[2016] UKFTT 0135 (TC)

TC04923

Appeal number: TC/2013/07347

VAT – whether appellant a body with aims of a political nature making a supply to its members in return for subscriptions - whether appellant entitled on this basis to exempt whole or part of its membership subscription – no – whether Tribunal has jurisdiction to consider applicability of ESC 3.35 – applying* BT Pension Fund - *no – appeal dismissed – comment on meaning of ESC 3.35

FIRST-TIER TRIBUNAL
TAX CHAMBER

SHANKLIN CONSERVATIVE AND UNIONIST CLUB **Appellant**

- and -

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

TRIBUNAL: JUDGE BARBARA MOSEDALE

Sitting in public at Fox Court, London on 9 September 2015 with post-hearing submissions received as directed from HMRC dated 9 October and the appellant dated 30 October.

Mr I Spencer, of Ian Spencer & Associates Ltd, for the Appellant

Ms I McArdle, Counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. The appellant ("the Club") submitted a claim for repayment of (alleged) overpaid output tax on 31 March 2011. The basis of the claim was that its membership fees were properly exempt from VAT on the basis it was a non-profit making body with objects in the public domain and of a political nature.

2. The claim covered the period 03/07 to 09/12 and was originally for £32,369 (representing output tax on the total of its membership fees in this period). The amount of the claim was revised on 13 April 2011 to reflect the fact that, since an agreement with HMRC in 2009 regarding its sports facilities and publications to which I refer below at §27, the appellant had only paid VAT on two thirds of its membership fees (from period 12/08) and it therefore needed to restrict its claim to reflect this. The amount claimed was reduced to £21,526. This amount was then further reduced by the appellant to £16,985 to reflect a reduction in the claim to being one for only 30% of the membership subscriptions.

3. HMRC formally rejected the claim in principle on 26 April 2013 on the basis that the appellant did not qualify for the exemption. The appellant requested a review of this decision. The review decision letter is dated 14 October 2013. The appellant appealed against that decision.

4. I mention in passing that this is a lead case with the appeals of four other conservative clubs stayed behind it.

Facts

5. Evidence was given firstly by Mr Philip Smith OBE, who was Chief Executive of the Association of Conservative Clubs ("ACC"). His witness statement was not really challenged although he was asked to elaborate on it: I accept his evidence and summarise it below.

Background to Conservative Clubs

6. The ACC was founded in 1894 with the aim of widening the public's political involvement and engagement with the Conservative Party. Individual conservative clubs can join the ACC and benefit from conferences, meetings and updates on club management and party political issues. The ACC provides standard rules which clubs can and do adopt. The appellant is a member.

7. The ACC publishes a monthly conservative clubs magazine which is distributed to all conservative clubs. It includes news on clubs and also sometimes (but not invariably) political articles.

8. Mr Smith was able to and did speak to conservative clubs in general: he had no particular knowledge of the appellant in this case. He explained that while there is

always political activity within such clubs, it increases as election time approaches. The clubs are focal points for local leafleting campaigns and similar electioneering; the premises of the clubs themselves are used to display posters promoting the local candidate and simply by existing to promote the Conservative Party. Clubs often host offices and meetings for local Conservative Party events; and indeed often host the meetings at which a local candidate is selected and thereafter maintain close relationship with candidate if elected MP or councillor as the case may be. Conservative clubs often make donations to the Conservative Party and to local conservative associations. (It was explained that the Conservative Party is comprised of local conservative associations).

9. Mr Smith had held various posts within the Conservative Party itself (eg Party Treasurer) as well as being chief Executive of ACC; but in addition he was Chair of CORCA. CORCA was an association of clubs in general, not restricted even to political clubs. When asked what benefit ACC provided to its member clubs, his answers showed that largely the benefit was on the 'club' rather than 'political' side: the ACC assisted clubs with management, compliance, licencing, employment tax, profitability and even with monitoring and lobbying on legislation that affected clubs.

10. He also said that social clubs of all types, including, say, the British Legion clubs, all offered very similar benefits to its members, such as bars where the cost of drinks was cheaper than in pubs. Nevertheless, the different types of club were subtly different in that their surpluses would go to different charities or other beneficiaries and there would be a difference in décor (such as conservative clubs would invariably prominently display a photograph of Lady Thatcher).

11. Mr Smith sees conservative clubs as providing a stepping stone to increased political activity by the members. He sees them as recruiters of members for the Conservative Party. He considered the administrative guidance given by the ACC to clubs as important because only a club which was financially successful could be a stable and attractive platform from which to recruit new members to the Conservative Party.

The Shanklin Conservative and Unionist Club

12. Mr Hilson also gave evidence. He has been the manager of the appellant for 23 years. This means he had day to day running of the club but policy decisions were taken by the club's management committee, of which he was not member albeit he advised them.

13. Largely, I accepted as reliable his evidence (save ignoring where he expressed opinions, such as his opinion on why people joined the club). HMRC did not accept his witness statement gave the right impression on how much political activity was undertaken within the club but accepted his answers to this in cross examination. I agree with HMRC that I should accept his oral evidence on this gave the full picture and that without the oral evidence his witness statement might have given me an erroneous impression. I summarise the evidence I accept at §§18-19. Another qualification is that I found his evidence on whether the bar was subsidised by

subscriptions or whether it generated a surplus contradictory and find that the appellant had not proved its point on this.

14. I do find from his evidence as follows: The appellant was a club with premises in Shanklin on the Isle of Wight. It was a not for profit organisation and registered for VAT. The club rule book states that the aims of the club were as follows:

> "to carry on the business of a Club and, in so doing, to promote by all proper means the principles of Conservatism, and the implementation of the Conservative Party's policies."

15. Membership of the Club did not confer on the club member membership of the Conservative Party; nor are members of the Conservative Party automatically members of the Club. To become a member of the Club requires a successful nomination by existing Club members. Moreover, an applicant must confirm on their application form that they are:

> "a Conservative in politics" and that
>
> "I will do all I possibly can to support Conservative Principles"

16. The premises which it occupied included a restaurant and two bars, and a suite which was available for hire. The Club put on live entertainment several nights every week which was free to members; occasionally it put on special entertainments at extra cost to members. It also provided sports facilities available to members comprising 2 snooker tables and 3 darts boards. Members could play organised bridge and cribbage games on the premises and had formed a skittles team. The Club let some space to a third party caterer who ran the catering facilities at the premises although later this was undertaken in-house: meals had to be paid for.

