Neutral Citation: **[2023] UKUT 00256 (TCC)**

Case Number: UT/2022/000008

UPPER TRIBUNAL
(Tax and Chancery Chamber)

Hearing venue: Rolls Building, London

PROCEDURE – Procedure – jurisdiction of First-tier Tribunal – whether a request to amend date on which member of a VAT group joined the group retrospectively was an application under s 43B(2) VATA 1994 - whether s 83(1) VAT Act 1994 provides a right of appeal against a refusal to amend the date on which a body corporate became a member of a VAT group or retrospectively to treat the body corporate as a member of the group earlier than it was – appeal dismissed

Heard on: 20 March 2023
Judgment date: 23 October 2023

Before

JUDGE GREG SINFIELD
JUDGE VINESH MANDALIA

Between

DOLLAR FINANCIAL UK LTD

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: James Rivett KC and Calypso Blaj, counsel, instructed by PricewaterhouseCoopers LLP

For the Respondents: Hui Ling McCarthy KC and Michael Ripley, counsel, instructed by the General Counsel and Solicitor to His Majesty's Revenue and Customs

DECISION

INTRODUCTION

In a decision released on 8 July 2021 with neutral citation [2021] UKFTT 253 (TC) ('the Decision'), the First-tier Tribunal (Tax Chamber) ('the FtT') struck out an appeal by Dollar Financial UK Limited ('DFUK'). DFUK had appealed against the rejection by the Respondents ('HMRC') of DFUK's application of 29 September 2016 to amend the date on which its USA parent company, Dollar Financial Group Inc ('DFGI'), joined the DFUK VAT group from 27 June 2013 to 1 July 2012 with retrospective effect. The FtT struck out DFUK's appeal under rule 8(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ('FtT Rules') on the ground that the FtT did not have jurisdiction in relation to the proceedings because there was no valid application by DFUK under Section 43B of the VAT Act 1994 ('VATA 1994') and thus no appealable decision under section 83 VATA 1994.

The Decision was amended and re-issued on 10 January 2022 with amendments pursuant to rule 37 of the FtT Rules to correct clerical mistakes, accidental slips and omissions but nothing turns on that. All references to the Decision in this decision are to the amended Decision.

FACTUAL AND PROCEDURAL BACKGROUND

There was no challenge by either party to the facts set out by the FtT in [10] to [21] of the Decision. The material facts for the purposes of this appeal may be summarised as follows.

DFUK was the representative member of the DFUK VAT Group which included other members from the same corporate group. On 27 June 2013, PwC, acting on behalf of DFGI, applied for DFGI to be added to the DFUK VAT Group with immediate effect. On 12 August 2013, HMRC issued a letter approving DFGI's inclusion with effect from 27 June 2013.

On 29 September 2016, the Tax Director of DFUK wrote to HMRC requesting an amendment to the date on which DFGI was included in the DFUK VAT Group. The letter included the following:

> "**Request to amend VAT grouping effective date**
>
> I am writing to you to request an amendment to the date on which Dollar Financial Group Inc (via its UK branch - Dollar Financial Group Inc UK branch), hereinafter collectively referred to as "DFG", was included in the DFUK VAT group.
>
> … My initial review of the group's activities highlighted the potential for DFG to have had a fixed establishment for VAT purposes prior to the point at which it registered its UK branch with Companies House and became registered for VAT as part of the DFUK VAT group.
>
> …
>
> **Background**
>
> … DFG registered its UK branch, DFG - UK branch, with Companies House on 25 June 2013. DFG- UK branch was included in the DFUK VAT group with effect from 27 June 2013.
>
> …
>
> Prior to the date on which DFG registered its branch in the UK and became a member of the DFUK VAT group, DFG maintained its involvement in the growth strategy of the UK businesses from its establishment in Philadelphia...

a decision was made to increase the level of support provided by DFG in terms of growth strategy and management of the UK business to ensure that the group realised the potential of its recent acquisitions

The result of this decision was that a number of DFG employees were seconded to the UK during 2011 and 2012… The bulk of the DFG employees arrived in the UK during August 2011 and November 2011 with the remaining individuals arriving during 2012.

It is worthwhile noting at this stage, that whilst the employees were seconded to the UK businesses and occupied UK office space, the individuals concerned were all senior members of staff with ability to act independently on behalf of DFG. The direction and control of the activities undertaken by the relevant employees remained with DFG. It is my opinion (for the reasons set out below) that the secondment of these individuals created a fixed establishment for VAT, earlier than DFG's actual registration date in the VAT group on 27 June 2013.

Fixed establishment

Whilst I do not consider DFG's activities in the UK to constitute a UK business establishment, it is my view that the presence of the UK employees was sufficient to create a UK fixed establishment for DFG.

…

Taking this into consideration, it is clear to me that DFG had a fixed establishment for UK VAT purposes prior to the registration of its UK branch, the consequence of which is that DFG registered for VAT in the VAT group late….

…

Impact of DFG's fixed establishment

Because the supplies made by DFG were provided solely by the employees located in the UK fixed establishment and not bought in, there was no requirement for DFUK to account for VAT under the reverse charge, so any reverse charge VAT has been treated in error. On the basis that DFG "belonged" in the UK for the purpose of supplying management services to the UK business, the requirement to account for VAT on the services supplied between August 2012 and 27th June 2013 therefore rested with DFG.

The value of the management services charged to the UK businesses between 2 August 2012 and 3 August 2012 was £1,620,83.42 *(sic)*. In view of the VAT registration threshold in place at the time (£77,000), DFG should have registered for VAT in the UK.

As the first set of invoices issued by DFG covered the period to 31 July 2012, it is my view that, in line with paragraph 1(b) of schedule 1 of the VAT Act 1994, 1 July 2012 is the date on which DFG's requirement to become registered in the UK arose. This is because this is first day on which DFG (had it been cognisant of its UK fixed establishment) could have reasonably been aware that it would breach the VAT registration threshold.

Taking this into consideration and the fact that DFG is already part of the DFUK VAT group (as a result of the inclusion of its UK branch on 27th June 2013), I request that HMRC amends DFG's VAT group registration effective date from 27 June 2013 to 1 July 2012 in accordance with paragraph 6(2) of schedule 1 of the VAT Act 1994.

…

At this stage, it is worth noting that had DFG been aware of the fact that it had a UKVAT registration requirement as a result of the management services provided by its fixed establishment, prior to the registration of its UK branch, DFG would have effected its registration by joining the DFUK VAT group (as is clearly evidenced by the fact that this is the registration which it subsequently chose).

