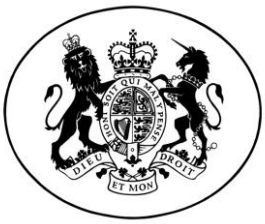
[2019] UKFTT 387 (TC)



TC07202

Appeal number: TC/2018/3736

Income tax – Worker supplied through intermediaries – "IR 35" s 49 ITEPA– Whether circumstances were such that had the services been provided under a contract directly with the worker the worker would have been an employee

National Insurance – Worker supplied through intermediaries – "IR 35" Whether circumstances were such that had the arrangements taken the form of a direct contract with the worker the worker would have been an employee.

FIRST-TIER TRIBUNAL
TAX CHAMBER

GEORGE MANTIDES LTD **Appellant**

- and -

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

TRIBUNAL: JUDGE CHARLES HELLIER

Sitting in public at Taylor House, London on 10 May 2019

The Appellant in person

Helen Davies for the Respondents

DECISION

The appeal.

1. George Mantides Limited ("GML") appeals against: (i) a determination under regulation 80 of the PAYE regulations assessing PAYE of £18,609.20, and (ii) a decision under regulations made under section 8 of the Social Security Contribution (Transfer of Functions etc) Act 1999 that the company was liable to class 1 National Insurance contributions of £11,004.13.

2. These determinations and that decision were made in relation to income received by GML in relation to its provision of the services of George Mantides for his work at the Royal Berkshire Hospital ("RBH") and Medway Maritime Hospital ("MMH"). They were made on the basis that the effect of the intermediaries legislation in section 49ff ITEPA 2003 and those regulations (together commonly known as the "IR35" legislation) was that GML was to be treated as making payments of employment income to Mr Mantides based on the sums received by GML from RBH and MMH, and that GML was as a result liable for PAYE and National Insurance on those deemed amounts.

3. Mr Mantides is a urologist. He is the sole director of and (I understood) owner of the shares in GML. Between March and August 2013 GML made Mr Mantides' services available to RBH, and between September and October 2013 GML made those services available to MMH. RBH and MMH paid GML for those services.

4. In outline the IR 35 legislation provides that if the circumstances are such that, had Mr Mantides performed his services under a (hypothetical) contract directly between him and the relevant hospital, and if that contract would have been one of employment, then GML would be liable for NI contributions and PAYE on the emoluments deemed to have been paid to Mr Mantides.

5. GML contends that the hypothetical contracts would not have been ones of employment. I understood that there was no dispute about the calculation of the amounts involved. This decision therefore addresses only the question of the nature of those contracts.

6. In the remainder of this decision I shall first discuss the evidence and set out my findings of fact, then address the relevant law, and then reach my conclusions on the appeal.

The Evidence

7. I heard oral evidence from Mr Mantides and from Benn Best, an NHS manager at MMH. I had a bundle of copy documents which included a contract between MMH and GML for the provision of Mr Mantides' services, two Locum Booking Confirmations relating to his work at RBH, and correspondence between HMRC and Mr Adam Jones, a Consultant Urologist at RBH. Mr Jones told HMRC that he would

be unwilling to appear as a witness before the tribunal because he could not remember the details of Mr Mantides' engagement and was not the lead consultant at RBH at the time; I accorded his statements less weight than if he had appeared in person.

My Findings of Fact

8. Mr Mantides is a Fellow of the Royal College of Surgeons (FRCS). He is a urology specialist.

9. Between March 2013 and August 2013 he worked as a locum at RBH in its urology department. Between 16 September 2013 and 21 October 2013 he worked as a locum at MMH in its urology department. During 2013/14 he also worked a a locum urologist at The Royal Shrewsbury Hospital.

10. At both RBH and MMH Mr Mantides's work consisted of conducting outpatient clinics, procedures and minor operations. At RBH he also undertook a small amount of on-call duty.

11. In an outpatient clinic Mr Mantides would see patients, review their history and any test results, prescribe further steps, for example discharge, medication, x-rays, endoscopy or cancer surgery and dictate letters to the patients' GPs.

12. For each clinic there would be a list of patients. Each would be allocated a 10 or 20 minute interval. This timetable would be adjusted by Mr Mantides according to clinical need: for example some early patients could be sent away for x-ray and reinserted into the timetable for review with the x-ray results later in the day, some consultations were complex and took longer than 20 minutes; others were shorter. Mr Mantides would take breaks during the sessions at his discretion.

13. Save in relation to cancer diagnoses the further steps prescribed by Mr Mantides would be taken without further review by other members of the department. Cancer cases were referred to meeting of the Multi Disciplinary Team to approve or evaluate the plan for the patient's management.

14. The outpatient clinics took place on hospital premises in rooms allocated by the hospital management. There Mr Mantides would have the use of any necessary equipment and the help of the nursing staff (for example in arranging for further tests). After seeing each patient Mr Mantides would dictate a letter using the hospital's dictation equipment which, after transcription by the hospital's staff, would later be available for his review.

15. For each of Mr Mantides's allocated surgery sessions there would be a list of patients - 10 or 12 cases and a timetable. The sessions were scheduled to start at a fixed time. On average the procedures took 10 or 15 minutes per patient although some could take considerably longer. Mr Mantides could adjust the timetable at his discretion.

16. The surgical work was carried out in a small operating theatre at the hospital equipped with the (expensive) specialist equipment needed. The theatre was attended by nursing staff who managed the equipment and assisted Mr Mantides as required.

17. After conducting a procedure Mr Mantides would make a manuscript record of his findings. This record was scanned into the hospital's IT system by hospital personnel. Mr Mantides would also dictate a letter to the patient's GP. Mr Mantides's conclusions as a result of investigative procedures were not checked by other clinicians.

18. For both clinics and operating sessions Mr Mantides would not leave until he had finished the list. Sometimes this meant staying beyond the normal end time for a session; sometimes he would leave before that time.

19. Mr Mantides was given the list of his clinic and operating sessions for the forthcoming week at the end of the preceding week by the secretariat of the relevant urology department. The list would indicate whether each session was an outpatient clinic or an operating session and whether it was in the morning or afternoon. The list indicated a starting time for each session. The hospital would expect Mr Mantides to turn up for the sessions on the rota. Whilst there would be sessions allocated to Mr Mantides on most days of a working week on some days only a morning or only an afternoon or sometimes no session at all would be allocated to him.

