



**TC01985**

**Appeal number: TC/2012/01482**

*INCOME TAX–construction industry scheme- application for registration for gross payment – late payment of corporation tax – whether reasonable excuse – "reason to expect" test – whether compliance record of shadow director relevant – cash flow issues – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**DALE SERVICES CONTRACTS LIMITED**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE GUY BRANNAN  
DAVID E WILLIAMS CTA**

**Sitting in public at Bedford Square, London WC1 on 10 April 2012**

**David and Geraldine Tucker for the Appellant**

**Karen Weare, presenting officer, for the Respondents**

## DECISION

### Introduction

1. The Appellant applied for gross payment status under the construction industry scheme ("CIS") on 20 September 2011 pursuant to section 63 Finance Act 2004. HMRC rejected the application on 10 October 2011 because corporation tax of £333.27 owed by the Appellant and due on 1 January 2011 was not paid in full until 1 July 2011. The Appellant now appeals to this Tribunal.

### The facts

2. The Appellant was incorporated on 3 November 2005. Mrs Geraldine Tucker was appointed as a director on 5 November 2008 and was the director of the Appellant at all material times.

3. The Appellant carries on a roofing and cladding business.

4. It was common ground that the Appellant paid corporation tax of £333.27 for the accounting period ended 31 March 2010, due on 1 January 2011, on 1 July 2011.

5. In the course of correspondence with HMRC, the Appellant gave various reasons for the failure to make this payment of corporation tax on time. Although originally described as a clerical error, Mrs Tucker in a letter dated 18 November 2011 stated that the outstanding corporation tax "was left unpaid because our accountant was dealing with a CIS dispute which has now been resolved." However, in our view, the reason for the failure to pay corporation tax on the due date is to be found in a letter to HMRC dated 12 December 2011 from the Appellant's accountants, R M Accountancy. This reveals that the failure to pay the corporation tax due was the result of instructions given by R M Accountancy. The letter stated as follows:

"The CT tax paid on the 1 July 2011 was delayed due to instructions given by ourselves as it was our belief that Cis taxes had been paid to cover this. We were unable to prove this is explained in our letter of 21 July 2011."

6. Because the Appellant is not registered for gross payment under the CIS, payments made to the Appellant under its contracts are subject to deduction of income tax. Nonetheless, where the Appellant's subcontractors are registered for gross payment under the CIS the Appellant must pay them their contractual entitlements without deduction of tax. When it submits its corporation tax return, it will claim a set-off for the income tax suffered on its own CIS income against corporation tax payable on that income, but until that time it will have an inevitable cash flow problem. As the Appellant's business grows, the cash flow problem increases.

7. The Appellant owed corporation tax of £39,834.69 for the accounting period ended 31 March 2011. This amount was due on 1 January 2012. We accept the evidence of Mr and Mrs Tucker that the cash flow problem caused by the fact that the Appellant was not registered for gross payment was largely responsible for the failure to make this corporation tax payment on time.

8. We were shown a repayment statement for the Appellant (dated 22 March 2012) issued by HMRC in respect of income tax, national insurance contributions and amounts deductible from payments to subcontractors in the construction industry in respect of the income tax year 2010/11. This showed that the Appellant in 2010/11 had overpaid income tax (almost entirely due to the fact that the Appellant was not registered for gross payment under the CIS) of £52,545.33. The Appellant's liability for corporation tax in respect of the accounting period ended 31 March 2011 of £39,834.69 was offset against this repayment obligation. The resultant net repayment made by HMRC (excluding interest) was £12,710.64. In HMRC's skeleton argument, (paragraph 56) the corporation tax liability of £39,834.69 was, confusingly, shown as "Unpaid".

9. In a nutshell, it appears that the Appellant's overpayment of income tax was repaid in March in the year following the end of the relevant income tax year and, therefore, after corporation tax was due in respect of that year. Corporation tax is due nine months after the end of a company's accounting period. Thus, for example, for the income tax year 2010/11 the overpayment of income tax (£52,545.33) less the corporation tax due in respect of the accounting period ended 31 March 2011 (£39,834.69) was refunded on 22 March 2012. The difficulty for the Appellant is that the corporation tax liability was due for payment on 1 January 2012. Obviously, if the Appellant had paid the corporation tax on 1 January 2012 it would have simply increased the amount of the repayment due on 22 March 2012.

