Neutral Citation: [2024] UKFTT 00143 (TC)

Case Number: TC09078

FIRST-TIER TRIBUNAL
TAX CHAMBER

[By remote video/telephone hearing]

Appeal reference: TC/2022/00763
TC/2022/01708
TC/2023/01352
TC/2023/01353
TC/2023/01354

PROCEDUE: application to bar HMRC or further and better particulars – objection to admit evidence considered irrelevant/prejudicial – applications refused

Heard on: 30 January 2024
Judgment date: 15 February 2024

Before

TRIBUNAL JUDGE AMANDA BROWN KC

Between

4SITE SERVICES LONDON LIMITED
DEEPAMAN PRABHAKHAR
CARLOS DARMOO

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Michael Avient of counsel, instructed by GC9 Ltd

For the Respondents: Joanna Vicary of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION

1. With the consent of the parties, the form of the hearing was a video hearing using the Tribunal video hearing system. A face-to-face hearing was not held because it was expedient not to do so. The documents to which I was referred were: skeleton arguments served by both parties, a document bundle of 5963 pages, a supplemental bundle (which I directed be admitted (see below)) of 58 pages and an authorities bundle.

2. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

APPLICATIONS

3. The hearing was listed to hear a number of applications:

(1) An application by 4Site London Services Limited (**Appellant**) dated 19 June 2023 to:

(a) Bar HM Revenue & Customs (**HMRC**) from the proceedings pursuant to Rules 8(3)(c) and (7)(a) Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (**FTT Rules**) (**Barring Application**);

(b) To the extent not barred, for HMRC to provide further and better particulars pursuant to rule 5(3) FTT Rules (**F&BP(1) Application**);

(c) To remove the requirement to comply with certain directions of the Tribunal (**Fairford Direction Removal Application**);

(d) To exclude the witness statement of Gavin Stock (HMRC Officer) (**GS Application**); and

(e) To remove statements asserted to be opinion or irrelevant evidence from the statement of Royston Moore (HMRC Officer) (**RM Application**).

(2) The application by HMRC to join appeal references TC/2023/01532 – 01534 to the appeal references TC/2022/00763 and TC/2022/01708 which are already consolidated under TC/2022/0763 (**Joinder Application**).

(3) The Appellant's application for wasted costs dated 14 July 2023 (**Costs Application**).

(4) The Appellant's application for additional further and better particulars dated 6 September 2023 (**F&BP(2) Application**).

(5) The Appellant's application for an extension of time for service of witness statements (**Extension Application**).

4. In addition to the above, and arising in the course of the listing and preparation for this applications hearing:

(1) the Appellant had breached an unless order having failed to provide listing information. I had directed that unless the Appellant provide the listing information required before the prescribed date and time the applications listed in 3(1), 3(3) and 3(4) above would be refused, that in 3(2) would be allowed. The information was provided but after the deadline had expired and thus the applications were formally determined as indicated in the order. However, I indicated prior to the hearing that I was minded to

reinstate the applications given the short delay in provision of the listing information unless HMRC objected to reinstatement;

(2) there was an application by HMRC to admit a supplemental bundle. The bundle contained the HMRC decisions under appeal which had not been included in the original bundle (**Supplemental Bundle Application**).

BACKGROUND TO THE APPLICATIONS

5. The Appellant's business is that of providing "muck away" services and day hire of lorries and drivers. The Appellant does not own any lorries, nor does it employ drivers. The services it provides to construction companies are delivered through subcontracting the hire of lorries and engagement of drivers.

6. HMRC have issued a series of assessments to tax and associated penalties to the Appellant:

(1) For VAT prescribed accounting periods 12/18, 03/19, 06/19 and 06/20 VAT assessments totalling £260,032 on the basis that the Appellant knew or should have known that two of the subcontractors (CM Utilitys and Services Ltd (**CMUS**) and Glassoncorp Ltd (**GCorp**)) with whom they were dealing were fraudulently evading VAT in connection with the supplies made to the Appellant (**Kittel Assessments**)

(2) For the same periods as in (1) above penalties totalling £80,409.60 (**Kittel Penalties**).

(3) For VAT prescribed accounting periods 09/19, 12/19 and 03/20 VAT assessments totalling £253,262 on the basis that the Appellant has failed to evidence an entitlement to input tax credit (**Section 73 Assessments**)

(4) For the same periods as in (3) above associated penalties totalling £141,826.72 (**Section 73 Penalties**).