Retrospective VAT Grouping

…

Failure to allow DFG to join the VAT group from its amended effective registration date and requiring it to register in its own right from 1 July 2012 will produce an illogical result. It will also result in an unjust amount of irrecoverable VAT being incurred, given that had we been aware of DFG's fixed establishment it would have clearly been our intention to VAT group DFG and treat the supplies as intra-VAT group.

DFUK VAT group

…

Pursuing a separate VAT registration for the backdated period would, in my view, be unreasonable. HMRC is required to exercise its discretion reasonably and following Copthorn Holdings [2015] UKFIT 405 (TC) (Appendix 4) it is clear what DFG would have done regarding its registration had it realised its obligation in this regard earlier. In exercising its discretion reasonably, it seems to me that HMRC is not permitted to exercise it so as to gain an advantage which would not otherwise arise (penalties and an enhanced VAT payment from a taxpayer).

Should HMRC determine it would be reasonable to insist on a single registration for DFG, please accept this as a claim for any input tax that may arise from such a separate registration in for the vat (sic) group, although as you can appreciate this tax has been previously recovered as part of the reverse charge.

Summary

It is my view for the reasons set out above that DFUK had a fixed establishment in the UK prior to the VAT registration of its branch in June 2013. This fixed established was directly concerned with providing management services to the UK group businesses. As a result of the value of the supplies made by DFG via its UK fixed establishment, DFG had a requirement to register for VAT in the UK with effect from 1 July 2012.

I request that HMRC amends the date on which DFG became a member of the DFUK VAT group from 27 June 2013 to 1 July 2012.

As a consequence of DFG's fixed establishment, DFUK has overpaid VAT under the reverse charge in respect of management services received in the period 2 August 2012 to 27th June 2013. I also request that HMRC arranges for an amount of £2,220,614.23, representing the total amount of VAT overpaid by DFUK in respect of the management services supplied by DFG, to be repaid."

On 6 March 2018, HMRC sent a letter refusing to treat DFGI as a member of the VAT Group during the period 1 July 2012 to 26 June 2013. There were two reasons given for the refusal:

"The first decision is to refuse the application for Dollar Financial Group Inc. to join the VAT group from the 01 July 2012 under s43B(5)(b) VATA 1994.

> This is because during the period in question (01 July 2012 – 27 June 2013) the UK branch of DFG Inc. does not meet the eligibility criteria set out in s43A VATA 1994; specifically, DFG Inc. does not have a 'fixed establishment' in the UK.
>
> My second decision is to refuse the application for Dollar Financial Group Inc. to join the VAT group from the 01 July 2012 under s43B (4)(b). This is because HMRC only allow the backdating of grouping registrations to extend beyond 30 days under exceptional circumstances This application does not come under exceptional circumstances and thus it is refused.

The letter from HMRC went on to set out the reasons for refusing the request and the decisions reached.

By letter dated 3 April 2018, DFUK requested a statutory review of the decision. In a letter dated 14 May 2018, HMRC notified DFUK that the decisions were maintained following the review.

In June 2018, DFUK lodged an appeal in the FtT. HMRC filed a Statement of Case dated 8 October 2018. HMRC's primary position was that the application for DFGI to be treated as a member of the VAT Group during the period 1 July 2012 to 26 June 2013 was misconceived and in consequence, the decision of 6 March 2018 had no legal significance such that DFUK had no right of appeal against it, and the appeal should be struck out.

The claim that the appeal should be struck out was dealt with as a preliminary issue at a hearing before Judge Anne Scott sitting with Member, Leslie Brown. In summary, the FtT concluded, at [68]:

> "(1) The Application was not a valid application in terms of Section 43B.
>
> (2) In the absence of any valid application DFGI cannot be treated as a member of the DFUK VAT Group during the Relevant Period.
>
> (3) Even if the Application were to have been valid, the effective date of registration is the date the Application was received by HMRC."

The FtT agreed with HMRC that, although their decision purported to refuse the application, the decision was a nullity. The FtT concluded, at [70], that there was no appealable issue in respect of registration and sections 83(a), (k) and (t) of VATA were not engaged. Accordingly, the FtT held that it had no jurisdiction and the appeal must be struck out.

THE APPEAL TO THE UPPER TRIBUNAL

The central question in the appeal before us is whether the FtT had jurisdiction. DFUK advances three grounds of appeal:

> Ground 1: The FtT was wrong to hold that DFUK did not have a right of appeal before it under s 83(1)(a) VATA 1994.
>
> Ground 2: The FtT was wrong to hold that DFUK did not make a valid application under s 43B VATA 1994; and
>
> Ground 3: The FtT was wrong to hold that, if DFUK did make a valid application under s 43B VATA 1994, it was deemed granted from the date of receipt so that the application was of no legal effect with no right of appeal under s 83(1)(k) VATA 1994.

Permission to appeal to the Upper Tribunal ('UT') was granted by the FtT on 11 January 2022. We are grateful to Counsel for their clear and helpful submissions, both in writing and at the hearing before us although we have not found it necessary to refer to each and every point which they raised.

Before we address the relevant legal framework and the grounds of appeal, it is helpful for us to record two matters that were not in issue between the parties:

The central question whether the FtT did or did not have jurisdiction is the subject of a binary decision which must be addressed and determined at the hearing of a strike out application. Either the FtT has jurisdiction, or it does not: *HMRC v Woodstream Europe Ltd* [2018] UKUT 398 (TCC) *at [15] – [16]*

The FtT must, of its own motion, strike out proceedings even if neither party has made an application for strike out where the FtT comes to the conclusion that it does not have jurisdiction; *Dugan v HMRC* [2016] UKFTT 618 (TC) at [94]

LEGISLATION

Article 11 of the Principal VAT Directive (2006/112/EC) permits Member States to regard as a single taxable person any persons established in the territory of that member state who, while legally independent, are closely bound to one another by financial, economic and organisational links. The Principal VAT Directive was implemented in the UK by the VATA 1994.

The legal framework for the decision reached by HMRC and whether the FtT had jurisdiction requires us to have regard to the relevant provisions of VATA 1994. In summary, a person is a taxable person if they are registered for VAT (or are required to register for VAT) as set out in s 3(1) VATA 1994. Although VAT grouping is not mandatory, eligible companies established in the United Kingdom can register as a group with one of them becoming the group's representative member.

