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UPPER TRIBUNAL
(Tax and Chancery Chamber)

Hearing venue: The Rolls Building
Fetter Lane
London
EC4A 1NL

Heard on: 18 and 19 June 2025
Judgment date: 21 October 2025

VALUE ADDED TAX - claim to additional interest under section 84(8) Value Added Tax Act 1994 (now repealed) - whether entitlement arises for post 1 April 2009 appeals – whether entitlement arises in respect of section 80 VATA claims

Before

JUDGE GUY BRANNAN
JUDGE JENNIFER DEAN

Between

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS Appellants
and

COLAINGROVE LIMITED

Respondent

Representation:

For the Appellants: Philip Moser KC and Andrew Macnab, of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

For the Respondent: Kieron Beal KC and Tom Lowenthal, of counsel, instructed by Pricewaterhouse Coopers LLP

DECISION

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INTRODUCTION

1. This appeal concerns whether Colaingrove Limited (**“the Company”**) is entitled to an award of discretionary interest under section 84(8) Value Added Tax Act 1994 (**“VATA”**) in respect of amounts of overpaid VAT repaid to the Company by the Appellants (**“HMRC”**).¹ This is, perhaps, one of the final chapters in a very long-running series of VAT disputes between the Company and HMRC in which HMRC were largely unsuccessful².

2. In a decision released on 29 May 2024, the First-tier Tribunal (**“FTT”**) released a decision (**“the Decision”**) allowing the Company’s appeal as regards its entitlement to discretionary interest under section 84(8) (**“discretionary interest”**) in respect of sums repaid following litigation of a section 80 VATA claim in relation to certain VAT periods, determining the rate to be the margin between statutory interest paid and the Bank of England base rate plus 1.5%, but rejecting the Company’s claim for discretionary interest in respect of decisions taken on or after 1 April 2009 and/or relating to VAT repaid in respect of VAT periods after that date. Both parties applied for permission to appeal in respect of those issues in which they were unsuccessful and the FTT granted both parties permission to appeal to this Tribunal on 24 August 2024.

3. We wish to express our gratitude to counsel and those instructing them for their very comprehensive and helpful submissions and the efficient conduct of this appeal.

FACTUAL BACKGROUND

4. We explain the complex background to these appeals below. Because of the involved nature of the underlying VAT disputes, we have set out in full the FTT’s description of the background, chronology and findings of fact. References in our decision to “FTT [**]” are references to the Decision, unless otherwise specified.

5. The facts are fully set out by the FTT at FTT [3]-[33] and the FTT summarised the outline of the dispute at FTT [3]-[10]:

“3. The Appellant is part of a group of companies supplying leisure services, operating under the Haven and Warner Leisure Hotels brands. During the VAT periods in question, Butlins was also part of this group of companies.

4. The parties were engaged in a series of disputes concerning the VAT treatment of certain of the Appellant’s activities as follows:

(1) For VAT prescribed accounting periods 03/87 to 12/11 HMRC considered that supplies of removable contents, when sold together with static caravans, should have been standard rated. The Appellant considered the supplies were zero rated. The matter was finally resolved following various

¹ For simplicity, in this Decision we shall refer to HMRC and their predecessors The Commissioners of Customs & Excise as “HMRC” unless the context otherwise requires. Also, all statutory references are to VATA unless otherwise stated.

² Albeit that the “Contents Dispute” – one of the four main areas of dispute between the parties – was settled without admission of liability by a payment of £13,856,940.22 by HMRC to the Company, plus statutory interest of £6,211,401.46.

stages of litigation with a partial settlement pursuant to which HMRC made a payment (as recorded in the settlement agreement) of £13.8m together with statutory interest. These sums were repaid on 15 December 2014. **(Contents Dispute)**

(2) For VAT prescribed accounting periods 03/89 to 12/11 HMRC considered that verandas sold with caravans too should be standard rated whereas the Appellant considered them to be zero rated. Again, following litigation HMRC repaid to the Appellant a sum of £2.6m; the payment being made on 7 May 2015. **(Verandas Dispute)**

(3) VAT was overpaid in VAT prescribed accounting periods 06/73 to 09/08 in connection with bingo participation fees. In the relevant periods HMRC considered bingo participation and session fees to be standard rated. However, following litigation conducted by others it was established that such charges were properly exempt from VAT. On 4 May 2010 HMRC repaid £3.4m in respect of VAT overpaid in the period 03/75 to 09/08. **(Bingo Dispute)**

(4) VAT was also overpaid in respect of prescribed accounting periods 12/02 to 12/05 in relation to certain gaming machine income. Again, such income had been considered to be subject to VAT at the standard rate when properly it should have been exempt from VAT. That resulted in a repayment of VAT in the sum of £5.6m, such payment being made on 16 November 2020. **(Gaming Dispute)**

5. HMRC accepted that for the full period for which the Appellant had been denied the correct VAT treatment, and had thereby been kept out of the associated funds, interest was due under section 78 VATA (**s78**) i.e. that due to an error on the part of the Commissioners the Appellant had accounted to HMRC for an amount by way of output tax which was not output tax due from the Appellant and/or had paid assessments to VAT which was not due. The total interest paid by HMRC under s78 is £9,321,655.75 calculated by reference to the period for which HMRC withheld funds properly due to the Appellant and applying the statutory rate for such interest.

6. However, and in consequence of their having bought a series of appeals before initially the VAT and Duties Tribunal (**VDT**) and subsequently to this Tribunal (**FTT**), the Appellant claims it is entitled to invite the Tribunal to direct that additional interest is paid in accordance with s84(8). The Appellant contends that it should be paid £8,244,823.19 in additional interest. That sum has been calculated, by reference to the evidence adduced (and in the main accepted by HMRC), as the margin between the statutory rate paid under s78 and the estimated true cost of borrowing incurred by the Appellant in the period in which it was wrongfully denied the funds by HMRC. The additional interest is not claimed in respect of the full sums repaid and referred to in paragraph 4 above. The Appellant accepts that part of the sum repaid in settlement of the Contents Dispute related to claims which were never appealed and in respect of which no s84(8) Interest entitlement accrues. We understand that certain appeals may also have been excluded from the additional interest claim; Mr Beal did not know why that was the case and indicated it may have been in error. In any event, as they are not included in the application, we do not consider them.

7. HMRC contend that no additional interest is due. In the alternative they contend that the maximum rate at which it should be payable is the conventional rate i.e. Bank of England base rate plus 1%.

8. Attached as Appendix 1 [attached as Appendix 1 to this decision] to this judgment is a table of each of the relevant appeals lodged by the Appellant in respect of which the payments referred to in paragraph 4 were made. The Appendix identifies the appeal reference for each of the appeals as originally lodged with the VDT/FTT, the category of dispute, the consolidated appeal reference as appropriate, the nature of the underlying decision (i.e. whether the sums were collected/repayment was withheld by HMRC through the raising of an assessment or denial of a repayment claim), the date of the assessment/claim, date of rejection of any claim, VAT periods concerned, VAT repaid, gross interest claimed, statutory interest paid, and additional interest now claimed.

