[2017] UKFTT 578 (TC)

TC06021

Appeal numbers: TC/2015/04914

VALUE ADDED TAX – whether costs attributed directly to taxable supplies should be apportioned – whether land area based formula previously agreed with HMRC for making business/non-business split of residual costs over-compensates the appellant and should be replaced by HMRC's income based formula – appeals allowed.

FIRST-TIER TRIBUNAL
TAX CHAMBER

WILL WOODLANDS (a charity) **Appellant**

- and -

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

TRIBUNAL: JUDGE RICHARD THOMAS
ELIZABETH BRIDGE

Sitting in public at the Royal Courts of Justice, Strand, London WC2 on 20 and 21 April 2017

Mr Owain Thomas QC (instructed by Haysmacintyre, Chartered Accountants) for the Appellant

Mr Howard Watkinson, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. This decision relates to an appeal by Will Woodlands, a company limited by guarantee and a charity, ("the appellant") against a revised assessment made by the respondents ("HMRC") to value added tax ("VAT") and interest in the amount of £37,621.27 issued on 1 July 2016. The assessment is for the monthly periods from 10/14 to 03/15.

2. The decision also relates to an appeal by the appellant against an assessment to VAT and interest in the amount of £37,501.85 issued on 7 July 2016. The assessment is for the monthly periods from 04/15 to 03/16.

Evidence

3. We had a bundle of documents containing correspondence between the parties, notes of meetings and visits, a report from the Ombudsman into a complaint about the Forestry Commission, a Guide to, and other material about, the English Woodland Grant Scheme and contracts between the Forestry Commission and the appellants.

4. We also had financial reports and Charity Commission returns of the appellant, extracts from its website and that of the Charity Commission, a number of articles from websites and a report by the British Trust for Ornithology.

5. None of the documents described in the previous two paragraphs was in dispute as to what they contained. There was naturally a great deal in the correspondence which consisted of the opinions of the writers or speakers at meetings and we taken no account of those opinions.

6. For HMRC we had a witness statements from Mr David Powell, the officer of HMRC concerned in the case, whose exhibits included the documents described in §§3 and 4.

7. For the appellant we had witness statements from Ms Kathryn Thelwell FCCA, an accountant employed by Carter Jonas LLP, financial managers of the appellant's estates. She exhibited a number of documents relating to the allocation of costs of the appellant and the system used in Carter Jonas for VAT accounting.

8. We had a witness statement from Mr Oliver Mead RICS, a chartered surveyor employed by Carter Jonas. Mr Mead was responsible for the management of the four estates owned by the appellant in the relevant period. He exhibited maps and photographs of the estates and other documents discussed below.

9. We had a witness statement from Mr Michael Tustin, a forestry manager and investment adviser employed by John Clegg & Co, Chartered Surveyors and Chartered Foresters. He was engaged by the appellant to provide it with forestry management advice.

10. Finally we had a letter from the chairman of the charity expressing the charity's intentions for the woodlands.

11. We consider that all the witnesses were truthful and credible and doing their best to assist the Tribunal.

Facts

12. We set out first facts which were not in dispute in any way, and we take these primarily from the exhibits of Mr Powell and Mr Mead.

The charity: its aims, objectives and activities –as it sees them

13. The appellant is a "privately funded charity" incorporated in 1994.

14. In its report and financial statements ("RFS") for the year ended 31 March 2014 its "***objectives and activities***" [*all terms in bold italics are emphases by the Tribunal*] are "conserving, restoring and establishing trees, plants and all forms of wildlife in the United Kingdom and securing and enhancing public enjoyment of the natural environment of the United Kingdom".

15. That description of its objectives and activities is also shown as being its ***charitable objects*** as set out in its Memorandum & Articles of Association.

16. The RFS shows as the charity's ***aims*** in the following statement:

> "in furtherance of its ***objects***, the charity has adopted a policy of acquiring land and establishing woodlands. Its ***aims*** are to create new woodlands and to manage them as an addition to the woodland heritage of England and Wales for the benefit of this and future generations."

17. In doing this the appellant says it:

(1) enlarges and protects the wooded landscape

(2) enriches existing woodlands and adjoining countryside

(3) improves the environment by the protection and management of new and existing habitats for plants and animals

(4) provides opportunities for peaceful enjoyment and appreciation by the public of woodlands and the adjacent countryside.

18. The appellant's ***primary objective*** according to the RFS is to establish and protect woodlands at its four estates.

19. The key elements of the charity's ***strategy*** as shown in the Return to the Charity Commission are that:

(1) it seeks to plant amenity woodland on land it has acquired for that purpose where that can be achieved within the constraints of current Environmental Regulations, grants and funding

(2) it manages the woodlands by controlling pests, weeds and disease and by thinning and pruning where necessary

(3) it seeks to re-establish and re-introduce native plants and to provide food sources for fauna especially birds.

20. In addition to the above in its RFS it also includes in its "***Strategies and Activities***" providing opportunities for peaceful enjoyment and appreciation by:

(1) developing a wooded landscape for the aesthetic improvement of the general countryside in which its estates are located

(2) attempting to encourage viable populations of flora and fauna with the long term aim that individuals from this population can spread to other nearby localities

(3) providing opportunities for guided walks around conservation area for a wide number of interest and educational groups

(4) facilitates access by the public along public rights of way and other similar paths opened on a permissive basis.

21. In its Summary Information Return to the Charity Commissions the persons said to benefit from the charity's work are "the public" and their need are responded to by the provision of "guided walks around the conservation areas".

The appellant's VAT history & the current enquiry

22. The appellant was registered for VAT in 1994.

23. On 12 April 1999 HM Customs & Excise ("HMCE") confirmed to the appellant that running a woodland is a taxable forestry business and that VAT incurred could be treated as input tax.

24. On 7 March 2000 the appellant wrote to HMCE referring to a voluntary disclosure for underclaimed VAT up to 1998 which had been paid by HMCE. The letter then sought to put forward a basis for apportionment of residual VAT (the VAT on general overheads not attributable to taxable or to non-taxable business).

25. The letter referred to the two estates then owned and explained that the North Barn estate 50% was planned as woodlands and almost all of the rest was farmed in hand and so generated taxable supplies. There was a residential property under rent.

