Neutral Citation: [2024] UKFTT 00323 (TC)

Case Number: TC9140

FIRST-TIER TRIBUNAL
TAX CHAMBER

Tribunal Hearing Centre
Piccadilly Exchange
Manchester

Appeal reference: TC/2022/11058

DISCLOSURE OF TAX AVOIDANCE SCHEMES (DOTAS) - Whether a notice of proposed allocation of Scheme Reference Number by HMRC was issued to the Appellant? - Yes - Whether the SRN was lawfully allocated? - Yes - Whether the arrangements were notifiable arrangements? - Yes - Whether the Appellant was a promoter? - Yes - Appeal dismissed

Heard on: 23 and 24 January 2024
Judgment date: 11 April 2024

Before

TRIBUNAL JUDGE CHRISTOPHER MCNALL

Between

COUNTRYWIDE PARTNERS LIMITED
(formerly known as IPS COUNTRYWIDE LIMITED)

Appellant

and

THE COMMISSIONERS FOR
HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Julian Hickey, of Counsel (with Mr Hickey and Mr Andrew Wood, also of Counsel, both signing the Skeleton Argument), both instructed on a Public Access basis.

For the Respondents: Ms Joanna Vicary, of Counsel, instructed by HM Revenue and Customs' Solicitors' Office and Legal Services, Leeds and Stratford (London)

DECISION

The Appellant's appeal is dismissed on all grounds. Certain arrangements promoted by Countrywide Partners Limited (formerly known as IPS Countrywide Ltd) were notifiable arrangements within the proper meaning and effect of Part 7 of the *Finance Act 2004*, and HMRC was and remains entitled to allocate those arrangements a Scheme Reference Number (20980718) for Disclosure Of Tax Avoidance Scheme ('DOTAS') purposes.

REASONS

SUMMARY

1. This case concerns the operation of the law concerning the Disclosure Of Tax Avoidance Schemes ('**DOTAS**'). DOTAS is designed to allow HMRC to obtain early information about certain tax arrangements, how they work, and who has used them. The relevant provisions are to be found in Part 7 of the *Finance Act 2004* ('**FA 2004**'), as amended by *Finance Act 2021*, which amendments came into effect on 10 June 2021.

2. The Appellant company ('**CPL**'; '**the Appellant**') challenges HMRC's decision to allocate a Scheme Reference Number ('**SRN**') to certain arrangements which HMRC considered the Appellant should have notified to them under the DOTAS regime.

3. The Appellant provided PAYE payroll services in relation to individuals whose personal services were made available by recruitment agencies to businesses and entities requiring those services. For example, the Appellant provided its services in relation to locum doctors, nurses, and other medical professionals, whose services were made available to hospitals and other healthcare providers by recruitment agencies.

4. The Grounds of Appeal, dated 16 May 2022, challenge the validity of the SRN on the following three bases:

   (1) A "Notice of potential allocation of an SRN" from HMRC ('**the Notice**') was not delivered to and/or received by the Appellant;

   (2) In actually allocating the SRN ('**the Allocation**'), HMRC did not act in accordance with FA 2004 section 311;

   (3) Regardless of the Notice, and the Allocation, the arrangements are in any event not notifiable arrangements.

5. For reasons set out more fully below, I have decided to dismiss the whole of this Appeal:

   (1) In relation to the Notice, I am satisfied that the provisions of FA 2004 section 310D were followed;

   (2) In relation to the Allocation, I am satisfied that HMRC did act in accordance with FA 2004 section 311;

   (3) I am satisfied that the arrangements were notifiable arrangements;

(4) Although not expressly challenged in the Grounds of Appeal, I am also satisfied, for the sake of completeness, that the Appellant was a promoter of those arrangements.

THE DOTAS REGIME

6. As others in this Tribunal have done, I gratefully adopt the succinct outline of the DOTAS regime given by Green J in *R (on the application of Walapu) v Revenue and Customs Commissioners* [2016] EWHC 658 (Admin), [2016] STC 1682 at Paras [11]-[12]:

> "11. The Disclosure of Tax Avoidance Schemes ("DOTAS") regime was introduced by Part 7 of the Finance Act 2004 entitled "Disclosure of Tax Avoidance Schemes". Pursuant to these provisions certain persons, normally the promoters of tax avoidance schemes, were required to provide HMRC with information about "arrangements" and "proposals for arrangements" (i.e. the tax avoidance schemes): where that arrangement or proposal might be expected to provide a person with a tax advantage in relation to a specified tax; where the tax advantage might be expected to be the main benefit, or one of the main benefits, of using the scheme; and, where the scheme fell within certain descriptions contained within the Regulations. There have been changes to the Regulations since 2004 and the scheme now in force was introduced in 2006.
>
> 12. In circumstances where a scheme is notifiable the promoter is required to provide specified information to HMRC. The obligation to notify normally accrues within 5 days of the marketing of the scheme or the making of the scheme available to clients for implementation. HMRC may issue a Scheme Reference Number ("SRN"). If so the promoter is required to pass the SRN on to the scheme users who, in turn, are obliged to notify HMRC of their use of the scheme. They do this normally by including the SRN upon their tax return. This enables HMRC to identify the users of a particular scheme."

THE APPELLANT

7. The Appellant was incorporated in England and Wales on 14 December 2016. Until 12 July 2019, it was known as IPS Countrywide Ltd. According to Companies House, the 'Nature of its Business' is 'Other activities of employment placement agencies'.

8. At all relevant times following incorporation, its registered office, and its address for correspondence, was Suite 114, 25 Goodlass Road, Liverpool L24 9HJ. The Liverpool address is a suite in a business centre. The Appellant has staff in Liverpool and on the Isle of Man.

9. The Appellant has three directors: Michael John Hall; Julie-Marie Hall (who is also the Company secretary); and Christopher David Champion. Mr Hall and Mr Champion are the two persons listed by Companies House as persons with significant control.

10. A Mr David Alan Shand was named by the company in a submission to the FCA dated 21 August 2017 as exercising the controlled function of money laundering reporting. He is an employee. An application was made, in the Appellant's Skeleton Argument, that none of the Appellant's employees should be named in this published decision. I decline to make such an order:

(1) The Appellant's 'internal accountant' Mr MacGregor has already been named in the IPS Progression decision: see below;

(2) In relation to Mr Shand, he was identified as connected with the Appellant in a public filing, and some of the key documents in evidence before me (for example, an email from 20 December 2017 regarding whether the arrangements fell within DOTAS, and the email of 3 April 2018 about the change from IPS Progression Ltd to the Appellant) were signed by Mr Shand, as Compliance Manager for the Income Plus Group;

(3) Additionally, Mr MacGregor's evidence was that it was "fair to say" that Mr Shand was "the driving force" behind the arrangements which are under consideration.

11. But I take a different view when it comes to identification of participants in the arrangements. They are neither parties nor witnesses. I do not know whether they are even aware of these proceedings, or that papers relating to their individual circumstances have been placed before the Tribunal. It would not be fair to name those persons in this decision.

HMRC's initial interest

12. On 25 October 2021, HMRC's Counter-Avoidance directorate wrote to the Appellant that it had reason to suspect that the Appellant might have been carrying on a business as a promoter as defined under the Promoters of Tax Avoidance Scheme (POTAS) legislation in the *Finance Act 2014*, and requiring information and documents.

The Notice of Potential Allocation

13. On 8 March 2022, HMRC produced a 'Notice of potential allocation of Scheme Reference Number' (the subject matter of Ground 1 of this Appeal).

The Allocation of the SRN

14. On 18 April 2022, HMRC allocated an SRN (the subject matter of Grounds 1 and 2 of this Appeal).

The naming of the Appellant on the list of named tax avoidance schemes

15. On 4 August 2022, HMRC published information about the Appellant and its arrangements on its 'Current List of Named Tax Avoidance Schemes, Promoters, Enablers, and Suppliers'.

The Stop Notice

16. On 6 December 2022, HMRC issued a 'Stop Notice' against the Appellant. On 23 December 2022, the Appellant asked HMRC that the notice should cease to have effect in relation to it. On 3 February 2023, HMRC declined that request.

IPS Progression Ltd

17. The arrangements in issue in this appeal were, to all intents and purposes, the same arrangements as had previously been carried on by another company, IPS Progression Ltd ('**Progression**'):

(1) Progression is in the same group (the 'Income Plus Group') as the Appellant;

(2) The Appellant's directors are the same as the directors of Progression;

(3) In his witness statement for this appeal, Mr Hall says that the matters under consideration were on the basis of a structure and documentation provided by a firm called Accountax "for what was originally IPS Progression and then became Countrywide Partners";

(4) Mr Hall also says that "We regard IPS Progression and Countrywide Partners to be a single structure";

(5) In his second witness statement, Mr MacGregor (the 'internal accountant' both for Progression and CPL) said that Progression and CPL 'are identical in all material and operational respects' (save for, on his evidence, one difference in how profits were to be generated in order to pay the bonuses).

18. HMRC applied to this Tribunal for an order that Progression be subject to a financial penalty for failure to comply with section 308(3) FA 2004 (ie, a failure to notify arrangements):

(1) Judge Sinfield CP refused an application to join HMRC's application against Progression with this appeal;

(2) HMRC's application was heard by Judge Christopher Staker, before I heard this appeal;

(3) Judge Staker's reserved decision was released after I heard this appeal. It has neutral citation [2024] UKFTT 00136 (TC) ('**the Staker Decision**').

