[2020] UKFTT 0125 (TC)

TC07619

VAT – refunds for DIY housebuilders – Value Added Tax Act 1994, section 35 – Value Added Tax Regulations 1995, regulations 200 and 201 – whether or not the claims were made no later than three months after the completion of the buildings – yes – appeals allowed

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal numbers: TC/2018/05464 and TC/2018/05466

BETWEEN

PAUL WEDGBURY
STEPHEN WEDGBURY **Appellants**

-and-

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

TRIBUNAL: JUDGE RICHARD CHAPMAN QC
MR JULIAN STAFFORD

Sitting in public at Centre City Tower, 5-7 Hill Street, Birmingham, B5 4UU on 14 May 2019 with written submissions from HMRC dated 11 June 2019, confirmation from the Appellants that no written submissions in response were being made on 17 September 2019, further submissions from HMRC on 13 January 2020 and submissions in response from the Appellants on 14 January 2020.

Mr Paul Wedgbury made all oral and written submissions on behalf of both Appellants (with the agreement of Mr Stephen Wedgbury, who also appeared in person).

Mrs Samantha Carr, litigator of HM Revenue and Customs' Solicitor's Office, for the Respondents (with written submissions dated 11 June 2019 by Mr Paul Marks, also litigator of HM Revenue and Customs' Solicitor's Office).

DECISION

INTRODUCTION

1. These appeals have been directed to be heard together. They are against HMRC's decisions dated 18 May 2018 ("the Decisions") to reject claims by Mr Paul Wedgbury and Mr Stephen Wedgbury (referred to in this decision together as "the Appellants" and individually by their full names) to recover VAT pursuant to the DIY Builders and Converters Scheme under section 35 of the Value Added Tax Act 1994 ("VATA 1994"). Such a claim must be made no later than three months after the completion of the relevant building. The central question is as to whether or not "completion" of a building for the purposes of such claims can take place before a local authority issues a certificate of completion in respect of the works undertaken. For the reasons set out below, we find that in principle completion of the building can pre-date the issue of a certificate of completion by a local authority, that it did so in the present case, that such completion was less than three months before the Appellants' claim, and that the claim was therefore made within time.

FINDINGS OF FACT

2. The only witness evidence before us was the oral evidence of Mr Paul Wedgbury. We make the following findings of fact taking into account that evidence, the documents made available to us and our consideration of the parties' submissions. In doing so, we bear in mind that the burden of proof is upon the Appellants and that the standard of proof is that of the balance of probabilities.

3. The Appellants are brothers. They were gifted a plot of land by their mother and decided to use it to build two properties in which they could each live with their families. Although not builders by trade, they decided to construct the properties themselves on a "self-build" basis, albeit with some professional help for discrete elements such as laying the foundations. The plot of land was in Bridgnorth, Shropshire, and had been a commercial garage.

4. On 28 April 2010, Mr Paul Wedgbury (on behalf of both Appellants) obtained planning permission at the site for the demolition of the garage and the erection of two detached dwellings and garages ("the Planning Permission"). These houses were to be substantial, five-bedroom properties ("the Properties"). The Planning Permission was made subject to various conditions and included plans.

5. In due course, work began. Mr Paul Wedgbury began six months later than Mr Stephen Wedgbury as a result of their different funding situations. They each treated the works as two separate new builds, albeit that they related to one planning permission, there was some overlap as to the works carried out and relevant inspections were carried out at the same time. The works progressed slowly, as each of the Appellants had full time jobs.

6. The Appellants purchased various materials between 3 August 2010 and 24 November 2016 for use in the construction of the properties. Mr Paul Wedgbury's oral evidence was that the materials were not all used straight away; instead, they were utilised as and when the appropriate stage in the works was reached. We accept this evidence.

7. Mr Stephen Wedgbury and his family moved into their Property on 20 December 2012. Mr Paul Wedgbury and his family moved into their Property in March 2013. At that point, three of the bedrooms in Mr Paul Wedgbury's Property were functional. One bedroom is still not functional. One of the four bathrooms was functional. He had also completed the first fix plumbing himself. We have no evidence as to the state of Mr Stephen Wedgbury's Property at the time he moved in save that his build was approximately six months further along than Mr Paul Wedgbury's.

8. On 9 May 2016, Shropshire Council ("the Council") attended at the Properties in order to carry out an inspection. Our papers include the Council's inspection notes, which designates the "Inspection Type" as "Completion". We take it from this that the Appellants requested a completion inspection from the Council. The notes also state as follows:

> "Met with owner on site. Discussed outstanding works and confirmed he would ring to arrange final completion.
>
> Outstanding items:
>
> Disabled access ramp
>
> Inspection chamber tops to secure
>
> Front driveway to complete.
>
> All certs to be forwarded.
>
> Owner happy with discussions and will call when all is complete."

9. In a letter dated 30 March 2018, Mr Stephen Wedgbury set out the timeline of the additional work carried out after the Council's inspection. He states that from May to September 2016 he built the disabled access ramp to his Property and made the inspection chamber tops secure. He includes an entry on the timeline which reads, "September 2016. My property complete in terms of any claimable VAT invoices." However, it is clear that work continued after September 2016. He notes in the same letter that the tarmacking to the front of the joint properties took place in November 2016. The most difficult issue appears to have related to the wood burning heaters in each of the Properties ("the Heaters") and also the boiler. As these were installed by the Appellants themselves, they found it very difficult to obtain safety certification. Eventually, an engineer was engaged. The engineer inspected the Properties and insisted on major physical changes to the tiling of the hearths in order to certify the Heaters, including a bespoke piece of granite. These works were carried out and regulatory safety certification (referred to by the parties as a "Hetas Certificate") was obtained dated 13 November 2017. The certificate stated that the works related to the installation of, "a solid fuel or multifuel dry room heater, stove or cooker", "a specialist flue lining system" and that the installation works were completed on 13 November 2017.