26. As to Hazel Manor the long-term activities were to be woodland, letting of residential properties and free of charge use of part of the estate for grazing sheep. There would be short term grazing rights let for a fee.

27. The appellant said the woodland would not be receiving income for many years, the free of charge use would not generate income but was a non-business use. The only income in the short term was exempt rents.

28. Thus, they said, an income based method would be entirely inappropriate. They put forward a method based on areas under use. The provisional calculation for a

business/non business ("B/NB") split showed that 93.59% of residual VAT would be regarded as input tax, and the partial exemption ("PE") split would show 99.02% relating to creditable input tax.

29. On 4 January 2001 HMCE wrote agreeing both proposals and agreements were signed on 8 January.

30. The next documented[1] event in the appellant's VAT history was an assurance visit on 27 June 2013 by Mr Powell and a Mr Hiller of HMRC to Carter Jonas' offices where they saw Ms Thelwell. Mr Powell's notes (dated 28 June) say that the meeting started with fact finding and the purchase of two more estates was noted. The current B/NB split was 95.81% business use and the PE split 87.06% taxable use. In some months the PE amount attributed to exempt use was below the *de minimis* level.

31. Input tax claims for the Cyffin estate in Wales for 12/12 were examined in detail and an error of £8 (in a total of £475) was found. The conclusion section of the notes letter recorded that Mr Powell had ongoing concerns about the B/NB method and that he might wish to consider this further.

32. On 13 August 2013 Mr Powell wrote to Carter Jonas about, among other things, the B/NB split. After setting out some material from the appellant's website and its RFS for the year ended 31 March 2012 Mr Powell stated:

> "I am concerned that the method agreed does not produce a fair and reasonable apportionment of VAT on taxable goods and services supplied to [the appellant]."

33. He accepted that a significant proportion, if not all, the trees at the four sites may ultimately be harvested and this would generate taxable supplies of timber, but they would not be generated for some time ie over 100 years for deciduous trees.

34. But his opinion was that the production and sale of timber was not a primary objective of the appellant, but a consequence arising from its charitable (non-business) objectives.

35. The main purpose of the appellant he said was its "charitable environmental work", and he pointed out that in support of its work it receives significant levels of income from grants from DEFRA and the Forestry Commission and from its investment portfolio.

36. He considered therefore that use of "land area" as a proxy for determining business use was not fair and reasonable. This was because:

(1) wooded areas treated as wholly for business use do not have 100% coverage of trees

[1] Mr Powell's notes of the meeting of 27 June refers to an assurance visit in 2006. We assume that no objection was taken at that time to the continuing use of the agreed bases for both B/NB and PE apportionments.

(2) wooded areas include pathways, water, grasses and other plants not used for business purposes

(3) costs of planting, establishing and maintaining trees are not incurred solely for the eventual business objective of harvesting timber, but also for the charitable objectives of heritage, conservation and public enjoyment.

37. After referring to HMRC's VAT B/NB Manual which explained the current HMRC policy, he asked the appellant to consider proposing an alternative method of apportionment.

38. He raised similar concerns about the PE special method ("PESM") used and referred to regulation 102(3) of the VAT Regulations which allowed HMRC to terminate the use of a PESM, but he said that before he did that he was asking for the appellant's proposals.

39. On 31 October 2013 haysmacintyre (as they style themselves), chartered accountants acting for the appellant, wrote to Mr Powell at HMRC. In response to Mr Powell's reasons for finding the B/NB apportionment method unreasonable they pointed out that the charity's objectives were irrelevant, citing the decision of the Court of Justice of the European Union ("CJEU[2]") in the case of *BLP Group plc v Commissioners for Customs and Excise* [1995] STC 424 ("*BLP*").

40. They pointed out that no wholly commercial forest has 100% tree coverage, and that Mr Powell was taking into account the appellant's motives.

41. They said that the view that the costs of trees was not solely for business purposes was also irrelevant. They added that the only non-business use was amenity works, and they could not see what it was that HMRC thought was a non-business activity, as any conservation benefit was passive.

42. They concluded that the current method was fair and reasonable and failed to see why HMRC thought otherwise.

43. On 22 July 2014 Mr Powell replied (after taking advice). This letter contained notice that the Commissioners intended to resile from the current B/NB agreement. From 1 October 2014 the appellant should use a new method that provided a fair and reasonable apportionment and to support such an apportionment the appellant should provide a business plan to demonstrate the level of costs and turnover it expected to receive from timber sales and other activities in the short, medium and long term.

44. He concluded this section of the letter by saying that the resiling was not an appealable matter but that if the appellant persisted in using their method, assessments would be raised which could be appealed.

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[2] We use "CJEU" as an abbreviation of the European Court of Justice in relation to cases heard by the Court before it adopted its current title.

45. The letter then set out the law, the appellant's view and HMRC's view. Mr Powell referred, under the heading "Legislation and Case Law" to *BLP* and to *Nottinghamshire Wildlife Trust v HMRC* (VTD19540). In the section "My View" Mr Powell said that the "default calculation" is to make an analysis of income "for" [*sic*] both business and non-business activities. He accepted that there was a potential distortion to that calculation in that costs would be incurred currently against income derived in the future from the sale of timber.

46. This distortion could, he said, be "readily" overcome by regarding future sales of timber as taking place in stages over the years it took timber to grow. If, for example, there was a projected income of £20,000 that would result from felling and sale in 20 years time, this could be included in the proxy calculation on the basis of £1000 per year for the next 20 years and would result in the recovery of some costs that ultimately support the sale of timber.

47. Mr Powell then analysed the sources of income of the appellant. These were, he said, 43.2% investments and 46.3% woodland grants and 1.3% sundry receipts which might be timber sales. Thus less than 11% of income was derived from business activities.

48. On 14 April 2015 Carter Jonas confirmed that the appellant, having taken Counsel's opinion, disagreed with Mr Powell's view and said that their current method was not unfair and they were continuing to use it. They said there was no business plan estimating future income as any such plan would be meaningless. First thinning would not be undertaken until year 20 to 25 and it was impossible to predict what timber prices would be then. Timber production would continue for up to 150 years.

