



TC05891

Appeal number: TC/2016/03182

VALUE ADDED TAX – registration – whether the appellants carried on one business in partnership or two separate businesses independently – held, applying Christine Nigl and Others v Finanzamt Waldviertel (Case C-340/15), that on the facts they carried on two separate businesses independently – appeal against compulsory registration for VAT allowed – appeal against belated notification penalty allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**GRAHAM BELCHER
CHRISTINE BELCHER**

Appellants

- and -

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

Respondents

**TRIBUNAL: JUDGE JOHN WALTERS QC
MRS BEVERLEY TANNER**

Sitting in public at Liverpool Civil and Family Court, Liverpool on 25 April 2017

Marc Glover, Counsel, instructed by Rogers and Norton, for the Appellants

Gareth Hilton, officer of Her Majesty's Revenue and Customs, for the Respondents

DECISION

1. The Appellants, Mr Graham Belcher and Mrs Christine Belcher, who have been
5 married to each other since 1984, appeal against a decision of the Respondents
("HMRC"), communicated to them by a letter dated 5 November 2015 sent by VAT
Officer Lee Atkinson that they were required to register for VAT as a partnership with
an effective date of registration of 1 January 2006.

2. Mr and Mrs Belcher, through their Counsel, Mr Glover, told the Tribunal that they
10 also wished to appeal against a belated notification penalty in the amount of £15,829
assessed by HMRC on 15 December 2015. Insofar as it is necessary to formalise Mr
and Mrs Belcher's appeal against the penalty, we treat their notice of appeal as
appropriately amended pursuant to our general case management powers in rule 5 of
15 the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the Rules")
in giving effect to the overriding objective of the Rules to deal with the dispute
between the parties fairly and justly.

3. We noted, however, that Mr Hilton, the advocate for HMRC had not come to the
hearing of the appeal prepared to deal with an appeal against the penalty. We
therefore informed the parties at the conclusion of the hearing that, if we decided it
20 was necessary or important, we would direct HMRC to make formal submissions in
writing in relation to the appeal against the penalty. At the hearing, we heard Mr
Glover's oral submissions, on behalf of Mr and Mrs Belcher, in relation to the
penalty.

4. The underlying issue between the parties, which falls to be resolved on the appeal
25 against the decision requiring Mr and Mrs Belcher to be registered for VAT as a
partnership with an effective date of registration of 1 January 2006, is whether, as
HMRC contend, they have been carrying on one business in partnership or whether,
as Mr and Mrs Belcher contend, each of them has been carrying on a separate
business.

30 5. We received evidence from Mr Belcher, Mrs Belcher, Officer Atkinson and
Officer Keith Hasted, each of whom had made a Witness Statement. We also had
before us a bundle of documents.

6. From the evidence, we find facts as follows.

The facts

35 7. In 1991 Mr and Mrs Belcher bought as their family home the premises in Crewe
where they now live and from which the business, or businesses, is or are operated.
They have since their marriage always operated a joint bank account. From 1991 to
1997, Mr Belcher ran a butcher's shop from their home premises. Their home
premises had a shop on the ground floor and behind and above there were (and are)
40 domestic premises. In 1997, after undertaking the necessary building and
refurbishment work Mr Belcher opened up a barber's shop (men's hairdressing) in the

shop premises. He operated the barber's shop as a sole trader, not himself cutting hair, but employing ladies to cut men's hair.

8. At this time (1997) Mrs Belcher was working for the DHSS in Crewe as a clerical officer. After taking a hairdressing course, Mrs Belcher changed career to become a ladies' hairdresser. She gained some experience working in the barber's shop between 1998 and September 2005. At that time (2005) she left the DHSS and opened her ladies' salon in the converted garage of the home premises in Crewe. The converted garage is a separate building from the house, which contains the barber's shop, and has a separate street entrance from the barber's shop.