9. Lines 1 - 20 of Appendix 1 concern the Contents Dispute; 21 - 24 the Verandas Dispute, 25 - 26 the Bingo Dispute and 27 the Gaming Dispute.

10. For the reasons set out below we allow the appeal in part. Attached as Appendix 2 is a table [attached as Appendix 2 to this decision] setting out the summarised reason for our decision on an appeal-by-appeal basis (by reference to Appendix 1). The parties are to recalculate the interest due in consequence of our decision.”

6. The FTT then described at FTT [11]-[29] the chronology of the various appeals as follows:

“Contents Dispute

11. Examination of the chronology of the Contents Dispute demonstrates that it originated in correspondence in at least early 2000 to which reference was then made in a claim made by the Appellant for recovery of sums considered to have been overpaid as output tax. That claim was made on 30 June 2000 and, consistent with the limitation period which applied to VAT output tax overpayment claims made under section 80(1) VATA as it then stood, was limited to the three preceding years i.e. the claim was for periods 06/97 – 09/99. The value of the claim was £2,177,925.16. The claim was rejected on 12 July 2000 “until the underlying liability query” had been resolved. The notice of appeal referred to the decision of 12 July 2000 and appealed on grounds that the decision was “wrong in law ... and that the voluntary disclosure [was] properly made and repayable by [HMRC]” (line 17(1) in Appendix 1).

12. It appears that the Appellant began accounting for VAT on the basis that removable contents were zero rated from VAT prescribed accounting period 03/01. This prompted HMRC to assess for the VAT which would have been due on the basis that the supplies were standard rated. The assessments were appealed on the grounds that there was no output tax due on the supplies. It is not clear from the documents which were made available to us whether these early assessments were issued on a protective basis whilst HMRC continued to consider the underlying liability of removeable contents (lines 1 – 4 of Appendix 1).

13. Following the judgment of the CJEU in *Marks & Spencer plc v CEC* C-62/00 which indicated that the Appellant was entitled to make claims for periods earlier than 06/97, further claims to over paid VAT were made in

August 2002. These claims were rejected on 23 August 2002 expressly on the basis that the underlying supplies were properly subject to VAT. The appeal was stated to be bought under section 83(t) VATA and against a rejected claim to overpaid VAT. However, the grounds of appeal challenge HMRC's conclusion as to the liability of the supplies (line 17(2) Appendix 1).

14. Further assessments continued to be issued post August 2002. Some assessments were appealed. The grounds of appeal brought into challenge the liability of the supplies in the context of having been assessed (lines 5 – 8 Appendix 1).

15. For some periods it appears that the Appellant did not appeal the assessments when made; but, approximately once per annum, made claims for VAT overpaid in a connection with the assessments. Section 80 VATA was amended by section 4(6) Finance (No 2) Act 2005 with effect from 20 July 2005. That amendment had the effect of bifurcating what had been section 80(1) (providing the basis of a claim to overpaid VAT) into provisions which separately provided for claims in respect of output tax over paid/declared on a return (which became subsection (1)) and sums over declared in consequence of an assessment raised by HMRC (subsection (1A)). The terms of the amendment provided that claims submitted on or after 26 May 2005 in respect of sums over declared by way of assessment were treated as submitted pursuant to section 80(1A) VATA. In the present case therefore, as the claims were submitted from 1 July 2005 they were all were treated as submitted pursuant to section 80(1A) VATA. Those claims were rejected, and the rejections appealed. The notice of appeal states such appeals were bought under section 83(b) and (p) VATA. We note that whilst these appeals did represent appeals against HMRC's decision as to the VAT chargeable on a supply (thus within section 83(b)) they cannot have been section 83(p) VATA appeals as the decision appealed is the rejection of the claim to overpayment on the assessments and not the assessments themselves despite the effect of a claim against an overpaid assessment being the same as a challenge to the assessment (lines 9 – 16 Appendix 1).

16. It appears that in or about period 06/06 the Appellant reverted to treating removable contents as standard rated when rendering its VAT returns such that for all periods from 06/06 through to 12/11 claims were made pursuant to section 80(1) VATA which, at the time of those claims, provided for claims in respect of sums bought into account on a VAT return as output tax which was not due. The claims for periods from 06/07 were submitted after 1 April 2009 and were made on the basis that there was no longer a dispute that the supply of some items of removable contents was properly zero rated. When HMRC rejected the claims, they did so on the basis that they were "unable to accept the claim because agreement has yet to be reached on what is a fair and reasonable method of valuing the removable contents within the supply of a caravan". The grounds of appeal used were apparently a cut and paste of previous appeals and did not reflect the basis on which the claim had been rejected and thereby did not reflect the true issue between the parties at that time i.e. that the basis of apportionment had not been agreed rather they implied a continuing dispute as to liability (lines 18 – 20 Appendix 1).

17. All the appeals relating to the Contents Dispute were either consolidated or joined under Tribunal reference LON/2000/0765 (the first appeal lodged and referred to in paragraph 11 above).

Verandas Dispute

18. The first claim for verandas was made on 17 December 2007 for periods 12/04 to 06/07, it formed part of a contents claim for the same period. The second claim was made on 22 January 2008 for periods 03/89 to 09/04 with an additional claim for periods 12/04 to 06/07. The letters of claim form part of a series of correspondence. As regards the verandas the assertion was that where a veranda is supplied at the same time as the caravan it should be zero rated as a structure adjacent and fixed to a new dwelling. It was however, accepted that the later supply of a veranda would be standard rated. HMRC's position on that assertion was invited.

19. HMRC's response to both claims was dated 23 May 2008. It identified the information considered and communicated: "having considered that documentation and taken legal advice, I have concluded that the zero-rate which applies to caravans under VATA 1994 Schedule 8 Group 9 Item 1 should not be extended to verandas, as they do not form part of the caravan or fall within the scope of what Parliament intended when the zero rate provisions was enacted". It proceeded to provide a fuller explanation of the reason for reaching that conclusion.

20. The notice of appeal identified the letter of 23 May 2008 as the decision appealed and contended that it was wrong in law being based on an incorrect construction of the legislation. The Appellant applied for the appeal to be joined to the earlier contents appeal (lines 21 – 22 Appendix 1).

21. On 21 September 2011, again forming part of additional claims in respect of contents, veranda claims were submitted for periods 09/07 to 06/08. Perhaps understandably given the duration of the dispute, there is no specific narrative of the basis on which the VAT was overpaid. However, the claim was rejected by HMRC on the basis that, in their view, the supply of verandas was subject to VAT at the standard rate. The notice of appeal narrated the nature of claim, basis for refusal and the challenge to HMRC's liability decision as grounds of appeal (line 23 Appendix 1).

