



TC02100

**Appeal number: TC/2010/2720
TC/2010/2722
TC/2010/0274**

***CORPORATION TAX - whether industrial buildings within s18 CAA? - On facts –
No – appeal dismissed***

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**NEXT DISTRIBUTION LIMITED
NEXT GROUP PLC
THE PAIGE GROUP LIMITED**

Appellant

- and -

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

**TRIBUNAL: JUDGE ADRIAN SHIPWRIGHT
RUTH WATTS DAVIES FCIPD MIH**

Sitting in public at Bedford Square on 6 – 9 February 2012

Timothy Brennan QC, instructed by PWC for the Appellant

**Sam Grodzinski QC, instructed by the General Counsel and Solicitor to HM
Revenue and Customs, for the Respondents**

DECISION

Introduction

1. This decision concerns three appeals against the Respondents' ("HMRC") decision on review to refuse the Appellants' claim to industrial building allowances ("IBA") for the accounting periods ending 31 January 1998 to 31 January 2001. The decisions followed enquiries in to the Appellants' corporation tax returns for those accounting periods.
2. The decision on review was notified by letters dated 18 February 2010. HMRC had issued assessments following an inquiry into the Appellants' corporation tax returns for the accounting periods in question and these assessments did not allow the IBA claimed.
3. The Appellants and the amounts in dispute totalling £19,264,856 are as follows.

<u>Company</u>	<u>£</u>
Next Distribution Limited ("NDL")	42,754
Next Group PLC ("NGP")	3,485,608
The Paige Group Limited ("Paige")	<u>15,736,494</u>
Total	<u>19,264,856</u>

The Issue

4. The essential issue in this case is whether the buildings in question, namely, Elmsall Way and Stadium Two, ("the Buildings"), constituted industrial buildings(s) or structure(s) as defined in section 18 Capital Allowances Act 1990 ("CAA"). Section 18 CAA is set out at [12] below.
5. This raises a number of questions which need to be answered to decide this case. They include the following questions.
- (1) Although the legislation refers to "goods" there is no helpful definition so the question therefore arises what are the "goods" for the purposes of the IBA legislation? Are they the individual items or the bulk? Can the meaning change as the items progress through the buildings?
- (2) What are the goods in the case before us for the purposes of the section?
- (3) Were the Buildings used for a trade which consisted in subjecting goods or materials to any process?
- (4) Were the Buildings used for a trade which consisted in the storage of goods or materials:
- (a) Which were to be subjected to any process; or
- (b) On their arrival in the United Kingdom from a place outside the United Kingdom?
6. These questions are not a substitute for the wording of the legislation but are a useful starting point in deciding whether the buildings in question constituted industrial buildings(s) or structure(s) as defined in section 18 CAA.
7. There was no dispute before us that there were "buildings or structures" in this case and for the sake of completeness we find that there were buildings or structures.
8. The area of dispute was as to the purpose for which the buildings or structures were used.
9. It was common ground that the other criteria for the allowances were met. The dispute was whether the buildings in question were industrial buildings within the meaning of the CAA. In particular, it was common ground that the Appellant companies, which incurred the capital expenditure, all held 'relevant interests' for the purposes of the legislation.

Abbreviations and Dramatis Personae

10. The following abbreviations and references to persons are used in this decision but as ever are subject to the requirements of the context.

	“BDC”	Bulk Delivery Cartons
	“the Buildings”	the buildings at Elmsall Way and Stadium Two on which IBA’s are claimed
5	“CAA”	Capital Allowances Act 1990
	“HMRC”	the Respondents
	“IBA”	Industrial Building Allowances
	“NDL”	Next Distribution Limited
10	“Next”	Next PLC or the group as appropriate
	“NGP”	Next Group PLC
	“Paige”	The Paige Group Limited
	“Picking”	the selection of individual items from a generic batch as described in greater detail below
15	“the Taxpayers”	NDL, NGP and Paige or any of them as appropriate
	“UK”	United Kingdom

The Law

11. The law in this area is to be found in the CAA particularly sections 18 and 20.

12. Section 18 CAA is headed “Definition of ‘industrial building or structure’”. So far as is relevant here it provides:

“(1) Subject to the provisions of this section, in this Part ‘industrial building or structure’ means a building or structure in use— ...

(e) for the purposes of a trade which consists in the manufacture of goods or materials or the subjection of goods or materials to any process; or

25 (f) for the purposes of a trade which consists in the storage—...

(ii) of goods or materials which are to be subjected, in course of a trade, to any process; or ...

(iv) of goods or materials on their arrival in the United Kingdom from a place outside the United Kingdom;’

30 (2) The provisions of subsection (1) above shall apply in relation to a part of a trade ... as they apply in relation to a trade ...’

13. Section 20 CAA sets out the meaning of ‘relevant interest’ for these purposes. It was not argued that the relevant interests were not held by the Taxpayer. In the light of the common ground we have proceeded on the basis they are the holders of the relevant interests.

14. We were provided with copies of the following cases and decisions which we have read and carefully considered.

Bestway (Holdings) limited vs. Luff (1998) 70 TC 512

Buckingham vs. Securitas Properties Limited (1979) 53 TC292

40 *Carr (HM Inspector of Taxes) vs. Sayer* [1992] STC 396

Copol Clothing Limited vs. Hindmarch (Inspector of Taxes) [1982] STC 421

Copol Clothing Limited vs. Hindmarch (Inspector of Taxes) [1984] STC 33

Copol Clothing Limited vs. Hindmarch (Inspector of Taxes) [1984] 1 WLR 411

Crusabridge Investments Limited vs. Casings International Limited (1979) 54 TC246

45 *Dale (Inspector of Taxes) vs. Johnson Brothers* (1951) 32 TC487

Farnell Electronics Components Limited vs. HMRC [2011] UK FTT 14.09.11

Girobank plc vs Clarke (1998) 70 TC 387

Kilmarnock Equitable Cooperative Society vs IRC (1966) 42 TC 675
Maco Door and Window Hardware (UK) Limited vs HMRC (2008) 79 TC287
Saxone, Lilley & Skinner (Holdings) Limited vs IRC (1967) 44 TC122
Vibroplant vs. Holland (1981) 54 TC658

5 **Evidence**

15. There were six volumes of agreed documents produced.

16. We heard oral evidence from:

- (1) Andrew John Robert McKinlay, Group Central Director and Company Secretary at Next; and
- 10 (2) James Grier, Director of Warehouse Development for NDL since he joined the company in June 2005 (after the periods in question).

We found them helpful and sensible witnesses and thank them for their help.

17. We had the benefit of a site visit to the Elmsall Way site where the two buildings in question (Elmsall Way and Stadium Two) are located. This is near Doncaster.

15 **Findings of Fact**

18. From the evidence we make the following findings of fact.

We proceed by setting out details concerning the companies, the land and the buildings, considering the activities in the Buildings and considering the progress of goods in the Buildings so as to assist in the understanding of the position.

20 *The Companies*

19. The companies in question are part of a sub-group of companies under NGP.

20. Next Group Plc ('NGP') is a wholly owned subsidiary of Next Plc.

21. The Paige Group Limited ('Paige') is a wholly owned subsidiary of NGP. Paige owns NDL.

25 22. Next PLC was incorporated in April 2002 and became the holding company of the Next group in November 2002.

23. NGP is a wholly owned subsidiary of Next and was originally incorporated in 1891.

30 We understand that NGP's principal activities comprise three divisions. These are management services, estates management and property development. NGP has an interest in over 500 properties, the vast majority of which are occupied for the purposes of the Next group's businesses. These interests include the freeholds of the land on which the Buildings stand. The Buildings are the subject of the claims for IBAs.

35 24. Next Retail Limited ('NRL') is a wholly owned subsidiary of NGP. NRL is the main operating company of the Next group. Its principal business is the retailing of fashion clothing and home wares through retail stores, a catalogue and website based home shopping and an international franchising network.

40 25. The Paige Group Limited ('Paige') is a wholly owned subsidiary of NGP and, until 29 January 2011, its principal activity was commercial property management. Paige transferred its business and net assets to NGP with effect from the close of business on that date. It then became dormant.

NDL

26. Next Distribution Limited ('NDL') is a wholly owned subsidiary of Paige and was incorporated on 12 April 1995.

45 27. NDL is the company which, in essence, operates the Buildings and other warehouses etc. to provide warehousing and distribution services to the group at the time and now additionally to third parties.

28. It was decided, following an internal review, to establish a new operating company (i.e. NDL) to carry on warehousing and distribution activities. NDL acquired the existing warehousing and distribution activities of the Group in August 1997.

29. It was not disputed that in August 1997 NDL commenced a separate trade of
5 warehousing and distribution services. This is not part of a larger trader carried on by NDL to which the warehousing and distribution were ancillary but as a “stand alone” warehouse and distribution trade. NDL does not sell goods rather it is concerned with the logistics and distribution of goods. The holding and distribution of goods is its trade. We find this as a fact and note that this is done in a group context.

10 30. NDL’s business was described to us as providing “... dedicated warehouse processing, quality control, rework and sorting services for goods acquired by NRL for resale in its businesses (principally fashion clothing and home wares) and arranging for the storage of and then the distribution of such goods to NRL stores, Directory customers and franchisee customers...” We consider this to be an accurate description of its
15 business and we so find. We do not treat “warehouse processing” as meaning that there is necessarily the application of a process to goods within section 18 CAA in so doing nor that the storage falls within section 18(1)(f) CAA. This is considered below.