9. Mrs Belcher also took a basic accounts course and handled the accounts of both the barber's shop and the ladies' salon.

10. In around February 2006, Mrs Belcher received a telephone call from a Mr David Roderick of a firm called "Tax Matters". He operated out of an office in Crewe and offered to prepare the accounts and the pay slips for the barber's shop and the ladies' salon for an annual fee. Mr and Mrs Belcher engaged Mr Roderick to 'deal with our tax returns, accounts and payroll to ensure no mistakes were made' (to quote from Mr Belcher's Witness Statement).

11. When income tax returns were due, Mr Roderick would prepare them, send them to Mrs Belcher, who would present Mr Belcher with his tax return and ask him to check the figure and sign the return. Mr Belcher never personally met Mr Roderick. Mrs Belcher did so, but only very infrequently. We received no evidence from Mr Roderick.

12. The barber's shop is on the ground floor of the premises and measures 16 feet by 13 feet. It has three cutting chairs. The barber's shop is closed on Wednesday and Sunday and operates for a short day on Saturday. Mr Belcher employs three staff to cut men's hair at the barber's shop. The cost of a haircut is £5.20. The barber's shop operates a "walk-in" service. Appointments are not made in advance.

13. The ladies' salon is closed on Monday, Wednesday and Sunday and operates for a short day on Saturday. At first (from 2005) it did not open on Thursdays but it began to be open on Thursdays in 2007. The average cost of a lady's treatment is £18 for a 'wash/cut/blow-dry'. If hair is coloured, the cost is £35 or more. A lady must make an appointment at the salon and the telephone at the premises is used for that purpose.

14. Officer Atkinson has been working as a Hidden Economy officer for HMRC since 2014. On 1 June 2015, he was assigned the case of Mr and Mrs Belcher. He started his investigation by printing off their income tax self-assessment returns for the tax years 2004/05 to 2013/14 to establish the yearly turnover figures, so that he could create a monthly rolling turnover calculation, necessary to establish when (or if) circumstances giving rise to a liability to be registered for VAT occurred.

15. Those self-assessment returns were partnership returns. There were also individual self-assessment returns submitted by Mr Belcher and Mrs Belcher separately. The partnership returns named Mr and Mrs Belcher as partners, the trading name as

“Crewe Cuts” and the description of the business as “Hair Dresser”. The ‘nominated partner’ is stated to be Mrs Belcher. There appears to be no dispute regarding the figures on the returns. The total income returned for the “Crewe Cuts” partnership was split equally between Mr and Mrs Belcher for the years 2008/09 to 2013/14. The returns were filed electronically by Mr Roderick.

16. Officer Atkinson’s calculations based on the self-assessment partnership figures persuaded him that the turnover of the partnership “Crewe Cuts” had exceeded the limit at which registration for VAT was mandatory in November 2005, meaning that the effective date of registration for VAT should have been 1 January 2006.

17. His calculation of the estimated VAT liability on this basis was £136,691.26.

18. He wrote to Mr and Mrs Belcher on 5 June 2015 in terms that assumed that they were operating a business trading as “Crewe Cuts” in partnership and had been doing so from 8 October 1997 (which was certainly not the case, as Mrs Belcher was then working for the DHSS as a clerical officer). The letter asked Mr and Mrs Belcher if they were registered for VAT and informed them that if they were not, he would need some additional information from them, to help to establish if they were required to be registered. The letter warned Mr and Mrs Belcher that if Officer Atkinson did not receive a response by 2 July 2015, then he would have ‘no alternative but to compulsory [*sic*] register the business for VAT from 01 November 2005 to current date based on your Self Assessment partnership declarations’.