10. The Appellants provided a document dated 21 December 2018 which was effectively a proof of evidence (indeed, HMRC referred to it in their index to the bundle as "Statement of Appellants"). The Appellants stated that Mr Stephen Wedgbury could not afford to have his frontage tarmacked up to the same level as his Property and so made a ramp with a gradient compliant with the Building Regulations 2010. The Appellants also said that the ramp was constructed by Mr Stephen Wedgbury in December 2017 using materials already purchased. Mr Paul Wedgbury also said in oral evidence that the ramp was finished in December 2017. We note that Miss Carr did not cross-examine Mr Paul Wedgbury on these points and did not require Mr Stephen Wedgbury to give evidence. We therefore find as a matter of fact that Mr Stephen Wedgbury's ramp was not completed until December 2017. We bear in mind that this is inconsistent with Mr Stephen Wedgbury's letter dated 30 March 2018. However, we prefer Mr Paul Wedgbury's uncontested oral evidence and the Appellants' written statement because these provide fuller explanations of the position as set out above and we accept that Mr Paul Wedgbury's oral evidence was credible and accurate.

11. We also find that Mr Paul Wedgbury did not need a ramp and did not build one for his Property. No reference has been made to Mr Paul Wedgbury building a ramp and we take from the Appellant's statement that the disabled access was resolved for Mr Paul Wedgbury's Property by tarmacking up to the same level as the Property. Further, Mr Paul Wedgbury wrote

a similar letter to Mr Stephen Wedgbury's dated 28 March 2018 which did not refer to any ramp on Mr Paul Wedgbury's Property.

12. Mr Paul Wedgbury gave further oral evidence as to the work which he carried out to his Property after the inspection on 9 May 2016. He said that the majority of the inside of his Property had been finished by the end of 2016 but that at that point there was no garden or drive, with just open land. He finished the garage (which formed part of the drive) in about May 2017. He also said the main items carried out were to the paving area at the front between the front door and the tarmac, which was about the middle of 2017. He said that the landscaping and laying of turf took until December 2017. We accept this evidence as Mrs Carr did not challenge him upon it.

13. On 6 December 2017, the Appellants sent the Council the certificates for the Heaters and the boiler. However, a site inspection was still required for what the Council's inspection notes refer to as "outstanding items". Given that the previous entry on the inspection notes was 9 May 2016, we find that the "outstanding items" referred to the matters identified at the inspection on 9 May 2016. This is reinforced by an email from the Council to Mr Paul Wedgbury dated 3 January 2018 in which the Council stated that one more visit was needed to check the disabled access ramp (especially its gradient), the inspection chamber tops and the front driveway, all of which had been referred to in the inspection notes for 9 May 2016.

14. The next entry on the inspection notes is the final inspection on 4 January 2018, which we find was the only inspection after 9 May 2016. Although the notes refer to "Outstanding items: Final SAP & EPC Certificates required" we were told, and we accept, that these had previously been sent to the Council, but the Council had not processed them properly.

15. We note that there are completion certificates dated 5 January 2018 headed, "Completion Certificate - Site", and "Completion Certificate - Plot" which include within the narrative "Completion Date 5 January 2018". There are also certificates simply headed "Completion Certificate" dated 15 January 2018 which include within the narrative "Completion Date 15 January 2018". We were not given any evidence as to the distinction between these certificates. However, we find that the Council treated the completion date for its purposes as 15 January 2018 (and, we note, the Appellants have also done so as they entered 15 January 2018 as the certified date of completion within their Claims). This is because the Council stated that they recorded the Properties as complete on 15 January 2018 in a letter dated 8 November 2018 (written in the context of this appeal). The Council states as follows:

> "I can confirm that your application was registered with Shropshire Council on 19th January 2011. From the Building Control Register I am able to confirm that both Plots 1 and 2 were recorded as completed on the 15th January 2018 and therefore would have been approved by a Building Control Officer.
>
> No occupation certificate (habitation certificate) has ever been issued on the site.
>
> Shropshire council do not issue habitation certificates and you issue a completion certificate once the property is completed."

16. Each of the Claims was made on the appropriate forms and providing the necessary information and documents under the cover of a letter dated 28 February 2018. Mr Paul Wedgbury's claim was for the sum of £31,170.42. Mr Stephen Wedgbury's claim was for the sum of £25,019.28. HMRC refused the Claims by letters dated 11 May 2018 as out of time. Although HMRC did not state when they treated the Properties as complete, they asserted that it was some time before the certificates of completion because the invoices were between 2011 and 2016 (although largely 2011 to 2014) and the Appellants had been in occupation since

March 2013 at the latest. The Appellants requested a review. By review conclusion letters dated 13 July 2018, HMRC upheld the Decisions.

17. The Appellants filed notices of appeal dated 9 August 2018. The grounds for appeal are that HMRC acted unreasonably in refusing the Claims as the Appellants were acting upon the guidelines given by HMRC.

ISSUES

18. The following issues arise for determination:

(1) The nature of the Tribunal's jurisdiction.

(2) When the three-month time limit begins.

(3) Whether or not the Claims were brought in time.

(4) If the Claims were brought in time, whether the appeal should be determined at this stage or alternatively be the subject of further directions.

THE LEGISLATIVE FRAMEWORK

19. The same legislative framework arises for each of these issues.

20. The relevant parts of section 35 of VATA 1994 provides as follows:

> "35. Refund of VAT to persons constructing certain buildings.
>
> (1) Where
>
> (a) a person carries out works to which this section applies,
>
> (b) his carrying out of the works is lawful and otherwise than in the course or furtherance of any business, and
>
> (c) VAT is chargeable on the supply, acquisition or importation of any goods used by him for the purposes of the works,
>
> The Commissioners shall, on a claim made in that behalf, refund to that person the amount of VAT so chargeable.
>
> (1A) The works to which this section applies are
>
> (a) the construction of a building designed as a dwelling or a number of dwellings;
>
> …
>
> (2) The Commissioners shall not be required to entertain a claim for a refund of VAT under this section unless the claim
>
> (a) is made within such time and in such form and manner, and
>
> (b) contains such information, and
>
> (c) is accompanied by such documents, whether by way of evidence or otherwise,
>
> as may be specified by regulations or by the Commissioners in accordance with regulations.
>
> …
>
> (4) The notes to Group 5 of Schedule 8 shall apply for construing this section as they apply for construing that Group."

