



Neutral Citation: [2024] UKFTT 00772 (TC)

Case Number: TC09268

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2022/00279

CORONAVIRUS JOB RETENTION SCHEME – meaning of “period of employment” and the time when “the period of furlough began” – whether individual worked for a person connected with their employer.

Heard on: 18 December 2023

Written submissions: 2 February 2024

Judgment date: 22 August 2024

Before

**TRIBUNAL JUDGE MARK BALDWIN
SONIA GABLE JP**

Between

ARK ANGEL LTD

Appellant

and

**THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS
Respondents**

Representation:

For the Appellant: Mr Kulvinder Boparai, an employee of the Appellant

For the Respondents: Mr Paul Marks, litigator of HM Revenue and Customs’ Solicitor’s Office

DECISION

INTRODUCTION

1. The Appellant (“Ark Angel”) appeals against two notices of assessment (the “Assessments”) issued pursuant to paragraph 9 of Schedule 16 (“Schedule 16”) to the Finance Act 2020 (the “FA 2020”) in the sums of £59,664.54 and £16,000.00 and relating to the tax years ended 5 April 2021 and 5 April 2022 respectively. The Assessments charge income tax because of Ark Angel receiving an amount of Coronavirus Support Payment (“Support Payment”) in relation to two employees under the Coronavirus Job Retention Scheme (“CJRS”) which the Respondents (“HMRC”) say was excessive.

2. On 4 August 2023 we issued our decision (“the Decision”) on certain questions relevant to the calculation of the Support Payments Ark Angel was entitled to. Capitalised words and expressions defined in the Decision and used in this decision have the same meaning in this decision as they have in the Decision. As with the Decision, references to paragraphs are to paragraphs of the Coronavirus Direction.

3. These are the points of principle we determined in the Decision:

- (1) the Employees were furloughed with effect from 17 April 2020;
- (2) both Employees started to work for a person connected with Ark Angel on 1 December 2020;
- (3) the Employees were not fixed rate employees within the meaning of paragraph 7.6 at any time and so their reference salary is to be calculated in accordance with paragraph 7.2; and
- (4) levels of Support Payment found in accordance with points (1)-(3) above do not fall foul of paragraph 2.5.

4. We then left it to HMRC and Ark Angel to agree, based on these determinations, the amount due from Ark Angel to HMRC. We also said that, if they could not reach agreement, there was liberty to apply to the tribunal. There were two issues on which HMRC and Ark Angel were unable to reach agreement. In addition, Ark Angel asked for certain corrections to be made to the Decision. All these issues were canvassed in a hearing (“the Hearing”) on 18 December 2023 and in written submissions from both HMRC and Ark Angel. Before going on to discuss these issues, we should apologise to the parties for the time it has taken to produce this decision.

5. After the Hearing the parties were directed to send their written submissions in by 31 January 2024. HMRC delivered their submissions on 2 February 2024 and on 5 February 2024 Ark Angel objected to this arguing that HMRC’s submissions should not be admitted as the Tribunal’s rules should be followed. In the light of Ark Angel’s objection, HMRC formally applied for their submission to be admitted out of time.

6. Rule 5 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (“the Rules”) allows the Tribunal to regulate its own procedure and to give a direction relating to the conduct of proceedings. Rule 5 also allows the Tribunal (without restricting its general powers) to extend the time for complying with a direction. Rule 2 provides that, in exercising any power under the Rules, the Tribunal must seek to give effect to the overriding objective, which is to deal with cases fairly and justly (which is expressly stated to include avoiding unnecessary formality and seeking flexibility).

7. Mr Marks accepts that there is no good reason for the delay; he missed the deadline through other work commitments. The delay was, however, very short, only two days, and it

is not serious or significant. On the question whether, in the interests of justice, HMRC's late submissions should be admitted, Mr Marks says that submissions were asked for by the Tribunal to enable it to decide whether (and if so how) to amend the Decision and to deal with the effect of the May/June 2021 claim on the assessment. He particularly draws our attention to the fact that only HMRC's submissions refer to the correct Coronavirus direction relevant to that issue.

