Neutral Citation: [2024] UKFTT 00402 (TC)

Case Number: TC09169

FIRST-TIER TRIBUNAL
TAX CHAMBER

In Taylor House, London

Appeal references: TC/2022/01066
TC/2022/01067

NATIONAL INSURANCE CONTRIBUTIONS – definition of pool cars – meeting with HM Inspector of Taxes in 1993 – agreement that the cars were pool cars if certain conditions satisfied – whether HMRC estopped from issuing decisions to collect NICs retrospectively – although conditions in Tinkler *satisfied, HMRC cannot be estopped from enforcing a statute – agreement made in 1993 also ultra-vires so far as it related to the future – whether Tribunal has the jurisdiction to decide whether the Appellants had a legitimate expectation that decisions would not be retrospective – Court of Appeal judgment in* Beadle *and subsequent case law considered and applied – appeal dismissed.*

Heard on 29 and 30 November 2023
and 22 March 2024
Judgment date: 16 May 2024

Before

TRIBUNAL JUDGE ANNE REDSTON
MR RICHARD LAW

Between

MWL INTERNATIONAL LTD
MAYWAL LTD

Appellants

and

THE COMMISSIONERS FOR
HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellants: Mr David Walpole, director of the Appellants, and Mr Keith Gordon of Counsel, instructed by Berwick Tax Ltd

For the Respondents: Ms Rose Grainger, with Mr Stephen Goulding and Mr Paul Marks, Litigators of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION AND SUMMARY

1. Maywal Ltd ("Maywal") and MWL International Ltd ("MWL"), together "the Appellants", trade in commodities. The companies were set up by Mr David Walpole ("Mr Walpole"), and he remains a director of both companies.

2. On 21 April 2021, HM Revenue & Customs ("HMRC") decided Maywal was liable to Class 1A National Insurance Contributions ("NICs") totalling £50,072 for the tax years 2015-16 through to 2018-19 under s 8 of the Social Security Contributions (Transfer of Functions, etc) Act 1999 ("ToFA"), and on the same day, that MWL was liable to Class 1A NICs of £7,814 for 2019-20 under the same provision. In this decision, the years 2015-2020 are referred to as "the relevant period".

3. HMRC made those decisions because they had concluded that certain prestige cars ("the Cars") leased by the Appellants and used by various employees were not pool cars as defined by the Income Tax (Employment and Pensions) Act ("ITEPA"), s 167.

4. The Appellants appealed HMRC's decisions on the basis that the Cars satisfied the statutory conditions, and if not, that:

(1) HMRC were estopped from arguing that the Cars were not pool cars during the relevant period; and/or

(2) the Appellants had a legitimate expectation that the Cars would be treated as such.

5. The estoppel and the Appellants' legitimate expectations were said to derive from a meeting ("the Meeting") in 1993 between Mr Walpole and an HM Inspector of Taxes ("the Inspector") at which it had been agreed that the Cars were pool cars as long as:

(1) they were available for the company's business as required;

(2) they were available to, and used by, more than one employee;

(3) they were kept overnight at the registered office of the employing company (which the Inspector knew was also Mr Walpole's residential address); and

(4) each employee who had use of the Cars owned another car which was available for private use.

6. We found that one of the Cars failed almost all the statutory conditions and so was plainly not a pool car. The other Cars were available to Mr Walpole, his son and his wife by reason of their employments and were actually used by them. Those Cars were kept overnight at the residence of Mr and Mrs Walpole, which was also the registered office of the Appellants. We held that this was sufficient for the Cars to meet the condition that the premises was "occupied" by the Appellants and the exception at ITEPA s 167(3)(c) was therefore satisfied. However, we agreed with HMRC that all three employees used the Cars privately, and that their private use was not "merely incidental" to their other use. We therefore found that the Cars were not pool cars.

7. We went on to consider whether, as the result of the agreement made at the Meeting, HMRC were estopped from issuing retrospective NIC decisions. We found that the principles of estoppel by convention set out in *Tinkler v HMRC* [2021] UKSC 39 ("*Tinkler*") were satisfied, but that HMRC were nevertheless not estopped from retrospectively changing the agreement made at the Meeting for two reasons:

(1) HMRC cannot be estopped from enforcing a statutory prevision; and

(2) the Inspector had no authority to enter into a forward agreement relating to the Appellants' tax or NICs position. The agreement was therefore void as regards the future, and a void agreement cannot found an estoppel.

8. The Appellants' final argument was that they had a legitimate expectation that HMRC would not retrospectively change their position. Having considered the case law, we decided the Tribunal did not have the jurisdiction to decide that issue.

9. For the above reasons, we refused the Appellants' appeals.

Structure of decision

10. This decision is structured as follows:

The evidence	§17.
Findings of fact	§25.
Issue One: Whether the Cars were pool cars	§64.
Issue Two: Estoppel	§99.(2)(b)
Issue Three: Legitimate expectations	§160.

Other assessments

11. HMRC had issued two junior employees (Ms Lisa Cowles and Ms Paula Rowe) with assessments to company car benefit and fuel benefit. HMRC told the Tribunal that these assessments had been stayed pending this hearing, and would be vacated if we found as a fact that none of the Cars was available for use, or actually used by, Ms Cowles or Ms Rowe. We do so find, see §50.(4), and it follows that these assessments should be cancelled.

12. HMRC also told us there were open enquiries into Mr Walpole's self-assessment ("SA") tax returns for the relevant period, and that HMRC were waiting to decide whether to assess him on the benefit of the Cars and the related fuel. We were not told whether the position was the same in relation to Mr Walpole's son, Mr Mark Walpole, or anyone else.

The hearings

13. The hearing was originally listed for two days, during which the parties put forward their case on the facts and we heard the oral evidence. Mr Walpole represented the Appellants at that hearing. The case was adjourned and relisted for a third day, with directions for the parties further to consider a number of the legal issues raised by the appeal. The Appellants then instructed Berwick Tax Ltd, which in turn instructed Mr Keith Gordon of Counsel. He provided written submissions and attended the third hearing day.

14. Ms Rose Grainger represented HMRC on all three days. For the first two, Mr Stephen Goulding was what HMRC call "the second Chair"; on the third day, that role was taken by Mr Paul Marks.

15. The Tribunal is grateful for the helpful submissions made by all the representatives. We have not, however, found it necessary to refer in this decision to every argument advanced or all the authorities cited.

16. At the end of the hearing we asked whether the parties had had sufficient time to put their cases, in particular in relation to the estoppel and legitimate expectations issues, and both said no further time was required.

THE EVIDENCE

17. The evidence consisted of documents and witness evidence.

The documents

18. The Tribunal was provided with a bundle of documents for the first hearing, and a further bundle for the second hearing. The documents included:

(1) the correspondence between the parties, and between the parties and the Tribunal;

(2) structure plans showing the shareholders of both Appellants and of other companies linked to Mr Walpole, together with lists of directors and employees; and

(3) registration certificates for some of the Cars, and for cars made available to Ms Cowles and Ms Rowe.

The witness evidence

19. Ms Rhonda Bigwood had conduct of the investigation into the status of the Cars. She provided a witness statement, gave evidence-in-chief led by Ms Grainger, was cross-examined by Mr Walpole and re-examined by Ms Grainger. We found her to be a credible and honest witness.

20. Mr Kayser Ahmed is a member of Ms Bigwood's team and worked under her direction. He provided a witness statement, gave evidence-in-chief led by Ms Grainger, was cross-examined by Mr Walpole and re-examined by Ms Grainger. We found him also to be credible and honest.

21. Mr Walpole's witness statement included both evidence and submissions. We have taken the factual part of his statement as his evidence, and treated the other passages as a skeleton argument. He gave evidence-in-chief, was cross-examined by Ms Grainger and answered questions from the Tribunal. We found him to be a straightforward witness, who gave his honest recollection of relevant events and arrangements, even when that was not to the Appellants' advantage: for example, when asked if all the Cars were used by him, Mrs Walpole and his son, he said the Porsche was used only by his son.

22. Ms Cowles is the Appellants' Accounts and Administrative Officer. She provided a letter dated 3 October 2022 setting out her position**,** which both parties treated as a witness statement. She gave evidence-in-chief led by Mr Walpole, was cross-examined by Ms Grainger and answered a question from the Tribunal. We found her to be an honest and straightforward witness.

23. Ms Rowe provided a similar letter, but did not attend the hearing; Mr Walpole said that the Appellants needed to have either her or Ms Cowles on site during the working day. Ms Grainger did not ask us to disregard Ms Rowe's letter, and did not challenge its content. We therefore accepted the evidence within it.

24. The Bundle also included a letter from Mr Perry**,** who had attended the Meeting in his capacity as a partner of Perrys Chartered Accountants, who at all relevant times have been the Appellants' auditors and tax advisers. Mr Perry did not attend the hearing: Mr Walpole said he was elderly and his health and hearing were poor. Mr Perry's letter supported the unchallenged evidence given by Mr Walpole, and we therefore accepted it.

THE FACTS

25. On the basis of the evidence summarised above, we make the following findings of fact. We make further findings of fact later in our decision, see §115.(2) (about the use of the Cars) and §150. (about the Meeting).

The Appellants' business

26. Maywal Trading Limited ("MTL") was founded in 1988 by Mr Walpole and Mr Murch; both had previously been employed by Dalgety International Trading Ltd ("Dalgety") but had been made redundant. When at Dalgety, Mr Walpole had been responsible for trading in commodities with customers in the Middle East, including Yemen and Kuwait. As part of the redundancy arrangements, it was agreed that Mr Walpole could retain the Middle Eastern part of Dalgety's commodity business.

