TC02731

Appeal number: TC/2012/03653

INCOME TAX – registered pension scheme –Part 4 Finance Act 2004 – unauthorised employer payment – scheme sanction charge on scheme administrator – whether charge should be discharged pursuant to section 268 or otherwise set aside – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

STEPHEN CHARLES WILLEY **Appellant**

- and -

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

TRIBUNAL: JUDGE JONATHAN CANNAN
MR ALAN REDDEN FCA

Sitting in public at Bradford on 26 March 2013

The Appellant appeared in person

Mr Clarke of HM Revenue & Customs appeared for the Respondents

DECISION

Background

1. The appellant is the scheme administrator of the Hesco Military Products Limited Directors' Pension Scheme ("the Scheme"). He appeals against a decision of the respondents to assess him to a scheme sanction charge pursuant to regulations made under section 255 Finance Act 2004 ("FA 2004"). As appears below, the sum in issue is £15,000.

2. The assessment under appeal arises out of an unauthorised payment made by the Scheme in relation to one of its members, a Mr Rory Fordyce. There is no dispute that there was an unauthorised payment. The appellant contends however that the respondents ought to discharge his liability to the scheme sanction charge pursuant to section 268 FA 2004 on the ground that it is not just and reasonable that he should be liable for the charge. In the alternative he contends that the sum assessed is wholly unjust and unreasonable and ought to be set aside.

3. There is little if any dispute in relation to the facts. Before setting out our findings of fact we consider the statutory framework. All references are to FA 2004 save where otherwise noted.

Statutory Framework

4. It is important for the purposes of this decision to consider the context in which the FA 2004 introduced significant changes to the tax treatment and regulation of pension schemes. It replaced various different regimes applying to different types of pension products with a single regime for registered pension schemes. The new regime was introduced with effect from 6 April 2006, otherwise known as "A-day".

5. Prior to 6 April 2006 compliance with the various rules and regulations applying to pension schemes was via a pensioneer trustee. Pensioneer trustees have now been replaced. Section 270 FA 2004 requires every registered pension scheme to have a "scheme administrator" who is appointed in accordance with the rules of the scheme. The scheme administrator is responsible for discharging certain functions imposed by the FA 2004. Those functions include various accounting and reporting requirements.

6. FA 2004 contains a prescriptive regime in relation to the payments that registered pension schemes are authorised to make and the consequences of unauthorised payments. The rationale is to ensure that the tax reliefs and exemptions in respect of contributions to registered pension schemes are available only to the extent that the pension schemes genuinely make provision for the benefit of members on retirement, subject to various statutory limits. The compliance regime and reporting requirements set out in FA 2004 are directed towards the same end.

7. The only payments which a registered pension scheme is authorised to make to a person who is or has been a member of the pension scheme are those specified in section 164. Similar restrictions apply to payments to a sponsoring employer which are restricted to those specified in section 175. Any payment to a sponsoring employer which is not authorised by section 175 is known as an "unauthorised employer payment".

8. Section 175 provides that "authorised employer loans" are authorised payments for these purposes. Section 179 provides that a loan is an authorised employer loan if, broadly:

(1) The amount loaned does not exceed 50% of the market value of the assets of the pension scheme,

(2) The loan is secured by a charge of adequate value,

(3) The repayment terms provide that:

(a) The rate of interest is not less than a rate prescribed by HMRC,

(b) The loan repayment date is not more than 5 years after the date on which the loan was made,

(c) Certain minimum repayments are made during the period of the loan.

9. The old regime for tax relief on pensions included a similar restriction on loans which were not for a fixed term, at less than a commercial rate of interest and not evidenced in writing - *Retirement Benefits Scheme (Restriction on Discretion to Approve)(Small Self-administered Schemes) Regulations 1991*.

10. Where an unauthorised employer payment is made there is a charge to income tax pursuant to section 208 at the rate of 40% on the person to whom the payment is made.

11. An unauthorised payment, including an unauthorised employer payment, may also be a "scheme chargeable payment" pursuant to section 241 unless it is exempted by that section. Where there is a scheme chargeable payment, section 239 provides as follows:

"(1) *A charge to income tax, to be known as the scheme sanction charge, arises where in any tax year one or more scheme chargeable payments are made by a registered pension scheme.*

(2) The person liable to the scheme sanction charge is the scheme administrator."