20. One or two sessions a week were allocated to administration. This comprised the review of the results of tests (and making decisions in relation to the next steps as a result), and the review, amendment and dispatch of the transcribed letters he had dictated to patients' GP's.

21. Each urology department had four or five consultants one of whom would be the lead consultant for the department. The consultants conducted outpatient clinics similar to those which Mr Mantides conducted and undertook some minor surgical operations (although at MMH they did not do endoscopic work). The consultants undertook the major operations. At any time there would be a consultant on call.

22. Mr Mantides attended only one regular hospital meeting. This was the monthly mortality and morbidity meeting at which complications which had arisen would also be discussed. Mr Jones told HMRC that Mr Mantides was obliged to attend these meetings; Mr Mantides told me that attendance at these meetings was most important to retain his GMC registration and that if did not attend he would be likely to fail the GMC's quality test. Mr Jones told HMRC that this meeting also addressed clinical governance and management; Mr Mantides accepted that this formed a component of the meetings but said that he did not participate in that component. I conclude that GML was required to procure that Mr Mantides attended the clinical part of such meetings as part of the timetabled sessions.

23. Mr Mantides was not given, and did not assume, responsibility for more junior doctors although he would advise those who sought his counsel.

24. Mr Mantides was not involved in teaching and was not sent on courses (or provided with space in his schedule to attend them).

25. At the end of each week Mr Mantides completed a record of the time he had worked during the week. At MMH this record was checked by service managers or signed by the consultant on duty. I think it likely that a similar approval or check was

conducted at RBH. The hospital was invoiced at an agreed hourly rate for the time Mr Mantides work had worked. If the sessions involved fewer hours of Mr Mantides's time the bill would be smaller; if he spent longer it would be larger. Payment was made only for hours worked.

26. If Mr Mantides was ill and unable to work on a day in which he had scheduled sessions he would be expected to, and would, ring the hospital (probably one of the consultants on duty) to let them know that he could not attend. He would not be paid for the sessions which he was not able to work.

27. The hospitals regularly engaged locum doctors (I was told that some doctors prefer to work as locums rather than permanent employees, and that hospitals used locums to deal with variation in caseloads). Some locums were engaged directly by the hospitals; others, like Mr Mantides, were provided by a company for whom they worked. The hospitals used locums to cover for missing manpower and to catch up on compliance with government waiting time targets - people who had been waiting for more than six months, and people who had to be seen within two weeks after a suspected cancer diagnosis.

28. The services of locums were generally obtained through agencies. Each hospital had a number of approved agencies. DRC Locums was such an agency and, Mr Mantides told me, acted as agent for GML in contracting with the hospital. From Mr Best's evidence I find that when MMH used an agency, the agency completed all the necessary checks on the suitability and qualifications of the locum and received a fee for so doing. I conclude that it is likely that the same thing happened at RBH. The hospital would then pay the agency for the work done by the locum on receipt of an invoice. Some locums were put on the hospital's "bank" and paid directly; in such cases the hospital completed the necessary checks.

29. Mr Best told me that MMH had a list of approved payees. These included the agencies they used on a regular basis also the "bank" locums. He told me that a locum's personal service companies were not on that list. I concluded that payment would be made through the agency

30. Mr Mantides was not interviewed by the hospitals prior to his engagements: his suitability was determined only by the checks undertaken by the agencies for the hospital prior to engagement. On first arriving at the hospital he would be shown round the various areas the hospital and given an induction into the IT system.

Supervision.

31. Mr Best told me that he would expect Mr Mantides to go to see the consultant conducting a clinic in a neighbouring room to discuss more difficult cases, and those cases where he proposed radical surgery. In some cases he expected that after such a discussion the consultant would wish to talk to the patient.

32. Mr Mantides accepted that if in a particular case he had doubts, he could, as would any reputable clinician, speak to a consultant. But he did not recall doing so at either RBH or MMH. He agreed with Mr Best that a new diagnosis of, say, bladder cancer for which radical surgery might be recommended would be discussed by the

consultants and others at the multidisciplinary team meeting before any action was taken.

33. Mr Jones told HMRC that Mr Mantides's work was checked "from a distance". He said that Mr Mantides was not directly overseen in the sense that he conducted clinics and operations on his own, but said that the consultants would have had feedback from nurses, secretaries and theatre staff so that "repeated concerns would be raised".

34. Mr Best told me that Mr Mantides was "overseen by the urology consultants". He said that Mr Mantides would see patients "under the name of one of the consultants" who would be responsible for Mr Mantides. He said that Mr Mantides's work was not supervised minute by minute but there would be a consultant to supervise. He accepted that the supervising consultant would not expect to go through the notes of every patient seen by Mr Mantides.

35. I concluded that, given his expertise, there was almost no direct oversight of Mr Mantides's work. No one attended sessions to check what he was doing or how he did it. He was expected to, and in my view it was likely that he did (as would any competent clinician), discuss difficult cases with one or other of the consultants. He could report concerns but he did not report to anyone on a daily basis. All his decisions in relation to cancer treatment were considered by the multidisciplinary team (as were those of all other clinicians). Naturally any deficiencies in his work or working practice would generally find their way to the ears of the consultants in the department but there was no programme of audit or review. There was no indication that he would be directed how to perform any part of his duties.

The Contract with MMH

36. GM limited had a formal written contract with MMH. It provided:

(1) that GML would make Mr Mantides (defined as the "Temporary Contractor") available to MMH;

(2) the GML would procure that the Temporary Contractor should provide the services of a specialist doctor at MMH or other of the trusts sites in accordance with the Trust’s rota;

(3) the engagement would start on 16 September 2013 and end (without notice) on 16 December 2013 "unless previously terminated by either party giving the other not less than one day’s prior written notice";

(4) that the consultant on call would be responsible for overseeing the quality of the Temporary Contractor’s services;

(5) that travelling time between different sites would be paid for;

(6) that payment would be made to GML at a set hourly rate on approved timesheets;

(7) that GML warranted that the Temporary Contractor was a director with control over GML;

(8) for termination with immediate effect for matters such as misconduct or incompetence and if "the temporary contractor is incapacitated ... for ... one week ... without a Substitute Contractor".

37. Clause 4.4 of the contract made provision in relation to the appointment of a substitute contractor. I set it out sentence by sentence below to aid the discussion which follows. The numbering was not in the original.