17. All members of the Club received three times a year a programme of activities at the Club. They could also read the ACC magazine which was made available at the Club premises.

The Club's political activities

18. The Club had a number of committees, including a political committee. This was open to all members who were also members of the Conservative Party. One member of this committee attended as a representative at meetings of the Isle of Wight Conservative Association. This committee coordinated some political campaigning: this was almost all in the weeks before an election and involved distribution of party political leaflets, display of party political posters and (for election day) the activities of 'tellers' (who attend poling booths and record who has voted) and help with transporting Conservative voters. In other words, the club organised and provided volunteers who undertook footwork on behalf of the Conservative Party.

19. The Club permitted local conservative MPs and councillors to hold regular surgeries at its premises. The club hosted selection events for local MP and council conservative candidates.

20. The Club also held fundraising events for the Conservative Party and its accounts showed it had raised some £50,000 over 20 years (averaging some £2,500 per year). I find, however, other evidence which indicated in the relevant years equivalent or greater amounts were raised for other non-political charities (eg McMillan cancer) by events on the Club's premises.

21. The Club also held dinners at which political speeches were given by an invited guest speaker: there was a charge for attendance with the surplus ordinarily going to the local Conservative Association.

The Club Minutes

22. The Tribunal had the benefit of the Club's Minutes of its Annual General Meetings in 2010 and 2011 and of management committee meetings in 2011. I find very little in the minutes dealing with any political matter: they were concerned with finances and the social aspect of the club. This was the case even in the AGM minutes for 2010 where there was a general election less than 2 months after the AGM. The AGM minutes contained a long address by the chairman which focussed exclusively on the members of, and social events at, the Club.

23. Reading the minutes gave the Tribunal the strong impression that the social and not political aspects of the club were what were predominant: whatever the purpose for which the Club had been established, at the period in question the main activity was the provision of social events and not the provision of participation in political activity.

24. It is true that the management committee meetings might give a biased impression as it was the social events which both incurred the greatest costs and realised the largest source of income for the Club and the Club's management of necessity would focus on these as solvency was crucial; but this was not true of the annual general meetings which would be expected to reflect the priorities of the Club. And, as I have said, the AGM minutes also gave the strong impression of the importance of the social side of the Club to the management and to the members of it. There was barely any mention of any political matter.

Website

25. The club has a website. Mr Hilson accepted, as I could see, that no political activity was offered or mentioned on the club's website. It was used to advertise the entertainment side of club. The Club also had facebook pages, which had no political entries in the election year save that the day before the election it had a video of the (now) Prime Minister and the day after the election it gave a thank you to the public in general for voting Conservative. It then returned to social events. I accepted that the Club's facebook pages were only followed by about 10% of the club's membership.

Conclusion

26. While I accept that the motive for the establishment of the Club was political, in that it was intended as a local focal point for recruiting and organising members of the

Conservative Party, and I accept that the Club did provide a forum in which members could undertake political activities, but I find from consideration of the above evidence that the most significant of its activities at the period in question was providing social amenities to its members, albeit all its members would share similar, conservative political views.

The parties' cases

27. The appellant considers that, as with sports facilities and the publications for which HMRC has given it exemption of 30% of its fees since 2009, it made available to its members services referable to its aims, by which it means that it provided its members with the opportunity to become involved in political activity. Not all members take up the opportunity, but the appellant does not consider that the optional nature of the facilities would prevent it benefiting from the VAT exemption. Use of the sports facilities and reading the available publications was also optional yet HMRC had agreed that one-third of the club's subscriptions should be exempt from VAT because of the provision of these optional facilities.

28. HMRC agreed that the mere fact political activity on part of members is discretionary does not disqualify the Club from exemption. HMRC's case is that the Club is disqualified from the exemption because in practice its main focus is social and leisure activities rather than political activity.

29. HMRC points out that although the appellant originally asked for 100% exemption of its membership fees, it modified this to ask for only a 30% apportionment. HMRC says this is an acceptance that political facilities are ***not*** its main supply and such acceptance means it cannot qualify for exemption. They also point out that the appellant's own case is that it provides ordinary club facilities as well as the ability to undertake political activity and thereby, says HMRC, is accepting that its main supply was not of political activity.

The law

30. The Principle VAT Directive Art 132(1) provides exemption for:

> "(l) the supply of services and goods closely linked thereto, to their members in their common interest in return for a subscription fixed in accordance with their rules by non-profit-making organisations with aims of a political, trade union, religious, patriotic, philosophical, philanthropic or civic nature, provided that this exemption is not likely to cause distortion of competition.

So I move on to consider whether the appellant was able to rely on this exemption.

Meaning of political

31. The appellant relies on the exemption on the basis that its aims/objects are 'political'. Neither the parties nor the Tribunal are aware of any definition in case law of 'political'. The parties were agreed that HMRC were correct in Notice 701/5 to state that 'political' in the context of the exemption meant:

> "campaigns for or against legislative and constitutional changes or campaigns in local and governmental elections"

I agree that this sums up political activity: it is about making known support either for the status quo or change to the laws of a country or region and/or support for or change to those in control of the country or region.

32. I find the aims of the club were political in so far as they were 'to promote by all proper means the principles of Conservatism, and the implementation of the Conservative Party's policies'. But that does not determine whether the appellant falls within the exemption.

Main aim?

33. The CJEU has clarified in the *Institute of the Motor Industry v CCE* [1999] 1 CMLR 326 that to obtain exemption under this provision the relevant aims must be the main aims of the body in question. In that case, the appellant in that case relied on the 'trade-union' exemption so the question was whether it was enough if the appellant had at least some aims which were those of a trade union or whether its main aims had to be those of a trade union. The CJEU ruled:

> [20] The expression 'trade-union' in that provision means specifically an organisation whose main object is to defend the collective interests of its members - whether they are workers, employers, independent professionals or traders carrying on a particular economic activity - and to represent them vis-a-vis the appropriate third parties, including the public authorities.
>
> [21] Thus, a non-profit making organisation whose main object is to defend and represent the collective interests of its members satisfies the criterion of exercising an activity in the public interest, which is the basis of the exemption set out in [the predecessor of Art 132(1)(l)], in so far as it provides its members with a representative voice and strength in negotiations with third parties.
>
> ...