19. Mrs Belcher responded on 10 June 2015 by telephoning Officer Atkinson. She explained that there were two separate businesses, the barber’s shop at the front of the premises and the ladies’ salon at the back. She told Officer Atkinson that there were separate staff working in the businesses, two separate tills and separate business rates with the Council. Officer Atkinson’s evidence was that Mrs Belcher told him that all the staff ‘worked for her’ and that there was one business bank account. Mrs Belcher denied that she had said that the staff working in the barber’s shop worked for her. We find that they worked under the direction of Mr Belcher and that the staff working in the ladies’ salon worked under the direction of Mrs Belcher.

20. On 11 June 2015 Officer Atkinson telephoned Mrs Belcher to clarify the position. Mrs Belcher confirmed that there were two separate businesses but she said there was only one set of accounts for both businesses and that the accountant (Mr Roderick) had prepared the accounts. Mrs Belcher told Officer Atkinson that in about 2006 she had sought advice from HMRC, who had confirmed that, on the basis that Mrs Belcher was intending to open a ladies’ salon as her own business, the accounts could be consolidated with the accounts of the barber’s shop. Mr Hilton told us that, while he did not suggest that Mrs Belcher had not sought advice at that time from HMRC, HMRC had no record of giving such advice. In all the circumstances, giving Mrs Belcher the benefit of the doubt, we find that she was given such advice by HMRC.

21. Officer Atkinson established that consumables for the ladies’ salon and the barber’s shop were bought on the same account. The consumables bought for each, however, were different. The same utilities were used for both the barber’s shop and

the ladies' salon, but they were utilities supplied to the premises which served both as Mr and Mrs Belcher's home and as the barber's shop and ladies' salon.

22. These telephone calls were followed up by a visit by Officer Atkinson, accompanied by Officer Hasted on 22 July 2015, to the premises, to interview Mr and Mrs Belcher. Officer Atkinson agreed with Mr Glover when he put to him in cross-examination that this visit showed that his research, principally into the tax returns, had showed that there may well have been a failure to register as required for VAT but that he 'needed to see what was going on on the ground'.

23. Officer Atkinson interviewed Mrs Belcher and Officer Hasted separately interviewed Mr Belcher. Officer Atkinson wrote to Mr and Mrs Belcher on 10 August 2015 enclosing typed copies of notes of the interviews taken by himself and by Officer Hasted separately. We were shown the handwritten manuscript of Officer Atkinson's notes but not the handwritten manuscript of Officer Hasted's notes. We comment that it is unsatisfactory in a contested appeal of this kind that an officer's manuscript notes are not disclosed and in evidence.

24. There is inconsistency in the notes as to the question of 'hiring and firing' staff. Officer Hasted's notes state that Mr Belcher said that he 'is responsible for hiring and firing of staff'. The notes also state that 'all staff work at the barber's only, however in an emergency, staff from ladies have filled in'. Officer Atkinson's typed notes state that Mrs Belcher had said that she and Mr Belcher 'both hire and fire staff for both the barbers and the ladies' salon'. The manuscript notes, however, state: 'Mr and Mrs Belcher both hire + fire'. Although the officers may have formed the impression that both Mr and Mrs Belcher took on and dismissed staff for both the barber's shop and the ladies' salon, we find that Mr Belcher took on and dismissed staff for the barber's shop, Mrs Belcher took on and dismissed staff for the ladies' salon and sometimes, when the need arose, staff from the ladies' salon helped out by working in the barber's shop.

25. We find that the expenses of the barber's shop are met out of the takings from the barber's shop and, similarly, the expenses of the ladies' salon are met out of the takings from the ladies' salon. Any losses from the ladies' salon are not absorbed by the barber's shop and similarly any losses from the barber's shop are not absorbed by the ladies' salon. However, the net takings from the barber's shop and the ladies' salon are banked in a bank account held jointly by Mr and Mrs Belcher (either a private account or a business account) and are effectively shared by them on a 50/50 basis in this way.

26. Mr and Mrs Belcher were both asked, when examined in chief by Mr Glover, whether, if it came to selling the barber's shop business or the ladies' salon business (or taking a partner into either business) they would individually decide to do so (or not), or whether they would consult the other and make a joint decision. Both said that they would each make such a decision individually without consulting the other.