21. Note 2 of Group 5 of Schedule 8 defines the circumstances in which a building is designed as a dwelling as follows:

> "(2) A building is designed as a dwelling or a number of dwellings where in relation to each dwelling the following conditions are satisfied—
>
> (a) the dwelling consists of self-contained living accommodation;
>
> (b) there is no provision for direct internal access from the dwelling to any other dwelling or part of a dwelling;
>
> (c) the separate use, or disposal of the dwelling is not prohibited by the term of any covenant, statutory planning consent or similar provision; and
>
> (d) statutory planning consent has been granted in respect of that dwelling and its construction or conversion has been carried out in accordance with that consent."

22. Regulations 200 and 201 of the Value Added Tax Regulations 1995 ("VATR 1995") provide as follows:

> "Interpretation of Part XXIII
>
> 200. In this Part
>
> "claim" means a claim for refund of VAT made pursuant to section 35 of the Act, and "claimant" shall be construed accordingly;
>
> "relevant building" means a building in respect of which a claimant makes a claim.
>
> Method and time for making claim
>
> 201. A claimant shall make his claim in respect of a relevant building by
>
> (a) furnishing to the Commissioners no later than 3 months after the completion of the building the form numbered 11 in Schedule 1 to these Regulations containing the full particulars required therein, and
>
> (b) at the same time furnishing to them
>
> (i) a certificate of completion obtained from a local authority or such other documentary evidence of completion of the building as is satisfactory to the Commissioners,
>
> (ii) an invoice showing the registration number of the person supplying the goods, whether or not such an invoice is a VAT invoice, in respect of each supply of goods on which VAT has been paid which have been incorporated into the building or its site,
>
> (iii) in respect of imported goods which have been incorporated into the building or its site, documentary evidence of their importation and of the VAT paid thereon,
>
> (iv) documentary evidence that planning permission for the building had been granted, and
>
> (v) a certificate signed by a quantity surveyor or architect that the goods shown in the claim were or, in his judgement, were likely to have been, incorporated into the building or its site."

THE NATURE OF THE TRIBUNAL'S JURISDICTION

The parties' submissions

The Appellants

23. Mr Paul Wedgbury submitted that it was unreasonable for HMRC to refuse to treat the date of the certificate of completion as the start of the three-month limitation period in

circumstances in which HMRC's own guidance said that this is what they would do and that they would accept reasonable excuses for delay.

24. He relied upon the guidance notes attached to the standard form for making a claim, which provide (where relevant) as follows:

> "14. Has a Building Regulation Completion Certificate ben granted by the local authority or by an approved inspector registered with the local authority building control?
>
> You should send the certificate to us with your claim form.
>
> If you do not have a Completion Certificate yet, we will accept one of the following documents:
>
> - a habitation letter from the local authority (in Scotland a temporary habitation certificate
> - in England and Wales, a VOA: Notice of making a New Entry into the Valuation List
> - …
> - …
> - a letter from your bank or building society saying
>
> 'This is to certify that the … Bank/Building Society released on … (date) the last instalment of its loan secured on the building at … because it then regarded that building as complete'.
>
> A building is normally considered to be complete when it has been finished according to its original plans. Remember that you can make only one claim no later than 3 months after the construction work is completed. The 3 months will usually run from the date of the document you are using as your completion evidence. If your claim is late you must send us a letter explaining the delay.
>
> Tip: Please send the specific evidence that we have asked for. We will not accept:
>
> - annual Council Tax bills
> - professional certificates
> - stage certificates
> - insurance cover notes, and so on.
>
> Claims received without completion evidence will be closed and returned."

25. He also relied upon HMRC's publicly available internal manual VCONST02530, which provides as follows:

> "Certificates of Completion
>
> Planning authorities may issue a Certificate of Completion when a building satisfies building regulation requirements. The issue of a certificate is generally a good guide that a building has been completed but, as has been recognised in *Carrophil Ltd* (VTD 10190), they cannot always be relied upon:
>
> > I cannot accept, as an immoveable principle, the proposition that the course of construction of a building stops when the architect issues the Certificate of Practical Completion. It may be a useful working rule but

> it will be displaced where for example under the provisions of the original building contract some structural work is carried out or some essential services are installed, in both cases after the issue of the Certificate … it is all a matter of degree.
>
> Date of occupation
>
> In *SA Whiteley* (VTD 11292), the Tribunal looked at whether occupation could be used as a conclusive test and observed:
>
> > Although in our view, first occupation may well be a relevant factor in determining when the construction of a building ceases, it is not the only factor.
>
> …
>
> Three month time limit
>
> Refund Scheme claims must be made within three months of the date of completion. However, exceptionally, claims may be accepted on an individual basis if there is a reasonable excuse for the delay.
>
> The claimant must explain in writing why a claim is being submitted late. If no satisfactory explanation is received, the claim must be refused.
>
> Examples of reasonable excuse may include:
>
> - compassionate reasons
> - negligence of a professional adviser
> - circumstances outside the claimant's control, such as difficulty in obtaining invoices or completion certificates."

26. Mr Paul Wedgbury noted that the key difficulty had been obtaining certification for the Heaters and then obtaining a certificate of completion from the Council.

HMRC

27. Mrs Carr submitted that neither HMRC nor the Tribunal has any jurisdiction to extend the time limit for the Claims if we find that they were made out of time, whether by way of the existence of a reasonable excuse or otherwise. She relied upon the Upper Tribunal decision of *HMRC v Asim Patel* [2014] UKUT 0361 (TCC) (Judge Colin Bishopp and Judge Judith Powell) ("*Patel*") at [21]:

> "In our judgment the failure of the FTT to take the requirements of reg 201(b)(iv) into account in this way was wrong. The regulation is clear; when he makes his claim, the claimant must provide documentary evidence that planning permission has been granted. This can only mean the correct permission, meaning permission relating to the works actually carried out; in that we agree with Mr Brown. As we have said, Mr Patel was not in a position to do that in 2011, since it was not until 2012 that the retrospective permission was granted. The requirements of the regulation are framed in mandatory terms; HMRC are allowed no discretion to accept something less than the prescribed documentation, nor to extend the time limit, and it is equally not open to the FTT or to us to do so. HMRC's appeal must succeed on this ground."

