In respect of the latter amount, this required the credit for any tax deducted at source;

(4) s.59B(1) then determined when that tax was payable;

(5) s.59B(1) "operates by largely duplicating section 9(1)", because:

(a) s.59B(1)(a) draws on the s.9(1)(a) amounts, whereas

(b) s.59B(1)(b) requires the deduction of two further sums:

(i) any payments of tax on account; and

(ii) "any income tax which in respect of that year has been deducted at source."

(6) The s.59B(1)(b) amount has already been taken into account at s.9(1)(b);

40. Thus, said Mr Gordon, "when applying regulation 185(2), one sees that the credit is applied when identifying "the amount of income tax deducted at source". Given the considerable overlap between sections 9(1) and 59B(1) (and, moreover, the absence of any reason for them to give rise to different outcomes), it is clear that the regulation 185 credit is equally applicable to both section 59B(1)(b) and section 9(1)(b). Or, to put it another way, there is absolutely no reason why the determination of the credit cannot be justiciable in the Tribunal."

41. Mr Gordon relied on *HMRC v Walker* [2016] UKUT 32 (TCC) by analogy, urging the Tribunal to apply the dictum of the Upper Tribunal so as "to amend the assessment to reflect its own conclusion."

42. In response to HMRC's submission that PAYE was purely a matter of collection, in which the County Court and not the Tribunal had jurisdiction, Mr Gordon asserted that the County Court had only a limited jurisdiction, as evidenced by the fast-track process available for tax debts pursuant to CPR, Practice Direction 7D. That Practice Direction presumes, pursuant to a certificate by an HMRC officer, that the "sum payable" is finally determined and indisputable. Mr Gordon commented that "[t]he idea that (say) taxpayers claiming entitlement to the credit will need to establish such claims in the County Court is likely to give rise to considerable concern (amongst County Court judges and perhaps wider afield)."

Mr Nawbatt's Submissions

43. Mr Nawbatt's primary submissions were straightforward and set out at paragraph 11 of his skeleton argument:

i. the appellant's argument that they are entitled to a "credit" under the PAYE Regulations is a collection / enforcement matter which is not

justiciable before the tribunal: see *HMRC v Walker* [2016] UKUT 32 at [39]. The alleged entitlement to a PAYE credit is not relevant to the question whether the Appellants are overcharged by an assessment and is, therefore, not a question in respect of which the Tribunal has jurisdiction.

ii. The FTT has no jurisdiction in a statutory appeal to review HMRC's exercise of discretion under s.684(7A) (b) ITEPA. This could only be challenged by way of judicial review proceedings, which the Appellants have not issued and are now out of time to bring.

Jurisdiction

44. For Mr Nawbatt, the proper starting point was to consider whether the Tribunal had jurisdiction to determine *any* matters pertaining to the PAYE credit: if the tribunal did not have that jurisdiction, it was irrelevant whether or not the s.684(7A) (b) decision was effective to remove the credit in this case.

45. Mr Nawbatt argued that HMRC's s.684(7A) (b) discretion was a public law matter, in respect of which the Administrative Court – and not this Tribunal – had jurisdiction by way of Judicial Review. It followed that even if the credits were matters that the Tribunal could examine, the effectiveness or otherwise of the s.684(7A)(b) decision purportedly or actually removing those credits was not a matter within its jurisdiction.

46. Mr Nawbatt criticised Mr Gordon's attempt to characterise his submissions on this point as concerning the "effect" of the s.684(7A) (b) decision as opposed to its validity: this was, in Mr Nawbatt's submission, a distinction without a difference. In fact, the consequences of a decision followed its *vires*: if the decision was *intra vires*, its consequences would follow. To challenge the consequences of a public law decision, an appellant would necessarily have to attack the power to make that decision. In this case, the deficiency giving rise to the purported lack of "effectiveness" in Mr Gordon's analysis was the retrospective effect of the decision. Notwithstanding his protestations otherwise, Mr Gordon was in essence arguing that HMRC lacked power to make a retrospective decision under s.684(7A) (b). The forum for that argument was the Administrative Court. Mr Nawbatt cited *F. Hoffmann-La Roche & Co AG and Others v Secretary of State for Trade and Industry* [1975] AC 295 in support of the general proposition that administrative decisions were presumed valid unless and until a court of competent jurisdiction determined otherwise.

