[2017] UKFTT 862 (TC)

TC06257

Appeal number: TC/16/2753, TC/17/4314, TC/17/4705

PROCEDURE – application for expedited hearing of de-registration decision –not made out on facts - application for consolidation of MTIC appeals with de-registration appeal – nature of Tribunal's jurisdiction – full appellate - appeals consolidated -directions issued

FIRST-TIER TRIBUNAL
TAX CHAMBER

MANHATTAN SYSTEMS LIIMITED **Appellant**

- and -

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

TRIBUNAL: JUDGE BARBARA MOSEDALE

Sitting in public at Taylor House, Rosebery Avenue, London on 27 November 2017 with further written submissions on 4 December 2017 from both parties

Ms V Tanchel, Counsel, instructed by LSGA Solicitors for the Appellant

Ms J Goldring, Counsel, at the hearing, with written submissions by Mr H Watkinson, Counsel, both instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. In brief summary, the appellant has appealed five decisions issued by HMRC. Four of those five appealed assessments to reclaim input tax and denials of input tax, made on the basis that (as HMRC alleged) the appellant knew or ought to have known that its transactions were connected to fraud. I will refer to them as the '*Kittel*' appeals. The fifth appeal was against HMRC's decision to de-register the appellant on the basis that it used and would use its registration for fraud.

2. The first three of the four *Kittel* decisions have already been consolidated (by consent) and are referred to by reference TC/16/2753. The fourth *Kittel* decision is known by reference TC/17/4314. The de-registration appeal is TC/17/4705.

3. HMRC applied for all three remaining appeals to be consolidated. It was their position that the evidence relied on in the *Kittel* appeals is virtually identical to that in the de-registration appeal: and that the Tribunal hearing the de-registration appeal will necessarily have to first answer the question whether the appellant did undertake the impugned transactions knowing they were connected to fraud, in order to answer the question whether the VAT registration was being used (as alleged by HMRC) wholly or mainly for the purposes of fraud.

4. The appellant applied for the de-registration appeal to be expedited: its position was that it had been de-registered with immediate effect which, while that did not in law prevent it trading, its practical effect was to make it very difficult to trade and the reality was (it said) that unless the appeal was expedited it would be insolvent before the Tribunal could make its ruling on whether or not the deregistration was lawful, thus rendering its right of appeal nugatory.

5. The appellant did not oppose consolidation of the fourth *Kittel* appeal with the existing consolidated appeal. It opposed consolidation of the de-registration appeal because it considered that consolidation would slow down the de-registration appeal. In particular, Ms Tanchel accepted that HMRC would need a significant amount of time to prepare for the *Kittel* appeals whereas (in her view) much less evidence, and therefore preparation time, was needed for the de-registration appeal.

The application for expedition

Principles governing expedition

6. I understood expedition to mean either or both:

> (1) As short as possible time consistent with justice permitted to the parties to prepare the case for hearing, with a presumption against extensions of time being granted for compliance;
>
> (2) An early hearing with the expedited case prioritised for listing over other cases within the Tribunal system.

7. The appellant relied on the case of *CPC Group Ltd* [2009] EWHC 3204 (Ch). The judge there summarised the law on expedition saying that [88] the applicant must satisfy the court of 'objective urgency' and that was a 'high threshold' [87]. He also said that 'the respondent's attitude is not really of importance. It is only if he can show some real prejudice to him if a trial is expedited that he has a part to play' [89] although the judge also said the respondent could make representations on whether or not expedition was justified.

8. The principles governing my decision whether or not to order expedition were not in any event really in dispute: the dispute was whether expedition was justified on the facts of this case.

Whether the high threshold for expedition was met

9. Objective justification for expedition seemed to me to turn on two questions, one of fact and one of law.

(a) In law, was the appeal the only option available to the appellant to challenge the de-registration decision complained of? And if so,

(b) Did the factual situation justify expedition of that appeal?

Is a Tribunal appeal the only route open to the appellant?

