[2017] UKFTT 0193 (TC)

TC05681

Appeal number: TC/2015/00501

VALUE ADDED TAX - Second-hand car dealers in Northern Ireland - Ostensible sales of vehicles to the Republic of Ireland - Refusal of input tax on basis of insufficient evidence of removal to Republic of Ireland - VAT Notice 725 - Whether assessment out of time? - No - Whether assessment raised against the wrong person? - No - Whether refusal of input tax was unreasonable? - No - Appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

(1) MR ANTHONY MULLAN **Appellants**
(2) MRS ZOE MULLAN (formerly FELL)
(A Partnership, trading as 'GRANGE ROAD CAR SALES')

- and -

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

TRIBUNAL: JUDGE CHRISTOPHER MCNALL
MR ANTHONY HENNESSEY FCA

Sitting in public at the Tribunal Hearing Centre, 2nd Floor, Royal Courts of Justice, Chichester Street, Belfast BT1 3JF on 1 and 2 September 2016

Mr Danny McNamee of McNamee McDonnell Solicitors, for the Appellants

Ms Joanna Vicary, Counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. The Appellants are a married couple. Since 2011 they have been in business together as a partnership, trading (and, since 2012, registered for VAT purposes) as 'Grange Road Car Sales' ('**GRCS**'). GRCS trades in used cars from premises in Cookstown, County Tyrone.

2. This appeal relates to HMRC's denial of input tax to GRCS in relation to transactions involving the following 21 vehicles, all ostensibly sold to customers in the Republic of Ireland.

3. All the vehicles had a 'certificate of dispatch'.

4. The 'other information' column refers to other information which was made available to HMRC before deciding to deny input tax:

			Invoice Value (£)	Payment Method	Customer	Other information available to Officer at time
1	11.5.13	MF60 XHC	15,000	Bankers draft	McCarville	Copy log book
2	21.5.13	AJ10 JZO	13,500	Cheque	ditto	
3	20.6.13	SD13 ZHX	77,000	nk	ditto	
4	27.6.13	FT12 VFB	16,950	nk	ditto	
5	2.6.13	RHZ 1909	None stated	nk	ditto	
6	11.6.13	YE09 ZHL	8,200	nk	ditto	
7	5.7.13	LM10 LHZ	14,000	nk	ditto	
8	10.7.13	08C 17320	10,900	nk	ditto	
9	20.7.13	MW08 XXS	22,050	nk	M Clancy	
10	24.7.13	HF13 ZHW	46,150	nk	McCarville	
11 12 13	25.7.13	FT12 XJH FR12 HZY FV12 OUF	46,500	nk	M Clancy	

14 15 16	29.7.13	YC62 UZG YP62 VUT VK11 FTF	64,000	nk	McCarville	
17	8.8.13	PN62 TJZ	23,000	nk	McCarville	
18	9.8.13	SB62 GNO	63,000	nk	M Clancy	
19	22.8.13	AE10 MVY	28,250	nk	GM Autos	Letter
20	24.8.13	KU13 UDL	57,900	nk	McCarville	
21	26.8.13	VO13 DVX	30,700	nk	M Clancy	

5. On 3 October 2014 HMRC's Officer Arnold wrote a letter to the Appellant, updating it on her extended verification into its VAT returns, and especially in relation to the periods 05/13 to 08/13, and denying zero rating of those 21 vehicles (set out in an attached Schedule) namely:

(1) 05/13 (2 vehicles - output tax due £4,249.99);

(2) 06/13 (4 vehicles - output tax due £21,916.65);

(3) 07/13 (10 vehicles - output tax due £33,933.29);

(4) 08/13 (5 vehicles - output tax due £33,808.32).

6. The VAT returns were adjusted and the assessments raised for the VAT periods three months after each of the periods in question.

7. For the period 05/13 an adjustment to the Appellant's VAT return for 08/13 was issued on 30 October 2014. That was subsequently corrected, but not as to the figure, on 25 November 2014.

8. A form VAT 655 was subsequently issued. It was not dated as such, but was date stamped by HMRC's Administration - as outgoing mail - on 17 November 2014. A VAT Statement of Account (form VAT 667A), tallying with the VAT 655, calculated the VAT account as at 10 November 2014 and was also date-stamped out, in the same way, on 17 November 2014.

9. A departmental review on 9 January 2015 considered and upheld Officer Arnold's decision 'to remove GRCS's entitlement to zero-rate the supplies in question as notified to GRCS in letters dated 3 October 2014, 30 October 2014 and two letters dated 25 November 2014'. No mention was made of 17 November 2014.

10. That letter said that the reviewing officer had been advised that the reason why the Appellant had been assessed for VAT on supplies of vehicles alleged to have been exported to the Republic of Ireland was that the Appellant had failed to provide HMRC with satisfactory evidence, as requested, that the cars were indeed exported.

11. At one stage, it was contemplated that the present Appeal might be heard at the same time as another Appeal by the same Appellant (TC/2014/06301). However, that course of action (which was otherwise endorsed by the parties) was not adopted, principally due to reasons of available time. It suffices to note that TC/2014/06310 was heard by a different composition of the same Tribunal, albeit presided over by the same Judge. For the avoidance of any doubt, the present Appeal has been treated by the Tribunal on its own merits. The Tribunal's findings in the other Appeal have not played any part in this one; and vice versa.

12. Those comments are subject to one point, relating to an allegation of fraud, dealt with separately below, where the Appellant's representatives themselves suggested that there was a link between the circumstances of the two Appeals. We should say now, and for reasons which are set out further below, that we have rejected that suggestion.

The Notice of Appeal

13. The Grounds for Appeal, in full, are given as follows:

> "The Appellant has made all the zero rates sales which appear in his records and has kept all of the records required in relation to the same. The Appellant is entitled to have his' [sic] 'sales zero rated and is not liable for the assessment herein. The Appellant believes that the raising of this assessment is unreasonable and without proper foundation."

14. The 'sic' is not without significance since it is suggestive that the present Appeal emanates only from Mr Mullan, and not from the partnership which is the VAT-registered person. That is a point to which we shall return.