31. NDL’s warehousing and distribution services were provided exclusively to NRL until 2007. Since then they have been provided to third parties as well. We note that this
20 change is after the periods in question.

32. We were also told that NDL now operates 7 key warehouse sites in 4 UK locations with an aggregate capacity of 6m square feet.

33. We were told that before 2003, NDL used third party contractors to handle distribution of NRL’s product to its stores and Directory customers (principally, Grattan
25 and Royal Mail for home shopping and Lane Bros. for retail stores). We understood this to relate to transporting the items in question and accept it as accurate on that basis.

34. We consider NDL’s activities at [78] below.

NRL

35. NRL is the main company through which goods are sold.

30 36. The business activities of NRL consist mainly in retail outlets and servicing its Directory and franchise customers. This presents serious distribution and logistical challenges.

37. NRL holds and sells common stock lines through its retail stores and its Directory and franchise partners, so the bulk storage of common stock lines has remained a
35 constant feature since the Buildings were erected and brought into use. While there has been an increase in automation the scale of the activity at these two warehouses has remained much the same. Having said that, the level of automation existing in the warehouses when they first came into operation in 1997 would have been considered ‘state of the art’. However, there has been an increasing trend towards automation.

40 38. Until August 1997, NRL carried on its own warehousing and transportation activities supported by subcontractors.

Contractual Arrangements

39. NDL and NRL entered into an Agreement on 3 August 1997 for a term of four years under which NDL was to provide NRL with warehousing and distribution services.

45 40. NRL was to pay NDL in accordance with the provisions of the Third Schedule of the Agreement. This provided for NRL to pay an annual charge based on the cost of providing the services together with a 15% surcharge or such other amount or shall be

agreed between the parties exclusive of VAT. In other words it was a “cost plus” arrangement.

41. There was no provision for a charge by reference to the number of items dealt on any other basis.

5 42. We consider that this was a commercial arrangement between the parties which was convenient and workable. We draw no inferences either way from the fact that it was a flat rate payment rather than a fee per unit basis etc.

The Land

10 43. The land on which Elmsall Way and Stadium Two were to be built was owned by NGP.

44. NGP granted a lease to Paige out of the freehold interest it held in land on which the Buildings stand.

45. Paige then granted a sub-lease of the Buildings to NDL during the course of construction at South Elmsall.

15 *Expenditure in respect of which IBAs are claimed*

46. The total expenditure incurred by the Appellants on the Buildings, was £19,264,856. The break down is given at [3] above.

20 47. This figure relates to expenditure on the fabric of the warehouse buildings (after removing expenditure which HMRC have agreed qualify for plant and machinery capital allowances). The figure itself was not in dispute before us. The dispute was as to whether the Buildings qualified for IBA’s.

25 48. The expenditure on the Buildings here covers the cost of land preparation, walls and roofs for both warehouses, an office block at Elmsall Way (costing less than 25% of total building expenditure), car park and vehicle access areas, as well as other building works which were not incidental to the installation of plant and machinery.

49. These figures seemed to be common ground and were not disputed. We have proceeded on the basis that they were not disputed.

The Buildings in question

30 50. The buildings in question here are Elmsall Way and Stadium Two.

51. After a review by the Group of warehousing and distribution and its future requirements, it was decided to erect two new, highly automated warehouses and consolidate the existing warehousing and distribution activities into a smaller number of warehouses, in and around the Doncaster area. This allowed Next to “...produce cost efficiencies”. In particular, it allowed orders to be grouped together in one parcel for mail order and so minimise delivery costs.

35 52. The two warehouses were what became known as Elmsall Way and Stadium Two i.e. the Buildings.

40 53. Construction on the Elmsall Way and Stadium Two site commenced in the year to 31 January 1998 and these buildings were in use in NDL’s trade prior to the end of that period. The precise date was not clear from the evidence but there was no argument before us that it was not in that period.

54. Further expenditure was incurred in the following accounting period to 31 January 1999 when building works were finalised.

45 55. On completion of the new buildings, NDL began its occupation of, and commenced using, the Elmsall Way and Stadium Two warehouses for the purposes of its trade of warehouse and distribution services.

56. The Buildings were designed to provide sufficient capacity to meet future stock holding and distribution needs as sales grew.

57. In 1997 the Buildings were constructed, so that with Stadium Way (a building connected to Stadium Two they operate as one warehouse and so would have provided approximately 80% of the storage and warehousing requirements of the retailing business of Next. Goods may be stored for 6 months. The overall average length of time during which goods are stored is 6 weeks.

Size and Capacity

58. It should be recorded, for information purposes, that the warehouses are enormous. This became much clearer as a result of the very helpful site visit. We were told the capacity was as follows.

59. Stadium Two (which primarily deals with items which are received hanging, rather than folded in boxes) we were told can store up to 4.25m hanging items.

60. Elmsall Way has a capacity to hold approximately 16.5m individual items.

61. We have no way of verifying this but have no reason to doubt its accuracy.

The Goods

62. The goods in question were received by NDL and were essentially for NRL's business for the periods in question. They were not goods to be sold by NDL.

63. Goods were delivered to the site at Doncaster by lorry.

64. Most of the goods came from abroad. These goods came to the UK generally by sea or air.

65. Goods that come by sea usually arrived in containers at Felixstowe or Southampton container ports.

66. The containers were unloaded from the ship, usually onto railway wagons, and sent to a railway depot such as Leeds. The containers were then loaded onto lorries and driven to Doncaster.

67. Goods that come by air arrive at the airport and were made available for collection. They were loaded onto lorries and driven to Doncaster.

68. We were told (and accept) that of goods arriving at the NDL South Elmsall site approximately:

(1) 34% were Land Goods;

(2) 19% were air freighted goods (including sea air); and

(3) 47% were goods which have been transported by sea in sea containers.

69. We were told and accept that "[W]hichever method of transportation is used, when the goods arrived in the UK [*sic*] the HGV trailers, sea containers or air freight containing the NRL stock will be transferred from the UK port or air terminal direct to NDL's South Elmsall warehouse site via fleet road transport, taking advantage of NDL's customs duty and VAT deferment arrangements".

70. The Appellants said "... stock is not stored or opened since leaving the port of origin and arriving at the South Elmsall warehouse site for unloading at dedicated loading bays". We accept that the containers were not opened.

Boxed and Hanging Stock

71. There are broadly two different categories of stock dealt with at the Buildings. These are:

(1) boxed stock; and

(2) hanging stock.

72. Boxed stock items are smaller garments or those which can be folded and packed for delivery to the Buildings in boxes. Boxed goods are often packed in BDC. These need to be kept in shape so that they can run easily in the automated systems.

5 73. We understand most goods are BDC goods from abroad. Some goods are delivered on pallets known as flat pack palletised goods.

74. Hanging stock is generally jackets, coats and dresses which are delivered on hangers.

75. NDL will receive from third party suppliers bulk orders of boxed and hanging goods. NDL receives boxes and hanging poles of identical garments (usually of different sizes).

10 76. The boxed and hanging warehouses consist of two separate buildings that are connected by means of an extensive and highly sophisticated conveyor system. They effectively operate as one warehouse facility per product type. Stock can be moved between warehouse buildings as required according to levels of demand.

15 77. Notwithstanding this seamless nature of the NDL warehouse management system, boxed goods and hanging goods arrive separately and are processed in different parts of the site. This is discussed at [128 et seq] below.

Activities in the Buildings-Overview

78. NDL holds goods received in the UK from suppliers. The activities in its trade include:

- 20 (1) Receiving goods;
- (2) Breaking down bulk deliveries;
- (3) Checking and Quality Control;
- (4) Collation;
- (5) Stock control;
- 25 (6) Organisation;
- (7) Transport to initial storage;
- (8) Storage (in large quantities for a phase launch) ;
- (9) Managing;
- (10) Picking i.e. the selection of items from storage whether for retail allocation or replenishment, or for Directory;
- 30 (11) Bringing together of items in accordance with the needs of the destination;
- (12) Packing and/or re-packaging (for retail, in plastic totes; for Directory in plastic bags);
- (13) Labelling;
- (14) Despatching goods (for retail, pallets to depots; for Directory by courier etc.).
- 35 The goods going to retail stores will include some Directory goods, for collection from stores;
- (15) Dealing with Retail and Directory returns.

This is not meant to be an exhaustive description but to be helpful in setting the context.

40 79. These are done as they are required for the complex operations of the catalogue and retail businesses.

Activities

Introductory

45 80. We were shown what was done currently on the sites during the course of the site visit. As noted above there was limited direct evidence as to what precisely was done in the warehouses during the years in dispute. However, it was clear that certain activities had to be done in order for the warehouses to operate.

81. Mr McKinlay said “In broad summary, the activities of storage and processing carried out in the Buildings have remained largely unchanged since 1997. The way in which some of these activities are carried out has changed in line with technological developments ...” We accept this and sensibly it was not really disputed by HMRC. We
5 find the activities carried out by NDL at Elmsall Way and Stadium Two have broadly remained the same since the warehouses were built in 1997. We are not to be taken as finding by this that the goods were subjected to a process. Clearly, there were processes at the Buildings but that does not mean they fulfil the requirements of section 18 CAA.

82. The Stadium Two building provides high storage for goods. We were told and it was
10 not disputed that the holding of goods in the Stadium Two warehouse has hardly changed at all since it opened in 1998. The only change, we were made aware of, is that the capacity of the building has increased from 12 cranes in 1998 to 24 cranes in 2011, in order to meet the increased demand for hanging storage capacity from NDL’s customers.