22. Further veranda claims were submitted on 30 September 2012 in respect of periods 09/08 to 11/12 and as part of a wider claim including contents. The claim does not explicitly refer to verandas. The claim was rejected on 30 September 2012 on the basis that litigation was ongoing. The substance of the grounds set out in the notice of appeal addressed the question of liability in the context of the identified decision of HMRC to reject the additional claims (line 24 Appendix 1).

23. The Veranda Dispute appeals too were consolidated with the Contents Dispute appeals under VDT reference LON/2000/0765. During the course of the litigation the verandas issue was hived off for separate determination but remained part of the consolidated appeal.

Bingo Dispute

24. The first claim in the Bingo Dispute was submitted on 14 November 2007 for periods 03/75 to 12/02. The claim narrates the legislative analysis at domestic and EU level which it was claimed justified a conclusion that bingo participation fees should be exempt from VAT. The quantum of the claim was extrapolated. Claims were then submitted for period 03/03 on 31 March 2006 and periods 06/03 to 09/05 on 30 June 2006. The letters for these claims were in identical form. Neither explicitly referenced the basis on which it was asserted that the VAT had been overpaid.

25. All three claims were rejected on 2 October 2008. The explanation given was that HMRC did not agree that the relevant supplies were exempt from VAT. It was this decision which was appealed to the Tribunal and the grounds of appeal provide a full explanation of the basis on which the liability of the bingo supplies should have been exempt (lines 25 and 26 Appendix 1).

Gaming Dispute

26. On 19 October 2005 the Appellant submitted a claim for overpaid VAT on certain gaming machine turnover which domestic law treated as taxable whereas it should have been exempt from VAT. The letter recites the basis on which the claim is predicated by reference to the then disputed liability of the gaming supplies. That claim was for periods 03/04 – 09/05. A second claim was submitted on 9 December 2005 for periods 03/03 – 12/03. The claim followed the same form as the earlier claim with an identical narrative as to the challenge to the VAT liability of the supplies. Further claims were submitted in the same form on 30 June 2006 for periods 03/04 – 12/05. The claims were revised by letter dated 14 November 2007.

27. HMRC rejected the claims by letter dated 2 October 2008 on the basis that the Appellant had failed to show that the gaming machines in question were similar and in competition with machines/gaming which was exempt from VAT. The refusal of the claim was appealed on 17 October 2008 (line 27(1) Appendix 1).

28. However, on 20 April 2011 HMRC wrote to the Appellant confirming that a repayment would be made against the claim but subject to the issue of a recovery assessment raised pursuant to section 80(4A) VATA. That assessment was issued on a “protective” basis such that HMRC informed the Appellant that it would not be enforced against them pending the outcome of continuing litigation (to which the Appellant was not party) and therefore did not require to be paid (unless the Appellant wanted to protect itself from interest accruing on the amount should it ultimately require enforcement). The Appellant appealed it on 15 May 2011 (line 27(2) Appendix 1) and paid the assessments when they were enforced on various dates in 2014.

29. The appeal at line 27(1) was not formally settled or withdrawn.”

7. The FTT at FTT [30]-[33] found the following facts:

“Findings of fact

30. Derived from the chronology above we determine the following facts:

(1) The core and underlying issue in respect of the Contents Dispute appeals at lines 1 – 17 was the liability to VAT of removable contents generally. However, each disputed decision concerned either an assessment or the rejection of a claim to overpaid output tax in identified periods consequent upon the underlying dispute. The appeals were against the disputed decisions and included grounds which concerned the VAT chargeable on the supply.

(2) The Contents Dispute appeals identified at lines 18 – 20 in Appendix 1 also concerned the VAT chargeable on supplies but the principal question was apportioning the price paid for the zero-rated caravan, zero rated removable contents and standard rated removable contents.

(3) All the disputed decisions and associated appeals (save that identified at line 27(2) of Appendix 1) in respect of the Verandas Dispute, Bingo Dispute

and Gaming Dispute challenged the VAT chargeable on the underlying supplies in the context of rejected claims to overpaid VAT. Line 27(2) Appendix 1 is an appeal against a recovery assessment issued as there was an ongoing dispute as to the VAT chargeable on the underlying gaming machine supplies.

31. We were provided with two witness statements from Mr Iain MacMillan, the current Chief Financial Officer of the Appellant. His first witness statement set out his first-hand knowledge of the Appellant's financing for the period from 2018. It also explained a series of investigations and exercises he had carried out. He sought to identify the Appellant's financing strategy and rate of borrowing evidenced by the documents identified. The earliest documents retained by the Appellant and identified in the search dated back to 2000. He also explained and presented an extrapolation exercise he had undertaken to identify a reasonable estimation of the borrowing rates available to the Appellant in the period from 1975 to 1999. By his second statement he confirmed, by reference to the annual statements available, that year on year the Appellant was in a net debt position.

32. HMRC accepted the majority of Mr MacMillan's evidence and cross examination was limited.

33. From the written statement, oral testimony and annexed documents we find the following facts:

(1) Throughout the period from 1975 to 2022 the Appellant operated cash balances which facilitated the running of its business from day to day. The cash balance at 31 December each year was generally strong having completed the peak season and as deposits for the following summer were being collected.

(2) Throughout the period from 2000 there is direct evidence that the Appellant's borrowings were by way of a revolving credit facility (**RCF**) and term loan facilities (**Term Loan**). Whilst there is no direct evidence for the period prior to 2000, by reference to the annual accounts available (all years bar 1994, 1992, 1985, 1983, 1981, 1979, and 1975 were available to us), it is reasonable to conclude that the Appellant was similarly funded throughout the period 1975 - 2022.

(3) The cash balance shown in the annual accounts available for each year 1975 – 2022 as at 31 December each year was smaller than total borrowing from its RCF and Term Loan. Accordingly, it is reasonable to conclude that the Appellant traded consistently in a net debt position throughout the period 1975 - 2022.

(4) There is direct evidence that the Appellant's principal lender from 2000 was Barclays Bank Plc (**Barclays**). From at least 2013 the senior facility with Barclays was syndicated. Mr MacMillan believed that Barclays had been the principal lender from 1975 and was not challenged in that belief; we therefore find that Barclays was the primary lender throughout the period from 1975 - 2022.

(5) The interest rate terms on which the RCF and Term Loan were provided were driven by the base lending rates and the specific attributes of the Appellant. Under the loan agreement extant from 2000 the interest rate for the Term Loan was calculated by reference to London Interbank Offered Rate (**LIBOR**) plus a risk margin with a cap at 3.3% and a collar of 2%.

(6) Mr MacMillan was able to calculate the average interest rate paid under the Term Loan for each year 2000 – 2020 as compared to the average statutory rate for the year. He accepted in cross examination that the rate applicable under the RCF may have been different but on the basis that the RCF is a short term facility principally used for emergency funding it was not a facility which was used as part of the cash flow forecasting for the business and not, in his view, relevant for determining the cost incurred by the Appellant in consequence of having overpaid VAT to HMRC.