19. After its release, HMRC alerted me to the Staker Decision but did not invite me to treat any matters decided in it as now res judicata or for some other reason no longer calling for my determination in this appeal. Nor have I been asked to stay release of this Decision pending any application by Progression for permission to appeal the Staker Decision. I have proceeded on the basis that the Staker Decision is relevant and important, and, although it does not formally bind me, I should nonetheless, as a matter of judicial comity, have appropriate regard to it, especially where it traverses substantially similar ground, both in terms of the facts, and the law.

20. At Paras [3]-[4], Judge Staker described Progression's arrangements as follows:

> "3. In 2016-2018, the Respondent was an umbrella company providing PAYE payroll services in respect of individuals whose personal services were made available by recruitment agencies to end users. Each of those individuals ("employees") entered into three agreements with the Respondent: (1) an employment agreement that provided that they were an employee of the Respondent, (2) a loan agreement that provided that the Respondent would loan "certain monies" to the employee with interest charged at 2% above HMRC's official rate of interest, and (3) a bonus agreement that provided that the employee could participate in a bonus scheme.
>
> 4. The end users paid an hourly rate for the employees' personal services. From the payments received from the end users, the Respondent deducted 15% as its own fee. The Respondent issued payslips to employees showing the remaining 85% as paid to the employees, divided into three elements: "salary paid"; "rolled-up holiday pay"; and "ILO bonus". The "salary paid" element was equivalent to the national minimum wage for the number of hours worked, the "rolled-up holiday pay" element was 12.07% of the "salary paid" element, and the "ILO bonus" was the remainder of the payment to the employee. Tax and National Insurance were deducted in respect of the "salary paid" and "rolled-up holiday pay" elements only."

21. In my view, those arrangements are materially identical to the ones which I am called upon to consider in this case.

22. Judge Staker's findings included the following:

(1) At the end of the 2017/18 tax year, all of Progression's existing and future employees (ie, participants in its arrangements) were transferred to the present appellant, whereupon Progression had no business;

(2) The Appellant's services were similar services, pursuant to the same model, as Progression's;

(3) Progression were invited by HMRC to notify their arrangements under DOTAS, but declined to do so, and did so only after HMRC applied to the Tribunal for a penalty;

(4) On 25 April 2022, Progression filed a form AAG1 (an Anti-Avoidance notification form), but stated that was done only on a protective basis as it did not agree that the DOTAS legislation required it to do so. That form was rejected by HMRC;

(5) On 16 May 2022, Progression filed a further AAG, but omitting the statement that its disclosure was being made on a protective basis.

23. Judge Staker also found, amongst other matters, that the arrangements being operated by Progression were "arrangements" within the proper meaning and effect of the legislation, and were notifiable:

(1) Progression's documents - an employment contract, loan agreement, and bonus agreement - were a standardised tax product within Regulation 10 Description 5 of the *Tax Avoidance Schemes (Regulations) 2006* (**'the 2006 Regulations'**), as amended and in force at the relevant time;

(2) Progression never intended to establish or operate a genuine bonus scheme, or to pay bonuses to the generality of the employees (Paragraph 60) and there was no genuine bonus scheme in operation (Paragraph 60(3));

(3) Progression never intended that the loans would be repaid, never intended to obtain repayment from the employees of the amounts identified as 'ILO Bonus' ("In Lieu of Bonus"), and the employees never expected to repay those amounts (Paragraph 61);

(4) It is doubtful whether the payments identified in payslips as 'ILO Bonus' were loans at all. They may have been payments of earnings under the employment agreements, or payments of bonuses under the bonus agreements (Paragraph 62);

(5) The method by which Progression provided its services, including a loan agreement and bonus agreement, and the identification of part of the payments to employees as 'ILO Bonus', rather than as 'salary', served no purpose other than to provide a justification (whether or not valid or effective at law) for not paying tax on part of the employees' earnings (Paragraph 64);

(6) The practical effect was that employees were paid part of their taxable earnings tax-free;

(7) Progression was a promoter in relation to those arrangements.

24. Whilst I am not bound by those findings, I adopt them. They mirror the facts and circumstances which I am called on to consider. Of particular significance, and as furnishing a factual and legal 'nexus' between Progression's arrangements and CPL's activity (and without

deciding, at this stage, whether those amounted to arrangements within the proper meaning and effect of the legislation):

(1) Is Mr Shand's email of 3 April 2018 carrying across all Progression's existing business and putting it into CPL, and stating that:

> "***The IPS Countrywide Ltd service is exactly the same as IPS Progression Ltd, just a different employer" (asterixes in the original);

(2) Mr Hall's explanation that "Any new business was moved to CPL because Progression had reached capacity".

THE GROUNDS OF APPEAL

25. An appeal under Part 7 of FA 2004 can only be brought on certain, prescribed, grounds: see FA 2004 311(3), which reads:

> "(3) An appeal under this section may be brought only on the following grounds—
>
> (a) that, in issuing the notice under section 310D as a result of which the reference number was allocated, HMRC did not act in accordance with that section;
>
> (b) that, in allocating the reference number, HMRC did not act in accordance with section 311;
>
> (c) that the arrangements are not in fact notifiable arrangements or, in the case of proposed arrangements, that the proposal for the arrangements is not in fact a notifiable proposal."

26. FA 2004 s 311B(6) provides that "the notice of appeal must specify the grounds of appeal".

27. Given the wording of sections 311(3) and 311B(6), it is therefore appropriate to scrutinise the Grounds of Appeal, which were settled by Andrew Wood of Counsel and dated 16 May 2022, so as to ensure that they align with the permissible appeal rights. Anything falling outside the scope of section 311(3) is not appealable.

28. As I read them, there are three grounds:

(1) The requisite "Notice of Potential Allocation of an SRN" from HMRC was not delivered to or received by the Appellant, meaning that the provisions of FA 2004 section 310D were not followed (see Grounds Paras 1-8 and 25a) ('**the Notice Issue**')

(2) Because there was no Notice, then the notice period in FA s311(3)(b) cannot have expired, meaning that HMRC cannot have allocated an SRN, and so did not act in accordance with FA 2004 section 311 (see Grounds 7-9, and 25b) ('**the Allocation Issue**')

(3) The arrangements are not notifiable arrangements: see FA 2004 section 311B(3)(c) (see Grounds Paras 10-18 and 25c) ('**the Notifiability Issue**')

THE BURDEN AND STANDARD OF PROOF

29. The burden of proof on the Notice Issue and Allocation Issue issues rests with the Appellant, for the reasons recently set out by the Tribunal in *Greenwich Contracts Ltd v HMRC*

[2023] UKFTT 874 (TC) at Paras [18] onwards and especially at Para [29]. However, like Judge Sukul in that case (see Para [130] of her decision) I will also consider whether the outcome would have been different had HMRC and not the Appellant borne the burden.

30. In relation to the Notifiability Issue, the burden is on HMRC. It must show, to the appropriate standard, that the criteria in sections 306(1)(a)(b) and (c) and 307 are met - namely, that the Appellant was, at the relevant time, the promoter of arrangements which were notifiable arrangements.

31. The standard of proof in relation to disputed matters is the usual civil standard - namely, whether something is likelier than not.

THE EVIDENCE

32. On behalf of the Appellant, its internal accountant, Mr Peter MacGregor FCCA, had filed two witness statements dated 9 March 2023 and 11 December 2023. He also gave oral evidence and was cross-examined by Ms Vicary.

33. A witness statement had been filed and served from Mr Hall, dated 9 March 2023. However, I was provided with information that Mr Hall was not well enough to attend the Tribunal hearing to give evidence. Even though Mr MacGregor's evidence was that he had seen Mr Hall "a couple of times" "in the last few weeks" in the office, "picking things up" for "maybe half an hour or so" I was nonetheless prepared to accept that Mr Hall was not well enough to attend the hearing, and to give Mr Hall's witness statement such weight as appropriate, given that Mr Hall was not present to be cross-examined about it.

34. I was told that his co-director Mr Champion had given evidence in the Progression appeal, but that no evidence from him was being relied on in support of this appeal.

35. I was told by Mr MacGregor in the course of giving his evidence that the third director (who was also the Company Secretary), Ms Hall, would not have any useful evidence to give about the matters which are in dispute in this case. He said that she "wouldn't have enough knowledge to take [the] stand, to answer questions about [the Appellant]" and (at a later stage in his evidence) "I don't think she would know enough".

36. I found that somewhat surprising evidence. It runs counter to the generally accepted position that directors (who are not only assuming directorial duties but also liabilities) ought to know something about the business which they are directing.

37. I am bound to say that, to my mind, there remain questions as to who actually was exercising the directorial functions in this business, and whether it was the named directors or someone else. The roles of Mr Shand and Mr Wood were each explained to me by Mr MacGregor in ways which I did not always find easy to follow.

38. However, I do not consider it necessary or appropriate, in this instance, draw any adverse inferences from the failures either of Mr Champion or Ms Hall to give evidence in support of this Appellant's appeal.

39. On behalf of HMRC, I heard from Officer Charlotte Stanford. She is an Intervention Lead in HMRC's Counter-Avoidance Directorate. She had filed two witness statements; 17 March 2023 and 19 January 2024. The latter, and its exhibit, was principally directed to the systems which HMRC used to issue the Notice. She was cross-examined by Mr Hickey.