(1) [GML] may appoint a suitably qualified and skilled individual as a substitute for the temporary contractor (the "Substitute Contractor") to perform the Services on [GML]'s behalf.

(2) Any reference in this Engagement to the Temporary Contractor should be taken to be a reference also to the Substitute Contractor;

(3) For the avoidance of doubt [GML] will propose a substitute contractor to the employment agency who introduced [GML] to the Trust for the purposes of this Engagement ("the Agency") rather than directly to the Trust.

(4) The Agency will determine whether the Substitute Contractor is suitable based on the Trust's assessment criteria.

(5) If the agency deems that the Substitute Contractor is suitable, it will discuss the proposed substitution directly with the Trust on [GML]'s behalf.

38. The proper construction of this clause was not immediately clear. Mrs Davies submitted that it merely provided a right for GML to suggest a substitute.

39. Mr Best said he had not seen this clause (or the contract) before but that if Mr Mantides had proposed a replacement the hospital would have consulted the agency and one of the urology consultants. If they had approved the substitute the replacement would have been engaged through the agency. But he had never seen the mechanism of this clause (which envisaged engagement of the substitute via GML) applied in practice.

40. Mr Mantides told me, and I accept, that he had a list of five other urologists who would be suitably qualified and could have been proposed as substitutes. In a letter of 25 November 2017 to HMRC Mr Mantides says, and I also accept, that in 2013 there was an occasion when he undertook an on-call shift at RBH in substitution for another clinician with the approval of the urology head clinician at that time.

41. The first sentence (1) of clause 4.4 appears to provide GML with an unqualified right to substitute a suitably qualified and skilled substitute for Mr Mantides. The words "for the avoidance of doubt" at the beginning of the third sentence (3) are unhelpful, but that sentence and the fourth sentence appear to me to have the effect of defining whether an individual is to be treated as "suitably qualified and skilled" for the purposes of the first sentence.

42. The last sentence (5) appears to attempt to place a duty on the agency to discuss the proposed substitution with the Trust but only after the agency has deemed the substitute acceptable, and provides no veto for the Trust.

43. Given Mr Best's evidence that MMH would rely upon agency to assess the competence of a locum, it seems to me that what is agreed by this clause is the following:

(1) if GML wish to supply another doctor in place of Mr Mantides it must first notify the agency of the details;

(2) the agency would then determine whether the candidate was suitable (on the basis of the Trust's usual criteria as known by the agency). The agency is not a party to this contract and it seems to me that a term may be implied that each of GML and the Trust would use their reasonable endeavours to get the agency to make such a determination;

(3) if the agency concluded that the substitute was acceptable, the parties would use their reasonable endeavours to ensure that the agency consulted the hospital. If the hospital had concerns about the proposed replacement the agency could revisit its opinion as to the suitability of the replacement, (for otherwise the consultation clause had no affect), but the hospital had no right of veto;

(4) if the agency, after consultation with the hospital considered the proposed substitute suitable, the hospital would be bound to accept the substitute (subject subject of course to its ability to terminate the contract on one days notice) and to pay GML (through the agency) for the services provided.

44. Clause 1.1 of the contract provides that GML "shall make available to the Trust the individual named at paragraph 2 of the Front Sheet [that individual is Mr Mantides] (the "Temporary Contractor") under the terms of the agreement". It seems to me that, read with clause 4.4, the effect is that GML agrees to make available the services of Mr Mantides unless a substitute contractor is declared suitable by the agency whereupon GML is obliged to make the substitute available. Thereafter the provisions relating to the Temporary Contractor are to be treated as referring to the substitute rather than Mr Mantides.

45. Clause 13.7 of the agreement requires GML to warrant that the temporary contractor is a director of the company with management and financial control over it. In order to satisfy this warranty Mr Mantides would have to arrange for that be the case, but that is not a condition for the operation of clause 4.4.

46. The contract made no provision for pension, sick pay or holiday pay.

The contract with RBH

47. No formal contract was shown to me between RBH and GML. I conclude there was none. The written evidence of the terms of GML's engagement with RBH was limited to the two Locum Booking Confirmations comprised in letters from DRC Locums (the agency) to Mr Mantides at GML. These letters confirmed two consecutive booking bookings running (together) from 14 March 2013 to 6 August 2013 at RBH. I note the following items:

(1) Grade: SpR

(2) standard hours: "as per rota"

(3) on-call hours: “as per rota”

(4) Trust client (I take this to be RBH) to pay one return journey

(5) Accommodation: details e-mailed to you

(6) Upon arrival report to: “carry on as usual”

(7) Trust break policy: breaks will not be deducted

(8) Senior colleague: [blank]

(9) Covering : [blank]

(10) Vacancy: [blank]

48. The rate of pay per hour was said to be "inclusive of WTR [which I understand to refer to the Working Time Regulations] and NI equivalent based on your working on a limited company basis". A note indicated that “as a standard benefit to our locums DRC include holiday pay in your hourly rate”.

49. There was a note in bold type that "should there be any change in your status [as regards GMC regulation] ... it is your legal duty to notify us in writing".

50. This locum booking confirmation appears to me to record an agreement between DRC Locums (rather than RBH) and GML. That is because: it starts "Thank you for choosing to work through DRC Locums", it refers to the holiday pay benefit given “to our locums” and says that "our standard Terms and Conditions ... apply to this booking" (I was not shown these terms and conditions).

51. Mr Mantides told me that DRC Locums acted as agent for GML but Mr Best’s evidence in relation to MMH that hospitals relied on the agency's confirmation of the qualification of locums, indicated that some extent the agency also acted for the hospital. It seems to me to be likely that either DRC Locums was acting as agent for RBH in making a contract with GML or that DRC were contracting with GML and had a back-to-back contract with RBH mirroring the contract with GML.

52. Mr Jones, in his correspondence with HMRC, said that he understood that Mr Mantides was required to perform the services personally and was not, and would not be, allowed to send a substitute. In his letter of 10 October 2017 to HMRC Mr Mantides says that the question of whether RBH would consider an eminently qualified substitute if he declared his inability to work was not raised, but he firmly believed that it would be allowed as there would be no good reason not to.

53. I conclude that in practice if Mr Mantides were ill or unavoidably detained, RBH may have accepted the services of a suitably qualified replacement proposed by Mr Mantides, but I am not persuaded that in practice RBH would have done so in relation to any services which Mr Mantides was otherwise expected to cover.