8. We have decided that the deadline for HMRC's submissions should be extended, and they are to be admitted. Our reasons for this are, first, the delay was very short and did not cause any inconvenience. It was 22 February before the Tribunal administration delivered the submissions to the Panel. The delay is regrettable, but Mr Marks has apologised for this. Most importantly, we consider that, to reach balanced conclusions on all the issues before us, we need to take account of both sets of submissions. Accordingly, whilst we absolutely agree with Mr Boparai that the Rules are there to be followed and should be observed, we do not consider that we would be acting fairly or justly if we did not admit HMRC's submissions.

THE FIRST ISSUE: THE EMPLOYEES' REFERENCE SALARY

9. The level of Support Payments is determined by an employee's "reference salary". Paragraph 8.2 provides that the amount to be reimbursed to reimburse the gross earnings of an employee is not to exceed the lower of £2,500 per month or an amount equal to 80% of the employee's reference salary. Paragraph 7 contains provisions which tell us how to calculate someone's "reference salary". Paragraph 7.2 (which is the rule that applies here as the Employees were not fixed-rate employees) provides:

"Except in relation to a fixed rate employee, the reference salary of an employee or a person treated as an employee for the purposes of CJRS by virtue of paragraph 13.3(a) (member of a limited liability partnership) is the greater of-

(a) the average monthly (or daily or other appropriate pro-rata) amount paid to the employee for the period comprising the tax year 2019-20 (or, if less, the period of employment) before the period of furlough began, and

(b) the actual amount paid to the employee in the corresponding calendar period in the previous year."

10. In the period in the tax year 2019/20 prior to 27 February 2020, no employment contracts were in place, and the two Employees received ad hoc payments.

11. On 27 February 2020, formal employment contracts were signed. These new contracts increased the Employees' salaries to £3,200 per month for a fixed term of four months, from 27 February 2020 to 30 June 2020.

12. The Employees stopped doing any work for Ark Angel on 1 March 2020 (when the company stopped asking them to do any work because of its concerns about the virus spreading) and on 17 April 2020 they were sent letters which said that "Your period of furlough commenced on 1st March 2020".

13. At [85] of the Decision we recorded our agreement with Ark Angel's submission that the £480 paid to each Employee in March 2020 was for three days' work at the end of February.

14. The essence of Ark Angel's submission is that the "period of employment" in paragraph 7.2(a) should disregard the period before 27 February 2020 (because the Employees' period of employment only began on that date) and the period from and including 1 March (as that is when the Employees' "period of furlough began"). As a result

of doing that, the average daily rate will be the £160 per day paid to each Employee for the 3 days they worked at the end of February before they stopped working on 1 March.

15. As far as the period of furlough is concerned, in his written submissions Mr Boparai says:

“The employees were instructed by their employer to cease work, and because they had not completed any work in March due to the spread of the virus, and then the UK lockdown, which stopped travel to the premises and actually any movement outside your local area. The employer is entitled to claim CJRS for the period for when the Employers operations were affected by the virus. This was 1st March based on the claim sent to HMRC. There is nothing in the CJRS rules stating the employee is only furloughed from the date of issue of a furlough communication from the employer. The rules permit the employer to furlough an employee if they have completed no work for them, the employer’s operations were affected by Covid-19 and other qualifying criteria is met, the furloughing letter is just an exercise for record keeping it does not determine the start date of Furlough.

...

If the start date of the CJRS is to be from the Furlough notification letter, then this is against the HRA, as there is no legislation to determine the start date from this point in time that we can identify.

If the employees had not completed any work for the company in March, then the business was entitled to place them on Furlough in the 17th April letter from an earlier date and use the CJRS scheme.”