27. Insurances and a music licence have been arranged to cover both the barber's shop and the ladies' salon.

28. Mr Roderick of Tax Matters ceased to act for Mr and Mrs Belcher when they became aware of Officer Atkinson's investigation. They approached a different accountant (Mannion & Company) to act for them in the summer of 2015.

5 29. On 25 August 2015 Mr Mannion of Mannion & Company wrote to Officer Atkinson with Mr and Mrs Belcher's recollections as to aspects of the interview which had not been recorded in HMRC's notes. In particular, Mr and Mrs Belcher recalled that Officer Atkinson had said that he could see that there were two shops in different buildings and that the ledgers were perfect, providing a good audit trail. He said, however, that he had a problem with the fact that there are not two separate
10 accounts for each business, and that the utilities 'are one' and that the bank account 'comes under Crewe Cuts only'.

15 30. Officer Atkinson formed the view that 'although there were two separate entrances' (to the barber's shop and the ladies' salon respectively) 'all of the other evidence indicated that Crewe Cuts was run as one business and should be registered for VAT' (to quote from his Witness Statement). He issued the decision letter referred to above on 5 November 2015, and sent a further letter, dated 16 December 2015, to Mr and Mrs Belcher (with a copy to Mannion & Company) 'reiterating the reasons why [he had] registered Crewe Cuts for VAT and why [he considered] it to be one business'.

20 31. The stated reasons were:

'The partnership SA is one as Crewe Cuts

The partnership annual accounts are Crewe Cuts one business not separate

They share business rates and utilities

Crewe Cuts have one telephone number for customers not separate

25 Monies from both ladies and barbers are pooled at night and placed into one business account

Purchases for both ladies and barbers have one suppliers account not separate

The partnership (husband & wife) split profits 50/50 on the SA returns.'

30 32. We find that Mr and Mrs Belcher never expressly agreed between themselves to operate the barber's shop and the ladies' salon in partnership. Although HMRC's documents indicate that a partnership business was being carried on from a date in 1997, Mr Hilton accepted that there was no evidence that Mrs Belcher was involved in either the barber's shop or the ladies' salon before 2005 (apart from working occasionally in the barber's shop while she was training to become a hairdresser). We
35 make a finding of this fact accordingly.

33. Mr Glover took Officer Atkinson and Officer Hasted in cross-examination to paragraph VATDSAG03200 of HMRC Manuals for the guidance of HMRC staff (VAT Manuals – VAT Single Entity and Disaggregation) where the text is as follows:

5 ‘Before you rule that a separated business is a single entity, you must confirm the trader’s intention when they organised the business ...’

and asked them whether at any stage they had enquired about the intention of Mr and Mrs Belcher with regard to whether a single business was being run as a partnership or two business were being run by each of them respectively separately. Both officers replied that they had they had not asked Mr and Mrs Belcher about their intentions in this regard.

10 34. Similarly, Mr Glover took the officers in cross-examination to paragraph VATDSAG03250 of HMRC Manuals, where the text is as follows:

15 ‘The fact that the various parties are related should not influence your decision. Tribunal decisions have indicated that a wife can quite feasibly help her husband in his business (in her capacity as his wife) and still carry on her own business (in her capacity as a sole proprietor). You should ask each individual to define the distinction between what they do in their business capacity and what they do to help out as a family member.’

and asked them whether they had followed this guidance in their questioning of Mr and Mrs Belcher. Both officers agreed that they had not done so.

The parties’ submissions on the issue of one or two businesses

35. Mr Glover based his submissions on the law on Article 11 of the Principal VAT Directive (2006/112/EC) which provides:

25 ‘After consulting the advisory committee on value added tax ... each Member State may regard as a single taxable person any persons established in the territory of the Member State who, while legally independent, are closely bound to one another by financial, economic and organisational links.