In other words, the club's main aim must be political for services provided in return for the membership subscription to come within the exemption.

34. I was also referred to a UK case which made the same point: *United Grand Lodge of England ('UGLE')* [2014] UKFTT 164 (TC). At the time of the hearing this was only a First Tier Tribunal decision. The same exemption was in issue although the body was claiming to have philosophical/philanthropic/civic aims rather than a political aims. The FTT's view was that the body's principle aims had to be of the character required in the Directive else the body would not be entitled to exemption:

> "[15] But it is not enough that some of its aims, or some part of its aims fall within one or more of the listed categories because of the requirement is that the nature of the aims falls within those categories. Unless the principle part of those aims falls within one or more listed categories, its aims would not have the requisite nature. That requires

> in our view that the remainder of those aims are minor, insignificant or incidental, or ancillary to aims of the requisite character."

35. I agree with what the Judge said here. It means that a single supply by a body such as the appellant in return for its membership subscription is not exempt merely because one of its aims has the requisite political character. Since the hearing in this case, the Upper Tribunal has issued its decision in that appeal: [2015] UKUT 589 (TCC). The FTT decision was upheld and its approach here was not criticised: [60].

Must the services be referable to political aims?

36. HMRC went further and it was its case that not only did the Club's main aim have to be political but that the services supplied in return for the membership subscription had to be mainly referable to the Club's political aims. It relied on the UK enactment of the above exemption for this proposition, which is Schedule 9 Group 9 Item 1 of the VAT Act 1994. That provides:

> "the supply to its members of such services and in connection with those services, of such goods as are both referable only to its aims and available without payment other than a membership subscription by any of the following non-profit making organisations –
>
> …
>
> (e) a body which has objects which are in the public domain and are of a political, religious, patriotic, philosophical, philanthropic or civic nature, provided that this exemption is not likely to cause distortion of competition
>
> …"

37. The exemption provided by the Directive is directly effective; but neither party suggested that the exemption in the Directive was not properly implemented by the VAT Act. I note that in *British Association of Leisure Parks, Piers and Attractions Ltd* [2013] UKUT 0130 (TCC) ('BALPPA') which was a case also concerning the same exemption in the Directive, the Upper Tribunal records at [13] that neither party suggested that application of the Principle VAT Directive ('PVD'), which sets out EU law on VAT, would lead to different outcome to the UK legislation, and so the Upper Tribunal confined itself to consideration of the exemption in UK law.

38. On a superficial reading, however, article 132(1)(l) appears to exempt <u>all</u> supplies by a body with political aims, even if the supplies are nothing to do with those aims, whereas the UK law requires the services for which exemption is claimed to be referable only to its aims. But I agree with HMRC that the Directive is presupposing that the supplies are made with reference to the body's aims. Otherwise any supplies made in return for the subscription by a body with political aims would be exempt, even if it was nothing to do with the political aims. So I accept what was not in dispute, which is that services exempt under s 132(1)(l) must be services referable to the specified aims, and UK law is consistent with this.

39. Such an interpretation of Art 132 is strengthened, in my view, by the qualification to Article 132 provided by Article 134. That provides as follows:

> "The supply of goods or services shall not be granted exemption, as provided for in points …(l)…of Article 132(1), in the following cases:
>
> (a) where the supply is not essential to the transactions exempted;
>
> (b) where the basic purpose of the supply is to obtain additional income for the body in question through transactions which are in direct competition with those of commercial enterprises subject to VAT.

40. It is not entirely clear what supplies the drafter of this provision envisaged would be caught by it. HMRC's view was that the intention was to remove from exemption ancillary services which were part of an exempt single supply but which would not qualify for exemption if supplied alone. The literal wording suggests that the drafter was actually contemplating the possibility of more than one supply being made in return for the subscription, and he was simply clarifying that only the supplies with the requisite aims by such bodies qualified for exemption. Either way, however, it is clear to me that the drafters had in mind that the exemption in Art 132 should be limited to supplies referable to the requisite aims.

41. In conclusion, I consider that UK law does reflect EU law in requiring the services supplied to be referable to the body's relevant aims in order to be exempt. That means that the service(s) provided in return for the subscription would need to be referable to the body's political aims and objectives.

42. What this actually means has been considered in *BALPPA*. That case concerned the same exemption in the Directive, but a different sub-paragraph of the exemption enacted in UK law. The paragraph at issue in *BALPPA* was Group 9 item 1(d) whereas this hearing is concerned with item 1(e). Item 1(d) has a primary purpose test in UK law whereas 1(e) does not: but as I have said, for the 1(e) exemption, the services supplied in return for the membership subscription must be principally referable to aims of the specified nature if the subscription is to be exempt. That is much the same as saying the primary purpose of the taxpayer must be of the specified nature. Nevertheless, bearing this caveat in mind, what Morgan J said at [14] was as follows and is to my mind applicable here:

> "(1) …the court should adopt a strict but not a strained approach…[to application of exemption]
>
> (2) ..the purpose referred to…must be [the taxpayer's] main or principal purpose;
>
> (3) it is possible for a body to have multiple objects so that no single object could be said to be predominant or the primary purpose;
>
> (4) the primary purpose test involves an objective enquiry, not a subjective one; the matter is to be determined primarily by an examination of the stated objects and the actual activities of the body in question; the subjective views of the officers and members of the

> body may throw some light on the relevant objective enquiry but those view are not to be elevated into a diagnostic test;
>
> (5) the enquiry as to the primary purpose of the body normally involves the tribunal looking at the constitutional documents of that body and other materials from which the purposes of the body can be derived tested against the reality of what the body does

43. In other words, whether a body is entitled to the exemption requires the Tribunal to look not only at what it says in its constitutional and other document, it must also look at the reality of what it does. That is because to obtain the exemption for the services, the main aims of the body must be of the requisite nature; but alao the services must mainly be referable to those aims because if they are not, then the conclusion must be that the body's main aim is not of the requisite nature.

Underlying motive and main aims?

44. The appellant's case is that its fundamental aim or reason for its existence was to promote the Conservative Party and its principles. It pointed to its main aim as stated in its club rule book (see §14) and that its purpose in running a social club was to draw in potential recruits to the Conservative Party and to increase political participation by those who were already members (see §§6, 11, 15, and 26). Its case was even if much of what it did was providing the facilities of a social club to its members, its main aim remained political because the purpose of providing the social club facilities was, on its case, to increase support for the Conservative Party.

