[2017] UKFTT 86 (TC)

TC05604

Appeal number: TC/2014/05557

VALUE ADDED TAX – zero-rating – whether plants producing edible flowers, and seeds and plug plants relating thereto, are "food" – no – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

BRANDED GARDEN PRODUCTS LIMITED **Appellant**

- and -

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

TRIBUNAL: JUDGE JONATHAN RICHARDS
PETER DAVIES

Sitting in public at The Royal Courts of Justice, Strand, London on 16 December 2016

Hilary Waters of KPMG LLP for the Appellant

Sarabjit Singh, instructed by the General Counsel and Solicitor to HM Revenue & Customs, for the Respondents

DECISION

1. The appellant company (the "Company") is a subsidiary of Thompson & Morgan Group Holdings Limited ("TMGH"). The Company's business consists primarily of selling Thompson & Morgan branded packeted seeds, plants, gifts and related horticultural products. In this consolidated appeal, the Company appeals against decisions that HMRC have made to the effect that the Company's supplies of certain plants, and seeds for plants, that produce edible flowers are standard-rated for VAT purposes. The Company considers that the supplies in question are zero-rated for VAT purposes on the basis that they fall within Group 1 of Schedule 8 of the Value Added Tax Act 1994 ("VATA 1994") which applies to food.

Evidence

2. The Company relied on evidence of the following witnesses of fact:

(1) John May, who has previously been the Chief Executive of TMGH and has, since July 2014, been the Deputy Chairman of TMGH;

(2) Peter Wrapson, who was, for nine years, the Head Gardener at Jamie Oliver's private residence; and

(3) Dr Alistair Griffiths, who is the Director of Science and Collections at the Royal Horticultural Society.

HMRC did not rely on witness evidence.

3. Prior to the hearing, there had been some discussion between the parties and the Tribunal as to whether Dr Griffiths was giving expert evidence or not. At the hearing, Ms Waters agreed that his evidence was not being tendered as expert evidence as the Tribunal was not being invited to accept that his expertise on horticultural matters meant that we should accept opinion evidence that he gave. Rather, the Tribunal was being invited to accept his factual evidence and he was in a position to give that factual evidence because of his previous experience of horticultural matters.

4. Mr Singh only wished to cross-examine Dr Griffiths, and therefore the evidence of Mr May and Mr Wrapson was not challenged.

5. We also had evidence in the form of a bundle of documents.

The decisions under appeal and the background to them

6. HMRC have published VAT Notice 701/38 dealing with the VAT liability of seeds and plants (the "Notice"). Section 5.2 of the Notice contains some guidance on the VAT treatment of seed varieties that are used to grow plants that produce edible flowers. In the Notice, HMRC specified what they described as an "exhaustive list" (the "HMRC List") of flower seed varieties that could be zero-rated on the basis that they produced flowers for human consumption. The Notice stated that seeds falling

within the "exhaustive list" could be zero-rated provided that they are "held out for sale" as food of a kind used for human consumption. HMRC gave guidance on what this concept involved.

7. On 1 October 2009, the Company wrote to HMRC explaining that it sold over 100 varieties of flower seeds that were not on the HMRC List but which it considered produced edible flowers. With its letter, the Company attached a schedule (the "Company's Initial List") listing the varieties of seeds in question (with their Latin names) and the product code for those seeds as they appeared in the Company's catalogues. The Company asked HMRC to consider expanding the "exhaustive list" to include the seed varieties on the Company's Initial List.

8. On 4 February 2010 (although HMRC incorrectly dated their letter as 4 February 2009), HMRC replied to the Company's letter of 1 October 2009. In that letter, HMRC wrote:

> In principle, it is agreed that in addition to the list in paragraph 5.2 of Notice No 701/38 there are further types of flower seeds that are capable of producing flowers that can be suitable and used for human consumption.
>
> However, the main criteria is that any such seed variety must be held out for sale as food of a kind used for human consumption.

HMRC then quoted their guidance in the Notice as to what "holding out" for sale as food involved and concluded their letter:

> It is therefore acceptable for you to zero-rate the items that are on the list you submitted with your letter provided that the above conditions [as to "holding out"] are met.