Discussion

28. We note that there has been some criticism of *Patel* at First-tier Tribunal ("FTT") level (see *Dunbar v HMRC* [2019] UKFTT 747 (TC) (Judge Robin Vos and Mr Derek Robertson) ("*Dunbar*") at [24] to [28]). However, as recognised in *Dunbar, Patel* is an Upper Tribunal

decision and so is binding upon this Tribunal. As such, we find that neither we nor HMRC have any discretion to extend time whether by virtue of a reasonable excuse or at all.

29. We also note that the guidance and internal manual do not have the force of law. Further, we have no general supervisory jurisdiction and so whether or not public law questions can be taken into account at all depends upon the statutory basis for the Tribunal's jurisdiction. We take this from the following analysis of the relevant principles by the Upper Tribunal in *R & J Birkett (trading as The Orchards Residential Home, Dunmore Residential Home, Kingland House Residential Home, The Firs Residential Home, Merry Hall Residential Home) v HMRC* [2017] UKUT 89 (TCC) (Nugee J and Judge Ashley Greenbank) at [30] (although see also *HMRC v Goldsmith* [2019] UKUT 325 (TCC), [2019] STC 2512 (Fancourt J and Judge Brannan) at [89] to [113]):

> "[30] The principles that we understand to be derived from these authorities are as follows:
>
> (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 ss. 15 and 18 TCEA): *Hok* at [41]-[43], *Noor* at [25]-[29], [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."

30. Given that it is clear that neither HMRC nor this Tribunal has any discretion to extend time, our jurisdiction is limited to whether or not the Appellants fulfilled the requirements to make the Claims. As the only requirement in dispute is whether or not the Claims were made in time, the relevant jurisdiction is whether or not, as a matter of law, the Claims were made no later than three months after the completion of the buildings. This leaves no room for the Tribunal to consider any legitimate expectation argument.

31. The rider to this is that there may be cases where HMRC's discretion or decision-making as to the acceptable alternative evidence is in issue. However, this does not arise in the present case as the Appellants relied upon the certificates of completion.

THE TIME LIMIT:

The competing authorities

32. The parties referred us to a number of FTT decisions which reach differing views as to the date of completion and in particular as to the significance of a local authority's certificate of completion. None of these are binding upon us. Given that many of the authorities include commentaries upon previous cases, we will set these out in chronological order.

33. Mrs Carr relied upon the extracts of *Carrophil Ltd* [1993] Lexis Citation 843 and *SA Whiteley* (VTD 11292) ("*Carrophil*") which we have already recited within HMRC's guidance above.

34. In *Hall v HMRC* [2016] UKFTT 632 (TC) ("*Hall*") (Judge Geraint Jones QC and Mr John Robinson) the FTT stated as follows at [2] to [4]:

> "[2] Before turning to the specific invoiced amounts and the VAT thereon that are in dispute in this appeal, we turn to a letter dated 03 November 2015 from the respondents to the appellant in which the respondents stated that a refund of VAT in respect of eligible building materials could not be made if those materials were purchased after the building "is deemed complete". The respondents went on to say that the building was deemed complete when a Completion Certificate from Building Control was issued. Miss Ashworth did not seek to rely upon or support that contention. In our judgement she was correct not to do so because it is plainly wrong.
>
> [3] A Certificate of Completion can be issued in respect of a dwelling house when the dwelling house satisfies the various criteria set out in the Building Regulations. That does not necessarily mean that the building works, for which planning permission has been granted in respect of a new dwelling, will have been completed. A Completion Certificate can be granted where the dwelling itself satisfies each of the applicable Building Regulations so as to qualify as being habitable, notwithstanding that, for example, the driveway, surrounding paths and/or boundary fences/walls have not been completed. Some may choose to reside in a new house whilst those outstanding works are done. The fact that they have not been done will not prevent a Completion Certificate being issued. Such a Certificate does not certify that the entire building works have been completed; only that the dwelling has been constructed so as to be habitable in accordance with the requirements of the Building Regulations.
>
> [4] It will always be a matter of fact and degree as to whether and when any particular building project has been finished and come to its actual completion. It will not necessarily be the date upon the Completion Certificate."

35. In *Sadd v HMRC*, TC/2018/06399 (Judge Greg Sinfield) ("*Sadd*") (which we bear in mind was a summary decision rather than a full decision), the FTT stated as follows at [9] to [11]:

> "[9] Before I set out my reasons for finding that the conversion was completed before 2018, I should say something about the meaning of "completion" in regulation 201 of the VAT Regulations 1995. There is no definition of "completion" in regulation 201 or in the VATA94. Mrs Hancox referred to Note (2) to Group 1 of Schedule 9 to VATA94 which provides that a building is regarded as completed when a certificate of completion is issued by an architect or it is first fully occupied, whichever happens first. However, that note does not apply to section 35 or regulation 201.
>
> [10] The meaning of completion or completed in the context of the DIY Builders' Scheme is found in the decisions of the Tribunal which have considered this point. In *Richard Hall v HMRC* [2016] UKFTT 632 (TC), the Tribunal said at [4]:
>
> > "It will always be a matter of fact and degree as to whether and when any particular building project has been finished and come to its actual completion. It will not necessarily be the date upon the Completion Certificate."
>
> [11] Some guidance on when a building can be regarded as having been completed can be obtained from the decisions of the VAT Tribunal in *McElroy v C & E Comrs* (1977) VAT Decision 490 ('*McElroy*') and the VAT and Duties Tribunal in *Purdue v C & E Comrs* (1995) VAT Decision 13430 ('*Purdue*'). In *McElroy*, the Tribunal held that the construction of a dwelling "ends with such floor and wall finishes and decorations internal and external as are customary in the building trade for dwellings of this size and type, and would be carried out by a vendor before a sale takes place. … It follows that until that work is done the construction of the dwelling is not complete." In *Purdue*, the Tribunal held that, for the purpose of the DIY Builders' Scheme, a building is complete when it is "habitable, safe and hygienic"."