10. The appellant's case was that it had been established by the decision of *Thames Wine Ltd* [2017] EWHC 452 (Admin) that it would be unable to judicially review a decision of HMRC to immediately de-register it for VAT unless it had first exhausted its statutory appeal rights.

11. In *Thames Wine,* the appellant sought to judicially review HMRC's decision to de-register it for VAT. As in this case, the appellant's position was that by the time its appeal in the FTT came on for hearing, it would be insolvent, and its appeal rights therefore nugatory.

12. Its position was that HMRC's decision to de-register is was unlawful. It wanted interim relief pending the determination of its appeal in this Tribunal [6]. The Judge ruled that it would have to show an arguable case that HMRC's decision was unlawful before the court would consider whether it was appropriate to grant interim relief [21]. The Judge concluded that the appellant did not have an arguable case that HMRC's decision to de-register it was unlawful [43-49] and therefore refused interim relief.

13. I do not accept that the *Thames Wine* case decided that interim relief would never be ordered in a case where HMRC deregistered a taxpayer. On the contrary, it was just an example of the Administrative Court applying the well-established principle that interim relief would only be granted (if at all) where the applicant could show an arguable case that the challenged decision was wrong in law.

14. In my view, if the appellant here thought that it had an arguable case that its de-registration was wrong in law, it would be able to pursue a claim for interim relief, although obviously I cannot say whether it would succeed. The fact it appears not to have applied for interim relief does detract from its application for expedition. In the event this does not affect my decision, because for reasons explained below, I do not consider it has objectively justified a need for full expedition of its appeal.

Do the facts justify expedition?

15. The Tribunal had the benefit of the witness statement of Mr Ebrahim Afshernejad, a director of the appellant company. It did not have the benefit of his oral evidence as he did not attend. I was not told why and HMRC did not question this either: so I read nothing into his non-attendance. The fact of his non-attendance, however, did mean that he was unable to answer questions and that therefore I was left unsatisfied on a number of significant issues about the evidence.

16. Ms Tanchel complained that HMRC had not made it clear to her until shortly before the hearing that they had questions about the evidence. She indicated that they had had the witness statement for months but never before indicated that they did not fully accept it. Ms Goldring's reply was that she had not understood until she read Ms Tanchel's skeleton to what extent the appellant relied on it. This all seems besides the point because I can only go on the evidence I had. Mr Afshernejad was not called nor was an adjournment sought. In the absence of answers he might have been able to provide, I was left uncertain of the real impact of the deregistration on the appellant.

17. The appellant's position was that it needed an expedited hearing to save it from insolvency. It indicated it was difficult to trade because:

(a) it suffered reputational damage as it was difficult to give a satisfactory explanation to existing and potential trading partners of why it was not registered for VAT;

(b) It might be unable to service its debt.

(c) it was unable to recover its input tax.

18. HMRC did raise questions about this evidence. So far as reputational damage was concerned, the appellant's evidence was that a trading partner had refused to trade with it as it had no VAT registration number. Another trading partner (Crazy Price) had initially refused to pay for a supply, and then paid the VAT element direct to HMRC. HMRC pointed out that Crazy Price had itself been deregistered from VAT a short time later and so the appellant would no longer be trading with it in any event.

19. The Tribunal was therefore left with a little evidence of reputational damage but, as it only to one or two suppliers, it did not make it clear to what extent Manhattan's ability to trade was actually affected. Manhattan's evidence of debt was also difficult to rely on: while there was some evidence of a mortgage on the property it occupied, there was also more recent evidence that that property had been sold. Most significantly, I was also uncertain of whether or not it could continue to trade.

20. On the one hand, Mr Afshernejad suggested the company could still trade, but with difficulties. He said in his witness statement: 'Manhattan remains able to trade generally'. The explanation for that may be, as Ms Goldring pointed out, that its main areas of business were areas where there was a reverse charge mechanism. Her point was that the appellant ought to be able to trade if its suppliers did not charge it VAT, as it would not incur irrecoverable input tax. The appellant provided no answer to this. And while I recognise the law provides that the reverse charge does not apply where the supply is to a VAT unregistered person, it was not clear whether HMRC permitted reverse charge supplies to be made to Manhattan, which was 'taxable' in the sense it traded above the VAT registration threshold albeit had been de-registered.