30 A Member State exercising the option provided for in the first paragraph, may adopt any measures needed to prevent tax evasion or avoidance through the use of this provision.’

36. He referred to the decision of the VAT and Duties Tribunal in the appeal of *George Francis & Helen Francis* [2006] V&DR 487; [2007] STI 388 and the recent decision of the Court of Justice of the European Union in *Christine Nigl and others v Finanzamt Waldviertel* (C-340/15). In *Nigl* it was held that ‘multiple civil law partnerships ... which conduct themselves outwardly as such and independently in relation to their suppliers, public authorities and, to a certain extent, their customers and each of which carries out its own production by using for the most part its means of production, but which market a large proportion of their products under a common trade mark through a limited company, the shares in which are held by members of those civil law partnerships and by other members of the family in question, must be

regarded as independent undertakings which are taxable persons for VAT purposes' (*ibid.* [34]).

5 37. He submitted that there were three overriding objective facts 'through which prism all matters must be considered', namely, that Mr and Mrs Belcher are husband and wife, that the barber's shop and the ladies' salon are physically located within the jointly owned marital home and benefit from the services laid to that marital home, and that the businesses are 'small businesses'.

10 38. In relation to Mr and Mrs Belcher's presentation of themselves as carrying on a single business in partnership for the purposes of income tax, Mr Glover's submission was that this was not determinative of the VAT issue in this appeal and might, indeed, only be of secondary relevance to the proper approach to be adopted, namely to ascertain 'whether the economic activity is being carried out in an independent manner [by examining] whether the person concerned performs his activities in his own name, on his own behalf and under his own responsibility, and whether he bears
15 the economic risk associated with the carrying out of those activities' (*Nigl* at [28]).

39. He also submitted that Mr and Mrs Belcher's 'disavowal' of the approach to their self-assessment adopted by their former accountant, Mr Roderick, was relevant.

40. Mr Glover stressed that each business in practice maintained a separate till and a separate ledger and that HMRC had not taken these facts into account.

20 41. Mr Glover submitted that the evidence showed not that Mr and Mrs Belcher distributed the profits of the businesses to themselves 50/50, but that the profits of the two businesses were pooled and shared by them in their capacity of being husband and wife living together, rather than in their capacity of being joint owners of one business.

25 42. He also submitted that the relevance and significance of shared outgoings between Mr and Mrs Belcher, their single bank account, and their use of a single trade account for purchases of consumables, must be considered in the context of their personal circumstances as husband and wife, and does not indicate a financial link in the operation of the businesses, as it might do if the owners of the business were not so
30 intimately related. He referred to the appeals of *A D and J Forster* [2011] UKFTT 469, *Stephen and Angela Jane Trippitt* (V&DT reference 17430) (MAN/00/249), and *Mr PC and Mrs VL Leonidas* (V&DT reference 16588) (LON/97/1594).

35 43. Mr Glover submitted that particularly relevant factors were that each business had its own staff, each business was responsible for its own staff, each business managed its own clients and that each of Mr and Mrs Belcher makes managerial and ownership decisions in relation his or her respective business.

40 44. Mr Hilton laid very great emphasis on the fact that Mr and Mrs Belcher had submitted self-assessment returns for income tax purposes on the basis that they were in partnership carrying on one business in common. This fact, together with the crediting of the profits of both the barber's shop and the ladies' salon to a joint bank account, the sharing of utilities without any cross payments between the barber's shop

and the ladies' salon, the joint purchase of consumables through a single account under the name 'Crewe Cuts', the operation of a single insurance policy and music licence suggested that Mr and Mrs Belcher operated one business rather than two businesses.

5 45. Mr Hilton referred us to the Partnership Act 1890, which, as is well known, provides that (as a matter of English law) partnership is the relation which subsists between persons carrying on a business in common with a view to profit (*ibid.* section 1(1)). He also referred us to section 2 of the Partnership Act which refers to various factors which do not of themselves make persons partners in a business.