49. In a letter of 22 May 2015 Mr Powell informed Carter Jonas that his "initial understanding that the great majority of taxable costs that [the appellant] is incurring are to support its charitable aims and objectives is reinforced by the evidence set out above and though the absence of any evidence suggesting that the commercial exploitation of timber constitutes a significant business aim for [the appellant]".

50. On 25 July 2015 HMRC made assessments on the appellant for the months 10/14 to 03/15 showing tax due of £36,866.00 plus interest. Despite Mr Powell saying in his pre-assessment letter that if HMRC were going to charge interest he would write separately about it, the assessment included interest but there was no separate letter.

51. The calculations attached with the letter show that costs attributed by the appellant to taxable business exclusively have been treated by HMRC as residual costs (ie not attributable exclusively to business or to non-business activity) and an apportionment made of them as well as those costs already treated by the appellant as residual.

52. There is nothing in the bundle of documents that purports to offer a review under s 83A Value Added Tax Act 1994 ("VATA"), a matter pointed out by the

appellant in the Notice of Appeal it sent to the Tribunal on 13 August 2015. [No point about this failure was taken before us]

53. On 24 June 2016 Mr Powell informed Carter Jonas that the assessment would be increased by £205 to take account of that fact that for two of the periods HMRC has used estimates and they now had the precise figures. An assessment showing identical figures for four periods and slightly amended one for two periods was issued on 1 July 2016.

54. On 7 July 2016 HMRC made an assessment on the same basis as the previous ones for the periods 04/15 to 03/16 in the sum of £36,817.00 plus interest. Notice of Appeal was sent to the Tribunal on 18 July 2016.

55. The two appeals were consolidated under the number shown on the first page of this decision.

Mr Powell's oral evidence

56. Mr Powell's witness statement, which relates much of what has been set out under the two previous subheadings of this section, stood as his examination in chief.

57. Mr Powell was cross-examined by Mr Thomas. He agreed that:

(1) he did not seek evidence of whether the silvicultural operations of the appellant were carried on in the same way as a commercial forestry operation nor had he looked at the business operations at all.

(2) in his letters he had emphasised the objectives of the appellant as shown in the RFS and returns to the Charity Commission

(3) the assessments took no account of future income from forestry

(4) he had treated the grants as not supporting the forestry business on the basis of his experience

(5) he regarded the investment income as being for the support of the charitable activities not the timber business.

58. When asked by the Tribunal why he thought the apportionment used by the appellant did not give a fair result, he said it was because it allowed them too much input tax credit.

59. We accept Mr Powell's evidence in its entirety, in particular the answers given in cross-examination.

The operations of the estates: Mr Mead's and Mr Tustin's evidence

(a) Mr Oliver Mead

60. Mr Mead in his witness statement explained that he was responsible for the day to day management of the four estates, and that they are primarily given over to woodlands but there are some areas of grass and arable, some residential properties

rented to employees and third parties and some livestock is grazed which is sold as meat.

61. Mr Mead responded in his statement to the question whether the management of the estates differs in any way from the management of other commercially or privately owns woodland estates. His answer was that the only differences were that the appellant requires a higher standard of care and attention than is the norm for commercial woodlands and that there are some ancillary conservation projects limited in the main to putting up bird boxes and wildflower establishment and maintenance. He listed fourteen or so activities which are common to both commercial and the appellant's forestry operations.

62. He also responded to questions about public access to the estates. He said that there were rights of way and permissive paths on the estates which were fenced in, except where they crossed grassland. Forested land was generally fenced in with deer-proof fences.

63. Mr Mead also gave evidence about the livestock activities and the costs of the permissive paths. Finally Mr Mead exhibited a list of all VAT invoices incurred by the estates for the 6 months to March 2016 and an allocation of each invoice to the various activities of the estates.

64. In cross-examination Mr Mead said there were no public access grants but that the appellant has an annual woodland grant, and agricultural subsidy, the same he said as might be made to any operator of woodlands.

65. Mr Mead was asked by Mr Watkinson about the guided walks of the estate. He said there were two walks per year per estate and that they incurred no (VAT bearing) costs.

66. Mr Mead also said that they did not always sell thinned trees. On the question of what timber would be felled and sold Mr Mead said that he had been told that the appellant would be leaving a mature woodland in many decades time, though he agreed that not all trees would be clear felled and that some would be left standing. He could not tell what percentage would be left. Clear felling operations had taken place.

67. He agreed that hedge laying and the maintenance of ponds was not absolutely essential for a commercial woodland, although the later would help in the event of fire.

68. A letter that had been written on 20 March 2017 by the Chairman of the charity to Mr Mead was produced in evidence at the hearing and put to Mr Mead. In that letter the Chairman said that it had always been the intention that the woodlands created would be exploited at some point in the future; that the Council of the appellant could see no way of managing the woodlands except through thinning and felling which were standard practice in the forestry industry and that the standing instructions to Carter Jonas were that the woodlands should be managed as commercially as possible but to the highest standards consistent with the objects of

the charity. He added that, due to the longevity of the process, harvesting activities were only now beginning to be seen. Mr Watkinson's question was whether the costs that were in issue would have been incurred without any sale of even one piece of timber. Mr Mead agreed that they would.

69. In re-examination Mr Mead confirmed that not all the thinning was sold but this was standard forestry management.

70. As far as Mr Mead was concerned he did not think there would be an endpoint when all the trees planted now were mature and still standing.

71. We accept all of Mr Mead's evidence, save that where he differed with Mr Tustin about the question of felling all the trees eventually, we prefer Mr Tustin's evidence as the professional forester.

(b) Mr Michael Tustin

72. Mr Tustin's witness statement explained that the level of his advice depended on the stage and management requirements of the four "young" woodland sites owned by the charity. His advice includes grant advice and advice on harvesting and marketing during forestry operations.

73. The woodlands, he says, are managed with the eventual aim that they will become productive and provide an income stream for the future. All except for a large area of one estate are still in the establishment phase and there is no income as yet. There is one exception: firewood is being sold if the opportunity arises.

74. All of the work undertaken in the woods is essential for their management to help them become productive as soon as possible.

75. In his view there are no silvicultural operations undertaken on the estates that would not be carried on by a commercial operator, but the charity tends to carry out its operations with more care.

76. He had been asked in his statement to say if the Forestry Commission grant conditions were the same as for a commercial woodland and he said they were.