47. Mr Nawbatt then directed me to the classic dictum of Lord Dunedin in *Whitney v IRC* [1926] AC 37 at [52]:

> … There are three stages in the imposition of a tax: there is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment. That, *ex hypothesi*, has already been fixed. But assessment particular arises the exact sum which a person liable has to pay. Lastly, come the methods of recovery, if the person taxed does not voluntarily pay.

48. Mr Nawbatt submitted that the PAYE Regulations provided only for a collection mechanism in respect of certain specific categories of (employment) income subject to income tax, nothing more. *Liability* to tax on employment income is fixed at an earlier stage, by different provisions, and Mr Nawbatt referred me to sections 6, 7, 9, 11 and 13 ITEPA in that regard.

49. This observation is also relevant to the *incidence* of liability: the person liable for tax on employment income is the employee, and nothing in any other provision changes that. In

support of this point, Mr Nawbatt quoted from *McCarthy v McCarthy & Stone PLC* [2007] EWCA Civ 664, per the Chancellor:

> 42. As is well known the PAYE system is designed to recover tax due on income of an employee from its source, that is the employer, and in anticipation of the liability which arises at the end of the year of assessment in which it is paid. **Accordingly it is hardly surprising that the PAYE regulations do not impose any liability on the employee. That is done by the primary legislation, namely ITEPA, to which I have referred and the general machinery for collection contained in the Taxes Management Act 1970 ("TMA")**, to which I now turn.
>
> 43. Part VI of TMA deals with "Payment of Tax". S.59A deals with payments on account of tax. It imposes the now familiar requirement to pay tax on 31st January and 31st July, the first of which is payable during the relevant year of assessment and the second only three months after its conclusion. It applies if in the previous year of assessment the tax on the income of the taxpayer from all sources exceeded the amount of tax deducted at source by a fraction to be prescribed by regulations. Thus a liability is imposed on a taxpayer in respect of his income in excess of that from which tax has been deducted at source. This section was referred to by Peter Smith J in paragraph 72 of his judgment as reinforcing the position that the Claimant **"is liable to pay tax on his own earnings <u>if</u> it is not deducted".**
>
> 44. **The matter is put beyond doubt by the provisions of s.59B.** That provides that the amount shown in a taxpayer's self-assessment under s.9 TMA for any year of assessment less (1) the aggregate of payments on account made by him under s.59A or otherwise in respect of that year and (2) any income tax deducted at source "shall be payable by him as mentioned in subsections (3) or (4) below". Those subsections deal with the time of payment by reference to notices given under ss.7 or 8 TMA. **But all of them recognise that the sums "payable by" the taxpayer are recoverable by the normal assessment procedures.**
>
> 45. Counsel for the Claimant seeks to avoid what appear to me to be the obvious consequences of the legislative provisions to which I have referred on the grounds that s.59B is concerned with the mechanics of calculation of the liability, not its imposition. In one sense, of course, it is. **It provides the mechanics for recovering the sums due in respect of the liabilities imposed by ITEPA in the provisions to which I have already referred. What it does not show is that an employee is not liable for tax on his employment income**, including gains arising from the exercise of share options.
>
> [The emphasis was that supplied by Mr Nawbatt in the quotation in his skeleton argument.]

50. Furthermore, it was decided in *Walker* at [39] that "section 59B is not justiciable before the FTT, being concerned with matters of collection and enforcement".

Calculation of a person's income tax liability

51. Mr Nawbatt took me carefully through the provisions relevant to the calculation of a person's income tax liability for a given tax year. The salient features are as follows:

(1) A person's liability to income tax is determined using the calculation contained at s.23 Income Tax Act 2007 (**ITA**).

(2) The person liable to tax on employment income on "taxable earnings" is the person to whose employment the earnings related – s.13(2) ITEPA.

(3) The amount charged is the "net taxable earnings" – s.11 ITEPA.