The underlining is ours, but those words capture the essence of Mr Boparai’s submission: the need for a written record of when furlough started is “record keeping” but the Coronavirus Direction does not say that the period of furlough only starts when that document has been generated.

16. As far as the period of employment is concerned, Mr Boparai says that the payments in the period before 27 February 2020 were “irregular/ad hoc payments being taken when needed by the employees but crucially for not doing any particular work” and drew our attention to paragraph 7.3, which says that no account is to be taken of anything which is not regular salary or wages. He points out that averaging the amounts paid over the 2019/20 tax year would produce a “daily rate” below the national minimum wage.

17. As far as the earlier payments (pre-27 February) are concerned more generally, Mr Boparai says:

“The earlier payments in 2019-20 to the employees were not payments for any regular work or wages, there was no contract in place because it was irregular/ad-hoc payments being taken when needed by the employees but crucially for not doing any particular work – I think historically we would be considered the Bourgeoise by the Russian state. Para 7.3 tells the employer to ignore these payments when calculating the employees reference salary.

Additionally, to calculate the employee’s reference salary, also interchangeable with the term regular salary or wages from the CJRS rules, para 7.4 (d) tells the employer to take into account legally enforceable agreements. The employees’ salaries are detailed in the employment contracts. Therefore, the calculation needs to start with considering what period of employment time the £480 covered. The tribunal has decided that this was for the 3 days worked in February.

...

We had established during the cross-examination that [the HMRC officer] was informed there were no contracts for the period of ad-hoc employment, looking at the payment amounts and frequencies, we think the Tribunal should agree, it is not possible to write a contract for ad-hoc payments.”

18. In an email to Mr Marks copied to the Tribunal Mr Boparai said:

“We have already submitted that these are ad-hoc payments for covering our household expenses, and not as payment for doing a piece of work/or working a duration of time.

The work was not a reward for working a set number of hours or day(s), this is evidenced by the fact that we cannot provide details of how a calculation was derived to be considered on that basis. It was not calculated as a payment based on an hourly/daily or other rate. It was just a figure we used for our household expenses, there are no contracts, it would not be possible to put these amounts into a contract based on an hourly rate for the amounts paid, and because the payments were irregular, and it wasn't a conventional employment that rewards the employee with a salary after they perform work. We have explained why the payments were taken, to pay our bills, and we have confirmed the company does function with input by us across the year, for instance for generating invoices, obtaining insurance, weeding etc.

...

Our pre-19th March payments have nothing to do with performing any work for Ark Angel at the specific times of those RTIs in return for the payments. They are not from an understanding we had as employees with Ark Angel because the payments are not for performing work, they are to cover our household expenses. We were never going to repay the money to Ark Angel, so this was the correct way to extract it from the business. There was no scheme, transaction or series of transactions which resulted in those payments. Managing the affairs of the business would have occurred, regardless of the payments being made or not made. Therefore, those earlier RTI's cannot be considered regular wages and should therefore not be considered.”

19. HMRC, on the other hand, say that the new contracts do not give rise to a new period of employment and the £480 paid for the three days at the end of February should be averaged over whole of the tax year as the furlough period (for the purposes of the Coronavirus Direction) did not start until after the end of the tax year, on 17 April when a written agreement was made that the Employees were to cease working for Ark Angel; see paragraph 6.7. Mr Marks says that throughout the 2019/20 tax year there was a single employer (Ark Angel) and that employment was unbroken. The PAYE rules (regulation 36 of the Income Tax (Pay As You Earn) Regulations 2003) provide for certain notifications and formalities when an employer ceases to employ someone, but Ark Angel did not follow any of these procedures. His analysis is that the same employments continued with changed contractual terms, in particular a different rate of pay.

20. There are two questions we need to answer to perform the calculation required by paragraph 7.2(a) and we turn to each of them separately now:

When did the period of furlough begin?