77. He explained that a first thinning is undertaken at 15 to 25 years from planting when about 20% of the crop would be removed. At 30-35 years more thinning is undertaken with higher yields but lower costs than at the first thinning.

78. Thinning continues until the woods are mature. Typically 2,500 trees per hectare would be planted and at maturity there would be 100-150, with the majority of the timber being sold over a period of up to 150 years.

79. He said that it was not possible to predict what timber prices would be when the projected thinnings occurred. On the basis of current prices for firewood he estimated that first thinning at all four estates would provide between £822k and £1,027k and for second thinnings between £986k and £1,644k.

80. In cross-examination it was put to Mr Tustin that he had said that the appellant did not want amenity woodlands, yet the 2014 RFS says that it does. He could not say why the RFS said that.

81. Asked if it was possible that some trees would be left standing he said that every tree would be felled at some stage.

82. Mr Tustin was also questioned extensively about the forestry grant application and the density of tree planting referred to in the applications and the grant guidance. Mr Tustin was adamant that the density used in the application and agreed to was no different from that which might be used by a commercial operation.

83. In re-examination he agreed that he had has no discussion with the appellant on what might happen in the future. His brief was to establish the woodlands and manage them in the way he had described. He agreed that plans could alter.

84. Mr Tustin is clearly an experienced professional forester and we accept all his evidence.

Further findings of fact from the evidence of Mr Mead and Mr Tustin

85. We find from the evidence of Mr Mead and Mr Tustin that the woodlands owned by the appellant are managed in the same way as those of a commercial operator and that they are in the early stages of development and can only be expected to produce sales of timber from around now, subject to unexpected sales such as occurred as a result of measures taken to prevent ash dieback.

86. We also find that the activities of the appellant designed to give current benefits to the public are carried out on small limited and generally enclosed areas such as rights of way and permissive paths and that the public is actively discouraged from the woodland areas.

87. We find that there is no *activity* being carried on in the woodland areas which is not part of the woodland operations and that there are no costs incurred in relation to those areas which are not costs of those operations. In other words we reject any notion that areas which are not themselves covered by a tree canopy but which are within the woodland areas shown on the maps we saw, such as ponds and clearings, have nothing to do with the forestry operations. We find that all the conservation benefits and aims that are set out in the RFS and elsewhere are achieved only as a by product of the forestry operations.

Ms Thirwell's evidence

88. Ms Thirwell's evidence is primarily an explanation of the job she does for the appellant in compiling the VAT returns and the system she uses for allocating expenditure to various categories. She added that after the meeting with HMRC on 13 August 2013 she passed HMRC's queries about the underlying basis of the calculations to Mr Mead.

89. Ms Thirlwell's task is to allocate a code to each invoice for the purposes of calculating the recoverable input tax in accordance with the agreement reached with HMRC in 2001.

90. She uses a number of codes: P for apportionable VAT bearing costs (P stands for Pot VAT), H for costs relating to exempt income, such as rent from residential properties, S for costs relating to taxable income, eg woodlands and cattle, E for costs which are exempt from VAT and OS for costs which are outside the scope of VAT used only for non-business activities.

91. From exhibits attached to Ms Thirwell's witness statement, we can see that for the period 01/17 there are a number of larger items such as "improvement" and fees to John Clegg (Mr Tustin's employer) which have code S, and fees to Carter Jonas which are code P. The figures that went into the VAT return show that of £34,352.85 net invoiced amounts, £28,352.85 was coded S so on which all the VAT was treated as allowable and £4,576.24 was coded P which was apportioned.

92. The P costs, those not directly attributable to taxable supplies or to exempt supplies are then reduced by a percentage (the agreed fraction under the 2001 agreement), in the exhibit being 3.61%. This is described as "Disallow as attributable to 'non-business activities' (ref public access)".

93. We accept Ms Thirwell's evidence. But we note that the S/P split in 01/17 does not seem to be typical. From other calculations as used by the appellant in its returns we note that typically the P amounts are very much larger than the S amounts. For example, the "Partial Exemption Calculation" for period 12/16 shows £5,758.18 input VAT for the month, of which £5,660.41 was coded P and £43.17 coded S.

94. This seems to be what one would expect with those costs directly related to woodlands being sporadic but when they occur would tend to be larger.

95. The effect of these differences is limited however as, if 95%+ of the P costs are allocated to standard rated forestry activities, then it will always be the case that the input VAT attributable to the woodlands will be the overwhelming proportion, whether those costs are S or P.

The law

96. Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, known as the Principal VAT Directive ("PVD") provides relevantly as follows.

> "*Article 2*
>
> 1. The following transactions shall be subject to VAT:
>
> (a) the supply of goods for consideration within the territory of a Member State by a taxable person acting as such;
>
> …
>
> …

Article 9

1. 'Taxable person' shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity.

Any activity of producers, traders or persons supplying services, including mining and agricultural activities and activities of the professions, shall be regarded as 'economic activity'. The exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis shall in particular be regarded as an economic activity.

…

Article 168

In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT which he is liable to pay:

(a) the VAT due or paid in that Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person;

…

…

Proportional deduction

Article 173

1. In the case of goods or services used by a taxable person both for transactions in respect of which VAT is deductible pursuant to Articles 168, 169 and 170, and for transactions in respect of which VAT is not deductible, only such proportion of the VAT as is attributable to the former transactions shall be deductible.

The deductible proportion shall be determined, in accordance with Articles 174 and 175, for all the transactions carried out by the taxable person.

2. Member States may take the following measures:

(a) authorise the taxable person to determine a proportion for each sector of his business, provided that separate accounts are kept for each sector;

(b) require the taxable person to determine a proportion for each sector of his business and to keep separate accounts for each sector;

(c) authorise or require the taxable person to make the deduction on the basis of the use made of all or part of the goods and services;

(d) authorise or require the taxable person to make the deduction in accordance with the rule laid down in the first subparagraph of paragraph 1, in respect of all goods and services used for all transactions referred to therein;

(e) provide that, where the VAT which is not deductible by the taxable person is insignificant, it is to be treated as nil.

Article 174

1. The deductible proportion shall be made up of a fraction comprising the following amounts:

(a) as numerator, the total amount, exclusive of VAT, of turnover per year attributable to transactions in respect of which VAT is deductible pursuant to Articles 168 and 169;

(b) as denominator, the total amount, exclusive of VAT, of turnover per year attributable to transactions included in the numerator and to transactions in respect of which VAT is not deductible.