As at the date of HMRC's decision (6 March 2018), VATA 1994 provided:

> "43A.— Groups: eligibility.
>
> (1) Two or more bodies corporate are eligible to be treated as members of a group if each is established or has a fixed establishment in the United Kingdom and—
>
> (a) one of them controls each of the others,
>
> (b) one person (whether a body corporate or an individual) controls all of them, or
>
> (c) two or more individuals carrying on a business in partnership control all of them.
>
> …
>
> 43B.— Groups: applications
>
> (1) This section applies where an application is made to the Commissioners for two or more bodies corporate, which are eligible by virtue of section 43A, to be treated as members of a group.
>
> (2) This section also applies where two or more bodies corporate are treated as members of a group and an application is made to the Commissioners—
>
> (a) for another body corporate, which is eligible by virtue of section 43A to be treated as a member of the group, to be treated as a member of the group,

(b) for a body corporate to cease to be treated as a member of the group,

(c) for a member to be substituted as the group's representative member, or

(d) for the bodies corporate no longer to be treated as members of a group.

(3) An application with respect to any bodies corporate—

(a) must be made by one of them or by the person controlling them, and

(b) in the case of an application for the bodies to be treated as a group, must appoint one of them as the representative member.

(4) Where this section applies in relation to an application it shall, subject to subsection (6) below, be taken to be granted with effect from—

(a) the day on which the application is received by the Commissioners, or

(b) such earlier or later time as the Commissioners may allow.

(5) The Commissioners may refuse an application, within the period of 90 days starting with the day on which it was received by them, if it appears to them—

(a) in the case of an application such as is mentioned in subsection (1) above, that the bodies corporate are not eligible by virtue of section 43A to be treated as members of a group,

(b) in the case of an application such as is mentioned in subsection (2)(a) above, that the body corporate is not eligible by virtue of section 43A to be treated as a member of the group, or

(c) in any case, that refusal of the application is necessary for the protection of the revenue.

(6) If the Commissioners refuse an application it shall be taken never to have been granted.

The FtT held that DFUK did not have a right of appeal before it under section 83(1)(a) and (k) VATA 1994. The provision, so far as relevant, is as follows:

"83 Appeals

(1) Subject to sections 83G and 84, an appeal shall lie to the tribunal with respect to any of the following matters –

(a) the registration or cancellation of registration of any person under this Act;

…

(k) the refusal of an application such as is mentioned in section 43B(1) or (2)."

(2) In the following provisions of this Part, a reference to a decision with respect to which an appeal under this section lies, or has been made, includes any matter listed in subsection (1) whether or not described there as a decision.

OUR APPROACH TO THE APPEAL

DFUK's primary grounds before us are grounds 2 and 3. Ground 1 was said to be an additional route by which there is a right of appeal before the FtT. In his oral submissions before us Mr James Rivett KC submitted that the appropriate course is for us to consider the third ground first. He submitted that if DFUK had made a valid application under s 43B VATA 1994, the simple answer is that the FtT had jurisdiction and the question whether the refusal of the application was lawful was one for the FtT to determine on the substantive merits of the appeal.

In addressing whether it had jurisdiction, the FtT began by looking at the relevant provisions of s 83 VATA 1994 and subsumed within its consideration, the questions whether DFUK had made a valid application under s 43B. Although we can see the force in the approach that Mr Rivett invited us to adopt, the primary conclusion reached by the FtT was that no valid application was made and nor could it have been. We propose therefore to address grounds two and three, and then ground one.

GROUND TWO

Mr Rivett submitted that the FtT was wrong to find that DFUK's letter of 29 September 2016 was not a valid application under s 43B(2) VATA 1994. At paragraphs [45] to [63] of its decision the FtT set out its reasons for finding that no valid application had been made under s 43(B)(2) VATA 1994, and nor could it have been. In summary the FtT said:

> The wording of s 43B(2) relates to applications made by another (*emphasised by the FtT)* body corporate that is not already in the group. The FtT rejected the claim made by DFUK that, because DFGI was not a member of the DFUK VAT group in 2012, they should be treated as being "another body corporate".
>
> Relying upon the judgment of Arden LJ in *C & E Commissioners v Barclays Bank plc* [2001] EWCA Civ 1513 ("*Barclays Bank*") at [32], s 43B is a complete code and sets out specific rights for specifically identified applications. Applications are only permitted for one of the four purposes set out in s 43B(2)(a)-(d). Section 43B(2) makes no provision for an application to amend the date from which group membership takes effect.
>
> If a taxpayer does not fall within the scope of s 43B then an application can be made to HMRC to make a decision using their care and management responsibilities (i.e. their discretionary powers in terms of s 5 of the Commissioners for Revenue and Customs Act 2005.
>
> The application cannot be deemed to have been made in 2012. The application had to be considered based upon the circumstances as they were when the application was made in 2016. In 2016, DFGI was a member of the VAT group. Deeming the application to have been made in 2012 would be contrary to the intended purpose of the legislation in that, far from simplifying the administration of VAT, it would not only complicate matters but would open the door to manipulation of dates and therefore abuse.

Mr Rivett submitted that the FtT's approach to statutory construction was wrong. He submitted that, in the context of a sub-section that permits a VAT group to expand, the ordinary meaning of "another" body corporate in s 43B(2)(a) VATA 1994 is simply that the entity is not already one of the "two or more bodies corporate" referred to in the opening words of s 43B(2). Mr Rivett submitted that s43B(2) imposes no bar on present group members applying to be a member at an earlier time in the group's existence, and neither would such an interpretation open the door to manipulation and abuse given that HMRC are free to exercise their discretion to refuse the application under s 43B(5)(c). He submitted that an unduly narrow interpretation of s43B(2)(a) would be contrary to the statutory purpose and would leave those such as DFGI without redress.

