TC02542

Appeal number: TC/2011/05222

INCOME TAX —Taxes Management Act 1970 ss. 8, 9A, 9ZA, 19A, 28A, 42, 43 and 50(6)—Appeal against amendment made by a closure notice—burden of proof—Whether amendment to an "unsolicited" tax return subject to the time limit in s.9ZA—Appeal allowed

FIRST-TIER TRIBUNAL
TAX CHAMBER

FARHANA WEERASINGHE **Appellant**

- and -

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

TRIBUNAL: JUDGE CHRISTOPHER STAKER
NICHOLAS DEE

Sitting in public in London on 3 December 2012

Mr JJK Chowdhury of JC Associates, Chartered Certified Accountants, for the Appellant

Mr CJ Brown for the Respondents

DECISION

Introduction

1. This is an appeal by Mrs Weerasinghe (the "Appellant") against a closure notice dated 17 March 2011 issued under s.28A(1) and (2) of the Taxes Management Act 1970 (the "TMA") in respect of the 2007-08 tax year. The Appellant's self-assessment showed that she had no tax to pay for that year. The closure notice shows that she was due to pay £31,811.20.

2. The background facts of the case are as follows. At material times, the Appellant had a service station and convenience store in Aberdeen, which commenced trading on 27 February 2007. HMRC issued no notice requiring a return for 2006-07, but a commercial substitute paper return was received by HMRC on 11 February 2008 (the "first 2006-07 return"). This showed a profit of £12,700 for the period 21 February 2007 to 31 March 2008, and a profit of £1,222.96 for the tax year to 5 April 2007. A second return for that year (the "second 2006-07 return"), provided by the Appellant's present representative, JC Associates, was received by HMRC on 13 January 2011 (although the due date for an electronic return for that year was 31 January 2009). This showed a revised accounting period, 21 February 2007 to 31 March 2007, and a loss of £3,976. There was no notice of enquiry into the return for 2006-07.

3. HMRC treated the second 2006-07 return as an amendment to the first 2006-07 return. In fact, the Appellant's case is that her new tax advisers filed the second return in ignorance of the fact that the first return had been filed by her previous advisers.

4. Subsequently, HMRC issued a notice requiring a return for 2007-08. This return was submitted electronically on 13 January 2011, covering the year to 31 March 2008. On 25 January 2011, HMRC gave a notice of enquiry into this return. On 17 March 2011, HMRC issued the closure notice against which the Appellant now appeals.

5. There were various procedural developments that are no longer directly material to the appeal, and which it is unnecessary to set out in detail. Following a hearing before the Tribunal on 6 March 2012, the Tribunal directed that this appeal was to stand as an appeal against the closure notice dated 17 March 2011 in respect of the 2007-08 tax year.

6. The Appellant's case is in essence as follows. Her affairs were mishandled by her previous tax advisers, who lost all of her papers in respect of both the 2006-07 and 2007-08 tax years. When the Appellant came to her new tax advisers, JC Associates, they were unaware that her previous advisers had already lodged a tax return for 2006-07. That is why they issued the second tax return received by HMRC on 13 January 2011, at the same time as the tax return for 2007-08. Because the previous tax advisers had lost all of the Appellant's papers, the tax returns for both years were

necessarily based on estimated figures. The Appellant claims to be entitled to carry forward to 2007-08 the losses of £3,976 stated in the second 2006-07 return.

7. The HMRC case is in essence as follows. The closure notice determined that the Appellant's profit for 2007-08 was £93,600, on which the Appellant is due to pay tax of £31,811.20. In a letter dated 26 March 2012, HMRC has since indicated that it would be prepared to accept lower figures such that the Appellant's profit for 2007-08 is £54,288, on which the Appellant is due to pay tax of £15,693.28. HMRC requests the Tribunal to find that the amount of the 2007-08 self assessment is to be determined in accordance with the latter lower figures. In accordance with well-established case law (*Bi-Flex Caribbean Limited v. The Board of Inland Revenue* (1990) 63 TC 515, 522 ("*Bi-Flex Caribbean*")), the onus rests with the Appellant to show that the Appellant's estimate or some other alternative is to be preferred to the HMRC figure, and the Appellant has not discharged this burden. The Appellant cannot carry forward the claimed losses of £3,976 from 2006-07 return, because the 2006-07 return which contained those losses was filed outside the time limit for amending the first 2006-07 return.

