



TC02909

Appeal number: TC/2010/08441

VAT – Compulsory registration – Supplies of cleaning services to owners of holiday cottages – Contract between owners of cottages and appellant – Whether appellant supplying cleaning services itself or engaging cleaners as agent of owners – Appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

WENDY LANE

Appellant

- and -

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

**TRIBUNAL: JUDGE JOHN BROOKS
WILLIAM HAARER**

**Sitting in public at St Catherines House, 5 Notte Street Plymouth on 5 April 2013
and Plymouth Magistrates Court on 20 September 2013**

**The Appellant in person on 5 April 2013 but did not appear and was not
represented on 20 September 2013**

**Lynne Ratenett, of HM Revenue and Customs, on 5 April 2013 and Erika
Carroll, of HM Revenue and Customs, on 20 September 2013 for the
Respondents**

DECISION

1. Mrs Wendy Lane, who trades as SPOT ON!, undertakes caretaking and housekeeping services for owners of holiday properties and second homes in North Cornwall. She appeals against a decision of HM Revenue and Customs (“HMRC”) to compulsorily register her for VAT from 1 November 1999 on the basis that her business turnover exceeded the then VAT registration threshold of £51,000 in September 1999 on the grounds that she did not supply cleaning services to the property owners herself but, acting as their agent, engaged cleaners on their behalf and retained a commission from the total amounts paid by them for doing so.

2. This appeal first came on for a hearing in Plymouth on 5 April 2013. On the morning of that hearing Mrs Lane provided the Tribunal and HMRC with copies of some of the agreements between SPOT ON! and property owners and forms setting out the details of the particular property and the requirements of its owner, eg the address, changeover day, whether bed linen and towels were provided etc. However, despite having been provided with the Documents Bundle by HMRC in November 2012 and knowing that they had not been included in it, Mrs Lane did not bring a copy of the terms and conditions to the hearing.

3. As it appeared that the content of these terms and conditions could be determinative of the appeal and, to give effect to the overriding objective of the Tribunal Rules (First-tier Tribunal)(Tax Chamber) Rules 2009 to deal with cases “fairly and justly”, we reluctantly decided that the appeal should be adjourned to allow Mrs Lane an opportunity to produce the terms and conditions and directed that she did so by 30 April 2013.

4. Mrs Lane complied with the direction and, on 5 July 2013 the parties were notified the adjourned hearing was re-listed for a hearing in Plymouth on 20 September 2013. Despite having been given notice of the date of the hearing it became apparent in the days before it was due to take place, but only after being contacted by the Tribunal, that Mrs Lane was unlikely to attend due to transport difficulties. However, she did send a letter, dated 19 September 2013, to the Tribunal setting out her case. On the morning of the hearing Mrs Lane confirmed in a telephone conversation with the Tribunal clerk that she was not going to be present.

5. Under Rule 33 of the Tribunal Rules (First-tier Tribunal)(Tax Chamber) Rules 2009 a hearing may proceed in the absence of a party if the Tribunal –

- (a) is satisfied that the party has been notified of the hearing ...; and
- (b) considers it to be in the interests of justice to proceed with the hearing.

We were satisfied that Mrs Lane had been notified of the date of the hearing in July 2013 which had given her over two months to make arrangements to attend the hearing and, as we were in receipt of her letter 19 September 2013 considered it to be in the interests justice to proceed with the hearing without Mrs Lane being present.

Facts

6. Although there was not a Statement or Schedule of Agreed facts it was clear that the following summary of facts, attached to HMRC's skeleton argument which although not formally agreed, was not disputed.

