IN THE FIRST-TIER TRIBUNAL **Ref: TC/2017/08385**

TAX CHAMBER

BETWEEN

JOLYON MAUGHAM

Appellant

and

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS

Respondents

STATEMENT OF CASE

A INTRODUCTION

1. This VAT appeal arises out of a claim for input tax credit by the Appellant, in the absence of a VAT invoice, but backed up by letters and documents provided to HMRC by the Appellant.

2. The Appellant appeals pursuant to s 83(1) Value Added Tax Act 1994 ('VATA') against the decision of the Respondents ('HMRC') contained in a letter from HMRC to the Appellant dated 6 November 2017 ('the Letter'). A copy of the Letter is at page 1 of the Annex to the Appellant's undated Grounds of Appeal ('GoA') attached to the Notice of Appeal dated 21 November 2017).

3. The Appellant alleges that in the Letter HMRC determined (a) that VAT was not chargeable on a supply of minicab services ('the Supply') made to the Appellant and (b) that the Appellant was not entitled to deduct any input tax in relation to that Supply (see paragraphs 3 and 13 of the GoA).

4. HMRC's position is that it is plain that the Letter appealed against did not contain a decision on whether or not the Supply to the Appellant was a taxable supply of services. The only decision contained in the Letter was a decision by HMRC not to accept alternative evidence of a charge to VAT in respect of the Supply, the Appellant holding no VAT invoice in respect of the Supply.

5. HMRC accept that the Appellant has a right of appeal under s 83(1)(c) VATA against HMRC's decision to decline to accept that alternative evidence provided by the Appellant to HMRC should be treated as sufficient evidence of a taxable supply to the Appellant. Such an appeal is to be approached in accordance with the correct approach as set out in the decision of the Upper Tribunal in *Scandico Limited v HMRC* [2017] UKUT 0467 (TCC) ('the *Scandico* Decision'), released on 7 December 2017, after the Appellant's Notice of Appeal was filed.

6. The Appellant has no right of appeal under s 83(1)(b) VATA.

7. The total amount at issue in this appeal is £1.06.

B FACTS

8. The Appellant, a self-employed barrister, is registered for VAT under VAT registration number 714441558 and has carried on business providing legal services.

9. Paragraph 2 of the GoA states that the Appellant received "*a supply of Uber private minicab services made on 15 March 2017*". It is stated at paragraph 4 of the GoA that the fare was £6.34. At paragraph 5 of the GoA it is stated that the Appellant was given a receipt for that journey, attached at page 3 of the Annex to the GoA. However, the attached receipt bears a date of 10 October 2017 and is for a total amount of £6.61**.** This Statement of Case proceeds on the basis that the document attached at page 3 of the Annex to the GoA was attached in error, and the correct document is that attached to the Appellant's letter of 30 June 2017 which is annexed hereto.

10. It is accepted that the Appellant received a supply of minicab services on 15 March 2017 ('the Supply') and that the total fare charged was £6.34. It is accepted that the Appellant used those services for the purpose of his business.

11. On 30 June 2017 the Appellant submitted his VAT return for the period 05/07 (quarter ending 31 May 2017). He claimed to deduct £1.06 by way of input tax in respect of the Supply.

12. The Appellant also wrote to HMRC by a letter dated 30 June 2017, in connection with that deduction made in that VAT return, and attaching a receipt. The Appellant acknowledged that the receipt was not a VAT invoice. He stated that he had asked Uber London Ltd ('ULL') to issue him with a VAT invoice, that they had refused to issue a VAT invoice to him, and that he had commenced High Court proceedings against ULL to require that company to provide him with a VAT invoice (which were ongoing). The Appellant, in that letter, requested HMRC to waive the requirement that he hold a VAT invoice by exercising their powers under regulation 29(2) Value Added Tax Regulations 1995 ('Regulation 29(2)' and 'the Regulations').

13. HMRC responded by a letter dated 7 August 2017 to the Appellant which concluded by giving the Appellant the opportunity to provide additional evidence to show that VAT had been charged on the Supply.

14. The Appellant responded to HMRC by a letter dated 1 September 2017, enclosing a letter before action from the Appellant to ULL dated 21 March 2017 and that company's reply dated 3 April 2017, commenting on those letters and alleging that, given the Appellant's letters of 30 June 2017 and 1 September 2017 and their enclosures, there was no basis for HMRC to decline to exercise their discretion under Regulation 29(2) in favour of the Appellant.

15. As stated, the Appellant appeals against HMRC's decision in the Letter. That Letter concluded:

"*Having carefully considered this further evidence and your arguments, we have concluded that these documents cannot in our view be read as*

demonstrating that VAT has been charged or was payable. As we set out in our previous letter, the legal position is that we can only provide a refund on the basis of a valid VAT invoice or other sufficient evidence of VAT charge."