83. Whilst we had the benefit of Mr McKinlay’s evidence as noted above there was
15 limited evidence as to what activities were actually carried in 1997 and subsequent years in question. M Grier was very helpful but had not been there at the relevant time. However, we find that the underlying activities of holding and dealing with bulk goods, despatch and processing of returns have remained unchanged since 1997.

General Comments

20 84. NDL typically receives direct from third party suppliers a bulk delivery of large numbers of the same item (for example an item of clothing of whatever type).

85. NRL does not require goods in this form, whether at the time of delivery or
subsequently. On the contrary, NRL’s stores require a carefully selected range of goods (as replenished from time to time) whilst its Directory business requires goods to be
25 selected, assembled, parcelled together and dispatched to match customer orders.

86. We accept, as we were told, that it follows that of the very large numbers of items of
goods received by NDL, some will need to be stored for a period and combined with other items for distribution to NRL’s designated destination, whether this is an individual
Directory customer, a retail store or an international franchise partner. NDL therefore, in
30 broad terms, ensures that:

- (i) stock levels are accurately recorded and monitored;
- (ii) incoming goods are unloaded, recorded, moved into storage, then stored in bulk in an efficient and organised manner; and
- (iii) as necessary, goods are selected from bulk and arranged into unique bundles
35 which represent exactly what NRL requires in order to fulfil orders from its Directory customers and for its retail and franchise stores

87. The commercial rationale for NDL is to arrange the clothes into the particular format
required by NRL and ensure these are delivered to NRL’s wholly owned and franchise
stores or Directory customers in the right quantities at the right items (including sizes,
40 styles and colours), in the right order and at the right time, with the minimum amount of involvement from people.

88. Stock is stored in the warehouses to cover the different selling periods of the
different sales cycles (called “phases”). NDL’s activities have to fit in with this so that it can happen as and when required.

45 89. We were told NRL devotes a great deal of resources to ensuring that clothes are presented in the very best way possible.

Phases, Stores and Distribution

90. NRL sells products in two seasons, Spring Summer (S/S) and Autumn Winter (A/W), and each season has a number of “phases” when different types of product will go on sale (each a ‘phase’), reflecting primarily seasonal weather trends.
- 5 91. Clothes are organised into three product groups, namely men’s, women’s and children’s (older and younger).
92. There are approximately nine phase launches each year in respect of NRL retail stores. Thus Phase 1 Autumn/Winter will move away from high summer towards a more autumnal look, whilst phase 3 will be mostly winter wear.
- 10 93. NRL’s design teams group the range of clothes for each phase in “stories”. Stories are put together by NRL’s designers and these stories “group” clothing to illustrate the different themes and include product which it is thought will be attractive to particular customers. So in any phase there will be a number of “stories” and each story will be a different range of clothes.
- 15 94. Stories are also allocated a “priority”. If it is thought that a story will have wide appeal it will be given a priority 1. The priority allocated to each story determines how the clothes in that story should be presented. A priority 1 story item will be prominent in the stores so that it attracts customer attention. This is likely to affect the number of items relating to it.
- 20 95. The designers will prepare very detailed briefs for store managers as to how clothes are to be arranged and displayed. The look and feel, colours and themes, of the displays in the store are determined centrally.
- 25 96. The briefing material will detail for example, presentation on racks, on tables, how and what accessories should be placed with which items of clothing and how mannequins are to be dressed. The material provides a floor plan (to show precisely where each item of clothing should be within the store).
97. Each launch will have a percentage that is allocated to particular product groups (for example a winter launch is likely to have a higher percentage of coats). Again these percentages are worked out very precisely by the design and marketing teams.
- 30 98. Stores are themselves graded A to E according to expected or recorded sales performance.
99. For NRL retail and franchise stores, stock will be brought in and stored by NDL until the next phase launch. NDL will then send each store a large delivery of stock called an “allocation”. This is to give a complete range for each launch.
- 35 100. The allocation is very precisely worked out so that each store will have precisely the right mix of products to enable it to present the phase with exactly the right mix of “stories” or product ranges displayed in accordance with the phase plan. These allocations across the whole of the retail network are part of what NDL has to package and deliver.
- 40 101. Once a launch is live and stock is sold in store, NDL will pick and make further deliveries called “replenishments” to ensure that NRL stores maintain a full product offering. The replenishments will vary depending on how sales are going. It is obviously critical to NRL that replenishments from NDL, of precisely the right items, are received in time to ensure the maximum sales volumes.
- 45 102. Each phase launch is co-ordinated across NRL stores in conjunction with NDL, with a large amount of new allocation stock being issued at the same time, along with tailored marketing material for such purpose. Replenishment stock deliveries are inevitably smaller in size and made on a more frequent basis each week.

103.NRL retail stores also have a set of mini-campaigns in that store displays are re-launched every month.

104.NRL requires the launch of new season stock in its retail stores to be highly organised. This requirement has to be met by NDL's warehouses. Specifically, NRL
5 requires NDL to hold a balance of stock in respect of each phase launch and allocation. In respect of each phase launch, NRL requires NDL to make large simultaneous deliveries of specified stock to ensure that each of its stores has the correct number of items of new stock across the range of sizes available. This is on a large scale.

Returns and Drop Stock

105.NDL also have to have in place procedures to deal with unpopular stock that does not sell in stores (sometimes called "drop stock"). Unsold stock will ultimately be destined for sale in Next's clearance stores ("Next To Nothing") or occasionally in the staff stores. In the first instance unsold stock is held by each store or local depot to be sold in the next calendar sale period. If the item is not sold it is returned to NDL.

15 However prior to this each item is scanned to verify that the store is not making a mistake and is not about to return an item that it should sell at full price.

106.Once items are returned to NDL the items need first to be sorted. NDL will put all the same items together, grouping for example, all coats, trousers or shirts. NDL will then usually place those items into storage for six months. The reason for this is that
20 returned items will usually arrive towards the end of a season. This means that in terms of retail sale they will generally be in the wrong season to permit immediate sale and so will have to be stored to wait for the right season. At the end of this period, NDL will arrange an orderly dispatch of last season's unsold goods from storage to the Next clearance stores which will usually receive that stock approximately one year after it was
25 originally sent to NRL retail stores for sale at full price. These processes in respect of drop stock are carried out in both Elmsall Way and Stadium Way.

107.30% of NRL's product sales are made to Directory customers. However, the relative usage of the warehouses for servicing the Directory business is higher. There must be sufficient stock on hand, for example, to meet demand from catalogues which can have a
30 life of up to six months.

108.Customer return rates for the Directory business are relatively high. Approximately 40% of all Directory goods ordered are returned by customers. This percentage can be significantly higher in respect of certain goods, for example approximately 70% of women's dresses are returned. We were told this is normal in this kind of retailing as
35 customers often buy two otherwise identical items in different sizes, and return the one they do not need.

109.Goods which are returned have to be refurbished (i.e. cleaned or pressed as appropriate, repacked) and put back into the business, so these products will be returned to storage by NDL and then taken out of storage again to meet future orders. Directory
40 stock is generally held no longer than three months.

Directory Business

110.The Directory catalogue is reprinted four times per year. There are two main catalogues, a Spring/Summer and an Autumn/Winter catalogue at the start of each of these seasons as well as two mid-season catalogues during each of the Spring/Summer
45 (Summer) and Autumn/Winter (Christmas) trading seasons. A different range of stock is required to be available to match these catalogue reprints.

111. It is a further feature of the Directory business that customers can order one item or, more usually, they will order several different items in a single order. This requires the warehouse to be able to batch Directory orders with more than one item, known as “multiples” so that one delivery can be made. This is important since customers will only be charged one delivery charge for these orders and if NDL is not able to ensure that it sends out one parcel, it will incur unnecessary courier charges which are not recouped from the customers. This could potentially substantially erode the margins of the Directory business.

112. Since 2000, Directory customers have been able to place an order any time before 5 pm for guaranteed next day delivery (this facility has recently been extended to a 9 pm cut off time). This requires NDL to be able to process and deliver Directory customer orders within a short time frame and accurately. NDL’s warehouses operate with highly automated processes so as to enable this to be done.

113. In addition, the Directory business requires returned goods to be processed in a very particular way. Returned goods have to be reintegrated by NDL into NRL’s stock inventory as quickly as possible so that they are available to fulfil new orders.

114. Accordingly, having a robust and reliable system to process returned goods and reintroduce them into NRL’s stock is critical to the Directory business.

Picking
115. We were informed and accept that “Picking” is the process by which items are selected from a generic batch of products. In selecting fast moving products, NDL at first used a manual trolley picking system with operators directed by paper instructions, later by radio frequency terminals, so that operators could select from stored items those items that were needed to go to particular stores. Given the scale of NRL’s product range, operators had to travel significant distances between static “pick” locations.

Flat/Boxed goods
116. The Elmsall Way warehouse stores predominantly womenswear flat/boxed goods as well as women’s shoes, small home items. The forward storage and picking areas for this warehouse are currently used to service store allocations and replenishments.

117. Womenswear flat/boxed goods are also stored in an adjacent separate leasehold warehouse building to the rear of Elmsall Way, Elmsall Drive. The forward storage and picking areas for this warehouse are currently used to service Directory customer orders. As this warehouse is not relevant for the purpose of the Claims it is not discussed further.

Hanging goods
118. The Stadium Two warehouse receives goods, carries out Quality Control checks and stores hanging stock for NRL’s retail stores and mail order customers (Next Directory and third party stock). This stock is then processed and dispatched in the adjacent Stadium Way warehouse building. While Stadium Way is not strictly relevant for the purposes of the Claims a number of the procedures to which hanging goods are subjected are carried on there. Reference is made to what is done there for the sake of completeness but does not affect directly what use is made of the Buildings.