45. But I consider that a distinction must be drawn between motive and actions. In the well-known case of *BLP* [1995] EUECJ 4/94, the taxpayer sold shares to realise capital to support its business. The sale of shares is exempt while the taxpayer's business was fully taxable. It sought to recover the VAT attributable to the sale of the shares on the basis that fundamentally the costs of selling the shares were to support its taxable business. The CJEU held it was not entitled to recover the VAT because what mattered was that the input tax was incurred on the exempt sale of the shares and the company's ultimate purpose in selling the shares was not relevant.

46. While not completely analogous to the situation here, fundamentally the point is the same. The Club's political motives in making the supplies to its members are not relevant; what is relevant is the nature of the supplies actually made. Were those supplies directly referable to or concerned with the Club's political aims?

47. I also agree with HMRC that the fact that the members all shared a particular political point of view, and indeed that doing so was a condition of membership, did not mean that the activities of the Club were necessarily political. That is a question of what was given in return for the membership subscription.

48. So I must consider what the Club actually supplied and whether that supply or supplies was mainly referable to political aims.

Public Domain?

49. In passing I note that Item 1(e) of Sch 9 Group 9 requires the body claiming exemption to have objects which are in the 'public domain'. I was not addressed on the meaning of this. HMRC's position was that they would not make out a positive case that the appellant did not have objects in the public domain, but they did not wish the Tribunal to make a reasoned finding on the matter as HMRC might choose to argue the point in another case.

50. My view on this issue is that the exemption contained in Art 132(1)(l) is directly effective. The restriction of the exemption to bodies with objects in the public domain would therefore only be relevant to this case if it widened the exemption granted by EU law: if it narrows it, then the appellant is entitled to rely on the wider exemption in EU law. If it does no more than reflect Art 132, it is similarly irrelevant. And my conclusion is that the restriction to objects in the public domain does not widen the exemption contained in Art 132(1)(l) and therefore I do not need to consider it further.

Decision

What did the members get for their subscription?

51. The first thing I must decide is what the members actually got in return for their subscription, as that is what was supplied and for which the Club claims exemption.

52. The members got the right to attend the premises of the club with its low-price bar, read the magazines made available and the programmes posted to them, take part in the various activities, social (eg bridge club) and political (eg leafleting) and use the sports facilities (in some cases for a small charge), and (several nights a week) benefit from the free live entertainment. They could do all this in a venue where they could expect to be able to talk about political matters with people of similar political beliefs as all members had to sign up to 'conservative' principles. Supporting the club via a membership subscription also enabled the club to continue to provide free facilities to the local Conservative Association and local Conservative Party MPs and councillors, such as allowing local Conservative MPs to hold surgeries at the premises.

53. Looking at some of these benefits in detail, I consider that the right to use the Club's bar was a real benefit for members, because, although drinks had to be paid for, the bar prices were cheaper than those in a commercial establishment. As I have said the appellant's evidence on whether the bar prices were actually subsidised by the membership subscriptions was confused and they therefore failed to prove that they were not. However, I do not really consider it matters. Even if not subsidised, I consider it a real benefit of membership.

54. I also consider the right to use the sports facilities was a real benefit in return for the subscription: my understanding of the evidence is that where charges were levied, they were not intended to make a profit but to cover certain extra costs such as of lighting over the snooker tables.

55. On the other hand, the right to attend, for a charge, the extra live entertainment (not the normal free live entertainment) and the political dinners did not appear to me to be a significant benefit of membership as there was no evidence that these rights were exclusive to members and in any event tickets had to be purchased and were clearly sold in order to make a profit. For instance, members get the right to attend the 'political' dinners, but they had to pay for their ticket and the tickets of any guests. These dinners were intended to generate a profit (paid to the Conservative Association) and so the dinners themselves were neither in return for nor subsidised by the membership subscription; nor does it appear that the right to buy tickets is exclusive to members. So it cannot really be said that these dinners or extra live entertainment were in any real sense in return for the subscription, although no doubt the ability to obtain the tickets for them through the Club was a benefit of membership.

56. The appellant considered its 'political' dinners were referable to its political aims: as I have said I did not consider them a significant benefit of membership this does not really matter. Nevertheless, on the point of principle and contrary to HMRC's view, I consider the speeches would be properly characterised as political if they were about how the speaker thinks Parliament should change (or maintain) the law, or about who should or should not be elected to govern. A speech does not cease to be 'political' just because it is delivered to a receptive audience. It is still campaigning, even if preaching to the converted. However, this does not really matter as, as I have said, I do not consider attending these political dinners a significant benefit in return for the subscription.

57. I do not agree with the appellant that its fund raising events, including these political dinners, should be characterised as political just because the proceeds were paid to the Conservative Party or local conservative association. I agree with HMRC that fund-raising is not a service provided to members: where supplies are made with the intention of donating the profits to a political party, the VAT status of the supplies made is unaffected by the destination of the profits (except to the extent that exemption depends on the non-profit making status of the supplier): what matters is the nature of the supplies. But this does not really matter in this appeal as the question is what services it provided in return for the membership subscription: additional fund raising activities were not in return for the membership subscription and so are not relevant.

58. It is difficult to accurately summarise what the Club provided in return for membership subscriptions in a single sentence. It was something of a mixed bag, although it could be said in brief summary the members got the right to attend the premises, to use the leisure and sports facilities in the company with other persons of similar political views and were also given the opportunity to support and participate in political events and campaigning.

Single and multiple supplies

59. Having decided what the members received in return for their subscription, I need to decide whether the Club was making a single supply comprising all those various benefits outlined above (often referred to as a 'composite' supply), or whether

it made a number of different supplies (often referred to as multiple supplies). In the former case, the entire supply, being a single supply, would have to meet the test for exemption; in the latter case, some of the supplies could be exempt while others were standard rated.

60. As I have said, the appellant originally made its claim (see §2) on the basis that the entirety of its membership subscription income was exempt from VAT. Long before the hearing it had reduced the amount claimed to reflect its revised position that only a part (about 30%) of the membership subscription was exempt on the basis of its political objectives.

61. This reduction in claim may have been done on the basis that it considered the Concession ESC 3.35 (see below at §78) should be applied. I consider the concession below; here I consider whether the taxpayer is entitled to exemption of the whole or part of the membership subscription under Art 132(1)(l).