54. The letter from DRC Locums was addressed to GML, and began “Dear Dr Mantides”. For the following reasons it seems to me that it envisages that GML would provide Mr Mantides to act as a locum:

(1) the instruction to "carry on as usual" on arrival indicates to me that it is envisaged that the locum was a specific known person, namely Mr Mantides;

(2) the requirement that any "change" in "your" status as regards GMC regulation should be notified indicates that the person intended to fulfil the role was Mr Mantides.

55. I conclude that any agreement (whether between GML and RBH through the agency of DRC, or agreements between GML and DRC, and DRC and RBH) was for the provision of the services of Mr Mantides and that GML had no right to provide another person to undertake those services in Mr Mantides' place.

Hours of work

(a) MMH

56. Clause 4.6 of the MMH contract provided that GML would procure that the temporary contractor was available to provide the services 37 ½ hours per week (although the front sheet described 37 ½ hours as the number of hours per week that services "will be provided" it cross referred to clause 4.6). GML's invoices to MMH showed a range of hours between 35 ½ and 39.17. Mr Best said that a locum would be scheduled to work the hours needed to fulfil an absent person's role and if extra work came along they would have been able to use Mr Mantides more.

57. I concluded that GML was required to make the Temporary Contractor available for at least 37 ½ hours per week but that MMH were not obliged to provide 37 ½ hours work per week. Given the formal contract between GML and MMH I do not think that there was any form of understanding that a minimum number of hours work would be provided.

58. Mr Best said that Mr Mantides could refuse any work allocated to him but, as I understood him, for a locum to do this was very rare. I find that Mr Mantides could refuse one or more sessions but not (unless he gave notice to terminate the contract) so as to reduce his working hours below 37 ½ in any week.

(b) RBH.

59. The locum booking confirmation merely specified that "standard hours" were "as per rota". Mr Jones had told HMRC that a typical week would comprise 10 half day sessions and that, as Mr Mantides also told me, if these sessions finished early he would be free to go but that he would be expected to (and did) stay on to the end of an overrunning list. Mr Jones had said that Mr Mantides could refuse extra work.

60. Mr Jones told HMRC that Mr Mantides could take time off if he gave 6 to 8 weeks notice. Mr Mantides said that this was generic evidence in relation to locums as a class which was not relevant to him: he told me, and I accept, that he took 11 days leave from his duties during the course of his engagement with RBH. He also told me that he frequently asked for, and took, Friday afternoons off (to travel back to London). Mr Mantides argued that he could insist on not working particular session although as a matter of professional etiquette and custom he would not do so. Given Mr Jones' confession of his lack of memory of the detail and the fact that he did not give evidence, I consider that Mr Mantides would not have been required by the contract to give 6 to 8 weeks notice but that some shorter period applied.

61. I find that the contract with RBH required Mr Mantides to be available during the period of the contract to conduct 10 half day sessions per week, but that with the consent of RBH he could take holidays and miss occasional sessions. He was paid by the hour only for the time it took to complete the sessions. I think it likely however that there was a mutual understanding that the sessions would result in between 30 and 40 hours work per week.

Termination.

(a) MMH

62. Clause 2 of the MMH contract provided that the contract could be terminated on one day's written notice by either party, and summarily terminated in the case of gross misconduct or incompetence etc.

63. Although the contract was for a period of three months it was in fact terminated by the hospital after five weeks.

(b) RBH.

64. The locum confirmations contained no provision for termination before the end of the relevant periods. Mr Jones told HMRC that the contract could be terminated at any time by urology management and that if Mr Mantides was no longer needed in urology the contract would be terminated. I conclude that the contract could be terminated early by RBH, but on the evidence of Mr Jones' replies to HMRC in relation to time off, and in view of the likelihood of some reciprocity, I think it likely that at least a week's notice would be required.

Other matters

65. GML bore the costs associated with Mr Mantides' GMC registration. The hospitals were some distance from his home and he would live in rented accommodation during the week. GML paid for that accommodation and his travelling costs.

66. The contract between GML and MMH provided that GML should have insurance cover in place for the negligence of the Temporary Contractor. I consider it likely that GML bore the costs of such insurance in relation to both the MMH and RBH engagements.

67. A guidance note issued by the NHS indicated that it was no longer a contractual requirement for doctors employed by the NHS to hold indemnity insurance. Thus had Mr Mantides been an employee of a hospital he would not have had to bear the cost of such insurance.

The Statutory Provisions and their interpretation

68. The legislation relating to income tax is contained in sections 49 to 61 ITEPA 2003. These provide so far as relevant to this appeal that where an individual receives from an intermediary (it is accepted that GML is an intermediary for those purposes) or has rights to receive from an intermediary a payment or benefit not taxable as

employment income (and there was no dispute that this condition was satisfied) then the intermediary is to be treated as making a payment of employment earnings of an amount calculated by reference to the monies received by the intermediary in respect of the individual's relevant engagements. The provisions apply only where section 49 applies, namely where:-

> "(a) an individual ("the worker") personally performs, or is under an obligation personally to perform, services for by another person ("the client")".

69. This provision was clearly satisfied. Mr Mantides personally performed services for the hospitals.

> "(b) the services are provided not under a contract between the client and the worker but under arrangements involving a third party ("the intermediary")."

70. This condition was also satisfied: Mr Mantides had no contractual relationship with the hospitals. His services were provided under arrangements involving GML, and the agencies. Each of them was a third party.

> "(c) the circumstances are such that… if the services were provided under a contract directly between the client and the worker, the worker would be regarded for income tax purposes as an employee of the client..."

71. It was this last condition which was in dispute in the appeal.

72. Before leaving the income tax provisions, I should note the provision of subsection 49(4):

> "(4) The circumstances referred to in sub-paragraph (1)(c) include the terms on which the services are provided, having regard to the terms of the contracts forming part of the arrangements under which the services are provided."

For income tax purposes I therefore have to decide "What would have been agreed? – what would have been the terms of the notional contract?". That question has to be answered by reference to "the circumstances", which by virtue of paragraph 1(4): " include the terms on which the services are provided, having regard to the terms of the contracts forming part of the arrangements under which the services are provided."