27. Mr Walpole and Mr Murch subsequently established other companies, including Maywal, MWL and ABM Leasing Ltd ("ABM"). Although the companies were not a single group for corporation tax purposes, Mr Walpole regarded them as part of the "Maywal group". As a result, when describing the trade carried on, he did not distinguish between MTL, Maywal or MWL, and HMRC similarly did not make any distinction. In the rest of this decision, we have referred to the commodity business as being carried on by the Maywal group, without making findings as to which individual company was carrying on that trading activity at any point in time.

28. The Maywal group trades physical commodities, particularly grains and vegetable oils, from various overseas countries to destinations in the Middle East. All the trading is thus between one non-UK country and another non-UK country. The only reason Maywal was established in the UK was because Mr Walpole and Mr Murch were resident here. The Maywal group also acts as a broker in relation to certain commodity trades.

29. It was common ground that:

(1) in the years 2015-16 to 2019-20, Maywal employed Mr Walpole, Mr Murch, Mr Mark Walpole, Ms Cowles and Ms Rowe, and reported their earnings to HMRC for PAYE and NICs purposes; and

(2) in 2020-21, those individuals were employed by MWL, which reported their earnings to HMRC for PAYE and NICs purposes.

30. Throughout the relevant period, Mr Walpole's wife, Mrs Lyn Walpole, was employed by MWL. We had no information about whether her earnings were reported to HMRC by that company, or by Maywal as its agent.

Where the business is carried on

31. The trading and broking deals are made by Mr Walpole, Mr Mark Walpole and/or Mr Murch ("the Trading Directors"); deals are usually agreed in principle on the phone and subsequently detailed and confirmed in writing. In the relevant period, those later communications were usually by email; more recently they have been by WhatsApp.

32. The time differences between the UK and the locations of the suppliers and the customers mean that business may be transacted at any time of the day or night. The flow of transactions is unpredictable, and the Trading Directors therefore need to be able to respond quickly, ideally immediately, to deal-related contacts from customers and suppliers.

33. Each Trading Director has an office at home; this is their main place of work. Mr Walpole's unchallenged evidence was that Mrs Walpole also worked from the office in their house; he described her as "managing the home office".

34. In addition, the Maywal group has an office based in Borough Green in Kent, where the details of the commodity contracts are written up. The Trading Directors visit that office from time to time to oversee procedures. At all relevant times, the registered office of Maywal and MWL has been Mr Walpole's home address.

35. Since 1989, the Maywal group has owned or leased the Cars, which are prestige limousine vehicles. The Cars have always been equipped with telephone connections: initially these phones were specific to each car; more recently Bluetooth has been installed. At all relevant times, these telephone connections have been necessary to ensure that the Trading Directors can make and receive calls to and from clients when travelling in the Cars.

The overseas clients

36. Many of the Maywal group's customers are companies owned and run by extremely wealthy individuals based in Kuwait and Yemen. Mr Walpole told us, and HMRC did not dispute, that:

(1) it is customary in those countries for the host of a business meeting to provide hospitality;

(2) on overseas visits, it is expected that the hospitality will include hotel costs and the provision of a car with a chauffeur, or a self-drive car; and

(3) it would be an insult to provide the customers with anything other than a prestige luxury car such as a Mercedes.

37. For those reasons, the Cars are made available to Maywal Group's customers when they visit the UK. At other times, the Cars are available for use and actually used by one or more directors and/or employees. The issue in dispute was the extent and nature of that use.

The Meeting

38. In 1993, the Inland Revenue carried out a PAYE audit of the Maywal group, following which the Meeting was arranged. This was attended by Mr Walpole and Mr Murch on behalf of the Maywal group; by Mr Perry, and by Mr Ken Nutt (who dealt with PAYE for the Maywal group). The Inland Revenue were represented by an Inspector of Taxes and a compliance officer from the Maidstone tax office. The main purpose of the Meeting was to discuss the use of the Cars by directors/employees.

39. No note of the Meeting is extant, but Mr Walpole's unchallenged evidence was that he told the Officers:

(1) the Cars were purchased because they were required to transport the customers;

(2) the Cars were equipped with communication systems which allowed instant contact with customers, and as a result were used as "travelling offices" by the Trading Directors;

(3) the Cars were kept overnight at Maywal's registered office, which was also Mr Walpole's home;

(4) the Trading Directors each owned another car privately;

(5) no records had been kept of the journeys made in the Cars;

(6) Maywal had treated the Cars as "pool cars" in the past and had thus not reported any benefit in kind in relation to the provision of the vehicles or the related fuel; and

(7) the Maywal group could easily operate from overseas, and would do so if every journey in the Cars had to be logged.

40. It was also Mr Walpole's unchallenged evidence that the Compliance Officer took the position that the Cars could not be pool cars unless records were kept of journeys to support that treatment, but he was overruled. The Inspector instead agreed with Mr Walpole that the Cars were and would continue to be pool cars as long as:

(1) they were available for the company's business as required;

(2) they were available to, and used by, more than one employee;

(3) they were kept overnight at the registered office of the company (which was also the residential address of one of the directors); and

(4) each employee who had use of the Cars owned another car which was available for private use.

41. The evidence in Mr Perry's letter was briefer and less detailed than that given by Mr Walpole, it confirmed that the Inspector had agreed that the Cars were and would continue to be pool cars, and that no benefit in kind was assessable.

42. We find as facts that Mr Walpole gave the Officers the information at §39. and that the parties then came to the agreement set out at §40..

Subsequently

43. During the period from 1993 to 2018, various of the Cars were sold and new cars purchased. From some date before 2015, all new Cars were purchased by ABM, the leasing company within the Maywal group, and were then leased to Maywal or MWL.

44. At all relevant times, the Appellants relied on the agreement reached at the Meeting, and reported none of the Cars on P11Ds. During that time, they submitted their payroll returns on a regular basis, without any questions from HMRC. It was also Mr Walpole's evidence, again unchallenged, that between the Meeting and the enquiry which led to this appeal, there had been "numerous tax enquiries" during which HMRC did not raise any questions about the Cars.

The enquiry, the assessments and the appeal

45. On 25 January 2018, HMRC wrote to Maywal and MWL saying they were undertaking a full review of the companies' records, including in relation to PAYE. This was followed by a meeting on 5 March 2018. At some point HMRC wrote to various employees (in addition to Ms Rowe and Ms Cowles) about increasing their tax liabilities so as to include benefits-in-kind in relation to the use of the Cars. On 25 March 2021, Ms Bigwood informed Maywal and MWL that Class 1A NIC decisions were about to be issued.

46. On 28 March 2021, 10 March 2022 and 13 March 2022, HMRC issued Ms Rowe and Ms Cowles with "simple assessments" which added "many thousands of pounds" of car and fuel benefits to the income which had previously been assessed. .

47. On 21 April 2021, HMRC issued Maywal with decisions charging Class 1A NIC totalling £50,072 in relation to the tax years 2015-16 through to 2018-19 under ToFA s 8. On the same day, HMRC issued MWL with a decision charging Class 1A NICs of £7,814 under the same provisions.

48. On 10 May 2021, a claim to collect the NICs which HMRC had decided was due from Maywal was registered in the County Court Money Claims centre. The Tribunal had no information as to whether a similar claim had been registered against MWL.

The Cars which were the subject of the assessments

49. The decisions related to twelve Cars, being seven Mercedes; two Teslas; one Land Rover Discovery, one BMW and one Porsche Cayenne. There was no dispute as to the quantum of the decisions, in other words, the Appellants agreed that they had been correctly calculated based on the Cars leased to the Appellants during the relevant period and used by one or more of the directors and/or employees.

50. Mr Walpole gave unchallenged evidence that:

(1) the Porsche was available to and driven only by Mr Mark Walpole, but that all the other Cars:

(a) were available to himself, Mr Mark Walpole and Mrs Walpole;

(b) were driven by himself, Mr Mark Walpole, and the chauffeur (see (6) below), who was also an employee;

(c) were normally kept overnight at Mr Walpole's home, which was also the registered office of both Maywal and MWL;

(2) Mr Walpole and Mr Mark Walpole had personal cars which they owned privately;

(3) Mr Walpole and Mr Mark Walpole used the Cars to drive to and from Mr Walpole's home to Maywal's office in Borough Green; to other premises owned or operated by other Maywal group companies in order to manage the work of those companies, and to travel to other locations including to visit friends;

(4) the Cars were not available to or used by Mr Murch, Ms Cowles, Ms Rowe or any other director or employee of Maywal, MWL, or any other company in the Maywal group;

(5) Mrs Walpole was unable to drive; she had also suffered from disabilities for many years. She passed away after the relevant period but before the issuance of the decisions which are under appeal; and

(6) when Mrs Walpole wanted to travel, she was driven by a chauffeur employed by one or other of the Appellants; his role included taking her to hospital appointments.

51. On the basis of that unchallenged evidence, we find the above to be facts.

THE DECISIONS UNDER APPEAL

52. We first set out the legislation relating to the making of the decisions under appeal and the related appeal rights, and then consider the position in this case.