62. HMRC said that the appellant had to be taken to have accepted that there was a single supply in return for the membership subscription because the appellant had relied on HMRC's ESC (discussed below) to obtain exemption on the provision of sports facilities (see §2). The ESC permitted an otherwise single supply to be apportioned. I do not agree with HMRC's rationale here: although the ESC would be necessary to justify the exemption for the sports facilities if there was a single supply involving other elements, if there was a multiple supply, the supply of sports facilities could be exempt without the need for the concession. So the appellant's entitlement to recover VAT on sports facilities might not depend on the supply being a single supply.

63. So I will consider whether there was a single or multiple supply as a matter of law: I do not consider the appellant has conceded anything on this by accepting the 30% exemption for its sports facilities.

64. HMRC's position is that there was a single supply of membership of the club, including the right to use its facilities, being the sports and leisure facilities, and to join in any political activity promoted by Club. HMRC rely on *Chipping Sodbury Golf Club* [2012] UKFTT 557 (TCC) at §71 as persuasive if not binding authority for saying that a membership subscription is a single supply.

65. I don't find the *Chipping Sodbury* case of particular relevance because the club concerned was a golf club and the nature and relationship of the benefits provided for membership were not really comparable to those in this case. So although I was not referred to the leading authorities on when there is a single or multiple supply I refer to them to decide this issue. Those authorities are that there will be a single supply where either:

> (1) One or more elements of the supply comprised a principle element and the other elements were ancillary to it in the sense that they were not an end in themselves but a means of better enjoying the principle element (as per *CPP* C-349/96 [1999] STC 270 at [30]); or

(2) Two or more elements of the supply were so closely linked that objectively they formed a single indivisible supply which it would be artificial to split (as per *Levob* C-41/04 [2006] STC 766.

66. Here I do not consider that any element of the supply(s) made by the club in return for the membership subscription can be fairly said to be a principle element so this Tribunal is not concerned with *CPP*-type of single supply (if any). Different elements of the mixed bag of supplies may have had greater significance to different members, but overall I find that none of the more significant elements, such as the right to attend the premises with its low-cost bar and free live entertainment, the right to use its sports facilities, the right to participate in political events and activities, could be said to be ancillary to any of the others. (I have already dismissed the appellant's case on the relevance of its motive in supplying some of the facilities).

67. But I do think that here there is a 'table top' or *Levob*-type single supply. It is not just that a single fee is paid and that it is not possible to be entitled to one benefit without being entitled to them all: it is also clear that the leisure and political activities provided by the club are inextricably linked. For instance, by attending the premises and benefiting from the free live entertainment or using the bar, the member might also be able to join in political discussion; and the payment of the subscriptions permit the premises to be operate as a conservative club, thus facilitating (for example) coffee mornings to benefit McMillan nurses and also political surgeries by the local Conservative MP.

68. In conclusion, I agree with HMRC that the membership subscription was in return for a single supply which comprised indivisible elements it would be artificial to split. It was a single supply and so I reject the appellant's case that an element of the membership subscription was in return for a single supply comprising just the political elements of the overall supply. There was, on the contrary, a single supply comprising multiple elements, outlined at §§51-58 above. Single supplies cannot in law be apportioned (save in the rare circumstance, entirely inapplicable here, involving zero rates and as explained by the CJEU in *Talacre Beach* [2006] EUECJ 251/05*)*.

69. As it was a single supply in return for the membership subscription, I cannot divide up the supply into different elements, treating those 'political' elements as exempt and any non-political elements as standard rated. I must look at it as a single supply and apply the test for exemption to that single supply.

70. In particular, this means that it is irrelevant that HMRC already treated one third of the subscription fee as zero rated/exempt: as this was a single supply it would be wrong to ignore the benefits provided in return for the membership subscription which are already treated as exempt/zero rated and simply ask whether the remainder are entitled to exemption. The question is whether <u>all</u> the services, all being part of the same single supply, rendered in return for the membership subscription, are primarily referable to the club's political aims. So when considering that question, I include the sports facilities and publications in the benefits provided in return for the subscription.

71. It is not necessary for all elements of that single supply to be referable to political objects, but they must mainly be referable to political objects. I agree with what Judge Hellier said in *UGLE* in the FTT:

> "In this context, we note that Article 132(1)(l) relates to services supplied to members 'in their common interest' by a body with the requisite aims. It seems to us that these words suggest that the activities of the organisation – including the supplies it makes – need not be limited to those in direct pursuit of its aims. Thus a body brought together to campaign for a political party is not disqualified from being treated as having political aims because it supplies to its members a newsletter, or certificates of membership or even cups of tea during its meetings. On the other hand, if the supplies made for the benefit of the members constitute the majority of its activity and are not directly related to a requisite aim, it may, in our view, be permissible to conclude that the aim of providing them has overtaken any external aim of the body.

Was the supply provided by the Club mainly referable to political objects?

72. So, as the supply in return for the subscription was a single supply, I have to consider all of the benefits received in return for the subscription and consider if they were mainly referable to the Club's political aims.

73. I note that originally HMRC said that the benefits were not referable to a political aim where political activity by the club's members was not compulsory. By the time of the hearing, HMRC no longer pressed this submission. I agree with the appellant that it is wrong. Taking up the benefits of membership does not have to be compulsory in order for the services supplied to come within the exemption.

74. So the question is whether the benefits provided as listed above at §§51-58, all being part of a single supply, were mainly or primarily referable to political aims.

75. I find that the emphasis of the club was on the social rather than political side. I find the political benefits to the members were not the main aim of the club in the period in question. I reach this conclusion taking into account in particular that the non-political benefits were extensive (such as the very frequent live entertainment, access to premises with a cheap bar, the sports facilities) and that the political benefits appeared from the minutes to be of significantly less importance to the members and tended mostly to occur only around election time. Indeed, while I accept the management committee would concentrate on financial and practical matters, the very few references to political matters in the minutes of the club's AGM is striking. I conclude that the social benefits of club membership were at least as, if not more, important as the political side: while it is no doubt true to say that the taxpayer would not have come into existence were it not for its political aims, nevertheless the impression I gained is that at the period in question its social benefits were at least as much the reason as its political aims for its continued existence. It was not possible to say at the period in question that the membership subscription was for services mainly

referable to the club's political aims; it seems to me they were paid more for the social services provided.