C DECISION MADE BY HMRC

16. The Letter contains a decision by HMRC, pursuant to Regulation 29(2) not to accept the receipt and letters provided by the Appellant to HMRC, and the letters enclosing them, referred to in Section B above, as evidence of the charge to VAT alleged by the Appellant. That decision is an appealable decision on a matter within s 83(1)(c) VATA.

17. The Letter does not contain or record any decision by HMRC on the VAT chargeable on the Supply. HMRC did not accept the claim by the Appellant that he was entitled to deduct £1.06 as input tax on the basis that HMRC were not satisfied that the evidence provided to HMRC by the Appellant was adequate to establish that the Supply was a taxable supply.

18. It cannot, or should not, be inferred from the Letter, as the Appellant seeks to in paragraphs 12 and 13 of the GoA, that HMRC must have reached a decision on the VAT chargeable on the Supply.

19. Thus, in so far as the Appellant seeks to pursue an appeal on a matter within s 83(1)(b) VATA, that part of its appeal is misconceived as it is not an appeal based on any decision actually given by HMRC to the Appellant. HMRC have taken no decision on the VAT chargeable on the Supply.

20. Paragraph 13(b) of the GoA refers to the Appellant's appeal also being under s 83(1)(e) VATA. Section 83(1)(e) VATA relates to decisions by HMRC on "*the proportion of input tax allowable under section 26 [VATA]*" and has no relevance to the decision made by HMRC contained in the Letter.

21. In this Statement of Case HMRC will address the only decision actually made by HMRC, that is the decision by HMRC to refuse to accept alternative evidence under Regulation 29(2).

D RELEVANT LEGISLATION

EU legislation

22. Article 178 of Directive 2006/112/EC ('PVD') relevantly provides:

"In order to exercise the right of deduction, a taxable person must meet the following conditions:
(a) for the purposes of deductions pursuant to Article 168(a), in respect of the supply of goods or services, he must hold an invoice drawn up in accordance with Articles 220 to 236 and Articles 238, 239 and 240;…"

23. Article 180 PVD relevantly provides that:

"Member States may authorise a taxable person to make a deduction which he has not made in accordance with Articles 178 …"

24. Article 182 PVD relevantly provides:

"Member States shall determine the conditions and detailed rules for applying Articles 180…"

25. The obligation on suppliers of goods and services to provide a VAT invoice is imposed by Article 220 PVD.

National law

26. Regulation 13 of the Regulations provides that where a registered person makes a taxable supply in the United Kingdom to a taxable person he shall provide that person with a VAT invoice.

27. Regulation 14 of the Regulations specifies the contents of a VAT invoice. Regulation 16A of the Regulations provides for simplified invoices in cases "*where the consideration for a supply does not exceed £250 and the supply is other than to a person in another member State*…"

28. Regulation 29(1) and (2) relevantly provide as follows:

"(1) … save as the Commissioners may otherwise allow or direct either generally or specially, a person claiming deduction of input tax under section 25(2) of the Act shall do so on a return made by him for the prescribed accounting period in which the VAT became chargeable. ..

…

(2) At the time of claiming deduction of input tax in accordance with paragraph (1) above, a person shall, if the claim is in respect of—
(a) a supply from another taxable person, hold the document which is required to be provided under regulation 13;

….

provided that where the Commissioners so direct, either generally or in relation to particular cases or classes of cases, a claimant shall hold, or provide, such other evidence of the charge to VAT as the Commissioners may direct."

E HMRC'S DECISION TO DECLINE TO ACCEPT THE ALTERNATIVE EVIDENCE PROVIDED BY THE APPELLANT

Correct approach to appeal in respect of decision to decline to accept alternative evidence under Regulation 29(2)

29. The correct approach to an appeal under s 83(1)(c) VATA, concerning a decision by HMRC, in the exercise by of its discretion under Regulation 29(2), whether or not to accept alternative evidence of a taxable supply has now been considered and determined by the Upper Tribunal in the *Scandico* Decision, differing significantly from the approach habitually previously adopted by First-tier tribunals.

30. In summary, a First-tier tribunal is neither required nor entitled to examine the issue of whether there has in fact been a taxable supply to the appellant (see *Scandico* Decision, §41). In appeals of this kind (see *Scandico* Decision, §43): "*the First-tier tribunal should address only the decision which is before it, namely HMRC's decision, that in the absence of the VAT receipts, they were not prepared to exercise their discretion to accept the alternative evidence provided by the taxpayer as to whether there had been a taxable supply.*"

31. The Upper Tribunal continued (in §43): "*The test that the First-tier tribunal applies in reviewing that decision is the test set out in Kohanzad*."[1] The test set out in *Kohanzad* has been described by the Upper Tribunal as "*supervisory in that the FTT could not substitute its own decision but could only decide whether the discretion had been exercised reasonably [by HMRC]*."[2]

32. The relevant evidence is limited to the evidence that was before the decision taker at the date of the decision under appeal.