36. In *Farquharson v HMRC* [2019] UKFTT 0425 (TC) (Judge Heidi Poon and Mr Ian Malcolm), the FTT stated as follows at [42] to [47]:

> "[42] From the statutory wording, the Tribunal finds that the meaning of 'completion' under reg 201(a) is to be given the plain meaning as referential to a certificate of completion for the following reasons:
>
> (1) Applying the ordinary rules of statutory construction, the plain meaning of 'completion' under reg 201(a) is to be defined by the issue of a certificate of completion under reg 201(b)(i). It is a clear-cut definition for 'completion' that enables the claimant and the Commissioners to establish the common ground, and for the efficient administration of the refund scheme so that there is no cause for ambiguity or dispute such as the present case.
>
> (2) The primacy given to a certificate of completion is evident in the statutory wording; it is the sine qua non for the purposes of a VAT refund claim under the DIY Scheme. The statutory wording makes it clear that the preferred document is a certificate of completion, and it is only in the absence of which that the alternative should be provided in substitution.
>
> (3) It is only in the absence of a certificate of completion that the Commissioners would entertain a claim based on the alternative. What is satisfactory as an alternative is not specified by the statute in like manner as a certificate of completion. HMRC's guidance notes in relation to question 14 of the claim form then come in to fill the gap.

(4) 'If you do not have a Completion Certificate yet, we will accept one of the following documents', states the guidance notes (see §7). From the word 'yet', it can be inferred that the alternative documentation is one that can be obtained before the house builder is able to obtain a completion certificate. In other words, the alternative documentation to a completion certificate has the effect of enabling the house builder to bring forward the claim ahead of the issue of a completion certificate.

(5) Per the guidance notes, the alternative documentation that is satisfactory to the Commissioners are: a habitation letter or a Joint valuation Board Notice of Tax Banding (Scotland); a VOA (England and Wales); a District Valuer's Certificate of Valuation (Northern Ireland); or a letter from a certified lender in relation to a loan secured on the new-build.

(6) The alternative documentation is to serve as evidence of completion, to enable a claim for a VAT refund to be made before a new build has obtained its completion certificate.

(7) The provisions under reg 201(b)(ii) to (v) concern the validity of the input VAT being claimed, by reference to the valid invoice from a registered supplier, in relation to the goods being imported, and in relation to whether the goods so claimed are genuinely used in the making of the supply of a new dwelling. None of these provisions pertain to the meaning of 'completion' for any further possible meaning of completion to be drawn after reg 201(b)(i).

[43] In conclusion, the statutory interpretation of reg 201(a) is that 'completion' is referential to the issue of a certificate of completion. For the purposes of a VAT refund claim under the DIY Scheme, the only definition in terms of 'completion' is by reference to the documentation stipulated to evidence completion under reg 201(b)(i).

[44] The stipulation cannot be clearer; it is either by way of 'a certificate of completion obtained from a local authority' or by alternative documentation as specified in the guidance notes. The proof of 'completion' for the purposes of reg 201 is by way of documentation, and documentation alone.

[45] There are no extraneous definitions to the meaning of 'completion' within reg 201 that can be extracted from the statutory wording as pertaining to the date of occupation, or to the date of the last invoice being included in the claim. We therefore reject both of HMRC's interpretations of 'completion' as without any basis in law.

[46] It is plain from the statutory wording that a bright-line definition is to be given to 'completion' by reference to the stipulated documentation alone. The definition of 'completion' is not to be founded on circumstantial factors, which are in turn subject to different documentation to establish. The date of occupation, or the date of last purchases are not provided as possible alternative points of completion in the statute, not to mention that these are facts that need to be established by evidence that has no reference in the statute whatsoever.

[47] If two different dates of completion as reckoned by HMRC were indeed possible according to the statute, then the relevant provision would seem to us flawed in its conception because: (a) it would promote ambiguity in establishing 'completion' subject to arbitrary documentation as evidence, and (b) it would allow such wide margin of difference, with the range of some 8 years between the possible date of 23 December 2008, and a later date of 2 June 2016. Such ambiguity and wide margin in establishing 'completion' cannot be desirable in providing for an efficient scheme for administering refund, and cannot be the intention of the legislature."

37. At [48] to [54], the FTT also considered the purpose of the DIY Scheme, rejected HMRC's submission in that case that the date of completion is set as the date of occupation and rejected HMRC's further submission that the date of completion should be set as the date of the last invoice being included for the refund.

38. In *Fraser v HMRC* [2019] UKFTT 0573 (TC) (Judge Anne Scott) ("*Fraser*"), the FTT stated as follows at [29] to [33]:

> "The purpose of Regulation 201(a) and (b)(i)
>
> [29] This is written in clear and unambiguous language. Where a building has been completed, as this one was, and for some reason a completion certificate is not available then other documentation, that is satisfactory to HMRC, will suffice.
>
> [30] Whilst I certainly agree with Judge Poon at paragraph 38 in *Farquharson v HMRC* ("*Farquharson*") that HMRC's guidance is simply their view of the matter and it has no force in law, nevertheless it makes it clear that in this case, as HMRC point out, the Notice of Council Tax Banding would have sufficed. It also confirms that HMRC would have accepted that the time limit would run from the date of its issue which, in fact, is approximately when the fans were changed.
>
> [31] As the Upper Tribunal pointed out at paragraph 21 in *HMRC v Patel* ("*Patel*") neither HMRC nor this Tribunal has any power to extend the time limit regardless of the circumstances. There is no discretion.
>
> [32] Mr Millar sought to rely on Farquharson as authority for the proposition that in terms of this Regulation the three months could only run from the date of issue of the completion certificate because a completion certificate had in fact been issued.
>
> [33] Firstly, the decision in *Farquharson* is not binding on this Tribunal but secondly, and more importantly, it was decided on the basis of radically different facts. As I pointed out, at paragraph 55, Judge Poon made it explicit that, in that case, although a completion certificate had been issued, the property most certainly was very far from complete. The reverse is the position in this case. Lastly, it is not known whether leave to appeal has been sought in that case."