76. The effect of that finding is that the supply made in return for the membership subscriptions was not within Art 132(1)(l) (or the UK equivalent of Sch 9 Group 9 Item 1(e)). It comprised a single supply which did not have a predominant element which was referable to political aims, albeit a part of the supply was referable to political aims. The conclusion might be different for other political clubs, but only if the facts were significantly different.

Relief under Art 134?

77. In its post-hearing submissions the Club suggested that Art 134 worked both ways: permitting a part of a single supply to be exempt as well as removing a part of a single supply from exemption. This is clearly quite wrong. I have set Art 134 out at §39 above: it clearly only operates to remove supplies from exemption as it provides 'shall not be granted exemption'….. Art 134 does not have the effect the Club contends.

The Concession

78. The Club sought, in the alternative, to rely on the concession under which HMRC have already agreed about 30% of its subscription income is exempt as reflecting exempt sports supplies and zero rated supplies of publications. ESC 3.35 provides as follows:

> "Where a membership body supplies, in return for its membership subscription a principal benefit, together with one or more ancillary benefits, it will normally have to treat the subscription as being in return for that principal benefit. This means that the body will have to ignore the liability to the VAT of the ancillary benefits and account for VAT on the whole subscription based on the liability to VAT of that principal benefit.
>
> However bodies that are non-profit making and supply a mixture of zero-rated, exempt and/or standard rated benefits to their members in return for their subscriptions, may apportion such subscriptions to reflect the value and VAT liability of those individual benefits, without regard to whether there is one principal benefit. This concession may not be used for the purpose of tax avoidance."

79. The appellant considers that (as I have said) a further 30% of its subscription reflects services which are referable to its political aims. I have found that services referable to its political aims are not the main or principal service supplied but have not gone so far as to put a percentage on what part of the supply is referable to political aims.

80. Accepting that some percentage of the supply is referable to the club's political aims, can the club rely on this concession to obtain exemption for that percentage?

81. HMRC's position is that the appellant cannot rely on the concession in this tribunal and that in any event (1) the concession would not apply to exempt only a proportion of a single supply where the Art 132(1)(l) exemption is relied upon and (2) concessions cannot be relied on retrospectively.

Jurisdiction?

82. The appellant wished me to ignore the concessionary status of ESC3.35 and treat it as part of the law of the land the basis (they said) HMRC in permitting them to rely on it in relation to their sports facilities and publications had not made it clear that it was merely a concession.

83. I am unable to do this. The Tribunal must apply the law and the concession is not part of the law; the appellant could only rely on it at all to the extent it gave rise to legitimate expectations under public law, and then only in a court or tribunal permitted to take public law considerations into account.

84. The High Court decision in *Oxfam* [2009] EWHC 2078 indicated that appellants could rely on legitimate expectations in this Tribunal and I have expressed the view in previous decisions that concessions are justiciable in this Tribunal: see *L H Bishop and others* [2013] UKFTT 522 (TC). But since those decisions the Court of Appeal has ruled on the matter in *The Trustees of the BT Pension Scheme* [2015] EWCA Civ 713. The Court said at paragraph 142:

> "the statutory jurisdiction conferred upon the FTT by s 3 TCEA 2007 [Tribunals, Courts and Enforcement Act 2007] is in our view to be read as exclusive and the closure notice appeals under Schedule 1A TMA do not extend to what are essentially parallel common law challenges to the fairness of the treatment afforded to the taxpayer. The extra-statutory concession is, by definition, a statement as to how HMRC will operate in the circumstances there specified and its failure to do so denies the legitimate expectation of taxpayers who had been led to expect that they would be treated in accordance with it. We are not concerned as in these statutory appeals with the direct application of the taxing instrument modified, or otherwise, by a relevant principles of EU law. The sole issue in relation to ESC B 41 is whether it was fairly operated in accordance with its terms.
>
> [143] We therefore consider that the reasoning of Sales J in *Oxfam v HMRC* has no application to the statutory jurisdiction under s 3 TCEA in the sense of giving to the FTT and the Upper Tribunal jurisdiction to decide the common law question of whether HMRC has properly operated the extra-statutory concession. The appeals are concerned with whether the Trustees are entitled under s 231 to claim the benefit of the credits on FIDs and foreign dividends. Not with what is their entitlement under ESC B41. This reading of TCEA 2007 is strengthened by s 15 TCEA which gives the Upper Tribunal jurisdiction to decide applications for judicial review when transferred from the Administrative Court. It indicates that when one of the tax tribunals was intended to be able to determine public law claims

> Parliament made that expressly clear. There are no similar provisions in the case of the FTT.
>
> (my emphasis)

85. In summary, the Court decided that the Tribunal Courts and Enforcement Act 2007 ("TCEA") did not confer on this Tribunal jurisdiction to consider matters of public law. The law of precedent applies in the Tribunal: the Court's decision here was not obiter and is therefore binding unless (a) it can and ought to be distinguished or (b) it was per incuriam.

86. Is it per incuriam? The Court of Appeal's decision was that the TCEA must be interpreted as meaning that Parliament did not intend to permit this Tribunal to consider matters of public law when considering the lawfulness of an assessment or other decision under appeal. My view in the past has been that Parliament's intentions would have been more nuanced. There are different aspects to public law challenges and I considered that while Parliament would not have intended this Tribunal to consider a general allegation that although a taxpayer was liable to a particular tax imposed by Parliament it was unfair of HMRC not to relieve them from liability (as HMRC as a matter of public law have power to do), there were other aspects of public law which Parliament did intend the Tribunal to consider. The Court of Appeal appeared to give no consideration to a nuanced approach and did not consider some caselaw in this area. There were at least two areas of case law not considered.

87. Firstly, the Court of Appeal gave no express consideration to the House of Lords decision in *Winder* [1985] AC 461 and *Boddington* [1999] 2 AC 143 and the Court of Appeal decision in *Pawlowski* [1999] STC 550. These cases establish that an appellant cannot rely on its own unlawful act in proceedings against a defendant. However, while it might seem obvious that HMRC ought not to be able to rely on their own unlawful act in imposing a tax liability on a taxpayer, even in this Tribunal, I do not think it can be said that the Court of Appeal's decision in *BT Pension Fund* was actually per incuriam for failing to consider this line of cases. This is for a number of reasons: technically (if not practically) a taxpayer is the appellant (and not defendant) in this Tribunal so this line of cases does not necessarily apply; more importantly these cases were clearly known to the Court of Appeal in *BT Pension Fund* as they cited a passage from *Oxfam* which expressly mentioned them (see paragraph 140 of *BT Pension Fund*).

