[2022] UKFTT 32 (TC)

TC 08384

CAPITAL GAINS TAX – Swiss residential property – basis of calculation where foreign exchange rate fluctuations account for some of the gain – Capcount v Evans applied – appeal dismissed.

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2020/04128
TC/2020/04129

BETWEEN

HOWARD RAWLINGS
MONIQUE RAWLINGS **Appellants**

-and-

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

TRIBUNAL: JUDGE AMANDA BROWN QC
MISS PATRICIA GORDON

The hearing took place on 28 January 2022. With the consent of the parties, the form of the hearing was a video using the Tribunal video platform. A face-to-face hearing was not held because of the ongoing covid restrictions and because it was in the interest of justice to do so.

Prior notice of the hearing had been published on the gov.uk website, with information on 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.

The documents available to the Tribunal were contained in a hearing bundle consisting of 191 pages plus a supplemental bundle of 7 pages, a legislation and authorities bundle of 218 pages and a skeleton argument prepared on behalf of each of the Appellants and HM Revenue and Customs.

Mr Rawlings represented himself and his wife.

Mr R Cook, litigator represented HM Revenue and Customs appeared for the Respondents

DECISION

INTRODUCTION

1. These appeals concerns the basis on which a charge to capital gains tax is calculated in connection with the sale of a Swiss residential property funded, in part, by a foreign currency mortgage.

2. The decisions of HM Revenue and Customs (**HMRC**) under appeal are:

(1) A closure notice issued under section 28(a)(1B) and (2) Taxes Management Act 1970 (**TMA**) for Mr Howard Rawling's (**HR**) tax return for the year ended 5 April 2017 pursuant to which, following review, HR was charged an additional sum of £28,849.84 income tax. The additional tax arose as a consequence of the disallowance of certain expenditure that HR had used in calculating a chargeable gain.

(2) A discovery assessment issued under section 29 TMA for Mrs Moniqe Rawlings' (**MR**) in respect of the tax year ended 5 April 2017 and pursuant to which, following review, MR was charged an additional sum of £29,110.84 income tax. The additional tax arose as a consequence of the disallowance of certain expenditure that HR had used in calculating a chargeable gain.

(3) A penalty assessment issued under Schedule 24 Finance Act 2007 against HR in the sum of £4,327.47.

(4) A penalty assessment issued under Schedule 24 Finance Act 2004 against MR in the sum of £4,336.62.

3. HR and MR (**the Rawlings**) accept their respective tax returns for the tax year ended 5 April 2017 did not fully account for capital gains due from them and that assessments are due. MR accepts that HMRC made a discovery that there was an insufficiency in her self-assessment and that HMRC were entitled to raise a discovery assessment in respect of additional capital gain tax due from her.

4. The Rawlings accept that they are liable to penalties on the basis of careless behaviour and that HMRC applied an appropriate level of mitigation in calculating the penalties issued.

5. However, and, in summary, the Rawlings do not consider that the additional charge to income tax arising as a consequence of the capital gain has been calculated in accordance with the relevant legislative provisions and/or that the amount so due is neither fair nor reasonable.

6. Having considered the legislative provisions and the authoritative case law on the issues arising in this appeal the Tribunal considers that the calculation used by HMRC to determine the gain were correct. The correct rate of tax has been applied to the gain and the closure notice, discovery assessment and penalty assessments stand as issued

FACTS

7. The Tribunal were provided with documents and heard oral evidence from Mrs Beer, tax inspector at HMRC.

8. However, the facts in this appeal were agreed and the Tribunal so finds the facts as follows:

(1) The Rawlings are UK tax resident.

(2) The Rawlings jointly purchased a dwelling "Casa Colinetta" in Zermatt on 23 August 2006 for which they paid CHF 563,000.

(3) The purchase was partly funded by way of a Swiss franc mortgage which was secured on the property.

(4) The property was let as a holiday let by the Rawlings during their period of ownership.

(5) Pursuant to a reservation agreement the final effect of which was that the property legally transfer by the Rawlings to the purchaser no later than 15 December 2016. The price payable by the purchaser was CHF 730,000.

(6) In their tax returns for the tax year ended 5 April 2007, submitted on 29 April 2018, the Rawlings each declared 50% of a total capital gain calculated as £39,433.