7. HMRC have also issued personal liability notices to Deepaman Prabhakar and Carlos Darmoo in respect of the Section 73 Penalties. Each individual has been allocated 50% of the penalty (**PLNs**).

8. The Kittel Assessments and Penalties have been appealed under Tribunal references TC/2022/00763 and TC/2022/01708 (**Kittel Assessment Appeal, Kittel Penalty Appeal and together Kittel Appeals**). Those appeals have been consolidated by the Tribunal and directions issued to progress the matter to hearing. To date HMRC have served their statement of case in those appeals, together with witness statements from Gavin Stock (whose statement deals with HMRC's evidence regarding CMUS and GCorp) and Royston Moore (whose statement deals with HMRC's evidence regarding the Appellant).

9. By reference to the original directions the Appellant is next due to provide confirmation (or otherwise) that they accept: (1) the accuracy of the transaction chains with CMUS and GCorp, (2) that there was a tax loss tax in connection with those transactions; (3) that the tax loss was attributable to fraudulent evasion; and (4) those parts of HMRC's witness statements with which they disagree. By the Fairford Direction Removal Application the Appellant has applied to set aside that direction..

10. The Appellant and Messrs Prabhakar and Darmoo have appealed the Section 73 Assessments and Penalties (**Section 73 Assessment Appeal, Section 73 Penalty Appeal, PLN Appeal, together Section 73 Appeals**). No progress has been made with those appeals other than HMRC agreeing to the hardship applications made.

APPLICATIONS COMPROMISED OR RESOLVED DURING THE HEARING

11. HMRC did not object to the reinstatement of the applications following the breach of the unless order. As I had previously indicated therefore the applications were reinstated.

12. I determined the Supplemental Bundle Application in HMRC's favour. The Appellant's objection to its introduction centred on an objection that HMRC had failed to comply with the direction to produce a compete index and bundle and that their failure should not be readily permitted to sidestep their own failure. It was however plain that all the documents were documents otherwise passing between the parties. More pertinently the documents were ones which could be said to have been included in the index in any event i.e. a Notice of Appeal must attach the decision appealed, therefore showing the Notice of Appeal on an index would, in my view, include all attached documents. The fact that they were then missed when the bundle was prepared did not, in my view, represent a grievous, or indeed any failure to comply it was a simple error in compilation of the bundle and it was therefore in accordance with the overriding objective that I admit the supplemental bundle.

13. During the course of the hearing, and at my suggestion, HMRC withdrew the application to join the Section 73 Appeals to the Kittel Appeals both parties agreeing that the Section 73 Assessment and Penalty appeals could simply be stayed pending the outcome of the Kittel Assessment and Penalty appeals. The parties agreed that a stay was effective to protect the Appellants and meet HMRC's concern that were the Section 73 Appeals to run in parallel to the Kittel Appeals there was a risk of different decisions on conduct arising from the same factual backdrop.

14. Formally, therefore, the Joinder Application is refused. However, appeal references TC/2023/01532 – 01534 are joined to one another and the joined appeals are stayed until 60 days after the final determination by this Tribunal of the consolidated Kittel appeals.

15. During the course of argument the Appellant also conceded the Fairford Directions Removal Application. Formally therefore it is refused.

BARRING APPLICATION

16. Rule 8(3)(c) and (7) FTT Rules provides for a party to be excluded (struck out or barred) where the Tribunal considers that the position adopted in the proceedings has no reasonable prospect of succeeding.

17. The approach I must adopt when considering the Appellant's Barring Application is prescribed by the Upper Tribunal (**UT**) in *First De Sales Ltd Partnership and others v HMRC* [2018] UKUT 396 (TCC)) (***First De Sales***). The factors/questions to be considered are:

> (1) Does HMRC have a "realistic" as opposed to a "fanciful" prospect of successfully defending the appeal. In this regard, HMRC's case must have some degree of conviction, being more than merely arguable.
>
> (2) In answering that question, no "mini trial" must be conducted.
>
> (3) I need not take at face value assertions made, without analysing what is said, particularly if contradicted by contemporaneous documents.
>
> (4) I may take account of evidence available now and such evidence as may become available before hearing (though that is less relevant now given that HMRC have served their witness statements).
>
> (5) The Tribunal should not make a final decision "where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence".

18. That approach reflects the approach taken in the civil courts more generally when considering whether to grant summary judgment. In that context (and by reference to the judgement of the Court of Appeal in *Hytech Information Systems Ltd v Coventry City Council* [1997] WLR 1666) a decision to strike out/bar on the basis that the case advanced has no reasonable prospects of success is one that should not be taken lightly and represents a high hurdle for the party inviting that course of action.