12. The rate of the scheme sanction charge is 40% of the scheme chargeable payment. Section 240 provides that this is reduced if an unauthorised payment charge has been paid. The amount of the reduction is the lesser of (1) 25% of the scheme chargeable payment, and (2) the amount of tax paid under section 208.

13. Section 268 provides for relief for the scheme administrator from the scheme sanction charge in relation to unauthorised employer payments as follows:

> "*(5) The scheme administrator may apply to the Inland Revenue for the discharge of the scheme administrator's liability to the scheme sanction charge in respect of a scheme chargeable payment on the ground mentioned in subsection …(7).*
>
> …
>
> *(7) In any other case, the ground is that –*
>
> *(a) the scheme administrator reasonably believed that the unauthorised payment was not a scheme chargeable payment, and*
>
> *(b) in all the circumstances of the case, it would not be just and reasonable for the scheme administrator to be liable to the scheme sanction charge in respect of the unauthorised payment.*"

14. In broad terms the effect of these provisions in the case of an unauthorised employer payment is a charge to income tax at 40% on the employer and a charge to income tax at 40% on the scheme administrator. If the employer pays the tax charged, the charge on the scheme administrator is reduced to 15%. The scheme administrator can apply to be discharged from liability under section 268.

15. There are various tax charges which can apply when funds are paid out of a registered pension scheme, either as authorised or unauthorised payments. We did not have a comprehensive analysis of those tax charges but we were referred to the fact that in certain circumstances there is a tax charge at a rate of 55% on payments out of a scheme. For example on death or where the lifetime allowance is exceeded. Both parties agreed that the rate of these charges is a broad brush method to recover the tax relief on contributions and the tax-free growth of the fund.

16. *The Registered Pension Schemes (Provision of Information) Regulations 2006* require the scheme administrator to report to HMRC amongst other things any unauthorised payments in a tax year. This report, known as an "event report", must be delivered to HMRC on or before 31 January following the end of the tax year.

17. Neither party suggested to us that there was any other relevant reporting requirement on the part of the scheme administrator. We note section 254 makes provision for the scheme administrator to make a quarterly return where tax is chargeable on the scheme administrator. However that requirement does not appear to extend to tax chargeable pursuant to section 208 on the recipient of an unauthorised payment, nor to the scheme sanction charge.

18. The assessment in the present case was made pursuant to regulations made under section 255. It is expressed to be an assessment to tax and as such the right of appeal arises under *section 31(1)(d) Taxes Management Act 1970* ("TMA 1970"). The jurisdiction of the tribunal is set out in section 50(6) TMA 1970 as follows:

"*If, on an appeal notified to the tribunal, the tribunal decides –*

(a)…

(b)…

(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."

Findings of Fact

19. We heard oral evidence from the appellant and we were also provided with a bundle of documentary evidence. We make the following findings of fact.

20. The appellant is a chartered accountant and a chartered tax adviser. Until the Finance Act 2004 provisions came into effect on 6 April 2006 he acted as a pensioneer trustee for approximately 100 different pension schemes. When the new regime came into effect the role of pensioneer trustee disappeared. He took the view that he would take on the role of scheme administrator without the burdens associated with being a trustee. In particular he did not want to expose himself to potential liability as a trustee for breach of trust. Liability for breach of trust by pensioneer trustees had been limited under the old regime. He therefore became the scheme administrator for the existing schemes where he had been the pensioneer trustee and for new schemes set up after 5 April 2006. He did not realise at that time the extent of the potential liability of a scheme administrator.

21. In June 2006 the appellant advised and set up a registered pension scheme for Hesco Military Products Limited ("the Company"). A bank account was opened for the Scheme and shortly afterwards the Company paid a sum of £600,000 into the bank account. The appellant was the scheme administrator but not a trustee of the Scheme. The Scheme's bank account was operated solely by the trustees without reference to the appellant. There was no provision for the appellant to receive information in relation to the operation of the bank account. He was not a signatory on the bank mandate.