The relevant legislation

8. Section 8 of the TMA relevantly provides:

> (1) For the purpose of establishing the amounts in which a person is chargeable to income tax and capital gains tax for a year of assessment, and the amount payable by him by way of income tax for that year, he may be required by a notice given to him by an officer of the Board—
>
> (a) to make and deliver to the officer, a return containing such information as may reasonably be required in pursuance of the notice, and
>
> (b) to deliver with the return such accounts, statements and documents, relating to information contained in the return, as may reasonably be so required.
>
> ...

9. Section 9A of the TMA relevantly provides:

> (1) An officer of the Board may enquire into a return under section 8 or 8A of this Act if he gives notice of his intention to do so ("notice of enquiry")—
>
> (a) to the person whose return it is ("the taxpayer"),
>
> (b) within the time allowed.
>
> (2) The time allowed is—
>
> (a) if the return was delivered on or before the filing date, up to the end of the period of twelve months after the day on which the return was delivered;
>
> ...

10. Section 9ZA of the TMA relevantly provides:

> (1) A person may amend his return under section 8 or 8A of this Act by notice to an officer of the Board.
>
> (2) An amendment may not be made more than twelve months after the filing date.
>
> (3) In this section "the filing date", in respect of a return for a year of assessment (Year 1), means–
>
> (a) 31st January of Year 2, or
>
> (b) if the notice under section 8 or 8A is given after 31st October of Year 2, the last day of the period of three months beginning with the date of the notice.

11. Section 19A of the TMA (since repealed with savings provisions) relevantly provided:

> (1) This section applies where an officer of the Board gives notice of enquiry under section 9A(1) or 12AC(1) of this Act to a person ("the taxpayer").
>
> (2) For the purpose of the enquiry, the officer may at the same or any subsequent time by notice in writing require the taxpayer, within such time (which shall not be less than 30 days) as may be specified in the notice—
>
> (a) to produce to the officer such documents as are in the taxpayer's possession or power and as the officer may reasonably require for the purpose of determining whether and, if so, the extent to which —
>
> (i) the return is incorrect or incomplete, or
>
> (ii) in the case of an enquiry which is limited under section 9A(5) or 12AC(5) of this Act, the amendment to which the enquiry relates is incorrect, and
>
> (b) to furnish the officer with such accounts or particulars as he may reasonably require for that purpose.
>
> ...

12. Section 28A of the TMA relevantly provides:

> (1) An enquiry under section 9A(1) of this Act is completed when an officer of the Board by notice (a "closure notice") informs the taxpayer that he has completed his enquiries and states his conclusions.
>
> In this section "the taxpayer" means the person to whom notice of enquiry was given.
>
> (2) A closure notice must either—
>
> (a) state that in the officer's opinion no amendment of the return is required, or

(b) make the amendments of the return required to give effect to his conclusions.

(3) A closure notice takes effect when it is issued.

...

13. Section 31 of the TMA relevantly provides:

(1) An appeal may be brought against—

...

(b) any conclusion stated or amendment made by a closure notice under section 28A or 28B of this Act (amendment by Revenue on completion of enquiry into return),

...

14. Section 42 of the TMA relevantly provides:

(1) Where any provision of the Taxes Acts provides for relief to be given, or any other thing to be done, on the making of a claim, this section shall, unless otherwise provided, have effect in relation to the claim.

...

(2) Subject to subsections (3) to (3ZB) below, where notice has been given under section 8, 8A or 12AA of this Act, a claim shall not at any time be made otherwise than by being included in a return under that section if it could, at that or any subsequent time, be made by being so included.

...

15. Section 43 of the TMA, as in force at the material time, relevantly provides:

(1) Subject to any provision of the Taxes Acts prescribing a longer or shorter period, no claim for relief in respect of income tax or capital gains tax may be made more than 5 years after the end of the year of assessment to which it relates.

...

16. Section 50 of the TMA relevantly provides:

(6) If, on an appeal notified to the tribunal, the tribunal decides—

(a) that, the appellant is overcharged by a self-assessment;

... or

(c) that the appellant is overcharged by an assessment other than a self-assessment,

the assessment or amounts shall be reduced accordingly, but otherwise the assessment or statement shall stand good.