Changes since the periods in question
119. Before the highly automated processes which take place in the warehouses were introduced, the storage and processing of goods by NDL was time consuming, labour intensive, prone to high error rates and costly. Increased automation has not changed essentially the function that NDL carries out; that is storage of goods, selection of an

appropriate mix of goods so as to deliver stock to match NRL's business strategies for its different sales channels and dispatch of those goods.

The Progress of Goods in the Buildings

5 120. The progress of goods in the Buildings was described and shown to us by Mr Grier. We are most grateful for his clear and knowledgeable help. What follows is taken to a large extent from his evidence.

121. As noted above the goods arrive by lorry of the buildings.

10 122. If one considers a single garment (such as a pair of trousers or shoes or a dress) and how it progresses through the Buildings then it becomes clear that there are procedures being carried out here rather than subjecting the goods to a process.

123. When a container is unloaded by BBC or hanging rails on which they come if have to be dealt with.

15 124. The goods or received into the Buildings when unloaded from the containers and trailers etc. The goods or recorded as received in the warehouse on the system. They are checked and stored and then picked and made ready to be delivered to stores for customers.

125. Each of the buildings deals with different types of goods and will be considered separately.

126. Mr Grier summarised what went on at the Buildings as follows:

- 20 (1) the receiving of stock of the same type in varying sizes from third party suppliers;
(2) movement into storage of stock, as appropriate, in the appropriate areas;
(3) storage;
(4) identifying, selecting, arranging and packing goods (with other goods as appropriate); and
25 (5) dispatching goods to NRL stores, Directory or Franchise customers as appropriate.

127. We now turn to consider what went on in each of the Buildings. Mention is made of other buildings (such as Stadium Way) but this is for the sake of clarity. We have not considered the activities in the other buildings in considering the status of the Buildings.

30 ***Elmsall Way Warehouse – mainly boxed goods.***

Inward receipt and registration: boxed goods

35 128. NRL's suppliers usually pack bulk goods into boxes known as Bulk Delivery Cartons ("BDCs"). The BDCs are packed into the HGV trailers or transport containers from floor to ceiling to maximise space or into standard air freight crates for transportation to the UK by air.

40 129. There are five standard sizes of BDC. Each size has the same width but may have varying heights and depths. NDL stipulates these size requirements. This allows standardisation of the size of boxed deliveries in the warehouses. This ensures that the storage space within the warehouse can be used as efficiently as possible. It can also help with transport within the Buildings by conveyor.

130. Each BDC in a consignment contains the same specification and quantity of goods.

131. The BDCs are taken by hand out of the container or HGV trailer and put on an extendable in-feed conveyor.

45 132. Each BDC is identified and registered in the warehouse management system using an automatic barcode scanner. There is a barcode sticker on the end of each BDC which is read as the BDC travels into the warehouse via the in-feed conveyor. We understand

that identification and registration has always been done but not necessarily in the same way.

133. Conveyors then take the BDCs to high-bay storage, except for a single BDC sample of each batch which is subject to a quality control process. This is discussed further below.

Quality control: boxed goods

134. The quality control area is a uniformly lit area holding “approved” samples of stock.

135. Here the selected BDC is unpacked and its contents examined against a detailed specification. The remainder of the batch is not normally opened or checked.

136. If there is a confirmed problem, the whole batch will be retrieved from high-bay storage and the relevant supplier will be contacted to decide whether the defective stock will be returned to the supplier. NDL is obviously very keen to ensure that stock is available for sale if at all possible. If the defect is minor it is often much quicker for NDL to sort that defect out.

137. Where NDL agrees to carry out ‘rework’ of defective incoming stock this process may involve cleaning, reconditioning, replacing missing buttons or remedying missing or incorrect barcodes. This may be done in the Buildings or elsewhere.

Storage: boxed goods

138. The storage operation for boxed goods is substantial.

139. The high-bay storage area uses an automatic storage and retrieval system. Following receipt at the high-bay area the BDCs are conveyed to an input station for transfer from the conveyor system to the high-bay crane (one station for each crane).

140. The BDC is scanned and the warehouse management system directs the crane to the appropriate storage location in the high-bay array. The crane will verify the correct location and automatically transfer the BDC on to the storage shelf, confirming the put location with the warehouse management system. The “put location” is where the particular BDC is placed in the storage area.

141. The automatic cranes both “put” and “pick” BDCs, in and out of, high-bay storage as directed by the computerised automated warehouse management system.

Picking: boxed goods

142. Picking is essentially the process of arranging particular items of stock into specific individual orders.

143. Once an order is placed the put location of the relevant BDC containing the required stock is identified by the warehouse management system.

144. The relevant high-bay crane is then automatically directed to the BDC put location in high-bay storage.

145. Once the BDC has been retrieved, it is automatically loaded on to the crane and delivered to an output station where it is reintroduced on to the conveyor system which transfers it to “a dedicated ergonomic picking station”.

146. The BDCs are then opened manually by operatives and placed into blue plastic totes for the purposes of the warehouse conveyor system.

147. A tote is a plastic box which acts as a receptacle for boxed stock for the purposes of transporting it around the warehouse buildings. Different colours indicate a tote’s specific use. The blue stock totes are then automatically directed via the conveyor system to the relevant picking area.

148. The picking process for boxed/flat goods for delivery to NRL retail stores is different from the picking process for Next Directory orders. Accordingly, there are two separate picking areas in Elmsall Way. These are:

- 5 (i) high-rate put stations for NRL retail flat/boxed stock (womenswear); and
- (ii) manual trolley picking for women's shoes or small home items to be delivered to NRL's stores.

149. The NRL retail stores picking area consists of put stations arranged around a central conveyor. The warehouse management system controls the location and direction of the totes via barcode readers, 'points' on the conveyor system and an interlinking high-speed sorter to ensure that the correct stock tote is directed to the appropriate put station at the appropriate time.

150. Each high-rate put station holds up to 24 NRL retail store order totes, which are either yellow or grey. These totes will contain, once filled by the picking process, all of the garments that a particular store will need for either a phase launch (allocation) or a stock replenishment for the items picked on that day.

151. The operator picks the items as directed. The operator must first scan the item using a hand-held barcode scanner to confirm the box contents match the outer label. The operator is instructed (nowadays by an LCD control panel) but in other ways in the past which indicates which tote(s) require(s) the scanned items.

20 152. Once an order tote is either physically full or the order is complete the tote is then manually sealed with a red plug and the operator pushes it on to a take-away conveyor for automatic transfer to the dispatch area for packing and onward delivery.

153. Empty store totes (which are ready to be filled with stock) are retrieved and directed by an interlinked sorter to the put station as they are required. Once at the put station, the operator scans the barcode on the empty order tote to confirm its arrival and allocate it to a particular NRL retail store order. The operator is directed to the relevant empty order tote location where it is placed ready to fulfil the order.

154. We were told this picking process allows NDJ to ensure that:

- 30 (i) NRL stores have all merchandise for the correct launch (standardised across the country); and
- (ii) stock is replenished accurately and quickly as required by each store following sales.

155. Women's shoes and small home items for delivery to NRL's stores are picked in a separate area in Elmsall Way which employs traditional manual order picking. The manual picking area consists of stock held in static pigeonholes arranged in racks, which are divided into aisles. Each pigeonhole has a specific location denoted by a barcode sticker below each location.

156. As new BDCs are brought into the manual picking area they are placed into the pigeonholes at random. The barcode on the BDC is then matched with the barcode on the pigeonhole and this information is logged on the warehouse management system, so stock can be accurately tracked.

157. When women's shoes or small home items orders are placed, a picker uses a hand held scanner and trolley on wheels which they push around the picking area to manually fulfil the order. The system indicates where the picker must travel to find the particular item. Upon arrival, the picker scans the pigeonhole barcode to verify the correct stock location. If the location is correct, the picker will then scan the required number of items

as they are taken from the pigeonholes before moving to the next pick location, as directed by the warehouse management system, until the order is complete.

158. We understand that in the early days much of the stock was dealt with in this way. Over time the procedure has been improved and speeded up mainly by further automation of the procedure. The procedure remains essentially the same.

Packing and dispatch: boxed goods

159. Completed store totes of flat/boxed womenswear and women's shoes and small home items for delivery to NRL's stores are transported by conveyor to the dispatch area in Elmsall Way where an automatic sorter directs each tote down the appropriate chute to be consolidated with other order totes for a particular NRL store.

160. The totes for each NRL store are then loaded on to pallets usually using an interlocking pattern for stability. Once a pallet has been loaded with the required number of store totes and is complete it is wrapped in clear plastic sheeting for general protection and to keep the store totes bound together on the pallet.

161. The pallets are then manually loaded on to HGV trailers for onward distribution via fleet transport to NRL retail stores.

162. Overseas orders are sent by truck to Stadium Way, which contains a secure overseas consignment area, for packing and despatch.

Returns processing: boxed goods

163. Any unsold flat/boxed retail stock returned from NRL's retail stores is allocated for future despatch to 'Next to Nothing' clearance shops or to the staff shops.

164. All flat/boxed goods returned by Directory customers are usually sent to NDL's Toftshaw warehouse facility in Bradford in the first instance. Once unpacked, the relevant returns docket is scanned, the reason for return is checked and the customer is refunded. The stock is then registered on the warehouse management system and subjected to a quality control process and, if appropriate, refurbishment process. Finally, the stock is sent to Elmsall Way for 'put away' or re-storage. Historically, the put away of returned Directory goods has occurred in the Elmsall Drive warehouse.