15. At one stage, HMRC sought a direction that the Appellant send the Respondents and the Tribunal further and better particulars of its grounds of appeal, setting out, by reference to each of the VAT periods 08/13, 09/13, 10/13 and 11/13, "*why the Appellant maintains that the evidence of dispatch provided by the Appellant to the Respondents was sufficient to demonstrate removal of the goods and accordingly, why the Appellant maintains in its notice of appeal that the Respondents' decision was without proper foundation"*. That application was resisted on the basis that the Appellant had supplied a 'compendious List of Documents' (under 4 heads) and the application does not seem to have been pursued insofar as no such direction seems to have been made.

HMRC's Case

16. The core proposition underlying HMRC's case, as articulated in Ms Vicary's Skeleton Argument, is a simple one. It is this:

"The evidence is not sufficient to meet the standards required for the zero-rating of supplies as laid down in VAT Notice 725, as particularised within sections 4 and 5 of that Notice."

17. In closing, Ms Vicary went further than that, and submitted that GRCS has no documentary proof whatsoever to show that any of the 21 vehicles in question were actually and in fact removed by that customer from the United Kingdom.

18. At this point, it suffices to note the careful way in which HMRC put its case. HMRC did not put its case on the basis that GRCS had active or constructive knowledge of any fraud. The cross-examination of Mr Mullan was conducted on a footing which was consistent with that. He was asked to explain inconsistencies which were pointed out to him, but HMRC did not advance any positive assertion that the documents relied upon by GRCS were fraudulently produced.

19. This has an important bearing both on the scope of this appeal and upon whether it can be said that HMRC acted unreasonably in refusing to consider information brought to its attention after the decision in question.

Jurisdiction

20. The appeal relates to a matter over which HMRC had discretion. In a well-known passage in *Kohanzad v Customs and Excise Commissioners* [1994] STC 968 Schiemann J (as he then was) described the Tribunal's jurisdiction in the following terms (at page 969d):

> "It is established that the Tribunal, when it is considering a case where the Commissioners have a discretion, exercises a supervisory jurisdiction over the exercise by the Commissioners of that discretion. It is not an original discretion of the Tribunal; it is one where it sees whether the Commissioners have exercised their discretion in a defensible manner. That is the accepted law in this branch of the court's jurisdiction, and indeed it has recently been decided that the supervisory jurisdiction is to be exercised in relation to materials which were before the commissioners, rather than in relation to later material. It is, of course, well-established that in this type of case, the burden of proof lies on an Appellant to satisfy the Tribunal that the decision of the Commissioners was incorrect."

21. The supervisory jurisdiction in cases such as this involves consideration as to whether the Commissioners took into account all relevant matters, whether they took into account any irrelevant matter, and whether the decision was within the bounds of reasonableness.

22. This approach has been followed and applied in relatively recent decisions of the Tribunal: see *McAndrew Utilities Limited v HMRC [2012] UKFTT 749 (TC)* and *GB Housley Ltd v HMRC [2013] UKFTT 150 (TC)*. The latter decision was overturned by the Upper Tribunal on first appeal but reinstated by the Court of Appeal on second appeal.

23. We therefore proceed on the basis that we have jurisdiction to consider the exercise by HMRC of its discretion, but that such jurisdiction is supervisory in the sense that we cannot substitute our own decision but can only decide whether HMRC's discretion has been exercised reasonably.

24. Therefore, GRCS can only succeed if it can show, on the balance of probabilities, that HMRC's decision was flawed in a public law sense.

VAT Notice 725

25. The formal requirements for when sales of goods may be zero-rated are contained in VAT Notice 725, which reads:

"**4.3 When can a supply of goods be zero-rated?**

[Box begins]

The text in this box has the force of law

A supply from the UK to a customer in another EC Member State is liable to the zero rate where:

- you obtain and show on your VAT sales invoice your customer's EC VAT registration number, including the 2-letter country prefix code, and
- the goods are sent or transported out of the UK to a destination in another EC Member State, and
- you obtain and keep valid commercial evidence that the goods have been removed from the UK within the time limits set out at paragraph 4.4

You must not zero-rate a sale, even if the goods are subsequently removed to another Member State, if you:

- supply the goods to a UK VAT registered customer (unless that customer is also registered for VAT in another Member State. In such cases they must provide their EC VAT registration number and the goods must be removed to another EC Member State)
- deliver to, or allow the goods to be collected by, a UK customer at a UK address, or
- allow the goods to be used in the UK in the period between supply and removal, except where specifically authorised to do so.

Paragraph 4.9 covers the checks that you must undertake to make sure that your customer's EC VAT number is valid.

[Box ends]

26. The time limits for compliance are governed by section 4.4:

4.4 Time limits for removal of goods and obtaining evidence of removal

[Box begins]

The text in this box has the force of law

In all cases the time limits for removing the goods and obtaining valid evidence of removal will begin from the time of supply. For goods removed to another EC Member State the time limits are as follows:

- 3 months (including supplies of goods involved in groupage or consolidation prior to removal), or
- 6 months for supplies of goods involved in processing or incorporation prior to removal.

27. Section 5 of VAT Notice 725 sets out the evidence of removal which is required:

Zero-rating of supplies to VAT registered customers in another Member State – evidence of removal

5.1 Evidence of removal

A combination of these documents must be used to provide clear evidence that a supply has taken place, and the goods have been removed from the UK:

- the customer's order (including customer's name, VAT number and delivery address for the goods)
- inter-company correspondence
- copy sales invoice (including a description of the goods, an invoice number and customer's EC VAT number etc)
- advice note
- packing list
- commercial transport document(s) from the carrier responsible for removing the goods from the UK, for example an International Consignment Note (CMR) fully completed by the consignor, the haulier and signed by receiving consignee
- details of insurance or freight charges
- bank statements as evidence of payment
- receipted copy of the consignment note as evidence of receipt of goods abroad
- any other documents relevant to the removal of the goods in question which you would normally obtain in the course of your intra-EC business

Photocopy certificates of shipment or other transport documents are not normally acceptable as evidence of removal unless authenticated with an original stamp and dated by an authorised official of the issuing office.