21. The Coronavirus Direction does not contain a definition of when “the period of furlough began”. However, paragraph 6.1 tells us when someone is a “furloughed employee”.

22. Paragraph 6.1 says that an employee is furloughed if they have been told “to cease all work in relation to their employment” for at least 21 calendar days because of coronavirus. Paragraphs 6.2-6.6 go on to make provision for particular cases (e.g. people on sabbatical) which do not apply here, and then paragraph 6.7 says that,

“An employee has been instructed by the employer to cease all work in relation to their employment only if the employer and employee have agreed in writing ... that the employee will cease all work in relation to their employment.”

The words we have underlined in that quotation seem to us to admit of only one interpretation: that an employee has only been told to cease all work once there is a written agreement (which can be in electronic form such as an email) that they will cease all work in relation to their employment. As a person is only a “furloughed employee” once they have been instructed to cease all work and, as only a written agreement counts as such an instruction, it is just not possible to treat a person as a furloughed employee for CJRS purposes before such an agreement is in place. It follows that we cannot accept Mr Boparai’s submission that the requirement for a written agreement is just “record keeping”; it is an operative part of the description of when someone is a “furloughed employee”.

23. Paragraph 5 provides that the costs of employment in respect of which an employer may make a claim for payment under CJRS are costs which (inter alia) meet the relevant conditions in paragraphs 7.1 to 7.15. Paragraph 7.1 provides that costs of employment meet the conditions in that paragraph if (inter alia):

“they relate to the payment of earnings to an employee during a period in which the employee is furloughed”

24. The clear relationship between paragraphs 7.1 and 7.2 is that the former provides for Support Payments to be made while an employee is furloughed, and the latter calculates the reference salary (used to calculate the Support Payments) taking into account earnings up to the time the furlough started. The reference to a “period of furlough” in paragraph 7.2 is clearly a reference back to the phrase “a period in which the employee is furloughed” in paragraph 7.1. Paragraph 6.1 tells us when an employee is a furloughed employee. The obvious close relationship between those phrases (“a furloughed employee”, “a period in which the employee is furloughed” and “the period of furlough”), coupled with the fact that it would seem very odd to treat an individual’s period of furlough as beginning before they met the definition of a “furloughed employee”, leads us to the conclusion that an employee’s “period of furlough” begins when they meet the definition of “furloughed employee” in paragraph 6.1.

25. It follows from this that for the Employees the “period of furlough began” on 17 April 2020, as that is the first day when the requirement in paragraph 6.7 for a written agreement for cessation of work was met.

What was the “period of employment”?

26. This is another expression which is not defined in the Coronavirus Direction. There is a definition of “employment”, however, and this is in paragraph 13.1(e), which reads as follows:

“ “employment” and corresponding references to “employed”, “employer” and “employee” have the same meanings as they do in section 4 of ITEPA as extended by-

(i) section 5 of that Act,

- (ii) regulation 10 of the PAYE Regulations (application to agencies and agency workers), and
- (iii) paragraphs 13.2 and 13.3 of this Direction;”

27. The core definition of “employment” in section 4 of ITEPA is “any employment under a contract of service”.

28. Section 5 of ITEPA provides that the provisions of the employment income Parts of ITEPA that are expressed to apply to employments apply equally to offices, unless otherwise indicated, and references to being employed are to being the holder of an office. Being a director of a company is an office. Ramandeep has been a director of Ark Angel since 10 February 2011. Kulvinder has been a director, but he ceased to be one long before the period we are concerned with. The other two extensions, in (ii) and (iii), are not relevant for us.

29. The essence of Mr Boparai’s argument here is that, before 27 February, there was no employment contract for either of the Employees and the only arrangements were for ad hoc payments which fall to be disregarded by virtue of paragraphs 7.3 and 7.4.