(7) HMRC opened an in-time enquiry into HR's return on 20 November 2018 pursuant to which, inter alia, HMRC sought further information as to the basis on which the capital gain had been calculated. In response to the request for information the following calculation was provided on behalf of HR.

	CHF	Rate		£
Sale Dec 2016	730,000	0.7788		568,524
Chattels				7,500
Purchase				
Mortgage Aug 16 repaid Dec 16	450,000	0.7788		350,460
Deposit Aug 06	280,000	0.4278		119,748
Fees Aug 06	17,049	0.4278		7,294
Repaid Mortgage ave rate 15 and 16	23,000	0.7085		16,294
Mortgage repaid on sale	427,000	0.7788		332,548
Sales fees	58,644	0.7788		45,672
Sales proceeds			568,524	
Less chattels			(7,500)	
				561,025
Less cost				
Mortgage paid on sale			332,548	
Mortgage paid off 15 and 16			16,294	
Deposit Paid			119,784	
Fees on purchase			7,294	
Fees on sale			45,672	
				(521,591)
GAIN				39,433

(8) HMRC reviewed the calculations. They accepted the Rawlings calculation of the sales and purchase price (after deduction for chattels) by reference to the exchange rates used. HMRC also accepted that the fees on each of the purchase and sale, whilst not fully evidenced, were reasonable. However they considered all costs which had been deducted in connection with the mortgages were not permissibly deducted. On the basis of the adjusted calculation HMRC determined that the total gain was £267,207 which was to be allocated 50:50 between HR and MR.

(9) On 15 August 2019 HMRC issued a closure notice to HR calculating the additional income tax due arising from the recalculated chargeable gain as £19,049.60. In doing so HMRC applied the rate of tax to the capital gain as to 10% for the first £3,200 of the gain and at 20% for the remainder of the gain. Foreign Tax Credit Relief was given in respect of some of the gain.

(10) HMRC notified MR of their intention to raise a discovery assessment and duly raised it on 23 October 2019. The basis of calculation of the assessment was as for HR.

(11) Carelessness penalties were charged against each of the Rawlings based on 15% of the tax charged having given full mitigation for the penalty.

(12) As part of the review of the closure notice, discovery assessment and penalties it was identified that the incorrect rate of tax had been used to calculate the additional income tax due. As Casa Colinetta was a residential property the applicable rates should have been 18% and 28%. Revised tax and penalty assessments as set out in paragraph [2] above were issued on 23 April 2020.

RELEVANT LEGISLATION

9. The legislative provisions pertinent to this appeal are limited, as such, and so far, as relevant, they are set out below rather than included in an annex. All provisions are contained in Taxation of Capital Gains Act 1992 (**TCGA**) as follows:

> **Section 1**(1) Capital gains tax is charged for a tax year on chargeable gains accruing in the year to a person on the disposal of assets. …
>
> **Section 1A**(1) A person who is UK resident for a tax year is chargeable to capital gains tax on chargeable gains accruing to the person in the tax year on the disposal of the assets wherever situated. …
>
> **Section 1H**
>
> (1) This section makes provision about the rates on which capital gains tax is charged …
>
> (2) Chargeable gains accruing in a tax year to an individual that are: (a) residential property gains [as defined in schedule 1B i.e. gains in respect of a property which consists of a dwelling] … are charged to capital gains tax at a rate of 18% or 28%.
>
> (3) Other chargeable gains accruing in a tax year to an individual are charge to capital gains tax at a rate of 10% or 20%.
>
> **Section 21**(1) All forms of property shall be assets for the purposes of this Act, whether situated in the United Kingdon or not, including … b) currency, with the exception … of sterling.
>
> **Section 38**
>
> (1) Except as otherwise expressly provided, the sums allowable as a deduction from the consideration in the computation of the gain accruing to a person on the disposal of an asset shall be restricted to (a) the amount or value of the

> consideration, in money or money's worth, given by him … wholly and exclusively for the acquisition of the asset , together with the incidental costs to him of the acquisition … b) the amount of any expenditure wholly and exclusively incurred on the asset by him … for the purposes of enhancing the value of the asset, being expenditure reflected in the state or nature of the asset at the time of disposal…
>
> (2) For the purposes of this section … the incidental costs to the person making the disposal of the acquisition of the asset or to its disposal shall consist of the expenditure wholly and exclusively incurred by him for the purposes of the acquisition or, as the case may be, the disposal, being fees, commission or remuneration paid for the professional services …
>
> (3) Except as provided by section 40 [not relevant here] no payment of interest shall be allowable under this section.