9. On 16 November 2011, the Company notified HMRC that they sold other seeds (the "Company's Second List"), not included on the Company's Initial List that produced edible flowers. (We refer to the Company's Initial List and the Company's Second List together as the "Company's Lists".) The Company confirmed to HMRC that these additional varieties would be "held out" for sale as food of a kind used for human consumption and asked HMRC to acknowledge the additions to the Company's Initial List.

10. On 2 March 2012, HMRC replied in a letter including the following paragraph:

> As I have previously confirmed to you, HMRC will not be adding to the list that is detailed at paragraph 5.2 of Notice 701/38. However, if you are selling seeds that produce flowers that are of a kind used for human consumption and the conditions in paragraph 5.2 are met you may zero-rate such products. I must point out though that this is not a blanket approval to zero-rate the items mentioned in your letter as you will need to ensure that you are able to demonstrate if required that the items are of a kind used for human consumption.

11. The correspondence referred to at [7] to [10] above related only to seeds. On 30 May 2012 the Company wrote to HMRC with a request for clarification as to the

VAT treatment of "plug plants"[1] (which grow into mature plants that produce edible flowers) and mature potted plants which produce edible flowers. That resulted in a further chain of correspondence.

12. On 15 September 2014, HMRC expressed their conclusion on the Company's request for clarification of the VAT treatment of plug plants and mature potted plants. In that letter, HMRC referred to the lists of varieties that the Company had provided and said that:

> …many of them appear to be good garden plants that are popular for their decorative effect, for example in summer bedding schemes, rather than varieties bred for eating…
>
> The test is whether these products are ordinarily used for food by people growing them in the UK, or are ordinarily used as something else, such as bedding plants.
>
> HMRC does not accept that a pamphlet explaining the edible properties of flowers means that the products are being marketed as food. Clearly, the customer can still admire the floral display, but can also eat the flowers if he so wishes. However, this does not mean that garden flowers are within the ordinary meaning of food.

The conclusion that HMRC expressed was that "these plants" (which in context we have taken as meaning the plant varieties on the Company's Lists) when sold in the form of plug plants or mature potted plants were not zero-rated by virtue of Item 1 or Item 3 of Group 1 (Food) of Schedule 8 of VATA 1994. HMRC's letter concluded by notifying the Company of its right to appeal against HMRC's decision.

13. Having reached the conclusion set out at [12] in relation to plug plants and mature potted plants, on 5 December 2014, HMRC wrote to the Company in relation to the VAT treatment of seeds. They concluded that:

> HMRC's current view, as notified in [their letter of 15 September 2014] is that these varieties of plants do not fall within the ordinary meaning of the word food and therefore do not qualify to be zero-rated for VAT purposes. HMRC considers that the predominant use of these plants is as garden plants that are used for ornamental purposes.

The letter went on to say:

> I have reviewed the 'seeds' ruling and have reconsidered whether these seeds produce 'food' of a kind [used] for human consumption… I consider that these seed varieties produce plants that would predominantly be considered to be used for ornamental purposes within a garden environment.
>
> …

[1] Mr May in his witness statement explained that these are small plantlets that are about one inch in height.

> In order to allow you sufficient time to amend the VAT codes in respect of the seeds at points of sale throughout your business the effective date of this ruling is 1st January 2015.
>
> If you disagree with this decision you can appeal direct to the tribunal within 30 days of this notice.

Although HMRC did not specify in their letter specifically what seed varieties and plants they were referring to, we consider that viewed in context, their letter was concluding that all seeds of varieties referred to in the Company's Lists should, from 1 January 2015, be treated as standard-rated.

14. The Company has appealed to the Tribunal against HMRC's decisions set out at [12] and [13] and its two appeals have been consolidated. However, the parties had a difference of opinion as to precisely what decision was being appealed against and precisely what power the Tribunal had. Ms Waters believed that HMRC's decisions would be appealable decisions even if the Company had not provided the Company's Lists setting out specific varieties of plants with which it was concerned. She therefore submitted that the Company was appealing against HMRC's general statements in their respective decisions as to the scope for supplies of potted plants, plug plants and seeds to be zero-rated. She therefore invited the Tribunal to release a "decision in principle" that would set out the tests that needed to be satisfied in order for these supplies to be zero-rated, with further Tribunal proceedings to follow if the Company and HMRC could not agree on how the decision in principle should be applied to particular varieties. By contrast, Mr Singh submitted that the Company was appealing against HMRC's determination that supplies of particular seeds, potted plants and plug plants (those contained within the Company's Lists) are standard-rated for VAT purposes. It followed, in Mr Singh's submission, that in order to succeed in its appeal, the Company needed to satisfy its burden of proving that supplies of those particular items are zero-rated and, if the evidence it was putting forward was insufficient, its appeal would fail.