Stadium Two Warehouse

Inward receipt and registration: hanging goods

165. Mr Grier told us that the operation of the Stadium Two warehouse has hardly changed at all since it opened in 1998. We have no reason not to accept that this is the case. It was not objected to and we accept this to be the case.

166. NDL deals with hanging goods at the Stadium Two warehouse.

167. Hanging stock arrives at the Stadium Two warehouse in either specially adapted sea containers or HGV trailers.

168. Each container or trailer will contain hanging goods either attached to cords suspended from the ceiling or hanging on long rails suspended in a specially designed lattice structure.

169. Hanging items are manually unloaded in bundles of 34 garments and placed on to detachable standardised hanging rails connected to an automated in-feed overhead monorail conveyor called a 'trolley conveyor'. Each rail will carry the same type and size of hanging garment.

170. After the hanging goods have been manually unloaded, the overhead trolley conveyor transports each hanging rail carrying the hanging stock to a holding area.

171. The hanging stock on each rail is counted and scanned, and then the barcode on the rail is scanned and associated with this information (i.e. number of items, size and description) as it is registered in the NDL warehouse management system.

172. Each rail is then transferred to high-bay storage via the overhead trolley conveyor.

5 The length of the garments is automatically measured as they travel to the high-bay storage area.

Quality control: hanging goods

173. As for boxed good there is quality control. Approximately one rail in 50 of each size of hanging stock is checked in the quality control area.

10 174. NDL also has the capability to carry out rework to defective hanging stock. This is similar to the reworking for boxed/flat goods.

175. NDL also carries out a quality control process in the Stadium Way warehouse (not part of the Buildings) in respect of returned hanging goods

15 176. Hanging goods picked for delivery to NRL's retail stores are also subjected to a final Quality Control check once orders are complete and ready to be despatched. This is similar to that for boxed goods.

Storage: hanging goods

177. High-bay storage for hanging goods in the Stadium Two warehouse is similar in design to that for boxed goods in Elmsall Way and consists of an array of 24 aisles of high-rise racking and shelves. However, the storage bays deal three different garment lengths. Hence the measurement of hanging stock in the holding area before transferring them to the high-bay storage area. This allows the most efficient use to be made of the available space.

178. Stadium Two also stores the graphics (posters, props and stickers) required for NRL retail window and in-store displays on pallets and has a capacity of 6,000 pallet locations.

Picking: hanging goods

179. As orders are placed, the NDL computerised warehouse management system will automatically request the appropriate rail of hanging stock required to fulfil each order (whether for NRL retail stores or Directory mail order customers) from high-bay storage.

180. The picked rail is then transferred from Stadium Two in bundles of approximately 34 items via an overhead 'fence' conveyor to an 'adaptor loading' area in the adjacent Stadium Way warehouse using a covered bridge connecting these two warehouses.

181. The adaptor loading area in Stadium Way is where the hanging items are transferred to individual trolleys using a 'marriage station' (one item per hanger). As the hanging items are transferred they are scanned by a barcode scanner and, at the same time, this information is uploaded on to a radio frequency identification or 'RFID' electronic tag within each of the trolleys now carrying the individual items on the overhead conveyor system so that the NDL warehouse management system can track each hanging item accurately and direct it as required to fulfil orders.

182. The hanging stock is then held in any random order in a large revolving conveyor known as the 'random remnant buffer' or 'wardrobe'. The NDL warehouse management system directs decision points in the wardrobe to pick automatically individual items of stock as required from the overhead conveyor as it revolves in order to fulfil orders.

45 183. Once items have been picked from the random remnant buffer, they are arranged in an area known as the 'pre-allocation buffer' using a sophisticated system of overhead gravity rails. For NRL retail store orders, items are automatically sorted so that different

categories of garments are arranged together in sequence until the order is complete (e.g. menswear, womenswear and childrenswear). Each lane of a specific stock type being held for several stores will then be released and sorted further into lanes for each store destination where the orders are further checked by scanning each RFID identification tag in respect of each item's hanger. Therefore, what is achieved is that each store will receive a consignment of stock with separate batches of each type of stock required.

184. For Next Directory orders, the automated pick system is programmed to collate all hanging garments if possible so as to avoid more than one delivery to each customer. As with NRL retail store orders, garments are subject to a two stage sorting system which first identifies and picks garments for a group of customer orders and then sorts those garments by individual customers. Once orders are complete, the hanging goods are sent automatically to the dispatch area for sorting and then to the depot and onward delivery.

185. Hanging goods are manually unloaded but until they are packed for dispatch, the hanging goods have not normally been touched by any worker in either warehouse. It has taken place completely automatically as directed by the warehouse management system. This, we were told and accept, is critical to Next achieving efficient and cost effective warehousing and despatch.

Packing and dispatch: hanging goods

186. There are separate packing areas for NRL retail stores and mail order customers.

187. For NRL retail stores, once each consignment of hanging stock is complete it is transferred to wheeled hanger rails and transferred manually on these rails to road vehicles for onward delivery to the appropriate NRL retail store.

188. In the case of mail order customer orders, once each order is collated it is automatically labelled and packed in the dispatch area. Individual invoices (that can be read through the packaging) are applied to each customer's garments before the branded outer bag is applied around the single or multiple garments. The orders are then dispatched ready hanging.

189. The packing area in Stadium Way also contains a secure overseas consignment area for packing hanging and boxed goods for dispatch to overseas franchise operations. Until 2008 this overseas operation was carried out in Stadium Two but was later moved to Stadium Way as extra space was required in Stadium Two for the storage of Next graphics.

190. Since 2009, NDL has been a certified freight operator with a bonded warehouse exemption and this secure area contains x-ray equipment for this purpose. It was not the case at the times in question.

Returns processing: hanging goods

191. Any returned unsold hanging stock is stored and ultimately sent to 'Next to Nothing' clearance shops or to Next staff shops.

192. Returned Directory hanging stock returned on a hanger will be sent directly to the Stadium Way warehouse for processing (not the Stadium Two warehouse).

193. If Directory hanging stock is returned by a customer off the hanger the item may go to the Toftshaw warehouse where the system will alert the operator that the item is a hanging item and it will then be sent to Stadium Way for processing in the usual way.

194. The returned hanging goods are not put into Stadium Two's high-bay storage but remain in Stadium Way where they are reintroduced into the 'random remnant buffer' (wardrobe) in order that they can be picked ahead of stored stock to fulfil new orders to maintain a high level of stock efficiency.

195. If problems are identified with returned stock during the quality control process it undergoes a refurbishment and, if merchantable, is transferred to the relevant forward picking area for new orders.

Submissions of the Parties

5 ***The Taxpayer's submissions in outline***

General

196. In essence, the Taxpayer argued that the buildings were used to subject to a process goods that were stored there. This was for the purposes of a trade which consisted in so doing.

10 197. The process consisted of “stepping down” the bulk delivery of goods into smaller parcels of goods (which might be just one item) so they were more marketable. These items could not be sold in the right way from the container or trailer. They had to be directed to a retail store or Directory customer having been checked to ensure that they met the quality standards. In the meantime they had to be held or stored.

15 198. There were also other arguments on section 18 CAA. In particular, it was argued that the Buildings were used to store goods on their arrival in the UK from a place outside it.

199. NRL's activities were not ancillary to a trade involving the sale of goods by NRL but were a trade which consisted in the storage and transport of goods which met the requirements of section 18 CAA. The storage was for this purpose not for sale by NDL.

20 200. In more detail, the Appellants argued as follows.

Breaking down bulk of goods is a process

201. The goods are delivered in bulk and have to be broken down before they can be sold. The breaking down of the bulk constitutes subjecting the goods to a process or number of processes within section 18 CAA. So for boxed goods delivered as a shipping container full of boxes of clothing this must be *processed* by being broken down for storage. It is then further processed by being selected from high bay storage for preparation for dispatch. This process involves a complex series of largely mechanised activities, including checking the shapes and sizes of boxes, their bar-coding, sampling and quality control, movement to the correct bay of storage.

202. These boxes of goods, now broken down from containerised bulk, are then *stored* in high bay storage. They are still in bulk, and not sold in this form.

203. The bulk goods are further subjected to a process or number of processes by being split into items for sale (picking, putting). Bulk goods are split into individual items or multiple items (Directory) or into larger groups of individual items (retail). This ensures that goods are ready to be delivered to customers or retail outlets to be sold whether by way of initial allocation, or subsequent replenishment. The further breakdown of goods includes removing and recycling (dross) packaging which is not required for resale.

40 204. The outgoing parcels of goods are in a different form from the goods which came in.

205. Further, the goods are in *storage* at all times until they are despatched.

206. The processes are essentially the same for boxed goods and hanging goods.

45 207. It does not make a difference that the processes are now further mechanised than during the years of assessment. What is done remains the same.

208. The overall activity of storage and distribution (which is what NDL's trade consists in and only consists in) necessarily includes other processes. Some, if not all, activities are

capable of subsisting as part-trades. But whether they are or not, they form activities undertaken in the course of NDL's trade of storage and distribution, and form part of the overall processes to which the goods are subjected.

5 209. These processes all involve subjecting the goods to a uniform treatment – assisted respectively by the uniformity of the standard box and of the RFID hanger. It is only at the conclusion of the uniform processes that the result is achieved, or even apparent – while the processes are being effected, it not possible to identify the destination of any particular item. The destination is decided by, and is apparent only on conclusion of, the processes.