(4) S.23 ITA makes no provision for deductions under PAYE or otherwise. The reasons for this is explained at paragraph 78 of the Explanatory Notes to ITA:

> 78. The calculation does not deal with amounts of tax suffered (e.g. under PAYE or by way of deduction of tax at source) as these are set off against a person's liability rather than deducted in arriving at it. See section 59B(1) of TMA.

(5) A person making a s.8 TMA tax return is obliged to make a s.9 self-assessment. Other than any Capital Gains Tax liability, the s.9(1)(a) TMA amount is the same as the s.23 ITA amount.

(6) The s.8(1AA)(b) return and the s.9(1)(b) self-assessment require the taxpayer to specify the "amount payable by a person by way of income tax", being "the difference between the amount in which he is chargeable to income tax and the aggregate amount of any tax deducted at source." S.8(5) TMA specifies that "income tax deducted at source" means "income tax deducted or treated as deducted from any income or treated as paid on any income."

(7) Crucially, however, the s.8(5) amount *does not* include Regulation 185 and Regulation 188 PAYE Regulation amounts.

(8) As regards Regulation 185, this is because:

(a) it only applies to s.59A and s.59B TMA. Accordingly, it does not apply for the purposes of ss.8-9 TMA, which fix the amount of the assessment.

(b) In support of this proposition, s.59A only deals with "payments on account of income tax" – it requires taxpayers to make two payments on account of their liability to tax in a given year of assessment (s.59A(2)). Such a provision can logically only apply subsequent to the establishment of the liability in that year of assessment.

(c) S.59B deals with "payments of income tax…" in the case of *assessments* (including self-assessments). The difference between the amounts at s.59B(1)(a) and s.59B(1)(b) is "payable". In Mr Nawbatt's submission, that amount is the amount "to be paid", as contrasted with the amount "chargeable" and the amount "payable" as described in s.8(1AA) and s.9(1) TMA respectively. This interpretation is supported by s.684(5) ITEPA, which preserves an employee's right of appeal to this Tribunal irrespective of any provision in the PAYE Regulations. That this is so reflects the fact that the PAYE Regulations do not in any way disturb the liability to tax of an employee, which had already been imposed by the point at which they became relevant.

(d) It follows, in Mr Nawbatt's submission, that "[f]or the purposes of arriving at the amount in s.59B(1)(b) TMA, amounts '*deducted at source*' are defined as including amounts '*treated as deducted*' from any income or treated as paid on any income: s.59B(7) TMA. Thus s.59B TMA accommodates the adjustment made in accordance with Regulation 185. But that adjustment only affects the figures at s.59A and s.59B. It does not affect ss.8 and 9, to which the deeming in Regulation 185(5) and (6) does not extend.

(9) As regards Regulation 188 (which applies to assessments other than self-assessments, e.g. s.29 TMA discovery assessments):

(a) Regulation 188(2) provides that the tax payable by the employee is "A-(B-C)" where A is the "tax payable under the assessment", i.e. not the amount to be paid but rather the amount fixed as the person's liability pursuant to ss.8-9 TMA.

(b) Regulation 188(7) expressly excludes deductions from, or credits against, the amount payable under the assessment.

52. The conclusion which Mr Nawbatt submitted the Tribunal should reach was therefore that the existence or otherwise of the PAYE credit was not a question that it could entertain on any basis: it simply did not arise in the context of a statutory appeal pursuant to s.50 TMA.

s.684(7A)(b)

53. The logic of Mr Nawbatt's submissions was that it was unnecessary for him to address the justiciability of HMRC's s.684(7A) (b) decision: properly considered, the point could not arise. This was because, at best, a public law decision could only be determined by this Tribunal if and to the extent it was necessary to do so as an ancillary matter when determining a question which was undoubtedly within its jurisdiction. In this case, Mr Nawbatt submitted, the Tribunal had no jurisdiction to consider the PAYE Regulations at all (being concerned with collection, not assessment). It followed that no jurisdiction could arise to review the exercise of HMRC's s.684(7A) (b) decision – there was no question properly before the Tribunal in respect of which s.684(7A)(b) could be treated as ancillary.

54. In fact, Mr Nawbatt went further and submitted that "The Tribunal's jurisdiction is to decide whether the Appellants are overcharged by the discovery assessments and the closure notices. Any public law issue is not within its jurisdiction and is only susceptible to challenge by the Appellants in judicial review proceedings, which have not been issued."