BASIS OF HMRC'S ASSESSMENT

10. HMRC start from the position, they say founded on the judgment of Vinelott J in *Bently v Pike* [1981] 53 TC 590 (***Bentley***), that the gain is to be calculated by reference to the sterling equivalent of each of the transactions at the exchange rates applicable in 2006 and 2016 respectively on the basis that the Swiss franc price represents "money's worth" (rather than money) for the purposes of section 38 TCGA.

11. In *Bentley,* in 1967 Mrs Bentley (a UK resident) inherited from her intestate non-resident/non-domiciled father a one sixth share of a property in Berlin. It was not until 1972 that she was formally entered onto the land registry title for the property which was then sold in 1973. The Inland Revenue (as it then was) assessed Mr Bentley was liable (in Mrs Bentley's sted) to capital gains tax on a gain calculated by reference to the sterling equivalent values as at the date of Mrs Bentley's father's death and the date of sale. Mr Bently appealed the assessment contending, in the first instance, and by reference to a range of factors, that no capital gains tax was due at all as Mrs Bentley was never entitled to an interest in the property and only to the proceeds of sale which were held on her behalf as a beneficiary under a settlement. In the alternative, he contended that any gain which was assessable should be calculated by taking the Deutsch Mark differential as between 1967 and 1973 and applying the 1973 exchange rate. In this latter regard it was contended that "to convert into sterling on acquisition would result in taxing a notional gain due to devaluation of sterling … and not the gain due to the increase in value of the building".

12. The General Commissioner rejected the appeal, and a further appeal was lodged with the High Court. The High Court also rejected the appeal. The Court held that the General Commissioner was entitled to determine on the facts that Mrs Bentley had sufficient interest in the property from her father's death to be liable to a charge to capital gains tax. As to the amount of the gain and the impact of the devaluation of the pound the Court stated:

> "While I feel some sympathy for Mrs Bentley, who is in large measure called on to pay capital gains tax upon a gain resulting from the devaluation of the pound, I can see no possible justification in the capital gains tax legislation for this approach. … Mrs Bentley must be deemed to have acquired the one-sixth share of the property which passed to her on her father's death for a consideration equal to its market value. That is the acquisition cost which she is entitled to deduct … from the share of the proceeds of sale to which she became entitled … The market value of the acquisition this deemed to have taken place at her father's death, as I see it, can only be expressed for the purposes of the computation require to be make under the capital gains tax legislation in sterling, which is the only permissible unit of account."

13. HMRC's calculation is said to apply this ruling and calculates the 2016 sterling equivalent of the price paid to the Rawlings and deducts from that figure the 2016 sterling equivalent of the costs of sale and the 2006 sterling equivalent of the purchase price paid together with the purchase costs giving the gain on which capital gains tax is charged.

14. No further deductions have been permitted by HMRC on the basis that the scope for deduction is prescribed by section 38 TCGA and all such permitted deductions have been given.

PARTIES' SUBMISSIONS

The Rawlings submissions

15. The fundamental objection raised by the Rawlings is that HMRC's calculation of the gain gives rise to an absurd charge to tax when the true economics of the transactions giving rise to the gain are taken into consideration. They consider that the charge is both unfair and unreasonable in all the circumstances.

16. The relevant circumstances, they contend are that: the property was purchased by them with the aid of a foreign currency mortgage the value of which fluctuated with the exchange rate between the pound and the Swiss franc; the gain they made was not, therefore, the sterling equivalent of the difference between the price received on sale and the price paid because, unlike a domestic sterling mortgage the exchange rate fluctuation had the effect of causing both the value of the property and the Swiss franc mortgage to increase in line with one another.

17. This can best be illustrated by contrasting two examples:

(1) A UK residential property is purchased in 2006 for £200,000 with the benefit of an interest only mortgage of £50,000. In 2016 the property is sold for £300,000. The mortgage value has not changed but rather than representing 25% of the value of the property at the time of sale it represents 16.66%. The property owners repay the mortgage from the proceeds of sale and have a gain of £100,000.