(7) The figures were not challenged by HMRC and we accept them:

Year	Interest rate paid	Average Statutory Rate
2000	8.62	4.90
2001	7.87	4.19
2002	6.94	3.00
2003	6.56	2.67
2004	7.44	3.32
2005	6.22	3.68
2006	5.73	3.32
2007	6.88	4.41
2008	6.67	3.79
2009	3.43	0.21
2010	2.96	0.50
2011	2.96	0.50
2012	2.88	0.50
2013	2.52	0.50
2014	2.49	0.50
2015	2.51	0.50
2016	2.42	0.50
2017	2.29	0.50
2018	2.59	0.50
2019	2.72	0.50
2020	3.41	0.50

(8) Mr MacMillan undertook/caused to have undertaken an extensive search, including a request made of Barclays to locate the relevant facility agreement(s) for earlier periods but was unable to locate them. He therefore undertook an analysis which compared known facility rates to both LIBOR and Bank of England base rate across the period 2000 to 2020 from which he

was able to calculate the average margin for that period to each official rate. The average margin to Bank of England base rate was calculated at 2.27%. Mr MacMillan then applied that average margin to known Bank of England base rates in the period 1975 – 1999 (LIBOR was introduced in 1996 and did not therefore represent a basis for extrapolation for earlier periods) to determine a reasonable estimate of the Appellant's borrowing cost in the period 1975 – 1999. Neither the assumptions for, nor the accuracy of, this exercise was challenged by HMRC; we therefore accept that a reasonably inferred interest rate at which the Appellant was likely to have borrowed is as follows:

Year	Bank of England Base Rate	Inferred interest with 2.27% margin
1975	10.76	13.03
1976	11.73	14.00
1977	8.46	10.73
1978	9.14	11.41
1979	13.76	16.03
1980	16.30	18.57
1981	13.16	15.43
1982	11.96	14.23
1983	9.86	12.13
1984	9.67	11.94
1985	12.06	14.33
1986	10.74	13.01
1987	9.60	11.87
1988	9.96	12.23
1989	13.68	15.95
1990	14.65	16.92
1991	11.56	13.83
1992	9.43	11.70
1993	5.90	8.17
1994	5.34	7.61
1995	6.57	8.84
1996	5.89	8.16
1997	6.66	8.82
1998	7.23	9.50

1999	5.35	7.62
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(9) During the period in which overpayments had been made to HMRC the sums so overpaid were not available to the Appellant in the running of its business and therefore either directly or indirectly the borrowing requirements of the Appellant were increased as a consequence of the overpayments.

(10) The Contents Dispute was settled by way of a settlement agreement dated 20 November 2014. The terms of that settlement agreement provided that if HMRC did not repay the agreed sum by 11 December 2014 (being 21 days from the date of the agreement) HMRC would be liable to pay simple interest on the sum at 1.5% per annum above the base lending rate from time to time of Barclays Bank Plc.”

STATUTORY PROVISIONS RELATING TO THE PAYMENT OF ADDITIONAL INTEREST

8. The FTT considered the relevant statutory provisions under which it had power to direct the payment of additional interest. These provisions are complex because of the number of VAT periods involved in this appeal and involve successive versions of VAT legislation. We set out the FTT’s summary of the relevant statutory provisions at FTT [35]-[41], followed by the text of the relevant provisions:

“35. The FTT was established with effect from 1 April 2009. Prior to that date disputes between HMRC (and prior to 2005 with HM Customs and Excise (HMCE)) and taxpayers in connection with VAT were litigated before the VDT.

36. Both the VDT and the FTT have a jurisdiction defined by statute and not a general jurisdiction to determine disputes between taxpayers and HMRC. That jurisdiction is framed by reference to a list of "matters" in respect of which an appeal "shall lie" as prescribed initially in section 40(1) Finance Act 1972 (FA72) and subsequently in section 40(1) Value Added Tax Act 1983 (VAT Act 83) and latterly section 83 VATA . Under FA72 and VAT Act 83 the statute specifically referenced a decision in respect of the listed matters; section 83 VATA excludes a reference to a "decision" though it remains at least implicit from the list of matters that there must be a decision "with respect to" one of the listed matters. Throughout the period from 1973 to 2011 the list of matters included:

"the VAT chargeable on the supply of any goods or services" ((c) in FA72 and (b) in VAT Act 83 and VATA)

"the amount of any input tax which may be credited to a person" ((d) in FA 72, (c) in VAT Act 83 and VATA)

"an assessment [to VAT raised pursuant to HMRC's power to assess to the best of their judgment where a taxpayer has failed to render a VAT return, or where a return is incorrect]" ((b) in FA72, (m) in VAT Act 83 and (p) in VATA)"

37. From the implementation of VAT in 1973 through to 31 March 2009 it was a requirement (pursuant initially to section 40(2) FA72 and then section 40(2) VAT Act 83 and finally section 84(2) VATA) that in order for an appeal to be entertained by the VDT a taxpayer was required to have made

and paid all VAT returns which were required to be made. This provision was repealed with effect from 1 April 2009.

38. It was a further (and remains a) requirement that no appeal be entertained by either the VDT or the FTT in respect of decisions regarding the VAT chargeable on a supply and assessments (and subsequently a wider class of matters 1) unless:

"the amount which the Commissioners have determined as payable has been paid or deposited with them; or on being satisfied that the appellant would otherwise suffer hardship the Commissioners agree or the tribunal decides that it should be entertained notwithstanding that the amount has not been so paid or deposited" (section 40(3) FA72, section 40(3) VAT Act 83 and section 84(3) VATA).

39. In the period 1 April 1973 – 31 March 2009, section 40(4) FA72, section 40(4) VAT Act 83 and s84(8) then all relevantly provided:

"Where on an appeal under this section it is found:

(a) that the whole or any part of any amount paid or deposited in pursuance of subsection (3) [be that of section 40 FA72, 40 VAT Act 83 or section 84 VATA] above is not due; or

(b) that the whole or part of any [VAT credit] due to the appellant has not been paid

so much of that amount as is found not to be due or not to have been paid shall be repaid ... with interest at such rate as the tribunal may determine; ..."

40. That provision was repealed with effect from 1 April 2009 and section 85A was inserted into VATA . Until 31 December 2022, section 85A VATA provided for the payment of interest in the same circumstances as had been provided for under s84(8) but the discretion given to the tribunal to set the rate was removed and the rate was fixed by statute (Bank of England base rate minus 1%). Post 1 January 2023 the FTT no longer has the power to award interest but pursuant to section 102 Finance Act 2009 (FA 09) where an amount is repayable pursuant to section 85A VATA on a successful appeal there is a mandatory requirement for HMRC to pay interest at the statutory rate. The effect of section 102 FA 09 is therefore to provide for interest to be paid for the full period in which a taxpayer is out of pocket when the taxpayer is required to litigate a dispute leading to repayment in circumstances in which s78 interest may only be payable for part of the period.