22. The Company had three directors. Each was notionally entitled to one third of the assets in the Scheme and was a trustee of the Scheme.

23. On 7 August 2006 the Scheme made a payment of £100,000 to the Company. The appellant was not aware that this payment had been made until later. We describe the circumstances in which he became aware of the payment in more detail below. In August 2006 the Appellant was not fully aware of his reporting requirements or the extent of his potential liability as scheme administrator. Nor was he aware of the approach the respondents would take to reporting failures by a scheme administrator

or to the enforcement of charges against a scheme administrator under the new regime.

24. The payment of £100,000 was notionally allocated against Mr Fordyce's entitlement under the Scheme. The trustees of the Scheme including Mr Fordyce intended that the payment to the Company was a loan. The Company in turn paid the £100,000 to Mr Fordyce's company, Mobyco Limited, again by way of loan. There were no written loan agreements and no security for the loans. The trustees of the Scheme were not aware of the conditions that had to be satisfied before a loan could be made to the Company. It is common ground that the loan was an unauthorised employer payment.

25. In late 2006 the appellant became aware of the loan to the Company. At this stage Mr Fordyce and the other shareholders in the Company had fallen out and were negotiating Mr Fordyce's exit. As part of these negotiations Mr Fordyce assured the trustees of the Scheme that he would establish a new self administered pension scheme. It was intended that this would receive an assignment of the benefit of the loan by the Scheme to the Company together with his notional share of the balance of the Scheme assets.

26. During 2007 the appellant was in contact with Mr Fordyce with a view to assisting him in setting up a pension scheme for Mobyco Limited. In the event, Mr Fordyce did not proceed to set up a pension scheme for Mobyco. On 7 October 2008 the Company required Mr Fordyce to make arrangements for the repayment of the loan.

27. At all material times the Company operated a successful business. In the year ended 30 June 2006 it made a net profit after tax of £2,034,092. The equivalent profit for the year ended 30 June 2007 was £3,881,474. It had cash at bank on 30 June 2006 of £821,206 and on 30 June 2007 it had cash at bank of £2,450,059.

28. The appellant ought to have delivered an event report referring to the unauthorised payment in 2006-07 by 31 January 2008. No such report was provided. The appellant was not aware of his reporting requirements in that regard. He had delegated day to day control of the schemes for which he was the scheme administrator to another individual.

29. On 1 July 2010 HMRC commenced an enquiry into various aspects of the Scheme, including the loan by the Scheme to the Company. The appellant dealt with that enquiry in his position as the scheme administrator. In relation to the loan he provided the information described above, together with supporting correspondence.

30. On 7 December 2010 the Company repaid the loan to the Scheme.

31. HMRC concluded that the loan to the Company was an unauthorised employer payment and a scheme chargeable payment. On 10 March 2011 HMRC issued a notice of assessment to the appellant for £40,000 in respect of the scheme sanction charge. On 15 June 2011 HMRC issued a notice of assessment to the Company for £40,000 in respect of the unauthorised payments charge.

32. On 3 July 2012 the Company paid the £40,000 unauthorised payment charge. This had the effect of reducing the scheme sanction charge on the appellant to £15,000. We understand that the Scheme has also paid the scheme sanction charge but we were told that there remains a possibility that the Scheme will seek re-imbursement from the appellant. We are not aware as to the terms on which the appellant may be entitled to any indemnity out of the assets of the Scheme for liabilities he incurs as scheme administrator.

Decision

33. The appellant accepts, as he must, that the loan made by the Scheme to the Company was an unauthorised employer payment. In particular there was no security and the terms did not satisfy section 179.

34. The appellant relies on the following factors in support of his submission that the scheme sanction charge should be discharged:

(1) The loan was made shortly after A-day and the appellant, together with other pensions professionals, was unfamiliar with the new regime. HMRC's guidance at that time was incomplete.

(2) If the appellant had been made aware of the Scheme's intention to make a loan he would have advised the Scheme of the potential consequences.

(3) As soon as the appellant became aware of the loan he took steps to assist the Scheme to correct the position by transferring the loan to a new pension scheme to be set up for Mobyco Limited. The fact Mr Fordyce did not set up such a scheme was beyond the control of the appellant.