(2) A Swiss residential property is purchased in 2006 for CHF 400,000 with the benefit of an interest only mortgage of CHF 100,000, at the time the exchange rate of £ to CHF is 0.5. In 2016 the property is sold for CHF 600,000 when the exchange rate is 0.75. In CHF the position is the same as in the example above. However, on the basis that the purchase transaction is converted to sterling at the 2006 exchange rate and the sale transaction is converted at the 2016 exchange rate the value of the mortgage that has to be repaid in sterling terms has increased from £50,000 to £66,000 and remains at 25% of the value of the property.

18. The Rawlings contend that *Bentley* is not relevant to the present case on the basis that its factual context can be distinguished, and it arose from legislation which predates TCGA. HR forensically analysed the facts of the *Bentley* case highlighting that Mrs Bentley had not in fact paid for her property, the applicable legislation required that the market value for her inheritance be imputed and that she had been the only beneficiary of the interest rate fluctuations.

19. By contrast, it was contended, the Rawlings had not been the sole beneficiaries of the interest rate fluctuation as a commensurate proportion of the gain arising from the exchange rate movement had been the mortgagor. As a consequence, when determining how the "profit" or gain should be calculated to arrive at the correct charge to tax it was appropriate to take account of that part of the exchange rate fluctuation which had accrued to the mortgagor.

20. Reference was made to HMRC's website guidance on capital gains tax as "a tax on the profit when you sell (or 'dispose of') something (an 'asset') at an increased value" and to the

dictionary definition of profit to support the position adopted that a deduction of some sort was required in calculating the chargeable gain in connection with the additional sterling cost of the mortgage arising from the currency fluctuation. The Rawlings submitted that this was a very real cost associated with the transaction which should be taken into account.

21. The Rawlings calculated their investment in Casa Colinetta as £116,000 (the sterling equivalent of the deposit, the capital payments made against the mortgage together with the disposal costs) against which they had seen a return of the equity released by remortgage and the net proceeds of sale totalling £203,000. They considered that this gave rise to an assessable joint gain of £87,000. As compared to that real gain they contended that the assessments to capital gains tax represented an effective tax rate of 66.62%.

22. The Rawlings point out that the basis of calculation applied by HMRC have a propensity to give rise to absurd results in many cases and could ultimately relieve a real gain which is masked a currency loss.

HMRC's submissions

23. HMRC contend that the calculation of the consideration on disposal, by reference to *Bentley,* requires that the payment made in Swiss francs be converted to its sterling equivalent using the 2016 exchange rate on the basis that "sterling … is the only permissible unit of account". The rate used by the Rawlings for this purpose was 0.7788 £ to CHF and HMRC accepted that as a reasonable exchange rate.

24. Once the consideration on disposal has been established HMRC contend that section 38 TCGA prescribes the sums which may be deducted from it in calculating the gain. By reference to the sums incurred by the Rawlings, permissible deductions are limited to:

(1) the sterling equivalent of the purchase price calculated by reference to the relevant 2006 exchange rate of 0.4278 on the basis that the Swiss franc price paid represented "money's worth" given by the Rawlings "wholly and exclusively for the acquisition of the asset"; and

(2) the sterling equivalent of the incidental costs wholly and exclusively incurred in connection with the acquisition and disposal of the asset (at the appropriate rate in either 2006 or 2016 by refence to when the costs were incurred).

25. HMRC contend that the Court of Appeal judgment in *Capcount Trading v Evans* [1993] BTC 3 (***Capcount***) supports their approach to the foreign exchange valuation of the permissible deductions.

26. They further contend that as there is no basis for further adjustment or deduction the residential property rate of capital gains tax is to be charged on the gain calculated in accordance with the statutory provisions.

27. HMRC derive support for their contention that deduction of any amount referable to the mortgage is impermissible both by reference to the terms of section 38 TCGA and to the recent First-tier Tribunal judgment in *Unger v HMRC* [2020] UKFTT 37 (***Unger***).