In his oral submissions, Mr Rivett submitted that there is a distinction between 'an application' and 'a valid application'. Here, there is nothing that sets out what form an application must take. Mr Rivett submitted that, as at 1 July 2012, DFGI was 'another body corporate' for the purposes of s 43B albeit, it was already part of the VAT group on 29 September 2016. He submitted that the FtT's view that the construction of s 43B contended for by DFUK would be

contrary to the intended purpose of the legislation and would open the door to manipulation of dates and therefore abuse, could not be correct because s43B(5)(c) expressly makes provision for HMRC to refuse an application if it appears to them that refusal is necessary for the protection of the revenue. Mr Rivett submitted that if s43B is construed in the way it was construed by the FtT, notwithstanding the fact that there is nothing in the statute expressly preventing an amendment, the date from which a person is included in a VAT group could never change and that could not be what was intended. He referred to the judgment of Arden LJ in *Barclays Bank* in which she confirmed, at [32], that s 43 constitutes a comprehensive scheme for bringing into being, and bringing to an end, single taxable person status and that the statutory machinery must be followed. He submitted that where s 43 is widely cast, subject to policing safeguards, there is no warrant to narrow the jurisdiction. He also referred to the judgment of Neill J in *Customs and Excise Commissioners v Save and Prosper Group Ltd* [1979] STC 205 ("*Save and Prosper*") in which he held, at page 210, that if Parliament had intended to limit the discretion in the way contended for by HMRC, it would have been simple to provide for that in the relevant legislation.

In reply, Ms Hui Ling McCarthy KC submitted that the FtT's analysis of the purpose of the statutory provisions is adequately supported by the purpose of Article 11 of the Principal VAT Directive. She referred to the judgment of the CJEU in *European Commission v Ireland* C-85/11which stated at [47]:

> "47. …the objectives pursued by Article 11 of the VAT Directive, it is apparent from the Explanatory Memorandum to the proposal which resulted in the adoption of the Sixth Directive (COM(73) 950) that, by adopting the second subparagraph of Article 4(4) of the Sixth Directive, which was replaced by Article 11 of the VAT Directive, the European Union legislature intended, either in the interests of simplifying administration or with a view to combating abuses such as, for example, the splitting-up of one undertaking among several taxable persons so that each might benefit from a special scheme, to ensure that Member States would not be obliged to treat as taxable persons those whose 'independence' is purely a legal technicality."

Ms McCarthy submitted that, in *HSBC Electronic Data Processing (Guandong) Ltd and Others v HMRC* [2022] UKUT 41 (TCC), it was common ground that the twin objectives of Art 11 are (a) simplifying administration for VAT group members and the tax authorities and (b) helping to combat abuses such as splitting up one undertaking into several taxable persons

She submitted that the specific purpose of s43B is to allow applications to be made for companies to be treated as members of a VAT group in the context of a voluntary regime. The default position is that any such application is taken to be granted with effect from the date on which it is received by HMRC (s43B(4)(a)) but HMRC may agree that the application has effect from some earlier or later time (s43B(4)(b)). She submitted that, once an application has been approved and a new member has joined the VAT group, there is no scope for the taxpayer to change its mind about the effective date subsequently. In *Customs and Excise Commissioners v Thorn Materials Supply* [1998] STC 725, Lord Nolan said at 733 that such provisions are not designed to confer exemption or relief from tax but simply to facilitate the collection of tax by treating the representative member as if it were carrying on all the business of the other members as well as their own and dealing on behalf of them all with non-members

Ms McCarthy submitted that, here, the issue is what interpretation of s 43B better fulfils the core objective of simplification. In summary, DFUK's position undermines that core objective. She submitted that s 43B(2)(a) provides for the addition of a new member to an existing group and thus it applies "where two or more bodies corporate are treated as members of a group and an application is made to [HMRC] (a) for another body corporate… to be treated as a member

of the group". Thus, s43B(2)(a) only provides for applications made in respect of a body corporate which is not one of the ones already in the group. Neither s 43B(2)(a) (nor any other provision) provides for applications by one of the members to backdate its entry to the group after they have already joined. Ms McCarthy submitted that this construction is also supported by subsection (4) which provides that an application under s 43B shall (unless refused by HMRC within 90 days) be taken to be granted with effect from either (i) the date on which it is received by HMRC; or (ii) (if HMRC so allows) some earlier date. Therefore, if HMRC simply does not respond to an application, the effective date of VAT grouping treatment (i.e. the date from which it is taken to be granted) is the date on which the application is received by HMRC. If DFUK's construction of s 43B is correct (and if HMRC did not refuse the application within 90 days), an application would, by operation of s 43B(4)(a), be taken to be granted with effect from the day on which the application is received by HMRC. That could be of no effect if, as here, the person is already a member of the VAT group at the date upon which the application is received.

Ms McCarthy submitted that the FtT was right to conclude that the letter of 26 September 2016 was not an 'application' and HMRC's decision could not be read as a refusal of an application made under s 43B capable of giving rise to a right of appeal under section 83(1)(k). Arden LJ in *Barclays Bank* described the statutory scheme as a comprehensive scheme for bringing into being, and bringing to end, single taxable person status and that is the end of the matter. She submitted that DFUK was seeking to undo VAT returns in a way that is contrary to the purpose of simplification. VAT grouping is not compulsory and is a matter of choice. Once a person has made that choice, and a decision is reached by HMRC, there is no good reason why the taxpayer should be able, at some later date, to decide that the date should be revisited.

Decision on ground two

The consequences of any particular interpretation of a statutory provision is a relevant consideration in determining the proper construction of the provision. The starting point should be the language of the provision and its context and purpose. Applying the plain and ordinary meaning of the language of s 43B, it applies in two situations. First, by operation of s 43B(1), it applies where an application is made to the Commissioners for two or more bodies corporate that are eligible, to be treated as members of a group. In effect that establishes the VAT group and confers single taxable person status on the two or more bodies corporate. There is plainly no limitation to the number of bodies corporate that can be included in an application under s 43B(1). The second situation in which s 43B applies is set out in s 43B(2)(a). On a proper reading of that provision there are two pre-requisites. The first is that two or more bodies corporate are treated as members of a group. That simply reflects the fact that there must be a VAT group in existence for "another body corporate" to join. The second is that an application is made to HMRC. We accept, as Mr Rivett submitted, that there is nothing in the statutory framework that requires an application made under s 43B to be made in a particular form for there to be a valid application. What is required is an application, but importantly, it must be an application 'for' one of the four purposes identified in s 43B(2)(a) to (d).

In our judgment, Parliament has set down in s 43 VATA 1994 a carefully defined regime for VAT Grouping that, in accordance with Article 11 of the Principal VAT Directive, allows entities that, while legally independent, are closely bound to one another by financial, economic and organisational links to be regarded as a single taxable entity. It is, as Ms McCarthy submitted, an entirely voluntary scheme.

When read in context, the word 'another' in s43B(2)(a) refers to an additional entity, of the same type as the two or more referred to in the opening words of s43B(2). Therefore applying the ordinary meaning of "another", s 43B(2)(a) VATA 1994 imposes a requirement that the

body corporate is not already one of the "two or more persons" referred to in the first lines of s 43B(2).