21. And on the other hand, Ms Tanchel's instructions were that the appellant had in fact by the date of the hearing ceased to trade. Moreover, the financial evidence it provided was (its last accounts being for the year to end 2015) that it had a very high turnover (approximately £52 million) with a very low profit margin (as its profits were only stated to be approximately £143,000). With such a very low profit margin, I find it would be impossible for the business to absorb the input tax: its margin was much smaller than the VAT percentage. This of course would not matter if it was able to benefit from the reverse charge mechanism, but I did not know whether in practice it was able to do so.

22. In conclusion, while I am satisfied that there must be some financial prejudice to the appellant in being VAT deregistered, I was left uncertain of how severe a prejudice it was. I don't know whether or not it was able to trade. The appellant wished me to rely on Mr Afshernejad's evidence while at the same time the current instructions to counsel contradicted it. And because of that I cannot be satisfied that it would be appropriate to order expedition in the full sense indicated in *CPC Group*. The appellant did not pass the 'high threshold' of satisfying me of objective urgency. And, as I have said, I did not understand why it had not sought interim relief if it thought HMRC's decision was arguably wrong in law although this was not a decisive factor in my decision.

23. Nevertheless, it did seem to me that HMRC must accept that where they deregister a taxpayer, they must be prepared to make ready the appeal for hearing with reasonable expedition, and it would be appropriate to make case management directions on that basis.

24. To decide the timetable for case preparation, the first question was whether or not the de-registration appeal ought to be consolidated with the *Kittel* appeals.

Principles governing consolidation

25. No one discussed the meaning of consolidation as it was obvious. Consolidation meant that the three appeals would become a single appeal, case managed and heard as one.

26. HMRC relied on *Maharani Restaurant* (1999) STC 295 for the principles on when appeals should be consolidated. These principles were not really in dispute: the dispute was whether consolidation was justified on the facts of this case. In *Maharani* the High Court ruled that the Tribunal should consider:

> (a) The risk of two tribunals reaching inconsistent findings of fact ('[22].... It would indeed have been a mischievous result if there had been two separate hearings and witnesses whose evidence was believed in one case in relation to the same evidential matters were not believed in the other, or the rother way about.')
>
> (b) Convenience of the witnesses ('[23]...added enormously to their inconvenience if they had been required to give evidence on two separate occasions in relation to a matter that was covering essentially the same matter.'
>
> (c) Length of the hearing and whether consolidation will reduce the overall sitting days: [24];
>
> (d) Potential effect of similar fact evidence [25];

27. By ruling that the Tribunal had not taken into account any irrelevant matter, he High Court also impliedly approved the fact that the Tribunal had considered:

> (e) Whether overall costs will be saved by consolidation;
>
> (f) Whether consolidation will increase complexity
>
> (g) Risk of prejudice to parties to only some but not all of the consolidated appeals.

28. However, it seems to me that the above list is not necessarily an exhaustive list of what would be relevant and in this case, it was also relevant to consider:

> (h) Whether consolidation would make it difficult to expedite the de-registration appeal in the limited fashion which I have found justified in this case.

29. I will deal with factor (a) first.

(a) What is the factual overlap between the Kittel and de-registration appeals?

30. I find the officer's decision letter makes it clear that his decision depended on his belief that (in accordance with the various decisions he had made the subject of the other four appeals) the appellant had knowingly entered into transactions connected with MTIC fraud; that led directly to his belief that the appellant was using its VAT registration with fraudulent or dishonest intent and that, for that reason, should be deregistered.