DISCUSSION

28. The jurisdiction of this Tribunal, as set out in section 50 TMA, is to determine whether the amendment to HR's self-assessment and the discovery assessment issued to MR results in them being overcharged to tax. In so determining the Tribunal must establish whether the calculations undertaken are made in accordance with the statutory provisions as informed by the case law. Where senior court precedent provides authority for the approach to be adopted, the Tribunal must follow it. Judgments of the FTT are not binding on but the principle of judicial comity should be respected such that unless there has been an intervening contrary

decision, or the Tribunal considers the analysis can be distinguished it should be treated as persuasive.

29. Where the Tribunal considers that a taxpayer has been overcharged, it is required to reduce the assessment accordingly.

30. As set out in paragraph [9] above the statutory provisions are limited and require a comparatively simple calculation to be undertaken: the cost of acquisition and incidental costs incurred wholly and exclusively in connection to both acquisition and disposal are to be deducted from the consideration received on the disposal of an asset to establish the gain accruing from ownership of it. The appropriate rate of capital gains tax is then applied to determine the tax due on that gain.

31. The case law to which the Tribunal has been referred provides direction and guidance on how to approach certain of the issues which arise in this appeal.

32. The facts of *Capcount* bear very little/no resemblance to the facts of the present case. It is, however, the leading authority on the approach previously adopted by the courts and tribunals to the treatment of foreign exchange movements when calculating the capital gain on a disposal of an asset. The judgment and the principles arising from it are binding on this Tribunal.

33. Capcount had acquired and disposed of shares in a Canadian company, both transactions were in Canadian dollars. It had made a loss over the period of ownership and the dispute arose as to how the loss was to be quantified. In particular whether the loss was quantified 1) by taking the dollar disposal value, deducting the dollar acquisition value and then converting that value into sterling at the exchange rate applicable at the time of sale or 2) by taking the disposal value converted to sterling at the exchange rate at the time of sale and the acquisition value by reference to the exchange rate at the time of purchase. In Capcount the former calculation resulted in a loss of approximately £16m and the latter at a loss of approximately £3m as a consequence of the depreciation in sterling over the period of ownership.

34. The Inland Revenue's submission that currency represented "money's worth" as consideration for the shares was predicated on the Canadian dollars constituting an asset in their own right. In rejecting the taxpayer's basis of calculation and holding that "capital gains tax is a tax measured on the difference computed in pounds sterling and no other way" and expressly approving the *Benley* judgment, Nolan LJ' analysis is predicated on the need to value the currency asset for the purposes of determining the value of the consideration received on disposal and given on acquisition.

35. By reference to *Bentley* and *Capcount* it is clear that gains (and losses) in connection with the disposal of an asset are to be calculated in sterling and only sterling. As such where the consideration for either the disposal or the acquisition (or indeed any of the deductible incidental costs) is in the form of a foreign currency payment that payment is to be converted to currency, using the exchange rate applicable at the time of the giving or receiving of the consideration.

36. Like *Bentley*, *Unger* concerned an inherited property. After a variation to the will of Mr Ungar's father's partner, Mr Unger was the beneficiary of a trust as to 50% of the property which continued to be occupied by his father as trustee. The probate value of the property (and hence the acquisition value for capital gains tax purposes) was £375,000. Whilst in occupation of the property, the property was mortgaged by way of equity release and the funds were used, in part, to extend the lease and, in part, for Mr Unger's father's living and care costs. After his father's death the property was sold for £1.3m. HMRC accepted the probate value, the cost of the lease extension and associated SDLT and incidental costs as allowable deductions when

calculating the chargeable gain. Mr Unger accepted that the repayment of the mortgage and the accrued interest were not an allowable deduction under section 38 TCGA but contended that the consideration on disposal should comprise the proceeds of disposal net of the mortgage and interest repayments because the mortgage had not been taken for the benefit of the beneficiaries and that repayment had reduced the money received by them.

37. The Tribunal in that case notes that it was "a curious feature" of TCGA that it does not set out a step-by-step process to calculate a capital gain such that the process is to be deducted from the words used and the exceptions applied. Having considered the provisions of TCGA the judge states:

> 39. We find nothing in the legislation that would mean the consideration should be reduced by the amount of the mortgage redemption payment.
>
> 40. It simply cannot be the case that a taxpayer can reduce their potential capital gains tax liability on sale by mortgaging the property, and effectively withdrawing cash from it …
>
> 41. Although the circumstances of this particular mortgage are relatively unusual, having been taken out for the benefit (at least partly) of the bare trustee … those unusual circumstances do not alter the fact that mortgage debts of the property owners … and the need to repay those dents is not related to the amount of consideration given by the purchaser.