41. Despite the repeal of s84(8) it continued to provide a discretion to the FTT to award interest in accordance with the transitional provisions set out in Schedule 3 the Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (TTFO). Schedule 3 prescribed the transitional arrangements to be applied to each permutation of situation in which HMRC had issued a decision in respect of which the previous jurisdiction of the VDT (or the General/Special Commissioners) may have been invoked. So far as relevant to the Appellant's application for interest it is to be noted that:

(1) Paragraph 4 concerned decisions of HMRC of a type listed in section 83 VATA which had been made and notified, but which had not yet been appealed to the VDT. The provisions of VATA continued to apply to such

decisions subject to the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (Tribunal Rules).

(2) Paragraphs 6 and 7 provided for the continuation of proceedings commenced inter alia before the VDT prior to 1 April 2009, again subject to the Tribunal Rules.

(3) Paragraph 9 concerned decisions of the VDT made before 1 April 2009 and provided explicitly for the continued application of s84(8)."

9. Section 83, as it stood immediately before the repeal of section 84(8) on 1 April 2009, provided as follows (as far as material):

"83. Appeals

Subject to s.84, an appeal shall lie to a tribunal with respect to any of the following matters—

...

(b) the VAT chargeable on the supply of any goods or services ...

(p) an assessment—

(i) under s.73(1) or (2) in respect of a period for which the appellant has made a return under this Act; ...

or the amount of such an assessment;..

(t) a claim for the crediting or repayment of an amount under s.80, an assessment under subs.(4A) of that section or the amount of such an assessment; ..."

10. Prior to 1 April 2009, section 84(1) to (3) provided:

"(1) References in this section to an appeal are references to an appeal under section 83.

(2) An appeal shall not be entertained unless the appellant has made all the returns which he was required to make under paragraph 2(1) of Schedule 11 and [...] has paid the amounts shown in those returns as payable by him.

(3) Where the appeal is against a decision with respect to any of the matters mentioned in section 83[(b), (n), (p) or (q)] it shall not be entertained unless—

(a) the amount which the Commissioners have determined to be payable as VAT has been paid or deposited with them; or

(b) on being satisfied that the appellant would otherwise suffer hardship the Commissioners agree or the tribunal decides that it should be entertained notwithstanding that that amount has not been so paid or deposited."

11. Until 1 April 2009, section 84(8) provided:

(8) Where on an appeal it is found—

(a) that the whole or part of any amount paid or deposited in pursuance of subsection (3) above is not due; or

(b) that the whole or part of any VAT credit³ due to the appellant has not been paid,

so much of that amount as is found not to be due or not to have been paid shall be repaid (or, as the case may be, paid) with interest at such rate as the tribunal may determine; and where the appeal has been entertained notwithstanding that an amount determined by the Commissioners to be payable as VAT has not been paid or deposited and it is found on the appeal that that amount is due, the tribunal may, if it thinks fit, direct that that amount shall be paid with interest at such rate as may be specified in the direction.

12. For completeness, we should also set out the terms of section 80 as it stood from 19 March 1997 to 19 July 2005:

80. Recovery of overpaid VAT.

(1) Where a person has (whether before or after the commencement of this Act) paid an amount to the Commissioners by way of VAT which was not VAT due to them, they shall be liable to repay the amount to him.

(2) The Commissioners shall only be liable to repay an amount under this section on a claim being made for the purpose.

(3) It shall be a defence, in relation to a claim under this section, that repayment of an amount would unjustly enrich the claimant.

(3A) Subsection (3B) below applies for the purposes of subsection (3) above where—

(a) there is an amount paid by way of VAT which (apart from subsection (3) above) would fall to be repaid under this section to any person ('the taxpayer'), and

(b) the whole or a part of the cost of the payment of that amount to the Commissioners has, for practical purposes, been borne by a person other than the taxpayer.

(3B) Where, in a case to which this subsection applies, loss or damage has been or may be incurred by the taxpayer as a result of mistaken assumptions made in his case about the operation of any VAT provisions, that loss or damage shall be disregarded, except to the extent of the quantified amount, in the making of any determination—

(a) of whether or to what extent the repayment of an amount to the taxpayer would enrich him; or

(b) of whether or to what extent any enrichment of the taxpayer would be unjust.

(3C) In subsection (3B) above—

³ "VAT credit" is a defined term: sections 25(3), 96(1). Section 25(3) provides, "If either no output tax is due at the end of the period, or the amount of the credit exceeds that of the output tax then, subject to subsections (4) and (5) below, the amount of the credit or, as the case may be, the amount of the excess shall be paid to the taxable person by the Commissioners; and an amount which is due under this subsection is referred to in this Act as a "VAT credit"."

'the quantified amount' means the amount (if any) which is shown by the taxpayer to constitute the amount that would

appropriately compensate him for loss or damage shown by him to have resulted, for any business carried on by him, from

the making of the mistaken assumptions; and

'VAT provisions' means the provisions of— any enactment, subordinate legislation or Community legislation (whether or not still in force) which relates to VAT or to any matter connected with VAT; or any notice published by the Commissioners under or for the purposes of any such enactment or subordinate legislation.

(4) The Commissioners shall not be liable, on a claim made under this section, to repay any amount paid to them more than three years before the making of the claim.

(4A) Where—

(a) any amount has been paid, at any time on or after 18th July 1996, to any person by way of a repayment under this section, and

(b) the amount paid exceeded the Commissioners' repayment liability to that person at that time,

the Commissioners may, to the best of their judgement, assess the excess paid to that person and notify it to him.

(4B) For the purposes of subsection (4A) above the Commissioners' repayment liability to a person at any time is—

(a) in a case where any provision affecting the amount which they were liable to repay to that person at that time

is subsequently deemed to have been in force at that time, the amount which the Commissioners are to be treated, in

accordance with that provision, as having been liable at that time to repay to that person; and

(b) in any other case, the amount which they were liable at that time to repay to that person.

(4C) Subsections (2) to (8) of section 78A apply in the case of an assessment under subsection (4A) above as they apply in the case of an assessment under section 78A(1).

...

(6) A claim under this section shall be made in such form and manner and shall be supported by such documentary evidence as the Commissioners prescribe by regulations; and regulations under this subsection may make different provision for different cases.

(7) Except as provided by this section, the Commissioners shall not be liable to repay an amount paid to them by way of VAT by virtue of the fact that it was not VAT due to them.

13. With effect from 20 July 2005, section 80 provided:

“80.— Credit for, or repayment of, overstated or overpaid VAT

(1) Where a person—

(a) has accounted to the Commissioners for VAT for a prescribed accounting period (whenever ended), and

(b) in doing so, has brought into account as output tax an amount that was not output tax due,

the Commissioners shall be liable to credit the person with that amount.

(1A) Where the Commissioners—

(a) have assessed a person to VAT for a prescribed accounting period (whenever ended), and

(b) in doing so, have brought into account as output tax an amount that was not output tax due,

they shall be liable to credit the person with that amount...

(2) The Commissioners shall only be liable to credit or repay an amount under this section on a claim being made for the purpose.