Although Mr Rivett referred to the use of the words 'another body corporate' in s 43B(2)(a), and the words 'a body corporate' in s43B(2)(b)-(d), it is clear in our judgement that s 43B(2)(a) is concerned with an application for an additional entity to be treated as a member of a VAT group, whereas s43B(2)(b)-(d) are concerned with applications made by an entity that is already a member of the group. Those entities may apply to cease to be treated as a member of the group, to be substituted as the group's representative member, or for the group treatment to end.

We reject the submission made by Mr Rivett that s43B(2) imposes no bar on present group members applying to be a member at an earlier time in the group's existence, or, alternatively, that s43B(2)(a) can be read so that DFGI was 'another body corporate' because it was not a member of the group between 1 July 2012 and 27 June 2013. It was already part of the VAT group on 29 September 2016. The application to HMRC must be for 'another' body corporate to be treated as a member of the group. Simply put, a member of the group cannot apply again to be treated as a member of the group if they are already a member. If Parliament had intended to permit a body corporate to amend the date from which it is to be treated as a member of the group, it could very easily have done so. DFGI wanted to alter the position for the past and in our judgment, unless that is something which the statutory scheme provides for, it is not permitted.

Section 43B(4) provides that the application is to be taken to be granted with effect from; (a) the day on which the application is received by HMRC, or (b) such earlier or later time as HMRC may allow. If the construction contended for by Mr Rivett is correct, s 43B(4)(a) would operate so that the application (here, to amend the date on which DFGI became a member of the DFUK VAT Group from 27 June 2013 to 01 July 2012) would in effect, be taken to be granted with effect from the day on which the application is received by HMRC. We accept the submission made by Ms McCarthy that s 43B(4)(a) would be otiose because as at the date upon which the application is deemed to take effect, DFGI was already a member of the group. Absent a decision to refuse the application under s 43B(5), section 43B(4)(a) is concerned with the VAT group status looking forward from the day on which the application is received by HMRC rather than retrospectively at some earlier point in time.

Section 43B(5) sets out the limited basis upon which an application can be refused by HMRC within 90 days. The focus of s 43B(5)(a) and (b) is upon eligibility and the focus of s 43B(5)(c) is upon the protection of the revenue. If, as Mr Rivett submitted, s 43B should be construed widely so as to permit an application beyond the type of application identified in s 43B(1) and (2), that in our judgement is inimical to a comprehensive scheme for bringing into being, and bringing to end, single taxable person status. It would permit any application at all regarding VAT Grouping and unless the application could be refused by HMRC on grounds of eligibility or the protection of the revenue, it would have to be accepted. The way in which s 43B(4) and (5) operate in our judgement serve to illuminate why the type of application permitted by s 43B(1) and (2) is restricted in the context of a VAT grouping regime that is not compulsory and a matter of choice for the taxpayer. If any type of application were permitted under s 43(2) beyond the applications expressly permitted by s 43B(2)(a) to (d), s 43B read as a whole could not be read as a comprehensive scheme for bringing into being, and bringing to end, single taxable person status, with the core objective of simplification.

Although we accept that, in *Save and Prosper Group*, Neill J said that if Parliament had intended to limit the discretion in the way contended for by the Commissioners, it would have been simple to provide for that in the relevant legislation, that provides us with little assistance

in construing s 43B. Neill J considered predecessor legislation to s 43B VATA 1994. There, a particular subsidiary company, which was not registered or included in a group registration, commenced business. Consequently, inter-company supplies became chargeable to VAT. Save and Prosper applied to the Commissioners in 1977 to have the subsidiary company treated as a member of the group between 1973 and 1976 for VAT purposes. The Commissioners decided that they had no power under s 21 of the Finance Act 1972 to allow an application for group treatment to have retrospective effect. The Tribunal held that the Commissioners had jurisdiction to order retrospective group treatment and granted the holding company's application for retrospective group treatment from 1973. Section 21(7) of the Finance Act 1972 provided that an application with respect to any bodies corporate must be made by one of those bodies or by the person controlling them and must be made not less than 90 days before the date from which it is to take effect, or at such later time as the Commissioners may allow. Neill J held that the provision should be construed so that (a) the application should be made not less than 90 days before the date from which it is to take effect, but (b) it can be made at such time subsequent to the fixed point, that is, the 90 days before the date from which it is to take effect, as the Commissioners may allow. If a late application is made, it was for the Commissioners to decide whether to allow the application to go forward. Neill J did not consider it necessary to construe the subsection so as to limit the discretion of the Commissioners. Here, we are not concerned with the extent or limitation of any discretion vested in HMRC. Parliament has, in S43B(2), expressly set out the applications that can be made to HMRC.

Arden LJ in *Barclays Bank* described the statutory scheme as a comprehensive scheme for bringing into being, and bringing to end, single taxable person status. The construction urged upon us by HMRC better fulfils the core objective of simplification. Retrospective alteration of a legal position is generally to be seen as incompatible with the core objective of simplification. We accept, as Ms McCarthy submitted that a construction of s 43B which allows an existing member of a VAT group to change retrospectively the date of its admission to the group would not be consistent with those purposes and it would increase the administrative burden for taxpayers and HMRC alike, not least because of the potential effect on historic liabilities.

It follows that, in our judgement, the FtT was right to say that no valid application was made under s 43B(1) or (2) and nor could it have been.

We simply add that we reject the claim that our interpretation leaves those such as DFGI without recourse to any remedy. As the FtT noted, it is open to a taxpayer to invite a decision from HMRC in the exercise of their discretionary care and management responsibilities. A decision would not give rise to a right of appeal to the FtT but could be challenged by applying for judicial review. We do not consider that, in the present context, to be an inadequate remedy. Although it may be preferable for all tax-related matters to be heard by the specialist tax tribunals, if a right of appeal simply does not arise, it remains possible for applications for judicial review of HMRC's decisions to be transferred to and heard by the Upper Tribunal. The costs of such a claim are at the discretion of the Tribunal.

GROUND THREE

Mr Rivett submitted that the FtT was wrong to hold that, if DFUK did make a valid application under s 43B VATA 1994, it was deemed granted from the date of receipt so that the refusal of the application was of no legal effect with no right of appeal under s 83(1)(k) VATA 1994.