30. We are not with Mr Boparai on his interpretation of paragraphs 7.3 and 7.4. Paragraph 7.3 tells us that “in calculating the employee’s reference salary ... no account is to be taken of anything which is not regular salary or wages” (our emphasis) and paragraph 7.4 expands on what is meant by “regular”, telling us (in particular) that certain variable amounts are disregarded unless the variation in the amount arises from a legally enforceable arrangement. These paragraphs disregard amounts in determining a reference salary; they do not disregard the arrangements giving rise to those amounts and (in particular) they do not provide that, in a period where a person receives (even, only receives) amounts which fall to be disregarded under paragraph 7.3, they are not to be treated as an employee for these purposes if they otherwise would be.

31. Whilst we do not derive any help or guidance from paragraphs 7.3 or 7.4 when it comes to deciding the question when the Employees’ period of employment began, we still have Mr Boparai’s second point, which is that the nature of the arrangements that were put in place on 27 February are so different from those which went before that a new period of employment must have begun. As he put it, under the previous arrangements “there was no contract in place because it was irregular/ad-hoc payments being taken when needed by the employees but crucially for not doing any particular work”.

32. The Employees were recorded in Ark Angel’s PAYE records as having been employed throughout the 2019/20 tax year. HMRC’s (undisputed) evidence is that their systems show that the Employees had been on Ark Angel’s PAYE scheme since 6 April 2013. RTI submissions show that their pay was low and ad hoc. In 2019/20 they received pay on only three occasions (in weeks 42, 44 and 48). Kulvinder received £1,095 and Ramandeep £2,296. In commenting on HMRC’s submissions in advance of the December hearing, Mr Boparai wrote, “It wasn’t employment in the normal sense. It was ad-hoc payments we took to cover our expenses when we needed money.” This comment is consistent with the general tenor of the evidence at the first hearing, but it does not alter the fact that the Employees were recorded on Ark Angel’s PAYE system as employees and these payments were shown as employment income, as opposed to loans or distributions.

33. Whilst we do not accept Mr Marks’ submission that, because no cessation of employment had been recorded under the PAYE regime, it follows that there was no cessation, we do consider that the fact that the Employees were shown in Ark Angel’s PAYE records as its employees throughout the 2019/20 tax year (indeed, since 6 April 2013) to be helpful evidence when it comes to analysing whether they were employed by Ark Angel.

These may have been unusual employments, but they still seem to have been treated by all concerned as employments.

34. It is clear from the evidence and Mr Boparai's submissions that the Employees did perform tasks for Ark Angel. They were not rewarded by being paid on a "per task" basis. Instead, the arrangement seems to have been that, in return for performing tasks for Ark Angel as needed, the Employees could draw money out of Ark Angel, again on an as needed basis. Arrangements like these (an employment with irregular, ad hoc duties and payments) do not seem far removed from employment under a zero hours contract (one where an employer is not obliged to provide any minimum amount of work and the employee is not obliged to accept any work offered).

35. Although they were clearly not engaged under typical contracts before 27 February 2020, we are satisfied that the Employees were employed by Ark Angel throughout the 2019/20 tax year.

36. In the case of Ramandeep (but not Kulvinder) there is the additional point that she was a director of Ark Angel throughout the 2019/20 tax year. The effect of section 5 ITEPA is that she is treated as employed by Ark Angel throughout that period.

37. The next question is whether, although the Employees were employed by Ark Angel throughout the 2019/20 tax year, the very significant changes to the terms of their employment on 27 February 2020, which might be thought to be so substantial that they had a new employment different from the previous one, affects the analysis. In this connection Mr Boparai drew our attention to the fact that the written contracts contained a provision to the effect that there was no continuity of employment.

38. Paragraph 7.2(a) is looking to find "the average monthly (or daily or other appropriate pro-rata) amount paid to the employee for the period comprising the tax year 2019-20 (or, if less, the period of employment)".