19. At the start of the hearing the Appellant contended that on the basis of the evidence served by HMRC, taken at its highest and without refence to any evidence the Appellant might serve, HMRC cannot meet the burden of establishing either that there was tax loss or that such loss was attributed to the fraudulent evasion of VAT so far as the transactions with CMUS and GCorp are concerned. During the hearing it was conceded that HMRC did have a reasonable argument that there was a tax loss but it continued to be asserted that there was no evidence that the loss was attributed to fraudulent evasion of VAT in particular because there may have been an alternative explanation for non-payment of VAT.

20. HMRC point to the evidence in the witness statements and exhibited documents which demonstrate that:

(1) Neither CMUS and GCorp owned lorries or employed drivers, they too subcontracted all the work offered to them by the Appellant, as such there was no obvious rationale for their involvement in the supply chain.

(2) Both companies issued VAT invoices to the Appellant in circumstances in which the "tickets" for such work did not match the invoices.

(3) Both companies either failed to render VAT returns at all or rendered nil returns whilst carrying on business.

(4) Centrally issued assessments went unpaid by both companies.

(5) Following deregistration of CMUS and GCorp they continued to trade with the Appellant and continued to issued invoices bearing VAT.

21. On the basis of this evidence HMRC contend that they have a compelling and in any event reasonable case that the now admitted tax loss was attributed to the fraudulent evasion of VAT.

22. The Appellant contended that where there was a positive alternative basis to which the tax loss could be attributed then HMRC failed to meet the burden on them. The alternative posited here was that CMUS and GCorp might simply have been in financial difficulties wanting to trade through in order to be able to pay the outstanding VAT at some later point and thereby without an intention to permanently deprive the state of the VAT in question.

23. In my view the Appellant's position is entirely unsustainable. In essence it elevates the burden on HMRC to one of beyond reasonable doubt or worse certainty. As directed in *Frist De Sales* all I must be satisfied of is that there is a reasonable argument. It is possible that there is another explanation for CMUS and GCorp's failure to pay any VAT at all over a substantial period of trading and to have rendered returns including a declaration as to accuracy showing no trading when there is plain evidence that they were trading and adding VAT to their invoices. But whether that possibility is more or less likely than HMRC's posited view that CMUS and GCorp fraudulently evaded VAT is one of the matters which will be tested in evidence at a full trial alongside the evidence as to the Appellant's knowledge. It is certainly not a possibility so likely that it would render HMRC's position so improbable that it was fanciful or not reasonably arguable. It would be entirely contrary to the direction in *Frist De*

Sales for me to evaluate without evidence the likelihood of possible alternatives in order to dismiss HMRC's case as fanciful, without conviction and merely arguable.

24. For the above reasons I refuse the Appellant's application that HMRC be barred from future involvement in these proceedings.

F&BP APPLICATIONS

25. As indicated the Appellant has made two separate applications for further and better particulars.

26. The requested particulars in the F&BP Application were generally framed:

(1) To particularise how the asserted tax loss arose;

(2) The nature of the fraudulent evasion of VAT;

(3) The full transactions chains, having particular regard to the input and output tax paid by each entity in the chain.

27. These were more fully particularised in the Appellant's skeleton argument:

(1) HMRC assert the Appellant's submissions '…invite the Tribunal to entertain fictional input tax claims by the defaulting companies', ignoring HMRC have the burden of proof. Further and better particulars are sought as to HMRC's case as regards the input tax paid by CMUS and GCorp.

(2) HMRC assert the CMUS and GCorp were inserted into the supply chain for no reasonable or economic reason. Further and better particulars are sought as to the basis on which HMRC assert there was no reasonable or economic reason for CMUS and GCorp to be in the supply chain.

(3) In the absence of HMRC fully particularising the supply chain immediately below the Purported Defaulters, the Appellant is ignorant as to the basis on which the primary facts support an allegation of fraud. Further and better particulars are sought of each supply in the chain immediately below the chains identified in the SoC and the witness evidence.

28. F&BP(2) seeks the following additional information:

(1) What due diligence HMRC allege the Appellant could have undertaken but did not?

(2) What it alleges better due diligence would have revealed

29. The Appellant contends that all the information requested is required for them to understand fully and accurately the case that they face. By reference to the case of *Ronald Hull Junior Limited v HMRC* [2016] UKFTT 525 (TC) (***Ronald Hull***) it is submitted that the requests are reasonable and proportionate.