GROUND 1 - THE NOTICE ISSUE

40. FA 2004 section 310D reads:

Notice of potential allocation of reference number: arrangements and proposals suspected of being notifiable

(1) This section applies where—

(a) HMRC have become aware that—

(i) a transaction forming part of arrangements has been entered into,
(ii) a firm approach has been made to a person in relation to a proposal for arrangements, with a view to making the proposal available for implementation, or
(iii) a proposal for arrangements is made available for implementation, and

(b) HMRC have reasonable grounds for suspecting that the arrangements are notifiable, or the proposal is notifiable.

(2) HMRC may issue a notice to a person explaining that, unless the person is able to satisfy HMRC, before the end of the notice period, that the arrangements are not notifiable or (as the case may be) the proposal is not notifiable, HMRC may allocate a reference number to the arrangements or (in the case of a proposal) the proposed arrangements.

(3) But HMRC may not issue a notice under this section before the end of the period of 15 days beginning with the day on which they first become aware that the condition in paragraph (a)(i), (ii) or (iii) of subsection (1) is met.

(4) A notice under this section must be issued to any person who, on the day the notice is issued, HMRC reasonably suspect to be a promoter in relation to the arrangements or proposal.

(5) A notice under this section may be issued to any other person who HMRC reasonably suspect to be involved in the supply of the arrangements or proposed arrangements

41. In short, where HMRC have reasonable grounds for suspecting that a person has failed to disclose to HMRC arrangements which should have been notified to them under DOTAS, HMRC can issue a Notice of potential allocation of a Scheme Reference Number.

42. If a person or entity subject to such a notice fails to satisfy HMRC within 30 days of issue that the arrangements are not notifiable, then HMRC may allocate a Scheme Reference Number.

43. The first formal Ground of Appeal is that HMRC's Notice of Potential Allocation dated 8 March 2022 (**'the Notice'**) was never 'delivered to' and/or (insofar as different) 'received' by the Appellant. If correct, it is argued that this would have been a failure to comply with section 310D, meaning that the appeal would have to be decided in favour of the Appellant.

44. This Ground of Appeal has a curious history, which I consider it necessary to set out.

45. Until on or about Friday 19 January - ie, the Friday immediately preceding the weekend following which the appeal hearing was to begin - the Appellant's position in relation to this Ground was as follows:

(1) In its Grounds of Appeal, dated 16 May 2022, the Appellant states (at Paragraph 5):

> "The letter" (this refers to a letter dated 18 April 2022) "stated that the purported Notice was issued on 8 March 2022. However, this was not received by the appellant nor by their agent"

(2) And goes on to say (at Paragraph 7):

> "As the Notice has not been delivered, then the allocation of the SRN is appealed firstly on the following grounds:
>
> a. that FA 2004 s 311(3)(a) cannot be satisfied - as such, it is appealed under s311B(3)(b); and/or
>
> b. Under s311B that the notice was not issued in accordance with s310D as it was not issued at all".

(3) In its Skeleton Argument, dated 8 January 2024 (and re-served on 15 January 2024, amended for pagination and minor 'typos'), Paragraphs 2.1, 23 to 39 deal with the Notice, and conclude with the submission:

"moreover, it was never received by CPL (this is apparent from the letter sent by Mr Wood on 10 May 2022)."

The email of 26 May 2022

46. However, on Monday 22 January, being the reading day allocated to this Appeal, the Appellant, under cover of an application dated 22 January, signed by Mr Andrew Wood of Counsel, disclosed an email, dated 26 May 2022, from Mr Peter MacGregor to Mr Andrew Wood, reading as follows:

> "Hi Andy
>
> I received two large parcels of mails from our Liverpool office today and in it was the missing HMRC Countrywide letter from the 8th of March, copy attached.
>
> This has either been put in the wrong post box in Liverpool or HMRC have sent out again further to your letters of complaint.
>
> [...]"

47. The document attached, referred to as 'the missing letter' was a 2 page letter from Officer Stanford to CPL, dated 8 March 2022, correctly addressed. That letter enclosed a 6-page "Notice of potential allocation of an SRN" also dated 8 March 2022.

48. In the application of 22 January, it was said that Mr MacGregor had identified his email dated 26 May 2022 'following sight of HMRC's 2nd witness statement'. It is not clear whether

that point was intended to be purely temporal, or was intended to also capture some element of causality. I would reject either explanation.

49. The true position, on the Appellant's own evidence, albeit coming to light only belatedly, is *not* that the Notice was never, as a matter of fact, received. Any such contention (i) is not only plainly unsustainable in the light of the above email, but also (ii) after 26 May 2022, always was, since, on 26 May 2022, the Appellant and its adviser both knew that the Notice had been received.

50. The passing suggestion in the email that the appearance of the Notice may have been that HMRC may have sent out another notice of potential allocation in response to a letter of complaint is - and never was - anything more than hypothesis. In his evidence, Mr MacGregor accepted that was pure speculation. In my view, it was.

51. Officer Stanford was not challenged on the contents of her second witness statement. Mr Hickey asked her where the information in Paragraphs 1 to 5 of that witness statement came from - her answer was one of the managers in HMRC's "Central Print Service" (HCPS) team - and whether those Paragraphs effectively set out what she had been told. Officer Stamford said that they did, and I accept her evidence.

52. She was not challenged by Mr Hickey on any of the following matters:

(1) Her uploading the notice of potential allocation and the cover letter to the HCPS on 7 March 2022;

(2) The printing having been completed and readied for collection by the Royal Mail on 9 March 2022;

(3) That the notice of potential allocation dated 8 March 2022, and actually sent on 9 March 2022, identifiable by a QR code, was received back by HMRC in a Zip file from Mr Wood, as part of the Appellant's disclosure, on 21 February 2023, with the fact that those were (albeit electronic copies) of the original hard copy documents because they bore a QR code (added by HCPS) and hole punches (added by the recipient).

53. I am entirely satisfied:

(1) That the Notice was sent by HMRC;

(2) When it says it was;

(3) Using the Royal Mail;

(4) Correctly addressed;

(5) To the Appellant's registered office, and

(6) It arrived there, delivered by the Royal Mail.

54. I cannot identify anything which HMRC have done wrong with the Notice. I find that what did go wrong is that the Appellant's business address (that is to say, the address which its directors have deliberately chosen to be its official address) is an office building in Liverpool where the Appellant is said to rent a room with 5 or 6 desks, sharing the building with about 30 other businesses. All the occupants share the same street address and postcode, and post for all the occupants arrives together, and is handed over by the Royal Mail's delivery person to the building's receptionist at the front desk. That is the time and manner of delivery. In doing that, the Royal Mail did, in my view, discharge its service obligation and did its job.

55. After delivery, post is sorted inside the building. But that is not done by Royal Mail. The building's receptionist, who is not an employee of the Appellant, sorts the mail into a series of open-fronted 'pigeon holes', being a communal facility which line one wall of a corridor, accessible to the building's occupants, behind reception. Mr MacGregor is familiar with the building's layout and appearance and confirmed the accuracy of a photograph of the postboxes (which photograph appears, as a selling feature, on the website of the building). The Appellant had a mid-sized pigeon hole, about 1 foot square, being one of 12 such pigeon-holes. There are 4 larger pigeon-holes on one side, and 60 on the other side.

56. Mr MacGregor's evidence is that post addressed to the Appellant, delivered in Liverpool, is periodically - every week or so, but not as part of any individual's regular work-flow - gathered together by a representative of the Appellant (this was said to be done by one of the director's daughters, coming across from North Wales to do so specially, or by her boyfriend, said to work in the building), taken up to the Appellant's office, parcelled up, and sent on using the Royal Mail to the Appellant on the Isle of Man.

57. In his oral evidence, Mr MacGregor complained - and I accept his evidence on this point - that post addressed to the Appellant sometimes goes astray in the building in Liverpool - for example, it is put (by the person doing the sorting) into the wrong pigeon-hole. He says that he knows that this happens because post addressed to other occupants of the building is sometimes parcelled up (by the Appellant's own representative) and sent to the Isle of Man. That can only be because it was put in the wrong pigeon-hole.

58. In the circumstances, and given the totality of the evidence, either the Notice was not picked up by the Appellant and forwarded promptly enough, or it spent some time in the wrong pigeon-hole. But in either event, it was delivered.

59. There are also two emails in evidence, dated 13 April 2022 and 20 April 2022, both written by Mr MacGregor to HMRC in which he complains about post from HMRC not reaching him promptly. The latter letter refers specifically to this appellant. The former refers to another (unnamed) company.

60. The Appellant's arrangements for handling its post once it arrived in Liverpool were its responsibility. Moreover, it knew that there was a problem with the sorting of its mail in Liverpool, but there is no evidence that it actually did anything about it. It did not put in place any different process for handling its post. The Appellant was leisurely in the handling of post once received, collecting it only every week or so, and then sending it on to the Isle of Man with the Royal Mail.

61. Its entire system for handling incoming mail carried with it the jeopardy that important letters, including those from HMRC, would go astray and/or would not be opened or actioned promptly. It was not using a courier; it did not have its post opened by its own staff in Liverpool and scanned; and it had not put in place any system whereby any particularly urgent correspondence was identified. In my view, it had no-one but itself to blame for the Notice going to its address in Liverpool, but then not reaching it on the Isle of Man for about 2 and a half months.

62. As such, I am entirely satisfied, as a fact, and so find, that the Notice was received by the Appellant, at its registered office, shortly after 8 March 2022. What happened after the Notice reached the receptionist's desk in Liverpool was nothing to do with HMRC. HMRC had discharged its statutory obligation.