- 5 (1) On 5 October 2006 HMRC Officer Stephen Gray received details from JobCentre Plus in Truro relating to SPOT ON! which provided cleaning services to local holiday cottages.
- (2) On 1 November 2006 Officer Gray wrote to SPOT ON! to arrange a date for a visit to discuss the business.
- 10 (3) On 6 November 2006 Officer Gray issued a letter to SPOT ON! stating that it had not been possible to find a VAT Registration number for the business and requesting the completion of a questionnaire.
- (4) On 6 December 2006 Officer Gray issued a reminder for the completed questionnaire.
- 15 (5) On 1 February 2007 Officer Gray wrote with the proposed date of 13 February 2007 for a visit.
- (6) On 11 April 2007 Officer Gray wrote proposing another visit on 23 April 2007.
- 20 (7) A file note by Officer Gray note that upon arriving at [the address] he found a note from Mrs Lane stating that she had to accompany someone to a hospital appointment so could not attend the meeting.
- (8) On 12 July 2007 Officer Gray accompanied by a colleague undertook an unannounced visit to see Mrs Lane. Notes of the meeting were produced and sent to Mrs Lane.
- 25 (9) On 16 October 2007 Officer Peter Ogdon, based in HMRC's Shipley office in West Yorkshire, following a request from Officer Gray, undertook a review of business records held at the premises of Craig Tulley [of Gilbert Tax] in Birkin, North Yorkshire. Mr Tulley had been appointed by Mrs Lane on 7 February 2007 to act on her behalf.
- 30 (10) On 18 October 2007 Officer Ogdon sent Officer Gray by email details of the takings figures that he had obtained from Mrs Lane's books. The figures had been recorded in three "Cathedral Books".
- (11) On 24 October 2007 Officer Gray wrote to Mrs Lane stating that based on the turnover figures she should have been registered for VAT from 1 November 35 1999. Mrs Lane was asked to complete a Form VAT1 – Application for Registration.
- (12) On 24 October 2007 Officer Gray passed details relating to Mrs Lane's registration for VAT to HMRC's National Registration Unit for compulsory registration action to be taken.
- 40 (13) In the absence of Mrs Lane completing form VAT1, Officer Gray wrote to Mrs Lane on 16 November 2007 stating that action had been taken to

compulsorily register her for VAT from 1 November 1999 advising her of her VAT registration number.

(14) On 12 May 2008 HMRC issued to Mrs Lane an assessment for VAT in the sum of £126,380 for the period 1 November 1999 to 31 January 2008.

5 (15) On 2 October 2008 Kinsellas, acting for Mrs Lane sent a letter of appeal to HMRC in respect of the assessment of 12 May 2008. They stated that Mrs Lane may not be liable to be registered for VAT due to a legal technicality.

10 (16) On 18 December 2008 Officer Moscardini of HMRC wrote to Kinsellas setting out the background to the case and advising that there was no right of appeal against the assessment in the absence of a VAT return. It was sated that Mrs Lane had the right of appeal against the decision for compulsory registration. Kinsellas were asked to expand on the previously stated grounds of “a legal technicality”.

15 (17) On 28 January 2009 Officer Moscardini once again asked for clarification as to why Kinsellas considered VAT was not technically chargeable – a deadline of 20 February was set for receipt of the information.

20 (18) On 9 April 2009 Kinsellas set out that they consider the assessment had not been made to best judgement, the figures having been derived from perceived gross income. They also stated that they believed their client acted as an agent between the owners of holiday homes and the local suppliers of services that they required. Acting as agent their client received gross payments for these services which were then passed on to the supplier less her commission. They stated that they had seen records supporting the contention.

25 (19) On 23 April 2009, Officer Rimes of HMRC requested the evidence to support the contention that Mrs Lane was not liable for registration.

(20) On 6 May 2009 Kinsellas stated they would contact the Tribunal to make an appeal against the compulsory registration.

30 (21) On 15 May 2009 Kinsellas advised HMRC that they were trying to obtain the necessary evidence. The red books maintained by their client contained, at the back a contemporaneous record of commissions received by SPOT ON!. The records previously held by Craig Tulley at Gilbert Tax had been handed to another adviser and Kinsellas were trying to identify the recipients.

35 (22) On 26 May 2009 Officer Rimes sent to Kinsellas a copy of the spreadsheet prepared by Officer Gray and advised that the case had been sent for reconsideration.

(23) On 2 July 2009 Kinsellas issued a letter to the Review Officer, Tina Saunders, stating that they had completed a review of the business records collected from the offices of Gilbert Tax in June 2009. It was necessary to ask Mrs Lane for further information.