10. In their evidence to the Tribunal, Mr and Mrs Tucker emphasised the difficulty that the repeated overpayment of income tax, caused by being unregistered for the CIS, was causing to the business. The Appellant's business was growing and the cash flow problem would, therefore, increase. The result would be that the Appellant would be late in paying tax bills in future because of this cash flow problem. Mr Tucker's evidence, which was not disputed, was that he had not been able to pay himself because the Appellant was struggling financially as a result of the continual overpayment of income tax.

### **The position of Mr Tucker**

11. One confusing aspect of this appeal was that HMRC argued that Mr David Tucker was a shadow director of the Appellant. HMRC contended, therefore, that his compliance record could be taken into account in determining whether the "compliance test" (see below) was met.

12. We asked Mrs Weare, appearing for HMRC, why this was so. As we read section 64(4) Finance Act 2004, Mr Tucker's compliance record (assuming that he was a "shadow director" and therefore a "director" within section 64(5)(a), the latter expression being defined, by section 64(7), in accordance with section 67 ITEPA 2003 and thus including any person in accordance with whose directions the directors are accustomed to act) could only be taken into account if the Board of Inland Revenue had given a direction. There was no such direction in the papers before us. Mrs Weare conceded that she was not aware of a direction having been made. Mrs Weare, therefore, accepted that Mr Tucker's compliance record was not relevant to the Appellant's application under section 63 for registration for gross payment.

## **The law**

13. Section 63 Finance Act 2004 provides for the application by a taxpayer for registration for gross payment under the CIS:

(1) If the Board of Inland Revenue are satisfied, on the application of an individual or a company, that the applicant has provided—

(a) such documents, records and information as may be required by or in accordance with regulations made by the Board, and

(b) such additional documents, records and information as may be required by the Inland Revenue in connection with the application,

the Board must register the individual or company under this section.

(2) If the Board are satisfied that the requirements of subsection (2), (3) or (4) of section 64 are met, the Board must register—

(a) the individual or company, or

(b) in a case falling within subsection (3) of that section, the individual or company as a partner in the firm in question,

for gross payment.

(3) In any other case, the Board must register the individual or company for payment under deduction.

14. It will be noted that section 63 is expressed in mandatory terms, signified by the use of the word "must". HMRC, therefore, have no discretion on whether to register an applicant for gross payment status.

15. Section 64 Finance Act 2004 sets out the requirements that have to be met by an applicant seeking registration gross payment. Section 64 (4) provides that where a company applies the registration for gross payment it must satisfy the conditions in Part 3 of Schedule 11 of Finance Act 2004. Part 3 of Schedule 11 provides for three tests which the subcontractor must satisfy, as follows:

-- paragraph 10: "the business test"

-- paragraph 11: "the turnover test"

-- paragraph 12: "the compliance test"

It was common ground that the "business test" and the "turnover test" are satisfied in this case. This appeal therefore concerns paragraph 12, ie whether the "compliance test" is satisfied.

16. The relevant provisions of paragraph 12 of Schedule 11 are as follows:

(1) The company must, subject to sub-paragraphs (2) and (3), have complied with—

(a) all obligations imposed on it in the qualifying period (see paragraph 14) by or under the Tax Acts or the Taxes Management Act 1970 (c 9); and

(b) all requests made in the qualifying period to supply to the Inland Revenue accounts of, or other information about, its business.

(2) A company that has failed to comply with such an obligation or request as—

(a) is referred to in sub-paragraph (1), and

(b) is of a kind prescribed by regulations made by the Board of Inland Revenue,

is, in such circumstances as may be prescribed by the regulations, to be treated as satisfying the condition in that sub-paragraph as regards that obligation or request.

(3) A company that has failed to comply with such an obligation or request as is referred to in sub-paragraph (1) is to be treated as satisfying the condition in that sub-paragraph as regards that obligation or request if the Board of Inland Revenue are of the opinion that—

(a) the company had a reasonable excuse for the failure to comply, and

(b) if the excuse ceased, it complied with the obligation or request without unreasonable delay after the excuse had ceased.

(4) ....

(5) ....

(6) ....