10 46. Mr Hilton submitted that the evidence was that Mr and Mrs Belcher shared the profits of a single business, and that this was consistent with the treatment they adopted in their self-assessment income tax returns.

15 47. Mr Hilton referred us to *Burrell (trading as The Firm) v Commissioners of Customs and Excise* [1997] STC 1413, where Ognall J was considering a case where it was contended that two separate businesses were carried on respectively by a partnership of father and son and the son alone acting as a sole trader. He said that the tribunal should examine the substance and reality of the matter and should only conclude that there were separate taxable entities if (1) the so-called separate businesses were sufficiently at arm's length from each other and (2) the businesses
20 had normal commercial relationships with each other.

25 48. He accepted that a qualification to this approach had been adopted by the VAT and Duties Tribunal in the appeal of *Mr BR Parker and Mrs JG Parker t/a Sea Breeze Café* (V&DT reference: 16350) (LON/98/1284) which commented that HMRC should not expect the relationship between two business run by a husband and his wife to be wholly at arm's length or to reflect normal commercial practice entirely. However, he referred us to the appeal of *Jack Smith and Shelagh Frances Smith t/a "The Salmon Tail"* (V&DT reference 16190), where the Tribunal had held that a husband and wife had operated a single business in partnership, instancing a lack of a commercial relationship between the two elements of the business.

30 49. He also referred to the *Leonidas* appeal, and to the appeal of *Paul Bear and Sarah Hill t/a Surreal Hair* (V&DT reference 17215) (MAN/98/551).

35 50. With regard to Mr and Mrs Belcher's use of utilities and the telephone line without cross-charging or separate provision, which they explained on the grounds of saving expense, Mr Hilton submitted that this showed that Mr and Mrs Belcher approached their business operations from the point of view of what would save them money overall, rather than an attitude that each part of the business should be profitable.

40 51. Mr Hilton cited the appeal of *Robert Wallace t/a Inn House* (V&DT reference 17109) (LON/00/599) for the proposition that public perception of a commercial operation was not important. The Tribunal in that appeal said: 'The public visiting a shop or public house cannot possibly tell what legal relationships exist in relation to

the businesses carried on there. As the Tribunal mentioned in the *Parker* case (paragraph 22) in almost every department store there are separate businesses issuing bills in the name of the store' (*ibid.* [26]). We note that in *Robert Wallace*, the Tribunal found that there were separate businesses by reference to the intention of both parties (*ibid.* [31]), and Mr Hilton pointed out that there was evidence in that case of cross-charges for rent, electricity and telephone.

52. In his oral submissions, Mr Hilton stated that HMRC were not suggesting that Mr and Mrs Belcher's evidence that they did not know the detail and import of the what Mr Roderick was submitting to HMRC, in the form of self-assessment returns filed on the basis that they were carrying on a single business in partnership, was untrue. He accepted that they did not know the detail and import of this. But he emphasised that they had a responsibility to make tax returns to HMRC on a correct basis.

Discussion and Decision

53. As in *Nigl*, so in this case, the period in issue includes a time when the Sixth VAT Directive 77/388/EEC was in force and a time when the Principal VAT Directive 2006/112/EC was in force – see: *ibid.* [24]. The Principal VAT Directive entered into force on 1 January 2007.

54. The question in terms of EU law is whether Mr and Mrs Belcher are each to be regarded as 'taxable persons' for VAT purposes or whether, on the other hand, Mr and Mrs Belcher are together to be regarded as a single 'taxable person'.

55. 'Taxable person' was defined (so far as relevant) in Article 4.1 of the Sixth VAT Directive as 'any person who independently carries out in any place any economic activity ... whatever the purpose or results of that activity'. The same wording is used in the definition of 'taxable person' in Article 9 of the Principal VAT Directive.