(7) If, on an appeal notified to the tribunal, the tribunal decides—

(a) that the appellant is undercharged to tax by a self-assessment …

... or

(c) that the appellant is undercharged by an assessment other than a self-assessment,

the assessment or amounts shall be increased accordingly.

The evidence and submissions

17. HMRC does not dispute the estimate of the turnover used in the 2007-08 return. Further, the following matters are not in dispute. The Appellant had no entitlement to the gross fuel sales revenue. The figure for turnover represents commission on fuel sales (rather than the gross value of fuel sold) and sales from the convenience store. The expenditure claimed as a deduction in arriving at the taxable profit/loss is estimated. No records relating to the expenditure incurred in 2007-08 are available. If the amendment to the 2006-07 return was made within the time allowed it is accepted by HMRC that the consequent claim for the loss to be carried forward was made within the time allowed.

18. At the hearing, Mr Chowdhury of JC Associates said that the Appellant had come to JC Associates in August 2010. Her previous accountant had lost all her papers. He sought the assistance of the previous accountants, but they were unable to provide any. HMRC have not been able to provide any information that would assist in completing correct returns for the years in question. Mr Chowdhury described it as a case of "*tabula rasa*". He said that in the absence of any documents or figures for the business, the Appellant had relied on accounts of NL Management Limited for the period 7 April 2009 to 30 April 2010. The business of NL Management Limited, of which the Appellant was a director, was similar to that of the Appellant's business in 2007-08, involving the operation of a single service station and convenience store. NL Management Limited commenced trading on 7 April 2009. The accounts for NL Management Limited showed a turnover of £436,676, a gross profit of £87,104, other income of £16,646, expenditure of £106,462, and a net loss of £2,813. Mr Chowdhury confirmed that the turnover of £436,676 consisted of sales of items in the convenience store, and commission on sales of petrol. Mr Chowdhury said that there simply was no other information on which a 2007-08 tax return for the business could be based. In relation to the claimed loss carried forward from 2006-07, Mr Chowdhury submitted that HMRC could not accept the profit from that tax year without simultaneously accepting the loss.

19. The case submitted for HMRC was as follows.

20. In relation to 2007-08, the Appellant had no records, and all figures were estimates which are inherently unreliable. The Appellant had therefore not fulfilled her duty under s.34 TMA. There were no records to substantiate any of the Appellant's figures. It is acknowledged that the HMRC figures are not any more satisfactory, but in accordance with the established case law (*Bi-Flex Caribbean*), the onus rests with the Appellant to show that the Appellant's estimate or some other alternative is to be preferred to the HMRC figure, and the Appellant has not

discharged this burden. In particular, the Appellant has responsibility to substantiate expenditure claimed as a deduction. The standard of proof is the ordinary civil standard of a balance of probabilities.

21. JC Associates on behalf of the Appellant acknowledge that all their figures are estimated, and that it is not possible to give actual figures as the prime records have been misplaced or lost. The HMRC proposal is set out in the HMRC letter of 26 March 2012. That letter states as follows: *"As you are aware I took the net profit as being 20% of the turnover returned which was based on the initial information provided at the meetings and subsequent discussions. I have undertaken further research into this type of trade and have ascertained that as an average the net profit based on the level of turnover you have indicated averages out at 11.6%. By applying this percentage to the years 2007 and 2008 this gives a revised net profit of £4,466 and £54,288 respectively."*

22. As to the "further research" referred to in this passage of the 26 March 2012 letter, the HMRC submissions were as follows. The letter uses figures derived from a sample of 1,157 self-assessment returns for 2007-08. HMRC acknowledges, for purposes of the hearing of this appeal, that the basis of selection of this sample is not known, other than that it aimed to cover at least 1,000 returns, that the information derived from this was not intended to represent anything more than a guide to typical figures, and that the starting point of 11.6% relates to gross fuel sales, which is consequently not compatible with the figure of turnover accepted by both parties in this appeal, which is based on commission on gross sales.

23. At the hearing, Mr Brown said that this "further research" was a survey specifically commissioned for purposes of this case, and acknowledged that this survey was not included in the material before the Tribunal. No explanation could be provided at the hearing for why the survey had not been provided by the Tribunal.