15. We prefer Mr Singh's submissions. This is an appeal brought under s83(1)(b) of VATA 1994 relating to the "VAT chargeable on the supply of any goods". In *Odhams Leisure Group Ltd v Customs and Excise Commissioners* [1992] STC 332, McCullough J held that an appeal under the predecessor provision of the Value Added Tax Act 1983 gave the VAT Tribunal no jurisdiction to consider the VAT liability of future supplies. In reaching this conclusion, he applied by analogy, the practice of the courts in not considering hypothetical questions. We consider a similar principle should apply in this appeal. In order to determine the "VAT chargeable on any supply of goods", we need to understand precisely what supplies of goods are relevant and the conclusion that we reach then relates to those supplies. That is not consistent with Ms Waters's request that we deliver a decision on matters of principle that is then applied, as a second stage, to specific supplies.

Findings of fact

16. The Company sells branded packeted seed, plants and related horticultural products to recreational gardeners by mail order, over the internet and through garden

centres in the UK and worldwide. It also supplies other seed businesses and commercial growers with seeds and plant material from its breeding and production activities.

17. The Company distributes over 10 million printed catalogues per year that contain details of its product range. It also maintains a detailed website which also contains full details of its product range to enable it to make sales over the internet.

18. Mr May exhibited to his witness statement a list of 70 plant varieties (the "John May List") which he considered to be the varieties of plant for which the Company was claiming zero-rating. A number of the varieties listed in the John May List were accepted, in the Notice, to be eligible for zero-rating. The Company's Lists and the John May List used a mixture of Latin and common names for plants, so it was not entirely straightforward to reconcile them. Dr Griffiths accepted in cross-examination that of the 47 or so varieties listed on the first page of the John May List, only 5 or 6 appeared on the Company's Initial List. He was not asked, in re-examination, the extent to which varieties on the John May List appeared in the Company's Second List. Our overall conclusion is that a large number of varieties set out on the John May List did not appear at all on the Company's Lists.

19. The Company's sales catalogues, websites and seed packaging all mark varieties of plant on the John May List (whether offered for sale as seeds, plug plants or plants) with a special "e" symbol denoting that the Company considers that parts of the plant are edible.

20. Whenever a potted plant or plug plant on the John May List is sent by post to a customer of the Company, the order is accompanied by a booklet that the Company produces (the "Edible Flowers Guide"). The Edible Flowers Guide includes general advice on edible flowers, specific comments and warnings about particular varieties and recipes using edible flowers. The Edible Flowers Guide also appears on the Company's website. The Company allows Tesco to use a version of the Edible Flowers Guide on its own website.

21. Seeds for plants on the John May List are in many cases sold in packets prominently displaying the words "Edible Flower". In addition, the packaging for such seeds often provides purchasers with information on how to eat the flowers (for example a suggestion that they might be added to green salads) and invites purchasers to write to the Company in order to obtain a copy of the Edible Flowers Guide.

22. The Company works closely with the Royal Horticultural Society to ensure that plants that are held out as edible are indeed edible. The Company does not simply assume that plant varieties listed on the HMRC List are edible. For example, the HMRC List notes that "any of the Papaver genus" produces edible flowers. However, the Company's own view is that some plants within this genus (for example Papaver Orientale, commonly known as the oriental poppy) are toxic and so does not hold out this plant as edible.

23. In the past few years, public interest in edible flowers has grown. In 2014, the Royal Horticultural Society produced a webpage dedicated to this topic. From May 2014 to May 2015 there were some 5,468 hits on this webpage. From May 2015 to May 2016, there were 10,587 hits, an increase of 93.6%. A search of the "WorldCat", the world's largest network of library services, that Dr Griffiths performed revealed that, between 1986 and 1995, only 58 books on edible flowers were published. Between 2006 and 2015, 299 such books were published. This public interest has manifested itself in an increase in the use of edible flowers in restaurants and home cooking and an increase in businesses selling edible flowers to the public. For example, we were shown a print out from Amazon's website demonstrating that a "Gourmet Flower Kit" (for the growing of six edible flower varieties) was on sale and that visitors to that website could also buy edible rose petals.