The legislation

53. The decisions were made under ToFA s 8(1), which, so far as relevant to this appeal, reads:

> "(1) Subject to the provisions of this Part, it shall be for an officer of the Board—
>
> (a)-(b)…
>
> (c) to decide whether a person is or was liable to pay contributions of any particular class and, if so, the amount that he is or was liable to pay…"

54. Section 10 of the Social Security Contributions and Benefits Act 1992 ("SSCBA") is headed "Class 1A contributions: benefits in kind etc" and so far as relevant, reads:

> "(1) Where–
>
> (a) for any tax year an earner is chargeable to income tax under ITEPA 2003 on an amount of general earnings received by him from any employment ("the relevant employment"),
>
> (b) the relevant employment is both—
>
> (i) employed earner's employment, and

(ii) an employment…within the meaning of the benefits code (see Chapter 2 of Part 3 of ITEPA 2003),

(c) the whole or a part of the general earnings falls, for the purposes of Class 1 contributions, to be left out of account in the computation of the earnings paid to or for the benefit of the earner,

a Class 1A contribution shall be payable for that tax year, in accordance with this section, in respect of that earner and so much of the general earnings as falls to be so left out of account.

(2) Subject to section 10ZA below, a Class 1A contribution for any tax year shall be payable by–

(a) the person who is liable to pay the secondary Class 1 contribution relating to the last (or only) relevant payment of earnings in that tax year in relation to which there is a liability to pay such a Class 1 contribution; …

(3) In subsection (2) above "relevant payment of earnings" means a payment which for the purposes of Class 1 contributions is a payment of earnings made to or for the benefit of the earner in respect of the relevant employment.

(4) The amount of the Class 1A contribution in respect of any general earnings shall be the Class 1A percentage of so much of them as to be left out of account as mentioned in subsection (1)(c) above."

55. Section 11 of ToFA is headed "Appeals against decisions of Board", and includes the following provisions:

"(1) This section applies to any decision of an officer of the Board under section 8 of this Act…

(2) In the case of a decision to which this section applies

(a) ….

(b) the person in respect of whom the decision is made shall have a right to appeal to the Tribunal."

56. Section 12 of ToFA is headed "Exercise of right of appeal" and subsection (3) provides that "the notice of appeal shall specify the grounds of appeal".

The decisions

57. On 21 April 2021, an officer of HMRC issued the decision notices to Maywal and MWL. That for Maywal read:

"My decision is that

Maywal Ltd is liable to pay Class 1A contributions in respect of Car and Fuel Benefit made available to employees during the period 6 April 2014 to 5 April 2019.

The Class 1A contributions Maywal Ltd is liable to pay in respect of Car and Fuel Benefit are £62,916.00

The amount Maywal Ltd has paid in respect of the Car and Fuel Benefit is £0.00."

58. The decision issued to MWL was similar, other than that the period was 6 April 2019 to 5 April 2020, and the amount was £7,814.

59. The decisions were made "in respect of" Maywal and MWL, and ToFA s 11 gave those companies the right to appeal to the Tribunal.

60. The decisions were in the following terms (our emphasis): "Maywal Ltd is liable to pay Class 1A contributions in respect of Car and Fuel Benefit *made available to employees*…". HMRC thus did not specify any one or more particular employees in the text of the decisions.

61. We have already found as facts that:

(1) HMRC had assessed Ms Cowles and Ms Rowe to company car benefit and fuel benefit in relation to the Cars, see §46.; but

(2) the Cars were not available to, or used by, either of those two employees, see §50.(4).

62. HMRC told us that there were open enquiries into Mr Walpole's SA tax returns for the relevant period, and that they were waiting until after this appeal had concluded to decide whether to assess him to tax on the benefit of the Cars and the related fuel. We were not informed whether the position was the same in relation to Mr Mark Walpole.

63. The grounds did not include a challenge to the decisions on the basis that a Class 1A assessment could only be validly made if HMRC had first correctly identified and assessed the particular earner who was "chargeable to income tax…on an amount of general earnings received by him" on the use of one or more of the Cars. We have therefore not considered that issue.

ISSUE ONE: WHETHER THE CARS WERE POOL CARS

THE LEGISLATION

64. The requirements for a vehicle to be a "pool car" are at ITEPA s 167, which reads as follows:

> "(1) This section applies to a car in relation to a particular tax year if for that year the car has been included in a car pool for the use of the employees of one or more employers.
>
> (2) For that tax year the car—
>
> (a) is to be treated under section 114(1) (cars to which this Chapter applies) as not having been available for the private use of any of the employees concerned, and
>
> (b) is not to be treated in relation to the employees concerned as an employment-related benefit within the meaning of Chapter 10 of this Part (taxable benefits: residual liability to charge) (see section 201).
>
> (3) In relation to a particular tax year, a car is included in a car pool for the use of the employees of one or more employers if in that year—
>
> (a) the car was made available to, and actually used by, more than one of those employees,
>
> (b) the car was made available, in the case of each of those employees, by reason of the employee's employment,
>
> (c) the car was not ordinarily used by one of those employees to the exclusion of the others,
>
> (d) in the case of each of those employees, any private use of the car made by the employee was merely incidental to the employee's other use of the car in that year, and

> (e) the car was not normally kept overnight on or in the vicinity of any residential premises where any of the employees was residing, except while being kept overnight on premises occupied by the person making the car available to them."

65. In the rest of our decision, we have referred to the conditions in subsection (3) as being "Condition (a)", "Condition (b)" etc. At the time of the Meeting, the relevant provision was at Taxes Act 1988, s 159(1)-(3), and the terms were identical.

DOES THE LEGISLATION APPLY?

66. Under this heading we first discuss the use of the Cars for the business of other group companies. We then consider the first three Conditions, followed by Conditions (d) and (e), and our conclusion.

The use of the Cars for the business of other Maywal group companies

67. HMRC's opening position was that the Cars were not "pool cars" because:

(1) they were used for the business of other Maywal group companies;

(2) those companies were not part of the same corporation tax group; and

(3) the usage was thus not "wholly and exclusively" for the purposes of the trade of Maywal and/or MWL.

68. HMRC rightly abandoned this submission before the final hearing day, and accepted that the statute does not impose any "wholly and exclusively" test in relation to pool cars. Instead, ITEPA s 167(1) provides that the vehicle must be "in a car pool for the use of the employees of one or more employers". It follows that the requirements can be satisfied, whether or not the employers are connected.

Conditions (a) to (c)

69. On the basis of Mr Walpole's unchallenged evidence and our consequential findings of fact, the first three Conditions are satisfied in relation to all the Cars other than the Porsche because:

(1) they were available to Mr Walpole, Mr Mark Walpole and Mrs Walpole by reason of their employments;

(2) they were actually used by Mr Walpole, Mr Mark Walpole and the chauffeur (who drove Mrs Walpole); and

(3) none was ordinarily used by one of the employees to the exclusion of the others.

70. The Porsche does not meet either Condition (a) or Condition (c), because it was actually driven only by Mr Mark Walpole and was thus used by him to the exclusion of the others. The Porsche is therefore not a pool car for those reasons alone.

Condition (d)

71. We first set out the Appellants' position, followed by HMRC's submissions and our view.

Appellants' submissions on Condition (d)

72. Mr Walpole submitted that any private use of the Cars by him or by Mr Mark Walpole was "merely incidental" to the other use of the Cars for the following reasons:

(1) he and his son needed to be in contact with clients at all times, and the Cars had the necessary telephone connections;

(2) the Cars operated as "mobile offices" irrespective of the destination of the journey; and

(3) although he and Mr Mark Walpole visited friends in the Cars, those journeys had business purpose because "everything we do is business, my friends are my clients".

73. Although Mr Walpole accepted that not all of Mrs Walpole's journeys were on business, Mr Gordon submitted that the focus should instead to be on the chauffeur. He said Mrs Walpole did not "use" the Cars; they were instead "used" by the chauffeur, who was driving the Cars in the course of his employment and not for a private purpose.

HMRC's submissions on Condition (d)

74. Ms Grainger emphasised that any private use must be "merely incidental". To determine whether this was the case, the "dominant purpose" of each journey had to be established. In her submission, when a person was travelling to meet friends or family, or was going to a hospital appointment, the private purpose was dominant, and any business element was incidental.

75. She pointed out that in *Time For Group v HMRC* [2012] UKFTT 214 (TC) (Judge Stephen Oliver and Mr Duncan McBride), the FTT had come to the same conclusion on similar facts: the directors in that case used the cars to go to sporting events and school functions, where they networked to obtain future business. The FTT said at [9]:

> "We are not satisfied as regards the journeys to sports events, to Scotland and
> to other events (such as the polo) that the private non-business purposes were really incidental to the business purpose. The private purpose of, for example, seeing their children compete, being at the polo event and having a family holiday in Scotland, was, we think, a purpose in its own right. In each case it was more than incidental to 'doing business' by networking."

The Tribunal's view

76. We agree with Ms Grainger. When Mr Walpole and Mr Mark Walpole travelled in the Cars to meet friends, this was a private purpose. Any business use (such as discussing business with the friends during the visit, or taking a call from a client during the journey) was merely incidental to that private use, not the other way about. We also agree with her that the position is similar to that in *Time For Group*.

77. We disagree with Mr Gordon's submissions abut Mrs Walpole. The statutory test is that:

> "any private use of the car made by the employee was merely incidental to the
> employee's other use of the car in that year."

78. Mrs Walpole used both the Cars and the chauffeur to travel to her hospital appointments and visit friends. The dominant purpose of those journeys (arguably, the only purpose) was private. Her use of the Cars therefore does not satisfy Condition (d). The provision of a chauffeur was itself a benefit, see ITEPA s 239(4) and (5).