(4) The loan has now been repaid together with interest and there is no loss to the Scheme.

(5) The scheme sanction charge amounts to a penalty which in all the circumstances is wholly unreasonable and unjust.

(6) It is unreasonable that if a sanction charge is payable, the same funds cannot be paid out of the Scheme without a further charge. In the words of the appellant this amounts to "two bites of the cherry".

35. HMRC submitted that one of the reasons for the tax charges which arise where a pension scheme makes unauthorised payments is to safeguard the tax relieved funds in the scheme for the provision of retirement benefits. In relation to loans the provisions seek to ensure that funds are not loaned in circumstances where there is a risk they might not be repaid. We accept that submission.

36. The appellant submitted that the Company was very profitable and there was little risk of default. We are prepared to accept that in 2006 and 2007 there was indeed little risk of default given the financial strength of the Company. However the definition of an unauthorised payment pays no regard to the financial position of the employer. It seeks to prohibit certain loans by reference to the particular terms of the

loan and by reference to the existence and adequacy of the security. That is the test which Parliament has enacted and the appellant cannot import any different test. It is however a factor which we can take into account in testing the respondents' decision not to discharge the appellant's liability to the scheme sanction charge.

37. The relief pursuant to section 268(5) refers to "*the ground*" in section 268(7). There are two limbs to section 268(7) but they comprise one ground. In other words, both limbs must be satisfied before the ground is established.

38. Section 268(7)(a) provides for relief from the scheme sanction charge where the scheme administrator reasonably believed that the unauthorised payment was not a scheme chargeable payment. This must be a reference to the scheme administrator's belief at the time the unauthorised payment was made. It is implicit in this sub-section that the scheme administrator should have systems in place whereby he is aware what payments are going to be made by the trustees. Only then will the scheme administrator be in a position to advise as to the consequences of such payments and effectively protect his own position. Such systems will also put the scheme administrator in a position to fulfil his reporting requirements. It seems to us therefore that this provision is generally aimed at relieving a scheme administrator where he has been misled or otherwise misinformed as to the nature of a payment to be made by the pension scheme.

39. The appellant accepts that as scheme administrator he had no systems in place to identify whether unauthorised payments were being made. Indeed he had no systems to identify in advance any payments being made. We cannot see therefore that he could reasonably have believed that the payment was not a scheme chargeable payment. The ground in section 268(7) is not satisfied and the power to discharge liability does not arise.

40. Even if the appellant had reasonably believed that the unauthorised payment was not a scheme chargeable payment, we are not satisfied that it would not be just and reasonable for him to be liable to the scheme sanction charge. We take into account all the factors urged on us by the appellant as set out above. In particular:

(1) The transaction took place shortly after A-day, although the loan would not have been permitted under the previous regime in any event. The appellant suggested in a written submission that HMRC's guidance at the time was incomplete. He did not take us to that guidance and we are not able to conclude on the basis of the evidence before us that the guidance was incomplete.

(2) We have no reason to doubt that if the appellant had been aware of the payment before it had been made then he would have advised the Company that it would be an unauthorised payment. We accept that in those circumstances the loan would probably not have been made, or would only have been made as an authorised loan.

(3) We accept that as soon as the appellant became aware of the payment he took steps to help the trustees to regularise the position. He could not undo what

had been done, but he did attempt to "convert" the unauthorised loan into an authorised payment to another registered pension scheme.

(4) We accept that the loan was eventually repaid with interest and the transaction itself resulted in no loss to the pension scheme. We also accept that at the time of the loan to the Company there appeared to be little risk that it would not be repaid.

41. Taking all the circumstances into account we consider that it remains just and reasonable for the scheme sanction charge to apply. The reason the unauthorised payment was made was because the appellant completely failed to have a system in place to identify the nature of payments before they were made. If such a system had been in place the appellant would have been in a position to advise the trustees as to the consequences of the proposed loan.

42. The likelihood of default by the Company is not a significant factor. There is always a risk that the financial position of a sponsoring employer will change. The legislation is highly prescriptive as to the requirements for a loan to be an authorised payment. The requirements themselves are very straightforward and they are designed to eliminate or minimise any risk to the fund. There was no excuse for the compliance failure in the present case.