24. The Royal Horticultural Society's dedicated webpage on edible flowers contains the following advice:

> Edible flowers are offered for sale but only use those labelled for 'culinary purposes' as these will have been grown in ways that ensure any pesticide residues are at acceptable [levels]. Shop or garden centre bought flowering plants should be grown on for at least three months to reduce the risk of pesticide residues and only harvest subsequent flowerings.

25. Dr Griffiths accepted in cross-examination that, as written, the Royal Horticultural Society's guidance was that only plants labelled "for culinary purposes" produced flowers that could be eaten immediately and that plants not labelled in this way could have unacceptable levels of pesticide residue. However, he said that the guidance was somewhat misleading as organically grown edible plants, even if not labelled as being "for culinary purposes", would not contain pesticide residues. He indicated that he would ensure that the guidance is amended in the future.

Relevant statutory provisions

26. Section 30 of VATA 1994 provides that a supply of goods or services is zero-rated if the goods or services are of a description set out in Schedule 8 of VATA 1994.

27. Group 1 of Schedule 8 of VATA 1994 sets out the scope of zero-rating applicable to food as follows:

> **Group 1 — Food**
>
> The supply of anything comprised in the general items set out below, except—
>
> (a) a supply in the course of catering; and
>
> (b) a supply of anything comprised in any of the excepted items set out below, unless it is also comprised in any of the items overriding the exceptions set out below which relates to that excepted item.

28. The "general items" so far as relevant are:

(1) Item 1 which refers to "food of a kind used for human consumption"; and

(2) Item 3 which refers to "seeds or other means of propagation of plants comprised in item 1 or 2".

None of the "excepted items" or "items overriding the exceptions" are directly relevant to the issues raised by this appeal.

29. Section 83 of VATA 1994 sets out the relevant right of appeal as follows:

> **83 Appeals**
>
> (1) Subject to sections 83G and 84, an appeal shall lie to the tribunal with respect to any of the following matters—
>
> (a) …
>
> (b) the VAT chargeable on the supply of any goods or services, on the acquisition of goods from another member State or, subject to section 84(9), on the importation of goods from a place outside the member States…

Matters in dispute and outline of the parties' submissions

30. The parties were agreed that, if a particular plant constitutes "food of a kind used for human consumption" then:

(1) supplies of the plant itself would be zero-rated under Item 1;

(2) supplies of seeds for that plant would be zero-rated under Item 3;

(3) supplies of plug plants and seedlings would also be zero-rated under Item 3.

(Prior to the hearing (3) above had been in dispute as HMRC had argued that plug plants and seedlings were not a "means of propagation" of the plant, but rather an immature version of the plant itself.)

31. The parties were also agreed that the Notice sets out only HMRC's view of the law and does not have the force of law.

32. HMRC accepted that all of the plants listed on the Company's Lists and the John May List were "edible" in the narrow sense that a human could eat the flowers of the plant (but not necessarily the whole plant) without suffering any ill effects. Mr Singh stressed the narrowness of this concession by noting that HMRC would regard grass as "edible" on this formulation.

33. The principal issue between the parties was whether the plants in question could be regarded as "food". They were agreed that, since the relevant statutory provisions used the word "food" in its ordinary sense, applying the decision in *Brutus v Cozens* [1973] AC 854, it is for the Tribunal to decide, as a matter of fact whether those plants are "food" applying the ordinary meaning of that word. It was also common ground that, on the authority of *Customs and Excise Commissioners v Ferrero UK*

Ltd, this question must be determined from the perspective of the "ordinary man in the street" who has been appropriately informed about the plants in question and relevant surrounding circumstances. However, although the parties were largely agreed as to the nature of the test, they differed as to how it should be applied:

(1) Ms Waters submitted that, in considering whether the plants in question are "food", the ordinary man in the street would take into account the way the plants were held out for sale. He would also take into account his general knowledge that changing palates and more cosmopolitan tastes meant that edible flowers are eaten with much greater frequency than previously. She submitted that he would conclude that "food" is a product which is "instructed as being edible and is commonly communicated and depicted as edible" and would, accordingly, regard the plants as being "food".