(7) There must be reason to expect that the company will, in respect of periods after the qualifying period, comply with—

(a) all such obligations as are referred to in paragraphs 10 and 11 and sub-paragraphs (1) to (6), and

(b) such requests as are referred to in sub-paragraph (1).

(8) Subject to sub-paragraphs (2) and (3), a company is not to be taken for the purposes of this paragraph to have complied with any such obligation or request as is referred to in sub-paragraphs (1) to (6) if there has been a contravention of a requirement as to—

(a) the time at which, or

(b) the period within which,

the obligation or request was to be complied with.

17. It will be noted that paragraph 12(2) allows certain defaults to be ignored as specified in regulations. The regulations referred to in paragraph 12 (2) above are contained in the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045). Regulation 32 sets out certain circumstances where a company can be treated as satisfying the obligations set out in the compliance test. Regulation 32 provides as follows:

(1) The obligations and requests prescribed for the purposes of paragraphs 4(3), 8(2) and 12(2) of Schedule 11 to the Act are given in column 1 of Table 3.

(2) The circumstances prescribed in which the applicant or company is to be treated as satisfying the conditions in paragraphs 4(1), 8(1) or 12(1) of Schedule 11 to the Act as regards each of the prescribed obligations are given in column 2 of Table 3.

**Table 3**

<i>1 Prescribed obligations</i>	<i>2 Prescribed circumstances</i>
Obligation to submit monthly contractor return within the required period.	(1) Return is submitted not later than 28 days after the due date, and (2) the applicant or company— (a) has not otherwise failed to comply with this obligation within the previous 12 months, or (b) has failed to comply with this obligation on not more than two occasions within the previous 12 months.
Obligation to pay—  (a) the amount liable to be deducted under section 61 of the Act from payments made during that tax period, or (b) tax liable to be deducted under the PAYE Regulations.	(1) Payment is made not later than 14 days after the due date, and (2) the applicant or company—  (a) has not otherwise failed to comply with this obligation within the previous 12 months, or (b) has failed to comply with this obligation on not more than two occasions within the previous 12 months.
Obligation to pay income tax.	(1) Payment is made not later than 28 days after the due date, and (2) the applicant has not otherwise failed to comply with this obligation within the previous 12 months.
Obligation to submit a return under regulation 73, 74 and 85 of the PAYE Regulations (annual returns) within the required period.	Return is submitted after the due date.
Obligation to pay corporation tax for which the applicant or company is liable.	(1) Payment is made not later than 28 days after the due date, and (2) any shortfall in that payment has incurred an interest charge but no penalty.
Obligation to submit a self-assessment return within the required period.	Return is submitted after the due date.
Obligations and requests referred to in paragraphs 4(1), 8(1) and 12(1) of Schedule 11 to the Act.	The failure to comply occurred before the appointed day and was within section 562(10), 564(4) or 565(4) of ICTA (conditions to be satisfied: minor and technical failures).
Obligation to make a payment under the Tax Acts or Taxes Management Act 1970.	Late or non-payment of an amount under £100.

18. The final exception in Table 3 was added by Regulation 2 of the Income Tax (Construction Industry Scheme) (Amendment No 2) Regulations SI 2008/1282 with effect from 3 June 2008.

19. Paragraph 14 Schedule 11 Finance Act 2004 defines the "qualifying period" as a period of 12 months ending with the date of the application in question.

20. Section 118 (2) Taxes Management Act 1970 provides that a person shall be deemed not to have failed to do anything required to be done within a limited time if he did so within such further time, if any, as allowed or where a person had a reasonable excuse he did it without unreasonable delay after the excuse has ceased.

21. Section 59D Taxes Management Act 1970 provides that Corporation tax for an accounting period is due and payable on the day following the expiry of nine months from the end of that period.

22. Section 67 Finance Act 2004 provides an appeal mechanism in respect of the cancellation of gross payment status. Section 67 provides:

- 1) A person aggrieved by—
  - (a) the refusal of an application for registration for gross payment, or
  - (b) the cancellation of his registration for gross payment,may by notice appeal ....
- (2) The notice must be given to the Board of Inland Revenue within 30 days after the refusal or cancellation.
- (3) The notice must state the person's reasons for believing that—
  - (a) the application should not have been refused, or
  - (b) his registration for gross payment should not have been cancelled.
- (4) The jurisdiction of the tribunal on such an appeal that is notified to the tribunal shall include jurisdiction to review any relevant decision taken by the Board of Inland Revenue in the exercise of their functions under section 63, 64, 65 or 66.
- (5) Where a person appeals against the cancellation of his registration for gross payment by virtue of a determination under section 66(1), the cancellation of his registration does not take effect until whichever is the latest of the following—
  - (a) the abandonment of the appeal,
  - (b) the determination of the appeal by the tribunal, or
  - (c) the determination of the appeal by the Upper Tribunal or a court.