79. We add that the focus of s 167 is on the *vehicles* – in other words, it is the Cars which must be shown to meet the statutory conditions. Condition (d) requires that no employee uses the Cars for non-incidental private purposes. Here, Mr Walpole, Mr Mark Walpole, and Mrs Walpole use all the Cars (other than the Porsche) for journeys where the dominant purpose is private, so Condition (d) is plainly not met.

Condition (e)

80. It is therefore not necessary for us to consider Condition (e), but as it was fully argued, we have gone on to consider it. The provision reads:

> "The car was not normally kept overnight on or in the vicinity of any residential premises where any of the employees was residing, except while being kept overnight on premises occupied by the person making the car available to them."

81. It was common ground that the Cars were normally kept overnight "on or in the vicinity of any residential premises where any of the employees was residing", because:

(1) the Porsche was normally kept overnight at Mr Mark Walpole's home; and

(2) the other Cars were normally kept overnight at the home of Mr and Mrs Walpole.

82. The dispute was about the exception for cars which are "kept overnight on premises occupied by the person making the car available to them", given that Mr and Mrs Walpole's home was also the registered office of Maywal and MWL, the employers who had made the Cars available.

83. Mr Gordon submitted that the Appellants "occupied" the residential premises because Mr Walpole was "the physical embodiment" of Maywal and MWL as he was the founder and director of those companies. Rightly recognising that companies have a separate legal personality, Mr Gordon added that in this situation it was possible to "pierce the corporate veil".

84. He provided no authorities for this ambitious submission, and we reject it. The situations in which the corporate veil may be pierced were examined in *Prest v Petrodel* [2013] UKSC 34. Lord Sumption said at [35] that:

> "there is a limited principle of English law which applies when a person is under an existing legal obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control. The court may then pierce the corporate veil for the purpose, and only for the purpose, of depriving the company or its controller of the advantage that they would otherwise have obtained by the company's separate legal personality."

85. Other members of the Court held that the corporate veil may be pierced in other situations, but Lord Clarke and Lord Mance described these as being "very rare", and Lady Hale (with whom Lord Wilson agreed) said it may be possible where there has been "unconscionable" behaviour.

86. The Appellants' case has nothing in common with the situations described in *Prest,* and we have no hesitation in finding that the corporate veil cannot be pierced so as to regard Mr Walpole as the "physical embodiment" of the Appellants.

87. Mr Gordon's other submission was Maywal and MWL "occupied" the place where the car was kept overnight because Mr Walpole did significant work there. Ms Grainger, rightly in our view, disagreed. She relied on *Yum Yum v HMRC* [2010] UKFTT 331 (TC), a decision of Judge Hellier and Mr Adams, in which the FTT was considering whether a car used by Yum Yum Ltd's director met the pool car requirements. In relation to Condition (d), they said at [26]:

> "The question is not where the business or the core of the business was carried out, but whether the Appellant 'occupied' certain premises."

88. We agree with the FTT in *Yum Yum* that that the test is one of "occupation" by the employer, and that this is different from the place where the business is carried on.

89. The more difficult question is what is meant by a limited company such as Maywal or MWL "occupying" a physical location. In *Yum Yum*, the FTT said that the term should be given the same meaning as in rating law, and cited *Westminster Council v Southern Railway Co* [1936] AC 511 ("*Westminster Council*"), where Lord Russell said:

> "Occupation, however, is not synonymous with legal possession: the owner of an empty house has the legal possession, but he is not in rateable occupation. Rateable occupation, however, must include actual possession, and it must have some degree of permanence: a mere temporary holding of land will not constitute rateable occupation. Where there is no rival claimant to the occupancy, no difficulty can arise; but in certain cases there may be a rival occupancy in some person who, to some extent, may have occupancy rights over the premises. The question in every such case must be one of fact – namely, whose position in relation to occupation is paramount, and whose position in relation to occupation is subordinate; but, in my opinion, the question must be considered and answered in regard to the position and rights of the parties in respect of the premises in question, and in regard to the purpose of the occupation of those premises.…"

90. In other words, where more than one person is in "occupation" of land, it is necessary to decide whose occupation takes precedence. The FTT in *Yum Yum* summarised the position as follows:

> "Section 167 is the state of affairs which exists when a person:-
>
> (i) has physical possession of land – and we take a person to have physical possession of land when he actually uses it for such purposes as he see fit (subject to any requirement imposed upon him by any agreement relating to the land or restriction to which the land is subject);
>
> (ii) controls the use of that land;
>
> (iii) has the power of excluding (by trespass action) other persons from the benefit he enjoys in the land; and
>
> (iv) has some form of right to some enjoyment of the land."

91. The FTT went on to conclude:

> "[32] There was no evidence before us to suggest that it was the Appellant rather than Mr Yeow which had possession or control of Mr Yeow's house or any power to exclude persons from it.
>
> [33] We conclude that the Appellant did not occupy Mr Yeow's house and accordingly that the exception in (d) does not apply."

92. Ms Grainger submitted that the same approach should be taken in this case. Mr and Mrs Walpole lived in the house; neither Maywal nor MWL could exclude them from those premises, and thus neither company "occupied" those premises for the purposes of s 167.

93. We agree with the FTT in *Yum Yum* that it is right to rely on the meaning of "occupation" used in rating law, but it is clear from that law that a single property can have more than one "occupier" at the same time. Lord Russell said in *Westminster Council* (our emphasis):

> "Where there is no rival claimant to the occupancy, no difficulty can arise; but in certain cases **there may be a rival occupancy** in some person who, **to some extent, may have occupancy rights over the premise**s. The question

> in every such case must be one of fact – namely, whose position in relation to occupation is paramount, and whose position in relation to occupation is subordinate…"

94. In rating law, it is necessary to decide on a hierarchy of occupiers in order to establish which of a number of possible persons is liable to pay the rates. There is no such requirement in s 167. All that is required is that the employer "occupy" the premises.

95. We next considered whether a company "occupied" its registered office. We were not referred to any authority on this, but took into account the following:

(1) The Companies Act 2006 requires each company to have a "registered office", and documents can be served on a company "by leaving it at or sending it by post to, the company's registered office", see s 1139 of that Act.

(2) The default position under the Companies Act is that:

(a) a company must "keep available" a register of members and directors, and make them available for inspection (s 114 and s 162);

(b) copies of certain resolutions must be held at the registered office (see for example ss 197(3), 200(4) and 201(4), among many others);

(c) copies of directors' service contracts must be held at the registered office for inspection and retained by the company for at least one year (s 238); and

(3) In addition to the provisions at (2) above, the Companies Act imposes many similar obligations on companies which relate to their registered officers.

96. We therefore find that a company does "occupy" its registered office in order to carry out its legal obligations. Since there is no hierarchy of occupation, Maywal and MWL occupy the same premises as Mr and Mrs Walpole. It therefore follows that Condition (e) is met in relation to all the Cars except the Porsche, which was kept overnight at Mr Mark Walpole's home.

Conclusion on Issue One

97. The Porsche fails Conditions (a) and (c) because it was used by and available exclusively to Mr Mark Walpole. It fails Condition (d) for the same reason as the other Cars, and it fails condition (e) because it was normally kept overnight at Mr Mark Walpole's house, which was not the registered office of Maywal or MWL, the employer making that Car available to him.

98. The other Cars are not pool cars because they fail Condition (d).

ISSUE TWO: ESTOPPEL

99. This Issue is complex and contains several sub-issues. We decided it would be helpful to begin by summarising our conclusions, which are as follows:

(1) The principles of estoppel by convention set out in *Tinkler* were satisfied.

(2) However, those principles did not operate in the Appellants' case because:

(a) HMRC cannot be estopped from enforcing a statutory prevision; and

(b) the Inspector had no authority to enter into a forward agreement relating to Maywal's tax and/or NICs position. The agreement made at the Meeting was therefore void as regards the future, and an estoppel cannot be founded on a void agreement.

TYPES OF "ESTOPPEL"

100. In ordinary language, an "estoppel" means that a person is prevented ("estopped") from relying on a particular fact or argument. In *Tinkler,* Lord Burrows, giving the leading judgment with which the rest of the Supreme Court agreed, said at [28]:

> "There are several types of estoppel recognised in English law. These include
> estoppel by representation, promissory estoppel, proprietary estoppel, estoppel by convention and, most recently, so-called contractual estoppel… Attempts have been made over the years to try to unify the various estoppels but such unification has proved elusive and the different types of estoppel continue to be seen as having their own particular requirements and effects."

ESTOPPEL BY REPRESENTATION?

101. HMRC considered that if any estoppel was in point, it would be estoppel by representation. In *Steria v Hutchison* [2006] EWCA Civ 1551 at [93], Lord Neuberger said that for such an estoppel to arise, the following elements needed to be present:

> "(a) a clear representation or promise made by the defendant upon which it is reasonably foreseeable that the claimant will act;
>
> (b) an act on the part of the claimant which was reasonably taken in reliance upon the representation or promise, and
>
> (c) after the act has been taken, the claimant being able to show that he will suffer detriment if the defendant is not held to the representation or promise."

102. Lord Neuberger continued by endorsing the following passage from the Privy Council judgment in *Tai Hing Cotton Mill Ltd v Liu Chong Hing Bank* [1986] AC 80 at p 110:

> "[T]he essence of estoppel is a representation (express or implied) intended to induce the person to whom it is made to adopt a course of conduct which results in detriment or loss…"

103. We acknowledge that what had happened at the Meeting could be analysed as follows:

(1) the Inspector made a representation as to what was required for the pool car exemption to be met;

(2) the Appellants relied on that representation when filing subsequent tax and NICs returns; and

(3) the Appellants will suffer detriment if HMRC are not held to that representation.