56. We have therefore to decide whether Mr and Mrs Belcher each carried on an economic activity (the barber's shop or the ladies' salon) independently of the other, or whether they both carried on a single economic activity (the barber's shop and the ladies' salon) together.

57. Article 11 of the Principal VAT Directive, to which Mr Glover made reference in his submissions, is a provision whereby in certain circumstances a Member State may disregard the 'legal independence' of persons and regard them as a single taxable person if they 'are closely bound to one another by financial, economic and organisational links'.

58. The 'legal independence' of each of Mr and Mrs Belcher (from the other of them) is therefore not enough to constitute each of them to be separate taxable persons if, as a matter of fact, they 'are closely bound to one another by financial, economic and organisational links'.

59. Plainly the issue we have to decide is very fact-sensitive. We therefore do not find the other Tribunal decisions which have been cited to us of determinative significance. Nor, it seems to us, would it be right to go first to the guidance in the 1997 decision in *Burrell* (although a decision of the High Court, Queen's Bench

Division), when we have, in *Nigl*, a recent decision of the Court of Justice of the European Union on the very provisions in issue.

60. We turn, therefore, to the decision in *Nigl*.

5 61. There, the (first) question for the Court was whether three associations of persons, consisting of different members of one family, constituted three taxable persons, where the three associations conducted themselves ‘outwardly as such independently in relation to their suppliers and to public authorities, [possessed] their own production facilities, with the exception of two business assets, but [marketed] under a common trade mark the greater part of their products through a limited company
10 whose shares [were] held by members of the associations of persons and other members of the family’. (*ibid.* [23(1)])

15 62. We observe, here, that Mr and Mrs Belcher consist of members of one family. They did not conduct themselves ‘outwardly as such independently’ in relation to one public authority (HMRC), but submitted self-assessment income tax returns on a partnership basis. In relation to business rates, Mrs Belcher told Officer Atkinson on 10 June 2015 (and we accept) that the barber’s shop and the ladies’ salon were separately rated for business rates purposes, although we also note that Officer Atkinson understood they Mr and Mrs Belcher shared business rates as well as utilities.

20 63. Mr and Mrs Belcher also did not conduct themselves independently in relation to their suppliers, in that consumables for the ladies’ salon and the barber’s shop were bought on the same account. They also appear to have marketed under the trading name “Crewe Cuts”, although we accept that there were two different (and mutually exclusive) pools of customers for the barber’s shop on the one hand and the ladies’
25 salon on the other.

64. Despite these different facts, *Nigl* establishes the principle that the focus of the definition of ‘taxable person’ is independence (assessed objectively) in the pursuit of an economic activity (*ibid.* [27]).

30 65. The necessary objective assessment of independence is to be carried out by examining ‘whether the person concerned performs his activities in his own name, on his own behalf and under his own responsibility, and whether he bears the economic risk associated with the carrying-out of those activities’ (*ibid.* [28]).

35 66. Turning to the facts which in our judgment are relevant in carrying out an objective assessment of whether Mr and Mrs Belcher each pursued an economic activity independently, we recall first that they never expressly agreed between themselves to operate the barber’s shop and the ladies’ salon in partnership. They had no conscious intention to run a single business in partnership.

40 67. We are very impressed by the fact that Mrs Belcher made the point that there were two separate businesses on 10 June 2015, immediately after Officer Atkinson first suggested that she and Mr Belcher were operating a business trading as “Crewe Cuts”

in partnership. That was Mr and Mrs Belcher's case from the beginning and it has not changed.

5 68. We bear in mind our finding that each of Mr and Mrs Belcher took on and dismissed staff for the barber's shop and the ladies' salon respectively. We also bear in mind our findings that there are separate tills and separate ledgers, that the pools of customers were different, and customers were managed differently, and that the expenses of the barber's shop are met out of the takings from the barber's shop and the expenses of the ladies' salon are met out of the takings from the ladies' salon and that there is no cross-absorption of losses between the two. These facts satisfy us that
10 each of Mr and Mrs Belcher bears the economic risk associated with the carrying out of the barber's shop and the ladies' salon respectively.