31. HMRC's position was that therefore there was substantial identity between the evidence relied on the one hand in the *Kittel* appeals and, on the other hand, in the de-registration appeal. It would involve the same witnesses, the same evidence, and the

same central issue. In both appeals the Tribunal would have to rule on whether the appellant knowingly entered into transactions connected with fraud.

32. To some extent, Ms Tanchel accepted that there would be identity of evidence as there was identity in the allegations; but she said that Tribunal hearing the de-registration appeal would only be interested in whether HMRC had reached a reasonable decision on the information known to them at the time, whereas in the Kittel appeals the Tribunal would be concerned with whether the input tax denial was correct. For that reason, she said, the deregistration appeal could be expedited because HMRC already had all the evidence the officer relied on in reaching his decision; the *Kittel* appeal might be delayed while HMRC carried out further research (eg on the transaction chain).

33. The parties were unable to agree whether the jurisdiction in the deregistration appeal would be merely supervisory and were unprepared to argue the point. I said that if it proved to be critical to my decision I would ask for written submissions, and on reflection the next day I did so. They were provided on 4 December, and my decision below is made with the benefit of them.

34. It seemed to me that proceeding on the assumption (for the sake of argument) that Ms Tanchel was right and the jurisdiction in the deregistration appeal would be merely supervisory, it would be significant because the two notional tribunals, the one hearing the deregistration appeal and the other the *Kittel* appeals, would not be deciding identical questions. The first would consider on the basis of the evidence known to HMRC at the time of the decision whether HMRC reasonably concluded that the appellant entered into the transactions knowing they were connected to fraud; the other tribunal would consider all the evidence available at the time of the hearing in order to decide whether the appellant actually did enter into the transactions knowing they were connected with fraud.

35. It would be possible for the two notional tribunals to decide these questions differently without bringing the administration of justice into disrepute. The case for consolidation would be much weaker than otherwise: while there would be some overlap of documentary and witness evidence, the inconvenience to the HMRC officer in giving evidence twice might not be sufficiently significant to delay the preparation of the de-registration appeal for hearing.

Is the deregistration jurisdiction supervisory or full appellate?

36. So is the jurisdiction of the notional tribunal hearing the de-registration appeal full appellate or merely supervisory? The jurisdiction is contained in s 83(1)(a) Value Added Tax Act 1994 ('VATA') and it provides:

> **83 Appeals**
>
> Subject to sections 83G and 84 an appeal shall lie to the Tribunal with respect to any of the following matters –
>
> (a) the registration or cancellation of registration of any person under this Act;

.....

S 83G contains the time-limit provisions and is not relevant here. S 84 contains a number of provisions and in particular in relation to various sub-sections of s 83, but not (1)(a), provides that the Tribunal's jurisdiction is supervisory only.

37. The parties appear agreed, however, that the fact that s 84 does not expressly provide for supervisory jurisdiction does not necessarily mean the jurisdiction is full appellate; nor does a reference to HMRC's discretion in the decision making power necessarily mean the jurisdiction is merely supervisory. As was said in ***Banbury Visionplus Ltd*** [2006] EWHC 1024 (Ch) (Etherton J), relying on the Court of Appeal decision in *John Dee Ltd* (1995) STC 941, the Tribunal must consider the nature of the decision from which the appeal was brought and the legislative context in which that decision was made.

38. HMRC's registration and deregistration decision making powers are contained in Sch 1 of VATA. As the appellant points out, Sch 1 VATA appears to make certain deregistration decisions a discretionary matter for HMRC (my underlining):

> 3 A person who has become liable to be registered under this Schedule shall cease to be so liable at any time **if the Commissioners are satisfied** in relation to that time that he...
>
> [(a)-(c) comprise 3 pre-conditions none of which are applicable here]
>
> 4(1) ...a person who has become liable to be registered under this Schedule shall cease to be so liable at any time after being registered **if the Commissioners are satisfied** that the value of his taxable supplies in the period of one year then beginning with not exceed [figure stated]....
>
> 13(1) ...where a registrable person satisfies the Commissioners that he is not liable to be registered under this Schedule, they shall, if he so requests, cancel his registration.....
>
> (2)....where the Commissioners are satisfied that a registered person has ceased to be registrable, they may cancel his registration.....