It is uncontroversial that HMRC did not respond to DFUK's letter of 29 September 2016 within the 90-day period referred to in s 43B(5). The FtT said:

> "67. In this case there is no doubt that HMRC did not respond within the 90 day period which expired on 29 December 2016. Where an application is not

> refused within 90 days it is deemed to have been granted with effect from the date on which it was received by HMRC. At that date DFGI was already a member of the DFUK VAT Group so the Application had no legal effect."

Mr Rivett submitted that the FtT did not appreciate the significance of HMRC having made two separate refusals in their Decision Letter, namely:

- a refusal, under s 43B(5)(b), of an application under s 43B(2)(a) on the ground that DFGI did not have a 'fixed establishment' in the UK between 1 July 2012 and 27 June 2023 and so did not meet the eligibility criteria in s43A; and
- a refusal to exercise their discretion under s 43B(4)(b) to grant the application with effect from an earlier date, ie 1 July 2012.

Any decision to refuse the application under s 43B(5)(b) was of no legal effect because that refusal was not made within 90 days so that the application took effect from the day that it had been received by HMRC. We accept that if HMRC had refused the application (on the assumption that it was a valid application) within 90 days then that decision would have given rise to a right of appeal under s 83(1)(k) of VATA 1994 as it would undoubtedly have been a refusal of an application mentioned in s 43B(2). In this case, however, there was no such refusal within 90 days and so the application, if it had been valid, would have taken effect from the day on which it was received by HMRC, ie 29 September 2016.

If the application to amend the date on which DFGI became a member of the VAT grouping is taken to be granted with effect from 29 September 2016, because HMRC did not issue any refusal within 90 days, then there was no "refusal of an application *(our emphasis)* such as is mentioned in s43B(1) or (2)". In the absence of such a refusal, there was never any right of appeal under s83(1)(k) VATA 1994. However, Mr Rivett submitted that a refusal to exercise discretion under s43B(4)(b) is a "refusal" within s 83(1)(k) carrying a right of appeal.

In *Save and Prosper Group*, there was no question before the Court that there had been a valid application made to the Commissioners and that the Commissioners had made a decision upon that application. Neill J considered the jurisdiction of the Tribunal and said:

> "… It seems to me that a decision by the commissioners that they had no jurisdiction to entertain the application submitted to them constituted a refusal for the purpose of s 40(1)(g). That paragraph gives the right to an appellant to appeal against the tribunal's findings with respect to: 'any refusal of an application under section 21 of this Act'. I am therefore satisfied that this appeal is properly before this court."

Mr Rivett also referred to the decision of the FtT in *University of Essex v HMRC* [2010] UKFTT 162 (TCC) ("*Essex University*") in which the FtT considered the refusal of HMRC to allow Universal Accommodation Group Ltd ("UAG") to cease to be a member of the University's VAT group from a date earlier than the date of the application to de-group UAG. The Tribunal referred to s 43B of VATA 1994. HMRC claimed the FtT had no jurisdiction to entertain an appeal under s 83(1)(k) because the refusal referred to in that section is confined to a refusal under s 43B(5) and there had been no such refusal. The FtT rejected the claim that s 83(1)(k) should be construed in such a restrictive way. If it had been intended to confine the right of appeal to the FtT to refusals of applications falling only within s 43B(5), s 83 could have said so. The FtT held that the application by the University to de-group UAG was an application to de-group on a particular date and by refusing to agree to the backdating, HMRC was refusing the application that had been made. As Ms McCarthy submitted, UAG had made an application to cease to be treated as a member of the group and so there was an application made to HMRC as permitted by s 43B(2). A decision was made by HMRC within 90 days refusing to allow UAG to be treated as ceasing to be a member of the group on the date sought.

As the FtT said at [51], by refusing to agree to the backdating, HMRC was refusing the application that had been made. It is perhaps unsurprising in those circumstances that the FtT concluded that there had been a refusal of an application under s 43B(1) and (2), giving rise to a right of appeal under s 83(1)(k).

Finally, Mr Rivett referred to the decision of the FtT in *Copthorn Holdings Ltd v HMRC* [2013] UKFTT 190. The FtT endorsed the views set out in *Save and Prosper* and *Essex University*. The FtT again concluded that it had jurisdiction by reference to s 43B read as whole, and by reference to the decisions of HMRC that were expressed in terms of a 'blanket' refusal of the application, rather than being couched in terms of a decision by HMRC not to exercise their discretion to permit an application to be granted with effect from a date earlier than that on which they received the application in question. At paragraph [126], the FtT said:

> "If HMRC argue that they are entitled to refuse an application on the basis solely of s 43B(4)(b), the inevitable consequence is that they must accept that the tribunal has jurisdiction pursuant to s 83(k), VATA 1994 in respect of an appeal against HMRC's decision."

Decision on ground three

As we have rejected DFUK's claim that the FtT was wrong to find that the letter of 29 September 2016 was not a valid application under s 43B(2) VATA 1994, we can deal with the third ground of appeal in brief terms.

It was common ground that HMRC did not respond to DFUK's letter within the 90-day period which expired on 29 December 2016. If DFUK's letter of 29 September 2016 had been a valid application under s 43B VATA 1994, the prescribed statutory consequence under s 43B(4)(a) and (5) would be that, in the absence of any refusal within 90 days, the application is treated as granted with effect from the day it was received by HMRC, ie 30 September 2016. The FtT concluded that, as DFGI was already a member of the DFUK VAT group at that date, DFUK's application (even if valid) could have no legal effect.

The FtT's conclusion appears to be based on an assumption that the DFUK's application was for DFGI to become a member of the VAT group. That is to ignore what the application was for. It was not an application for DFGI to become a member of the group, but an application to amend the date upon which it had become a member of the group. That however is immaterial to the outcome because, as the FtT had found and we agree, there was no valid application under s43B. Had there been a valid application and no refusal within 90 days, the application to backdate would have been treated as granted with effect from the date HMRC received the letter. The issue then is what does "with effect from" in s 43B(4) when read with subsection (a) mean. As HMRC are able to specify that an application shall be taken to be granted from an earlier or later time under s 43B(4)(b), we consider that an application to become a member of a VAT group granted under s 43B(4)(a) cannot have retrospective effect because that would require HMRC to allow it to have effect from an earlier time which they can only do under s 43B(4)(b). Accordingly, the deemed grant of DFUK's application (if it had been valid) when HMRC did not refuse it within 90 days would not have had the effect of backdating DFGI's membership of a VAT group but could only take effect from the date of receipt when DFGI was already a member of the VAT group.