Member States may include in the denominator the amount of subsidies, other than those directly linked to the price of supplies of goods or services referred to in Article 73.

2. By way of derogation from paragraph 1, the following amounts shall be excluded from the calculation of the deductible proportion:

(a) the amount of turnover attributable to supplies of capital goods used by the taxable person for the purposes of his business;

(b) the amount of turnover attributable to incidental real estate and financial transactions;

(c) the amount of turnover attributable to the transactions specified in points (b) to (g) of Article 135(1) in so far as those transactions are incidental.

…

97. The provisions of domestic law (VATA) which correlate to those provisions of the PVD are:

"**4 Scope of VAT on taxable supplies**

(1) VAT shall be charged on any supply of goods or services made in the United Kingdom, where it is a taxable supply made by a taxable person in the course or furtherance of any business carried on by him.

(2) A taxable supply is a supply of goods or services made in the United Kingdom other than an exempt supply.

24 Input tax and output tax

(1) Subject to the following provisions of this section, "input tax", in relation to a taxable person, means the following tax, that is to say—

(a) VAT on the supply to him of any goods or services;

…

being (in each case) goods or services used or to be used for the purpose of any business carried on or to be carried on by him.

(2) Subject to the following provisions of this section, "output tax", in relation to a taxable person, means VAT on supplies which he makes …

(5) Where goods or services supplied to a taxable person … are used or to be used partly for the purposes of a business carried on or to be carried on by him and partly for other purposes—

(a) VAT on supplies… shall be apportioned so that so much as is referable to the taxable person's business purposes is counted as that person's input tax, and

(b) the remainder of that VAT ("the non-business VAT") shall count as that person's input tax only to the extent (if any) provided for by regulations under subsection (6)(e).

(6) Regulations may provide—

…

(e) in cases where an apportionment is made under subsection (5), for the non-business VAT to be counted as the taxable person's input tax for the purposes of any provision made by or under section 26 in such circumstances, to such extent and subject to such conditions as may be prescribed.

…

26 Input tax allowable under section 25

(1) The amount of input tax for which a taxable person is entitled to credit at the end of any period shall be so much of the input tax for the period (that is input tax on supplies…) as is allowable by or under regulations as being attributable to supplies within subsection (2) below.

(2) The supplies within this subsection are the following supplies made or to be made by the taxable person in the course or furtherance of his business--

(a) taxable supplies;

…

(3) The Commissioners shall make regulations for securing a fair and reasonable attribution of input tax to supplies within subsection (2) above, and any such regulations may provide for—

(a) determining a proportion by reference to which input tax for any prescribed accounting period is to be provisionally attributed to those supplies;

(b) adjusting, in accordance with a proportion determined in like manner for any longer period comprising two or more prescribed accounting periods or parts thereof, the provisional attribution for any of those periods;

(4) Regulations under subsection (3) above may make different provision for different circumstances and, in particular (but without prejudice to the generality of that subsection) for different descriptions

of goods or services; and may contain such incidental, supplementary, consequential and transitional provisions as appear to the Commissioners necessary or expedient.

73 Failure to make returns etc

(1) … where it appears to the Commissioners that … returns are … incorrect, they may assess the amount of VAT due from him to the best of their judgment and notify it to him.

(2) In any case where, for any prescribed accounting period, there has been paid or credited to any person—

(a) as being a repayment or refund of VAT, or

(b) as being due to him as a VAT credit,

an amount which ought not to have been so paid or credited, or which would not have been so paid or credited had the facts been known or been as they later turn out to be, the Commissioners may assess that amount as being VAT due from him for that period and notify it to him accordingly.

…

(4) Where a person is assessed under subsections (1) and (2) above in respect of the same prescribed accounting period the assessments may be combined and notified to him as one assessment.

…

(6) An assessment under subsection (1), (2) or (3) above of an amount of VAT due for any prescribed accounting period must be made within the time limits provided for in section 77 and shall not be made after the later of the following—

(a) 2 years after the end of the prescribed accounting period; or

(b) one year after evidence of facts, sufficient in the opinion of the Commissioners to justify the making of the assessment, comes to their knowledge,

but (subject to that section) where further such evidence comes to the Commissioners' knowledge after the making of an assessment under subsection (1), (2) or (3) above, another assessment may be made under that subsection, in addition to any earlier assessment.

(6A) In the case of an assessment under subsection (2), the prescribed accounting period referred to in subsection (6)(a) and in section 77(1)(a) is the prescribed accounting period in which the repayment or refund of VAT, or the VAT credit, was paid or credited.

74 Interest on VAT recovered or recoverable by assessment

(1) Subject to section 76(8), where an assessment is made under any provision of section 73 and, in the case of an assessment under section 73(1) at least one of the following conditions is fulfilled, namely—

(a) the assessment relates to a prescribed accounting period in respect of which either—

(i) a return has previously been made, or

…

…

the whole of the amount assessed shall, subject to subsection (3) below, carry interest at the rate applicable under section 197 of the Finance Act 1996 from the reckonable date until payment.

76 Assessment of amounts due by way of penalty, interest or surcharge

(1) Where any person is liable—

…

(c) for interest under section 74, …

…

the Commissioners may, subject to subsection (2) below, assess the amount due by way of … interest … and notify it to him accordingly;

…

83 Appeals

(1) Subject to sections 83G and 84, an appeal shall lie to the tribunal with respect to any of the following matters—

…

(c) the amount of any input tax which may be credited to a person;

…

(p) an assessment—

(i) under section 73(1) or (2) in respect of a period for which the appellant has made a return under this Act;

…

or the amount of such an assessment;

(q) the amount of any … interest … specified in an assessment under section 76;

(2) In the following provisions of this Part, a reference to a decision with respect to which an appeal under this section lies, or has been made, includes any matter listed in subsection (1) whether or not described there as a decision.

84 Further provisions relating to appeals

(1) References in this section to an appeal are references to an appeal under section 83.