73. The National Insurance provisions are in the Social Security Contributions (Intermediaries) Regulations 2000 made under section 4A Social Security Contributions and Benefits Act 1992 and provide that, on conditions which, for the most part, are the same as those in the corresponding provisions of ITEPA, an amount calculated by reference to the receipts of the intermediary is to be treated as paid by the intermediary to the worker as employment earnings.

74. The difference, however, lies in the words of the third condition - paragraph (c) - and in the absence of any equivalent to section 49(4). The relevant NI regulation reads:

> This Part applies where–

(a) an individual ("the worker") personally performs, or is under an obligation personally to perform, services for another person ("the client"),

(b) the performance of those services by the worker is carried out, not under a contract directly between the client and the worker, but under arrangements involving an intermediary, and

(c) the circumstances are such that, had the arrangements taken the form of a contract between the worker and the client, the worker would be regarded for the purposes of Parts I to V of the Contributions and Benefits Act as employed in employed earner's employment by the client.

75. In *Dragonfly v HMRC [2008]* EWHC 2013 (Ch) Henderson J held that there was a (regrettable) potential difference in the effect of these differing provisions. He said:

"For whatever reason, the NIC test requires the arrangements themselves to be embodied in a notional contract, and then asks whether the circumstances (undefined) are such that the worker would be regarded as employed; whereas the income tax test directs attention in the first instance to the services provided by the worker for the client, and then asks whether the circumstances (widely defined in paragraph 1(4) in terms which include, but are not confined to, the terms of the contracts forming part of the arrangements) are such that, if the services were provided under a contract directly between the client and the worker, the worker would be regarded as an employee of the client. Nine times out of ten, perhaps ninety-nine times out of a hundred, the two tests will lead to the same answer. However, it cannot necessarily be assumed that this will always be the case."

"…I will also say that, if a choice were to be made between the two systems, I would regard the income tax approach as preferable. The problem with the NIC approach is that the "arrangements involving an intermediary" referred to in regulation 6(1)(b) cannot always be reformulated or collapsed into a notional contract between the worker and the client without a good deal of remoulding and evaluation of the surrounding circumstances, especially where (as in the present case) there is another party involved (such as DPP) and the arrangements include a chain of contracts with possibly conflicting provisions. In other words, the remoulding of the arrangements into a single notional contract will probably involve in practice very much the same process as the more open-textured income tax test expressly envisages"

76. Neither part suggested to me that this difference should make any difference in this appeal.

77. Thus I am required to determine whether the circumstances of Mr Mantides' engagements with RBH and MMH were such that if his services were provided under a hypothetical contract between him and the relevant hospital, Mr Mantides would be regarded as an employee. All the circumstances including the arrangements with the intermediary are to be taken into account, and may affect both the terms of the hypothetical contract and whether it would give rise to an employment relationship.

Employment – Case Law

78. *In MKM Computing Ltd v HMRC* SpC00653 I set out the principles which I derived from the authorities in relation to whether or not a person was employed. In this appeal the parties referred me to a number of other and more recent authorities. I set out below the principles I derived in *MKM* with additional references to those authorities.

79. (i) There is an irreducible minimum for a contract of employment. That minimum was described in *Ready Mixed Concrete v Minister of Pensions and National Insurance* (1967) 2 QB 497, where MacKenna J set out three necessary conditions for a contract of services:

> "(i) [the mutuality test] The servant agrees that in consideration of a wage or other remuneration, he will provide his own work in the performance of some service for his master;
>
> (ii) [the control test] He agrees, expressly or impliedly, that in the performance of that service he will be subject to the other's control in a sufficient degree to make that other master;
>
> (iii) [the inconsistency test] the other provisions of the contract are consistent with its being a contract of service."

80. These tests are a good starting point when considering whether a contract is one of employment and it is important that mutual obligation and control are identified before moving on to consider other factors (see Buckley J at paragraph 23 in *Montgomery v Johnson Underwood* Ltd (2001) EWCA Civ 318). Whilst the tests are necessary conditions for employment the nature and extent of the requirements for mutuality and control are not rigid but depend upon the circumstances. MacKenna J's third condition has to my mind much in common with the overall picture and in-business-on-his-own-account tests I describe below and the use of various indicia. The mutuality test and the control test require some further comment.

(ii) The Mutuality Test .

81. There are two aspects to this test: first that there must some mutuality of obligation, second that the contract must be for "his own work" – for the worker's personal service. That second aspect gives rise to the question as to whether a right for the taxpayer to substitute another person in his place can prevent a contract being one for service. I discuss that under Substitution below.

82. In relation to the question of mutuality of obligation I concluded in *MKM* :

> (i) For there to be an employment contract there must be a contract. That requires some mutual obligations: an obligation on the one hand to work and on the other to remunerate.
>
> (ii) A contract cannot be an employment contract unless the `employee' is obliged to provide his labour.
>
> (iii) An obligation on the employer to provide work or in the absence of available work to pay is not a precondition for the contract being one of

employment, but its presence in some form (such as for example an obligation to use reasonable endeavours to provide work, to allocate work fairly, or not to remove the ability to work e.g. by removing the pupil to be taught) is a touchstone or a feature one would expect to find in an employment contract and whose absence would call into question the existence of such a relationship.

83. The parties referred me to a number of employment law cases which dealt with a worker who works intermittently for the same employer. In such cases if it is found that there is an umbrella contract for a longer period which is punctuated by shorter periods of work, it may be then found that a period of continuous employment with the same employer is established for the purpose of certain employment law remedies.

84. The authorities indicate that for such an umbrella contract to remain in force there must be some minimum mutual obligation which continues during the breaks in work engagements, but "whilst the fact that there is no umbrella contract does not preclude the worker being employed under a contract of employment when actually carrying out an engagement, the fact that a worker only works casually and intermittently for an employer may, depending on the facts, justify an influence that when he or she does work it is to provide services as an independent contractor rather than as an employee." and the absence of mutuality outside the period of work may shed light on the character of the relationship within it: it could indicate a degree of independence incompatible with employee status (*Secretary of State v Windle* [2016] EWCA Civ 459, per Underhill LJ at [14 and 23] approving what had been said in *Quaishi*.

85. Mr Mantides referred me to *Clark v Oxfordshire.* This concerned "bank nurses" available to be called on to work in a casual capacity to fill a temporary vacancy. The appellant worked intermittently for a hospital authority for three years and claimed continuous employment during that period for the purposes of an unfair dismissal action. Sir Christopher Slade in the Court of Appeal said that no "umbrella" contract could exist "in the absence of mutual obligations subsisting over the entire duration of the relevant period". The lower tribunal had found that there was no mutuality (no obligation to offer or accept work) in the period in which the nurse did not work, and as a result the Court of Appeal held that there was no umbrella contract.