(2) Mr Singh argued that the ordinary man in the street would regard food as something that is ordinarily, or typically, eaten. Moreover, in order to be "food", a product must be typically eaten rather than typically used for some other purpose. Mr Singh accepted that the ordinary man in the street would pay attention to the way a product is held out for sale. However, the mere fact that a product is held out for sale as "edible" would not be enough: the ordinary man in the street would require a product to be held out as being for specifically culinary use before considering the product to be food.

Discussion

34. As we have noted, the Tribunal's task is to identify the amount of VAT chargeable on specific supplies that the Company has made. The next logical question is which specific supplies are at issue in this appeal. HMRC have made decisions to the effect that supplies of plants and seeds falling on the Company's Lists are standard-rated for VAT purposes. However, Mr May has put forward the John May List as containing a list of those varieties of seed and plant that can be zero-rated which is in material respects different from the Company's Lists. We have concluded that we will make a decision on those varieties listed on the Company's Lists since those are the only varieties on which HMRC have made a decision. Section 83 of VATA 1994 (which gives the Company a right of appeal to the Tribunal) does not expressly state that any appeal is against an HMRC decision: it states only that there is an appeal to the Tribunal in relation to certain specified "matters". However, we consider that there must nevertheless be an HMRC decision on the VAT liability of particular supplies before the Tribunal's jurisdiction is engaged. That is firstly because s83 of VATA 1994 gives a right of "appeal" to the Tribunal and, as a matter of ordinary English, there cannot be an "appeal" without a decision that is being appealed against. That impression is reinforced by s83G of VATA 1994 which sets out time limits for bringing an appeal, all of which run from the date of HMRC's relevant decision.

35. We will not seek to prescribe exactly what the ordinary man in the street would regard as "food" since that is a multifactorial assessment that will depend largely on

the specific item being considered. However, we consider that the ordinary man in the street would wish to consider the following factors before determining whether the plants on the Company's Lists are "food":

> (1) The range of uses of the plant in question: is the plant grown primarily for its edible flowers, or is it also grown for its decorative appeal? We quite agree with Ms Waters that a plant does not have to be grown for the sole purpose of producing edible flowers in order to constitute "food". However, where a plant is grown for a number of purposes, which include the production of edible flowers, the ordinary man in the street would wish to evaluate the significance of the various uses of the plant as part of the process of determining whether the plants are "food" or not.
>
> (2) The frequency with which the plant's flowers are consumed. We consider that Mr Singh set the bar too high when he submitted that the ordinary man in the street would only consider a product to be "food" if it is "ordinarily eaten" or "generally eaten". Some products that are "food" will only be eaten within particular cultures, for example. The ordinary man in the street would take that into account when making his evaluation. However, he is unlikely to regard product as "food" if, although it is held out for sale as "edible" and although recipes for its use are published, it is only actually eaten by a handful of people.
>
> (3) The taste of the product. If a particular flower has a repellent taste, then, even if it appeared widely on restaurant menus or home cuisine, the ordinary man in the street might conclude that its function is to decorate a meal rather than to be eaten as food.
>
> (4) The way in which the product is offered for sale. A product that is held out as being for "culinary purposes" by reputable retailers is likely to be regarded as food. By contrast, a product that is described merely as being "edible" may, or may not, be food since the ordinary man in the street would realise that there are many items that are edible in a narrow sense but which are not "food".

36. We had a good quantity of evidence dealing with the consideration set out at [35(4)]. However, that evidence was given only in relation to the John May List and did not extend to all varieties on the Company's Lists (there was a large number of items on the John May List that were not on the Company's Lists). There was, therefore, a lacuna in the evidence as our function is to adjudicate on the VAT liability associated with plants on the Company's Lists. In any event, such evidence as we had satisfied us only that the plants on the John May List produced flowers that were, and were held out as, "edible". Those plants and flowers were not held as being specifically for "culinary use". That is not of itself enough to satisfy us that those plants, or their edible flowers, were "food" since we agree with Mr Singh that not everything that is edible is "food".

