



FTC/40/2009 and FTC/41/2009

Application for permission to appeal - refused

**UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER**

NIGEL GROGAN

Appellant

- and -

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

Respondents

TRIBUNAL: The President, the Hon Mr Justice Warren

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**DECISION ON THE APPLICATIONS OF THE APPELLANT
FOR PERMISSION TO APPEAL**

This application

1. Following my decision released on 21 October 2010 (“the **main Decision**”), Mr Grogan applies for permission to appeal in respect of both parts of that decision namely
 - a. The validity of the First Notice and
 - b. The substantive issue, that is to say, the “*Willoughby*” point.
2. In accordance with section 13(11) and (12) of the Tribunals, Courts and Enforcement Act 2007 I specify the Court of Appeal in England and Wales as the relevant appellate court as respects any appeal from the main Decision.
3. Paragraph 2 of the Appeals from the Upper Tribunal to the Court of Appeal Order 2008 (“the 2008 Order”) provides:

“Permission to appeal to the Court of Appeal in England and Wales...shall not be granted unless the Upper Tribunal or, where the Upper Tribunal refuses permission, the relevant appellate court, considers that –

 - (a) the proposed appeal would raise some important point of principle or practice; or
 - (b) there is some other compelling reason for the relevant appellate court to hear the appeal.”
4. The Upper Tribunal rules themselves do not set out the criteria by which the granting of permission to appeal is to be judged. I do not consider that permission should be granted unless the appeal has a real prospect of success (or unless there is some other compelling reason for the appellate court to hear the appeal). This is so even if there is some important point of principle or practice which is involved. If the answer to the important point is clear, in the sense of an appeal having no reasonable prospect of success, permission to appeal should not be given.
5. As to that, I do not consider that there is a real prospect of success in an appeal by Mr Grogan on his second ground of appeal. Both the Tribunal below and I have rejected the arguments based on *Willoughby* and I do not doubt that we were right to do so. If this point is to go further, I consider that it is the Court of Appeal which should have the opportunity of deciding whether or not it should do so; it should not to have this appeal imposed on it. Although the Upper Tribunal clearly has power to give permission to appeal to the Court of Appeal, I note that this is

not a power which even the High Court possesses since all appeals from the High Court when acting as an appellate court need the permission of the Court of Appeal under CPR 52.13. That causes me to view with some circumspection the expansive power given to the Upper Tribunal and, in case of doubt about the merits of the appeal, and *a fortiori* where I perceive no reasonable prospect of success, to leave the decision to the Court of Appeal.

6. Since I am refusing permission to appeal on the second ground, it will make no difference to Mr Grogan's own case whether I am right or wrong about the validity of the First Notice. It is not appropriate to give permission to appeal on that point alone. I can quite understand, however, that if permission is obtained from the Court of Appeal on the second ground, it may well think it appropriate to deal with the first ground as well.

Disposition

7. I refuse permission to appeal.

Right to appeal against my refusal to give permission to appeal

8. In compliance with paragraph 45(4) of the Upper Tribunal Rules I hereby notify Mr Grogan of his right to make an application to the Court of Appeal for permission to appeal against the main Decision. Such application must be made in accordance with Part 52 of the Civil Procedure Rules.

Mr Justice Warren
President

Release Date: 22 November 2010