86. But I do not consider that this case offers much assistance in relation to the question of whether each separate engagement was an employment because at the end of its judgement the Court allowed the possibility that each separate engagement could be an employment (and remitted the appeal back to the tribunal to decide that point).

87. I was also referred to *McMeechan v Secretary of State for Employment* 1997 ICR 549. There, Waite LJ said that when considering the terms of an individual self contained engagement the fact that the parties were not obliged in future to offer or accept another engagement was neither here nor there.

88. I conclude that the lack of any obligation to provide work after the end of a fixed term contract does not mean that there is insufficient mutuality of obligation during the term, and in the context of such an engagement it is but a weak pointer away from employment.

89. These cases did not affect my former conclusion (see above) that in relation to a particular engagement an obligation on the employer to provide work or in the absence of available work to pay was not a precondition for the contract being one of employment, but its presence in some form is a touchstone or a feature one would expect to find in an employment contract and whose absence would call into question the existence of such a relationship

(iii) Substitution.

90. The contract must be for personal service. Nevertheless a limited or occasional power of delegation or right to substitute another person may be consistent with a contract of personal service. (*Usetech* : paras 49-52).

91. Mr Mantides referred me to *Primary Path v HMRC* [2011]. There the tribunal summarised conclusion in *Dragonfly v HMRC [2008]* EWHC 2013 (Ch) as being that if there is a general and unqualified right for the worker to send along a substitute, that is incompatible with employment, and that determines the matter; something less than that is unlikely to be determinative but a contract which has at least some recognition that a substitute can be supplied must "seriously be considered" as not being employment [68 and 69]. I agree and would add that the more qualified that right the less serious is its effect on the overall picture.

(iv) Control.

92. MacKenna J's control condition was "control in a sufficient degree to make that other the master". That is no indication that absolute control is required.

93. In *Autoclenz v Belcher* [2011] UK SC 41, the Supreme Court held, at [19], that the issue was whether the contractual right of control existed to a sufficient degree irrespective of whether it was exercised.

94. In *Morren v Pendlebury Borough Council* (1965) 1 WLR 576 Parker C J noted that the authorities had stressed the importance of the factor of superintendence and control, but said that in the case of a professional person there can be cases where there is no question of the employer telling him how to do the work so that the absence of control and direction "in that sense" can be little, if any, use as a test.

95. It seems to me that something which can be called control is a necessary feature of an employment relationship even for a skilled employee; but the nature of the power of control which suffices may differ with the nature of the job; the company will tell the ship's master where to take the ship; the school governors may tell the headmaster or headmistress how many staff he or she may engage.

96. In *Ian Mitchell FRCS* v HMRC [2011] UKFTT 177 (TC), the tribunal, citing the judgement of the High Court in *Dragonfly* concluded that control was relevant in determining whether a skilled professional was an employee, but that the test was not decisive and depended upon the degree of control. It noted that directing the thing to be done and the place at which it was to be done was something which would arise in a contract with an independent contractor such as a plumber but was nevertheless a factor which should be taken into account. It noted that in *Dragonfly,* where there was

a degree of supervision and quality control of the worker which went beyond telling him when and where to work, the regular appraisal and monitoring of a professional was held to be sufficient control.

97. In *MDCM* Ltd v HMRC [2018] TC 6400, the tribunal said that "control" included the power of: deciding the thing to be done, the way in which it should be done, the means to be employed in doing it, the time when, and the place where it should be done. It found, at [49], that the engager in that case "directed what" the taxpayer had to do during a shift, but that that was merely what had to be done on the site which the taxpayer supervised; it regarded that as insufficient control.

98. I conclude that there must be something in the contract which can reasonably be called a right for the employer to control the employee. But such a right need not be a right to control every aspect of what is done: what is done, how it is done, when and where it is done; instead a restricted right may be adequate, and on the other hand mere control over what, when or where may be in the circumstances insufficient to support a finding fo employment. MacKenna J accepted that in many cases the employer or controlling management have no more than a general idea of how the work is done and no inclination to interfere, but "some sufficient framework of control most surely exist" (paragraph 19), and at paragraph 23 indicated that tribunals should exercise appropriate latitude in determining the question of control. Further whilst some element of control may be sufficient to pass the second of MacKenna J's necessary conditions, the degree of control will affect whether, assuming that that condition is satisfied, the overall picture is one of employment: the greater the degree of control, the more strongly employment is indicated.

99. (v)Having considered whether these conditions are satisfied, the tribunal should then consider all the circumstances and evaluate where the balance lies. In doing so may use the following tests and guidance.

100. (vi)To ask whether the taxpayer is in business on his own account?

> "In order to decide whether a person carries on business on his own account it is necessary to consider many different aspects of that person's work activity. This is not a mechanical exercise of running through items on a check list to see whether they are present in, or absent from, a given situation. The object of the exercise is to paint a picture from the accumulation of detail. The overall effect can only be appreciated by standing back from the detailed picture which has been painted, by viewing it from a distance and making an informal, considered qualitative appreciation of the whole … Not all details are of equal weight … The details may also vary in importance from one situation to another." (*Hall v Lorimer* (1993) 66 TC 349 at 375F.)

101. (vii) The authorities indicate that the consideration of certain indicia which may point one way or the other may be helpful in considering that picture. (*Lee Ting Sang v Chung Chi-Keung* 2 AC 374, and *Hall v Lorimer*). Those indicia include those mentioned by Cooke J in *Market Investigations*. The following may be relevant although the extent to which they have swayed the thinking of different tribunals has varied with the facts of each particular case:-

(a) does the taxpayer provide his own equipment?

(b) does the taxpayer hire his own helpers?

(c) what degree of financial risk does the taxpayer bear and what opportunity for profit does the taxpayer have? In this regard the tribunal in *Marlen v HMRC [2011] UKFTT 411* accepted that the appellant carried the financial risk of termination of the contract without compensation. It found on the evidence that the risk was not great [55] but sufficient to point to self employment;

(d) what degree of responsibility for investment and management does the taxpayer have?