(2A) Where—

(a) as a result of a claim under this section by virtue of subsection (1) or (1A) an amount falls to be credited to a person, and

(b) after setting any sums against it under or by virtue of this Act, some or all of that amount remains to his credit,

the Commissioners shall be liable to pay (or repay) to him so much of that amount as so remains.

(3) It shall be a defence, in relation to a claim under this section by virtue of subsection (1) or (1A) above, that the crediting of an amount would unjustly enrich the claimant...

(4) The Commissioners shall not be liable on a claim under this section—

(a) to credit an amount to a person under subsection (1) or (1A) above ...

if the claim is made more than 37 years after the relevant date...

(4A) Where—

(a) an amount has been credited under subsection (1) or (1A) above to any person at any time on or after 26th May 2005, and

(b) the amount so credited exceeded the amount which the Commissioners were liable at that time to credit to that person,

the Commissioners may, to the best of their judgement, assess the excess credited to that person and notify it to him...

...

(7) Except as provided by this section, the Commissioners shall not be liable to credit or repay any amount accounted for or paid to them by way of VAT that was not VAT due to them.

14. On 1 April 2009, s. 84(8) was repealed, subject to transitional provisions in the Transfer of Tribunal Functions and Revenue and Customs Appeals Order, SI 2009 No 56 (the "TTF Order"). Schedule 3, paragraph 4 provides:

- “(1) This paragraph applies if, before the commencement date—
- (a) HMRC have notified a decision relating to a matter to which section 83 of the Value Added Tax Act 1994 applies, and
 - (b) no party has served notice on a VAT and duties tribunal for the purpose of beginning proceedings before such a tribunal in relation to that decision.
- (2) On and after the commencement date, the following enactments continue to apply (subject to sub-paragraphs (3) and (4)) as they applied immediately before that date—
- (a) the Value Added Tax Act 1994,
 - (b) rule 4(2) of the VAT Tribunals Rules 1986, and
 - (c) any other enactments that are applicable to the decision.
- (3) Those enactments apply subject to Tribunal Procedure Rules.
- (4) Any reference to an existing tribunal is to be substituted with a reference to the tribunal.
- (5) Any time period which has started to run before the commencement date and has not expired will continue to apply.”

15. Paragraph 9 provides:

- “(1) This paragraph applies in relation to any decision of a VAT and duties tribunal made before the commencement date.
- (2) On and after that date, the following provisions continue to apply as they applied immediately before that date—
- (a) section 84(8) of the Value Added Tax Act 1994 (VAT),
- [...]”

16. Pursuant to paragraph 1(2):

- “For the purposes of this Schedule there are “current proceedings” if, before the commencement date—
- (a) any party has served notice on an existing tribunal for the purpose of beginning proceedings before the existing tribunal, and
 - (b) the existing tribunal has not concluded proceedings arising by virtue of that notice.”

THE ISSUES BEFORE THE FTT

16. At [47]-[51] the FTT summarised the main issues before it. As will be seen, we shall be dealing with these issues in a slightly different order, dealing first with the Section 80 Objection. The issues before the FTT were as follows:

- “47. The issues for us to resolve are not matters which appear to have been the subject of previous litigation and principally concern what HMRC contend to be jurisdictional objections to the application of s84(8) in the present case.
48. The first objection: “**Post- April 2009 Objection**” is that the Tribunal has no jurisdiction to award additional interest under s84(8) in respect of a

decision taken on or after 1 April 2009 and/or relating to VAT repaid in respect of prescribed accounting periods after that date.

49. By reference to Appendix 1 the Post- April 2009 Objection would exclude interest in respect of lines 18 - 20, 23 - 24 and 27(2). In the case of each of those lines the appealed decision post-dated 1 April 2009. In the case of lines 19 and 24 the appealed decisions also concerned tax paid in respect of prescribed accounting periods after 1 April 2009.

50. The second objection: "**Section 80 Objection**" is that we have no jurisdiction to award s84(8) Interest in respect of sums repaid following litigation of a section 80 VATA claim.

51. By reference to Appendix 1 HMRC contend that the Section 80 Objection would exclude interest in respect of all lines 9 - 27. As explained further at paragraph 112 below, the Appellant contends that even if this objection represents a valid impediment to the payment of s84(8) Interest it does not operate so as to preclude interest in respect of lines 9 - 16."

THE DECISION – THE SECTION 80 OBJECTION

17. The FTT addressed the Section 80 Objection, viz that the FTT had no jurisdiction to award section 84(8) Interest in respect of sums repaid following litigation of a section 80 VATA claim. The FTT referred to the decision of the Court of Appeal in *C&E Commissioners v Cresta Holidays Ltd* [2001] EWCA Civ 215 ("**Cresta**"), and to the earlier decision of the VAT and Duties Tribunal ("VDT") in *Williams & Glyn's Bank Ltd v CEC* [1974] VATTR 262 ("**Williams & Glyn's**"), both of which we shall consider below, and said at FTT [128]:

"...[T]he Court [of Appeal] was comfortable that where sums had been paid to HMRC (or HMC&E) which, as a consequence of litigation, were determined not to have been due in the period prior to 27 July 1989 the predecessor provisions to section 84(8) VATA represented at least a vehicle for reimbursement and, in the case of an appeal bought by the recipient of a supply, the only mechanism by reference to which reimbursement would be secured (through the trust relationship identified in *Williams & Glyn's*)."

18. The FTT at FTT [132] also referred to the judgment of Lawrence Collins LJ sitting in the High Court in *HMRC v Royal Society for the Prevention of Cruelty to Animals* [2007] EWHC 422 (Ch) ("**RSPCA**") where he said:

"... under s84(8) where on an appeal is it found that the whole or part of any amount paid by the trader is not due or the whole or part of any VAT credit is due to the trader has not been paid, then the amount found to not be due or not have been paid shall be repaid (or as the case may, paid) 'with interest at such rate as the tribunal may determine'..."

19. The FTT continued at FTT [134]-[137]:

"134. It is our view that the apparent imprecision in the summary of s84(8) by Lawrence Collins LJ reflects the relevant provisions of section 84 VATA taken as a whole. In the period prior to 1 April 2009 a taxpayer was required to have paid all VAT due generally and in respect of any amount determined by HMRC as due from them even where the amount was disputed. Thus under 84(2) VATA they must have rendered and paid all their VAT returns and, under 84(3) VATA, have paid or deposited the amount determined by HMRC to be due in respect of: an output tax liability dispute (section 83(b)), an

assessment to VAT (generally i.e. under declaration of output tax or over claim to input tax) (section 83(p)), a challenge to a the imposition of or assessment to various penalties or surcharges (section 83(n), (q) and (za)), and a requirement to make payment in consequence of a notice of joint and several liability (section 83(ra)).

135. In *Emblaze*⁴ both at first instance and in the UT the language used to justify the payment of interest is that the taxpayer was "kept out of its money". That too indicates to us that when interpreting the circumstances to which s84(8) applies it is to any circumstance in which a taxpayer is denied the use of money held by HMRC where it is then determined through litigation that the taxpayer was entitled to the money.