40 (24) On 28 September 2010 Officer Saunders wrote to Mrs Lane with the result of her review. The decision to compulsorily register Mrs Lane from 1 November 1999 was upheld. Kinsellas had stated that they would provide

evidence supporting their belief that Mrs Lane had acted as an agent; Officer Saunders commented that this had not been provided.

(25) On 29 October Kinsellas submitted an appeal to the Tribunal.

7. The following documents setting out its services terms were provided by SPOT ON! to property owners.

SPOT ON! provides a comprehensive and flexible support for owners of furnished holiday accommodation and second homes, which they use for their own holidays, or which they let to other people, either privately or through a Booking Agent.

Many owners, especially those who live in other parts of the country, are pleased to have the day-to-day responsibility and care of their property taken over by someone on the spot. Holidaymakers also appreciate having someone local they can call on should they have any problems during their stay. Because of our experience (we are now in our 10th successful year – and proud to be the first and longest running holiday property management company in North Cornwall!), because we confine our activities to North Cornwall, and because we only deal with holiday properties, we have a wealth of local knowledge and contacts, and can offer a specialised, highly professional and personal service, tailor-made to suit your particular requirements, from finding the right property to arranging a baby sitter!

SPOT ON! can provide virtually any service you may require in connection with the running, care and management of your property, including:

- Full Property Management Service
- Cleaning on changeover days
- Spring cleaning
- Welcome tea-tray, with fresh milk, biscuits, wine – anything you like!
- Fresh flowers and/or fresh fruit
- Full laundry service for bed linen, towels, bathmats etc
- help line for tenants
- General household repairs, decorating and gardening
- Winter maintenance
- Window cleaning, carpet and upholstery cleaning and chimney sweeping
- Supervision of tradesmen
- Arrangements for deliveries
- Booking service for owners who let privately

- Conversion or renovation of existing buildings to holiday accommodation
- New holiday property search and advice

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FULL PROPERTY MANAGEMENT SERVICE

- A weekly security check while the property is unoccupied. Please note that many insurance companies insist on this as a condition of insurance. (The exact date and time of these visits to be at SPOT-ON!s discretion)
- 10 • Regular internal and external checks of the property for signs of obvious damage or deterioration, and notification to the owner.
- Collection and re-direction of mail
- 15 • Seeing that gas, electricity and water are turned on and off as and when required and/or requested by the owner
- Obtaining suitable estimates from local tradesmen if required by the owner
- 20 • Arrangement and attendance for access for deliveries/tradesmen as required by the owner (subject to a charge for waiting time if necessary)
- Provision of a call out service during normal working hours for any problems that may arise during the tenant’s stay
- Access to our 24 hour Emergency Call Out Service (subject to an additional charge)
- 25 • Guaranteed availability of an experienced cleaner to clean the property on changeover day
- Full Public Liability Insurance to cover cleaners working at the property
- 30 • Regular spot checks to ensure our high standards are maintained
- Liaison with the Booking Agency and informing them of any problems that may arise
- 35 • Notifying the owner of any damages or missing items, and (if required by the owner) replacing the same at the owners expense with articles of a similar nature and value entirely at **SPOT-ON!s** discretion
- Dealing with any minor repairs or incidents with such action that at **SPOT-ON!s** discretion is considered necessary, and informing the owner within a reasonable period of time of such action and of any costs to be borne by the owner
- 40 • For any emergencies of a serious nature (at **SPOT-ON!s** discretion) contacting the owner by telephone if possible, but if

unavailable taking action at the sole liability, cost, risk and expense of the owner

8. The agreement between SPOT ON! and the property owner was as follows:

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PROPERTY MANAGEMENT SERVICES CONTRACT

Property
address.....
Telephone.....

10

Owners Name and Address.....

Occupation.....

Email.....

Tel: Home..... Work

Mobile.....

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Emergency contact if you are
unavailable.....

Changeover day? Rubbish day?

Maximum occupancy?

No. of bedrooms? No. of bathrooms/WCs?

Pets accepted?

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Bed linen provided? Towels provided?