5.2 What must be shown on documents used as proof of removal?

The text in this box has the force of law

[Box begins]

The documents you use as proof of removal must clearly identify the following:
the supplier

- the consignor (where different from the supplier)
- the customer
- the goods
- an accurate value
- the mode of transport and route of movement of the goods, and
- the EC destination

Vague descriptions of goods, quantities or values are not acceptable. For instance, 'various electrical goods' must not be used when the correct description is '2000 mobile phones (Make ABC and Model Number XYZ2000)'. An accurate value, for example, £50,000 must be shown and not excluded or replaced by a lower or higher amount.

If the evidence is found to be unsatisfactory you as the supplier could become liable for the VAT due.

28. Section 5.3 of VAT Notice 725 is particularly important in the context of this Appeal:

5.3 Evidence of removal of goods to the Republic of Ireland across the Irish Land Boundary

The evidence you obtain must clearly show that the goods have left the UK. The types of documentary evidence required are explained in paragraphs 5.1 and 5.2. See also paragraph 5.5 for advice when goods are collected by your customer. Depending on the circumstances of the removal, we recommend that you obtain the following types of evidence to meet the conditions for zero-rating:

If the goods are removed:	then commercial evidence should include…
by road by an independent carrier	a copy of the carrier's invoice or consignment note, supported by evidence that the goods have been delivered to a destination in the Republic of Ireland (eg a receipted copy of the consignment note).
removed by rail	the consignor's copy of the consignment note signed by the railway official accepting the goods for delivery to your customer.
removed in your own transport	a copy of the delivery note showing your customer's name, address, EC VAT number and actual delivery address in the Republic of Ireland if different, and a signature of your customer, or their authorised representative, confirming receipt of the goods.
collected by your customer or their authorised	a written order completed by your customer, which shows their name, address, EC VAT number, the name of the authorised representative collecting the goods, the address in the Republic of Ireland where the goods are to be delivered,

representative	the vehicle registration number of the transport used, and a signature of your customer, or their authorised representative, confirming receipt of the goods.

Where you sell a motor vehicle, which is collected by your customer or their representative, it may be difficult to obtain satisfactory evidence of removal from the UK. In these circumstances, a copy of the vehicle registration document issued by the authorities in the Republic of Ireland will normally provide satisfactory evidence of removal if supported by other evidence described above and in paragraph 5.1.

5.4 What if I deliver the goods to my customer in another EC Member State?

In addition to the examples of acceptable documents relating to the sale listed in paragraph 5.1, travel tickets can also be used to demonstrate that an intra-EC journey took place for the purpose of removing the goods from the UK.

5.5 What if my customer collects the goods or arranges for their collection and removal from the UK?

If your VAT registered EC customer is arranging removal of the goods from the UK it can be difficult for you as the supplier to obtain adequate proof of removal as the carrier is contracted to your EC customer. For this type of transaction the standard of evidence required to substantiate VAT zero-rating is high.

Before zero-rating the supply you must ascertain what evidence of removal of the goods from the UK will be provided. You should consider taking a deposit equivalent to the amount of VAT you would have to account for if you do not hold satisfactory evidence of the removal of the goods from the UK. The deposit can be refunded when you obtain evidence that proves the goods were removed within the appropriate time limits.

Evidence must show that the goods you supplied have left the UK. Copies of transport documents alone will not be sufficient. Information held must identify the date and route of the movement of goods and the mode of transport involved. It should include the following:

Item	Description
1	Written order from your customer which shows their name, address and EC VAT number and the address where the goods are to be delivered.
2	Copy sales invoice showing customer's name, EC VAT number, a description of the goods and an invoice number.
3	Date of departure of goods from your premises and from the UK.
4	Name and address of the haulier collecting the goods.
5	Registration number of the vehicle collecting the goods and the name and signature of the driver and, where the goods are to be taken out of the UK by a different haulier or vehicle, the name and address of that haulier, that vehicle registration number and a signature for the goods.
6	Route, for example, Channel Tunnel, port of exit.
7	Copy of travel tickets.
8	Name of ferry or shipping company and date of sailing or airway number and airport.

9	Trailer number (if applicable).
10	Full container number (if applicable).
11	Name and address for consolidation, groupage, or processing (if applicable).

29. The force of law of the statements identified as having the force of law comes from Article 28C(A) of the Sixth VAT Directive (77/388/EEC), now replaced by Article 131 of Directive 2006/112, implemented into domestic law by sections 30(8) and 30(10) of the *Value Added Tax Act 1994* and Regulation 134 of the *Value Added Tax Regulations 1995*: SI/1995/2518.

The witnesses

30. Mr Mullan gave oral evidence. He was hesitant on many points of detail. His evidence was permeated with vagueness. He professed an inability to remember much detail.

31. We found this inability to remember difficult to accept. For example, two of the transactions involved the sale of three cars at one time. Mr Mullan said that he did not recall either of those instances. In our view, that was surprising, given (not least) the aggregate value of the vehicles and the fact that those sales also - at least, in the context of this appeal - seemed out of the ordinary run of things. Mr Mullan said that he did not even remember the cars, or whether they were picked up by a transporter or not (which was a pertinent factual matter given that three vehicles, and not one, were being sold at once).

32. When inconsistencies in documents were put to him - for example, the difference in engine number of an Audi A4 MF60 XHC (Vehicle 1) as recorded on GRCS's invoice of 11 May 2013 on the one hand and the engine number recorded on the log book on the other, he could not provide any satisfactory explanation. Nor could he provide an explanation as to why that vehicle appeared twice in his invoice book - once on 11 May 2013 (being sold to one McCarville for export) and then again on 20 May 2013 to JMC Wholesaling (which latter invoice gives the correct engine number, but is crossed out).

33. It was especially revealing that, when it was put to Mr Mullan that, in relation to 19 of the vehicles, there was no evidence of payment - that is, evidence to show that the price was actually paid - the best evidence he could give was *'yes, but I would have been paid in some way'*. This was hopelessly vague, especially from an individual involved in a trading enterprise which, if the denial of input tax is upheld, stands to lose tens of thousands of pounds.

34. Of course, it would not be the right approach to decide this appeal solely on the reliability of Mr Mullan's memory or his demeanour. We accept that busy businessmen, such as he was and is, can forget things. That is one very good reason why proper records have to be kept.