39. The definition of "employment" in section 4 ITEPA is "any employment under a contract of service". If we put those words into paragraph 7.2(a) in place of "employment", the relevant part of the definition of reference salary reads:

"the average monthly (or daily or other appropriate pro-rata) amount paid to the employee for the period comprising the tax year 2019-20 (or, if less, the period of employment under a contract of service)".

40. Having done this, it seems clear to us that the only parts of the 2019/20 tax year which are left out of account are those where the Employees were not employed by Ark Angel under a contract of service.

41. There is nothing in the language here which suggests that employment under one particular contract of service (the one under which individuals will be paid during the furlough period) counts whereas employment under another does not. The language of paragraph 7.2(a) focuses on amounts paid over a period and does not refer to any particular employment source. The position of Ramandeep illustrates this quite vividly. As a director she is treated as employed by Ark Angel throughout the 2019/20 tax year. She also signed a new employment contract at the end of February and was previously party to the ad hoc arrangements. If we only take her employment under the February contract into account, we would be ignoring the fact that the law very clearly provides that she is to be treated as an employee whilst she is a director.

Conclusion

42. As we have found that the Employees were employed by Ark Angel throughout the 2019/20 tax year and their period of furlough did not begin until 17 April 2020, their reference salary falls to be calculated by averaging the amounts (other than any amounts which fall to be disregarded under paragraph 7.3) paid to them by Ark Angel in the 2019/20 tax year over the whole of that year.

THE SECOND ISSUE: PAYMENTS TO KULVINDER IN TAX YEAR 2021/22

43. As we recorded at [99] in the Decision, Kulvinder accepted in evidence that he started to work for Greenwich/Grosvenor from the beginning of December 2020. This means that Kulvinder would cease to qualify as being on furlough from that date, as Greenwich and Grosvenor were both connected with Ark Angel. However, Ark Angel indicated that Kulvinder had been furloughed by those companies and had carried out no work for them for a period in 2021. This means that there may be a later period where Ark Angel could make CJRS claims in respect of Kulvinder. Ark Angel raised this point in advance of our hearing in December and HMRC commented that no evidence had been produced by Ark Angel to support this claim. On receiving HMRC's submissions in advance of the December hearing, Mr Boparai said that there was a furlough letter, which he would be supplying.

44. Mr Boparai produced a letter from Grosvenor to Kulvinder signed by both parties on 21 May 2021. It said that Kulvinder was being placed on furlough and he would not do any work for Grosvenor during the furlough period, which (the letter said) "will begin on 1st May 2021." Greenwich Bay wrote to Kulvinder to the same effect, also on 21 May 2021. On 1 July 2021 the two companies wrote to Kulvinder to confirm that they "will be flexibly furloughing you for your employment with the company" and the flexible furlough arrangement would (in both cases) be two hours a month and "This will be paid along with your furlough payment."

45. As Mr Marks observed, the period from 1 May 2021 to 30 June 2021 is covered by the Seventh Coronavirus Direction made by HM Treasury on 15 April 2021. The Seventh Direction is more complex than the Directions we have had to consider so far.

46. Paragraph 32.1 of the Seventh Direction provides as follows:

"For the purposes of CJRS, an employee must be treated as working for an employer if the employee works for a person connected with the employer (see paragraph 40.4) or otherwise works indirectly for the employer."

47. So far as the period from 1 July (when Kulvinder was placed on flexible furlough by the two companies) is concerned, we understand that no assessment has been raised in respect of that period as the claim was stopped by HMRC and Ark Angel has not appealed HMRC's decision to stop the claim.

48. Accordingly, we only need to decide whether Kulvinder was working for an employer connected with Ark Angel in the period from 1 May 2021 to 30 June 2021. Mr Marks says that the letters of 21 May only place Kulvinder on furlough from that date. Interestingly, the Seventh Direction provides (at paragraph 7(b)(iii)) that an agreement putting someone on furlough can be "made in writing or confirmed in writing". That is quite different from the language we considered earlier and, as Mr Marks accepted in his submissions, the written agreement could record an agreement reached earlier. However, he says, these letters do not purport to record an agreement already reached. For example, they say "If you agree ... you will need to sign to confirm your agreement", not "Please sign to confirm your previous agreement".