Cot/highchair provided?

Where is the: Electricity Mains Switch / Fuse Box?
.....

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Mains water stopcock? Mains gas
supply?

Heating – details of type/settings etc.
.....

Name and address of Booking Agent (if applicable)
.....

30

In the event of non-major items being broken or lost, do you wish us to attempt to replace the same at your expense, using our discretion in this respect? If so, please state the maximum amount for any one item which you are prepared to authorise us to deal with in this way (this also applies to minor repairs)

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Any comments / special
requirements.....

...../ continue over if necessary

40

I have read and understood the Terms and Conditions as laid down by Spot-On! and agree to abide by them. I understand that subsequent payments will be invoiced on the Anniversary of this Service Contract (unless previously cancelled in accordance with the terms of this Contract), or quarterly by prior arrangement, in addition to any other

services required by me in connection with my property, which will be invoiced monthly.

Signed.....

Date.....

5 This Service Contract to run from.....
to.....

I enclose a cheque for the sum of £..... made payable to Spot ON!

TERMS AND CONDITIONS (Numbering added)

10 [1] Throughout the life of this Service Contract **Spot On!** shall be deemed to be acting as your Agent in arranging on your behalf any matters relating to the cleaning, maintenance and general running of your property, and these Terms and Conditions shall apply to any property belonging to you at which we may carry out works requested by you, including building works.

[2] Once a Service Contract has been entered into, we shall not be obliged to refund any or part of our fees or charges, either paid or outstanding, upon the cancellation of the said Contract by you before its due expiry date, although if such a cancellation takes place for good reason, we may, at our discretion, do so.

[3] A Service Contract may be terminated at any time by either party giving at least one full months notice in writing. Should the Contract be terminated, you undertake to settle any outstanding invoices in full within 5 working days. All goods purchased on your behalf remain the property of **Spot On!** until paid for in full, and all keys, laundry or any other items belonging to your property and held by **Spot On!** will be returned upon final settlement of your account.

[4] **ALL INVOICES ARE TO BE SETTLED IN FULL WITHIN 14 DAYS OF DATE OF POSTMARK.** If payment is not made within this time we reserve the right to suspend our services until the full amount owing has been received. At our discretion, interest will be added to unpaid accounts at the rate of 10%.

[5] Unless cancelled by giving at least one full months notice in writing, the Service Contract will be automatically renewed each year, and the Terms and Conditions current at that time will apply.

[6] We do not accept any commission from Tradesmen we may engage on your behalf, and if such a person is retained by us within the Terms of the Service Contract, we shall be deemed to have acted as your Agent and you will be expected to honour any commitment negotiated by us on your behalf.

[7] You will be expected to promptly settle the accounts of any third party with whom we have properly and reasonably negotiated as your Agent, in accordance with the Service Contract. If you fail to do so, we shall be entitled to refuse to act as your Agent in negotiating with any third party for the remainder of the Service Contract, in which event we shall be under no obligation to refund any part of our fees.

5 [8] Where possible 7 clear days notice should be given prior to any let or visit, private or arranged through your Booking Agent, in order to prepare the property prior to arrival, especially during the high season. If less than 48 hours notice is given, we reserve the right to levy a surcharge of £30.00, in addition to any emergency cleaning charges that may be applicable.

10 [9] We shall not be obliged to refund any or part of our charges or fees relating to cleaning services following any complaints unless we have been informed of those complaints at the time, and been given the opportunity to rectify any faults, although we may at our discretion do so.

[10] Whilst **Spot On!** is happy to handle properties outside our normal areas, we reserve the right to charge travelling time, particularly during high season and Royal Cornwall Show week.

15 [11] You undertake to provide **Spot On!** with a full and complete list of all persons that possess any keys to your property, and to advise us of any changes to that list whenever they occur. You also undertake to provide us with a full Inventory of all items in the property, including bed linen and laundry items, which shall be confirmed and agreed by us prior to the commencement of the Contract, or as soon as possible thereafter, or at any rate prior to the first letting.