43. The fact that the loan has been repaid and the funds could be the subject of a further income tax charge if another unauthorised payment were to be made is in our view irrelevant to the issue under Section 268(7)(b). Mr Clarke for the respondents accepted that the scheme sanction charge was there in part to act as a deterrent. The answer to the appellant's complaint that HMRC are having two bites of the cherry is not to make any further unauthorised payments.

44. The appellant relies on the fact that where the sponsoring employer has paid the unauthorised payment charge of 40%, the scheme administrator is left with a charge of 15%. The total charge of 55% is equivalent to the 55% maximum charge which arises on termination of a scheme on the death of a member. He goes on to argue that in those circumstances the funds should not continue to be subject to the tax regime applicable to registered pension schemes and that the scheme sanction charge gives rise to the possibility of double taxation. If instead of a loan there had been a payment outright to the Company the appellant argues that there would be no possibility of double taxation.

45. There is no statutory basis upon which the appellant can argue that where an unauthorised loan is repaid then those funds in the Scheme should not be subject to a further unauthorised payment charge. The appellant is seeking to read into the legislation a provision which simply does not exist. We do not accept that this factor, either on its own or together with the other matters relied on by the appellant makes the decision of HMRC not to discharge the scheme sanction charge in any way unfair.

46. In all the circumstances we are not satisfied that HMRC was wrong to refuse to discharge the appellant's liability for the scheme sanction charge.

47. In the alternative to his submission that he ought to be discharged from liability pursuant to section 268, the appellant made the following further submissions:

> (1) That the scheme sanction charge is an unlawful interference with his right to the peaceful enjoyment of his possessions pursuant to Article 1 Protocol 1 of the European Convention on Human Rights ("Article 1"). As such it is liable to be set aside by the tribunal as being unreasonable and unjust.
>
> (2) That the scheme sanction charge is a penalty which engages his rights under Article 6 of the Convention ("Article 6")

48. In certain circumstances the tribunal can set aside a penalty where it is disproportionate. In *HM Revenue & Customs v Total Technology Limited [2012] UKUT 418 (TCC)* the Upper Tribunal considered the circumstances where that power arises in relation to the default surcharge regime applicable to value added tax. Whilst we are concerned with direct taxes, the Upper Tribunal considered that the circumstances in which Article 1 is engaged are largely co-extensive with the jurisdiction under EU law which governs value added tax.

49. We deal firstly with the appellant's submission that the scheme sanction charge is an unlawful interference with his Article 1 rights. The European Convention on Human Rights takes effect by virtue of the Human Rights Act 1998. Article 1 provides as follows:

> " *Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*
>
> *The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.*"

50. The authorities in relation to Article 1 in the context of tax and penalties were reviewed by the Upper Tribunal in Total Technology Engineering Ltd at [50] to [63]. We do not propose to repeat what is said there. The authorities recognise that the State has a wide margin of appreciation in enacting laws to secure the payment of taxes and penalties. In relation to the imposition of taxes, the measure must not be "*devoid of reasonable foundation*" (See *R (oao Federation of Tour Operators v HM Treasury [2008] STC 2524*. A penalty must not be disproportionate having regard to the aim of the policy it is seeking to implement.

51. There was some discussion during the hearing as to whether the scheme sanction charge is properly to be viewed as a charge to income tax, as it is described in section 239, or whether it is in reality a penalty. If it is the former then the margin of appreciation will be wider than if it is the latter.

52. *The Human Rights Act 1998* ("HRA 1998") gives effect to Convention rights. Section 3 HRA 1998 provides as follows:

> " *(1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.*
>
> *(2) This section--*
>
> *(a) applies to primary legislation and subordinate legislation whenever enacted;*
>
> *(b) does not affect the validity, continuing operation or enforcement of any incompatible primary legislation; and*
>
> *(c) does not affect the validity, continuing operation or enforcement of any incompatible subordinate legislation if (disregarding any possibility of revocation) primary legislation prevents removal of the incompatibility.*"

