



Appeal number: UT/2016/0150

*INCOME TAX and NATIONAL INSURANCE CONTRIBUTIONS (NICs)
– re-making of decision of the FTT following decision in principle –
evidence of HMRC in support of increasing the assessments in respect of
PAYE and NICs – appeal determined*

**UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER**

**THE COMMISSIONERS FOR HER MAJESTY’S
REVENUE AND CUSTOMS**

Appellants

- and -

C M UTILITIES LIMITED

Respondent

**TRIBUNAL: MR JUSTICE ARNOLD
JUDGE ROGER BERNER**

In chambers

**Decision of the Tribunal supplemental to the decision in principle released on 27
July 2017**

DECISION

1. On 27 July 2017 we released our decision in principle in this appeal. Put shortly, we allowed the appeal of HMRC and set aside the decision of the First-tier Tribunal (“FTT”). We decided that we would not remit the case to the FTT, but would re-make the decision pursuant to s 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007. However, in order to do so, we directed HMRC to serve a witness statement in support of the amounts by which HMRC submitted that the assessments which were the subject of the appeal should be increased in accordance with s 50(7) of the Taxes Management Act 1970 (“TMA”) (as it applies to PAYE) and regulation 10 of the Social Security (Decisions and Appeals) Regulations 1999 (SI 1999/1027) (“the 1999 Regulations”) (NICs).

2. HMRC have filed a witness statement of Officer Mark Callaghan with supporting exhibits. In accordance with our directions, the Respondent, C M Utilities Limited (“CMU”), was given the opportunity to make representations. No representations were received and we accordingly proceed to make our determination.

3. The original assessments on CMU for the periods 2007-08 and 2008-09 were in the following amounts of PAYE and NICs:

Year	Assessment	Amount	Date of assessment
2007-08	Regulation 80 (PAYE)	£110,000.00	21 February 2012
2007-08	Section 8 (NIC)	£69,533.37	21 February 2012 (revised 30 March 2012)
2008-09	Regulation 80 (PAYE)	£90,000.00	23 October 2013
2008-09	Section 8 (NIC)	£65,127.33	23 October 2013

4. As we explained in our decision in principle, in offering to review the assessments, on 8 May 2014 HMRC wrote to CMU to say that the amounts considered due were in fact greater than those initially assessed. That was confirmed by the statement of case served by HMRC in respect of CMU’s appeals, which set out the revised figures as follows:

Year	Liability	Amount
2007-08	Regulation 80 (PAYE)	£344,207.74
2007-08	Section 8 (NIC)	£124,733.43
2008-09	Regulation 80 (PAYE)	£217,384.40
2008-09	Section 8 (NIC)	£76,861.95

5. Mr Callaghan's witness statement explains that the original assessments had been made on an estimated basis, having regard to the need to comply with time limits. Those estimated assessments had been made, as regards the PAYE assessments, by reference to the basic rate of income tax. Following the making of the assessments, HMRC came to the view that the rate should have been at the higher rate. It was also discovered that amounts paid to the relevant individuals had been greater than had been known at the time of the assessments. For those reasons, the assessments had undercharged CMU to both tax and NICs, and the Tribunal was invited to increase those assessments pursuant to s 50(7) TMA as it applies to PAYE and regulation 10 of the 1999 Regulations in relation to NICs.

6. We have considered the detailed explanation given by Mr Callaghan in his witness statement and accompanying exhibits for the revised calculations that HMRC have made. As CMU has made no representations in that respect, it is not necessary for us to describe those calculations in detail. We can say, however, that we are satisfied that they have been made on a systematic and reasonable basis by reference to the information now available to HMRC.

7. The results of the detailed calculations have resulted in some modest adjustment to the final figures for NICs for both tax years in question. The final figures are as follows:

Year	Liability	Amount
2007-08	Regulation 80 (PAYE)	£344,207.74
2007-08	Section 8 (NIC)	£123,406.25
2008-09	Regulation 80 (PAYE)	£217,384.20
2008-09	Section 8 (NIC)	£76,860.50

8. We accordingly re-make the decision of the FTT by finding that CMU has been undercharged by the assessments, and we determine that the assessments shall be increased to the amounts shown in the table at paragraph 7 above.

MR JUSTICE ARNOLD

UPPER TRIBUNAL JUDGE ROGER BERNER

RELEASE DATE: 28 September 2017