30. HMRC contends that they have provided all the relevant information regarding the tax chains. As the Appellant points out these are not complicated supply chains. The Appellant traded directly with CMUS and GCorp and neither entity then paid the output tax in respect of which the Appellant's claims to input tax have been made. HMRC submit that what happened below CMUS and GCorp is ultimately irrelevant.

31. Whilst it is known that those companies must have subcontracted the lorry and driving services as there was no claim to input tax (no or nil returns having been submitted) the only relevant focus is the non-declaration and payment of the output tax charged to the Appellant. The position of CMUS and GCorp as "empty" (my language not HMRC's) intermediaries with

no lorries or drivers is, in HMRC's submission, evidence enough as to the absence of economic reason for their insertion into the supply chain.

32. Finally, and as regards the F&BP(2) Application HMRC contend that their position is clear on the face of the pleadings and to be contrasted with that in *Ronald Hull.* Unlike in that case HMRC have not asserted that there was specific due diligence which could have been carried out by the Appellant, simply that the due diligence which the Appellant in fact carried out amounted to no more than checking the basic requirements necessary for CMUS and GCorp to fraudulently evade VAT. They contend it is for the Tribunal to determine whether the limited checks undertaken by the Appellant are sufficient to substantiate a submission that they had done enough such that they had no means of knowing of the fraud being perpetrated.

33. In accordance with rule 25 FTT Rules HMRC's statement of case is required to state the legislative provision under which the decision under appeal was made and set out the respondent's position in relation to the case. These requirements are set in the context of the parties' obligations to assist the Tribunal to deal justly and fairly with the matter under appeal. As recently noted by Judge Aleksander in *Alpha Republic Limited v HMRC* [2023] UKFTT 750 (TC) endorsing the view taken in *Citibank NA v HMRC* [2014] UKFTT 1063 (TC) the statement of case, where necessary and appropriate by reference to other material including witness statements, must give the appellant the opportunity to properly prepare for the case. By reference to *Tejani v Fitzroy Plance Residential Ltd* [2020] EWHC 1855 (TCC) and the cases cited therein Judge Aleksander notes that a statement of case "marks out the parameters of the case being advanced", only pleading the facts necessary for the purpose of formulating a cause of action/defence.

34. The question to be asked when considering the F&BP applications is: does the statement of case (taken together with the witness statements) enable the Appellant in this case to know the case it has to meet?

35. The answer is quite plainly yes.

36. The burden rests with HMRC to establish tax loss attributable to fraudulent evasion of VAT of which the Appellant knew or should have been aware. The basis on which HMRC propose to make good their case is summarised in the statement of case and particularised in the evidence. Whether it is sufficient to meet the burden on them is a matter to be determined by the Tribunal panel hearing the appeal and one on which I make no observation other than that I have concluded that their case is at least reasonably arguable.

37. In light of the terms on which the statement of case is drafted and the evidence presented it is not clear to me what more HMRC could even say in response to the F&BPs beyond what is there already.

38. For these reasons I refuse both F&BP Applications.

GS APPLICATION

39. Officer Stock's witness statement concerns HMRC's enquiries into CMUS and GCorp. It sets out the extent of the actions taken by HMRC to collect VAT from those companies.

40. By their skeleton the Appellant contends that it is "non-expert opinion evidence" which is irrelevant in these proceedings. They seek to substantiate that contention on the basis that Officer Stock had no personal involvement in the facts of the present case, the evidence covers some of the material in Officer Moore's statement and expresses an opinion as to what the bare facts demonstrate such that the admission of the statement leads to unfairness to the Appellant.

41. These submissions were somewhat narrowed during the course of oral submissions during which it appeared to be contended that the evidence was simply duplicative or could have been given by Officer Moore.

42. HMRC contend that it is for them to determine who gives evidence. They state that in Kittel cases it is their normal practice to have an officer or officers to give evidence about the defaulting traders separately from the officer on the case who raised the assessment. It was pointed out that in many Kittel cases there may be any number of officers giving evidence regarding defaulters. In this case there are two defaulters and Officer Stock gives the relevant evidence about them both. As the Appellant could not ultimately substantiate any objection to the evidence itself, as distinct from the person giving it, I was invited to dismiss the application to exclude the evidence.

