**[2017] UKUT 504 (TCC)**

**Appeal number: FTC/07/2015**

***VAT – Flat rate scheme for farmers – whether Art 296.2 of the Principal VAT Directive (Council Directive 2006/112/EC) provides an exclusive regime as to when farmers can be excluded from the flat rate scheme – whether farmers who are found to be recovering substantially more as a member of the Flat Rate Scheme than they would if they were registered for VAT constitute a category for the purposes of Art 296.2***

**UPPER TRIBUNAL (TAX AND CHANCERY CHAMBER)**

**SHIELDS & SONS PARTNERSHIP** **Appellant**

**- and -**

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

**TRIBUNAL: MR JUSTICE NUGEE**

**Sitting without a hearing in the Rolls Building, London EC4A 1NL on 21 December 2017**

**Michael Thomas, instructed by Croner Group Ltd, for the Appellant**

**Richard Chapman, instructed by the General Counsel and Solicitor for HM Revenue and Customs, for the Respondents**

DECISION

**Mr Justice Nugee:**

*Introduction*

1. This is a further decision in the appeal by Shields & Sons Partnership (**"Shields"**) from a decision of the First-tier Tribunal (**"the FTT"**) dated 8 October 2014, the Respondents being Her Majesty's Commissioners for Revenue and Customs (**"HMRC"**). In a Decision released on 16 March 2016, I gave reasons why it was appropriate for a reference to be made to the Court of Justice of the European Union (**"CJEU"**) requesting a preliminary ruling on two questions: see [2016] UKUT 142 (TCC).

2. The reference was duly made and received by the CJEU on 12 May 2016. The CJEU delivered its judgment on 12 October 2017: see *Shields & Sons Partnership v HMRC* C-262/16. Its answers to the two questions referred were as follows:

> "1 Article 296(2) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as laying down exhaustively all the cases in which a member state may exclude a farmer from the common flat-rate scheme for farmers.
>
> 2 Article 296(2) of Directive 2006/112 must be interpreted as meaning that farmers who are found to be recovering substantially more as members of the common flat-rate scheme for farmers than they would if they were subject to the normal value added tax arrangements or the simplified value added tax arrangements cannot constitute a category of farmers within the meaning of that provision."

3. It is common ground between the parties that the effect of those rulings is that Shields' appeal against the decision of the FTT must be allowed.

4. I therefore allow the appeal. I am also asked to direct as follows:

   (1) Shields' agricultural flat-rate certificate will be reinstated from the date on which it was withdrawn, namely 15 October 2012.

   (2) Shields will issue 4% flat-rate addition invoices to VAT-registered customers retrospectively.

5. There is also no dispute that Shields should be awarded their costs. I will therefore direct that HMRC pay Shields their costs of the appeal, to be assessed on the standard basis if not agreed, pursuant to rule 10(8)(c) of the Tribunal Procedure (Upper Tribunal) Rules 2008/2698.

**MR JUSTICE NUGEE**

**RELEASE DATE: 21 December 2017**