(e) is the taxpayer part and parcel of his "employer's" organisation (see *Hall v Lorimer*) although in *Marlen* at [60] the FTT did not consider it significant that the worker was part of a team comprising employees and contractors;

(f) the degree of control to which the taxpayer is subject (rather than the mere existence of a right of `control');

(g) termination provisions – termination on notice may be a pointer towards employment in some cases (it was found to be so in *Morren v Swinton* (1965) 1 WLR 576 but found to be neutral in *McManus v Griffiths* 1997 70 TC 218). In M*arlen* the tribunal found that the fact that the engager and the worker treated the contract as being capable of termination mid way through with little notice and no payment in lieu of notice (sending the worker home without payment when the computers were down) was a compelling indicator of non employment [61]. In *MBF Design Services v HMRC [2011] UKFTT 35(TC)* the appellant argued that the right of cancellation at any time on written notice was inconsistent with mutuality of obligation. The tribunal at [61] considered that the right to cancel without notice was "foreign to the world of employment" ;

(h) the intention of the parties may have some relevance. In *Dragonfly* Henderson J said that intention may be relevant in a borderline case; but that in many cases it will be of little if any significance [54] and that the weight to be attached to statements of intent in the notional contract would normally be minimal.

(i) whether there was payment for the normal benefits of employment: pensions, sick pay, holiday pay. In *MDCM* the tribunal found that the flat rate payments, the lack of a notice period and the lack of entitlement to employee benefits was inconsistent with employment .

The Hypothetical contracts

102. I now turn to consider what the terms of the hypothetical contract between each hospital and Mr Mantides would have been. I shall then consider whether, in the

circumstances I have identified, had Mr Mantides been engaged under that contract, he would have been an employee. Unless the contrary is indicated I reach the same conclusion in relation to each contractual term of the hypothetical contract on the basis of both the income tax test (what would have been agreed?) as I do on the basis of the NI test (embodying the arrangements involving the intermediary in a contract between the worker and the hospital).

RBH

103. In find that the contract between RBH and Mr Mantides would have contained the following terms:

(1) it would have been for a fixed term

(2) it would be terminable early on at least one week's notice on either side. I come to this conclusion because there is no provision for early termination in the Locum Booking Confirmation, and because the suggestion from Mr Jones that 6 to 8 weeks notice was required for taking time off indicates that some reasonable notice of termination would have been expected by the hospital and it is likely that a corresponding period for notice to Mr Mantides would have formed part of the agreement between DRC/RBH and GML.

I reach this conclusion despite Mr Jones' statement that the contract could be ended at any time by the urology department and that if the hospital's priorities changed Mr Mantides' "employment" would be stopped. I do so because since I did not hear from Mr Jones, it was not clear to me from those answers that no notice would have been given;

(3) it would be for the personal services of Mr Mantides to work as a urologist grade SpR. Mr Mantides would have had no right to provide another person to step into his shoes.

This reflects my conclusions in relation to the arrangements with RBH at [55] above;

(4) it would require Mr Mantides to conduct the services notified to him by the weekly rota in the facilities provided by the hospital;

(5) it would require Mr Mantides to be available for 10 half day sessions in each week. I reach this conclusion because the Locum Booking Confirmation says that standard hours would be 'as per rota', and a standard rota, on Mr Jones' evidence was 10 half day sessions.

But with the consent of RBH he could take holidays and miss occasional sessions.

This reflects Mr Mantides' evidence that he frequently asked for, and took, Friday afternoons off, and that he had an 11 days of holiday while at RBH. It also reflects in part Mr Jones' statement that on a period of notice Mr Mantides could take time off. It would, in my view, have been part of the arrangements with GML.

(6) RBH would agree to use reasonable endeavours to provide 10 half hour sessions in each week.

Although there is no provision to this extent to this effect in the Locum Booking Confirmation, I so find because I concluded that there was a mutual understanding either between DRC as agent for RBH and GML or between GML and DRC and DRC and RBH that Mr Mantides' services would result in between 30 and 40 hours per week, and it would be a breach of such an understanding not to use some endeavours to make up a normal rota.

(7) RBH would pay Mr Mantides the agreed rates per hour worked.

(8) Mr Mantides would attend the morbidity and mortality meetings.

Although there is no express requirement in the Locum Booking Confirmation for Mr Mantides to attend such meetings, I think it highly likely that the hospital would schedule attendance at these meetings as part of the sessions on the rota. Thus the arrangement under which Mr Mantides' services were provided would encompass attendance at these meetings and as a result the same obligation would arise to attend them under both the income tax rest and the NI test.

(9) There would be no entitlement to holiday pay, sickness pay or pension benefits.

Would this have been a contract of employment in the circumstances?

104. Personal service: the contract would oblige Mr Mantides to provide his own work and skill. It would be a contract for his personal service. It is a pointer towards employment.

105. Control: Mr Mantides would be subject to a measure of control by the hospital. It would not be control of all aspects of his work but some of his activities would be dictated in part by the hospital or to some degree supervised by it.

106. He would be obliged to conduct the sessions in the mornings or the afternoons specified in the rota; he would have to deal with the patients on the list. This was a measure of control over what he did and when he carried out his work, but it points only weakly towards employment

107. He would be obliged to work in the rooms and theatres provided by the hospital. I see this however as only a weak indicator of control: those rooms were the only place his work with the hospital's patients could sensibly be conducted. A self-employed decorator is not subject to the relevant kind of control because he can only decorate the room he has contracted to paint.

108. Mr Mantides's work would not be closely supervised: he was not told how to deal with outpatients or how to operate. But in the case of an expert professional this does not seem to me to be a factor which points strongly away from the existence of employment. That is because the work of a professional employee will normally be overseen only "at a distance" by others, so that when problems arise corrective action is taken. I accept that there would be an accumulation of feedback from the other staff which would enable some monitoring of his work. The automatic referral of cancer patient management to the multidisciplinary team provided some measure of the kind of oversight which may in these circumstances be regarded as control.

109. Taking these factors together I conclude that, although tight control was not exercised over what Mr Mantides did, the hospital would be entitled to exercise sufficient control to pass the irreducible minimum test in *Ready Mixed Concrete*. But overall I do not consider that the level of conrol points strongly towards employment.