…

(10) Where an appeal is against an HMRC decision which depended upon a prior decision taken ... in relation to the appellant, the fact that the prior decision is not within section 83 shall not prevent the tribunal

from allowing the appeal on the ground that it would have allowed an appeal against the prior decision."

and in the Value Added Tax Regulations (SI 1995/2518):

"**101 Attribution of input tax to taxable supplies**

(1) … the amount of input tax which a taxable person shall be entitled to deduct provisionally shall be that amount which is attributable to taxable supplies in accordance with this regulation.

(2) … in respect of each prescribed accounting period—

(a) … goods or services supplied to … the taxable person in the period shall be identified,

(b) there shall be attributed to taxable supplies the whole of the input tax on such of those goods or services as are used or to be used by him exclusively in making taxable supplies,

(c) no part of the input tax on such of those goods or services as are used or to be used by him exclusively in making exempt supplies, or in carrying on any activity other than the making of taxable supplies, shall be attributed to taxable supplies,

…

…"

Discussion

The issue

98. Because the submissions by counsel were wide ranging and discussed a number of cases on a variety of topics we think it necessary to set out here what we think the issue before us was. After the closing submissions we did check with counsel that they agreed with our formulation of the issue, and they seemed to.

99. At that time we considered that the only issue before us was whether the appellant was, in the prescribed accounting periods which were the subject of the assessments, using a method of apportionment of residual costs which was fair and reasonable so as to comply with s 24(5) VATA, and if not, whether HMRC's proposed method was fair and reasonable. After further examination of the documents, including the skeletons of both counsel, we see the issue is wider than that, or rather that there is more than the one issue, as there is a separate question whether certain costs are attributable exclusively to taxable activities or should be apportioned.

100. What was not an issue and what we are not determining was the appropriateness of any partial exemption apportionment method used by the appellant or the figures in any assessment.

101. As frequently happens when basic rules of VAT are in issue, we were supplied with a long list of case law authorities from both the CJEU and domestic courts and tribunals.

102. We mean no disrespect to Mr Thomas and Mr Watkinson when we say that we have found it necessary to refer to only a few of them, although we have read the other cases from which the parties extracted parts in their skeletons. The cases we refer to give us, we consider, the way of coming to the correct conclusion in this case.

Is an apportionment of forestry costs required?

103. HMRC do not simply disagree with the method of apportionment of the residual costs as the appellant regards them (Ms Thirlwell's P costs – see §90). They regard the appellant's attribution of Ms Thirlwell's S costs – those treated by the appellant as wholly attributable to business activities – as wrong in principle and have included all of them in the operation of their chosen formula for attributing residual costs.

104. The S costs are the costs of planting, improvement and maintenance of the woodlands. They include the fees paid to Mr Tustin's employer, Clegg & Co. That they include planting costs was obvious to Mr Powell as he refers to input tax of £17,816 incurred for planting costs payable to UPM Tilhill Ltd in the 12/12 quarter which he examined in detail according to the notes he made of his meeting with Ms Thirlwell on 27 June 2013 at the offices of Carter Jonas.

105. The primary argument of HMRC in relation to the S costs is that in order for the appellant to claim 100% of the input tax that it incurs in connection with planting, management etc of its woodlands it must use the supplies concerned exclusively in making taxable supplies. The appellant does not do so, they say, because it also uses the supplies, in the main, to fulfil its primary, "out of scope" non-business/non-economic purpose, its "principal activity" as set out in the RFS and elsewhere.

106. It follows that if there is duality of purpose, an apportionment is required. In support of that proposition HMRC cite *Amana Books Ltd v HMRC* [2006] VATTD 19541 ("*Amana*").

107. The appellant says that it is wrong to treat the operation and management of the woodland as partly for a non-business activity just because there are non-economic aspects to the activity, as case law shows that the nature of the activities must be objectively determined (see *Sub One Ltd t/a Subway v HMRC* [2014] EWCA Civ 773[3] ("*Subway*") and that charitable aims or non-profit making status are irrelevant (see *Longridge on the Thames v HMRC* [2016] EWCA Civ 930 ("*Longridge*"), which Mr Thomas QC said contains a useful summary of the CJEU authority in this area). The woodland operation and maintenance activities are clearly business activities, whether or not the maintenance supports a conservation aim.

108. HMRC have, the appellant says, asked themselves the wrong question. The issue is not a ranking of the appellant's purposes but an objective analysis of the

[3] In the list of authorities the neutral citation of the First-tier Tribunal decision was given – [2010] UKFTT 487 (TC). The Court of Appeal also emphasised the objective nature of the assessment of the application of VAT law to the facts that was required, and is of course, unlike the decision of this Tribunal, binding on us.

activity. If that analysis shows a business activity then the fact that it is undertaken for one or more reasons is beside the point.

109. *Amana* does not help HMRC. Properly analysed it was not about dual purpose expenditure but about whether certain costs ere attributable to the economic activity at all so that a conventional apportionment was required.

110. In any case the costs would have to have been incurred in carrying out a completely separate activity in order to count as not attributable to economic activity or as being apportionable, for which proposition the appellant prays in aid joined CJEU cases C-108/14 and C-109/14 *Beteiligungsgesellschaft Larentia + Minerva mbH & Co. KG v Finanzamt Nordenham* and *Finanzamt Hamburg-Mitte v Marenave Schiffahrts AG* [2015] STC 2101 ("*Larentia etc*").

111. In our view it is clear from the case law cited by the appellant, *Subway* and *Longridge*, that the objects and aims of the appellant as a charity are irrelevant to the question we have to decide. That is also clear from Art 9.1 PVD – "'Taxable person' shall mean any person who, independently, carries out in any place any economic activity, *whatever the purpose or results of that activity*." [Our emphasis]

112. In *Longridge* at [73] Arden LJ said:

> "The concept of economic activity is objective in nature. To ensure legal certainty, the court must have regard to the objective character of the transaction and not to the intention of the taxable person (see *BLP* at [24]). The purpose or result of the transaction is irrelevant as such for the purpose of determining whether an activity is within the scope of the Sixth Directive (see *Enkler* at [25])."

and at [94]:

> "That leaves the FTT's final point in [103] that Longridge's predominant concern was to further its charitable objectives. That was demonstrated by its considerable use of volunteers (see paragraph 89, above). But economic activity is assessed objectively and so the concern of Longridge, which is its reason for providing the services which it does provide, is not enough to convert what would otherwise be economic activity into an activity of a different kind for VAT purposes. …."