55. In any event, Mr Nawbatt did not accept Mr Gordon's contention that HMRC's discretion under s.684(7A) (b) could only be exercised prospectively: he proposed the opposite view, that "[t]he natural and ordinary meaning of the statutory wording is contrary to that contention." Mr Nawbatt pointed to the permissive, rather than mandatory, wording in the provision. In his view, "[i]t stipulates no more than that the officer making the decision should be satisfied it is unnecessary or not appropriate for the payer to be required to comply with the PAYE regulations. The provision does not define what "unnecessary" or "not appropriate" mean. It leaves that to the officer making the decision to determine. Nor does it prescribe when such a direction must be made."

DISCUSSION

56. In the following discussion, I have considered:

(1) The calculation of a person's income tax liability and the justiciability of the PAYE Regulations in this Tribunal;

(2) The extent of the Tribunal's jurisdiction to consider public law matters, including s.684(7A) (b) ITEPA; and

(3) (For completeness,) the question of whether s.684(7A)(b) can apply retrospectively.

Calculation of a person's income tax liability and the justiciability of the PAYE Regulations

57. I have concluded that the PAYE Regulations are *not* justiciable in this Tribunal. My reasons for so deciding can be briefly stated, as set out below.

58. The logic of Mr Gordon's submissions seems to me to be that the PAYE Regulations, s.684(7A)(b) ITEPA, and the relevant provisions of TMA should all be treated as if they operate consecutively – and each in respect of the *assessment* to tax (notwithstanding Mr Gordon's protestation to the contrary in his reply to Mr Nawbatt's submissions). That is incorrect, and it ignores the classic division of tax into the three separate aspects of liability,

assessment, and collection – each distinct in time and effect, as set out in Lord Dunedin's dictum in *Whitney*.

59. I agree with Mr Nawbatt that the PAYE Regulations apply only to matters of *collection*, in respect of which this Tribunal has no jurisdiction. I accept Mr Nawbatt's submissions summarised at [51] above and I adopt them as my reasons for reaching this decision.

60. It follows that I reject each of Mr Gordon's submissions summarised at [30] to [42] as being incompatible with my conclusion at [59]. In my opinion, in addition to the fundamental objection that PAYE operates only in respect of collection, Mr Gordon's submissions rely on a strained construction of Regulation 188 and – especially – Regulation 185 of the PAYE Regulations. Mr Gordon's submission that the Tribunal has a greater ability to construe the PAYE Regulations – being secondary legislation – is only necessary because of the difficulties which arise in construing those Regulations as he proposes. Those difficulties fall away if, as I have done, one accepts Mr Nawbatt's submissions as representing the true interpretation of those provisions.

The Tribunal's jurisdiction to consider public law matters.

61. Mr Gordon and Mr Nawbatt were agreed in principle that this Tribunal does not have jurisdiction to consider the exercise of a public law discretion.

62. At paragraphs 14-16 of his skeleton argument, Mr Gordon wrote:

> 14. …It is recognised that this is the current state of the authorities even in cases where the challenge to the public law decision is collateral to an appeal within the Tribunal.
>
> 15. The Appellants reserve the right to argue on any further appeal that collateral public law challenges may be made in the Tribunal if (as in this case) it is in the context of (and relevant to the outcome of) an appealable matter. However, in the light of the current case law, the Appellants do not propose to pursue that argument at the present stage.
>
> 16. Accordingly, for the purposes of this hearing, the Appellants will concur with HMRC's assertion that "the FTT has no jurisdiction in a statutory appeal to review the exercise of a discretion under s.684(7A)(b) and the Appellants are now out of time to challenge HMRC's exercise of discretion by way of judicial review proceedings".

63. Meanwhile, at paragraph 34 of his skeleton argument, Mr Nawbatt wrote:

> It is well-established that the FTT has no inherent or free standing judicial review or supervisory jurisdiction: see *HMRC v Hok Ltd* [2012] UKUT 363 (TCC) at [39], and *HMRC v Noor* [2013] UKUT 71 (TCC). The Tribunal's jurisdiction is to decide whether the Appellants are overcharged by the discovery assessments and the closure notices. Any public law issue is not within its jurisdiction and is only susceptible to challenge by the Appellants in judicial review proceedings, which have not been issued.