10 210. The case law supports this. Neither in *Girobank* (*supra* at 417A, 428B-C), nor in *Buckingham v Securitas* (*supra* at 300-301) was there any alteration to the nature or quality of the items which were processed.

Storage

15 211. HMRC say that NDL's trade is [consists in] 'logistics and distribution'. This terminology is selected to avoid use of the term 'storage'. But it is nonetheless accepted by HMRC that storage takes place. Indeed, where else is stock stored for the retail outlets? The correct answer is there is a huge warehouse in which stock is stored until needed.

20 212. Whether NDL charges (this is intra-group) on a cost per unit basis is irrelevant. NRL has to have storage available because it knows its stock will come in and out. It has to be kept somewhere and by someone. NDL does this.

25 213. The test of whether there is storage is not whether there is payment by time for use of an area. This may be relevant to whether there is a licence or a lease of a warehouse. But NDL is not licensing or leasing its warehouse. NDL remains in occupation of the warehouse, and takes in someone else's goods to store them. That is exactly what is done by a trader whose trade consists in storage.

214. *Bestway* does not decide that storage can only occur 'as an end in itself'. The question in *Bestway* was whether there was a trade which consisted in storage. The explanation was provided by Lord Walker in *Maco* (*supra* p, 341B-C, 342B-D).

30 215. It was said in *Dale v Johnson Bros* (*supra* at 494) 'That section *so far as it is invoked here...*' There was no argument that there could be trade of storage and distribution (etc). There was no argument concerning 'part of a trade' (now s 18(2)).
18(1) (f) (iv) arrival in the United Kingdom from a place outside the United Kingdom

35 216. The goods arrived at the Buildings. It was there that they were unpacked from the containers. The VAT and Customs deferment treat them as arriving in the UK then.

217. *Copol* is outdated. HMRC cannot identify a relevant test. 'We are in elephant territory to some extent.' (sic)

40 218. There is no linkage to sea and air now to be found in the provision. Arguments based on serving ports and airports have thus disappeared. HMRC do not engage with this. While accepting the relevance of 'road' transport, they do not say how the provision works. It should be noted that there is no such thing as a road port nor a warehouse serving one. HMRC still rely on the earlier case law without acknowledging the disappearance of its statutory underpinning.

45 219. The explanation that the change was necessitated by the Channel Tunnel (all that HMRC have offered at any stage) is plainly inadequate to explain the width of the amendment and which is deemed to have always had effect i.e. before the Tunnel existed.

220. The section no longer refers to arrival ‘into’ the UK. It is not appropriate to cut the analysis of the term ‘on arrival’ out of its old statutory context, and to paste it into its new context. Neither is it appropriate to do this with ‘storage’. That NDL receives the goods for NRL does not mean they have reached their destination. It should be noted that in

5 *Copol* the premises were used by the purchaser for its trade. The wholesaler was trading from the ground floor; its warehouse was upstairs (*supra* 34g).

221. In *Copol* the CA was (obviously) aware that there were two separate corporate entities. But they failed to attach significance to it. *Saxone (supra)* was not cited. *Maco (supra)* was not decided.

10 222. ‘On arrival’ must be interpreted as reason and good sense require (*Copol supra* 35h). Reason and good sense require – or it is expedient to have – congruence between the impact of Customs Duties, VAT and IBA where they all depends on ‘on arrival’. No-one suggests that approval as a type E warehouse determines the IBA treatment. But it is striking that – when HMRC contends that the good must be ‘in transit’ – *not even HMRC*

15 *contends* that duty and VAT must be paid at any earlier point than the warehouse. The relevance (if any) of CEMA 1979 and the 1991 Regs here is obscure. Authorisation as a customs warehouse took place under EC 2454 (1993). It does not depend on the earlier legislation.

223. HMRC’s reliance on its own press release and notes on clause is wholly

20 illegitimate. The only Parliamentary material admissible under *Pepper v Hart* is a statement by the minister or other promoter of the bill which clearly answers the point at issue together (in such a case) with such Parliamentary material as is necessary to explain it. Even then the material is admissible only if the legislation is ambiguous, obscure or leads to an absurdity. That said, the material itself is not helpful anyway. Its reference to

25 ‘import warehouses’ is itself obscure. NDL is in fact operating an import warehouse – as amply demonstrated by its advantageous duty and VAT treatment.

224. *Carr v Sayer (supra)* is simply an application of *Copol (supra)* and still on old legislation.

225. Here the conditions in section 18(1) (f) (iv) CAA are fulfilled.

30 *Necessary Conclusion*

226. The buildings were used to subject to a process goods that were stored there and/or to store goods on their arrival in the UK. This was for the purposes of a trade which consisted in so doing.

227. Accordingly the appeals must be allowed.

35 ***HMRC’s submissions in outline***

General

228. In essence HMRC argued that the requirements of section 18CAA were not met. The appeals should therefore be dismissed.

229. Section 18 CAA was not met because there was:

40 (1) No subjection of goods to a process;

(2) There was no storage trade;

(3) There was no storage of goods on their arrival in the UK as the goods had, in reality, been delivered to the purchaser;

(4) No trade “which consists in the manufacture of goods or materials or the subjection

45 of goods or materials to any process”.

Section 18(1) (e): No subjection of goods to a process

230. The buildings were not in use for the purpose of a trade “which consists in the manufacture of goods or materials or the subjection of goods or materials to any process”. No goods or materials were manufactured. The Taxpayer argues that goods in question were subjected to a “process”. But they cannot possibly succeed on this limb.

5 231. There was no subjection of goods to a process here. Subjection to a process involves the treatment of goods in some way. There must be a method of manufacture or adaption of the goods towards a particular use. Moving of goods from one part of a building to another or taking items out of one box and putting them into another does not constitute a subjection of those goods to a process (see *Kilmarnock Equitable Co-operative Society v CIR* 42 TC *supra* at 681 per Lord Guthrie and Lord Cameron at 685; *Crusabrigue supra* and *Bestway supra* at 381-382 per Lightman J).

10 232. The term “process” connotes a substantial measure of uniformity of treatment of the goods in question (See *Vibroplant supra* at 668 per Templeman LJ).

15 233. In considering whether there was sufficient uniformity of treatment, one must look at what happens to the individual goods, not at whether there are uniform systems of procedures by which goods are dealt with differently depending on what they are (see *Farnell (supra)* at [48]).

20 234. Receiving goods cannot be a “process” nor can moving them from one part of a building to another be, no matter how automated or on how large a scale. Removing the goods from their bulk packaging, or collating, organising, packing and dispatching the individual items does not amount to subjecting goods to a process. They were not cleaned, as the coal was in *Kilmarnock*; nor do they have anything printed on them, like the cheques in *Girobank plc supra*.

25 235. While each case depends on its own facts, the closest analogies are with:
(1) *Bestway*, where the unpacking, checking, sorting, labelling, reading of product codes, refrigeration/freezing and repackaging of goods was held not to be subjecting goods to a process;
(2) *Farnell* in which large quantities of electronic components were delivered in bulk to the relevant premises, “broken up” into smaller quantities, boxed up for storage, the
30 boxes being labelled and bar-coded so that their movement around the warehouse could be tracked; and the boxes placed in various storage areas, many linked by conveyor belt which was held that not to be the subjection of the goods to a process.

35 236. The Appellants place reliance on the breaking down into individual items the bulk deliveries of the goods, and refer to the decision in *Buckingham v Securitas supra*.
However:
(1) Slade J decided *Buckingham* on a different basis (against the appellant), and his observations on “process” were *obiter*;
(2) There is no general principle that breaking down of batches of goods will suffice: see Brooke LJ in *Girobank (ibid)* in which he held (disagreeing with Lindsay J) that “It
40 would... be an abuse of language to say that what was going on in those premises involved subjecting goods or materials to a process...”; see also *Farnell supra*.

45 237. In any event, the requisite measure of uniformity of treatment is not present here. On the contrary, while the activities in the buildings may be automated, they are highly individualised rather than uniform. As in *Farnell*, the existence of sophisticated and large scale systems of procedures, by which large volumes of similar goods are separated and individual items dealt with according to the differing needs of the various business, does not provide the requisite uniformity of treatment.

s.18 (1) (f) (i) to (iv): storage and trade

238. For the Appellants to succeed in their appeal under section 18(1)(f) they must establish both:

- 5 (1) that the buildings were, at the relevant time, used for the purposes of a trade which consisted in the storage of goods or materials; and
10 (2) that the storage was for one of the limited purposes in sub-sections 18(1) (f) (i) to (iv) CAA.

239. The Appellants cannot establish either requirement.

240. To meet the requirements the building must be used for the purposes of a storage trade, in the sense that it must simply be for the keeping of goods, not storage as an adjunct to other activities.

241. The trade must *consist in*, and not merely involve or include, the storage of goods or materials albeit that section 18(2) means that the relevant storage may be part of the trade carried on (see *Dale v Johnson supra*, *Bestway supra* at 377, *Maco supra* at [24] per Lord Walker).

242. The determining factor is the purpose for which the goods are held in the building. A building is only used for storage if storage is an end in itself, rather than for some other purpose, such as storage pending sale (see *Bestway* at 388).

243. The fundamental error in the Appellants' approach is the suggestion that the requirement is met simply because goods are stored at the Buildings. That is wrong. There was undoubtedly some storage of the goods at the Buildings, but the storage was *not* an end in itself. Rather, it was incidental to the collection, sorting and distribution activities carried out by NDL. Put another way, NDL's trade may in part have included storage of goods, but its trade did not consist in storage.