35. We make one further point about Mr Mullan's evidence. In the course of cross-examination, and during a break in proceedings, we were told, on resuming the hearing, that Mr Mullan had sought to bring something to Mr McNamee's attention,

described by Mr McNamee as *'a matter of some seriousness'*. This matter was that, earlier in the day, it had (according to Mr Mullan, from whom we heard) *'just come back to him'* that an officer of HMRC involved at an early stage of the verification process (and before Officer Arnold had taken over), one Officer McCarville, had told Mr Mullan that he was related to the James McCarville who was the ostensible customer in relation to some of these transactions. Moreover Mr Mullan had also remembered that the same James McCarville had at some point told Mr Mullan that he was related to a Revenue Official by the name of McCarville, who was his uncle.

36. Mr McNamee sought to complain that HMRC had never 'disclosed' to him or to his client that James McCarville and Officer McCarville were related and expressed *'grave concern'*.

37. We assessed this as being an opportunistic and improvisatory attempt by Mr Mullan to derail the proceedings at a time when he was being hard-pressed in cross-examination. It was simply beyond belief that, almost 21 months after his Notice of Appeal had been written, and 11 months after HMRC's Statement of Case (which set out the customer details), that his memory had suddenly come rushing back: to the extent that he suddenly remembered not only what James McCarville had allegedly told him, but also what Officer McCarville had allegedly told him. There was no mention of any of this in either his witness statement (dated 29 January 2016) or his supplementary statement (26 February 2016).

38. In our view, Mr Mullan had heard something in passing and then latched onto it as a way of seeking to deflect attention from himself.

39. We did not hear any evidence from Mrs Mullan, nor from GRCS's accountant.

40. We heard evidence from Officer Arnold. She had made two lengthy witness statements. She is an extremely experienced officer, having served for over 40 years. She gave her evidence in a confident and fluent way. She was conversant with the documents.

41. The cross-examination of her began with questions about Officer McCarville, and she said that she did not know that there was any connection between him and the James McCarville named as a purchaser in this case. We believed her. Moreover, that is consistent with the documents, which is that Officer McCarville's connection with this case ended in January 2012, but James McCarville was not even registered for VAT until August 2012.

42. She was also clear that her position was not that GRCS had never had any cars. Her position was that she did not know whether GRCS had had them or not.

43. We did not get the impression, and reject any suggestion (which was implicit in many of the questions) that she had made her mind up in advance, irrespective of the evidence, to deny input tax to GRCS. We accept that her position was document and evidence focussed. We accept that she was, in particular, looking at evidence of dispatch. We accept her evidence that, if the evidence of dispatch provided by GRCS was satisfactory, then she would have directed the repayment of the input tax. We

accept her evidence, which was firm and not shaken in cross-examination, that this inquiry was one relating to evidence of dispatch and was not (as it was put to her) 'some form of MTIC'.

44. The above observations lead us to conclude that, where the evidence of Officer Arnold and Mr Mullan conflicted on any matters of fact (for instance, in relation to whether Officer Arnold had suggested that he take a deposit equivalent to the VAT) then we prefer the evidence of Officer Arnold.

Our findings of fact

45. We have already outlined some findings of fact above. We make further findings of fact below.

46. Zoe Fell trading as Grange Motors and as a sole trader applied for VAT registration on 21 June 2008 with an effective date of 24 June 2008. Mr Mullan was involved with the business right from the date of registration.

47. A compliance visit and audit took place on 27 October 2011. That involved both Patsy Brady (an accountant) and Mr Mullan.

48. Following that visit, HMRC's Officer McCarville wrote to GRCS, copied to P G Brady & Co. That letter referred to Public Notice 725 sections 4 and 5 as 'laying down the conditions which must be met in **full** for a supply of goods, before removal to another Member State to be zero rated'. That letter referred to Paragraph 4.4 and the **'specific conditions and evidential requirements'** (bold in the original) for goods where a customer collects or arranges for their collection and removal from the UK.

49. That letter dealt with an evidential point which is in direct issue in this case:

> "When a motor vehicle is sold which is collected by your customer or their representative, it may be difficult to obtain satisfactory evidence of removal from the UK. In these circumstances, a copy of the vehicle registration document issued by the authorities in the Republic of Ireland will provide satisfactory evidence of removal when supported by the other evidence described in Section 5 paragraph 5.1"

50. A further compliance visit took place on 23 January 2012. Sections 4 and 5 of Notice 725 were issued to Patsy Brady. Officer McCarville highlighted the need to retain proper documentary evidence regarding the movement of vehicles from the UK to the Republic of Ireland.

51. The requirements of Notice 725 were also brought to GRCS's attention by way of a letter dated 23 January 2012. That letter said: "When goods are sold to an EC VAT registered customer the conditions in **Notice 725 Section 4 and 5** must be met in **FULL**, you must have clear evidence that the goods have been removed from Northern Ireland/United Kingdom' (formatting in the original). That letter was copied to P G Brady & Co, GRCS's accountants.

52. A further compliance visit (by Officer McCabe) took place on 23 April 2012. Officer McCabe had taken over from Officer McCarville.

53. Shortly thereafter, on 25 April 2012, Ms Fell applied for the business to be registered as a partnership.

54. We find that HMRC, before the periods in question, notified GRCS and its accountant, several times, of the conditions which GRCS needed to meet for HMRC to zero-rate a supply of goods to another Member State. As early as November 2011, GRCS had been told what evidence HMRC was looking for.

55. We find that GRCS had no good reason for not complying with VAT Notice 725.

56. On 26 April 2013, Officers Arnold and Armstrong met Mr Mullan and the accountant. It was an MTIC Assurance Visit, made following a Mutual Assistance Request from the Revenue Commissioners in the Republic of Ireland.

57. The 'Visit Comments' recorded that Mr Mullan was asked whether he could say for definite that certain cars sold to a Mr Corcoran went to the Republic of Ireland '*and he confirmed he could not*'.

58. We accept that note as an accurate account of Mr Mullan's comment. It is recorded in the letter of 1 May 2013.

59. The letter of 1 May 2013 referred to '**Evidence of despatch**'. It made reference to Public Notice 725 Paragraphs 4.6, 5.3 and 5.5, and also to the letter of 23 January 2013. The letter ended by saying that if GRCS felt that Officer Arnold had omitted or misunderstood anything then GRCS should notify her in writing. No such notification was received.