88. The other line of cases not considered by the Court in *BT Pension Fund* was that dealing with whether this Tribunal is bound to apply unlawful secondary legislation. Determining whether secondary legislation is unlawful is seen as a matter of public law. When taxing a taxpayer using secondary legislation, a challenge to the legality of that legislation is a public law challenge. In *BT Pension Fund* the ratio seems to be wider than mere cases of legitimate expectation; the ratio appears to be that the TCEA does not permit this Tribunal to hear any public law challenge. Yet both the House of Lords and Court of Appeal in earlier cases (*Foster v Chief Adjudication Officer* [1993] AC 794 *and EN (Serbia)* [2009] EWCA Civ 630) have decided that a Tribunal can do so because it is implied that when considering the lawfulness of a matter,

Parliament must have intended the unlawfulness of any secondary legislation to be taken into account.

89. However, again, while it is regrettable that the Court of Appeal in *BT Pension Fund* did not have its attention drawn to this line of authority, firstly the earlier cases did not consider the taxing statutes at issue in this appeal and secondly, the first case preceded the TCEA and the second did not consider it. While the views expressed in those cases may have been persuasive, I do not think they could be said to bind the Court of Appeal in *BT Pension Fund* and so technically its decision was not per incuriam and must be followed unless it is right to distinguish it.

90. Should *BT Pension Fund* be distinguished? The case concerned an ESC in a direct tax context. It could be said that the court's ruling was not intended to apply in a VAT context as the Court expressly chose not to consider s 83 VATA (the section which gives appellants rights of appeal to this Tribunal in VAT matters, and which right the appellant is exercising here). Indeed, the Court of Appeal did not overrule *Oxfam*: because it was not relevant to the case before them they had not had any argument on whether the position might be different for VAT cases and so they expressly chose not to consider whether *Oxfam* was rightly or wrongly decided. The above extract from the decision of the Court of Appeal was preceded by this paragraph:

> [141] We have heard no argument about s 83(1) VATA and therefore express no view about the correctness or otherwise of the judge's interpretation of that section. But, in agreement with the Upper Tribunal, we do not consider that the decision in *Oxfam v HMRC* should be treated as authority for any wider proposition and we reject the suggestion that the reasoning of Sales J can or should be applied to the jurisdiction of the FTT and the Upper Tribunal to determine the appeals in this case.

91. Whatever my previously expressed views on the justiciability of ESCs in this Tribunal, I must now take the law to be as expressed by the Court of Appeal in [142-3] of *BT Pension Fund*. Their decision was, it seems to me, based on an interpretation of the TCEA, which is the Act which confers jurisdiction on this tribunal in both direct and indirect tax matters. There would be no reason to distinguish this case from *BT Pension Fund* merely because it concerned indirect rather than direct taxes.

92. The only material difference, in my view, between VAT cases and others is that the European Communities Act has to a great extent subordinated English VAT law to EU VAT law. My view is that this is what the Court of Appeal had in mind when refusing to consider whether or not what they said in *BT Pension Fund* would have applied in the case of *Oxfam*. Indeed, the Court of Appeal virtually said this expressly in paragraph 142 where in the penultimate sentence they refer to the principles of EU law (see section underlined in §84).

93. So it seems to me the Court of Appeal were recognising that the TCEA had to be read in a way consistent with the European Communities Act and that might mean (although they did not rule on this) that if EU law would in a particular context give

effect to legitimate expectations of taxpayers in a VAT context then the TCEA may have to be read as giving this Tribunal jurisdiction to also give effect to them.

94. The issue in *Oxfam* was whether the Tribunal should give effect, not to an extra-statutory concession, but to a bespoke partial exemption method agreed by the taxpayer with HMRC. While the PVD gives HMRC the freedom to agree a wide variety of partial exemption methods, I consider it likely that the Court of Justice of the European Union ('CJEU') would consider HMRC bound by a method properly agreed to, as the CJEU has never recognised a distinction between statutory law and administrative law, giving equal effect to both.

95. So even if it is correct to see *Oxfam* as rightly decided in its particular circumstances and that this Tribunal must give effect to legitimate expectations in line with the PVD (even where there is no direct effect, such as with a bespoke partial exemption method), that does not help the taxpayer here. The Club wishes to rely on an ESC that actually flies in the face of the PVD. The ESC allows taxpayer to divide up a single composite supply and tax it as if it were a bundle of separate supplies (see §§107-8 below): the PVD does not permit this (save in that rare circumstance recognised in *Talacre* and which does not apply here). While the CJEU, I think, might well hold HMRC to a concession consistent with the PVD (even where there is no direct effect), they would not hold HMRC to a concession inconsistent with the PVD.

96. In conclusion, I do not think that *BT Pension Fund* can be distinguished where the taxpayer seeks to rely on an ESC which is inconsistent with the PVD as this one here is. *Oxfam* was distinguished by the Court of Appeal, in my view, because it was applying principles of EU law. Here, on the contrary the Club is not relying on EU law principles: on the contrary it relies on a concession which is inconsistent with EU law. So with regret I must find that the club cannot rely on its legitimate expectations (if any) arising from ESC 3.35 in this Tribunal.

97. The appellant wished me to refer the point to the CJEU, but I can see no issue on which the CJEU might rule in the appellant's favour. The significant point is that ESC 3.35 runs contrary to the PVD and its rules on single supplies. The CJEU is bound to rule that it cannot be relied upon as a matter of EU law. So a reference would not determine anything that might affect the outcome of this case, even though a reference might one day need to be made if a taxpayer seeks to rely on a concession consistent with the PVD.

Retrospective reliance

98. Having decided that I do not have jurisdiction to consider whether the appellant can rely on the ESC, I do not therefore need to consider HMRC's second point which was that even if the ESC was enforceable in this Tribunal, the taxpayer could not rely on the ESC retrospectively as they sought to do here. Nevertheless, I will consider the matter as the taxpayer may wish to take its case to the Adjudicator: this may be the only avenue open to it as it cannot hold HMRC to its published policy in this Tribunal and a judicial review action may be beyond its financial reach and/or out of time.