63. Now that the true situation has come to light, nothing presently remains to be said as to the argument about non-receipt and/or non-delivery, as matters of fact, and/or the meaning of the expression 'issued to', as a matter of law and/or fact.

64. HMRC sent the Notice, dated 8 March 2022, on 9 March 2022. It gave until 7 April 2022 to respond. On 18 April 2022, and not having received any response, HMRC allocated SRN 20980718 to certain arrangements involving the Appellant.

65. The Appellant does not put any other matter in section 310D in issue. Insofar as relevant, I find - as unchallenged - that HMRC first became aware that a transaction forming part of arrangements had been entered into on 7 January 2022 and that HMRC had reasonable grounds for suspecting that the arrangements were notifiable.

66. The answer to this Ground is no different had HMRC borne the burden.

A final comment on the Notice Issue

67. Miss Vicary challenged Mr MacGregor as follows:

> "Is the reality, Mr MacGregor, that everyone at Countrywide, so that is you, Mr [Andrew] Wood and Mr Hall and no doubt the other directors, you all knew that you had actually received this notice and you were just hoping that the Revenue would not be able to catch you out on that, so you all just kept quiet and did not mention it in your witness statements?"

68. On the evidence, that was a fair challenge. His answer was:

> "To be honest - I'll be absolutely honest, I never really gave it much thought at all, this whole issue of the mail"

69. She also asked him, looking at the Skeleton Argument, and especially Paragraph 39, whether he agreed with its assertion that the notice had never been received by the Appeal. That was also a fair challenge. His answer was:

> "Not with hindight, but, as I say, the whole thing about the 26th May letter, it was completely out of my mind until this weekend, it was not something I'd even given any - a second's thought - to"

70. My impression of Mr MacGregor was that he was genuinely confused and wrong-footed by the late (re)appearance of the Notice, even though he had definitely known of it sooner, and that he was trying to give me honest evidence, albeit, as it emerged, this evidence was confused and fragmentary. But he did not seek to advance any argument before me that the notice which had been discovered was not the original, but was one sent later by HMRC (in effect, to cure a deficiency in service of the original notice). Mr MacGregor recognised, properly, that was not a sustainable argument. On the facts, it was not. I did not form the impression that he was being dishonest. My impression was that he was struggling (as the Appellant's only witness) to support its somewhat shambolic mail arrangements.

71. Nonetheless, the Notice point was a bold and ambitious one for the Appellant to have taken, especially in the unequivocal way it was taken, and pursued, without proper assurance that it was (at the very least) reasonably arguable, on the facts. It is clear that it was only Mr Hickey's late intervention which brought the original notice to light. But that intervention would not have been necessary had the Appellant conducted a proper search in the first place, and/or had its legal representative drawn proper, and timeous, attention to the email.

72. Without having invited submissions specifically on the point, I do not think that it is appropriate to go beyond simply noting my abiding sense of unease as to how this argument, despite evidence to the contrary known to the Appellant and one of its legal advisers as early as 22 May 2022, was nonetheless persisted in, including at the hearing, and gave rise to the need to consider evidence and legal submissions which were, on the face of it, except for the timing issue (which was pressed on me only faintly, and which was the matter of one question) otherwise unnecessary.

73. Having said that, I also remind myself that the Notice Issue is a discrete ground of appeal, and that I should not let the Appellant's absence of success on that ground, or the way in which that Ground has eventually to be dealt with, influence my assessment of its other grounds.

GROUND 2- THE ALLOCATION ISSUE

74. The second limb of the appeal is whether there was compliance with section 311.

75. FA 2004 section 311 provides as follows:

"***Allocation of reference number to arrangements***

(1) This section applies in—

(a) a subsection (2) case, or
(b) a subsection (3) case.

(2) A "subsection (2) case" is a case where a person complies, or purports to comply, with section 308(1) or (3), 309(1) or 310 in relation to a notifiable proposal or notifiable arrangements.

(3) A "subsection (3) case" is a case where—

(a) notice in relation to arrangements or a proposal has been issued in accordance with section 310D (notice of potential allocation of reference number);
(b) the notice period has expired, and
(c) the person to whom the notice was given has failed to satisfy HMRC, before the expiry of the notice period, that the arrangements are not notifiable or (as the case may be) that the proposal is not notifiable.

(4) "The notice period" means—

(a) the period of 30 days beginning with the day on which the notice under section 310D is issued, or
(b) such longer period as HMRC may direct.

(5) HMRC may allocate a reference number to the arrangements or, in the case of a proposal, the proposed arrangements, subject to subsection (6).

(6) HMRC may not allocate a reference number to arrangements or proposed arrangements after the time limit for doing so.

(7) The time limit for allocating a reference number is—

(a) in a subsection (2) case, the end of the period of 90 days beginning with the compliance, or purported compliance, with section 308(1) or (3), 309(1) or 310, as the case may be;

(b) in a subsection (3) case, the end of the period of one year beginning with the day after the end of the notice period (see subsection (4)).

(8) HMRC may at any time withdraw a reference number allocated to arrangements in a subsection (3) case.

(9) The allocation of a reference number to arrangements or proposed arrangements is not to be regarded as constituting an indication by HMRC that the arrangements could as a matter of law result in the obtaining by any person of a tax advantage."

76. The alleged non-compliance here is that, on the basis that the Notice was not delivered, then the allocation of the SRN was wrong because section 311(3)(a) cannot be satisfied, and the notice period in s 311(3)(b) cannot have expired.

77. Insofar as this is a challenge to section 311(3)(c) ("*the person to whom the notice was given has failed to satisfy HMRC, before the expiry of the notice period, that the arrangements are not notifiable or (as the case may be) that the proposal is not notifiable*") this is not an arguable ground of appeal by this Appellant.

78. Section 311(3)(c) was satisfied. The Appellant undoubtedly failed to satisfy HMRC, before 7 April 2022, that the arrangements were not notifiable. That was because the Appellant failed to deal with the Notice, as set out above.

79. I dismiss the appeal on this Ground. It cannot be sustained in the light of my conclusion on the Notice Issue.

80. The answer to this Ground is no different had HMRC borne the burden.

GROUND 3 - THE NOTIFIABILITY ISSUE

81. I am now able to arrive at consideration of the Appellant's final Ground, which is that the arrangements were not in fact notifiable arrangements: FA 2004 s 311(3)(c).

82. As already explained, the arrangements set out below are, in my view, materially identical to those considered by Judge Staker in the Progression case. In his evidence, Mr MacGregor confirmed that the paperwork was "the exact same paperwork. It's identical".

83. I was provided with a suite of documents relating only to a small number of scheme users (described as 'candidates') and have proceeded on the footing that these documents are a representative sample of the whole.

The Marketing materials

84. Prospective scheme users with CPL were provided with a leaflet which said that CPL sought to "[combine] skills to provide a better service to our clients and greater value for your temporary work. We provide a leading UK PAYE payroll service, ensuring our employees receive the best return for sub-contracting their skills as services of CPL". It said that working with CPL "as an employee can offer great returns from your contract work". This leaflet did not mention any loan, bonus scheme, or management fee.

The Application Form, Welcome Pack, and the 'Priority Documents'.

85. Applicants completed an 'Application Form'. This provides for their personal details, including their bank details, and the details of the agency. It required verification of the right to work in the UK. It does not say what it is an application form *for*, and ends with the curious declaration - the purpose of which is entirely unclear - that "I agree that the time spent attending the current work place will be less than two years. Once this assignment has been completed I expect to continue employment with IPS Countrywide Ltd at another workplace".

86. The Welcome Pack says:

> "Thank you for choosing IPS Countrywide Ltd; in this brochure we have supplied you with information for your personal reference and 5 priority documents that you will need to sign and return to us, along with proof of your Right to Work in the UK.
>
> - Application Form
> - Employment Contract
> - Bonus, Incentive or Pay Scheme Offer
> - Loan Agreement
> - P45 or Starter Checklist"

87. Thereafter, each individual simultaneously entered into three agreements, each in a discrete document, with the Appellant:

(1) A "Statement of Main Terms and Conditions of Employment";

(2) A "Loan Agreement"; and

(3) A "Bonus, Incentive or Pay Scheme Offer".

88. Completion of these documents, as a suite, was mandatory ("you will need to sign and return"). On the face of it, employees were invariably required sign all three of these documents. Moreover, there is no evidence that someone could become an employee only by signing and returning the Statement alone; or with the Loan Agreement (but not the Bonus Scheme); or vice versa. I find that all three documents had to be signed and returned. The only optional element, set out as an 'opt-in' was to the IPS Countrywide Ltd pension scheme.

The "Statement of Main Terms and Conditions of Employment"

89. This was said "to describe the employment". It relevantly provided as follows.

(1) The Appellant was the employer of the individual concerned (the so-called "**employee**");

(2) The employee's job title was Consultant, and duties included those listed in an attached job description;

(3) The Appellant provides services and undertakes work across a range of industries, including the construction industry, haulage and information technology, and the employee could be offered work in any of the industries which the Appellant operates;

(4) Pay was to be performance-related and was to be "agreed between you [the employee] and your employer and calculated according to fees your Employer charges for providing your services";

(5) The employee would always receive at least the National Minimum Wage for the hours worked;

(6) The employee was to receive a weekly remittance detailing their gross pay and deductions from this, including tax and National Insurance contributions;

(7) The employee was to receive "an explanatory leaflet as to how your pay is calculated at the commencement of your employment";

(8) The employer may make available bonus schemes from time to time, but acceptance of any such scheme was not to form part of the employment agreement or to "constitute any contractual rights between you and your employer" (sic);

(9) The employment contract was the whole agreement between the Appellant and the employee, and was governed by English law and subject to the jurisdiction of the English courts and employment tribunals.