43. I refuse GS Application. In this case we have only two witnesses from HMRC. The scope of the evidence each will give is clear and reasonable. HMRC must show that there is a tax loss attributed to the fraudulent evasion of VAT by CMUS and GCorp. They do so by reference to the evidence of Officer Stock and the documents exhibited to his statement. It is reasonable for them to do so. Subject to the position taken by the Appellant when they comply with the Fairford Directions Mr Stock will be available for cross examination and the Appellant can challenge the inferences he has drawn from the basic evidence. Those inferences are not opinions in an evidential sense. The Tribunal hearing the appeal will then find the facts it considers established on the evidence.

RM APPLICATION

44. The Appellant's attack on the statement of Officer Moore were more targeted. The Appellant sought to redact specific paragraphs from the statement on the basis that the evidence in question was either irrelevant or hearsay.

45. The evidence considered to be irrelevant concerns Messrs Prabhakar and Darmoo and, in particular, their historic directorships, self-assessment returns, involvement in companies with poor VAT compliance giving rise to VAT losses s details of a COP9 disclosure process.

46. It was argued, in essence, that these paragraphs were prejudicial to the Appellant. Whilst the Appellant accepted that the Tribunal powers under rule 15 FTT Rules permit the admission of evidence which might be otherwise excluded in civil proceedings it was contended that consistently with the overriding objective to deal with matters fairly and justly the evidence should be redacted and not available to the Tribunal hearing the substantive appeal.

47. HMRC contend that all the evidence of historic behaviour is relevant in the context of whether the Appellants should have known of the tax loss attributable to fraudulent evasion by CMUS and GCorp.

48. As to the purported hearsay evidence. Each of the paragraphs concerned represent a summary of a document exhibited to the statement, i.e. paragraph 43 is a summary of a telephone attendance note. The Appellant contends that the note speaks for itself and the narration of it is thereby hearsay evidence.

49. HMRC contend that it is convenient for the Tribunal to have a summary of the note in the first instance giving the Tribunal the opportunity to take a high level understanding and then subsequently read the note. They contend that if there is any inaccuracy in the summary then it is a matter on which Officer Moore can be cross examined.

50. As noted by the Appellant rule 15 FTT Rule the Tribunal has the power to admit evidence which would not be admissible in a civil trial in the UK and to exclude evidence which would otherwise be admissible where inter alia it would be unfair to admit it.

51. I cannot see that any of the objections that the Appellant has sought to levy should cause the redaction of Officer Moore's statement.

52. Dealing firstly with the alleged narration of documents. This is a question of style. Certainly for the judge preparing for the case with reading time, having all of the evidence broadly summarised in a witness statement is helpful. Of course, the primary evidence will be the document itself. It is notable that the Appellant has not challenged the accuracy of the summaries and as such the relevant paragraphs of the witness statement provide a relevant starting point. The panel hearing the case can then, during the course of the hearing, be taken to the documents and will then form their own view as to the facts proven by that evidence.

53. As to the other challenges, paragraphs 26 and 30 of the statement are a list of current and historic directorships held by the directors of the Appellant. That information is in the public domain, as is the status of the companies in which those directorships was held. The information is relevant to the experience of the directors and thereby the Appellant in business generally.

54. The challenges to paragraph 27 (setting out Mr Darmoo's previous involvement in a business which submitted fictitious VAT returns) and paragraph 35 (demonstrating that a substantial number of counterparties with whom the Appellant has traded have been non-compliant failing to render/pay VAT) are challenged on the basis of the perceived prejudice.

55. It is my view that such evidence it highly relevant in assessing both what the Appellant knew and should have known regarding the any fraudulent evasion (which is yet to be proven) by CMUS and GCorp and as to their credibility vis a vis awareness of VAT fraud/losses.

56. As I indicated in the hearing a lose analogy to whether it is prejudicial to permit the evidence to be adduced may be drawn to the circumstances in which bad character evidence is adduced in criminal proceedings. Under section 101 Criminal Justice Act 2003 evidence of a defendant's bad character will be admissible only through one of the statutory gateways. Section 101(1)(c) provides for the admission of evidence which is important explanatory evidence; (d) where the evidence is relevant to an important matter in issue between the defendant and prospection, and (e) if it is evidence to correct a false impression given by the defendant. Each gateway is subject to the overriding effect of 101(3) that admission of the evidence would have such an adverse effect of the fairness of the proceedings that the court ought not to admit it. Gateway (d) is also subject to section 103 which provides that a matter in issue between the defendant and the prosecution shall include a propensity to commit offences of the kind with which he is charged (unless that propensity makes it no more likely of guilt of the offence) or a propensity to be untruthful.