60. We accept Officer Arnold's evidence that, in the visit on 12 September 2013, which was attended by Mr Mullan and Mr Brady (an accountant) she was looking for evidence of dispatch and that she (again) gave Mr Mullan particular advice, which was to take a deposit equivalent to the VAT. That letter attached a note of 'Records Required' which included 'All evidence of despatch held including TAN numbers'.

61. We accept Officer Arnold's evidence, which was robustly tested in cross-examination, that, although she was aware of an MTIC investigation into GRCS, she did not take account of it in her decision-making giving rise to this Appeal. We accept her evidence that she was not influenced in her decision-making in this appeal by anything which had happened in any other appeal.

Discussion

62. We begin our discussion with some issues which emerged during the hearing.

The identity of the Appellant

63. We reject the argument (which did not appear in the Notice of Appeal) that the Appeal must be allowed since the assessment *'has been raised against Grange Road Car Sales which entity is neither a legal or natural person'*.

64. The point is a bad one. Ms Fell originally registered for VAT on 21.6.08. On 24.6.08 she was registered as the sole proprietor of GRCS. Latterly, on 25.4.12 - and, so, before the periods in issue in this dispute - an application was made to register GRCS as a partnership between Ms Fell and Mr Mullan. The 'Partnership Details' are given on the VAT2 in evidence. Mr Mullan in fact had become a partner somewhat earlier - by no later than October 2011.

65. Therefore GRCS was at all material times a partnership consisting of Mr Mullan and Ms Fell. In relation to HMRC, the partners were jointly and severally responsible for the VAT affairs of the business.

66. Section 45 of the *VAT Act 1994* relates to the VAT treatment of partnerships. The registration of persons carrying on a business in partnership may be in the name of the partnership: section 45(1)(a). Section 45(4) provides that any notice, whether of assessment or otherwise, which is addressed to a partnership by the name in which it is registered under section 45(1) shall be treated as served on the partnership. The VAT registered person in this case, at all material times, was a partnership consisting of Mr Mullan and Ms Fell.

67. Even if that were not the case, the issue of identity is not a good one for the Appellants to seek to take given that Box 1 of the Notice of Appeal gives the 'Appellant's details' as 'Grange Road Car Sales' and the VAT number- 969 9945 59 - is the VAT number of 'Grange Road Car Sales'.

Late assessment

68. In his closing remarks, Mr McNamee sought to argue that the appeal is against the assessment of 17 November 2014 and is not against the letter of 3 October 2014, and was therefore time-barred.

69. Mr McNamee submitted that the time limits set down by section 73(6) of the VAT Act 1994 have not been complied with, with the consequence '*this appeal must be allowed'*.

70. On one view, it was not procedurally open to the Appellant to even advance an argument of this kind. No such argument appeared, nor was even hinted at, in the Notice of Appeal. One of the purposes of the Notice of Appeal is to outline the grounds of appeal. That is not only to assist the opposing party, but also is to help the Tribunal, in terms of the case-management directions which are issued, and the estimated length of hearing.

71. Nor is the argument mentioned in Mr McNamee's (undated) Skeleton Argument. The latter omission is disappointing given Judge Poole gave directions on 15 December 2015 which included a conventional direction for an outline of the case.

72. But, irrespective of directions, if GRCS indeed intended to take an important point of this kind, then both common sense and the ordinary courtesies of litigation suggest that fair warning of the point should have been given, both to the Tribunal and to the other party.

73. Mr McNamee's explanation in closing that he had not raised the point previously since he was not in a position to say whether he was going to be able to advance the point until he had concluded his cross-examination of Officer Arnold, and the point had (as he put it) '*crystallised'* was far from satisfactory:

(1) It did not accord with or further the overriding objective, set out in Rule 2 of the Tribunal's Rules. In our view, it amounted to a kind of litigation by ambush, where not only HMRC but also the Tribunal were ambushed. It is contrary to the overriding objective for any party to try to conduct litigation by ambush;

(2) Contrary to Mr McNamee's suggestion, there was no good reason why the point of principle could not have been articulated earlier. Mr McNamee was not required to give advance notice of the precise questions which he would be asking.

74. Moving onto the substance of the point. Mr McNamee did not ask Officer Arnold, fairly and squarely, as in our view he should have done, had he wished to pursue this argument in closing (and irrespective of any notice of the point given in advance) 'what was the last fact of which Officer Arnold was aware which was in her mind sufficient upon which to raise an assessment'. That echoes the question framed by the Tribunal (Judge Herrington) in *Cozens v HMRC [2015] UKFTT 482 (TC)*.

75. We are driven to use the expression 'fairly and squarely' since, when the Tribunal sought to explore this point with him, Mr McNamee asserted to us that he *had* asked such a question, but not in those terms. Instead, he asserted that he had asked the question in terms as to *'whether there was anything else required'*.

76. Whilst giving due allowance for the inevitable ebb and flow of cross-examination, and the demands of the forensic process upon both the practitioner and the witness, we can only say that if any such question was indeed intended to be directed at that very point, potentially going right to the root of the case, and HMRC's right to raise the assessment at all, then it was, at the very best, allusive to the point of obscurity. The Tribunal did not, at the time, during the cross-examination, detect that Mr McNamee was seeking to elicit evidence which he could later use as a springboard for what is (in effect) a limitation / time-barring point.

77. That said, we consider, albeit with some reluctance, that it would be unfair to the Appellant to dismiss the argument once it had been raised.

78. It is for the Appellant to establish, albeit only on the balance of probabilities, that Officer Arnold unreasonably, or through some other justiciable error of law, raised the assessment out of time.

79. The Appellant has failed to do so.

80. Firstly, and conclusively, for the reasons set out above, there is no sufficiently good or secure evidential basis for the argument. Cross-examination did not elicit the point.

81. Secondly, in our view, HMRC is correct to point to the letter of 3 October 2014 as the operative decision. It communicated the decision to deny input tax, in a way which was particularised, and which moreover was described as a notice of assessment. The letter of 3 October 2014 cannot be ignored. It is the factual and legal basis upon which the documents of 17 November 2014 were based. Given the form and content of the letter of 3 October 2014, there was no substantive need to issue the form at all on 17 November 2014. We agree that, against the backdrop of the letter of 3 October 2014, the form was simply a bureaucratic instrument.