39. In *Arora and Arora v HMRC* [2019] UKFTT 0731 (TC) (Judge Michael Connell and Mrs Sonia Gable) ("*Arora*"), the FTT stated as follows at [55] to [59]:

> "[52] Unfortunately the provisions of regulation 201 VATR 1995, although clearly worded, can lead to a misunderstanding as to what is required by HMRC as evidence that a building has been completed for the purposes of the VAT DIY regulations.
>
> [53] The Tribunal has some sympathy with the appellants as it is clear from their correspondence with HMRC and from Mr Arora in giving evidence to the Tribunal, that they were simply trying to comply with their interpretation of guidance they had read on HMRC's VAT DIY web link.
>
> [54] Regulation 201 of the VATR 1995 states that the claimant must make his DIY VAT claim no later than three months after the completion of the building and provide either a Certificate of Completion from a local authority or such other documentary evidence of completion of the building as is satisfactory to the Commissioners.
>
> [55] A completion certificate issued by a local authority is confirmation that the requirements of the Building Regulations have been complied with in

accordance with regulation 17 of the Building Regulations 2010 (as amended). Such a certificate of completion only relates to the works described in regulation 17, not to any work carried out to which the regulations may not on any particular occasion apply or to any work carried out and independently supervised under a Competent Person's Scheme (for example fenestration work). It confirms only that the regulation matters raised, identified during the building regulation inspection, have been resolved.

[56] To determine when a building is complete, it is important to weigh all the evidence available. In essence, a building is deemed completed when the construction has been completed in accordance with the original plans, and as per HMRC's guidance in VCONST02530, "when all main elements for it to function for its intended purpose are in place". A completion certificate can sometimes be issued later than the date the property was actually deemed as habitable or fit for purpose, and therefore, whilst it can be used as evidence as to when a building was considered as complete, it is not the only factor which can be taken into consideration in determining whether the claim has been made in time.

[57] Documentary evidence confirming completion of a new build property can take many forms. The property built by the appellants is a very substantial modern 5 bedroomed house, with integral garage. The appellants will have engaged the professional services of a builder and possibly an architect and surveyor. A new property will often have a ten year insurance warranty or guarantee covering structural defects, such as a NHBC Buildmark policy issued by a registered builder or a LABC self-build warranty, for which purpose inspections are carried out at appropriate intervals by the Institution that issues the policy which works closely with the building regulation department of the local authority. In other cases, an architect or appropriately qualified surveyor will carry out stage surveys and inspections in order to provide a certificate of practical completion. Such certificates are often required by a bank or building society providing mortgage finance. The RICS or other relevant regulatory body adopt certain practice standards which define "completion of construction work".

[58] It is obviously necessary to determine the date of practical completion, if only for the purposes of establishing a defects liability period for the structure of the property or for example any installation (fenestration, electrical etc). If available, the appellants should have produced the documentation referred to in the previous paragraph, or as stated by HMRC, a habitation letter from the local authority or evidence that the property had been entered onto the valuation list, which was on 1 July 2015.

[59] It is unclear why the appellants appear to think that they had to wait until a certificate of completion was issued by Bury Building Regulations department. The main builder's certificate of practical completion which would have been available at the time the appellants took beneficial occupation would have been sufficient evidence for HMRC to regard the provisions of regulation 201 VATR 1995 as having been complied with."

40. In *Dunbar*, the FTT stated as follows at [40] to [46]:

"[40] With respect to the Tribunal in *Stewart Fraser*, we have found the rather more detailed reasoning and analysis in *Stuart Farquharson* much more persuasive and we gratefully adopt the reasoning set out in paragraph [42] of that decision, set out above. We would however emphasise certain points.

[41] First of all, regulation 201 VATR must be interpreted as a whole. This means that the phrase "the completion of the building" in regulation 201(a)

cannot be interpreted in isolation. It is necessary to look at the rest of regulation 201. Regulation 201(b)(i) requires the taxpayer to furnish HMRC with "a certificate of completion obtained from a Local Authority or such other documentary evidence of completion of the building as is satisfactory to the Commissioners".

[42] It could not be clearer from this that the primary evidence of completion in the context of regulation 201 VATR is therefore the certificate of completion. It is only if the taxpayer does not have a certificate of completion that he is at liberty to produce other documents which are acceptable to HMRC to try to persuade them that the building is complete.

[43] The fact that documents other than the certificate of completion may be used to evidence the completion of the building does of course mean that completion must be capable of occurring before any certificate of completion is issued. However, it is equally clear, as the Tribunal is *Stuart Farquharson* points out at [51(7)], that it is for the taxpayer to bring forward the date on which a building is deemed to be complete for the purposes of regulation 201 VATR and not for HMRC to argue that completion has taken place before a certificate of completion has been issued.

[44] It must in our view be assumed that the regulations have been framed in a way which is intended to make it relatively straightforward for both the taxpayer and for HMRC to determine when completion of the building has taken place. If, as Mr Hilton contends, the date of completion depends on all of the facts and circumstances, it would be almost impossible to be sure when completion had taken place. Indeed, in *Stewart Fraser*, it is clear that the Tribunal itself was not sure when completion had taken place. The judge says at [24-25] that:

> "24. …I find that the change in the plans was simply the rectification of a defect and the house had been completed by the end of 2015.
>
> 25. Even if I am wrong in that it was certainly completed by June 2016 since no further work was done thereafter."

[45] This leaves the taxpayer in an impossible position. If the Tribunal was right that completion had taken place at the end of 2015, a claim would have to have been made by the end of March 2016. However, if completion had only taken place in June 2016, a claim made in March 2016 would not be valid as the claim would have been made prior to the completion of the building (which is not permitted by regulation 201 VATR).

[46] We would stress that the phrase "completion of the building" must be interpreted in its own specific legislative context. The phrase appears in other parts of the VAT legislation and it may well have a different meaning for those purposes. We express no view on this.