57. It would be highly surprising if when the section 101 Criminal Justice Act gateways are considered that evidence which would be admissible in criminal proceedings were not admissible in civil proceedings, particularly proceedings in which the Tribunal has the power to admit evidence which is excluded in civil proceedings. The evidence in paragraphs 27 and 35 of the statement would, in my view be admissible under gateway (d) by analogy.

58. Finally, the evidence in paragraphs 28 and 32 which sets out each of the directors self-assessment return declarations. HMRC contend that the information is included for completeness. Ms Vicary suggested that it may even be helpful to the Appellant. I am less convinced as to its probative value to these proceedings; however, I can see no prejudice to its inclusion and the trial judge will place such reliance, if any, as they think appropriate in light of all the other evidence.

59. For these reasons I refuse the application to amend/redact Officer Moore's statement.

COSTS APPLICATION

60. The Appellant applied for costs in respect of the joinder application. They contended that HMRC acted unreasonably in bringing their joinder application before hardship had been granted and hence when there were no proceedings to join.

61. As I indicated in the hearing Judge Sinfield determined in *SNM Pipelines Limited v HMRC* [2022] UKFTT 231 (TC) (***SNM***) that the practical effect of section 84(3) Value Added Taxes Act 1994 (which provides that an appeal against an assessment to VAT cannot be entertained unless the amount assessed as payable has been paid or deposited with HMRC) and Rule 22 FTT Rules (which provides the requirement that when starting proceedings the taxpaying appellant must confirm that payment has been made or that a hardship application has been made) is that an appeal brought without payment and absent HMRC having accepted hardship are proceedings but proceedings which should not proceed further until hardship is determined.

62. HMRC's application to join the Section 73 Assessment appeals was made after the Appellant had applied for hardship but before it had been granted was therefore made within the scope of extant Tribunal proceedings. In light of the analysis in *SNM* therefore there were proceeding and there was nothing to restrict the progression of the proceedings. It might otherwise have been the case in terms of progression had there been no application for hardship at all.

63. It is also notable that the hardship application only related to the Section 73 Assessment and not the Section 73 Penalties or PLNs which do not require payment in order for the appeal to be entertained/proceed.

64. The test for determining whether conduct is unreasonable for the purposes of a costs application as initially framed in the matter of *Market & Opinion Research International Ltd v HMRC* [2015] UKUT 12 (TCC) and approved in *Distinctive Care Ltd v HMRC* [2019] EWCA Civ 1010 is to determine whether the conduct falls outside the range of reasonable conduct noting that conduct need not be wholly unreasonable in order to justify an award of costs.

65. Given that proceedings were on foot, there was no restriction on its progression and HMRC sought to ensure that appeals arising from the same factual background over the same period (the Section 73 Assessments and Penalties relating to periods in the middle of the Kittel Assessments and Penalties) the Application was not unreasonable. That is so whether or not it would have been granted, a question which I did not have to determine given the concession of the parties to a stay.

66. The Kittel Appeals are categorised as complex however, the Section 73 Appeals are not. As such, and on the basis that the costs were not unreasonable, whether the application for joinder was made as part of the Kittel Assessment and Penalties appeals or the Section 73 Assessment and Penalties and PLN appeals is strictly relevant to determine whether the costs of the application are payable at all.

67. On the basis that the hearing (which lasted a full day) ranged across aspects of both sets of appeals I consider it appropriate to determine that the costs of the hearing, including those in connection with the joinder application be costs in the cause of the Kittel Appeals. The party succeeding in the substantive appeal will therefore be entitled to claim the costs of this hearing.

EXTENSION APPLICATION AND CONSEQUENTIAL DIRECTIONS

68. The time limit for service of the Appellant's witness statements and other directions originally set by Judge Dean on 30 May 2023 have long since passed.

69. I grant extensions of time and revise the timetable for future conduct of the consolidated appeal under Tribunal reference TC/2022/00763 as set out in the attached directions.

DISPOSITION

70. For the reasons set out above:

(1) The Barring Application is refused

(2) Both F&BP(1) and (2) Applications are refused

(3) Fairford Direction Removal Application was withdrawn

(4) Joinder Application was withdrawn

(5) Tribunal references TC/2023/01532 – 4 are joined to one another and stayed until 60 days after this Tribunal finally determines the Kittel Appeals consolidated under TC/2022/00763.

(6) The GS and RM Applications are refused.

(7) The costs of this hearing are in the cause of appeal TC/2022/00763

(8) Further directions are made as attached.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

71. 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.

AMANDA BROWN KC
TRIBUNAL JUDGE

Release date: 15th FEBRUARY 2022