53. Acts of public authorities are regulated by section 6 HRA 1998 which provides:

> " *(1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.*
>
> *(2) Subsection (1) does not apply to an act if--*
>
> *(a) as the result of one or more provisions of primary legislation, the authority could not have acted differently; or*
>
> *(b) in the case of one or more provisions of or made under, primary legislation which cannot be read or given effect in a way which is compatible with the Convention rights, the authority was acting so as to give effect to or enforce those provisions.*
>
> *(3) In this section "public authority" includes--*
>
> *(a) a court or tribunal, and*
>
> *(b) any person certain of whose functions are functions of a public nature,*
>
> *but does not include either House of Parliament or a person exercising functions in connection with proceedings in Parliament."*

54. There is a helpful discussion in *Bosher v HM Revenue & Customs [2012] UKFTT 631 (TC)* of the circumstances in which the tribunal can set aside direct tax penalties which are disproportionate. That decision must be read subject to the decision of the Upper Tribunal in Total Technology Engineering Limited which concerned penalties in the context of value added tax. In Bosher the tribunal was concerned with fixed penalties under section 100B TMA 1970. In particular the

jurisdiction under section 100B(2)(a)(iii) to reduce a penalty which appeared to be incorrect. The tribunal held that "incorrect" should be construed as including incorrect by virtue of being disproportionate hence applying section 3 HRA 1998 and giving effect to Mr Bosher's Article 1 Convention right.

55. In the present case our jurisdiction is defined by section 50(6) TMA 1970. We consider that the term "overcharged" in section 50(6)(c) includes an assessment which overcharges the taxpayer by virtue of it being devoid of reasonable foundation in the case of a charge to tax or disproportionate in the case of a penalty.

56. We note that the total charge to tax in relation to an unauthorised employer payment is 55% comprising the 40% charge on the employer and the reduced 15% charge on the scheme administrator. It is notable that the 40% charge is on the recipient of the payment, rather than on the Scheme. The total charge is the same level of charge which arises where funds are paid out of a scheme on the death of a member or where the lifetime allowance is exceeded. Both parties agreed that the 55% charge is a broad measure by which the tax relief on contributions and tax free growth are recovered. In that sense, the scheme sanction charge, being part of an overall charge of 55% does appear to be a charge to tax rather than a penalty.

57. In the event however we do not need to determine whether the scheme sanction charge is properly to be viewed as a charge to tax or a penalty for the purposes of the Convention. We do not consider that on any view it is disproportionate, still less that it is devoid of reasonable foundation and outside the wide margin of appreciation enjoyed by Parliament. As Mr Clarke submitted the charge is there in part to act as a deterrent against unauthorised payments. It seeks to protect the assets in pension schemes and to ensure that the tax reliefs given to pension schemes accrue for the provision of retirement benefits to members. We are not satisfied that it is in any way unreasonable or disproportionate, either generally or in the specific circumstances of the present appeal. In reaching this conclusion we consider that the factors referred to above in the context of relief under section 268 are equally applicable in testing the proportionality and reasonableness of the charge for the purposes of Article 1.

58. We do not consider that the fact the same charge arises whether the funds are removed from a pension scheme as when there is an unlawful loan makes the scheme sanction charge unreasonable. The charge is a broad measure designed to ensure that tax relief is available only in respect of retirement benefits within the limits set down by the legislation.

59. In the circumstances we do not consider that there has been any breach of the appellant's rights under Article 1 or that there is any basis on which we should reduce the amount of the scheme sanction charge.

60. Article 6 of the Convention provides as follows:

> " *1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public*

hearing within a reasonable time by an independent and impartial tribunal established by law …

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

61. The extent to which Article 6 applies in the present case is debateable and may depend on whether or not the scheme sanction charge is a penalty. However, even on the assumption that Article 6 does apply it is not clear to us in what way the appellant argued that there has been any infringement of his rights under the article. There is nothing in the material before us to suggest any infringement. We are satisfied therefore that Article 6 provides no basis to support the appellant's case.

Generally

62. We have considered each ground of appeal raised by the appellant. For the reasons given above we have concluded that those grounds are not made out. In the circumstances we must dismiss the appeal.

63. 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.

JONATHAN CANNAN
TRIBUNAL JUDGE
RELEASE DATE: 3 June 2013