82. As late as 22 May 2014 Officer Arnold wrote to GRCS (in the letter at 2/342) to 'update' it on the extended verification. It is absolutely clear from that letter that Officer Arnold had not yet been supplied with sufficient material to make the assessment. There were matters still outstanding in relation to two of the vehicles, and other queries relating to (i) the existence, identity and role of alleged employee of GRCS; (ii) An invoice from Lafferty Moore and a cheque to Crown Promotions; (iii) Mileage discrepancies; (iv) A question whether GRCS used book V7D(NI) to notify Coleraine of sales of cars; (v) A question in relation to the '900 series invoice book' which Officer Arnold had still not seen; and (vi) Copies of GRCS's annual accounts for 4 years.

83. We agree that this was still, as at 22 May 2014, an active inquiry. Officer Arnold was still making substantive inquiries, and was still not possessed of all the documents and information which she wanted. She was still collating information.

84. Her request for the book V7D(NI) is significant. That is issued by the Driver and Vehicle Agency in Coleraine. It is 'Notification by a dealer of the sale or disposal of a vehicle' and is issued under the Road Vehicles (Registration and Licensing) Regulations 2002. Whilst completion of the book is not required by law, it is intended to help counteract fraud.

85. Officer Arnold was not asked about the V7D(NI) at all in cross-examination. Nor was it put to her that her inquiry in relation to the V7D(NI) was irrelevant.

86. Even if we were mistaken in relation to all those points, section 73 of the *VAT Act 1994* provides as follows:

> "Failure to make returns etc.
>
> (1) 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.

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

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

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

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

[...]

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

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

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

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

87. The purpose of Section 73(6) is to protect the taxpayer from tardy assessment. It is not to penalise the Commissioners for failing to spot some fact which, for example, may have become available to them earlier.

88. As Dyson J (as he then was) acknowledged in *Pegasus Birds* v *CCE* [1999] STC 95 at 102, where a taxpayer seeks to complain that, in the light of the evidence of which the Commissioners were aware, it was wholly unreasonable for the Commissioners to have delayed making the assessment, an appeal will succeed if it is shown that the Commissioners' approach was wholly unreasonable, and fails to pass a test akin to the Wednesbury test, but that this is a high hurdle for the taxpayer to surmount.

89. We do not consider that the Appellant has succeeded in showing that Officer Arnold's opinion was wholly unreasonable. GRCS has failed to surmount the 'high hurdle' outlined in *Pegasus Birds*.

The evidence of dispatch

90. This is the substantive heart of this appeal.

91. Our jurisdiction is simply to determine whether or not Officer Arnold properly exercised her discretion in refusing to allow GRCS's claim for zero-rating.

92. For reasons which we shall discuss at more length in the next section, we regard it as clear and settled law that proof of export depends on there being sufficient evidence of export in the hands of the taxable person at the relevant time. Accordingly, the question for us is whether the Appellant can show that Officer Arnold unreasonably concluded that there was insufficient evidence of export in the hands of GRCS within the prescribed time limit.

93. VAT Notice 725 provides that valid commercial evidence that goods have been removed must be obtained and kept in order to zero-rate a supply of goods. That is a mandatory provision ('must'). The evidence must be 'clear'.

94. Notice 725 repeatedly refers to evidence showing that the vehicle 'has' been removed. This is suggestive that evidence that the vehicle 'is going' to leave is not, in and of itself, sufficient evidence of export.

95. Section 5.1 says that 'a combination' of documents is called for. No single document is sufficient. The purpose of this is clear - the integrity of any individual document can be more readily, reliably, and effectively tested when it is part of a suite of documents.

96. We acknowledge that some of the items mentioned in VAT Notice 725 are not applicable to motor vehicles. But that does not affect the purpose of the items of evidence referred to in VAT Notice 725 which are so applicable.

97. We consider that the sale of a second-hand motor vehicle or vehicles to an individual for permanent export to the Republic of Ireland could have generated, in any case, more than one of the following: a customer order (including name, VAT number and delivery address); correspondence (e.g., even if not official 'inter-company' correspondence on headed notepaper, then emails); properly completed sales invoices (which correspond with the customer order); commercial transport documents (when cars are taken by transporter); details of insurance or freight; bank statements as evidence of payment; receipted copy of the consignment note as evidence of receipt abroad.

98. Specific guidance is given in VAT Notice 725 as to when goods are removed to the Republic of Ireland across the UK land boundary. The 'commercial evidence' to be included is set out in relation to each mode of transport.

99. The overarching aim of VAT Notice 725 is so that a paper trail can be created which gives 'clear' evidence that the goods (or, as in this case, the vehicle) have indeed left the UK and hence the sale can be validly treated as zero-rated. The conditions are laid down to ensure the correct and straightforward application of zero-rated exemptions, and to prevent evasion, avoidance or abuse.

100. We consider that it was entirely reasonable for HMRC, through Officer Arnold, to have insisted on compliance with VAT Notice 725.

101. The suggestion that Officer Arnold should have asked other people in the motor trade what documents they would consider would satisfy VAT Notice 725 simply does not get off the ground. There is no special VAT Notice 725 for the second-hand motor trade. It does not seem to us to be arguable that individual taxpayers, such as GRCS, or even the sector in which they are involved, can unilaterally rewrite VAT Notice 725.

102. There was no evidence before us from any trade body, reputable motor traders, or any of GRCS's counterparties concerning the sort of evidence which is ordinarily produced in relation to cross-border sales. We do not consider that Officer Arnold was required to obtain expert evidence on the point, or that her failure to have done so was unreasonable.

103. The 'Certificates of Dispatch' (each a single side of A4, headed 'Removal of GOODS to another EC Country', and referring to 'The single market: Notice 725 Section 4 and 5') are in standard form. They are ostensibly signed by the 'customer' and 'driver' that 'I have purchased the goods listed below... The goods will be **permanently removed from Northern Ireland / UK**'.