244. Nor did part of its trade consist in storage for the purposes of section 18(2), in the sense explained by Lord Walker in *Maco supra*. It cannot be said that the storage of the goods in the Buildings was in any sense a viable section of NDL's trade, recognisable as a trade if separated from the composite whole of NDL's activities. Further, even if the storage carried out by NDL could (contrary to the submission) be said to be an end in itself, it was not for any of the limited purposes set out in any of the four sub-paragraphs of sub-section 18(1)(f).

245. To come within s. 18(2), it is not enough to be able to isolate, by horizontal division, some activity carried on in the course of a vertically-integrated trade, even if that activity is "significant, separate and identifiable": *Maco Door* *ibid* at [25] to [26] per Lord Walker.

s.18 (1) (f) (iv): storage of goods on their arrival in the UK

246. This provision deals with the storage of goods which have reached the UK but not their ultimate destination and are being stored meanwhile. It is not intended to give allowances for a building used to store goods purchased from outside the UK which have, in reality, been delivered to the purchaser.

247. The fact that the company which owns the warehouse is legally separate from the purchaser of the goods is irrelevant where they are part of the same group (see *Copol supra* at 415 per Fox LJ; 416 per Dunn LJ).

248. Moreover, the building must, having regard to its location, be reasonably regarded in the normal course of its trade as providing a storage service in relation to a particular port or airport or similar terminal for goods or materials on the occasion of their arrival in the UK (see *Copol supra* at 415 per Fox LJ).

249. On no view can NDL's buildings in South Elmsall be reasonably regarded as providing a storage service in relation to a particular port or airport or similar terminal for goods or materials on the occasion of their arrival in the UK, which is the purpose of this sub-paragraph of section 18(1) (f), as explained by the Court of Appeal in *Copol Clothing*.

250. The Appellants seeks to avoid the decision in *Copol* by pointing to the amendment to s.18 (1) (f) (iv) made since that case was decided. However as noted above, that amendment, made by s.101 of the Finance Act 1995, was to cater for the possibility of goods arriving in the UK from the Channel Tunnel. It cannot be read as fundamentally extending the scope of this limb of the legislation as the Appellants suggest.

251. The fact that section 18(1) (f) was amended by s.101 of the Finance Act does not affect this. The amendment was simply intended to reflect the fact that goods were, from the time of the amendment, capable of being imported via the Channel Tunnel rail link.

252. In any event, and regardless of the reason for the 1995 amendment, s.18(1)(f)(iv) plainly does not give IBA for a building which is used to store goods purchased from outside the UK and which have in effect been delivered to the purchaser. The goods received by NDL were all in reality delivered to the purchaser.

253. The Appellants makes much of the fact that the goods are legally owned by NRL rather than NDL. But it is clear from *Copol Clothing* that this cannot assist them. In *Copol*, the appellant taxpayer company was a clothing wholesaler. It used a subsidiary and legally separate company to provide the warehousing and storage of goods, and leased a part of a building to the subsidiary for that purpose. It claimed IBA on the expenditure on that part of the building leased to its subsidiary. The taxpayer's appeal was dismissed by the Court of Appeal. In concurring with Fox LJ, Dunn LJ stated that "although [the subsidiary company] was a separate legal entity from the company, the reality of the matter is that when they arrived in Manchester the goods had reached their final destination, and it could not be said that the business involved the storage of goods in transit".

254. Here, even though NRL and NDL are separate legal entities, and the goods may be owned by NRL, they are part of the same group, and once the goods have reached the buildings in South Elmsall, they have in reality reached their intended customer. They are not being stored in transit on their way to a purchaser. The South Elmsall buildings were precisely where the purchaser of the goods (NRL) instructed their suppliers to deliver the goods.

255. Thus the Appellants' case under section 18(1) (f) must fail as well.
No trade "which consists in the manufacture of goods or materials or the subjection of goods or materials to any process"

256. If the Appellants fail on their argument on sub-section 18(1) (e) (i.e. that the goods are subjected to a process in the buildings) it is impossible to see how they could succeed on sub-section 18(1) (f) (ii), and their Skeleton Argument does not appear to suggest to the contrary. The Appellants do not identify any further process to which the goods in question are to be subjected following their arrival at the NDL buildings.

257. The buildings were not in use for the purpose of a trade "which consists in the manufacture of goods or materials or the subjection of goods or materials to any process".

Necessary Conclusion

258. For these reasons, the Tribunal is invited to dismiss these appeals.

Discussion

Introduction

259. We set out at the start of this Decision our view of the issue and some questions
5 relevant to deciding the case.

260. As noted above the essential issue in this case is whether the Buildings
constituted industrial buildings(s) or structure(s) within the meaning of section 18
CAA.

261. We consider this raises a number of questions which need to be answered to
10 decide this case. They include the following questions.

(1) Although the legislation refers to “goods” there is no helpful definition so
the question therefore arises what are the “goods” for the purposes of the IBA
legislation? Are they the individual items or the bulk? Can the meaning change
as the items progress through the buildings?

15 (2) What are the goods in the case before us for the purposes of the section?

(3) Were the Buildings used for a trade which consisted in subjecting goods or
materials to any process?

(4) Were the Buildings used for a trade which consisted in the storage of goods
or materials:

20 (a) which were to be subjected to any process; or

(b) on their arrival in the United Kingdom from a place outside the United
Kingdom.

262. We turn now to consider the first of these questions. For convenience we will
then set out what was done to the goods and then consider the other questions which
25 depend on what was done.

What are the goods for the purposes of the section?

263. This matter is not entirely obvious to us from the wording of the section. We
have not found this easy. However, we think the better view is that the goods are not
the bulk as such but the individual items which are comprised in the bulk. It is the
30 individual items with which the provision is concerned.

264. We derive some support for this in the suggestion in the cases in the higher
courts that there needs to be uniformity treatment of the items involved. This seems
to require, in our view, that each of the goods i.e. the individual items, are treated in
the same way and that it is the individual item that should be considered.

35 265. The ingenious “stepping down” approach seems to us to be somewhat of a
“bootstrap argument” in that it proceeds from the end of goods being made more
merchantable to say that that means they must have been subjected to a process and
that process falls within section 18 CAA. We do not think that is the right approach.

266. We consider it difficult to see that Parliament meant us to cover a reducing bulk
40 by using the word “goods”. We accept that it is plural but it still makes sense to look
at the individual goods in the context of the legislation and the requirement of uniform
treatment. Parliament could have specifically dealt with a reducing bulk had it wished
to. It did not.

267. This does not mean that there cannot be a transformation of goods such that a
45 building can qualify for IBA’s. In many cases that may amount to manufacture but it
is not the case here.

268. We consider that on the wording of the legislation we should consider the individual items rather than the step turn ever changing bulk of goods. The drafting could easily have dealt with this if it was intended to cover it.

269. Accordingly we find that the goods for the purposes of the section are the individual items and not the bulk.

What was done to the goods?

270. The goods in the sense of the individual items came into the building as part of a bulk load. The individual item was unloaded, checked, held until “picked” and then labelled on its packaging or hanger or other matter associated with the item so that it could be transported and then despatched. There was generally no physical change to the individual item. Although the label could well be attached to the packaging there was, in general, no change to the individual item. If a defect was detected on checking then the item might be returned to the supplier or in some cases have something done to it as such as pressing or cleaning. This would not necessarily be done at the Buildings. The items could be sent out or to another building for what was required to be done.

271. Overall nothing was physically done to most of the goods in question. As we said before at most a label or further packaging was attached to the packaging of the goods in question where work was not required following the quality control. We were not provided with any figures as to the proportion of goods which required work. However, it did seem to us that most of the goods did not require such work and commercially one would expect this to be the case as the suppliers would not want to bear the cost or suffer the returns and Next would wish to deal with matters as expeditiously and economically as possible. On that basis we find that the work that was done was not a major component in the activities in the buildings. It was essentially ancillary.

272. If the goods are treated as the then the bulk is broken down. Something is then done to the bulk. This requires the meaning of goods to be considered which we do next.

Is what was done subjecting goods to a process?

273. If one considers the individual items (such as a pair of trousers) then it is not itself changed physically. It does not have a new items added to it, it does not have coatings or similar treatments apply to it nor anything similar done to it.

274. We accept that the bulk is broken down and held till it is picked for distribution. We find this as a fact for the assistance of any higher court. However, we consider we should look at the individual items and see what is done to them. On that basis this was not subjecting goods to a process as the goods remain unchanged. We do not consider that attaching an address label (whether physical or electronic) is sufficient to meet this requirement.

275. We also accept HMRC’s argument on process set out above. This was: “There was no subjection of goods to a process here. Subjection to a process involves the treatment of goods in some way. There must be a method of manufacture or adaption of the goods towards a particular use. Moving of goods from one part of a building to another or taking items out of one box and putting them into another does not constitute a subjection of those goods to a process (see *Kilmarnock Equitable Co-operative Society v CIR* 42 TC *supra* at 681 per Lord Guthrie and Lord Cameron at 685; *Crusabriga supra* and *Bestway supra* at 381-382 per Lightman J)”.

276. We have found the comments on subjection of goods to a process in *Farnell* very illuminating and helpful. We acknowledge that they are obiter. However, they are the most recent consideration of section 18 CAA and subjection of goods to a process. The case is also factually similar as it concerned warehouses would pick faces and the like.