39. A binding High Court decision in *Gray* [2000] STC 880 ruled that

> [19] ....A VAT tribunal, or this court itself, can only interfere with the decision of the Commissioners [under paragraph 1(3) of Sch 1 of VATA] if it is shown that the decision is one which no reasonable body of Commissioners could reach.
>
> .....
>
> [23] I conclude, therefore, that in cases of late registration as well as in a case where the trader notifies in due time, the Commissioners must give effect to paragraph 1(3) by considering the case as at the date from which registration would otherwise take effect and, by looking forward, asking themselves whether they are or are not satisfied that turnover will not exceed the threshold amount. Obviously they cannot

> do this otherwise than on the basis of what they consider to be likely. But if they reach a conclusion which would be open to a reasonable body of Commissioners considering the relevant evidence, an appellate tribunal cannot interfere with their decision. It is not enough that the appellate tribunal thinks that it would have reached a different conclusion on the same evidence."

40. This has been followed in *Vaughan* [2008] UKVAT V20547 and *Gayle (t/a Photogen Promo Music Adverts Ltd and Photogen PMA Ltd)* [2017] UKFTT 211 (TC). Both the appellant and respondents consider what was said to the contrary in *Gardner & Co* [2011] UKFTT 470 (TC) was without hearing argument, per incuriam, and wrong, and in the light of *Gray*, they must be right.

41. In conclusion, the Tribunal's jurisdiction is limited to being supervisory in at least certain deregistration appeals. Where the appellant and respondents diverge is in respect of the Tribunal's jurisdiction on hearing an appeal against a deregistration decision taken by HMRC on the back of *Ablessio SIA* C-527/11, as in this appeal. The appellant considers that all deregistration decisions are subject only to supervisory jurisdiction; HMRC does not consider that the *Gray* line of cases applies in situations where the deregistration was on the basis that HMRC considered it likely the VAT registration would be used for fraudulent purposes.

42. HMRC's point is that the right to deregister where it is thought likely that a VAT registration will be used fraudulently is a power read into the VAT Act, in the same way that the right to deny input tax on *Kittel* grounds was read into the legislation (see *Mobilx* [2010] EWCA Civ 517 §49). So the right to deregister is only implied into Sch1 of VATA without being expressly provided for, so it does not follow that it is a discretionary decision for HMRC in the same way as HMRC have a discretion when deregistering under §3 and §4(1) of Sch 1.

43. HMRC go on to say that *Ablessio* itself indicates that the Tribunal's jurisdiction must be full appellate because:

> (a) The CJEU indicated that the national courts should have unlimited jurisdiction to consider whether the decision to deregister was right (citing [38] of *Ablessio*);
>
> (b) The burden of proof must be on HMRC to establish that it is likely the appellant will use its VAT registration fraudulently and it is incompatible with supervisory jurisdiction for HMRC to have the burden of proof;
>
> (c) The right to be registered for VAT is fundamental to the PVD so natural justice requires full appellant jurisdiction to determine whether a taxpayer was right deprived of that right;

44. I find HMRC's case on this persuasive. It seems wrong to me to suggest that the Tribunal would be limited to deciding whether HMRC's decision to deregister the appellant, on the basis that it was using its VAT registration for fraudulent purposes,

was reasonable on the facts as known to HMRC at the time: for justice to be done, the question must be whether that decision was right. The CJEU would expect no less.

45. In conclusion, I find that the Tribunal will have full appellate jurisdiction when deciding the appeal against the de-registration in this case; and the *Gray* line of cases does not apply to *Ablessio*-type deregistrations: the Tribunal will decide, not whether Mr Mandalia's decision was reasonable in light of what was known to him at the time, but whether his decision was right in the light of the entire evidence before the Tribunal.