90. The bundle also contains a "Contract of Employment", 'incorporating particulars required by the Employment Rights Act 1996", and "intended to be over-arching". This relevantly provides:

(1) "Unless otherwise specified in your current Employee Assignment Schedule, you may be considered periodically for a Discretionary Profit Sharing Bonus (DPSB) provided that: you have, in our reasonable opinion, generated sufficient profits, as determined by us, to warrant the grant of such a Bonus; and you have not breached the terms of this Agreement";

(2) "To the extent that your gross taxable pay (excluding holiday pay) exceeds your wages (calculated at the applicable NMW (or, if applicable, the NLW), it constitutes your Bonus, even if not separately identified on your payslip"

91. The NMW being applied was £7.38 an hour; but, between April 2018 and March 2019, £7.38 was only the NNW for those aged 21-24. The NMW for those aged 25 or more (also known as the National Living Wage; NLW) was £7.83.

92. I do not agree with the Appellant's argument that the terms of employment "were those which would normally be expected in an employment contract". Whilst this might be true, at a certain, high-level, of abstraction, it does not adequately capture the substance of the terms, and in particular that a person's earnings are capped at the National Minimum Wage.

93. In an 'Important Note', the Welcome Pack says that "IPS Countrywide has negotiated with your Recruitment Company/Client a Contract for Services'. There is no evidence before me of any such negotiation.

94. The Statement is silent as to the Appellant's intention to deduct 15% of the gross pay as a 'Management Fee'.

95. In the papers before me, this does not appear in the template introduction letter, or the introductory leaflet (although, in the introductory leaflet for Progression, it appears - albeit only inferentially - in the statement that working for Progression 'can offer returns of 85% of your contract value') but does appear (as a sum, but described only as 'Management Fee', without any percentage) in the specimen pay advice at page 99 of the bundle, and note 6 of the Payslip Information Notes at page 133 ("Management Fee charged for processing the payment. This is 15%").

The "Bonus, Incentive or Pay Scheme Offer"

96. This was said to be because "The Employer may make available bonus schemes from time to time".

97. The "Bonus, Incentive or Pay Scheme Offer" ("**the Bonus Agreement**") relevantly provided as follows.

(1) The Appellant invited the employee to participate in a bonus scheme, under which the Appellant would pay a bonus to the employee if "you [the employee] personally generate a profit in excess of 170% of your employment cost";

(2) "The bonus amount will be between 100% and 170% of the profit generated after consideration of the total employment cost attributed to You";

(3) "Payment of the achieved bonus' will be made at a time chosen by the Directors";

(4) "Payment of the achieved bonus' will be subject to normal PAYE deductions".

98. The Further Explanations to CPL's payslip at page 132 of the bundle refers to 'ILO Bonus', or 'Payment in Lieu of Bonus'. This is said to be a payment in lieu of future bonus, given as an employment loan from CPL. CPL asserted that this was not a 'beneficial loan', and that "deductions were not required from this part of the payment, in the same way as if candidates had a loan from a bank or finance company."

The Loan Agreement

99. This was said to be because "the Employer may make a loan to you, typically secured against future bonus payments".

100. The "Loan Agreement" ('**the Loan Agreement**') relevantly provided as follows.

(1) The Appellant was the lender and the employee was the borrower;

(2) The Appellant promised to lend "certain monies" (ie, the loan amount is unspecified) to the employee, and the employee promised to repay the principal amount, plus interest charged at 2% above HMRC's official rate of interest, within 60 days of the Respondent providing the borrower with written notice of demand;

(3) The employee granted to the Appellant, until the loan was paid in full, a security interest in "Any achieved bonus payments" as security for the loan;

(4) The lender was to be listed as a lender on the title of the security whether or not the lender elected to perfect the security interest in the security;

(5) The borrower was to do everything necessary to assist the lender in perfecting its security interest;

(6) The loan agreement constituted the entire agreement between the parties and was governed by 'the laws of Country of England' (sic)

101. As Judge Staker set out in Paragraph [13] of his Decision, at the end of the 2017-2018 tax year, all of IPS Progression's existing and future employees were transferred to this Appellant "which provided similar services pursuant to the same model."

102. An e-mail from Mr Shand to "all users" dated 3 April 2018 states that the reason for the transfer of the Respondent's business to another company in the group was that the Respondent "is now full" and that "We have reach[ed] the maximum liability that the directors are happy to hold in the [IPS Progression Ltd]".

103. The result of these arrangements appears, illustratively, in a Pay Advice at pages 132 and 394 of the bundle:

(1) The timesheet analysis shows that an individual worked for 67.5 hours between 16 and 22 July 2018, with 55 hours at £50/hr (described as 'hourly rate standard') and 12.5 hrs at £53/hr (described as 'hourly rate standard 1') = £3,412.50;

(2) £3,412.50 x 15% = £511.88 = the Appellant's 'Management Fee';

(3) £3,412.50 - £511.88 = £2,900.62 'available for salary'. Of this:

(i) "Salary paid" was £528.53 (= 67.5 hrs at £7.83);

(ii) "Rolled-up holiday pay" was £63.79;

(iii) "ILO Bonus" (ie, the Loan) was £2,308.30;

(4) The 'Gross Pay for Tax' was £528.53 plus £63.79 = £592.32;

(5) 'Tax Deducted' was £72.80;

(6) NI Contribution was £51.64.

104. As is apparent, income tax and NI are being calculated only on the NLW and rolled-up holiday pay. After deduction of the Appellant's 15% Management Fee, most of the money actually earned (here, about 79.5% of it, net of the Management Fee) is being passed on, without deduction of tax and NI, as "ILO Bonus".

105. I note that the hourly rates in that instance were £50 and £53. The hourly rates in the timesheet analysis for other participants were between £19 and £34. It is therefore obvious that the cash yield for participants, if only an hourly sum equivalent to NLW/NMW were to be taxed, with the remainder paid as ILO Bonus, would be significant.

The experience of one scheme user

106. One employee, CS, was contacted by HMRC's Individual and Small Business Compliance team in January 2022 about her employment arrangements with the Appellant.

107. She had entered into the arrangements in May 2021. That came about because the Appellant's 'Account Manager', who had been given her details by the recruitment consultant for a named locum agency, emailed her, on the basis that the Appellant 'runs the payroll for [the named agency]". To that extent, it is not clear to me - contrary to the introductory remarks in the Welcome Pack - that CS could genuinely be said to have 'chosen' the Appellant. That was more to do with the locum agency and the Appellant.

108. In the bundle is a document written by her setting out what she was told about the employment arrangements. Her hourly rate was £42. She had a conversation with the Appellant's account manager, who told her that she would be paid by the Appellant, and she understood that she would be paying the Appellant a fee (although she does not say what this was). She makes no mention of any discussion about the Loan, or the Bonus, or ILO Bonus; but does seem aware that she would be paying tax at the Basic Rate. Her payslips reflect the general pattern: there is no timesheet analysis, but in one week in December 2021 she did 14.75 hrs of work at £42/hr. Deduction of a 15% management fee left £526.57, which was paid to her at £8.91/hr, with holiday pay at £1.08/hr, with tax of £29.40 deducted from those, and the largest element - ILO Bonus - being £379.22, paid without deduction. Her payslip describes her 'NET PAY" as £497.17, but the 'This Period' boxes only include £147.35 as gross for tax, with £29.40 tax deduction. The ILO Bonus been silently included in the "Net Pay" figure. I was not given any explanation as to why the ILO Bonus was being treated in this way on the payslip - ie, as part of Net Pay, compounded silently together with 'salary paid', and 'holiday pay'. That treatment is consistently adopted across the complete run of her payslips.

109. The extent of CS's confusion - and anxiety - about the arrangements which she had entered into is clear from the correspondence which ensued when she was called up for jury service, and had to fill in a loss of earnings form, doing so on the basis of figures given to her by the Appellant. It was only then that CS, having been told that she was on a minimum wage of £8.91/hr, with the rest made up of 'the ILO bonus for your payment' had occasion to ask the Appellant 'What does the ILO Bonus actually stand for?' She also then realised that the weekly tax deduction 'sounds low if meant to [be] 20%'. Eventually, a local accountant looked at her payslips and advised her that the full amount of tax had not been deducted, "they have only taken tax off part of the income." She described herself as "devastated" to hear that this might involve tax avoidance.

The payment of bonuses

110. Mr Hall's written evidence is that bonuses were paid to 11 employees of Progression and 13 of CPL, that all such bonuses were subject to full PAYE deductions; and that, once such bonuses had been paid, any employment loans were repaid. In the absence of Mr Hall, I give little weight to his evidence, which could not be tested in cross-examination.

111. In the Progression case, Mr Champion asserted that Progression had paid bonuses to 13 employees (ie, to less than 1% of Progression's 1593 employees) but Judge Staker noted that there was only evidence of the payment of bonuses to two of these (Paragraph 60(2)(a)). Judge Staker found that "The fact that, even now, over 7 years after [Progression] began providing its services, and over 5 years after it ceased doing so, Progression says that it has paid bonuses to only 13 of its 1593 employees. [This] further confirms that it never intended to pay bonuses to the generality of its employees.