104. The certificates say that 'The evidence you obtain must **clearly** show that goods have left Northern Ireland/UK'. The 'you' in that sentence can only refer to the supplier, in this case GRCS, since (i) the certificate is completed at the supplier's end; (ii) the supplier is the taxable person who is in the UK and is subject to the requirements of VAT Notice 725. The certificates impose no requirement on the customer who, upon import to another Member State, is subject to the laws of that Member State.

105. The documents have the details entered in handwriting. Those involving James McCarville, although apparently signed by him as 'customer' and 'driver' are obviously, when compared one with another, in a number of different handwritings. Moreover, none of these happen to match the only apparently authentic signature of Mr McCarville which appears on the photocopy of his passport in his bundle.

106. Some of the certificates make no sense: for instance, the invoice for SD13 ZHX gives J McCarville as the customer, but the certificate describes Michael Ward as the customer (and also the driver).

107. Read most favourably to GRCS, the inconsistencies between the Certificates and other documents display such a careless and haphazard approach to accurate record-keeping that it was quite reasonable for Officer Arnold to wish to test or cross-check documents, and not simply to take individual documents at face value.

108. We are satisfied, in relation of each of the vehicles in this appeal, that there were inconsistencies or features in the documents which would have caused a reasonable decision-maker in the position of Officer Arnold to have required further information evidencing export.

109. It is important to note that HMRC, through Officer Arnold, did not exclude the Certificates of Service from consideration. She reasonably accepted that a Certificate

of Dispatch was 'part' of the evidence of dispatch. She also reasonably treated the Certificate of Dispatch, in and of itself, as insufficient, even when coupled with sales invoices. Irrespective of well-founded concerns about the integrity of the documents, all that GRCS's documents amounted to, even in combination, was evidence of *intention* to export. There was nothing to show that intention had in fact been carried through. We agree that the invoices to persons with Irish addresses, and certificates asserting an intention on the part of the customer to permanently remove the vehicle, do not show that the intention was ever actually carried through.

110. There was nothing coming 'the other way' to enable HMRC to be satisfied that the vehicles had been permanently exported. Officer Arnold explained that she would have liked to have seen evidence of the vehicles, following export, being registered in the Republic of Ireland.

111. We accept Officer Arnold's evidence and the analysis which underpinned it, that, as far as she was concerned, she had no reason to believe that GRCS had seen anything which she had not seen.

112. Mr McNamee submitted that 'sufficient' evidence of dispatch must also involve considerations of proportionality and fairness, and that the assessment in this case was disproportionate and unfair. In short, we reject those submissions. There was no evidence advanced by the Appellant (for example) that satisfactory compliance with VAT Notice 725 would be unduly burdensome, or oppressive.

113. Mr McNamee also submitted that two previous officers - McCarville and McCabe - had approved GRCS's exports on the basis of similar (if indeed not materially identical) paperwork which had failed to satisfy Officer Arnold. But we did not have any evidence before us as to the exact basis or iterative process underlying the previous Officers' decisions.

114. The argument is in reality one of legitimate expectation. As such, it must inevitably fail. Neither of Officer Arnold's predecessors could bind her decision-making or her discretion. More fundamentally, the Upper Tribunal (Warren J and Judge Bishopp) held in *HMRC v Abdul Noor* [2013] UKUT 071 (TCC) that the First-tier Tribunal does not have jurisdiction in VAT appeals to consider legitimate expectation type arguments.

115. In our view, the Appellant has failed to show, even on the balance of probabilities, that Officer Arnold was unreasonable or fell into some other justiciable error in refusing to treat the evidence before her, and especially the Certificates of Dispatch, as sufficient evidence that the cars had been removed from the UK.

116. In our view, this is a clear case of failure to comply with VAT Notice 725 and the Officer's treatment of it on that footing is simply beyond realistic challenge.

117. Were we to have the power to look at this entirely afresh, it seems to us that the simple point is that GRCS took the choice to carry on dealing in vehicles which were being ostensibly exported to the Republic of Ireland, knowing of the requirements of VAT Notice 725, but without insisting on evidence of registration in Ireland, and

without securing its position if its claim to zero-rating happened, for whatever reason, to be refused. It may well have been the case that Irish customers were reluctant to provide information such as TAN numbers. But, if customers were indeed reluctant, then GRCS could have chosen not to deal with them. Instead, it ran a risk.

After-acquired information

118. Officer Arnold's second witness statement deals with four vehicles said by Mr Mullan to be registered in the Republic of Ireland.

119. Even if the Appellant is correct that four of the vehicles in question are now in fact to be found in the Republic of Ireland, it does not answer the point of this appeal. The Appellant needs to establish that *its* supply should be zero-rated. That is, in order to establish an entitlement to zero-rating, the Appellant would need to establish that there was a direct and immediate causal link between its supply and the present location of the vehicle.

120. Ms Vicary accepted, when it came to the amount of the tax, that the Tribunal has general (and more than merely supervisory) jurisdiction. But she did not accept that the Tribunal has jurisdiction to allow information to be considered coming to light after the decision.

121. The underlying point is that, if we had that jurisdiction, it would run expressly counter to Section 4.4 of VAT Notice 725 which sets down the time limits for removal of the goods and obtaining evidence of removal. Regulation 134(d) of the *Value Added Tax Regulations 1995* (SI 1995/2518) provides that the Commissioners have power to impose conditions on the availability of zero-rating and we see Section 4.4 as consistent with the Commissioners' statutory power.

122. Mr McNamee sought to place heavy reliance on *R (on the application of Teleos plc) v Revenue and Customs Commissioners* [2008] STC 605, in support of the proposition that this Tribunal could look to evidence of export which had emerged subsequently: that is, after the assessment. We do not consider that he was correct to do so.

123. *Teleos* concerned a UK trader selling mobile telephones to a Spanish company, for delivery in France or, in certain cases, Spain. The terms of the sale were *ex works* - that is, the UK trader was required only to place the goods at the customer's disposal at a bonded warehouse in the UK. The customer was responsible for arranging the transport of the goods to their destination. The UK trader received from the customer consignment notes (CMRs) which described the goods, stated the delivery address, the carrier's name and the vehicle's registration number.

124. Although the CMRs were initially accepted by HMRC as evidence of removal from the UK, and the supply of the mobile phones was zero-rated, subsequent checks led to the discovery that, in certain cases, relevant information stated on the CMRs was false. HMRC concluded that the mobile telephones had never left the UK and assessed the UK trader to VAT on the supplies.