46. Therefore, I find that the two notional tribunals (one hearing the de-registration appeal and the other hearing the *Kittel* appeals) will principally be deciding exactly the same question of fact, and that is whether the appellant entered into transactions which were, and it knew were, connected to fraud. That question cannot be asked and answered in separate hearings, without risking inconsistent findings of fact; inconsistent findings of fact would bring the administration of justice into disrepute.

Conclusion on consolidation

47. The answers to the questions posed are as follows:

(a) The risk of two tribunals reaching inconsistent findings of fact indicates consolidation as fundamentally the de-registration and *Kittel* appeals involve the same questions of fact;

(b) Convenience of the witnesses indicates consolidation as otherwise the same witnesses will be required from both sides giving the same evidence twice.

(c) Length of the hearing and whether consolidation will reduce the overall sitting days: I was not addressed on this and it would have been difficult for counsel to do so other than in generalities as evidence is not yet exchanged, but, bearing in mind the strong crossover in issues, consolidation would be very likely to reduce the overall number of sitting days and costs for the parties;

(d) Potential effect of similar fact evidence [25]: there was no suggestion that this mattered here were the parties and witnesses were the same for both appeals.

(e) Whether overall costs will be saved by consolidation: yes, as per (c);

(f) Whether consolidation will increase complexity. I recognise that some questions may arise in the de-registration appeal that may not arise in the *Kittel* appeals but I do not consider that the complexity of the hearing will be increased in any way by consolidation: indeed, I think it will reduce it.

(g) Risk of prejudice to parties concerned in only some but not all of the appeals: not an issue here as per (d);

(h) Whether consolidation would slow down preparation of the de-registration appeal: this is the only factor which might be against consolidation but I do not think that properly analysed it is, as the same evidence must be served in both appeals.

48. In conclusion, because the same evidence is relevant to both appeals, I don't accept that consolidation will significantly delay the de-registration appeal. HMRC must be given a fair opportunity to serve the evidence of connection to fraud and knowledge/means of knowledge of it in *both* appeals.

49. So factor (a) is a factor which is very strongly in favour of consolidation; all the other factors bar (h) are also in favour of consolidation, and, as I have said, even factor (h) does not really indicate that it would be prejudicial to the appellant to consolidate.

50. The appellant pointed out that the *Kittel* appeals were categorised as complex while the de-registration appeal was categorised as standard: it considered this a bar to consolidation. I do not agree: categorisation is a decision made by the Registrar at the outset of the appeal and can be re-considered at any time, whether or not a party applies for re-categorisation. It seems clear to me that the de-registration appeal must be (as it depends on the same allegations) at least as complex as the *Kittel* appeals; in any event, the effect of consolidation into appeal Ref TC/16/2753 will be that all appeals take on the complex categorisation of that case. To the extent I am wrong on that, I re-categorise the de-registration appeal as complex because its nature is complex.

51. In any event, it is not impossible to consolidate appeals with different costs regimes. It just makes the decision on costs at the end of the appeal more complicated.

52. In conclusion, the appeals must be consolidated and I order that they are.

Preliminary issue?

53. The appellant suggested that if I was not minded to order expedition, or was minded to order consolidation, then I should order a preliminary issue to be tried in the de-registration appeal.

54. My understanding of this was that it was proposed originally as simply another route by which the de-registration appeal should be heard first, and should not be granted for all the reasons why consolidation should be ordered and in particular because the same factual issues had to be resolved in the de-registration appeal as in the *Kittel* appeals.

55. Nevertheless, I raised the question of whether there would be a discrete legal point arising in the de-registration appeal which would have the potential of resolving the

de-registration appeal. And that was the question of the impact (if any) of the Court of Appeal's ruling in *Citibank* and *Ebuyer* on the legality of HMRC's decision to deregister the appellant even if they could prove that the appellant had entered into transactions knowing they were connected to fraud. In other words, the Court of Appeal has ruled that it is *not* a necessary implication that entering into a transaction which to the appellant's knowledge is connected to fraud is dishonest or fraudulent behaviour: therefore, is entering into transactions knowing they are connected to fraud grounds on which the appellant can be said to abuse its VAT registration?