136. We therefore consider that s84(8) is not restricted in the way HMRC contend and that it applies to any situation in which on an appeal it is determined that amounts have been paid to HMRC which were not due to them. We consider that the reference to section 84(3) VATA does not preclude that conclusion given the history and historic application of the provision.

137. In the context of an appeal against a section 80 VATA claim, HMRC have a prima facie liability to repay under that section but will not have done so, having rejected the claim and been prepared to litigate that position. Accordingly, s84(8) imposes the mandatory obligation "shall be repaid" in all situations in which tax has been paid. That is to be distinguished from a liability to repay more generally."

20. At FTT [138]-[139] the FTT said:

"138. Given our conclusion we do not need to consider whether the decision by the Appellant to pay the assessments raised in the Contents Dispute and subsequently to then make claims under section 80(1)/(1A) VATA in respect of them makes a difference. Had we needed to do so we would have concluded that it did not make a difference. As HMRC submitted the Appellant had the choice whether to pay and appeal the assessments or, as it chose to do, subsequently make claims against them. We do not accept HMRC's veiled submission that such choice in some way abused the time limits for appeal against an assessment. Section 80(1)/(1A) VATA (at the relevant time) provided for that administrative choice but, as HMRC submitted, there was in effect a jurisdictional choice and the Appellant would have had to abide by the choice it made, even though it may not have appreciated at the time the full ramifications of the choice.

139. On that basis we conclude that the Section 80 Objection is ill founded and does not preclude our exercising our discretion to award interest in respect of appeals brought against a decision rejecting a section 80 VATA claim."

21. At FTT [140]-[148] the FTT dealt with the issue whether the amounts which had been repaid were amounts "*which the Commissioners have determined to be payable*" within the

⁴ *Emblaze Mobility Solutions Ltd v HMRC* [2014] UKFTT 679 (TC) and *Emblaze Mobility Solutions Ltd v HMRC* [2018] UKUT 373 (TCC)

meaning of section 84(3). The FTT concluded that the Commissioners had determined that the relevant amounts were payable. The FTT said:

“140. In light of our conclusion as to the meaning of "paid" under s84(8) it is not strictly necessary for us to determine the answer to this question. However, we do so for completeness and because, in our view, it even more clearly confirms that we have a discretion to direct the payment of additional interest.

141. On the hypothesis that in order to have a discretion to pay interest the Appellant must show that the sums repaid were amounts paid pursuant to section 84(3) VATA i.e. they were amounts "which the Commissioners have determined as payable" in connection with an appeal *inter alia* under section 83(b) and which were thereby required to have been paid in order that the appeal be entertained. We consider that plainly they were.

142. As set out in paragraphs 11 to 29 above each of the Contents, Verandas, Bingo and Gaming Disputes concerned a question as to the liability to VAT of supplies made by the Appellant. The Appellant had calculated its output tax liability and attributed the input tax incurred by it by reference to the provisions of VATA and by reference to guidance issued by HMRC. In each case, by reference to the applicable statutory provisions, HMRC considered the supplies to be standard rated and the Appellant contended otherwise. Claims were made and rejected and assessments issued and paid with claims made against those assessments entirely dependent on each party's respective positions as to the VAT properly chargeable on the supplies in question.

143. We consider that in that context and by reference to the UT judgment in *HBOS plc and others v HMRC* [2023] UKUT 13 (TCC) (HBOS) sums accounted for by the Appellant (or paid on assessments) and subsequently reclaimed pursuant to section 80 VATA properly represent amounts determined as payable by HMRC in connection with a dispute brought under section 83(b). As determined in *Cresta* there may be, and here was, a dispute falling within sections 83(b) and (t).

144. HBOS concerned the interpretation of s78 and, in particular, whether the opening words: "where due to an error on the part of the Commissioners" was limited to an error by HMRC as a body or included a statutory error. In that case, as here, the taxpayers had accounted for VAT to HMRC in accordance with the domestic statutory provisions. In HBOS the statutory provisions precluded a claim to bad debt relief where there was a retention of title clause. That restriction was subsequently held to be contrary to EU law. Many years after the unrestricted entitlement to bad debt relief arose the taxpayer made claims to bad debt relief. HMRC restricted the taxpayer's entitlement to interest under s78 on the repayments finally made to the period from the date of the claim to the date of repayment. The FTT found the restriction of the period for which interest was payable to have been lawful on the basis that in the period prior to the claim, on the facts, bad debt relief had not been claimed in consequence of a statutory error which could not be considered to be an "error on the part of the Commissioners".

145. At paragraphs 43 - 46 the UT determined that "error on the part of the Commissioners" necessarily included a statutory error as to conclude otherwise left a lacuna which would have precluded a taxpayer who had been held out of sums in consequence of a breach of EU law without remedy in

interest and represented an outcome that cannot have been intended by Parliament. The UT concluded:

"46. In our view the above points do not mean that the words 'on the part of the Commissioners' deem HMRC to have enacted the non-compliant legislation. Rather we consider that Parliament must have recognised when using those words that in so far as a statute concerns matters such as VAT which are within the collection and management powers of HMRC, HMRC is the relevant responsible state body. HMRC's behaviour, whether in acting or omitting to act, will therefore inevitably reflect the requirements and stipulations of the relevant UK legislative provisions. Behaviour on the part of HMRC (whether that is regarded as an act e.g. taking a payment, or an omission, e.g. failing to repay it) whose source is a provision of non-compliant statutory provision will clearly be something capable of fitting the words 'error on the part of the Commissioners'. That being the case, in our view, whether one articulates the error in terms of the statutory error or the corresponding action or inaction on the part of HMRC should not, and does not, make a difference."

146. In the same way as Parliament was interpreted as regarding an error on the part of the Commissioners to include a statutory error, we consider that VAT payable in accordance with the provisions of domestic law/HMRC's interpretation of it which results in an overpayment of VAT represents an amount "determined as payable by the Commissioners".

147. In order to make a claim under section 80 VATA the Appellant necessarily had to have paid the VAT in dispute, the sums were not repaid to them pending the outcome of the dispute, and it is that VAT which was then repaid to the Appellant after resolution of the litigation. We therefore consider that the amount of tax so paid was an amount determined by HMRC as payable in connection with a dispute concerning the VAT chargeable on a supply which was necessarily paid in order that the appeal be entertained and within section 84(3) VATA.

148. We therefore conclude that the Section 80 Objection does not preclude us from exercising our discretion to pay interest in respect of lines 9 - 17, 21 - 22 and 25 - 27(1) of Appendix 1. The Section 80 Objection would not preclude the exercise of our discretion in respect of lines 18 - 20, 23 - 24 and 27(2) but for the reasons set out above our discretion is excluded by virtue of the Post-1 April 2009 Objection."

THE DECISION – POST APRIL 2009 OBJECTION

22. Essentially, the post-April 2009 Objection is that the FTT had no jurisdiction to award additional interest under section 84 (8) in respect of a decision taken on or after 1 April 2009 or relating to VAT repaid in respect of prescribed accounting periods after that date.