113. That sums up this case precisely.

114. We also agree with the appellant that *Larentia etc* must be read as requiring there to be separate activities and outputs of a non taxable activity before the inputs must be apportioned. We have found (in §85) that there is no activity being carried on in the woodland areas which is not part of the woodland operations and that there are no costs incurred in relation to those areas which are not costs of those operations.

115. We therefore hold that the S costs are all attributable exclusively to the appellant's taxable forestry activities, and no apportionment is required by s 24(5) VATA.

The effect of Sveda

116. If we are wrong in our interpretation of *Larentia etc* (as those cases apply to the facts we have found in this case) and it is not necessary for there to be discernable out of scope activities with their own transactions and supplies, then it would become necessary to consider whether the S costs can properly be attributed solely to the silvicultural activities. We therefore set out our views on this, though we stress they are not necessary for the purposes of our decision.

117. Both parties made particular reference in their skeletons to Case C-126/14 *'Sveda' UAB v Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos, third party: Klaipėdos apskrities valstybinė mokesčių inspekcija* EU:C:2015:712 [2015] STC 447 ("*Sveda*").

118. For HMRC Mr Watkinson distinguishes *Sveda* from this case by pointing out that Sveda's making free to access for the public a path which it had constructed in a Baltic mythology theme park, the cost of which it was seeking to deduct as input tax, was so that the public could make purchases at cafes, gift shops etc which were taxable activities. Sveda, he says, was at all times engaged in economic activity (and he cites the CJEU's decision and the Advocate-General's ("A-G") opinion for this) so that making the path available to the public was economic activity. By contrast the appellant is (as can be seen from its income) engaged in non-business activity and that fact that it may sell some timber in the future does not create the "direct and immediate link" required for 100% input tax deduction.

119. Mr Thomas QC said that in *Sveda* part of the doubts of the referring national court about deductibility were that while there were going to be "downstream" taxable activities in the meantime the site would not generate any income for Sveda. This he said was in effect what HMRC were arguing. But the CJEU held that this was irrelevant and that there was a link established between the costs of the path and the downstream activities.

120. Indeed the link to taxable supplies in this case, he added, was clearer than in Sveda. Because the path was always going to be free and Sveda's business was in providing accommodation, food and beverages and leisure activities, the link between the costs of the path and the subsequent taxable supplies was not particularly close, but that did not prevent deduction. In this case it is the trees the cost of which is the equivalent to the cost of the path and it is the trees which are to be harvested and sold.

121. We agree with the appellant up to a point. The point is this. Mr Watkinson was at pains to seek to establish in his cross-examination of Mr Mead and Mr Tustin that it could not be said that all the trees would be felled and sold for timber even after 150 years. Mr Tustin maintained that all the trees would be felled at some stage, and we accept that. But the link between the trees acquired and planted in 2015 with the felling of those specific trees to sell the timber in periods probably ranging between 20 years' time and 150 years' time may be a direct link but is hardly an *immediate* one.

122. But it seems to us that "immediate" cannot mean in the sense that there must be a short or very short time between the inputs and related outputs. In the decision of the CJEU in *Sveda* the Court says at [19] – [20]:

> "19 As regards, in the first place, whether Sveda was acting as a taxable person during construction of the recreational path, that is to say, for the purposes of an economic transaction, within the meaning of the second subparagraph of Article 9(1) of the VAT Directive, it should be noted that goods and services may be acquired, by a taxable person, for the purposes of an economic activity within the meaning of that provision, even if the goods are not used immediately for that economic activity (see, to that effect, judgment in *Lennartz*, C-97/90, EU:C:1991:315, paragraph 14).
>
> 20 It is settled case-law that a person who incurs investment expenditure with the intention, confirmed by objective evidence, of engaging in economic activity within the meaning of Article 9(1) of the VAT Directive must be regarded as a taxable person. Acting in that capacity, he has therefore, in accordance with Article 167 et seq. of that directive, the right immediately to deduct the VAT payable or paid on the investment expenditure incurred for the purposes of the transactions which he intends to carry out and which give rise to the right to deduct (see, to that effect, judgment in *Gran Via Moineşti*, C-257/11, EU:C:2012:759, paragraph 27 and the case-law cited). That right to deduct arises, in accordance with Articles 63 and 167 of the VAT Directive, at the time when the tax becomes chargeable, namely when the goods are delivered (judgment in *Klub*, C-153/11, EU:C:2012:163, paragraph 36 and the case-law cited)."

123. And we agree with the appellant that the actual link in this case is closer in the sense that the costs and the sales are of the same goods, the trees. The trees whose cost is claimed as input tax are the very things that will give rise to output tax.

124. It is however the case, as Mr Watkinson stresses, that in her opinion at [52] A-G Kokott refers at [52] to the case where primary use of goods or services would prevent deductibility despite a link between the cost of the goods or services and future taxable transactions which represented a secondary use. That use is one which represented a non-economic activity, but that was not the case in *Sveda*, despite use of the path itself being free of charge. A-G Kokott refers at [53] to a point made by the United Kingdom referring to the free provision of parking by a shopping mall or supermarket as being nonetheless an economic activity.

125. If, contrary to our findings of fact, there was some activity in the woodland areas which represented the conservation and preservation of the woodlands for public benefit, we do not think that [52] of the A-G's opinion in *Sveda* would make any difference. The fact pattern on that hypothetical basis would be very different. We find it very difficult to see how the conservation "activity" could ever be properly regarded as the primary use of the young trees acquired by the appellant, and we would point out that in Sveda the same people would be the ones using the path free of charge and buying the items for sale, and would be using the path to reach the shops selling the taxable goods. The users of the conservation aspects of the

woodlands would not be the purchasers of the timber, if there were in fact any users at all given the lack of public access.

126. We are fortified in our view by reference to the decision of the CJEU in *Sveda* where at [33] the Court deals with the two cases referred to by the A-G that prevent deductibility. The Court says:

> "… Second, given that the expenditure incurred by Sveda in creating that path can be linked, as is apparent from paragraph 23 of this judgment, to the economic activity planned by the taxable person, that expenditure does not relate to activities that are outside the scope of VAT."