15 69. We also regard the evidence of both Mr and Mrs Belcher that each of them would individually decide on a question of selling or taking a partner into the barber's shop or the ladies' salon respectively as indicative of their objectively performing the activities of the barber's shop and the ladies' salon respectively on their own behalf and under their own responsibility.

70. These, we consider, are very strong pointers to the conclusion that each of Mr and Mrs Belcher carries on a separate economic activity and is a separate taxable person.

20 71. The question remains whether the combined accounts and the partnership income tax returns submitted oblige us to reach the contrary conclusion.

25 72. We certainly regard the fact that Mr and Mrs Belcher were content for, and indeed authorised, Mr Roderick to submit self-assessment income tax returns to HMRC over a long period on the basis that they were running a single business in partnership as a strong indication that, despite the other findings of fact which we have made, they were in fact carrying on a single business as a single taxable person.

30 73. We are puzzled by this fact and also by the fact that neither Mr nor Mrs Belcher (nor, indeed Mr Roderick advising them) seems to have given any intention to liability to register for VAT, even though it is likely that one or both of the businesses, considered separately, approached or may even have passed the turnover limit requiring VAT registration. We also accept entirely that it was Mr and Mrs Belcher's responsibility to have this matter under review and not HMRC's responsibility to give them any special advice or warning on the issue.

35 74. Nevertheless, having seen Mr and Mrs Belcher, and heard their evidence, we accept on the balance of probabilities that they did not know or understand the import of their submission of self-assessment income tax returns on the basis that they were carrying on a single business in partnership. This may cause the self-assessment income tax returns to have been incorrect (although there is no suggestion that the entirety of the profits have not been returned), but that is a matter outside the scope of this appeal.

40 75. We also accept the evidence of Mr and Mrs Belcher that they did not divide the profits of a single business between themselves on a 50/50 basis, but pooled, as a

family matter between husband and wife, the net profits of two businesses into one or more joint banks accounts.

5 76. The other factors which seem to have weighed with HMRC, namely the sharing of utilities and a music licence, and the joint purchasing of consumables on one account, do not appear to us to have great significance in objectively assessing whether Mr and Mrs Belcher independently ran one or two businesses. These are organisational matters arranged for convenience and, as they did not influence the decision in *Nigl* (see: *ibid.* [31], [32] and [33]), so they do not affect our decision. We observe, as an aside, that barristers practising independently in a set of chambers routinely share utilities and purchase consumables jointly.

10 77. Our conclusion therefore is that Mr and Mrs Belcher have each of them operated a separate business (the barber's shop and the ladies' salon) and that each of them is a 'taxable person' within the meaning of the Sixth VAT Directive and the Principal VAT Directive, and for the purposes of the Value Added Tax Act 1994. We add that, in the context of a husband and wife living together, we regard the two separate businesses as having been sufficiently at arm's length from each other and as having had sufficiently normal commercial relationships with each other to avoid aggregation for the purposes of registration for VAT.

15 78. Since the decision that Mr and Mrs Belcher were required to register for VAT as a partnership with an effective date of registration of 1 January 2006 (the decision appealed against) was made on the basis that they carried on one and not two businesses, we allow Mr and Mrs Belcher's appeal against that decision.

20 79. This means that the penalty imposed must be quashed, and we allow that appeal as well. We note that (although we have not heard submissions from Mr Hilton on the point) we are impressed by the force of the argument that, on the basis that there was a single business, Mr and Mrs Belcher had a reasonable excuse in relation to non-registration, in that they reasonably believed that they were carrying on two businesses, neither of which gave rise to the requirement to register.

25 80. 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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40 **JOHN WALTERS QC**
TRIBUNAL JUDGE

RELEASE DATE: 17 MAY 2017