64. In claiming that "any" public law issue is without the jurisdiction of the Tribunal, Mr Nawbatt overstates his case. Whilst the precise extent of the Tribunal's jurisdiction to determine legal questions (including public law questions) which arise in, and are ancillary to, a statutory appeal is not wholly clear, it is apparent from principle and from authority that it does have a limited jurisdiction to do so. That much is clear from the decision of the Upper Tribunal in *Birkett* at [30]:

> (1) The FTT is a creature of statute. It was created by s3 of the Tribunals, Courts and Enforcement Act 2007 ("TCEA") "for the purpose of exercising the functions conferred on it under or by virtue of this Act or any other Act".

> Its jurisdiction is therefore entirely statutory: *Hok* at [36], *Noor* at [25], *BT Trustees* at [133].
>
> (2) The FTT has no judicial review jurisdiction. It has no inherent jurisdiction equivalent to that of the High Court, and no statutory jurisdiction equivalent to that of the UT (which has a limited jurisdiction to deal with certain judicial review claims under ss15 and 18 TCEA): *Hok* at [41]-[43], *Noor* at [25]-[29] and [33], *BT Trustees* at [143].
>
> (3) But this does not mean that the FTT never has any jurisdiction to consider public law questions. A court or tribunal that has no judicial review jurisdiction may nevertheless have to decide questions of public law in the course of exercising the jurisdiction which it does have. In *Oxfam* at [68] Sales J gave as examples county courts, magistrates' courts and employment tribunals, none of which has a judicial review jurisdiction. In *Hok* at [52] the UT accepted that in certain cases where there was an issue whether a public body's actions had had the effect for which it argued – such as whether rent had been validly increased (*Wandsworth LBC v Winder* [1985] AC 461), or whether a compulsory purchase order had been vitiated (*Rhondda Cynon Taff BC v Watkins* [2003] 1 WLR 1864) – such issues could give rise to questions of public law for which judicial review was not the only remedy. In *Noor* at [73] the UT, similarly constituted, accepted that the tribunal (formerly the VAT Tribunal, now the FTT) would sometimes have to apply public law concepts, but characterised the cases that Sales J had referred to as those where a court had to determine a public law point either in the context of an issue which fell within its jurisdiction and had to be decided before that jurisdiction could be properly exercised, or in the context of whether it had jurisdiction in the first place.
>
> (4) In each case therefore when assessing whether a particular public law point is one that the FTT can consider, it is necessary to consider the specific jurisdiction that the FTT is exercising, and whether the particular point that is sought to be raised is one that falls to the FTT to consider in either exercising that jurisdiction, or deciding whether it has jurisdiction.
>
> (5) Since the FTT's jurisdiction is statutory, this is ultimately a question of statutory construction.

65. This was the passage I had in mind when asking Mr Gordon and Mr Nawbatt whether they wished to address me on the extent of the Tribunal's public law jurisdiction.

66. In *Hoey*, following submissions on the point, the Tribunal decided at [129] that the lack of a general public law jurisdiction did not prevent it from considering "whether or not the discretion which HMRC claim to have exercised is genuinely what they say it is." In essence, the Tribunal in *Hoey* seemed to accept, as Mr Gordon argued before me, that it was possible for it to consider the "effect" of HMRC's s.684(7A)(b) decision. In his written submissions on *Hoey*, Mr Gordon invited me to do likewise.

67. Mr Gordon sought to argue the point as follows:

> To use a further analogy, suppose HMRC had the power to display a red light or a green light (the exercise of such a power capable of challenge only by way of judicial review). If HMRC assert that they are displaying a red light, judicial review is not necessary for the taxpayer to argue that the light is in fact green.