24. It was acknowledged that the figures used in the 2007-08 return were similar to the figures in the return for NL Management Limited, which showed a turnover of £468,000, compared with the turnover in the Appellant's 2007-08 return (which is not disputed by HMRC) of £436,676.

25. HMRC's reasons for rejecting the accounts of NL Management Limited as a basis for calculating figures for the Appellant's 2007-08 tax return were set out in a letter dated 13 September 2012, which states amongst other matters as follows: *"As previously stated I cannot see how using records for a limited company can be used to accurately reflect the trading position of a sole proprietor. This is all the more difficult given that you are using results for 2009/10 to arrive at figures for 2007/08 and complicated further given that the business had changed completely. During 2007/08 Mrs Weerasinghe operated up to three different petrol stations including the A90 station for two months. By 2009/10 only the A90 station was left*".

26. In relation to the loss carried forward from 2006-07, the HMRC submissions were as follows.

27. In general terms, HMRC do not dispute the ability to make a claim for a loss carried forward from the previous tax year. The position in the present case is complicated by the fact that HMRC never issued a notice under s.8 TMA requiring a return for 2006-07 to be submitted. The HMRC practice in respect of such "unsolicited" tax returns is to treat the return as if it were in response to a notice under s.8 TMA, and as if it were due on the later of the earliest due date for the year or, if later, the date of receipt. HMRC acknowledge that apart from s.1 TMA, which gives the Commissioners a general power of care and administration, there is nothing whatsoever in the legislation to support this approach.

28. If, in accordance with this HMRC practice, the unsolicited first 2006-07 return is treated as if it were a return submitted in response to a notice under s.8 TMA, then in accordance with s.9ZA(2) TMA, the Appellant had a time limit of 12 months after the filing date of 11 February 2008 to amend that return. On this approach, the second return for 2006-07 should be treated as an amendment to the original 2006-07 return. As the second 2006-07 return was submitted on 13 January 2011, that is, more than 12 months after 11 February 2008, the amendment is outside the time limit and cannot be given effect. Therefore, the losses which were only claimed in the second 2006-07 return cannot be carried forward to 2007-08.

29. On the other hand, if the unsolicited first 2006-07 return is *not* treated as if it were a return submitted in response to a notice under s.8 TMA, then the second 2006-07 return cannot be treated as an amendment to the first 2006-07 return, because there was no return to amend. For the same reason, the second 2006-07 return cannot be an amendment to a return. Consequently there can be no loss established by the return.

30. HMRC submit that it is not possible under the HMRC practice to establish a loss and consequent claim to carry forward without making a return, since s.42(2) TMA precludes a claim outside a return where there is a notice under s.8. However, HMRC concedes that there is no such obstacle where there is no notice under s.8.

31. Section 43 TMA provides a time limit of 5 years from 31 January after the end of the year of assessment for making a claim under s.42. In relation to 2006-07, this time limit would be 5 years from 31 January 2008, that is, 31 January 2013, such that the second 2006-07 return submitted on 13 January 2011 would be in time, if it were treated as a claim under s.42 TMA.

32. However, HMRC submit that the second 2006-07 return should not be treated as a claim under s.42 TMA, as that document purported to be a return, or more strictly an amendment to a return. It was not the Appellant's intention to submit a distinct and separate loss claim and there is no evidence to support such an assertion. HMRC would be placed at a disadvantage if a document were treated as something other than that which both parties regarded it as being. In effect, the time limit for the Appellant to establish the loss would be extended by several years, while the time limits for HMRC to make a discovery assessment or to challenge the quantum of the loss would remain the same. It would also place the Appellant in a more advantageous position than a person submitting a return in response to a s.8 notice, which would seem to be an anomalous outcome.

Findings

33. The Tribunal has considered all of the material before it and all of the arguments of the parties. Failure to mention particular items or details of the evidence does not mean that the Tribunal has not considered them.

The claim to carry forward the loss from 2006-07

34. The HMRC submission is that the unsolicited first 2006-07 return should be treated as if it was a return filed in response to a notice under s.8 TMA. However, it is common ground that no notice was issued under s.8 TMA. It is a fact that the unsolicited first 2006-07 return was not filed in response to such a notice.