104. However, in our judgment the better view is that at the Meeting the Inspector and Mr Walpole shared the common factual assumption that Maywal was following the requirements set out at §40., and also shared the common legal assumption that in consequence the cars were pool cars, and went on to agree that Maywal could rely on the pool car exemption as long as the facts remained the same. In other words, the parties' common understanding as to the facts about the Cars and the law on pool cars together formed the basis of their future mutual dealings. As explained below, it is the law on estoppel by convention which is potentially engaged, rather than estoppel by representation.

ESTOPPEL BY CONVENTION

105. In *Tinkler*, Lord Burrows set out the relevant principles. We first summarise that case and then set out the principles, before considering the Appellants' position

The position in *Tinkler*

106. The key facts of *Tinkler* were as follows:

(1) HMRC issued a Notice of Enquiry under TMA s 9A naming Mr Tinkler, but sent that Notice to an incorrect address.

(2) HMRC also sent a copy of the Notice of Enquiry to Mr Tinkler's agent, BDO.

(3) TMA s 9A requires that a Notice of Enquiry be served on the taxpayer, and BDO did not have the authority to receive such Notices on Mr Tinkler's behalf.

(4) However, HMRC, Mr Tinkler and BDO all believed a valid enquiry had been opened, and discussions between the parties proceeded on that basis.

(5) After HMRC issued a closure notice, Mr Tinkler appealed the conclusions of that notice and notified the appeal to the Tribunal.

(6) Two weeks before the hearing of his appeal, his grounds of appeal were amended to include the submission that the Notice of Enquiry had not been validly served.

107. HMRC's position was that the Notice had been validly served, and in the alternative, that the principles of estoppel by convention prevented Mr Tinkler from arguing that no valid enquiry had been opened. The Court of Appeal agreed with Mr Tinkler on both grounds. HMRC then successfully appealed the estoppel issue to the Supreme Court.

The principles

108. At [31] of his judgment, Lord Burrows adopted the definition of estoppel by convention at p 157 of *The Law Relating to Estoppel by Representation* (1977 edition) by Spencer Bower and Turner, which read:

> "This form of estoppel is founded, not on a representation of fact made by a representor and believed by a representee, but on an agreed statement of facts the truth of which has been assumed, by the convention of the parties, as the basis of a transaction into which they are about to enter."

109. Although that definition refers only to facts, Lord Burrows said that an estoppel by convention can also arise where there is a common assumption as to the law. At [32] he confirmed that it did not matter that the party raising the estoppel "came to hold its mistaken belief in the first place as a result of its own error alone". With reference to the facts of Mr Tinkler's case, he said at [56]:

> "it is not a bar to estoppel that HMRC initiated the mistake or…was careless in relation to that mistake or induced the other party's mistake by a misrepresentation."

110. Lord Burrows also approved the principles previously set out by Briggs J (as he then was) in *Benchdollar v HMRC* [2009] EWHC 1310 ("*Benchdollar*") at [52]:

> "(i) It is not enough that the common assumption upon which the estoppel is based is merely understood by the parties in the same way. It must be expressly shared between them.
>
> (ii) The expression of the common assumption by the party alleged to be estopped must be such that he may properly be said to have assumed some element of responsibility for it, in the sense of conveying to the other party an understanding that he expected the other party to rely upon it.
>
> (iii) The person alleging the estoppel must in fact have relied upon the common assumption, to a sufficient extent, rather than merely upon his own independent view of the matter.

(iv) That reliance must have occurred in connection with some subsequent mutual dealing between the parties.

(v) Some detriment must thereby have been suffered by the person alleging the estoppel, or benefit thereby have been conferred upon the person alleged to be estopped, sufficient to make it unjust or unconscionable for the latter to assert the true legal (or factual) position."

111. Lord Burrows also expanded the first *Benchdollar* principle, saying that for there to be a "common assumption", it was necessary that "something must be shown to have 'crossed the line' sufficient to manifest an assent to the assumption", see [50] of *Tinkler*.

Common assumption?

112. The starting point is that a "common assumption" must be "expressly shared" between the two parties.

113. Mr Gordon submitted that the common assumption here was that the parties had agreed that the Cars were pool cars, provided the conditions set out at §40. were satisfied, and this assumption had been "expressly shared" between the parties at the Meeting. He went on to say that the Inspector had plainly conveyed to Mr Walpole that he expected Maywal to rely on the assumption in the future, and Mr Walpole had done so. In other words, the Appellants had acted on the basis that there was no restriction on the use of the Cars as long as the agreed requirements were met, and (with the exception of the Porsche) those requirements had been followed.

114. Ms Grainger and Mr Marks disagreed, saying there had been no common assumption that the Appellants could use the Cars for journeys with a private purpose; in their submission, the Inspector had only agreed there was no need to keep records of the Cars' usage.

115. We agree with Mr Gordon, and find as a fact that the Inspector knew the Cars would be used for some private journeys. We make that finding for the following reasons:

(1) Mr Walpole told the Inspector that the Cars were regarded as "travelling offices", because they contained phone equipment. It would have been an obvious and inescapable inference that the Cars were regularly used for all types of journey, including those with a private purpose, because otherwise there was a high risk that calls from customers would be missed.

(2) One of the requirements agreed at the Meeting was that employees who used the Cars each had access to a personal car owned privately. That requirement only makes sense if it was a proxy for the statutory condition that "any private use of the car made by the employee was merely incidental to the employee's other use of the car". The Inspector therefore accepted the Cars would be used for all types of journey, although as the directors had personal cars owned privately, the number of journeys with a private purpose could be expected to be lower than if this was not the position.

116. We therefore find that there was a common assumption that the Cars were pool cars provided the Appellants kept to the terms agreed in the Meeting. We also agree that the Inspector, acting on behalf of the Inland Revenue, assumed responsibility for that assumption, knowing it would be relied on, and that the Appellants did rely on it. It follows that the requirement in *Tinkler* that the Inspector's conduct must have "crossed the line" (see §111.) has also been met.

Mutual dealing?

117. The fourth requirement is that the reliance must have occurred "in connection with some subsequent mutual dealing between the parties". In *Tinkler,* Lord Burrows held at [73] that this should not be given a "narrow meaning".

118. We have already found as facts that the Appellants submitted their payroll returns on a on the basis of their understanding of the common assumption agreed at the Meeting, and that there had been "numerous tax enquiries" into the Appellants. That is sufficient to meet the requirement that subsequent mutual dealing took place between HMRC and the Appellants.

Detriment?

119. Mr Walpole said in his submission before the hearing that:

> "If HMRC have unilaterally decided that the agreement we had on Company pool cars should be discontinued, they should give us proper notice to allow us the courtesy of rearranging our affairs to mitigate our tax. It is quite wrong to penalise us for past years NI contributions."

120. He and Mr Gordon expanded that submission orally, saying that if the Appellants had been told that HMRC's position was changing *prospectively*, they could moved to owning the Cars personally and claiming business mileage at 45p per mile. That change would have removed the benefit in kind and related Class 1A charge and would also have eliminated the interest which has become due because the decisions relate to previous years. In their submission, HMRC's decisions caused detriment to the Appellants, and it was unjust and/or unconscionable for them to renege on the agreement with retrospective effect.

121. Ms Grainger and Mr Marks initially submitted that there was no detriment, on the basis that HMRC were only collecting the NICs due under the law, but by the end of the hearing they conceded that the Appellants had suffered detriment, for the reasons given by Mr Walpole and Mr Gordon.

122. We agree, and find that the retrospective nature of the decisions meant that the Appellants were unable to take steps to mitigate their position, so as to reduce or eliminate the NIC charges, and they therefore suffered detriment.

123. In *Tinkler* Lord Burrows said at [64]:

> "In most cases…unconscionability is unlikely to add anything once the other elements of estoppel by convention have been established and, in particular, where it has been established that the estoppel raiser has *detrimentally* relied on the common assumption. However, one can certainly envisage exceptional cases where unconscionability may have a useful additional role to play. For example, even if all the other elements of estoppel by convention can be made out, fraudulent conduct by the estoppel raiser would rule out estoppel by convention."

124. This is not an exceptional case such as one where fraud was present, and there is thus no need for the Tribunal to make a separate finding on unconscionability.

Conclusion on estoppel by convention

125. For the reasons explained above, we find that all the requirements in *Tinkler* for estoppel by convention to operate were present. However, it was HMRC's case that the Appellants nevertheless do not succeed on this Issue, for the reasons to which we now turn.

ESTOPPEL IN THE FACE OF THE STATUTE?

126. Ms Grainger submitted that even if the *Tinkler* conditions were met, HMRC could not be estopped from applying ITEPA s 167, because it was a statutory provision enacted by Parliament. Although she did not refer to *Halsbury's Laws*, we noted that this similarly says:

> "the principle that a party cannot set up an estoppel in the face of a statute has been described as a principle that appears in our law in many forms."

127. Ms Grainger relied on *Keen v Holland* [1984] 1 All ER 75. In that case, Mr Keen had submitted that Mr Holland was estopped from relying on s 2(1) of the Agricultural Holdings Act 1948, because he had signed contracts excluding the protection given by that subsection. Oliver LJ, giving the judgment of the Court, said at p 261 that this argument was "not, in our judgment, sound" because:

> "The terms of section 2(1) are mandatory once the factual situation therein described exists, as it does here, and it cannot, as we think, be overridden by an estoppel even assuming that otherwise the conditions for an estoppel exist."