127. At [23] the Court had said:

> "Therefore, it would appear from those findings that Sveda acquired or produced the capital goods concerned with the intention, confirmed by objective evidence, of carrying out an economic activity and did, consequently, act as a taxable person within the meaning of Article 9(1) of the VAT Directive."

128. This is precisely what we say is the case here. The appellant is carrying on an economic activity of operating woodlands on a commercial basis with a view to the sale of timber and incurred costs such as purchasing young trees with the intention of using them in that activity.

129. We therefore agree with the appellant that *Sveda* supports its case and not HMRC's.

What method of apportionment of residual costs is fair and reasonable?

130. Our decision at §115 does not however make this issue moot, although HMRC applied it to the forestry costs which we have held to be non-apportionable. HMRC regard the method used by the appellant to apportion the residual costs as giving the appellant undue compensation because it gave far too high an attribution to the taxable activities which HMRC admit were present in the form of sales of timber. Mr Powell admitted that the undue compensation was the reason he sought to resile from the original agreement.

131. Although in an appeal against a VAT assessment the overall legal burden of proof is on the appellant, in a case such as this where the appellant has used a method of apportionment agreed in writing in 2001 by one of HMRC's predecessors and accepted in an assurance visit in 2006 and where there has been no significant change of circumstances that HMRC have pointed to, we think that the appellant has thereby put forward evidence that the method is fair and reasonable and that there is an evidential burden on HMRC to show that its method is superior.

132. HMRC's method is "based on income" (Mr Powell's letter of 22 May 2015 at 3.3). Mr Powell has included as "business income" income from farming of £5,880, rents receivable £51,415 and sundry receipts of £12,028 which he seems to attribute to sales of timber. As non-business income he has included income from investments

of £410,251, deposit interest of £1,939 and woodland grants of £295,309. We note that the RFS from which these figures were taken show the business receipts under the heading "Income Resources from Charitable Activities".

133. We can see no evidence in the papers that "sundry receipts" were in fact from sales of timber. Mr Powell may have recognised this because he offers to iron out what he admitted was a "potential distortion" in his figures by deeming there to be sales of timber over a period leading up to a year in which there are expected sales.

134. We have no hesitation in saying that this attempted ironing out of the obvious distortion is hopelessly flawed. It presupposes that it can be established exactly when sales of timber will arise and exactly how much they will raise. The evidence of Mr Tustin dealt a devastating blow to this idea.

135. But any attempt to use a formula where all of the elements bar one will be recurring in roughly the same amounts annually but where the element that represents the main economic activity of the appellant produces large amounts every two decades or so over 150 years and nothing or small amounts in interim years is comparing apples with warthogs, not pears. In fact it is more like comparing apple trees which crop annually with the decades apart sales of deciduous timber rather than pear trees which also crop annually.

136. Those in HMRC whose function is to run the VAT system may be forgiven for not being au fait with the income tax treatment of woodlands, but there must be corporate knowledge in HMRC of that treatment which ought to be known or at least available to the VAT specialists in HMRC.

137. When William Pitt the Younger introduced his Income Tax Act[4] in 1799 (39 Geo. III Ch. XIII) it included a 10th case in its Schedule (the tax base for the Act) which provided:

> "*Profits of Manors, or of Timber or Woods, usually cut periodically, and in certain Proportions, Mines, and other Profits of uncertain Annual Amount.*
>
> Value on such Average as shall be settled by the respective Commissioners, before whom the Question shall be depending, except in the case of Mines, where the Average shall be taken on a Term not exceeding Five Years"

138. Modern accounting for long-term projects, of which deciduous forestry is perhaps the longest term of all, seeks to match expenditure with income by deferring expenditure to match the accrual of income. Pitt's pragmatic approach recognised the problems inherent in the taxation of profits from the commercial occupation of woodland, and in later Acts the problems were solved by simply charging a percentage of the annual rateable value under Schedule B to the successive Income Tax Acts from 1803 to 1988, until they became exempt from income and corporation tax in 1989.

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[4] It didn't of course have that short title when enacted as there were no short titles then.

139. We find that HMRC's method gives no recognition to the extremely different economics of commercial woodlands that the direct tax system and accounting theory has struggled with over the centuries and does not give a fair and reasonable result.

140. We add that even if we thought an income based formula (it is really a receipts or turnover based formula) was appropriate, we do not understand why forestry grants are considered non-business income or alternatively why they are income at all, and we would think that there was a good case for considering income from investments as related in part at least to the business activities. We also think it ironic that in the income statements for 2014 there are gains on investment assets of £589,283 that HMRC have ignored. It cannot surely have been on the grounds that they occur in a lumpy fashion, like sales of timber.

141. We go on to consider whether in fact the appellant's basis is a fair and reasonable one, as it is our job to determine, as far as possible, what the correct VAT position is.

142. We have looked at HMRC's skeleton and the documents on which it is based such as Mr Powell's correspondence. The objections by HMRC to the method seems to be solely that it over-compensates the appellant, and that in turn solely because the expenditure on forestry matters has a dual purpose. Paragraph 36(d) of the HMRC consolidated statement of case epitomises this. It says:

> "The current business/non-business apportionment is based on an analysis of the land areas said to be put to business and non-business use. The appellant barely recognises that the majority of its land and the supplies incurred in relation to it is put to dual purposes and therefor the method of apportionment, and consequently the PESM, are neither fair nor reasonable."

143. Thus the only thing wrong with a land area apportionment is the dual use. We have held that there is no dual use of the areas which the appellant says are business use areas.

144. The costs included in the P category are costs which apply to all the land owned by the appellants. A substantial amount of these costs is the fee paid to Carter Jonas for the services of Mr Mead. Mr Mead is responsible for the whole estate. His work relates to the land comprising the estates. Some of this land is entirely devoted to the conservation activities and the rest is devoted to the woodland. It seems to us eminently sensible that it is the area of each part that determines the split of costs.

145. In our view the land area split is fair and reasonable for the reasons we have given, so it must prevail where no other method is fair and reasonable. We add, though it is not necessary for our decision, that even if an income or turnover split were also to be fair and reasonable, we would come down in favour of the basis actually used for 15 years.

Decision

146. We cancel the assessments.

147. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

RICHARD THOMAS
TRIBUNAL JUDGE

RELEASE DATE: 24 JULY 2017