35. Section 118(1) TMA defines "return" as follows: "'*return' includes any statement or declaration under the Taxes Acts*". There is nothing in this definition to indicate that the expression "return" generally is confined in its meaning to returns filed in response to a notice under s.8 TMA.

36. Section 9ZA TMA applies, as is indicated in its sub-section (1), to a "return under section 8 or 8A of this Act". The express statement that it applies to such returns necessarily implies that it does *not* apply to returns that are *not* under section 8 or 8A TMA. There is no statutory provision that would justify treating a return that was not submitted under ss.8 or 8A as if it were a return filed under one of those provisions. The Tribunal therefore finds that the time limit in s.9ZA did not apply to any amendment to the first 2006-07 return.

37. The Tribunal has not been pointed to any statutory provision dealing with "unsolicited returns" (that is, returns filed voluntarily, where there has been no notice to file issued by HMRC). Indeed, the HMRC case is that there are none.

38. However, s.7(1) TMA provides that:

> (1) Every person who—
>
> (a) is chargeable to income tax or capital gains tax for any year of assessment, and
>
> (b) has not received a notice under section 8 of this Act requiring a return for that year of his total income and chargeable gains,
>
> shall, subject to subsection (3) below, within six months from the end of that year, give notice to an officer of the Board that he is so chargeable.

39. If a person files an unsolicited tax return for a particular year indicating that he or she is chargeable to income tax or capital gains tax for that year, it would seem logical to treat the unsolicited return as a notice under s.7(1). Indeed, given the broad definition of "return" in s.118(1), a notice of chargeability under s.7(1) would by definition be a kind of return, albeit not a return under s.8. The Tribunal sees no reason in logic why a notice of chargeability under s.7(1) could not be submitted in the same form as a return under s.8.

40. Conversely, if a person files an unsolicited tax return for a particular year indicating that he or she has made a loss in that year, it would seem logical to treat the unsolicited return as a claim under s.42 TMA. HMRC has not disputed that the Appellant could have made a claim under s.42 in respect of the claimed loss in 2006-07. HMRC argues only that the second 2006-07 return should not be treated as if it were such a claim, because it does not purport to be such a claim, but rather, purports to be a return.

41. However, the Tribunal considers that the second 2006-07 return could be both a return (bearing in mind the broad definition of "return" in s.118(1) TMA) as well as a claim under s.42. As HMRC point out, s.42(2) TMA says that a claim "shall not at any time be made otherwise than by being included in a return under [ss.8, 8A or 12AA] if it could, at that or any subsequent time, be made by being so included". However, this provision does not *prevent* a claim from being made in a return, even if the return could not have been made under ss.8, 8A or 12AA. In the present case, it was not possible for a return for 2006-07 to be filed under any of those provisions, because no notice under any of those provisions had been issued by HMRC. However, the Tribunal considers that it was still open to the Appellant to make a claim under s.42 by filing a return (as defined in s.118(1)). Indeed, again, given the broad definition of "return" in s.118(1), a claim under s.42 would by definition be a kind of return, and the Tribunal sees no reason in logic why it could not be submitted in the same form as a return under s.8.

42. In the present case, at the time that the Appellant filed the second 2006-07 return, there had previously already been submitted the first 2006-07 return. HMRC has not disputed that the Appellant could, by filing the second return, amend the first. The HMRC objection is rather that the time limit under s.9ZA for making any such amendment had passed by the time that the second 2006-07 return had been filed. For the reasons above, the Tribunal finds that the time limit in s.9ZA is not applicable. HMRC have not disputed that the second return was filed within the time limit under s.43. HMRC has not pointed to any other time limit that would be potentially applicable.

43. The Tribunal is not persuaded that this interpretation would unduly prejudice HMRC, or that the result would be anomalous. In any event, the Tribunal is satisfied that it is clear from the wording of the legislation that the time limit in s.9ZA TMA is inapplicable in this case, given that the first return was not submitted under s.8 TMA, and the Tribunal must give effect to the clear wording of the statute. The only other statutory deadline identified by HMRC has been complied with.