99. While the Adjudicator may not take the same view of the law and the interpretation of the concession as this Tribunal, but nevertheless it may be helpful to set down my views on this. And they are as follows. Although I was given few submissions and referred to no authority on this matter, it seems to me that the basis of HMRC's reliance on the importance of the prospective use of an ESC is that its enforceability as a matter of law depends on public law: in other words, the taxpayer's claim relies on its legitimate expectation arising out of HMRC's published policy. Enforceable legitimate expectations in common law normally require the person to show that they relied on something (in this case, HMRC's ESC) to their detriment: in other words, but for the act of the other party, the person would have acted differently.

100. But if the taxpayer (like the Club in this case) does not rely on the published ESC but pays tax in ignorance of it, he cannot be said to have relied on any expectation arising from the ESC. While overpaying tax was detrimental to the club, it was not its reliance on the ESC which led to the detriment but its *failure* to rely on the ESC which was detrimental.

101. Having said that, it seems that while so called detrimental reliance is an integral part of the common law of restitution and legitimate expectations, in public law it seems that detrimental reliance on the representation by the public authority is not always required (for example, see *R v Secretary of State for the Home Department, ex p Khan* [1985] 1 All ER 40 at 48, [1984] 1 WLR 1337 at 1347, CA, per Parker LJ, and at 52 and 1352 per Dunn LJ).

102. I was not addressed on this line of cases so reach no concluded view on whether on the facts of this case as a matter of public law the appellant would be unable to rely on the ESC because its reliance is retrospective. But I draw attention to it because the law on this is not as clear as HMRC claim.

Would the concession apply in any event?

103. It was in any event HMRC's position was that the appellant was not within the terms of the concession and could not benefit from it prospectively or retrospectively, and that was why they would not apply it to the Club's benefit. As the ESC is not justiciable in this Tribunal for the reasons stated above, my views on whether the appellant is within the terms of the ESC are irrelevant. Nevertheless, as with the question of retrospectivity, I will explain the point as that might be useful to the Adjudicator should the appellant chose to pursue this matter in that forum.

104. HMRC's position is that although the concession itself permits exemption of a part of a single supply, the Art 132(1)(l) exemption itself only applies where the requisite aim is the main or principal aim of the taxpayer. In other words, where the supply is only partly referable to the requisite aim, by definition that supply cannot be exempt.

105. The appellant considers HMRC's view irrational. HMRC has already accepted that the appellant's supply of sports facilities is a part of an overall single supply which is membership of the Shanklin Conservative Club and which cannot be characterised overall as a supply of sports facilities. Nevertheless, HMRC consider

that the concession applies to that sports element of the membership subscription. Why should the political exemption be different to the sports exemption?

106. I consider that that depends on the proper interpretation of the concession. How should the concession be read? A concession by its nature is not legislation. This concession is particularly difficult to interpret because the author of it lacked precision. It says

> 'bodies that … supply a mixture of zero-rated, exempt and/or standard rated benefits to their members in return for their subscriptions, …."

may benefit from the concession; but this makes absolutely no literal sense as it ignores the fact that concession clearly only applies where there is a single supply so by definition the bodies are *not* supplying a mixture of zero rated exempt and standard rated benefits in return for the subscription. They are making a single supply at a single rate.

107. So it seems to me that the only way to interpret it is to assume that words are missing. Readers are meant to understand the above phrase as referring to bodies which would supply a mixture of zero-rated, exempt and/or standard rated benefits *were it not for the rules on single supplies.* This makes perfect sense as the drafter used the first paragraph to describe the rules on single supplies (as per *CPP,* see §78 above*).* So the concession should be read as:

> 'bodies that are non-profit making and *would make a* supply *of* a mixture of zero-rated, exempt and/or standard rated benefits to their members in return for their subscriptions *were it not for the above rules on single supplies*, may apportion such subscriptions to reflect the value and VAT liability of those individual benefits, without regard to whether there is one principal benefit. …" (added words in italics)

108. In other words, the only logical interpretation of the concession is that it envisaged taxation on the basis that a single composite supply was divided up into its elements, which were taxed as if they were separate supplies.

109. If the effect of the concession is to split a single, overall supply into separate supplies, in other words to treat a single supply as a multiple supply, then I agree with the appellant that HMRC's position makes no sense. Because even if the overall single supply made by a taxpayer such as the appellant is not principally referable to political aims, if an element that is principally referable to political aims is split from the overall single supply and treated as a supply in its own right, that supply would then be exempt as referable principally to political aims. It would be no different to the supply of sports facilities: as part of an overall single supply, the supply of sports facilities is not exempt; if by concession it is treated as a separate supply, however, then the nature of that supply (made by an appellant such as in this case) is exempt.

110. HMRC said that the sports exemption is distinguishable from the one at issue in this appeal on the basis that the exemption for sports facilities does not expressly require the overall supply principally to be of sports facilities whereas the exemption claimed in this case does expressly require the supply to be principally referable to

political aims; accepting that only an element of the supply is so referable automatically disqualifies it from exemption. But whether or not the exemption expressly requires the supply to be principally of (or referable to) the exempt activity, that is the requirement of VAT law. A supply of sports facilities can only be exempt if that supply is principally of sports facilities. Whether or not this is expressed within the exemption is irrelevant. And it is not expressed in art 132 in any event.

111. I reject HMRC's interpretation of the concession. I consider that the concession was intended to apply wherever an element of a single composite supply, would, if supplied separately, be exempt. In this case were that element of the single supply referable to the club's political aims supplied separately, it would be exempt. It is therefore entitled to the exemption under the concession.

112. As I was not addressed on the appropriate percentage and as the parties appeared to consider that this could be negotiated, I make no comment on that aspect of the claim.

113. I must dismiss the appeal on the basis that the appellant does not meet the legal criteria for exemption of the whole or any part of its supply in return for its membership subscriptions; I also dismiss its claim that it is entitled to exemption for a part of its supply under the ESC, on the grounds that I do not have jurisdiction to consider that aspect of its claim. Nevertheless, I have expressed the non-binding view that a proportion of its subscription would be entitled to exemption under the ESC but have expressed no view on whether the retrospective nature of its claim means that it cannot rely on the ESC. The appellant's options if it wishes to pursue the question of the ESC is to lodge an action for judicial review, for which they are strict time limits, and/or lodge a complaint with the Adjudicator.

114. 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.

BARBARA MOSEDALE
TRIBUNAL JUDGE

RELEASE DATE: 25 FEBRUARY 2016