56. Both parties can consider their position on this: they had not considered it before the hearing, and I won't prejudge any application for a preliminary issue that might be made. But if either party is minded to make such application for a preliminary ruling, it should be made sooner rather than later.

Appropriate directions

57. So my conclusion is that full expedition of the appeal was not justified and the appeals must be consolidated. Nevertheless, because it is a deregistration appeal, the exchange of evidence and timetable generally should be as short as reasonably consistent with properly preparing the case for hearing.

58. HMRC wanted to deliver the consolidated statement of case by 31/1/18 with evidence to be served by 30 April 2018. Ms Tanchel's view on the appropriate directions in the de-registration appeal was that HMRC should deliver their statement of case *and* evidence by 30 December 2017. Ms Tanchel, however, accepted that her suggested timetable was too short if the appeals were consolidated, although she did not suggest an alternative.

59. As I have decided the de-registration and *Kittel* appeals must be consolidated, it follows that I find Ms Tanchel's timetable inconsistent with the right for HMRC to fully prepare their defence. While I do not consider that time to carry out further investigations would be justified (and HMRC do not ask for it), I do accept that collating the evidence they currently hold and preparing witness statements for an MTIC appeal covering two years of trading will be time consuming and far more time consuming that Ms Tanchel's timetable permits.

60. It seems to me that Ms Goldring's suggestion for the consolidated statement of case is reasonable. This will be a factually complex appeal and the statement of case can be expected to require a great deal of work. Moreover, in reality allowing HMRC 60 days for their consolidated statement of case is fairly short as time will be lost to the Christmas break.

61. Ms Goldring believes that the witness evidence (with exhibits) can be served by the end of April 2018. The parties are agreed there will be no exchange of lists of documents. Ms Tanchel, as I have said, asked for the witnesses' evidence much sooner. My experience of these types of appeals suggests that HMRC's witness statements and documents will be voluminous. It will need to cover the evidence of connection to fraud on large numbers of deal chains, as well as the appellant's alleged

knowledge/means of knowledge. I have no difficulty in accepting that HMRC will need to the end of April 2018 to prepare it.

62. Ms Tanchel only asked for one month for evidence in response. It seems more fair to give the appellant an equivalent three months: however, bearing in mind it is the appellant's desire to expedite the appeal, it seems to me that the time from which the later directions run should be from when the appellant actually provides its evidence rather than the due date. It is then in the hands of the appellant to do what it can to expedite the appeal by serving its evidence before the due date if it can.

63. Once the evidence is served, the appellant must then specify what is in dispute in order (if possible) to narrow the issues in dispute and shorten the length of the hearing. Again the speed at which it does this is in its own hands. Once the appellant has indicated what is in dispute, the parties can provide listing information and the appeal can be set down for hearing.

64. Both parties are on notice that applications for extensions of time may well not be viewed favourably. By taking away the appellant's VAT registration, HMRC must accept that they need to cooperate with preparing the appeal as quickly as reasonably possible because the appellant's ability to trade must be compromised to some extent.

65. The appellant complains that HMRC have not recognised this to date: the first appeal was lodged in early 2016 but no statement of case has served in any of the appeals as yet. While that is true, I also accept, as Ms Goldring says, HMRC are in breach of no direction to serve a statement of case. It was not really possible to serve a statement of case before the issues of hardship, and then consolidation, was resolved. I also accept that HMRC have now recognised that the appeal requires resources to be devoted to it. Ms Goldring says that the solicitor working on the appeal devotes most of her time to it; Mr Mandalia (the case officer) works on the appeal and a second, MTIC-appeal experienced, officer has been drafted in to assist him. It is to be hoped HMRC will ensure sufficient resources are devoted to the appeal so that extensions of time are not required.

66. Directions are attached to this decision.

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

BARBARA MOSEDALE
TRIBUNAL JUDGE

RELEASE DATE: 05 DECEMBER 2017