44. HMRC have accepted that if the amendment to the 2006-07 return was made within the time allowed, the consequent claim for the loss to be carried forward was made within the time allowed (paragraph 17 above). The Tribunal therefore finds that the Appellant was entitled to carry forward the loss from 2006-07 in the second 2006-07 return.

Appeal against closure notice for 2007-08

45. The closure notice was issued pursuant to s.28A(2) of the TMA, which states that at the end of an enquiry into a tax return, a closure notice must make the amendments to the tax return required to give effect to the officer's conclusions.

46. In relation to the tax year in question, the Appellant has provided neither HMRC nor the Tribunal with records in relation to 2007-08. The Appellant's case is that the records were lost by a previous tax adviser. The Appellant freely admits that the figures in the 2007-08 return are estimated figures.

47. The Tribunal finds that in such circumstances, the officer conducting the enquiry is not required to accept the Appellant's unsupported figures. Rather, in reaching "conclusions" at the end of an "enquiry" pursuant to ss.9A and 28A of the TMA, the officer must use his or her best judgement in determining the correct amount of tax.

48. In an appeal against a closure notice giving effect to such best judgment "conclusions" of an officer, the burden of proof is on the taxpayer to establish the correct amount of tax due. This is in accordance with the principles established (in different contexts) in *Bi-Flex Caribbean Limited*; *Pegasus Birds Ltd. v Customs and Excise* [2004] EWCA Civ 1015; and *Khan v Revenue and Customs* [2006] EWCA Civ 89 ("*Khan*") at [68]-[76], [78]-[83]. In such an appeal, the officer's conclusions "are *prima facie* right and remain right until the taxpayer shows that they are wrong and also shows positively what corrections should be made in order to make the assessments right or more nearly right" (*Khan* at [69], quoting *Bi-Flex Caribbean*).

49. The difficulty for HMRC is that in the present case, there is no evidence as to the basis for the figures in the HMRC best judgment assessment. The Tribunal was told that the HMRC figures were based on a survey of 1,157 self-assessment returns for 2007-08. However, this survey was not in evidence before the Tribunal, and no explanation could be provided at the hearing for why it was not in evidence. Furthermore, HMRC acknowledged that this survey, which the Tribunal had not seen, was subject to the shortcomings referred to at paragraph 22 above.

50. On the other hand, the Appellant provided a positive basis for the figures in the Appellant's tax return, namely the accounts of NL Management Limited for 2009-10. The accounts of NL Management Limited are also subject to shortcomings as a basis for estimated figures for the Appellant's 2007-08 tax return. The accounts are unaudited. Nevertheless, they are accounts that have been prepared by a professional accountant, and weight can therefore be placed on them. HMRC acknowledges that the figures used in the 2007-08 return were similar to the figures in the return for NL Management Limited (paragraph 24 above). Furthermore, the Tribunal is not persuaded by HMRC's reasons for rejecting these accounts as a basis for calculating figures for the Appellant's 2007-08 tax return (paragraph 25 above). The Tribunal does not see the significance of the fact that one business was run by a sole proprietor while the other was run by a limited company. The Tribunal is not satisfied on the evidence that the Appellant's business had "changed completely". Both businesses consisted of a petrol station and convenience store, in similar geographic locations. While the accounts are for a different time period, the Tribunal does not consider that

the percentage of profit to turnover would be expected to change significantly between 2007-08 and 2009-10. HMRC have not disputed the amount of turnover claimed by the Appellant for 2007-08, so that the main issue in dispute is what is a reasonable level of profit to turnover.

51. On its consideration of the evidence as a whole, the Tribunal finds that the basis of calculation of the figures in the Appellant's 2007-08 tax return is more reliable than the basis of calculation of the figures in the HMRC closure notice. Whatever the shortcomings of the former, in this appeal there was effectively no evidence at all before the Tribunal of the latter.

52. In the circumstances, the Tribunal is satisfied that the Appellant has shown "what corrections should be made in order to make the assessments right or more nearly right". Accordingly, the appeal is allowed.

Conclusion

53. For the reasons above, the Tribunal finds that the appeal is allowed. The Tribunal finds that the Appellant's tax liability for 2007-08 is as stated in the Appellant's return for that tax year.

54. 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 STAKER
TRIBUNAL JUDGE

RELEASE DATE: 13 February 2013