37. We had some evidence dealing with the consideration set out at [35(3)]. Some particular examples of recipes were included in the hearing bundle that sought to describe the taste of particular edible flowers. The Company's Edible Flowers Guide

said, as a general matter, that edible flowers "unlike some 'decorations' which appear in the guise of nouvelle cuisine, are actually nice to eat". However, the Appellant has not sought to go through all of the varieties set out on the Company's Lists and explain that the flowers concerned have a pleasing taste that adds to the flavour of a dish, and not merely its appearance. Dr Griffiths gave evidence to the effect that edible flowers generally have "flavours spanning everything from tasty aromatic to fizzy and sherbet-like and even rich and meaty", but this told us relatively little about the tastes of the flowers on the Company's Lists (or even of those on the John May List). Mr Wrapson's witness evidence came closest to dealing specifically with matters of flavour. However, he spoke only of certain specific varieties (some of which seemed to be uncontroversial for the purposes of this appeal such as thyme, mint, sage, rosemary and oregano), did not address all plants on the Company's Lists and indeed admitted quite fairly that he did not have personal experience of all the varieties on the John May List. Of the plants he addressed, Mr Wrapson said only that "some [he did not say which] just have great aesthetic value, others [he did not say which] add flavour or aroma to a dish". He clarified in answers to supplementary questions that all of the plants he was referring to were edible and all of them had "a flavour". However, while his evidence on these issues was unchallenged, it has not satisfied us that the ordinary man in the street would regard considerations of flavour as pointing towards a conclusion that the plants or flowers in question are "food".

38. We had little specific evidence on the consideration set out at [35(2)]. We were satisfied, as a general matter, that edible flowers are consumed more frequently than they were previously. Dr Griffiths, in his evidence, referred to the John May List (not the Company's Lists) and fairly accepted that he could not speak personally to every variety listed on the John May List. We have accepted his evidence that specific varieties contained on the John May List (which he identified) are "commonly grown for their edible flowers". However, there was little overlap between the John May List and the Company's Lists so this evidence was of little assistance. In any event, Dr Griffiths's evidence did not satisfy us that even the varieties he identified are eaten with any particular prevalence. The Company has not, therefore, gone through all the items on the Company's Lists and satisfied us as to the prevalence with which flowers of that plant are actually eaten. It follows that we have not been able to perform the kind of evaluation we consider the ordinary man in the street would perform that is summarised at [35(2)].

39. We had little, if any, evidence on the consideration set out at [35(1)]. The Company has not sought to explain, for each variety set out on the Company's Lists, the extent to which the plant in question is grown for its edible flowers as compared with the extent to which it is grown for its aesthetic appeal. Dr Griffiths's evidence that a particular subset of the John May List is "commonly grown for their edible flowers" has not told us much on this issue (as it does not say much about the use of the plants in question for aesthetic or other purposes). We have not, therefore, been able to perform the kind of evaluation summarised at [35(1)].

40. Having weighed up the various evidence with which we were presented, we found the Company's evidence to be too general for this appeal to succeed. We accept, as a general matter, that the plants set out on the Company's Lists (or at least their

flowers) are edible. We accept, as a general matter, that edible flowers are eaten more widely than they used to be and that the HMRC List should not necessarily be regarded as exhaustive. We have concluded that the flowers set out on the John May List (though not necessarily all flowers on the Company's Lists as Mr May spoke only of the John May List) are held out as being "edible" and that the Company makes available information and recipes as to how at least certain flowers on the John May List can be eaten. We have also reached other conclusions set out above. However, the general nature of the Company's evidence has not been sufficient for us perform a full evaluation of the matters summarised at [35] so as to conclude that any particular plant set out on the Company's Lists, or any flower of such a plant, is "food". Since it was common ground that the Company has the burden of proving its supplies are zero-rated, it follows that the appeal fails.

41. Ms Waters sought to argue that it would be a breach of the principle of fiscal neutrality for us to conclude that plants on the Company's Lists are not "food" in circumstances where similar plants in the Notice are treated as "food". There would only be a breach of the principle of fiscal neutrality if supplies of similar goods were being treated differently for VAT purposes. For reasons analogous to those set out above, we are not satisfied that plants on the Company's Lists are similar to those specified in the Notice. In any event, we are not satisfied that the plants on the Company's Lists are "food" so the essential requirement for supplies of those plants (and seeds) to be zero-rated is not met. We have not, therefore, accepted Ms Waters's "fiscal neutrality" argument.

42. Our conclusion, therefore, is that this appeal is dismissed. 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.

JONATHAN RICHARDS
TRIBUNAL JUDGE

RELEASE DATE: 16 JANUARY 2017