## **Submissions**

### *Appellant*

23. Mr and Mrs Tucker on behalf of the Appellant contended that the failure to pay corporation tax of £333.27 in respect of the accounting period 31 March 2010 (due on 1 January 2011) until 1 July 2011 was the result of the advice of their accountant. They emphasised the considerable cash flow difficulties faced by the business because it was not registered for gross payment. The Appellant received payments net but was obliged to pay many, if not all, of its contractors gross. The problem would continue and the viability of the business was threatened. The Appellant was potentially a growing business but it could not cope with the cash flow problems that non-registration for gross payment imposed.

## *HMRC*

24. Mrs Weare submitted that the Appellant had failed to pay its corporation tax liability for the accounting period ended 31 March 2010 on time. It paid the liability 122 days late. This was outside the 28 day grace period and the £100 de minimis limit allowed by Regulation 32.

25. Moreover, the Appellant had not put forward a valid reasonable excuse for the default. Following the incorrect advice of an accountant was not a reasonable excuse. As regards cash flow problems, these were simply the normal hazards of being in business. They were neither unforeseeable nor inescapable.

26. According to Mrs Weare, in accordance with HMRC's standard guidance, a reasonable excuse had to be unforeseen and inescapable, and caused by some event beyond the Appellant's control.

27. Mrs Weare also submitted that the consequences of the loss of gross payment status could not be taken into consideration. She cited a decision of this Tribunal in *John Grosvenor v HMRC Commissioners* [2009] UKFTT 283 (TC) where Judge Staker said at paragraph 37:

"I further find that the consequences of cancellation of gross payment status is not relevant to the issue whether or not there is a reasonable excuse, and that the material before me discloses no other reasonable excuse for the late payments."

28. Finally, Mrs Weare argued that the Appellant's failure to pay corporation tax in respect of its accounting period ended 31 March 2011 in the amount of £39,834.69 on the due date of 1 January 2012 meant that the "reason to expect" test contained in paragraph 12 (7)-(8) of Schedule 11 Finance Act 2004 had been failed. This test, in summary, provides that there must be reason to expect that the Appellant, in respect of periods after the qualifying period, will comply with, inter alia, all obligations imposed on it by the Taxes Management Act 1970 ("TMA"). This would include section 59D TMA which provides that corporation tax for an accounting period is due and payable on the day following the expiry of nine months from the end of that period.

## **Discussion**

29. The issue whether reliance on an adviser can constitute a reasonable excuse for the purposes of various provisions of the Taxes Acts has been considered in a number of Tribunal decisions, although regrettably we were referred to none of these decisions.

30. As regards the definition of "reasonable excuse" there is no elaboration on this expression contained in paragraph 12 Schedule 11 Finance Act 2004 or section 118 TMA. We note that, unlike section 59 VATA, there is no express restriction on the scope of the concept of "reasonable excuse" which excludes the reliance on another person to perform a task.

31. A helpful explanation of the concept of "reasonable excuse" can be found in *S Webster v HMRC Commissioners* [2012] UKFTT 8 (TC) where Judge Tildesley said (at paragraph 6):

"Reasonable excuse is not defined by statute. In considering a reasonable excuse the Tribunal examines the actions of the Appellant from the perspective of a prudent tax payer exercising reasonable foresight and due diligence and having proper regard for his responsibilities under the Tax Acts."

32. We would simply add that the Tribunal takes the "prudent taxpayer" assuming him to be in the circumstances of the particular taxpayer in question.

33. There have been a number of cases in which a taxpayer's reliance on an adviser has been considered in the context of whether a "reasonable excuse" existed.