128. We also considered the following passage from *Maritime Electric v General Dairies* [1937] AC 610 ("*Maritime Electric*"), which was to similar effect:

> "The sections of the Public Utilities Act which are here in question are sections enacted for the benefit of a section of the public, that is, on grounds of public policy in a general sense. In such a case - and their Lordships do not propose to express any opinion as to statutes which are not within this category - where, as here, the statute imposes a duty of a positive kind, not avoidable by the performance of any formality, for the doing of the very act which the plaintiff seeks to do, it is not open to the defendant to set up an estoppel to prevent it. This conclusion must follow from the circumstance that an estoppel is only a rule of evidence which under certain special circumstances can be invoked by a party to an action; it cannot therefore avail in such a case to release the plaintiff from an obligation to obey such a statute, nor can it enable the defendant to escape from a statutory obligation of such a kind on his part. …The duty of each party is to obey the law… If we now turn to the authorities it must be admitted that reported cases in which the precise point now under consideration has been raised are rare. It is, however, to be observed that there is not a single case in which an estoppel has been allowed in such a case to defeat a statutory obligation of an unconditional character."

129. That was a decision of the Privy Council, but the passage above was cited with approval by Lord Keith in *Society of Medical Officers of Health v Hope* [1960] 1 All ER 317 at p 324, and in subsequent cases.

130. Mr Gordon accepted that equitable principles such as estoppel cannot defeat legislation passed by Parliament. However, he distinguished the Appellants' case on the basis that HMRC have a discretion whether or not to issue a decision relating to previous years – in other words, they were not obliged to enforce the statute against the Appellants and should not have exercised that discretion in this case.

131. There are two difficulties with that submission. The first is that the decisions under appeal were made under ToFA s 8, which provides that an officer is to decide whether a person "is or was liable to pay" Class 1A NICs. Since the Cars are not pool cars, the Appellants are plainly *liable* to Class 1A. In issuing the decisions, the officer was therefore not exercising a discretion.

132. The second difficulty is that Mr Gordon did not cite any authorities to support his contention that a different rule applies when HMRC have a discretion, so that they can then be bound by an estoppel. We considered whether there was any relevant case law, and identified *Southend-on-Sea Corporation v Hodgson* [1961] 1 Q.B. 416 ("*Southend-on-Sea*"), where at p 423, Lord Parker CJ first cited *Maritime Electric* and then continued:

> "I can see no logical distinction between a case such as that of an estoppel being sought to be raised to prevent the performance of a statutory duty and one where it is sought to be raised to hinder the exercise of a statutory discretion. After all, in a case of discretion there is a duty under the statute to exercise a free and unhindered discretion. There is a long line of cases to which we have not been specifically referred which lay down that a public authority cannot by contract fetter the exercise of its discretion. Similarly, as it seems to me, an estoppel cannot be raised to prevent or hinder the exercise of the discretion."

133. Neither *Maritime Electric* nor *Southend-on-Sea* were cited to us, but we decided it was not in the interests of justice to ask for further submissions on those authorities, because:

(1) the hearing had already been adjourned once to give the parties the opportunity to put forward further submissions on estoppel;

(2) neither case raises new points. The first provides a further example of the principle from *Keen v Holland* relied on by Ms Grainger, and the second relates to a submission made by Mr Gordon without reference to authority; and

(3) neither changed our overall conclusion on this Issue.

134. We therefore agree with Ms Grainger that HMRC cannot be estopped from applying a statutory provision, whether or not they have a discretion as to its application, and despite the *Tinkler* conditions having been met.

135. That is enough to decide Issue Two in HMRC's favour, but as Ms Grainger's alternative point was fully argued, we consider it below.

WHETHER THE AGREEMENT WAS VOID

136. Ms Grainger also submitted that HMRC could not be estopped from making the decisions which are under appeal, because:

(1) the Inspector had no power to enter into a future agreement which disapplied the terms of what is now ITEPA s 167, and was thus acting *ultra vires* or beyond his powers;

(2) the agreement was therefore void; and

(3) since the "common assumption" had its source in the agreement, estoppel by convention cannot operate.

137. Mr Gordon disagreed, submitting that the agreement entered into:

> "…represented a fair and honest attempt to reflect the law. The driver behind the agreement was a desire to avoid bureaucratic procedures "

138. We have taken this as a submission that the Inspector was acting *intra vires* because he was using his "care and management" powers. Mr Gordon then said:

> "the terms of the agreement were intended to offer a protection to the Inland Revenue to give them confidence that the pool car rules were being complied with."

Care and management?

139. We agree with Mr Gordon that HMRC have a "care and management" power which allows HMRC officers some flexibility, see *IRC v National Federation of Self-Employed and Small Businesses Ltd* [1981] 2 WLR 22; AC 617 ("*Fleet Street Casuals*"). The issue that case was set out in the headnote as follows:

> "Some 6,000 casual workers in Fleet Street were nominated by their trade unions to work for newspapers on specified occasions. They were given call slips and then collected pay dockets to enable them to draw their pay from their employers but a substantial number of them gave false names and addresses so that it was impossible for the Inland Revenue to collect the tax which was due from them. The consequent loss to the revenue was estimated at £1 million a year. In view of the frauds the Inland Revenue after discussions with the employers and the unions, introduced a special arrangement which would ensure that for the future tax would either be deducted at source or be properly assessed and made it clear that, if the arrangement were generally accepted, and subject to certain other conditions, investigation into tax lost in certain previous years would not be carried out. A federation representing the self-employed and small businesses, who contrasted the attitude taken by the revenue to the tax evasions of the Fleet Street casuals with that adopted by the revenue in other cases where tax evasions were suspected, applied for judicial review…and claimed a declaration that the Inland Revenue acted unlawfully in granting the amnesty and an order of mandamus directed to the revenue to assess and collect income-tax from the casual workers."

140. The House of Lords refused to grant the order, holding that the members of the Federation did not have "sufficient interest" in the treatment of the casuals to bring a judicial review action but they also considered the role and duties of the Inland Revenue. In his judgment, Lord Scarman at pp 650-1 said the Inland Revenue Regulation Act 1890 provided that the Inland Revenue "shall collect and cause to be collected every part" of the taxes and duties which were under their "care and management", and that the TMA "places income tax under their care and management and for that purpose confers upon them and inspectors of tax very considerable discretion in the exercise of their powers". He went on to endorse the statement that:

> "in the daily discharge of their duties inspectors are constantly required to balance the duty to collect 'every part' of due tax against the duty of good management. This conflict of duties can be resolved only by good managerial decisions, some of which will inevitably mean that not all the tax known to be due will be collected."

141. We note in particular that the Inland Revenue had here used their care and management powers to decide that an "investigation into tax lost in *certain previous years* would not be carried out" (our emphasis). In relation to subsequent years, "the future tax would either be deducted at source or be properly assessed".

Future agreements

142. HMRC's position was that their care and management power did not extend to the making of future agreements. The leading cases are *Gresham Life Assurance Society v A-G* [1916] 1 Ch 228 ("*Gresham*") and *Al Fayed v Advocate General* [2004] Scots CS 278; STC 1703 ("*Al Fayed*"). The latter was decision of the Scottish Court of Session, but as the UT said in *HMRC v National Exhibition Centre* [2015] UKUT 0023 at [30]:

> "Essentially, whilst it is the case that the English and Scottish courts (including tribunals forming part of their respective judicial systems) are not

> bound to follow the judicial decisions of the other, regardless of the hierarchy level of the prior decision, it has long been the position that the interpretation of tax legislation ought, so far as possible, to follow the decisions of the cross-border court. Tax law generally applies to England and Wales and Scotland alike and should therefore be applied in the same way in both jurisdictions."

Gresham

143. The appellant in *Gresham* was a life assurance society which in 1912 had agreed with an Inland Revenue Surveyor that it would be assessed on its profits rather than on the alterative income less expenses ("I-E") basis, and that the level of profit would be based on the appellant's previous quinquennial valuation. The appellant was assessed on that basis for the first two years. In July 1914 Parliament passed Finance Act 1914, which imposed tax on the foreign income of life insurance companies. In November 1914, the Inland Revenue assessed the appellant on the basis of its income without reference to the quinquennial valuation. The appellant applied for a declaration that the agreement it had entered into with the Surveyor was binding, and an injunction to restrain the Board from enforcing the assessment.

144. Astbury J considered whether such an agreement could lawfully be made on behalf of the Crown. He first noted that income tax was a yearly tax, and then said, at page 240:

> "The defendants contend, and I think rightly, that the taxing authorities in 1912 had no power to make any contract with this society either as to the assessment which should be made in any subsequent year or as to the basis upon which the assessment should be made. The authorities, as each yearly Act is passed, have an option to tax the society either on a profit or an income basis. I conceive it to be their duty as each year comes round to ascertain the rate of the tax of the year and the circumstances existing, and then tax the subject in the way most favourable to the Crown. In this particular case I do not think the letters bear the meaning the society put on them, but assuming they do, and that the surveyor intended to bind the taxing authorities for the succeeding four years to an agreement that whatever might be the changes in the law and the circumstances of this society they would continue to tax them on a profit basis, however undesirable that basis might become, that agreement would in my judgment be invalid and one which the surveyor, and indeed the taxing authorities, would have no power or right to enter into."