If we are wrong in our analysis of s 43B(4) then DFUK's appeal would still fall to be struck out. Section 83(1)(k) of VATA 1994 provides for an appeal to the FtT in respect of the refusal of an application such as is mentioned in s43B(1) or (2). If DFUK's letter of 29 September 2016 had been a valid application and, when there was no refusal within 90 days, was taken to be granted so that DFGI's VAT group member was back dated to 1 July 2012, there would not be any refusal of an application capable of giving rise to an appeal to the FtT under s 83(1)(k).

GROUND ONE

We now turn to the final ground of appeal by which DFUK claims, in the alternative, that the FtT was wrong to hold that DFUK did not have a right of appeal under section 83(1)(a) VATA 1994. That is an appeal against the registration or cancellation of registration. In summary, the FtT said:

> By the letter of 29 September 2016, DFUK had noted that DFGI was required to register for VAT, but DFUK sought to achieve that not by requesting a separate registration (which only DFGI could do) but by backdating DFGI's membership of the DFUK VAT Group.
>
> Registration and grouping are two discrete matters in terms of VATA 1994.
>
> The letter of 29 September 2016 was not a valid notification of a liability to be registered for VAT under Paragraph 17 Schedule 1 VATA 1994 and Regulation 5 and Schedule 1 to the VAT Regulations 1995. The Regulations prescribe that notification of liability to be registered must be on the relevant form (VAT 1) and must make a declaration and give specified information. That form would have had to have been completed by DFGI and DFGI alone.
>
> The letter dated 29 September 2016 expressly requested an amendment to the date on which DFGI was included in the DFUK VAT Group. HMRC's decision was equally explicit and stated that the application to "amend the VAT group" was refused. It was a decision about grouping and did not address the questions as to whether DFGI should be registered for VAT separately.

Mr Rivett submitted that this ground is an additional route by which there is a right of appeal before the FtT. He submitted that, following an internal review, DFUK realised that DFGI had had become liable to register for VAT in the UK with effect from 1 July 2012. The letter dated 29 September 2016 made clear that DFGI had become liable to register for VAT via the DFGI UK Branch earlier than had previously been appreciated and that it would have been illogical for HMRC to insist that DFGI register for VAT as a separate taxable person given that it was already a member of the DFUK VAT group. Mr Rivett submitted that the FtT was wrong to find that HMRC had not issued any decision letter in respect of registration for five reasons:

> Relying upon the decision in *Olympia Technology Ltd v HMRC* (2006) VAT Decision 19984 ("*Olympia Technology*"), Mr Rivett submitted that there was an issue between the parties which had been sufficiently crystallised to constitute a decision falling within one of the paragraphs of section 83. He submitted that HMRC had refused to accept that DFGI should have been VAT registered earlier, and to backdate membership on that basis.
>
> The FtT chose to interpret s 83(1)(a) VATA 1994 narrowly so as to exclude a right of appeal. However, in *Portland Gas Storage Ltd v HMRC* [2014] STC 2589 ("*Portland Gas*") at [34] – [35], and in *Oxfam v HMRC* [2010] STC 686 ("*Oxfam*") the Upper Tribunal and High Court saw no difficulty in construing the relevant right of appeal more broadly so as to give the FtT jurisdiction.
>
> It seems the FtT considered that there was no right of appeal because an application for a "separate" VAT registration for DFGI had not been made. Mr Rivett submitted that a separate registration could not have been made in this case. It would have been wrong in law to do so. A normal VAT regime would not abide an entity benefiting from single and group registration simultaneously. As a representative member, DFUK has standing before the FtT.

The FtT appears to have taken the view that a right of appeal under s 83(1)(a) VATA 1994 can only arise where there has been an "application for registration". There is no such thing, however, as an "application" for VAT registration. Sch 1 para 6(1) VATA 1994 refers to "notifying" HMRC where a liability under Sch 1 para 1(1)(b) VATA 1994 arises. HMRC are required by statute to register entities meeting the VAT threshold whether or not HMRC are notified.

The FtT seems to have considered that there was no right of appeal under s 83(1)(a) VATA 1994 because "even if there was a liability to be registered that does not imply an entitlement to be included in a VAT group". Mr Rivett submitted that the reasoning here was hard to follow.

Mr Rivett submitted that the only question that the FtT should have asked itself is whether a right of appeal existed under s 83(1)(a) VATA 1994. He submitted that if there is a right of appeal, and the FtT agrees with DFUK that HMRC should have registered DFGI from the earlier date of 1 July 2012, this is a basis on which DFUK argues that HMRC should have exercised its discretion to backdate group membership under s 43B(4)(b) VATA 1994. He submitted that the difficulty is that the FtT appears to have confused the issues of registration and grouping and used the grouping question as a "reason" to bar a right of appeal under s 83(1)(a) VATA 1994.

Ms McCarthy submitted that having a registration liability and joining a VAT group are two separate matters She submitted that if the FtT does have jurisdiction with respect to the VAT registration of DFGI and it were found that DFGI had a liability to be registered, it would not follow that DFGI could join the DFUK VAT Group because the only way for a company to join a VAT group is by way of a valid application under s43B VATA 1994. Ms McCarthy submitted that HMRC's letter of 6 March 2018 was not a decision concerning whether DFGI could or should be registered for VAT and in any event, DFGI has not lodged any Notice of Appeal (in respect of registration or otherwise) and it is not a party to the appeal. She submitted that DFUK is the only appellant and it has no standing in relation to DFGI's liability to be registered.

Decision on ground one

Section 83(1)(a) of VATA 1994 gives rise to a right of appeal against a decision relating to registration or cancellation of registration. There is no doubt here that HMRC have made a decision, but the issue before us turns on whether there was an application, or notification to HMRC for registration, and whether HMRC's letter rejecting the application that had been made constituted a decision regarding the registration or cancellation of registration.

Although Mr Rivett drew our attention to several references to 'VAT Registration' in the letter from DFUK to HMRC dated 29 September 2016, and the explanation that had DFGI been aware of the fact that it had a UK VAT registration requirement as a result of the management services provided by its fixed establishment prior to the registration of its UK branch, it would have effected its registration by joining the DFUK VAT Group, we also note that the letter, albeit prepared by its Tax Director rather than a lawyer, recognised that DFGI was already part of the DFUK VAT Group. The letter expressly invited HMRC to 'amend' the date on which DFGI was included in the DFUK VAT group from 27 June 2013 to 1 July 2012, in accordance with paragraph 6(2) of Schedule 1 of VATA 1994. The letter stated: "Pursuing a separate VAT registration for the backdated period would in my view, be unreasonable". We have considered whether that letter would be read by a reasonable recipient as anything other than an application to backdate the inclusion of DFGI in the DFUK VAT group. The author of the letter plainly did not consider it to be notification to HMRC of the liability to register in accordance with Schedule 1 VATA 1994.