Appellant's Grounds of Appeal

33. The Appellant's Grounds of Appeal (Part IV of GoA) are largely directed to the issue of whether or not the Supply was a taxable supply made by ULL to the Appellant.

34. However, the Appellant contends that "*the only basis (and certainly the only rational basis) for the Decision is that the Supply was not made by ULL, but by the driver.*" (See paragraph 25 of the GoA).

35. That contention is said, by paragraph 25 of the GoA, to have been explained earlier in the GoA. At paragraph 9 of the GoA (by reference to correspondence) it is stated:

"*(a) there was and could be, no dispute about the fact of the Supply to the Appellant or as to the price that was paid";*

(b) there was, and could be, no dispute that if the Supply was made by ULL (a taxable person registered for VAT) then the price paid would have included an amount of input tax of £1.06 (corresponding to the amount of output tax for which ULL would on that basis be obliged to account for to HMRC); and

(c) the only reason why there was no VAT invoice recording VAT in the amount of £1.06 was that ULL denied that it made the Supply, contending that

[1] *Kohanzad v CCE* [1994] STC 967, QBD. See the passage cited in the Scandico Decision at §19.
[2] See *Best Buys Supplies Ltd v HMRC* [2011] UKUT 497 (TCC), at §49 cited with approval in the *Scandico* Decision at §21.

the Supply was instead made by the individual driver (who was not registered for VAT)."

36. Paragraph 10 of the GoA asserts that each of those contentions was established by the Appellant's letter to HMRC dated 1 September 2017 and quotes the Appellant from that letter, where he stated "*Given those facts… I can with respect see no basis for you to decline to exercise your discretion*:…" At paragraph 12(b) of the GoA, referencing paragraphs 9 and 10 of the GoA, it is stated "*that the only rational basis for the conclusion reached in the Decision could be that the Supply was not subject to VAT;*".

Respondent's Case

37. HMRC reached their decision to refuse the claim by the Appellant that he was entitled to deduct £1.06 as input tax on the basis that HMRC were not satisfied that the 'alternative evidence' provided to HMRC by the Appellant was adequate to establish that he had received a taxable supply. In reaching that decision HMRC acted reasonably..

38. The three matters set out at (a) to (c) of paragraph 9 of the GoA do not compel the conclusion that the Appellant had received a supply from ULL. Indeed, they do not provide any evidence, or any compelling evidence, of who made the Supply, such that any reasonable panel of Commissioners would have been bound to conclude that the Supply was made by ULL.

39. HMRC do not dispute as alleged in point (a) of paragraph 9 of the GoA, that the Appellant received a supply of minicab services in consideration for £6.34, or that the Supply took place on 15 March 2017 (as also alleged in paragraph 24(a) of the GoA). HMRC note that point (b) set out in paragraph 9 of the GoA contains the assumption that the Supply was made by ULL. Point (c) set out in that paragraph is premised on the assumption that the Supply was made by ULL.

40. As to paragraph 24(b) and (c) of the GoA, VAT is, by reason of s 4(1) VATA, only chargeable on a supply of goods or services made by a taxable person. It

is no part of HMRC's case in this appeal that supplies of private minicab services made by a taxable person are exempt from VAT or, zero-rated, or subject to a reduced rate. However, as set out in the Decision HMRC were not satisfied that the Appellant was entitled to deduct the amount of £1.06 he claimed to deduct by way of input tax in respect of the Supply and paragraph 24(c) is hypothetical.

41. The GoA are incorrect in proceeding on the basis that HMRC, in reaching their decision under Regulation 29(2), were required to come to a definitive conclusion on whether or not the Supply was a taxable supply made to the Appellant by ULL. HMRC were entitled to consider, as they did, whether they were satisfied that they should allow the tax credit claimed on the basis of the evidence which had been provided by the Appellant to HMRC.

42. Applying the test set out in *Kohanzad* to HMRC's decision under Regulation 29(2), a reasonable panel of Commissioners was not bound to conclude, on the basis of the letters and evidence provided by the Appellant to HMRC (see Section B above), that the supply had been made by ULL and that the Appellant was entitled to the input tax credit which he claimed.

43. In the circumstances HMRC contend that the appeal should be dismissed.

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ANNEXE
Appellant's letter dated 30 June 2017