[47] Our conclusion therefore is that, for the purposes of regulation 201 VATR, the completion of a building takes place when a certificate of completion is issued or, if there is no certificate of completion, on such other date as may be evidenced by documents produced to HMRC by the taxpayer and which HMRC are prepared to accept as satisfactory evidence of completion."

The parties' submissions

41. In essence, Mrs Carr invited us to find that *Carrophil, Hall, Sadd, Fraser* and *Arora* are correct statements of the law, whereas Mr Paul Wedgbury invites us to follow the approach taken in *Farquharson*. *Dunbar* is of course consistent with *Farquharson*. Mr Paul Wedgbury

also makes the point that HMRC's own guidance treats the time limit as running from the date of the document being used as completion evidence.

Discussion

42. We find that the date of "completion of the building" for the purposes of regulation 201 of VATR 1995 is not to be defined by reference to the date of issue of the local authority's certificate of completion. Instead, the date of completion of the building is a question of fact in any particular case, taking into account the plans for the works, the time when the works sufficient to obtain a local authority's certificate of completion were completed, and the nature and extent of any works which remained to be carried out after such a certificate of completion was obtained. This is for the following reasons.

43. First, we agree with the FTT in *Hall* (and the other cases which adopt the same approach) that it is a matter of fact and degree as to when a building has been completed. This is because regulation 201 is silent as to what constitutes completion, leaving it as a question of fact in any particular case rather than the fulfilment of any statutory definition or deemed event.

44. Secondly, we agree that regulation 201 has to be read as a whole. However, doing so reveals that the start date for the time limit is three months after the completion of the building, whereas the certificate of completion is simply evidence of completion. If the regulation was intended to treat the date of the certificate of completion as the start of the time limit, it would have said so. We agree that the certificate of completion is treated as the primary evidence. However, this does not elevate its significance to being the start of the time limit.

45. Thirdly, the very nature of a certificate of completion is that it post-dates the completion of the works. It operates to certify that the works have been completed in accordance with the building regulations and so is provided after that compliance. It is of note that the certificates of compliance have a date of completion within their narrative as well as a date for the issue of the certificate. When a self-builder has completed the works necessary to obtain a certificate of completion, the logical point at which the building is complete is the end of those works, not the date of issue of the certificate. This is illustrated where the issue of the certificate is delayed by matters which are not connected to any further works being carried out to the building, such as delays in obtaining documentation or delays in arranging an inspection. If no further works are carried out, nothing more is done to complete the building between the end of the works and the issue of the certificate. The building was therefore in its completed state at the end of the works done to it, not upon the issue of the certificate.

46. Fourthly, we are fortified in our view by the fact that the Building Regulations 2010 also envisage completion having taken place prior to the certification of such completion. Regulations 17 and 17A provide as follows:

> "17 Completion certificates
>
> (1) A local authority shall within the specified period give a completion certificate in all cases (including a case where a certificate has already been given under regulation 17A) where they are satisfied, after taking all reasonable steps, that, following completion of building work carried out on it, a building complies with the relevant provisions.
>
> (2) The specified period referred to in paragraph (1) is eight weeks starting from the date on which the person carrying out the building work notifies the local authority that the work has been completed.
>
> (2A) The relevant provisions referred to in paragraph (1) are any applicable requirements of the following provisions—
>
> (a) regulation 25A (high energy alternative systems for new buildings),

(b) regulation 26 (target CO^2 emission rates for new buildings),

(c) regulation 26A *(target fabric energy efficiency requirements for new dwellings)* (primary energy consumption rates for new buildings),

(ca) regulation 26B (fabric performance values for new dwellings),

(d) regulation 36 (water efficiency of new dwellings),

(e) regulation 38 (fire safety information), . . .

(f) Schedule 1,

(g) regulation 7A (energy performance certificates on construction) of the Energy Performance of Buildings (England and Wales) Regulations 2012.

(4) A certificate given in accordance with this regulation shall be evidence (but not conclusive evidence) that the requirements specified in the certificate have been complied with.

(5) The certificate must include a statement describing its evidentiary effect, in terms substantially the same as paragraph (4).

17A Certificate for building occupied before work is completed

(1) A local authority shall within the specified period give a completion certificate in respect of part or all of a building where building work is being carried out and where all of the following circumstances apply—

(a) part or all of the building is to be occupied before the work is completed;

(b) the building is subject to the Regulatory Reform (Fire Safety) Order 2005; and

(c) the authority is satisfied, after taking all reasonable steps, that, regardless of completion of the current building work, those parts of the building which are to be occupied before completion of the work currently comply with regulation 38 and Part B of Schedule 1.

(2) The specified period referred to in paragraph (1) is four weeks starting from the date that notice is received by the local authority in accordance with regulation 16(5).

(3) A certificate given in accordance with this regulation shall be evidence (but not conclusive evidence) that the requirements specified in the certificate have been complied with, and the certificate shall contain this wording.

(4) The certificate must include a statement describing its evidentiary effect, in terms substantially the same as paragraph (3)."

47. Fifthly, with respect to the learned FTTs in *Farquharson* and *Dunbar*, we do not accept that regulation 201(b)(i) enables a self-builder to bring forward the date on which a building is deemed to be complete. In such circumstances, it is not the completion which is being brought forward. The date of completion remains the same whatever evidence is being provided. The ability to provide alternative evidence simply means that, once the building is complete, the self-builder does not need to await the certificate of completion in order to make the claim if sufficient alternative evidence is available.

48. Sixthly, again with respect to the learned FTTs in *Farquharson* and *Dunbar*, we find that HMRC cannot be precluded from arguing that the building was complete before the issue of the certificate unless there is a deeming provision which treats the start date as the issue of the certificate. There is no such deeming provision within regulation 201.

49. Seventhly, we do not accept that this creates any unacceptable ambiguity. A self-builder knows when he or she treats the building as complete for the purposes of applying for a certificate of completion and so (unless further works are to be carried out after the certificate of completion or there has been some delay between reaching the point at which a certificate of completion would be granted and actually applying for one) this is likely to be the operative date.