125. The Upper Tribunal (Judge Roger Berner and Judge John Clark) in *HMRC v Arkeley Limited (in liquidation)* [2013] UKUT 0393 (TCC) remarked (at Paras. 45 and 35) that, in their view, *Teleos* establishes that the focus must be on the evidence required to establish the right to zero-rating, at the appropriate time.

126. The Upper Tribunal went on to say:

> "What this means is that in a case where bad faith is not alleged, and where it is not argued that the taxable person was a participant in fraud, whether an actual participant or a participant by virtue of knowledge or means of knowledge of the fraud (see Kittel v Belgium, Belgium v Recolta Recycling SPRL) **the only question is whether the documents received by the supplier are sufficient evidence of the export**. That is the case whether or not the tax authority has itself accepted the evidence. If that evidence is sufficient, and that is a matter for the Tribunal in the case of dispute, the application of zero-rating will not be precluded even if it is later discovered that the goods have not been exported. **Absent an allegation of knowledge or means of knowledge of fraud, the only relevant factor is the evidence available to the taxable person that the goods have left the UK**"

127. We are bound by that analysis. But, even if we were not so bound, we agree with it, and consider that it applies to this case. HMRC's case in the present appeal was not advanced as one in which GRCS was said to have had actual or constructive knowledge of fraud. Therefore, the only relevant factor was the evidence available to GRCS that the vehicles had left the UK. That evidence has to be clear and available at the time of supply. There was no such evidence.

The allegation of fraud and the ostensible link with the other appeal

128. A further matter requires comment. Mr McNamee put the following to Officer Arnold: "It is no coincidence that the VAT at stake in this appeal is almost equivalent to the VAT at stake in the other appeal".

129. This was not even in the form of a question. But, if intended as a question, it is an allegation that Officer Arnold's decisions in this case had been made, in effect, as a form of insurance in case GRCS's other Appeal were allowed.

130. This was entirely improper, for the following reasons.

131. In the 'Skeleton Argument on behalf of the Appellant', the following appears:

> "The Appellant would state that he believes that it is no coincidence that this denial of output tax is in this amount. The Appellant believes that HMRC have deliberately denied the output tax on these dealings not for any valid reason but in an attempt to ensure that should repayment have to be made in relation to the Appellants' input tax, which is the subject of appeal TC/2014/06310, that the Revenue would have 'compensated' itself as regards the payment of input tax. The Appellant submits that this is an absolute abuse of the Respondent's position...

132. The Skeleton Argument is just that - an outline of the argument to be put forward. The Skeleton Argument is not a surrogate or substitute for evidence. Evidence should appear in witness statements, supported by a Statement of Truth. Evidence should come from witnesses in their written and oral evidence and not from, or via, their representatives in a Skeleton Argument.

133. Mr Mullan's witness statement was entirely silent on the point. Hence, the Skeleton Argument is misleading when it says *'the Appellant would state'*. The Appellant stated no such thing. The Skeleton Argument, in saying *'the Appellant believes'* is impermissibly seeking to adopt a formula which tries to give evidence on behalf of GRCS.

134. The nearest we come to this allegation in *evidential* terms is the short, guarded and undeveloped comment in the Grounds of Appeal: *'The Appellant believes that the raising of this assessment is unreasonable and without proper foundation'*. That does not expressly allege any misconduct. Moreover, and given the supervisory nature of the Tribunal's jurisdiction in this case, the ordinary reading is that 'unreasonable' simply refers to the conventional public law sense

135. These are not procedural niceties. In substance, this amounted to an allegation of dishonesty and misconduct on the part of Officer Arnold: namely that she, as a public official, had deliberately made decisions in this appeal, not because of her assessment of the facts, or on her best judgment, but because she was actuated by vindictiveness, bad faith or whim.

136. This is an allegation of fraud against Officer Arnold. It does not matter whether the word 'fraud' is used.

137. There is no prohibition on the making of allegations of fraud. But, in the absence of any evidence from GRCS on this particular point, it was not only unreasonable for this point to be advanced, but was also contrary to the ordinary conventions of civil litigation which require allegations of fraud or criminal conduct on the part of a witness (i) not only to be raised in clear terms, but also (ii) only to be raised and put by a legal representative where there is clear prima facie evidence supporting such an allegation, or evidence which a representative reasonably believes shows, on the face of it, a case of fraud.

138. A suggestion of *'no coincidence'* does not even remotely satisfy this test. The higher civil courts have deprecated the insinuation of fraud. We respectfully agree.

139. Despite our misgivings as to the evidential footing upon which the point could properly be said to rest, which we canvassed with Mr McNamee, the allegation was pursued in closing. Mr McNamee said, clearly and unequivocally, that *'the assessment was raised by HMRC not on the basis of insufficiency of documentary proofs, but was raised in an amount almost identical to the refusal of input tax (in the other appeal)*'. That point should not have been so pursued.

140. It is obvious that significant reputational damage could be inflicted on any witness subject to an allegation of fraud. It is obvious that significant reputational

damage could be inflicted on a career public official by any unfounded allegation of fraud.

141. Insofar as we need to make any further findings on this point, we are entirely satisfied that the allegation was completely unfounded and we reject it without any hesitation. There was no fraud or dishonesty on the part of Officer Arnold. We are entirely satisfied that her evidence that there was no connection between the two appeals was truthful, and we accept it.

142. We consider it right that this finding should be recorded on the face of this Decision as a vindication of Officer Arnold's professional position and personal character.

143. Our view on this matter was not mitigated by Mr McNamee's comment, at the very end of his closing submissions, that he was 'making no criticism' of Officer Arnold. It seemed to us that comment was directed at the fact that Officer Arnold was involved in investigating more than one aspect of GRCS, and the suggestion (which we reject) that we could find, on the balance of probabilities, that her decision-making in this case took account of that other investigation. For the reasons outlined, it did not.

Decision

144. For the above reasons, the Appeal is dismissed.

145. 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.

DR CHRISTOPHER McNALL
TRIBUNAL JUDGE

RELEASE DATE: 28 FEBRUARY 2017