112. The same reasoning and observation applies here, with similar force.

113. Moreover, on the totality of the evidence before me, I do not consider that CPL ever intended to pay bonuses to the generality of its employees, and did not. Letters in the bundle dated 17 March 2017 regarding a bonus payment to candidates AS and HA come from Progression, and not CPL; and antedate the "porting" across of Progression's business to CPL. There is no similar award letter in evidence from the Appellant, and no plausible explanation why not. The best available evidence are two anonymised payslips, one undated, one for a period in November 2021, which each record sums deducted by the Appellant and described as "Loan Repayment". But it is impossible from those to extrapolate or infer any wider pattern of loan repayment.

The role of IPS Loans

114. Mr MacGregor's second witness statement says that the lending business for the Appellant was intended to be carried out by a separate company, IPS Loans Ltd, which had been incorporated on 9 January 2017, and that this goes to the fact that the Appellant really intended to make loans and generate surpluses from which genuine bonuses could be paid. But the main difficulty with this is that this is not what actually happened.

115. Even though IPS Loans received FCA authorisation in late October 2018, I am sceptical that the figures in IPS Loan's 'Regulatory Business Plan', especially a £65,000 capital injection, and its trading projections, leading to very modest profits (projected as £26,475, before tax and dividends), would ever have permitted it to operate in the way that Mr MacGregor described.

116. Mr MacGregor's evidence in this regard developed in an interesting way. As I understood it, his evidence was that IPS Loans was to make loans, "and make more money and we'll be able to use that money and have both companies (ie, Progression and CPL) paid ... But .. it

didn't work out the way it was planned". Mr MacGregor's evidence was that Mr Shand "was adamant that this would have worked if it had "gone to plan". But it did not go to plan because of the difficulties with IPS Loans.

117. This led to the following exchange between Ms Vicary, Mr MacGregor, and the Tribunal:

> Q. So, we are going around this very delicately, but in essence if we cut to the nub of it, this is just another loan scheme, is it not? It is a tax avoidance scheme?
>
> A. That's not what they intended to do, but I can see the similarities. Some of them are undeniable, but it wasn't the intention of the directors, and Mr Shand. Mr Shand is adamant that this would have worked if – if it had went to plan it would have worked and it would have been great. So, I would say intention and result are two different things here.
>
> [...]
>
> TRIBUNAL JUDGE McNALL: Can I just ask, you say there is a difference between intention and result?
>
> A. I think it was a good way to summarise it.
>
> TRIBUNAL JUDGE McNALL: [...] I am not going to put words into your mouth, and you can disagree with me if you want, and I will consider it. You say the original intention was not to create a tax avoidance scheme?
>
> A. Correct.
>
> TRIBUNAL JUDGE McNALL: Did you end up creating a tax avoidance scheme?
>
> A. The result – what it has resulted as is something that looks like that, but I can assure you that there are people in my office at senior level, director level, who never intended it to be that way".

118. I found this an interesting passage of evidence. It seemed to me that Mr MacGregor was doing his best to give me truthful evidence. He had a good understanding of the overall structure of the arrangements, and of the activity of CPL within the group. I bear in mind that he was the only person able, or willing, to come to give evidence on behalf of the Appellant to the Tribunal. But this evidence shows that he was consciously treading a very fine line, emerging with clarity here, as to what the arrangements actually, in the real world, as opposed to on the drawing board, ended up accomplishing. There was a potent counter-factual throughout, which was that the IPS Loans business would generate money to feed into CPL. Had that actually happened, and as Mr MacGregor recognised, the fiscal landscape, and the operation of the arrangements, might well have been materially different.

The parties' arguments

119. In summary, HMRC argues as follows:

> (1) The scheme operated by the Appellant was a "contractor loan scheme", of the type repeatedly and extensively used to avoid significant amounts of tax over a number of years. Such schemes typically consist of payment by salary (normally at the national

minimum wage rate), with the rest of the remuneration provided to the scheme user in the form of a loan or advance, which is then never repaid;

(2) The scheme in this case is more straightforward than other cases because the loan comes directly from the employer without any third party being involved.

(3) The scheme constituted notifiable arrangements;

(4) The Appellant was "a promoter" in relation to them.

120. In summary, the Appellant argues as follows:

(1) It is entirely permissible for an employee to be paid on a contingency, and that until such a contingency is met then it is not taxable (see *RFC 2012 Plc (in liquidation) v Advocate-General for Scotland* [2017] UKSC 45, esp at Paras 41 and 48 *per* Lord Hodge)

(2) Accordingly, the grant of a loan by an employer to an employee secured on an advance contingent bonus does not have its main benefit the obtaining of a tax advantage "because once a bonus ceases to be contingent, it is taxable as employment income": ('**the Contingent Remuneration Argument**');

(3) The Appellant relied on appropriate professional advisers, including a firm called Accountax and a specilist tax barrister;

(4) The transactions are not contrived or artificial, and do not involved a series of pre-planned steps;

(5) There was never any compulsion for someone to enter into a bonus agreement (albeit the Appellant recognises that, "in practice, an employee would have accepted the bonus offer");

(6) The loans are genuine loans; and the bonus pool is one from which an employee might realistically benefit;

(7) An individual choosing to participate in the Bonus Scheme "commuted what they could otherwise earn as a fixed salary for a hope of earning a greater sum from their interest in the IPS business bonus pool which was linked to its financial performance";

(8) Bonuses were in fact paid to 13 persons by CPL.

121. With the exception of the contingent remuneration argument, I note that many of these submissions are identical to those which Judge Staker records as having been made to him in the Progression case.

Were these notifiable arrangements?

122. In my view, for the reasons set out more fully below, these arrangements were notifiable arrangements.

123. Section 306(1) FA 2004 provides:

> (1) In this Part "notifiable arrangements" means any arrangements which—
>
> (a) fall within any description prescribed by the Treasury by regulations,
>
> (b) enable, or might be expected to enable, any person to obtain an advantage in relation to any tax that is so prescribed in relation to arrangements of that description,

and

(c) are such that the main benefit, or one of the main benefits, that might be expected to arise from the arrangements is the obtaining of that advantage.

Are these "arrangements"?

124. Yes:

(1) "*Arrangements"* includes "any scheme, transaction or series of transactions": FA 2004 s 318;

(2) The words "transaction or series of transactions" indicate that there need not be a series of transactions. A transaction not forming part of a series may suffice;

(3) The combination of a number of transactions was integral to the way that the Appellant provided its services:

(a) The Appellant entered into an Employment Agreement, Loan Agreement, and Bonus Agreement with each employee (this was either three transactions, or a series of three transactions);

(b) The Appellant received payments from end users;

(c) The Appellant issued payslips dividing each payment (following deduction of its own 15%) into the different elements of salary, rolled-up holiday pay and ILO bonus, with deductions of tax and National Insurance on the first two elements only (ie, with no tax or NI deducted from the ILO Bonus);

(d) The Appellant paid the deducted PAYE tax and National Insurance to HMRC;

(e) The Appellant paid the balance to the employee;

(4) Before Judge Staker, and as he records in his Decision, Mr MacGregor described what was happening in the IPS Progression appeal as a "scheme" and as "arrangements". Judge Staker also records an e-mail from IPS Progression's consultants to IPS Progression's compliance manager dated 20 December 2017 which says that "the scheme ... was designed in house".

125. I then fall to consider the individual parts of section 306(1)(a)(b) and (c). All must be satisfied.

Do the arrangements "fall within any description prescribed by the Treasury by regulations"? (FA 2004 s 306(1)(a)).

126. Yes. They fall within several descriptions prescribed by the Treasury in regulations.

127. The relevant Regulations are the *Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006* (SI/2006/1543) ("**2006 Regulations**"), as amended at the relevant time.

128. At the relevant time, they prescribed different "Descriptions" of arrangements, often referred to in HMRC Guidance and in practice as "Hallmarks".

129. In order to satisfy s 306(1)(a) FA 2004, "arrangements" need fall within only one of these Descriptions.

130. HMRC argue that the relevant Hallmarks are as follows:

(1) Regulation 8 - Premium Fee Hallmark

(2) Regulation 10 - Standardised Tax Product Hallmark

(3) Regulation 18 - Employment Income Hallmark

(4) Regulation 19 - Financial Products Hallmark.

131. HMRC pursue their case and seek judicial determination in relation to all four Hallmarks, even though success in relation to any one would suffice. HMRC submit that each of the four Hallmarks is independently met. HMRC do not make any submissions as to whether anything of material significance arises if arrangements happen to conform to more than one Hallmark.

132. Having reflected on the matter, lest my conclusions should fall to be reconsidered, and recognising that Judge Staker reached his conclusion only on the basis of one Hallmark, I consider that it is appropriate to deal with all of the Hallmarks placed before me, even though this will add significantly to the length and complexity of this Decision. For the avoidance of doubt, I approach each Hallmark discretely: that is to say, I do not consider, if I find one Hallmark to be satisfied, that my discussion in relation to the other and/or subsequent Hallmark(s) to be taken as given obiter. It is not.

133. For the sake of convenience, I am going to deal with the Hallmarks in their numerical order.

REGULATION 8 - PREMIUM FEE HALLMARK

134. Regulation 8 Description 3 provides that:

> "Arrangements are prescribed if they are such that it might reasonably be expected that a promoter ... would, but for the requirements of these Regulations, be able to obtain a premium fee from a person experienced in receiving services of the type being provided [...]".
>
> But arrangements are not prescribed by this regulation if
> (a) no person is a promoter in relation to them; and
> (b) the tax advantage which may be obtained under the arrangements is intended to be obtained by an individual [...]"