68. The logic of Mr Gordon's submission is clear. Treated in isolation, I would agree with it. However, it ignores the fundamental objection that the Tribunal must first be seized of jurisdiction to be able even to express a view as to the red-ness or the green-ness of HMRC's light (or, as here, the retrospectivity or prospectivity of HMRC's s.684(7A)(b) discretion). I

have found that this Tribunal does not have that jurisdiction, and so, in Mr Gordon's analogy, HMRC could swear in defiance of logic and truth that a green light was red until it was blue in the face, but this Tribunal would be still be unable to point out the obvious fallacy of that position unless there was a question properly within its jurisdiction to which the red-ness or green-ness of the light was ancillary. In its wisdom, Parliament has decided that the Administrative Court shall have that function, and not this Tribunal.

69. In a number of arguments based on jurisdictional convenience and appropriateness as a result of the specialist expertise of this Tribunal, Mr Gordon asked me to adopt an expansive view of the Tribunal's public law jurisdiction – in my view, far beyond that described in *Birkett*. I am unable to do so: it would contravene the statutory limits currently placed on the Tribunal's jurisdiction and it would be contrary to authority.

70. In fact, for the reasons given at [68], I disagree with Mr Gordon – and respectfully with the Tribunal in *Hoey* – that even the "effect" of the s.684(7A)(b) decision may properly be considered in this forum. This is because, applying *Birkett,* before identifying ancillary public law issues needing determination, the Tribunal's primary focus must be on the issues raised in the statutory appeal and its powers in respect of the latter. By definition, secondary issues cannot arise until it is known to what question (in respect of which the Tribunal has jurisdiction) they are ancillary. In this case, the relevant question is the power to increase or reduce a charge to tax pursuant to s.50 TMA where a person is undercharged or overcharged to tax.

71. Whereas the Tribunal in *Hoey* identified at [138]-[139] the "very wide discretion" in s.684(7A)(b) as being the cause of its inability to interfere with HMRC's decision, in my view the real reason is that the decision has no bearing on the primary question before the Tribunal, i.e. whether or not an appellant is overcharged or undercharged by an assessment to tax, per s.50 TMA.

72. That is sufficient to dispose of the point: because the question as to the effect of s.684(7A)(b) arises in a statutory appeal in which the Tribunal has no jurisdiction to consider the PAYE Regulations, the Tribunal equally has no jurisdiction to consider the exercise by HMRC of its discretion pursuant to s.684(7A)(b).

Retrospectivity

73. It follows from my decision at [72] that the Tribunal has no power to consider the matter further. However, as the question of the retrospectivity of s.684(7A)(b) was argued before me, I have also recorded my views on that issue in deference to Counsel's careful submissions. It should be clear that I consider this issue to be one for the Administrative Court to decide in a future case and my observations could only – at best – be treated as obiter (unless of course I am wrong in my interpretation of the Tribunal's jurisdiction).

74. Mr Gordon submitted that the generality of s.684(7A)(b) was overridden by the specificity of Regulation 72 and 81. The same point was dealt with in *Hoey* at [130]-[139]. The issue, as stated in *Hoey* at [130] is as follows:

> 130. The PAYE Regulations contain a number of very specific provisions, notably Regulation 72 and Regulation 81, which permit HMRC to collect the tax due from the employee rather than the employer, but only in very specific circumstances. This does not therefore sit easily with s684(7A), which, reading the plain words, gives HMRC a very wide ranging discretion to disapply the PAYE Regulations in circumstances where they consider it "unnecessary or not appropriate" to pursue the employer.

75. As did Mr Gordon before me, Counsel for the taxpayer in *Hoey* submitted (at [131]) that "…the general rule of construction was that the specific should over-ride the specific [*sic* for

'general'] and that therefore s684(7A) should be given a much narrower interpretation than that argued for by HMRC."

76. As Mr Gordon said (at paragraph 28 of his skeleton argument), "…the idea that the discretion can be exercised retrospectively undermines the careful balance within the PAYE regulations themselves." Unlike me, the Tribunal in *Hoey* was referred to a number of authorities in support of this proposition (it also had testimony from Mr Finch of HMRC (which was criticised by Mr Gordon in his post-hearing submissions), but that was not before me and I have not had any regard to it.