20 [12] **Spot On!** accepts no liability for any theft, loss or damage to the property or its contents howsoever caused, except where such action may be directly attributable to representatives of **Spot On!** whilst on the premises, and so may be covered by our Insurance.

25 9. The cleaners engaged by Mrs Lane, who were not obliged to accept cleaning work from SPOT ON! were responsible for providing their own cleaning materials and equipment and, in addition to SPOT ON! managed properties were able to and did clean elsewhere, were required to sign the following:

30 **DECLARATION**

I,
of

35 hereby state that any work I may do for the owners of any properties arranged through Spot-On! acting as the owner's Agent is done solely on a self-employed basis.

I understand that any work undertaken in any property is dependent upon bookings received by the owner for that property, and by its nature this work is both seasonal and occasional.

40 I will invoice Spot-On! on a weekly basis for any work done in that week, and I understand that any invoices will be paid in cash by Spot-On! on behalf of the owner of the property. I understand and confirm that Spot-On! will not make, and has no authority, responsibility, obligation or liability to make any deductions of any sort with regard to Income Tax, Pensions or National Insurance.

I understand and confirm that if appropriate or necessary it is my sole responsibility to advise the Inland Revenue or the Department of Social Security or any other relevant authority regarding any changes to my circumstances.

5 Signed
Date

10 10. The invoices sent by SPOT ON! to the property owners set out the date the property was cleaned, the amount of time spent and the hourly rate charged with a total amount payable to SPOT ON!. There is no reference in the invoice to sums being collected on behalf of a cleaner or of any commission retained by SPOT ON!.

11. We were not provided with any copies of invoices from the cleaners to SPOT ON!.

Law

15 12. The statutory provisions relating to a taxpayer's liability to register for VAT are found in schedule 1 to the VAT Act 1994 (“VATA”). Paragraph 1(1) of schedule 1 VATA sets out the basic rule as to when a person becomes liable to be registered, and insofar as is relevant to this appeal provides:

... a person who makes taxable supplies but is not registered under this Act becomes liable to be registered under this Schedule -

- 20 (a) at the end of any month, if the value of his taxable supplies in the period of one year then ending has exceeded [£51,000 – the VAT threshold in the present case]; or
- 25 (b) at any time, if there are reasonable grounds for believing that the value of his taxable supplies in the period then beginning will exceed [£51,000].

13. Section 2(2) VATA provides that:

a taxable supply is a “supply of goods and services made in the United Kingdom other than an exempt supply.

It is not suggested that the supplies made by SPOT ON! were exempt supplies.

30 14. In *Reed Employment Ltd v HMRC* [2011] UKFTT 200 (TC) the First-tier Tribunal (Judge Berner and Dr Small) considered whether the appellant’s supplies were limited to the introduction of workers to its clients in return for an introduction fee (as the appellant contended) or whether (as contended by HMRC) the appellant was making, as principal, a supply of temporary staff, the consideration for which was

35 the whole amount charged to the client.

15. Having reviewed the relevant authorities including those of the European Court of Justice in *HMRC v Loyalty Management Ltd and Baxi Group Ltd* (Cases C-53/09 and C-55/09) [2010] STC 2651, *Customs and Excise Commissioners v Reed Personnel Services Ltd* [1995] STC 588, the House of Lords in *Eastbourne Town*

Radio Cars Association v Customs and Excise Commissioners [2001] STC 60, the Court of Appeal in *Tesco plc v Customs and Excise Commissioners* [2003] STC 1561 and the Chancery Division of the High Court in *A1 Lofts Ltd v HMRC* [2010] STC 214, the Tribunal summed up the approach to determining the nature of a supply at [72] as follows:

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“72. What we take from all this is that the contracts between the various parties are necessarily a starting point, but may not be determinative of the nature of the supply or the consideration that has been given for it. That may depend on an objective analysis of all the facts, having regard to the economic purpose of the transactions. The search is for the economic reality, which may or may not be determined by the contractual arrangements between the parties.”