34. In *Rowland v HMRC Commissioners* [2006] STC SC D 536, the Special Commissioner held that in the context of section 118(2) TMA, reliance on a third party could give rise to a reasonable excuse. In *Rowland*, the taxpayer had relied on apparently incorrect advice from her accountants in relation to a complicated area of taxation. The Special Commissioner found that it was sensible and reasonable for her so to do, and that she had a reasonable excuse.

35. In *Huntley Solutions Ltd v HMRC Commissioners* [2009] UK FTT 329 (TC) the appellant relied upon an agent to provide straightforward information and documents to HMRC pursuant to paragraph 27 Schedule 18 to the Finance Act 1998. The agent failed to provide those documents because of overwork and personnel difficulties. The Tribunal requested written submissions from the parties on whether reliance on a third-party could be a reasonable excuse. Both parties accepted that reliance on the third party could amount to a reasonable excuse for income tax purposes (paragraph [25]).

36. The Tribunal in *Huntley Solutions* agreed that reliance on another could provide a reasonable excuse (paragraph[32]), but accepted HMRC's submission that regard should be had to the nature of the task. It found the information required of the taxpayer straightforward and easily understood, and that accordingly it was not reasonable for the appellant to rely on the agents when it should have been able to comply itself (paragraph[34]), and that therefore the appellant did not have a reasonable excuse.

37. In *Giles Bushell v HMRC Commissioners* [2010] UKFTT 577 (TC) Judge Hellier referred to the earlier Special Commissioners decision in *Jeffers* TC0337, where the President, Sir Stephen Oliver, had held that reliance on accountants did not constitute a reasonable excuse in the absence of any underlying cause. Sir Stephen Oliver said:

"17. The Code (i.e. Part X of TMA) does not qualify the expression "reasonable excuse" by, for example, ruling out reliance on another to perform a task such as making a tax return. The obligation to make the tax return on time is nonetheless the taxpayer's. It remains his obligation regardless of the fact that he may have delegated the task of making the return to his agent. There may be circumstances in which the taxpayer's failure, through his agent, to comply with, e.g, the obligation to make the return on time can amount to a "reasonable excuse". To be such a circumstance it must be something outside the control of the taxpayer and his agent or something that could not reasonably have been foreseen. It must be something exceptional."

38. Commenting on this passage Judge Hellier said (at paragraph is 56 – 57):

"It seems to us that reliance on an agent may be an excuse or a reason for non-compliance, but such reliance is normal and customary, and the statute cannot have intended such reliance to constitute a *reasonable* excuse in every case. It seems to us that it cannot be the intention of legislation to permit the reliance on a competent person who fails unreasonably to fulfil the task with which he is entrusted to absolve the principal in all cases.

We concur with the President when he said that to be a reasonable excuse the excuse must be something exceptional. In our view, in determining whether or not that is the case it may be necessary to consider why the agent failed (and thereby to regard the agent as an arm of the taxpayer). To give a simple example, if a return was given to someone to post, and that person failed to do so, the reasons for that failure will illuminate whether or not there is a reasonable excuse: if the messenger was run over by a bus the position will be different from the case where the messenger merely forgot."

39. In *Research and Development Partnership Limited v HMRC Commissioners* [2009] UKFTT 328 (TC) the Tribunal (Judge Brooks and Mr Miles) adopted a similar approach to that in *Huntley*. As in *Huntley* the issue was whether there was a reasonable excuse for the failure to provide information and documents under paragraph 27. The Tribunal held (at paragraphs 40 – 41):

"However, although we find that reliance on a third party can amount to a reasonable excuse, we accept the contention of HMRC that in determining whether a person has a reasonable excuse for failing to perform a particular task it is proper to have regard to the nature of the task.

The task in question in this appeal was the provision of documents and information which HMRC say is "straightforward and easily understood" and it is therefore not reasonable to rely on a third party with specialist knowledge to perform it."

40. In *RW Westworth Ltd v HMRC* [2010] UKFTT 477 (TC) (which concerned an appeal against cancellation of gross payment status under the CIS), the Tribunal said at paragraph 13 that: "In view of Mr and Mrs Westworth's lack of experience and expertise in accounting, administration and tax matters we consider that it was reasonable for the Company to retain the services of a consultant", and at paragraph 14 that "the Company had a reasonable excuse for the late PAYE payments".