38. In the present appeal the Rawlings are not contending that the calculation of their gain should take account of the mortgage per se. Indeed by reference to a number of examples put to HR by the Tribunal HR was clear that he accepted the principle set out in *Ugner*. His inclusion of the capital repayment figures in his calculations are to show what he considers to have been their investment in Casa Colinetta to benchmark the tax charge.

39. It is clear that Vinalott J in *Bentley* and Nolan LJ in *Capcount* recognised that the legislation determining a capital gains tax charge in respect of assets paid for in a foreign currency can produce apparently unfair or anomalous results. Those results were also acknowledged by Judge McGregor in *Ugner* where she hypothesised a situation in which a disposal might give rise to a "dry tax charge" (i.e. where chargeable gain arose despite negative equity in the property) but concluded that such a dry tax charge would nevertheless meet the purpose of the legislation which looks to tax the increase in value of the underlying asset.

40. The Rawlings find themselves in a similarly "unfair" position. However, the legislation is not predicated on a "fair" or even a "reasonable" basis of taxation. Capital gains are calculated in a mechanistic way by reference to actual consideration received and given at its sterling equivalent in respect of assets however the acquisition of those assets are funded.

41. The Rawlings purchased Casa Colinetta and became the owners of it, they did not share ownership of it with the bank who lent them some of the money to fund the purchase.

42. The purchase was funded by way of a cash deposit and a Swiss franc mortgage. As accepted by Mr Rawlings in the hearing (at least in connection with a sterling mortgage), the basis on which the purchase was funded is not taken into account when determining the difference between disposal value and acquisition cost. The fact that their mortgage was a foreign currency mortgage cannot influence the underlying premise that funding decisions carry no consequence in terms of the capital gains tax calculation.

43. HMRC accepted the Rawling's calculation of the sterling equivalent values. As set out in paragraph [8(8)] HMRC accepted the exchange rates used by the Rawlings though Mrs Beer told the Tribunal she had checked that they were reasonable. The Tribunal has gone back to official HMRC exchange rates for December 2016 and the Bank of England average for August

2006. By reference to that data the official government averages were at a slight variance to those used by the Rawlings, for the 2016 exchange rate that used by the Rawlings was more favourable to them that used for 2006 was less favourable. Both were marginal and the Tribunal considers it right to use either both of those used by the Rawlings or both from government sources. The government source rates overall give a more unfavourable outcome overall and the Tribunal therefore accepts HMRC's decision to use those provided by the Rawlings.

44. As such it is clear that the gain has been correctly calculated by HMRC. HMRC have applied tax at the residential property rate to the gain.

45. The Tribunal has considered with great care whether any implications arise from the introduction in the tax year of 2016/17 of the residential property rate for capital gains and, in particular, whether the element of the gain arising from the foreign exchange rate fluctuation should be treated as a gain separate from that arising from an appreciation in the value of the property itself. If there are two gains then the foreign currency gain would be subject to a lower rate and potentially to other reliefs or exemptions. In this regard the Tribunal considered the analysis of Nolan LJ and his focus on foreign currency as an asset. However, in this case the Rawlings did not own a foreign currency asset. They were subject to a foreign currency liability in the form of the mortgage. The only asset they held was a Swiss residential property. The gain is therefore all to be taxed at the residential property rate.

46. Like Vinalott J the Tribunal has sympathy for the Rawlings that the tax charge has been so significantly influenced by the exchange rate fluctuation. However, the provisions apply on their terms and by reference to the sterling equivalent calculations of the acquisition cost, incidental costs, as set against the sterling equivalent of the disposal value.

47. HR submitted compellingly and eloquently that the calculations are a square peg which HMRC seek to bash into any vaguely square hole. He is right but they do so because that is what Parliament has directed. He contended that big change can come form ordinary people making the changes that they choose to make. On many issues he may be right but Parliament left no discretion to either HMRC or to this Tribunal. Tax is collected by reference to the provisions as they apply even where the results in some situations appear absurd.

48. For the reasons stated the appeal is dimssed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

49. 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 QC
TRIBUNAL JUDGE

Release date: 01 FEBRUARY 2022