Paragraph 1 of Schedule 1 of VATA 1994 is concerned with a person who makes taxable supplies but is not registered under the Act, becoming liable to be registered. Here, DFGI was already registered under the Act and was a member of the DFUK VAT group. In any event, Paragraph 17 of Schedule 1 to VATA 1994 required any notification under this Schedule to be made in such form and manner and to contain such particulars as may be specified in regulations or by HMRC in accordance with the regulations. Here, the prescribed form, as required by regulation 6(1) of the VAT Regulations 1995, is the Application for VAT Registration in form VAT1. No such application form was completed. Although paragraph 6(2) requires, as Mr Rivett submitted, HMRC to register any person (whether or not he so notifies them) who is liable to be registered with effect from the beginning of the period by reference to which the liability arises, the right of appeal under s 83 only arises if there is a decision by HMRC with respect to the registration or cancellation of registration of any person.

We accept that in some circumstances the FtT has construed the relevant right of appeal more broadly so as to give the FtT jurisdiction. It is clear much depends upon the facts. In *Portland Gas*, the Upper Tribunal was concerned with an appeal against the FtT's decision to strike out the taxpayer's appeal against HMRC's refusal to allow it to reclaim stamp duty land tax on the ground that the FtT lacked jurisdiction. The taxpayer had claimed that, in correspondence, HMRC had issued a closure notice in response to its amendment, and such issue gave rise to an appealable decision under paragraph 35(1)(b) of Schedule10 Finance Act 2003 so that the FtT ought not to have declined jurisdiction. The Upper Tribunal accepted, at [32], that it should not give paragraph 35(1)(b) a narrow construction and that it should be construed against the underlying philosophy that the FtT is the body in whom Parliament has vested the jurisdiction to deal with disputes between the taxpayer and HMRC as to the correct amount of tax to be paid. At paragraph [33], it said:

> "…ultimately the FTT only has such jurisdiction that Parliament has through the relevant statutory provisions conferred on it and there can be anomalies where certain decisions can possibly through oversight fall through the net. There can be other situations where it is clear from the legislation that Parliament did not intend there to be a right of appeal, and in those circumstances it is not for this Tribunal to 'fill in the gaps' by giving a strained construction to clear language regardless as to whether the failure to give an appeal right appears to be an oversight or not."

The Upper Tribunal went on to examine the particular facts and found that HMRC had engaged in an enquiry into an amendment to a land transaction return and issued a closure notice, thereby giving rise to an appealable decision. The decision reached by the Upper Tribunal was fact specific.

In *Oxfam*, Sales J, as he then was, held that Oxfam's claim based upon public law principles and the doctrine of legitimate expectation could properly have been raised in its appeal to the FtT under s 83(1)(c) VATA 1994 which concerns the amount of any input tax which may be credited to a person. Sales J said:

> "63. On the ordinary meaning of the language of that provision, it appears that it covers all the issues between Oxfam and HMRC regarding the question whether HMRC should have allowed Oxfam credit for a higher amount of input tax under the Approved Method Formula, including both the contract issue and the legitimate expectation issue. The words, 'with respect to', in section 83(1) appear clearly to be wide enough to cover any legal question capable of being determinative of the issue of the amount of input tax which should be credited to a taxpayer. The Tribunal's jurisdiction is defined by reference to the subject matter specified in the section, not by reference to the

> particular legal regime or type of law to be applied in resolving issues arising in respect of that subject matter."

We reject the claim made by Mr Rivett that the FtT took the view that a right of appeal only arises where there has been an application for VAT Registration by DFGI. The FtT used "Application" as a defined term to mean the letter dated 29 September 2016. At paragraph [37] of its decision, the FtT said "the Application was not a valid notification of a liability to be registered for VAT" by reference to paragraph 17 of Schedule 1 VATA 1994. At paragraph [38], the FtT summarised that the Regulations prescribe that notification of liability to be registered must be on the relevant form, with the required declaration and providing the specified information.

We accept, as Ms McCarthy submitted, that liability to register for VAT and eligibility to join a VAT group are two separate matters. The claim by Mr Rivett that if on appeal the FtT agrees with DFUK that HMRC should have registered DFGI from the earlier date of 1 July 2012, that can form the basis on which DFUK may appeal against a refusal by HMRC to exercise its discretion to backdate DFGI's membership of the DFUK VAT group conflates the liability to register with VAT grouping. Granting an application in relation to VAT grouping with effect from an earlier date is discretionary and, for the reasons we have set out in this decision, there was no valid application under s43B. As Ms McCarthy submitted, HMRC's letter of 6 March 2018 was not a decision concerning whether DFGI could or should be registered for VAT.

We accept, as the VAT Tribunal held in *Olympia Technology*, that in order for the FtT to have jurisdiction there must be an issue between the parties which has been sufficiently crystallised to constitute a decision falling within one of the paragraphs of s 83. In this case, there was no notification to HMRC of DFGI's liability to register in accordance with Schedule 1 VATA 1994 and no decision with respect to registration of DFGI. The application made was for an amendment to the date upon which DFGI became a member of the DFUK VAT group, and that was the only issue in respect of which a decision was made. As Mr Rivett accepted before us, the decision does not identify itself as a decision with respect to registration during an earlier period. We accept the submission made by Ms McCarthy that HMRC's decision was concerned with VAT grouping only and was not, properly read, a decision about the VAT registration of DFGI.

It follows that in our judgment, the FtT was right to decide that it lacked jurisdiction and to strike out the appeal. In summary, there was no valid application under s 43B VATA 1994 and there was no decision made by HMRC relating to the registration of DFGI.

DISPOSITION

For the reasons given above, DFUK's appeal is dismissed.

COSTS

Any application for costs in relation to this appeal must be made in writing and served on the Tribunal and the person against whom it is made within one month after the date of release of this decision as required by rule 10(5)(a) and (6) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

JUDGE GREG SINFIELD
JUDGE VINESH MANDALIA

V. Mandalia

Release date: 23 October 2023