277. The Tribunal in *Farnell* said:

“[43] The debate between the parties was on the meaning of the phrase ‘subjection to a process’. [Counsel for the Appellant] ... argued for a wide meaning of this phrase, relying on the dictum¹ of Lindsay J in *Girobank plc*. In particular, he contended that it follows from what Lindsay J said that the activity of sorting goods by a method involving a substantial measure of uniformity of treatment is sufficient to amount to a ‘process’. [Counsel] for HMRC, submitted that the operations at the Building did not exhibit the necessary ‘substantial measure of uniformity of treatment’ to amount to a ‘process’ – the products are, on the contrary treated individually according to their size, different requirements in terms of storage and packaging²⁰ and are individually picked by the Appellant’s staff.

[44]. In *Bestway*, which was rightly decided in the opinion of Lord Walker – see *Maco Door* at [26] – Lightman J considered *inter alia* Lindsay J’s dictum in *Girobank*. In his judgment on the topic of ‘subjection to process’ he identified additional guidance from the authorities at *ibid.* p.381 as follows:

i. The phrase ‘subjection of goods to any process’ must be considered as a whole – *Girobank* [1998] STC 182 at 186 per Nourse LJ;

ii. It is not sufficient that ‘anything is done to goods’ (*Kilmarnock Equitable Co-operative Society Ltd v IRC* (1966) 42 TC 675 at 681 per Lord Guthrie and other authorities cited) – the mere conveyance of goods is not enough, some form of treatment is necessary – the fact

that a particular activity is a preliminary to something else being done is not determinative one way or the other, but may be relevant to ascertaining whether that activity constitutes the subjection of goods to a process;

iii. Subjection of goods to a process means a treatment (or course of operations) involving the application of a method of manufacture or adaptation of goods or materials towards a particular use, purpose or end (*Kilmarnock* at 685 per Lord Cameron);

iv. It is not sufficient that individual items or defects are treated individually – there is required a substantial measure of uniformity of treatment or system of treatment;

v. The process need not be industrial or complex.

[45]. Lightman J went on to say that since the word ‘process’ is used in the legislation in conjunction with the words ‘manufacture’⁵ and ‘production’, a uniform treatment or system of treatment of some real significance was postulated (*ibid.* p.382h).

[46]. He held that the activities in issue in *Bestway* (see paragraph 33 above) were not sufficiently significant, but were instead ‘limited, mundane and of no substantial

¹ “Nor is it required of a process that it alters the goods and materials subjected to it in any way but rather that it may suffice of a process that it should clean, sort or package the goods or materials fed into it. I hold also that it is no requirement of a process that it should be done with a view to the sale or disposition of the goods or materials processed but that ‘a process’ does connote a substantial measure of uniformity of treatment, in contrast (although doubtless the line will sometimes be difficult to draw) with individual treatments of the kind give, for example, to cars serviced in a garage or patients in a doctor’s surgery.”

significance and that they could not properly be elevated to the status of processing goods or materials' (*ibid.* p.383c).

[47]. Whereas on a high and generalized level, we recognise that as a matter of language the operations carried out at the Building might be described as the
5 subjection of goods to a process, we have concluded that the matter should not be judged at a high and generalized level, but, instead, regard should be had to the operations which the individual products were subject to. On that level it can be seen on the facts that the individual products are not subjected to a sufficiently substantial measure of uniformity of treatment or system of treatment to cause the system of
10 operations conducted in the Building to be a 'process' in the relevant sense.

[48]. Put another way, there could only be a uniformity of treatment or system of treatment if one were to consider the procedures operating at the Building *as procedures*. If, instead, one asks whether the products were subjected to a uniform treatment, or system of treatment, *looking at the products as such*, the conclusion
15 must be that they were not, because each product was dealt with according to what it was. We consider that on its correct construction the statutory test requires us to consider whether goods were subjected to uniform treatment, not whether there was a system of procedures being operated pursuant to which goods were treated differently according to what they were.

[49]. For this reason we consider that the operations are more akin to the 'individual treatment of the kind given, for example, to cars serviced in a garage or patients in a doctor's surgery' than a process of cleaning, sorting or packaging the goods or materials fed into it (*cf.* the dictum of Lindsay J in *Girobank* relied upon by [Counsel for the Appellant]).

25 278. We gratefully adopt these comments. We also consider that the operations here are more akin to the services in a garage or in a doctor's surgery.

279. Accordingly, we find that what was done was not subjecting goods to a process.
Was there storage?

280. HMRC seem to accept that there was storage in the Buildings. It is hard to see
30 how they could not. However, HMRC said that this storage was not an end in itself and so did not meet the statutory requirements.

281. We find that there was storage of goods in the Buildings and that it was part of NDL's trade. We find that it was a constituent of NDL's trade.

282. The question then is whether any of the sub paragraphs of section 18 (1) (f) were
35 satisfied. Only subsections (ii) and (iv) were considered to be in point. This requires us to consider whether there was:

(1) storage of goods to be subjected to a process; and/or

(2) storage of goods on their arrival in the UK from a place outside the UK.

283. We have concluded that the goods were not subjected to any process in the
40 Buildings. We do not consider that they were subjected to a process elsewhere within the meaning of section 18 CAA.

284. We find that what was done was not the storage of goods to be subjected to a process.

Accordingly, it cannot be done as part of a trade consisting in "... the storage—... of
45 goods or materials which are to be subjected, in course of a trade, to any process..."

Storage on arrival in the UK?

285. This requires us to consider was this storage of goods on their arrival in the UK their arrival from a place outside the UK? We have found that there was storage of goods at the Buildings. The question then is when did the goods arrive in the UK?
286. We understand that the distance from:
- 5 287. Felixstowe to the Buildings is more than 180 miles by road; and
288. Southampton to the Buildings is more than 210 miles by road.
289. The rail distances to Leeds from those ports are understood to be similar.
290. Goods either in bulk or individually carried on a ship arrived literally in the UK when they come into territorial waters. This does not seem to be what Parliament
10 intended either before or after the amendments by FA 1995.
291. However, it is interesting to note that in the taxpayers' own evidence it was said (see 69 above) that: "[W]hichever method of transportation is used, when the goods arrived in the UK [*sic*] the HGV trailers, sea containers or air freight containing the
15 NRL stock will be transferred from the UK port or air terminal direct to NDL's South Elmsall warehouse site via fleet road transport, taking advantage of NDL's customs duty and VAT deferral arrangements".
292. We consider this describes accurately what happened. The deferral for Customs and VAT purposes supports this. There would be no need for such deferral if the
20 goods have not already arrived in the UK.
293. We consider that the goods had arrived in the UK before arrival at the Buildings. They have come into the UK then the journey of more than 100 miles in the UK it is more than arrival in our view.
294. We accept that the legislation has changed and that in consequence we are in "elephant territory". This requires us to consider the wording of the provision rather
25 than the case law.
295. "Arrival", in our view, connotes the act or instance of reaching a place. The phrase here is "arrival in the UK". It is not arrival at somewhere in particular in the UK or of being delivered in the UK. It is arrival in the UK. The UK is a place and so reaching the UK can be arrival in the UK. This accords with the approach of the
30 dictionaries. We bear in mind that dictionaries are not determinative but they illustrate the ordinary meaning of the words.
296. We do not think of that the phrase is to be given a Sale of Goods Act interpretation by reference to passing of title or the rules about delivery or similar matters.
35 297. We consider that the phrase has to be given a pragmatic meaning in the context of each case rather than a literal one. We do not consider that the meaning is fulfilled solely when goods come in to territorial waters or UK airspace. It is a more flexible concept which depends to some extent on the context of the factual matrix which has to be considered.
40 298. We consider that the goods had arrived in the UK before arrival at the Buildings. For the purposes of this case it does not matter when they arrived in the UK if they had arrived before reaching the Buildings. It is unnecessary for us to determine the precise point of arrival. We find that the point of arrival was before coming to the Buildings.
45 299. We do not consider that Parliament intended that the holding goods in a large warehouses after they have been unloaded from a ship or aircraft, loaded on to railway wagons and then downloaded on to lorries and then to deliver to buildings or

within the UK and then stored can in the particular circumstances be storage on arrival in the UK from outside on the facts of this case.

300. Accordingly, we find that there was no storage in the buildings on arrival in the UK from outside for the purposes of section 18 CAA.

5 *Findings as to trade and section 18(1) (f)*

301. We find that there was no trade which consisted in the storage of goods or materials:

- (a) Which were to be subjected to any process; or
- (b) on their arrival in the United Kingdom from a place outside the UK.

10 **Conclusion**

302. We have found that:

- (1) There was storage of goods in the Buildings;
- (2) “Goods” in the section means the individual items and not the bulk;
- (3) Goods were not subjected to a process within the meaning of section 18 CAA;
- 15 (4) The goods were not stored to be subjected to a process;
- (5) The goods were not stored in the Buildings on their arrival in the UK from outside;
- (6) Therefore, section 18 (2) CAA did not to be considered;
- (7) The trade did not consist in matters falling section 18 CAA.

20 303. Accordingly the conditions in section 18 CAA were not satisfied. It was not argued that any of the other provisions of section 18 except section 18 (1) (e) and (f) (ii) and (iv) were in point. It was not obvious to us that any of the other conditions were fulfilled and we have not considered them in any detail. We find the section 18 requirements for IBA’s were not met in this case.

25 304. Consequently, as section 18 CAA is not fulfilled the appeal is dismissed.

30 305. 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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**ADRIAN SHIPWRIGHT
TRIBUNAL JUDGE**

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RELEASE DATE: 25 June 2012

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