Al-Fayed

145. The facts of the case are again well summarised in the head note:

> "The three petitioners were brothers. The first petitioner, F, was resident in the United Kingdom, the second and third petitioners were resident in the United States of America and Switzerland, respectively. The petitioners were not domiciled in the United Kingdom and were therefore subject to income tax and capital gains tax on foreign source income on the remittance basis. They could avoid paying tax on their foreign remittances provided they ensured that the remittances originated in a fund consisting exclusively of capital and therefore did not constitute income or capital gains. In order to avoid a time-consuming and expensive investigation into the petitioners' affairs in order to determine whether their foreign remittances originated from a capital fund, the Revenue entered into a forward tax agreement with the petitioners in 1997 under which the petitioners agreed to pay specified annual sums in respect of specified future years of assessment. The Revenue agreed to accept those sums in lieu of any income tax and capital gains tax to

> which the petitioners might otherwise have been liable. The agreement was expressed to be irrevocable except that the Revenue had the right to repudiate it if a payment under the agreement remained owing for a specified length of time. The agreement did not provide for its being suspended by either side for any reason. In March 2000, after F had given evidence in a civil trial revealing, *inter alia*, that he had access to large sums of cash, the Revenue wrote to the petitioners' accountants stating that the agreement was suspended."

146. Having considered the case law on extra-statutory concessions, the Court confirmed at [45] that the Inland Revenue could "lawfully regulate the tax treatment of future transactions by means of such concessions". However, it concluded at [78] that:

> "The decisions in relation to extra-statutory concessions make it plain that it is not lawful for the respondents to make a concession where it would be in conflict with their statutory duty."

147. In relation to that duty, the Court said at [73]:

> "Under taxation legislation the respondents have the duty of collecting tax as it falls due in respect of actual transactions…The respondents have no power…to contract with the taxpayer as to his future liability (see *Gresham Life Assurance Society v A-G...*"

148. The Court added at [80]:

> "Even if we had not reached the view that forward tax agreements were *ultra vires* of the respondents, we would have held that, in the absence of any terms in the 1997 Agreement which would have ensured that no sum was payable under the Agreement unless it was a genuine and realistic approximation to the actual liability of the petitioners, it was *ultra vires*. The 1997 Agreement, like its predecessors, contained no provision for termination or alteration of the agreement on a material change of circumstances."

The Tribunal's view

149. We do not agree with Mr Gordon that the agreement reached at the Meeting was "a fair…attempt to reflect the law". The statutory condition that pool car treatment was only allowed if "any private use was merely incidental" was replaced by the requirement that the employees simply owned another car. We have described this requirement as a "proxy" for Condition (d), but it was a very poor proxy, particularly as records of the use of the Cars were not required.

150. We also disagree with Mr Gordon's submission that the agreement was "intended to offer a protection to the Inland Revenue to give them confidence that the pool car rules were being complied with". Instead, we find as a fact that the Inspector took what he thought was a pragmatic approach to resolving the dispute both for the past and the future. This can also be seen from the fact that the Compliance Officer took the position that the Cars could not be pool cars unless records were kept to support that treatment, but was overruled by the Inspector, see §40..

151. The Inspector's approach was, as Ms Grainger said, *ultra vires*. He did not have the power to bind the Inland Revenue not to apply the statutory provisions in future years, for any one or more of the following reasons:

(1) income tax is an annual tax and the law could have changed in the future (see *Gresham*), and the same must be true of Class 1A NICs which depend on the benefit-in-kind rules;

(2) the agreement conflicted with HMRC's statutory duty "to collect the tax as it falls due in respect of actual transactions", see *Al Fayed*; and

(3) the sum payable under the agreement was not "a genuine and realistic approximation to the actual liability", again, see *Al Fayed*.

152. We therefore agree with Ms Grainger that the Inspector had no power to agree that the Cars would in the future be treated as pool cars, and in relation to those years, the agreement was *ultra vires* and void.

Whether estoppel operates in relation to void agreements

153. The next question was whether estoppels could not operate because the agreement (on which the assumption was based) was void. The parties' submissions on this point were brief. We set them out first followed by our own analysis.

The parties' submissions

154. Ms Grainger said that no estoppel was possible, because the agreement made between Mr Walpole and the Inspector was void in relation to future years. She did not cite any case law.

155. Mr Gordon's position was that, even if the Inspector had acted *ultra vires* so that the agreement was void, that factor was irrelevant. He submitted that "the *Tinkler* criteria do not turn on the lawfulness of the original decision to cross the line" and that this was clear from the facts of that case. He added a brief explanation by way of a footnote to his skeleton argument.

156. Reading that footnote together with the judgments of the Court of Appeal and Supreme Court in *Tinkler,* we understand Mr Gordon to be saying:

(1) HMRC did not serve a Notice of Enquiry on Mr Tinkler.

(2) A copy of the Notice was served on his agent, BDO, but this was insufficient, see the Court of Appeal judgment at [41] *per* Hamblen LJ, who said:

> "Interpreting Form 64-8 together with the linked website page, HMRC are acknowledging that a 'formal notice of enquiry' is a form which 'must' be sent to the taxpayer 'instead' of the agent and that the authority to deal with the agent is limited to correspondence in relation to such inquiries, reflecting an agreement made with professional bodies."

(3) HMRC did not ask for permission to appeal that finding at the Supreme Court.

(4) It followed that HMRC had not complied with the legal requirements as to service of the Notice of Enquiry.

(5) However, the Supreme Court nevertheless decided that Mr Tinkler was estopped by convention from arguing that the enquiry was invalid because the Notice had not been served on him.

(6) In consequence, even if the agreement made between the Inspector and Mr Walpole was *ultra vires,* invalid and void, HMRC were nevertheless estopped from issuing the assessments for the years in question, because all of the relevant conditions for estoppel by convention had been met.

Discussion

157. In our judgment, *Tinkler* does not provide support for Mr Gordon's submission that the legality of the arrangement is irrelevant. It is true that in *Tinkler* the receipt of the Notice of

Enquiry by BDO did not constitute valid service as a matter of law, because BDO did not have the requisite authority to receive such Notices.

158. However, as Lord Burrows said at [82], Mr Tinkler *could* have given BDO that authority: an agreement to that effect would have been entirely lawful. That passage reads:

> "Section 9A TMA requires that a notice of enquiry is given to the taxpayer; and section 115(2) provides one method by which that notice may be given. But it would have been open to the parties (ie HMRC and Mr Tinkler) to agree expressly the method by which the notice of enquiry was to be given (including, it would seem, that a notice of enquiry given to Mr Tinkler's tax advisers would have counted)."

159. Here, the Inspector and Mr Walpole agreed that the Cars were pool cars, provided the terms agreed at the Meeting were satisfied, and the Inspector had no power to enter into a future agreement to that effect. This is not the same as the *Tinkler* situation, where the parties could have taken steps to regularise the position. In our judgment, Ms Grainger is correct: a void and illegal agreement cannot form the basis for an estoppel.

ISSUE THREE: LEGITIMATE EXPECTATION

160. The Appellants' final ground of appeal was that they had a legitimate expectation that HMRC would not retrospectively change the agreement reached at the Meeting. As with estoppel, the case put by Mr Walpole was further developed by Mr Gordon. On behalf of HMRC, Ms Grainger provided brief written submissions before the final day of the hearing, which Mr Marks subsequently expanded orally.

COMMON GROUND

161. The following points were explicitly stated to be common ground:

(1) The Tribunal's jurisdiction is conferred by statute: it has no inherent or common law jurisdiction. Section 3(1) of the Tribunal, Courts and Enforcement Act 2007 ("TCEA") provides:

> "There is to be a tribunal, known as the First-tier Tribunal, for the purpose of exercising the functions conferred on it under or by virtue of this Act or any other Act."

(2) Where there is no statutory right of appeal against an HMRC decision, challenges can only be brought by way of an application for judicial review under CPR Part 54. Examples include HMRC's decisions as to who should receive a Notice to File under TMA s 8, and whether an extra-statutory concession applies (as to which, see *Trustees of the BT Pension Scheme v HMRC* [2015] EWCA Civ 315 ("*BT Pensions*") at [143]).

(3) Where there is a statutory right of appeal, whether the Tribunal has a public law jurisdiction depends on the particular provision in question.

162. We also understand the parties to agree that a person who appeals a tax assessment is in essentially the same position as a defendant in a civil action. In *King v Walden* [2001] TC 822, Jacob J said:

> "[57] …Assessments to tax are, in the first instance, made by an inspector (see s.29 of the TMA as it stood before amendment in 1994, now s.30A). If the taxpayer is unhappy, he may appeal within 30 days. If he does not appeal, the assessment stands. So the taxpayer's only method of challenge to an assessment is by way of 'appeal'. Thus an appeal is essentially a defensive step, rather than offensive.

> [58] In these circumstances I think it is artificial to say that proceedings are instigated by the taxpayer. It is the assessments which instigate the proceedings which come before the Commissioners, not the appeal itself."

163. In *KSM Henryk Zeman Sp Zoo v HMRC* [2021] UKUT 0182 (TCC) ("*Zeman*"), a judgment of Adam Johnson J and Judge Hellier, the UT similarly said at [37]:

> "Although technically the taxpayer is a claimant in the proceedings rather than a defendant, in substance he is defending part of an enforcement action by HMRC."