110. Mutuality: there would in my view be sufficient mutuality of obligation to satisfy this condition. There would be an obligation to work and obligation to pay for the work done. There would be no obligation on either party to work or provide work or pay after the end of the contract nor would there be an absolute obligation on the part of the hospital to provide 10 half day sessions per week during the period of the contract. Those latter factors cast some doubt on whether this would have been an employment contract, but I have found it likely that the hospital would have been under a duty to use reasonable endeavours to provide those sessions during the period of the contract, and that, when taken with the obligations to work and to pay, is, in my view is sufficient to satisfy the requirement for mutuality and points towards employment.

111. Other factors

112. During 2013/14 Mr Mantides' services were provided through GML to three hospitals. The successive provision of services to different clients may point to the carrying on of a business on one's own account. The more engagement the stronger the pull: in *Hall v Lorimer* Mr Lorimer worked for 20 engagers under engagements often lasting no more than a day: that was a pointer to being in business on his own account. Mr Mantides' three longer engagements do not point to self employment.

113. Had the hospital sent Mr Mantides batches of patients to be seen and dealt with in his own consulting rooms and operating theatre, furnished with his own equipment and helpers, that would have been a strong pointer towards self-employment. But given the circumstance that what was plainly required by the hospital was only his skill and expertise applied to patients who came to the hospital and the fact that patients' records would be held on the hospital computer system, I find the fact that he used the hospital's equipment and helpers points only weakly towards employment.

114. Mr Mantides would bear the risk that his contract terminated early (albeit in my judgement on some notice) and of having to find new work. He would also bear the risk that the number of hours he worked each week would be less than 37½ (although that risk would be mitigated by the hospital's obligation to use reasonable endeavours to provide 10 seesions a week). He would negotiate his rates of pay. He would bear the costs of training and complying with GMC registration requirements and of travel and accommodation when away from home. Conversely he would receive the benefit when he worked longer hours. These factors point only weakly to self-employment: most are risks borne by a salaried employee.

115. HMRC suggest that if he were engaged directly he would not need to bear the cost of insurance since he would be covered by the NHS indemnity scheme. However it seemed to me that the indemnity scheme applied only to employees of the NHS, and the notice explaining the scheme indicated that self employed doctors could not benefit from it. Thus only if he were employed would the absence of this cost point towards employment. Given that the MMH contact required GML to carry insurance I

think that the better resolution of this circle is to assume that the direct contract also required insurance cover and that this cost would be borne by Mr Mantides. I do not think however that this adds greatly to the strength of the pointer towards self employment.

116. The instructions to "carry on as usual" in the Locum Booking Confirmation may indicate some integration with the hospital organisation as did the fact that Mr Mantides did some on call work at RBH, but I do not think that it could be said that Mr Mantides was part and parcel of the hospital's organisation. He neither trained nor managed others, and he would attend only one regular meeting. This consideration points weakly to employment.

117. I find that the degree of control that would *actually* be exercised over Mr Mantides is a neutral factor. In practice it appeared that he was told when and where but not how to work.

118. I have found it likely that the contract was terminable at least a week's notice. That is not an indication of self-employment.

119. The lack of any employee benefits points away from employment. Although the rate of pay was said to include holiday pay that was nevertheless only an element of pay for hourly work. It was not pay for not working.

120. Taking all these factors together and standing back I conclude that had Mr Mantides' services been provided under a contract with RBH he would have been an employee (both on the income tax and the NI tests).

MMH.

121. In my judgement the hypothetical contract between MMH and Mr Mantides would have contained the following terms:

(1) it would have been for a fixed term;

(2) it would be terminable early on one day's notice on either side;

(3) it would be for the personal services of Mr Mantides to work as a urologist grade SpR, but permit a substitute to undertake the work if the agency, after consultation with the hospital (in which consultation the hospital had no veto) considered that the substitute was suitable on the basis of the hospital's usual criteria. (I do not consider that the warranty in clause 13.7 of the agreement between MMH and GML that the substitute be a director of the company can be reflected in the notional contract).

(4) it would require Mr Mantides (or the substitute) to conduct the services notified to him by the weekly rota in the facilities provided by the hospital;

(5) it would require Mr Mantides (or the substitute) to be available for 10 half day sessions in each week

(6) MMH would have no obligation to provide, or try to provide, any sessions in a week.

The contract between MMH and GML contained no such obligation and its absence in that formal written contract indicates to me that it should be absent from the notional contract.

(7) MMH would pay Mr Mantides the agreed rates per hour worked.

(8) Mr Mantides would attend the morbidity and mortality meetings.

I so conclude for the same reasons as I gave in relation to the RBH contract.

(9) There would be no entitlement to holiday pay, sickness pay or pension benefits.

(10) Travelling time between the hospital's sites would be paid by MMH. Other travel and accommodation expenses would not be paid.

Had Mr Mantides worked under such a contract would he, in the circumstances, have been an employee?

122. The circumstances of Mr Mantides's work for MMH differ in three material respects from those of his work for RBH:

(1) under the notional contract with MMH Mantides would have a right to send a substitute if that substitute was approved by the agency.

This right would not in my view be illusory: it could have been exercised and taken effect, and although its counterpart in reality was not exercised its existence would be a relevant pointer away from employment.

The qualified nature of the right, and the fact that Mr Best's evidence indicated that the hospital might have resisted its exercise convinced me that the contract could, just, be described as one for Mr Mantides's personal service, but the existence of the right points away from employment.

(2) The notional contract with MMH could be terminated on one day's notice. Whereas I found that at least a week's notice that had to be given under the RBH contract, one day's notice is almost illusory and does not point to employment.

(3) The notional contract with MMH would have contained no obligation on MMH to try to provide either 37½ hours or 10 half day sessions in a week. There would not have been even a qualified obligation to provide work. That points away from employment.

123. In other respects, the circumstances of the MMH engagement would be the same as those of the RBH engagement, and I reach the same conclusion as to the import of the other relevant factors as I do in relation to RBH. But standing back and looking at those factors together with the three noted above I find that the balance lies on the side of self-employment (both as regards the income tax and the NI tests).

124. **Conclusion**

125. I allow the appeal in relation to the work at MMH and dismiss it in relation to the work at RBS.

126. The appeal is formally adjourned to permit the parties to agree the figures. Each has leave to ask for a hearing to deal with the calculations if they cannot be agreed.

Right of Appeal

127. 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.

CHARLES HELLIER
TRIBUNAL JUDGE

RELEASE DATE: 13 JUNE 2019