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16. The principles by which contractual documents should be interpreted were considered by Lord Hoffman in *Investors Compensation Scheme v West Bromwich Building Society* [1998] 1 WLR 896 at 912-913 where he made the following “general remarks about the principles by which contractual documents are nowadays construed”:

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“I do not think that the fundamental change which has overtaken this branch of the law, particularly as a result of the speeches of Lord Wilberforce in *Prenn v. Simmonds* [1971] 1 WLR. 1381, 1384-1386 and *Reardon Smith Line Ltd. v. Yngvar Hansen-Tangen* [1976] 1 WLR 989, is always sufficiently appreciated. The result has been, subject to one important exception, to assimilate the way in which such documents are interpreted by judges to the common sense principles by which any serious utterance would be interpreted in ordinary life. Almost all the old intellectual baggage of "legal" interpretation has been discarded. The principles may be summarised as follows:

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(1) Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.

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(2) The background was famously referred to by Lord Wilberforce as the "matrix of fact," but this phrase is, if anything, an understated description of what the background may include. Subject to the requirement that it should have been reasonably available to the parties and to the exception to be mentioned next, it includes absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man.

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(3) The law excludes from the admissible background the previous negotiations of the parties and their declarations of subjective intent. They are admissible only in an action for rectification. The law makes this distinction for reasons of practical policy and, in this respect only, legal interpretation differs from the way we would interpret utterances in ordinary life. The boundaries of this exception are in some respects unclear. But this is not the occasion on which to explore them.

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5 (4) The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax. (see *Mannai Investments Co. Ltd. v. Eagle Star Life Assurance Co. Ltd.* [1997] 2 WLR 945

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15 (5) The "rule" that words should be given their "natural and ordinary meaning" reflects the common sense proposition that we do not easily accept that people have made linguistic mistakes, particularly in formal documents. On the other hand, if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention which they plainly could not have had. Lord Diplock made this point more vigorously when he said in *The Antaios Compania Neviera S.A. v. Salen Rederierna A.B.* [1985] 1 AC 191, 201:

20 ". . . if detailed semantic and syntactical analysis of words in a commercial contract is going to lead to a conclusion that flouts business commonsense, it must be made to yield to business commonsense."

25 17. These principles were confirmed by the Court of Appeal in *Delaney v Pickett* [2011] EWCA Civ 1532 in which Ward LJ said, at [43]:

30 "We are regularly referred to and are familiar with Lord Hoffmann's five principles adumbrated in *Investors Compensation Scheme Ltd v West Bromwich Building Society*. We have been told that interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract. The background or matrix of fact includes absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man. Previous negotiations are excluded. The meaning which a document would convey to a reasonable man is not the same thing as the meaning of its words which are a matter of dictionaries and grammar. If one would conclude from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention which they plainly could not have had."

Summary of Parties submissions

45 18. In her letter of 19 September 2013 Mrs Lane contends that her position is "simple" in that she believed and maintains that at all times she was acting as an agent in arranging various services for the owners of holiday properties she managed. The letter continues:

This included anything from cleaning, gardening and window cleaning, to building works, flowers and catering. All property owners signed an agreement stating that they had read and agreed with my Terms and Conditions, which clearly stated [in paragraph 1] that I was acting as their agent.

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19. For HMRC, Ms Carroll, submits that the question of whether Mrs Lane is acting as agent of principal depends on the true nature of the supplies being made and the facts and that a supply made by a principal does not become a supply by an agent simply by referring to it as such. She contends that Mrs Lane has a contract with the property owners to provide services under which there is no liability on the part of the owner to pay the cleaner. Rather the arrangement is that Mrs Lane engages the cleaners which she then supplies out to the property owners for a consideration, namely the agreed hourly rate out of which she pays the cleaner in line with her contractual obligation to do so under the terms of the agreement she has with the cleaner.

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Discussion and Conclusion

20. If the supplies were made to the property owners by SPOT ON! as Ms Carroll contends, the VAT registration threshold would have been exceeded in September 1999 and HMRC's decision to compulsorily register Mrs Lane from 1 November 1999 would be correct.

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21. However, if SPOT ON! was, as Mrs Lane contends, acting as the agent of a property owner and engaged cleaners on his or her behalf with payment due from the owner to the cleaner, albeit via SPOT ON!, its turnover would comprise of the commission it had retained and would be below the registration threshold and not required to register for VAT.