77. Ultimately, the Tribunal in *Hoey* decided as follows:

> 132. …I am not considering here a situation in which the general power is designed "to defeat the intention of [a] clear and particular statutory provision." In this case the two provisions are overlapping. There is no conflict between them…
>
> 138. …I cannot escape the fact that the wording of s684(7A) seems to give a very wide discretion to HMRC and effectively renders Regulations 72 and 81 otiose. It may have been intended to provide additional discretion in situations which were not covered by Regs 72 and 81, and Mr Mullan did indeed suggest certain circumstances where this might be appropriate, but I can find nothing in the legislation which restricts the use of this discretion in this way.
>
> 139. I must therefore find that s684(7A) ITEPA does indeed give HMRC the discretion which they say it does and that I do not have the jurisdiction to interfere with whether or not that discretion was properly exercised.

78. I agree with the finding in *Hoey* at [132] that "the two provisions [i.e. s.684(7A) (b) on the one hand and Regulations 72 and 80 of the PAYE Regulations on the other] are overlapping." However, I regard that to be in tension with the Tribunal's decision at [138] that Regulations 72 and 80 are "otiose" and I respectfully depart from that view. Indeed, it is undermined by the Tribunal's apparent acceptance, *ibid.*, of Counsel for the taxpayer's concession that s.684(7A) (b) "may have been intended to provide additional discretion in situations which were not covered by Reg[ulation]s 72 and 81".

79. I was not referred to *Bennion on Statutory Interpretation* (7th edn, 2019) at §21.4 and the authorities cited there, though I have reviewed it whilst writing up this decision. It supports the view I had already reached. The basic principle was articulated by Sir John Romily MR in *Pretty v Solly* (1859) 26 Beav 606 at 610:

> The rule is, that wherever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply.

80. However, this is not true where, instead of a specific provision and a more general provision, there are simply provisions with overlapping aims and overlapping applications: *Cusack v London Borough of Harrow* [2013] UKSC 40 at [61], per Lord Neuberger.

81. In my view, the aims and applications of s.684(7A) (b) overlap with those of Regulations 72 and 80. It follows that they are not mutually exclusive, and that the generality of the former should not be narrowly construed to avoid infringing the principle that the specific overrides the general. Whilst overlapping provisions undoubtedly make it harder for the courts and tribunals to identify the purpose of any given section, it is open to parliament to enact them if it wishes. I cannot agree with Mr Gordon's submission that giving s.684(7A)(b) a wide – including retrospective – interpretation "undermines the careful balance within the PAYE

regulations": I consider that it was intended that HMRC should have both the discretion conferred by s.684(7A)(b) and the powers contained in Regulations 72 and 80.

82. Furthermore, I reject Mr Gordon's primary submission that s.684(7A)(b) must operate prospectively only. On the contrary, I agree with Mr Nawbatt that the converse is true: there is nothing in the statutory wording that cuts down the exercise of the discretion to a prospective application. In my view, so long as the discretion is properly exercised in accordance with the statutory requirement (that an officer of HMRC "is satisfied that it is unnecessary or not appropriate" that a person comply with the PAYE Regulations), then I see no difficulty with the decision having prospective and/or retrospective effect.

83. I do not agree with Mr Gordon's submissions (summarised at [26]-[27] above) concerning the subjects of the s.684(7A)(b) and the necessary notice: the subject of the discretion, i.e. "the payer" as described in that section has a naturally wide meaning and may refer to any person within the ambit of the discretion. That includes the appellants and it is not restricted to the "end users". In practice, the question of notice is not in issue in this case.

84. I note in passing that this point was not dealt with in *Hoey* – of which Mr Gordon was critical in his post-hearing submissions. It is possible either that the point was not addressed in submissions in that case, or that it was unnecessary for the Tribunal to deal with it, given that Judge Gillett shared my view that it fell outside the jurisdiction of the Tribunal.

DECISION AND DIRECTIONS

85. For the reasons given at [56] to [84] above, the answer to Question 1 of the parties' agreed list of issues is that the Tribunal does *not* have jurisdiction to consider Questions 2 to 3. I therefore direct that Questions 1-3 be removed from the list of issues for this Tribunal to decide.

86. (Subject to the right to apply for permission to appeal summarised below,) the parties are at liberty to apply for any directions that may be appropriate pursuant to this decision.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

87. 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.

JAMES AUSTEN
TRIBUNAL JUDGE

RELEASE DATE: 24 FEBRUARY 2020