49. Whilst we agree with Mr Marks' comments, the question for us at this point is not whether Kulvinder was placed on furlough by the two companies or when any furlough took effect from. The question for us is whether Kulvinder worked for either of these companies in May or June 2021, and that does not turn on whether those companies put him on furlough. Mr Marks challenged when Kulvinder's furlough started for the purposes of the Seventh Direction on the basis of the language and date of the two letters, but he did not suggest that the letters were incorrect when they suggested that Kulvinder had not been working for the two companies from 1 May. Moreover, in his paper prepared for the December hearing Mr Boparai said of this period, "We can only remember that the work had ground to a halt due to Covid, which resulted in waiting for the Land Registry to complete registration paperwork for purchased land titles." On that basis, we are satisfied that Kulvinder did not work for Greenwich Bay or Grosvenor in the period we are concerned with (1 May to 30 June 2021).

THE THIRD ISSUE: THE DECISION

50. Ark Angel requested the Tribunal to make a number of changes to the Decision.

51. The Tribunal's power to amend the Decision is limited by the Tribunal Rules. The position in this regard was discussed very recently by the Upper Tribunal in *Anthony and Ross Outram v HMRC*, [2024] UKUT 00203 (TCC). To summarise the position, two rules are in point. First, rule 37 provides for correction of clerical mistakes, accidental slips and omissions. The scope of what falls within a rule 37 correction is quite limited and it should not be used to make substantive revisions to the judgment. Rule 41, on the other hand, is a wide-ranging power. Its purpose is to limit unnecessary appeals to the Upper Tribunal. The power to review under this rule arises only where there is an application for permission to appeal. If on review of the decision, the Tribunal considers that it has made an error of law, rule 41 permits it to correct that error. The Upper Tribunal considered that there is no limit on the power to correct/amend under rule 41. However, where the rule 41 power is to be exercised, the appropriate procedure set out in the rule must be followed and the parties must be given an opportunity to make representations on the proposed course of action.

52. We will send the parties a revised Decision which reflects matters which we consider can be addressed within rule 37. Wider changes can only be made if Ark Angel seeks permission to appeal the Decision and, on reviewing the Decision, we find an error of law which we consider we should correct.

53. Before closing, we would like to explain that no decision is ever a full record of everything that was said (or every document that was referred to) in the proceedings. It is a review of the evidence and a process of finding the facts needed to enable a tribunal to reach a conclusion on the substance of the appeal. A decision will also summarise the relevant legal principles or discuss them (and the parties' arguments) where (as here) the position is unclear or has not previously been tested. There may have been (as there were here) dealings between the parties which cover areas which extend beyond the focused scope of the issues before the tribunal. Again, these would not be canvassed in a decision. The Tribunal only has the jurisdiction given to it by Parliament, which here is to hear and determine Ark Angel's appeal, and our decision has to be limited to the task Parliament gave us; that is all we have power to do. We hope that explains why there are a number of points which are important to Mr and Mrs Boparai but which do not find a home in the Decision.

54. Finally, if our bald, lawyers' language has made it sound as if we are unsympathetic to, or critical of, Ark Angel, we are sorry for that. It was certainly not our intention. We appreciate that the rules in this area are not straightforward and (more importantly) were evolving (as we can see from paragraphs [22] and [48] and from comparing the original

Coronavirus Direction we studied with the (very different) text of the Seventh Direction) in a very different environment to today's.

DISPOSITION

55. We have set out above our answers to the questions posed by the parties. We hope that they will now be able to agree the amounts owed by Ark Angel to HMRC, but if they are unable to do so we remain at their disposal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

56. 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.

**MARK BALDWIN
TRIBUNAL JUDGE**

Release date: 22nd AUGUST 2024