THE CASE LAW

164. The question as to the Tribunal's jurisdiction in relation to public law issues has a long history. Mr Gordon said it was unnecessary to revisit all that case law, and that it was sufficient to begin with the Court of Appeal's judgment in *Beadle v HMRC* [2020] EWCA Civ 562 ("*Beadle*").

165. Mr Marks submitted that the appropriate starting point was instead *Metropolitan International Schools v HMRC* [2019] EWCA Civ 156 ("*MIS*"), which had been decided by a differently constituted Court of Appeal a year before *Beadle*. He pointed out that when the Court of Appeal decided *Beadle,* they were not referred to *MIS*.

166. Whilst that is true, in *Caerdav v HMRC* [2023] UKUT 000179 (TCC) ("*Caerdav*") the UT considered both *MIS* and *Beadle,* as well as earlier authorities. We therefore decided that the correct legal position could therefore be summarised without revisiting *MIS.*

Beadle

167. In *Beadle*, Simler LJ (as she then was) gave the only judgment with which Moylan LJ and Sir Ernest Ryder agreed; Mr Gordon with Ms Montes Manzano represented the taxpayer.

168. Simler LJ said at [4]:

> "…the FTT is a statutory tribunal and has no inherent jurisdiction, nor any jurisdiction to grant judicial review. However, that does not mean that the FTT never has jurisdiction to determine public law questions. A tribunal that has no judicial review jurisdiction may nevertheless have to decide questions of public law in the course of exercising the jurisdiction which it does have…"

169. At [44] she said:

> "Where a public body brings enforcement action against a person in a court or tribunal (including a court or tribunal whose only jurisdiction is statutory) the promotion of the rule of law and fairness means, in general, that person may defend themselves by challenging the validity of the enforcement decision or some antecedent decision on public law grounds, save where the scope for challenging alleged unlawful conduct has been circumscribed by the relevant statutory scheme, which excludes such a challenge. The question accordingly is whether the statutory scheme in question excludes the ability to raise a public law defence in civil (or criminal) proceedings that are dependent on the validity of an underlying administrative act."

170. In the following paragraph, she rejected Mr Gordon's submission that "only express statutory language is capable of excluding such a challenge", saying that:

> "In my judgment the express words used by a statutory scheme looked at in isolation may not be sufficient on their own to restrict or exclude public law challenges, but that may be the clear and necessary implication when the

> relevant statutory scheme is construed as a whole and in light of its context and purpose."

171. She went on to apply those principles in Mr Beadle's case. He had sought to appeal on public law grounds against a penalty imposed for the non-payment of a Partner Payment Notice ("PPN"). Simler LJ held at [48]:

> "…it is a clear and necessary implication of the FA 2014 scheme for PPN (and APN) notices, construed as a whole and in light of its statutory purpose, that the ability to raise a collateral public law challenge to the validity of the underlying PPN is excluded at the penalty and enforcement stages."

172. She concluded that part of her judgment by saying at [55]:

> "…the FTT has no jurisdiction to entertain a public law challenge to the validity of a PPN given pursuant to the FA 2014, in the course of an appeal against a penalty notice…"

Zeman

173. The issue in *Zeman* was whether the appellant had a legitimate expectation that it would not be assessed to VAT on certain supplies. The UT referred to paragraphs [44] and [45] of *Beadle* cited above, and then said:

> "[34]…The promotion of the rule of law and fairness means that the taxpayer should be entitled to defend himself by challenging the validity of the enforcement decision or some antecedent decision on public law grounds, unless that entitlement is excluded by the relevant statutory regime. That is a question of construing the relevant statutory language.
>
> [35] On the facts of *Beadle,* given the regime for PPNs contained in the Finance Act 2014, it was a clear and necessary implication of the statutory language that the ability to raise a public law challenge was excluded."

174. Mr Zeman had been assessed under Value Added Taxes Act 1984 ("VATA"), s 73(1), which read:

> "Where a person has failed to make any returns required under this Act (or under any provision repealed by this Act) or to keep any documents and afford
> the facilities necessary to verify such returns or where it appears to the Commissioners that such returns are incomplete or incorrect, they may assess
> the amount of VAT due from him to the best of their judgment and notify it to
> him."

175. VATA s 83(1) gives a right of appeal "with respect to" a number of matters. The particular subsection at issue in *Zeman* was (p), which gave the right to appeal an assessment made under s 73(1).

176. The UT considered earlier case law before saying:

> "[71] In the present case, the relevant statutory language provides that if certain conditions are fulfilled, the Commissioners "may assess the amount of VAT due...to the best of their judgment" (s.73(1)), and if they do then an appeal shall lie to the tribunal "with respect to" the assessment or its amount (s.83(1)(p)).
>
> [72] The word "may" is permissive, not mandatory. It must follow that an assessment is made not by operation of the statute but by a discretion exercised by HMRC...

> [73] A taxpayer has a right of appeal to the tribunal "with respect to...an assessment...under section 73(1)."…we agree with the comments on Sales J in *Oxfam* at [63] as to the ordinary and natural meaning of the phrase "with respect to". As a matter of language, it defines the scope of the tribunal's appellate jurisdiction not by reference to any particular legal regime or type of law, but instead by reference to the subject-matter of the subsection."

177. The UT concluded at [84]:

> "on the facts of this case and given the broad subject-matter of section 83(1)(p), we see strong reasons for thinking that it would be artificial and unworkable to exclude a defence based on the public law principle of legitimate expectation from the tribunal's appellate jurisdiction. We therefore consider that the FTT did have jurisdiction to determine that question in this case."

Caerdav

178. In *Caerdav,* Rajah J and Judge Rupert Jones considered a number of different issues, of which the last was whether the FTT had the jurisdiction to consider whether the taxpayer had a legitimate expectation. At [151] the UT set out relevant extracts from *MIS,* and summarised the *ratio* of that case at [152] as follows:

> "the FTT may have jurisdiction to consider appeal grounds based on public law arguments (such as legitimate expectation) depending on the statutory provisions under consideration."

179. The UT went on to approve Judge McKeever's decision at first instance on the legitimate expectations issue. She had said at [193] of her decision that *Zeman* had distinguished between:

> "an ability to appeal against an *amount* of tax where there is no jurisdiction to consider legitimate expectation and appeals where HMRC has discretion about the assessment, when the FTT may have jurisdiction to consider such issues."

180. She concluded by saying that "the FTT does not have jurisdiction to consider legitimate expectation where the appeal in question relates to the amount of tax due and HMRC has no discretion", see [200]. The UT explicitly endorsed that conclusion (albeit *obiter*), see [158] of their judgment.

SUBMISSIONS AND DISCUSSION

181. Mr Gordon submitted that a taxpayer "can always challenge the lawfulness of an assessment" on the basis that HMRC have breached legitimate expectations, unless the right to do so has been "circumscribed" by the statute itself.

182. He contrasted the PPNs at issue in *Beadle* with the position of the Appellants in this case, saying that "there is no clue in the statutory scheme here that displaces the Tribunal's jurisdiction to hear a collateral public law argument".

183. Mr Marks disagreed, saying that where (as here) HMRC has no discretion as to whether or not to assess a liability, the Tribunal does not have a public law jurisdiction.

184. We agree with Mr Marks. The decisions under appeal were made under ToFA s 8, which as set out earlier in this judgment, provides that:

> "it shall be for an officer of the Board…to decide whether a person is or was liable to pay contributions of any particular class and, if so, the amount that he is or was liable to pay."

185. HMRC thus had the power to decide only whether the Appellants were "liable" to pay Class 1A NICs. This is also reflected in the wording of the decisions themselves: they all begin by saying that the Appellant "is liable to pay Class 1A contributions".

186. The Appellants were "liable" to Class 1A NICs, because the Cars were available for use and actually used by, Mr Walpole, Mr Mark Walpole and Mrs Walpole, and they were not pool cars. The HMRC officer had no discretion: he could not decide the Appellants were not liable.

187. The situation is thus similar to that described by Judge McKeever and confirmed by the UT in *Caerdav*. Just as "FTT does not have jurisdiction to consider legitimate expectation where the appeal in question relates to the amount of tax due and HMRC has no discretion", the FTT also does not have a judicial review jurisdiction where the appeal in question relates to a taxpayer's liability, and HMRC has no discretion.

188. The position is different in other parts of the tax system, where after a liability has been established, HMRC have a discretion as to whether or not to assess that liability: see for instance VATA s 73(1) considered in *Zeman*. But as the case law has consistently said, whether or not this Tribunal has the jurisdiction to consider appeal grounds based on public law arguments (such as legitimate expectation)" depends on the statutory provisions under consideration. The Tribunal has no public law jurisdiction in relation to HMRC decisions made under ToFA s 8.

189. Given that finding, we did not consider it necessary further to lengthen this already long judgment by considering whether the Appellants had met the relevant requirements to establish a legitimate expectation. Any such findings would be entirely *obiter*.

HMRC'S BEHAVIOUR

190. Mr Walpole asked the Tribunal to take into account HMRC's treatment of Ms Cowles and Ms Rowe, and of other members of staff, which he described as "bullying". That is not, however, a matter which the Tribunal has any jurisdiction to consider; complaints of that nature must be made to HMRC and can be escalated to the independent adjudicator.

DECISION AND APPEAL RIGHTS TO APPLY FOR PERMISSION TO APPEAL

191. For the reasons set out above, we dismiss the Appellants' appeals and uphold the ToFA s 8 decisions.

192. 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.

ANNE REDSTON
TRIBUNAL JUDGE

Release Date: 16th MAY 2024