50. Eighthly, the works to the building are identified by reference to the plans, as shown by the need for planning consent, the need for the construction or conversion to be carried out in accordance with the planning consent (for the purposes of Note 2 of Group 5 of Schedule 8 to VATA 1994) and the need to provide a copy of the plans and planning permission. As such, whether or not the works are complete is primarily to be ascertained by reference to those plans. As the works must also be lawful, it follows that this must take into account carrying out the works in accordance with building regulations. It follows that in such circumstances the point at which a certificate of completion could be applied for successfully would, on the face of it, be the point at which the building is complete. This would not itself be determinative in every case, as there may be situations where the completion is later than even the issue of the certificate of completion if the plans provide for more works which were not dependent upon building regulations (such as was the case in *Hall*).

51. Ninthly, it follows that the date of occupation as a property is nothing more than part of the overall factual matrix. A self-builder might move into a property when it is far from complete, perhaps even in order to carry out the works. By contrast, a self-builder might decide to wait until long after the building is complete for the purposes of regulation 201, perhaps in order to finalise decorations or furnishings.

52. Tenthly, it cannot be the case that the issue of the certificate of completion is itself a constituent part of completion. If that were so, completion could not take place until the certificate of completion has been issued and so no alternative evidence could be adduced.

53. Finally, in response to the argument that HMRC's own guidance treats the time limit as running from the date of the document being used as completion evidence, we repeat our comment that this guidance does not have the force of law. Further, for the reasons set out above, the guidance is incorrect.

WHETHER OR NOT THE CLAIMS WERE BROUGHT IN TIME

The parties' submissions

The Appellants

54. Mr Paul Wedgbury submits that the Properties were not complete until after the work had been done to allow the certificate of completion to be obtained. He and his brother followed HMRC's guidance and treated the operative date as the issue of the certificate of completion. The Claims were made within three months of that date.

HMRC

55. Mrs Carr submits that the Properties were complete more than three months before the Claims were made. She notes that the Appellants occupied the Properties from December 2012 and March 2013 and that the works in accordance with the plans were completed by May 2017 at the latest.

Discussion

56. We find that the Properties were not complete until December 2017. We are unable to say precisely when in December this was, but, as the Claims were made on 28 February 2018, they would be within time even if this was on 1 December 2017.

57. We reach this conclusion because, as set out above, we accept that the disabled ramp on Mr Stephen Wedgbury's Property was not finished until December 2017 and that Mr Paul Wedgbury was still carrying out landscaping and turfing to his Property in December 2017. The disabled ramp was one of the reasons why the Council had rejected the application for a completion certificate in May 2016 and so Mr Stephen Wedgbury's Property could not be complete until it had been finished. Further, the landscaping and turfing were constituent parts of the plans for Mr Paul Wedgbury's Property. We note that the planning permission includes a requirement for landscaping and that the drawings accompanying the planning permission include areas labelled as being grass. As such, we find that completion in accordance with the plans included landscaping and turfing.

58. It follows that we do not accept that the Properties were complete upon occupation in December 2012 and March 2013 or May 2017. We accept that the Appellants both went into occupation when substantial works were still being carried out and that this work continued until December 2017. We also accept that the materials were purchased in advance to be used as and when necessary.

THE APPROPRIATE RELIEF

The parties' submissions

The Appellants

59. Mr Paul Wedgbury submitted that the only issue before us was as to whether or not the Claims had been made in time. As such, if we were to find (as we have done) that the Claims had been made in time, the proper approach would be to allow the appeals in full.

HMRC

60. Mr Marks submitted in HMRC's written submissions dated 11 June 2019 that if the Claims were found to be made in time, the appeals should be stayed in order for HMRC to examine the invoices and the claimed amount in order to reach a decision as to the quantum of the Claims. He further submitted that this was a question of case management pursuant to Rule 5 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the 2009 Rules"). Mr Marks referred us to the FTT case of *Dunlop v HMRC* [2014] UKFTT 1054 [95] to [100] as an example of a case where case management powers were exercised to allow the parties to negotiate the quantum of the claim. Mr Marks properly also drew our attention to the FTT case of *Swales v HMRC* [2019] UKFTT 277 (TC) [153] (which related to the DIY Builders Scheme) in which the FTT held that it was too late for HMRC to reserve the right to scrutinise the individual invoices should the appeal succeed. Mr Marks rightly pointed out that neither of these decisions are binding upon us.

Discussion

61. We allow the appeals in full at this stage rather than adjourning or staying the appeals.

62. We agree that such a decision is an exercise of our case management powers. As such, it is incumbent upon us to apply the overriding objective to deal with cases fairly and justly. Rule 2 of the 2009 Rules provides that dealing with case fairly and justly includes:

> "(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
>
> (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
>
> (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues."

63. We take into account that HMRC's Decisions were solely based upon the time limit, as were the reviews. Although the statements of case within each of the appeals reserved the right to reconsider the claim with regard to the other elements of the Claims, the only matter in issue within the appeals was the time limit. Indeed, under the heading "Matters in Dispute", HMRC stated in the statements of case "The matter in dispute rests on determining the date of completion and whether the claims were made within 3 months of completion date." Further, there is no explanation as to why HMRC did not consider the other elements of the Claims or apply for case management directions treating the time limit as a preliminary issue. HMRC has had the opportunity to participate fully in the proceedings and to deal with quantification if it so wished.

64. We note that we have not been provided with any evidence as to the anticipated costs of an adjournment or stay or the Appellants' resources or how long it would take to resolve the matter. This will inevitably add to costs as, insofar as we are aware, there has been no discussion between HMRC and the Appellants as to the quantification of the claim. If no agreement can be reached, then a further hearing will be necessary. Given that the total amount of the two claims is £56,189.70 and given that HMRC has provided no indication as to how much they anticipate reducing those claims down to, we find that the additional cost and inevitable delay would be disproportionate.

65. In such circumstances, it would not be fair and just to allow HMRC to have another chance to argue against the appeal as presented by the Appellants.

DISPOSITION

66. It follows that we allow the appeals in full.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

67. 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.

RICHARD CHAPMAN QC

TRIBUNAL JUDGE

RELEASE DATE: 2 MARCH 2020