135. A "Premium Fee" is "a fee chargeable by virtue of any element of the arrangements (including the way in which they are structured) from which the tax advantage expected to be obtained arises, and which is (a) to a significant extent attributable to that tax advantage, or (b) to any extent contingent upon the obtaining of that tax advantage as a matter of law".

136. This test is hypothetical and objective.

137. The Appellant obtained a 'Management Fee' from the Scheme. This was the 15% deducted from the gross amounts due to Scheme Users.

138. I agree with HMRC that this Management Fee was the equivalent of a Scheme User paying a 'premium fee', therefore satisfying the Hallmark. The Management Fee was the cost of the Scheme User entering into and taking part in the Scheme. Other relevant factors are:

(1) It is geared as a percentage, and not a flat fee;

(2) I accept Officer Stamford's evidence that the 'plain vanilla' (sic) umbrella company would normally charge between £15 and £20 per week.

(3) 15% is a significant percentage;

(4) The same percentage being paid by each Scheme User, the percentage is not calculated with reference to, nor obviously referable to, the amount of work carried out by the Appellant in administering payroll for that individual Scheme User;

(5) It was paid entirely out of income generated entirely by the Scheme Users' economic activities;

(6) Being calculated with reference to the gross contract value of the Scheme User's services, then, as a matter of arithmetic, the greater the contract value, the greater the tax advantage;

(7) It remunerated the Appellant for the Scheme which it had put in place;

(8) The fact that the Scheme was intended to give rise to a tax advantage was the only reasonable explanation for the Appellant being able to retain such a sizeable fee.

139. The Appellant's description, and the fact that it did not describe this as a "Premium Fee" does not matter. I agree with the Tribunal's analysis in *HMRC v Hyrax Resourcing Ltd and others* [2019] UKFTT 0175 that the key issue is whether the ability to take a percentage cut is evidence that, instead of a cut, the Appellant would have been able to take a fee. Here, there would, economically speaking, have been no difference to the Appellant between its 15% cut and a fee. I agree with Judge Mosedale that the fact that the Appellant here was able to earn a 15% cut, being economically the same as a fee, is good evidence that it might reasonably be expected (the hypothetical, objective, test) that a promoter of substantially similar arrangements would be able to obtain a fee from the arrangements.

Tax advantage

140. This is a convenient point at which to consider the notion of 'tax advantage' in Part 7 FA 2004, because this notion pervades the legislation, and is one in relation to which the parties to this appeal fundamentally disagree.

141. "Advantage", in relation to any tax, means:

"(a) relief or increased relief from, or repayment or increased repayment of, that tax, or the avoidance or reduction of a charge to that tax or an assessment to that tax or the avoidance of a possible assessment to that tax,

(b) the deferral of any payment of tax or the advancement of any repayment of tax,

or

(c) the avoidance of any obligation to deduct or account for any tax":

see FA 2004 section 318(1).

142. HMRC's position is that there was a tax advantage, albeit HMRC point out that, for the purposes of Part 7 FA 2004, 'tax advantage" includes an advantage in relation to income tax, but does not include an advantage in relation to NICs. HMRC contend that the only benefit that the arrangements might be expected to enable any person to obtain are an income tax advantage

(being a relevant 'tax advantage') and "a benefit relating to the concomitant reduction in NICs associated with the income tax advantage" (not being a relevant 'tax advantage'). HMRC thereby encourage me to focus on the income tax effect.

The Contingent Remuneration Argument

143. The Appellant points me to Paragraphs 41 and 48 of the decision of the Supreme Court in *RFC 2012 Plc (in liquidation) (formerly The Rangers Football Club Plc) (Appellant) v Advocate General for Scotland (Respondent) (Scotland)* [2017] UKSC 45.

144. Lord Hodge JSC said:

> [41] As a general rule, therefore, the charge to tax on employment income extends to money that the employee is entitled to have paid as his or her remuneration whether it is paid to the employee or a third party. The legislation does not require that the employee receive the money; a third party, including a trustee, may receive it. While that is a general rule, not every payment by an employer to a third party falls within the tax charge. It is necessary to consider other circumstances revealed in case law and in statutory provisions which fall outside the general rule. Those circumstances include: (i) the taxation of perquisites, at least since the enactment of ITEPA, (ii) where the employer uses the money to give a benefit in kind which is not earnings or emoluments, and (iii) **an arrangement by which the employer's payment does not give the intended recipient an immediate vested beneficial interest but only a contingent interest**. As I shall seek to show, in the first circumstance, current legislation requires receipt by the employee; in the second circumstance, there are special rules for the taxation of such benefits; **and, in the third circumstance, where on a proper analysis of the facts there is only a contingent right, the taxable earnings or emoluments are not paid by the employer as remuneration until the occurrence of the contingency.**
>
> (emphasis added by me)
>
> [...]
>
> [47] A third circumstance is where the person entitled to receive the sums paid by the employer does not acquire a vested right in those sums until the occurrence of a contingency. This circumstance is illustrated by the case of Edwards v Roberts (1935) 19 TC 618, in which an employing company entered into an employment contract to give an employee, in addition to his salary, an interest in a "conditional fund", into which it would make annual payments from its profits, as an incentive for him to advance the company's interests. The employee was entitled to receive the annual income from the fund but had no right to receive any of the capital of the fund other than that which had been held in the fund for five years or more. The contract provided that he would receive the whole fund if he died while still employed by the company or on termination of his employment by the company in specified circumstances. But the contract also provided that the employee would cease to have any right in the conditional fund in circumstances which included his dismissal for misconduct. The trustees of the fund handed over to the employee the investments in the fund when he later resigned with the consent of the company.

The employee argued that the sums which the company had paid into the conditional fund formed part of his emoluments in each of the years in which they were paid into the fund. But the Court of Appeal (Lord Hanworth MR, Romer and Maugham LJJ) held that those sums did not constitute his emoluments in those years because he had only a conditional interest in them; instead the value of the investments transferred to him after his resignation were his emoluments in the tax year in which they were transferred to him. The payments in that year reflected his status as an employee at the time when the contingency was fulfilled. In that case the court distinguished the case of Smyth v Stretton (1904) 5 TC 36, in which Channell J had construed an employer's scheme, which provided for payments into a provident fund for payment to employees on their retirement, as providing for an agreed application of part of the employee's salary and held that the payments into the fund were therefore taxable as emoluments for services provided in the year of payment into the fund.

[48] The recent judgment of this court in *Forde and McHugh Ltd v Revenue and Customs Comrs* [2014] 1 WLR 810, which turned on the wording of provisions in the Social Security Contributions and Benefits Act 1992, is consistent with the approach in Edwards v Roberts in holding that sums paid by an employer, other than out of an employee's salary, which were to provide contingent benefits to an employee, did not fall within the charge to NICs on earnings before the occurrence of the contingency and the payment of the benefits. Otherwise, on HMRC's approach to the legislation in question, liability to pay NICs on earnings would have arisen both on payment of sums into the trust and on the later payments of the benefits (if any) from it. Mr Thornhill founds on the case, and in particular on its emphasis in para 17 of the judgment on what the employee received, to support his submission that the payment of remuneration cannot be the payment of emoluments unless the employee is entitled to receive it. But Forde and McHugh Ltd was not concerned with the payment of an employee's remuneration to a third party or the provision of that money to the employee without the interposition of any contingency. What the court said in para 17 of that case should be read in its context, which involved (a) the conferring of only a contingent benefit on the employee and (b) (if HMRC had been correct in their submission) the imposition of a double charge, levied both on the settlement of funds on to the pension trust and on receipt of the deferred remuneration from it. The case did not create or support the principle for which Mr Thornhill contends."

145. On a proper analysis of the facts, I do not consider that the arrangements in this appeal give the employee only "a contingent interest" or "right" (as opposed to "an immediate vested beneficial interest") of a kind where the taxable earnings are "not paid by the employer as remuneration until the occurrence of the contingency":

(1) The evidence is that the participants in the Scheme invariably enter into the Bonus Scheme, as part-and-parcel of the arrangements whereby they are being paid the National Minimum or Living Wage, and are paying a 15% management fee;

(2) If the 'contingency' is said to be the Bonus fund having a distributable surplus, there is little to no evidence of this ever happening, let alone happening consistently or routinely.

146. Paragraph 55.3 of the Appellant's Skeleton Argument says that "*The deferral of tax in respect of the advance bonus payments until they cease to be contingent is an incident of the plain vanilla nature of the transactions"*. But, if that is correct, then the deferral is a tax advantage within the plain and ordinary meaning of section 318(1)(b) anyway.

147. Even if I were wrong about that, in my view, there was a tax advantage within the proper meaning and effect of section 318(1):

(1) The Appellant was retaining 15% of the User's gross income, arising exclusively from that Scheme User's employment;

(2) Put conversely, in return for entering into the Scheme, the User was sacrificing 15% of the money which they were receiving in return for their work;

(3) It is significant that the Appellant has not pointed to any non-tax advantage said to arise to the taxpayer from entry into these arrangements, and no credible non-tax advantage is discernible from the contemporary scheme documentation;

(4) It is reasonable for the informed observer to conclude that the main purpose of the arrangement was to generate a tax advantage, within the proper meaning and effect of section 318(1)(a)(b) and/or (c);

(5) It does not matter that the expression 'tax advantage' was not one of the benefits listed in the marketing material. The question is one of substance, not one of form.