41. In *Devon & Cornwall Surfacing Limited v HMRC* [2010] UKFTT 199 (also an appeal against cancellation of gross payment status), the appellant company which had no knowledge of tax or VAT matters had relied on a company secretary to ensure compliance with tax obligations. However, various tax obligations were not complied with. The Tribunal found in that case at paragraph 20 that it had been "reasonable for the Company to rely on its secretary to comply with its tax obligations and it was this reliance which led to the failures to meet its obligations". That decision concluded at paragraph 23, referring to *Rowland v HMRC* [2006] STC (SCD) 536 and other cases, that "reliance on a third party, such as the company secretary, can be a reasonable excuse in the direct tax context". We would simply comment that in that case it must be open to doubt whether the company secretary was in fact a third-party.

42. The *Westworth* and *Devon & Cornwall Surfacing* decisions were considered by the Tribunal in *Westbeach Apparel UK Ltd v HMRC Commissioners* [2011] UKFTT 561 (TC). The taxpayer appealed against a penalty in respect of a failure to submit a PAYE return (P35) on the due date. The task been entrusted to an agent. The Tribunal said (at paragraphs 16– 17):

"16. The Tribunal accepts that in cases where highly specialised advice is required, a taxpayer may have no choice but to rely on the advice of a specialist. However, in cases where no specialist advice is required, the Tribunal does not consider that a taxpayer can be absolved of personal responsibility to pay taxes on time through incorrect advice received by a specialist.

17. The Tribunal considers that in general, preparation of P35 returns is something that does not require specialist tax advice and is generally capable of being done by any lay employer. It certainly does not require any specialist tax expertise to check whether or not a P35 return has or has not in fact been submitted."

43. Broadly speaking, therefore, the position in this Tribunal can be summarised as follows. Reliance on a third-party may be a reasonable excuse, but it is not *necessarily* a reasonable excuse. Much will depend on the nature of the task entrusted to the third-party. Thus, specialist tax advice may well give a taxpayer a reasonable excuse if the advice proves to be wrong or misleading. On the other hand, relatively straightforward tasks which are delegated to an agent will not absolve the taxpayer if the agent fails to perform those tasks correctly.

44. In this case the Appellant's accountants advised the Appellant not to pay its corporation tax liability because "it was our belief that CIS taxes had been paid to cover this." In our view, the Appellant was entitled to rely on this (erroneous) advice. It seems to us that roofing contractors, who have retained accountants to deal with the company's tax affairs, might reasonably assume that an overpayment of tax under the CIS might well absolve them from the obligation to pay corporation tax (particularly if the effect of paying an amount of corporation tax determined without the correct credit for income tax accounted for under the CIS would simply be to increase the eventual overpayment of tax for that accounting period).

45. However, the Appellant gave no explanation why it took seven months after the due date for the payment of corporation tax for liability to be settled. Paragraph 12(3) (b) requires that "if the excuse ceased, [the Appellant] complied with the obligation... without unreasonable delay after the excuse ceased." Section 118 (2) TMA also provides that a taxpayer will not be failed to have performed an obligation "unless the excuse ceased and, after the excuse ceased,... he did it without unreasonable delay after the excuse had ceased." It seems to us unlikely that the Appellant's accountants could have laboured for seven months under the misapprehension that overpayments by the Appellant under the CIS entitled the Appellant not to pay its corporation tax liability. The onus of proof in respect of reasonable excuse is on the Appellant and in this case has simply not been discharged.

46. As regards the "reason to expect" test in paragraph 12 (7), no reasonable excuse was offered in respect of the failure to pay corporation tax of £39,834.69 on 1 January 2012, save that the failure was caused by the cash flow difficulties inherent in the

Appellant not being registered for gross payment (whilst having to make gross payments to its own registered contractors). Whilst we sympathise with the Appellant in its difficulty, we think that this cash flow problem is an inevitable consequence of a failure to be registered for gross payment. Therefore, the Appellant cannot successfully argue that this cash flow problem constitutes a reasonable excuse for the failure to pay this amount of corporation tax on time. Accordingly, in our view, HMRC are correct when they argue that the "reason to expect" test has been failed.

47. For these reasons, we dismiss this appeal.

48. 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.

**GUY BRANNAN**

**TRIBUNAL JUDGE**

**RELEASE DATE: 03 May 2012**