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22. Given the similarity of the issue in *Reed Employment Ltd* and present case we consider it appropriate to adopt the approach of the Tribunal in that case and, as a starting point, consider the contractual arrangements between a property owner and SPOT ON! (which we have set out at paragraph 8, above) taking into account Lord Hoffmann's principles.

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23. However, in doing so we find that there are inconsistencies and ambiguities within the Terms and Conditions.

24. For example, paragraph 1 of these refers SPOT ON! being:

...deemed to be acting as your [the property owner's] Agent in arranging on your behalf any matters relating to the cleaning, maintenance and general running of your property, and these Terms and Conditions shall apply to any property belonging to you at which we may carry out works requested by you, including building works.

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However, while this appears to support Mrs Lane's contention that SPOT ON! is acting as the agent of the property owners the inference to be drawn from paragraph 8, which refers to SPOT ON! reserving "the right to levy a surcharge of £30.00, in

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addition to any emergency cleaning charges that may be applicable”, is that as the surcharge is payable to SPOT ON! it provided the cleaning services as a principal and not as agent.

5 25. Also, paragraph 6 of the Terms and Conditions refer to “Tradesmen” and states that SPOT ON!

... shall be deemed to have acted as your [the property owner’s] Agent and you will be expected to honour any commitment negotiated by us on your behalf”.

10 However, by referring specifically to “Tradesmen” it is not at all clear whether this should also include cleaners.

26. Additionally, it is unclear whether the cleaners are regarded as third parties under paragraph 7 of the Terms and Conditions which requires a property owner:

15 ... to promptly settle the accounts of any third party with whom we have properly and reasonably negotiated as your Agent, in accordance with the Service Contract.

27. Given these inconsistencies, it must follow that the Terms and Conditions cannot, on their own, to be determinative of the commercial and economic reality of the supply and it is therefore necessary to consider the facts as a whole noting, in particular, the following matters:

20 (1) The invoices submitted to the property owners by SPOT ON! do not refer to the cleaners or any “agency fee” but an hourly rate for cleaning the property payable to SPOT ON!;

(2) SPOT ON! receives payment from the property owners under its Terms and Conditions;

25 (3) The cleaners did not work directly for or receive payment directly from the property owners;

30 (4) Under the agreement between SPOT ON! and the cleaners (the “Declaration” in paragraph 9, above) the cleaner would be entitled to payment from SPOT ON! on the presentation of an invoice irrespective of whether the property owner had paid SPOT ON! for the cleaning of the property notwithstanding that the document states that the payment by SPOT ON! is “on behalf of the owner of the property”;

(5) The cleaners were not obliged to accept cleaning work from SPOT ON!;

35 (6) The cleaners were responsible for providing their own cleaning materials and equipment;

(7) In addition to SPOT ON! managed properties the cleaners were free to and did clean elsewhere;

40 (8) In the event of any damage caused by a cleaner the property owner would be likely to complain to and seek a remedy from SPOT ON! with whom he or she had contracted rather than the cleaner;

(9) The document describing the services provided by SPOT ON! (which is set out at paragraph 7, above) indicates that SPOT ON! provides “cleaning on changeover days” and “spring cleaning”.

5 (10) The document headed “Full Property Management Service” (also set out at paragraph 7, above) refers to the “guaranteed availability of an experienced cleaner to clean the property on changeover day”; and also

(11) SPOT ON! states it has “Full Public Liability Insurance to cover cleaners working at a property.

10 28. Taking these matters into account we find, on balance, that the economic and commercial reality is that SPOT ON! itself supplied the property owners with cleaning services and did not engage the cleaners acting as an agent acting on their behalf:

29. In the circumstances we find that the decision of HMRC to compulsorily register Mrs Lane from 1 November 1999 was correct

15 30. Accordingly we dismiss the appeal.

Right to Apply for Permission to Appeal

20 31. 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.

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**JOHN BROOKS
TRIBUNAL JUDGE**

RELEASE DATE: 4 October 2013

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