148. Indeed, to my eyes, and notwithstanding the Appellant's contingent remuneration argument, no different conclusion can realistically be identified. Put shortly, the Scheme was one which had, as its centrepiece, the proposition that the Scheme User would get - if even in the short term - to keep more of their income than they had done hitherto, notwithstanding the deduction of the Appellant's 15%.

149. That aim could only, objectively, be accomplished by the Scheme User paying less tax, whether now, or in the future:

(1) It does not matter that the word 'tax was not used in the promotional literature. The expressions 'best returns' / 'great returns' were explicable only in the context of paying less tax;

(2) In IPS Progression Ltd, Judge Staker analysed the situations (i) if payments of ILO Bonus were loans; (ii) if payments of ILO Bonis were in fact payments of salary, and concluded that each were a tax advantage, either (i) because a person is not paying the full amount of tax on the salary which they would otherwise have received, by entering into a scheme under which they receive an equivalent sum in an economically similar, but legally distinct, form of smaller salary together with loan amount which is not expected to be repaid; or (ii) a person does not pay the full amount of tax on the salary or bonus which they have received, by entering into a scheme under which PAYE tax is not deducted by the employer in respect of part of the salary or in respect of the bonus, and the untaxed element is described in the payslip in a way that obscures this fact.

(3) I agree with his analysis.

150. Therefore, if the Appellant is a promoter, a matter to which I shall return below, then the exception in Hallmark 8 will not apply, and Hallmark 8 will be met.

REGULATION 10 - STANDARDISED TAX PRODUCT HALLMARK

151. Regulation 10 Description 5: Standardised tax products relevantly provides:

> (1) Subject to Regulation 11, arrangements are prescribed if a promoter makes the arrangements available for implementation by more than one person and the conditions in paragraph (2) are met.
>
> (2) The conditions are that an informed observer (having studied the arrangements and having regard to all relevant circumstances) could reasonably be expected to conclude that -
>
> (a) the arrangements have standardised, or substantially standardised, documentation—
>
> (i) the purpose of which is to enable the a person to implement the arrangements;
>
> (ii) the form of which is determined by the promoter; and
>
> (iii) the substance of which does not need to be tailored, to any material extent, to enable a person to implement the arrangements.
>
> (b) a person implementing the arrangements must enter into a specific transaction or series of specific transactions;
>
> (c) the transaction or series of transactions is standardised, or substantially standardised, in form; and
>
> (d) either the main purpose of the arrangements is to enable a person to obtain a tax advantage or the arrangements would be unlikely to be entered into but for the expectation of obtaining a tax advantage.

152. In my view, this Hallmark is met:

(1) The arrangements had standardised, or substantially standardised, documentation;

(2) The form of the documents was determined by the Appellant, and was not tailored, to any material extent, to reflect the circumstances of the client;

(3) The purpose of the standardised documentation was to enable the implementation of the same arrangements in relation to each of the employees;

(4) I am satisfied, on the evidence, that the 'candidates' entered into the three contracts (being either three transactions, or a series of three transactions) and had to do so, in the sense that Scheme Users would not have been able to participate in the arrangements unless they were to sign each of the three documents.

153. In my view, the arrangements are a tax product because it would be reasonable for an informed observer (having studied the arrangements) to conclude that the main purpose of the arrangements was to enable a client to obtain a tax advantage.

REGULATION 18 - EMPLOYMENT INCOME PROVIDED THROUGH THIRD PARTY HALLMARK

154. HMRC contend that Regulation 18 Description 8 is met, meaning that arrangements are prescribed if Conditions 1 and 2 are met and Condition 3 is not met.

155. Condition 1 is met if the arrangements involve "any person taking a relevant step under ITEPA 2003 section 554C": 18(2)(b).

156. I consider that Condition is met:

(1) There is a relevant arrangement for rewarding employees under ITEPA s 554A;

(2) The Appellant is the employer, and, as such, is 'any person' for the purposes of Condition 1;

(3) The Appellant takes a 'relevant step', within the meaning of ITEPA s 554C(1)(a), namely the payment of a sum of money to a Scheme User, when the Appellant makes a payment pursuant to the Loan Agreement to the Scheme User.

157. Condition 2 is met if the main benefit, or one of the main benefits, of the arrangements is that an amount that would otherwise count as employment income under ITEPA s 554Z2(1) is reduced or eliminated.

158. I consider that Condition 2 is met:

(1) Section 554Z2(1) is the charging provision for ITEPA Part 7A. Where there is a 'relevant step', the value of that step counts as employment income;

(2) I agree with HMRC that the main benefit - or, at least, one of the benefits - under the Scheme was to reduce or eliminate a charge under section 554Z2(1) which would otherwise have counted as employment income.

159. Condition 3 is met if, by reason of at least one of [ITEPA] sections 554E to 554XA or regulations made under section 554Y, Chapter 2 of Part 7A does not apply.

160. I agree with Condition 3 is not met.

161. Accordingly, Regulation 18 Hallmark 8 is present.

REGULATION 19 - FINANCIAL PRODUCTS HALLMARK

162. This regulation provides that arrangements are prescribed if Condition 1 is met, and "it would be reasonable to expect an informed observer (having studied the arrangements and having regard to all relevant circumstances) to conclude that Condition 2 is met, and either Condition 3 or Condition 4 is met."

163. Here, HMRC argue that Conditions 1, 2 and 4 are met.

164. Condition 1 is that the arrangements include at least one financial product specified in regulation 20(1) (a 'specified financial product').

165. This is met:

(1) 'A loan' is a specified financial product: Regulation 20(1)(a);

(2) The arrangements (ostensibly) include the making of loans.

166. Condition 2 is that the main benefit, or one of the main benefits, of including a specified financial product in the arrangements is to give rise to a tax advantage.

167. This is met:

(1) It would be reasonable to expect an informed observer (having studied the arrangements and having regard to all relevant circumstances) to conclude that Condition 2 is met;

(2) The Loan Agreements provided payments to the Scheme Users, and were claimed not to give rise to taxable employment income;

(3) The Loan Agreements thereby provided a main benefit of the Scheme, which was to give rise to a tax advantage - see the discussion of 'tax advantage' above.

168. Condition 4 is that the arrangements involve one or more contrived or abnormal steps without which the tax advantage could not be obtained.

169. This is met:

(1) It would be reasonable to expect an informed observer (having studied the arrangements and having regard to all relevant circumstances) to conclude that Condition 4 is met;

(2) In my view, it would be reasonable for the informed observer to conclude that it is "contrived" to put in place arrangements whereby the majority of an employed person's recompense is to be received in the form of a loan, and not as salary.

(3) Further or in the alternative, it is "abnormal" to do so.

170. This Hallmark is met.

Do they "enable, or might be expected to enable, any person to obtain an advantage in relation to any tax that is so prescribed in relation to arrangements of that description": section 306(1)(b).

171. In my view, the answer to this question is yes:

(1) "Might be expected to enable" is a low threshold. It is certainly lower than "enable";

(2) It is quite clear to me, even from the briefest examination of the arrangements, that their intention was to avoid the incidence of income tax on earnings from employment;

(3) In *HMRC v Curzon Capital* [2019] UKFTT 0063 (TC), the Tribunal (Judge Kevin Poole) remarked (at Para [49]), in relation to the expression "might be expected to obtain":

> It seems to me that this question must be considered in the light of the policy behind the provisions in general, and that policy would be stultified if a detailed examination had to be carried out into the robustness of any scheme in order to form a view as to whether, from the point of view of some notional observer with particular attributes, it “might be expected to enable” a tax advantage to be obtained; the better view in a case such as the present is, I think, that if the arrangements are presented in such a way as to claim that a tax advantage will (or may) flow from using them, then unless the claim is clearly ridiculous, it can fairly be said that the arrangements “might be expected to enable” the advantage to be obtained."

I respectfully agree, and that is the position here;

(4) I have already considered the advantage in relation to tax.

Are they "such that the main benefit, or one of the main benefits, that might be expected to arise from the arrangements is the obtaining of that advantage": section 306(1)(c)

172. Yes:

(1) It is, in my view, beyond argument that one of the main benefits was the obtaining of a tax advantage;

(2) Even if (for the sake of argument) it were to be credibly shown that streamlining or administrative efficiency were a main benefit, then this would nonetheless still not be sufficient to carry these arrangements outside the scope of section 306(1)(c).

Was the Appellant a promoter?

173. Insofar as material, FA 2004 section 307 provides:

"(1) For the purposes of this Part a person is a promoter—

...

(b) in relation to notifiable arrangements, ... if, in the course of a relevant business, he is to any extent responsible for—

...

(ii) the organisation or management of the arrangements.

...

(2) In this section "relevant business" means any trade, profession or business which—

(a) involves the provision to other persons of services relating to taxation ...

174. In my view, and insofar as this is actually put in issue by the Appellant, the Appellant was a "promoter" in relation to those notifiable arrangements within the proper meaning and effect of FA 2004 s 307(1)(b):

(1) I agree with the Tribunal in *Curzon Capital Ltd* that the phrase 'services relating to taxation' is sufficiently broad in meaning to cover the activity of administering a tax avoidance scheme;

(2) This Appellant's position in this regard is materially indistinguishable from that of Progression. It had a relevant business; it was providing other persons with services relating to taxation; and it was organising and managing the arrangements.

175. As signposted above, that therefore leaves the Appellant within Hallmark 3.

CONCLUSION

176. For the above reasons, the Appellant's appeal fails on all Grounds.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

177. 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.

Dr Christopher McNall
TRIBUNAL JUDGE

Release date: 11th April 2024