23. The FTT's discussion of this issue is contained in [86]-[105] of the Decision.

24. At [95] the FTT considered that the language of paragraphs 4, 6, 7 and 9 of Schedule 3 TTFO related to the different stages of challenge against specific decisions of HMRC referring to the decision of the High Court in *Touchwood Services Ltd v HMRC* [2007] ("**Touchwood**") EWHC 105, the Upper Tribunal in *Earlsferry Thistle Golf Club v HMRC* [2014] UKUT 0250

(“*Earlsferry*”) and the FTT in *Mather v HMRC* [2014] UKFTT 1062 (“*Mather*”). Those specific decisions were capable of and were then actually appealed to the VDT/FTT, thereby invoking the FTT’s jurisdiction under section 84(8). For section 84(8) to have continuing application, the appealable decision had to predate 1 April 2009.

25. At [96]-[99] and [102] the FTT stated:

“96. Each of the appeals referenced in lines 18 - 20, 23 - 24 and 27(2) were made in respect of individual appealable decisions i.e. they relate to matters within section 83 VATA which are adverse to the Appellant in a specific and identified regard being an assessment or rejected claim and the decision in each case post-dates 1 April 2009 such claims and assessments arising consequent upon a dispute regarding the VAT liability of the underlying supplies. In our view they are not within the terms of the transitional provisions of Schedule 3 TTFO.

97. We do not consider that the individual decisions can in some way be ignored in favour of a more general and underpinning dispute or decision concerning the VAT chargeable on the supplies as the right under s84(8) to first repayment and consequently to interest arises in respect of amounts determined as repayable pursuant to a tribunal appeal. The extent to which the subject matter of the appeal is determinative of an entitlement to s84(8) Interest is considered below in connection with the Section 80 Objection; but for present purposes in order for there to be an amount determined as repayable on an appeal there must be an amount which is identified within the scope of the appeal by reference to the decision under appeal i.e. the individual decision of HMRC adverse to the taxpayer in a specific and identifiable amount. It is a such a decision which must have been made and notified prior to 1 April 2009 in order for s84(8) Interest to be payable.

98. We have also considered whether, to the extent that the decisions which post-date 1 April 2009 relate to prescribed accounting periods prior to that date, an inchoate right to interest had accrued. In this regard we have carefully considered the FTT judgment in *Emblaze*.

99. We have concluded that there was no such right.

...

102. For the reasons given at paragraph 96 such rights had not accrued to the Appellant regarding lines 18 - 20, 23 - 24 and 27(2).”

GROUND OF APPEAL

HMRC’s Grounds of Appeal

26. HMRC contend that the FTT erred in law in the following respects.

27. **Ground 1:** under the heading ‘Meaning of “paid”’, the FTT wrongly decided that section 84(8), where it continues to apply, applies to any situation in which, on an appeal, it is determined that amounts have been paid to HMRC which were not due to HMRC: FTT [136]. The FTT wrongly decided that the application of section 84(8) was not limited to the situations

in section 84(3) VATA: FTT [136], but ‘imposes the mandatory obligation ‘shall be repaid’ in all situations in which tax has been paid’: FTT [137].

28. **Ground 2:** further or alternatively to Ground 1, under the heading ‘Are the amounts which have been repaid amounts determined as payable by HMRC in respect of an appeal under section 83(b)’, the FTT wrongly decided that the principal amounts in issue in the Section 80 Appeals⁵ were amounts ‘paid in pursuance of section 84(3)’ and that the conditions for the application of section 84(8) were met because the FTT wrongly decided that they were amounts ‘which the Commissioners have determined as payable’ in connection with an appeal under section 83(b) and which were thereby required to have been paid in order that the appeal be entertained: FTT [141].

29. Consequently, the FTT erred in law in deciding at FTT [148] and [155(2)] that the Section 80 Objection –

(1) does not preclude the FTT from awarding (further) interest in respect of the Pre-April 2009 Section 80 Appeals;

(2) would not preclude the FTT from awarding (further) interest in respect of the Post-April 2009 Section 80 Appeals but for the Post-April 2009 Objection.

The Company’s Grounds of Appeal

30. **Ground 1:** The post-April 2009 Objection is wrong as a matter of domestic law. The FTT erred in law at FTT [94]-[105] when it determined that, as a matter of statutory interpretation, it had no jurisdiction to award additional interest pursuant to section 84(8) VATA in respect of an appeal filed after 1 April 2009 but which depended upon a pre-1 April 2009 decision of principle as to the underlying VAT liability.

31. Section 84(8) VATA 1994 is preserved where no appeal has yet been brought but where “HMRC have notified a decision relating to a matter to which section 83 of [VATA] applies”, pursuant to paragraph 4 of Schedule 3 of the Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009/56 (‘TTFO’). Section 83(1)(b) VATA provides that one such matter is “the VAT chargeable on the supply of any goods or services”.

32. The FTT erred in failing to give these words their natural meaning in context (FTT [86]-[97]). A decision of principle as to the liability of a particular supply to taxation predating 1 April 2009 – which is given effect in subsequent assessments postdating 1 April 2009 – is a matter to which section 83 applies and therefore in respect of which section 84(8) is preserved.

33. The FTT wrongly failed to recognise that this construction reflects the deliberately broad language of the saving provision, as well as its purpose, which is to ensure that taxpayers are

⁵ the "Section 80 Appeals", to which the Section 80 Objection applies, are the appeals referred to in lines 9 to 27 (2) which concern: (1) the Company's appeal is against decisions to reject section 80 claims (lines 9 to 27(1)) and (2) the Company's appeal against recovery assessments made under sections 80 (4A) and section 78 A VATA (line 27 (2)).

not prejudiced in long running disputes about decisions of principle with HMRC which started before 1 April 2009 and continue thereafter.

34. **Ground 2:** post-April 2009 Objection is wrong as a matter of EU law. The FTT erred in law when it declined to give a *Marleasing*⁶ compliant interpretation to Schedule 3, paragraph 4 TTFO and/or section 85A VATA.

35. Those provisions must be read in compatibility with EU law in respect of each of the decisions in this case, which long predated IP Completion Day: see *Lipton v BA Cityflyer* [2024] UKSC 24, SC at [66]-[68]; [91], [94], [95] and [100].

36. EU law requires an “adequate indemnity” for wrongfully being kept out of money by the tax authorities: Case C-591/10 *Littlewoods Retail Ltd v HMRC* EU:C:2012:478, [2012] S.T.C. 1714, at [27] (“*Littlewoods CJEU*”). A discretion is required for those cases (such as this case) where the statutory interest rate fails to give “adequate indemnity”. The FTT erred in finding FTT [62-64] that the Supreme Court’s judgment in *Littlewoods Limited v HMRC* [2017] UKSC 70 (“*Littlewoods Limited*”) concluded otherwise FTT [62-64].

37. The FTT fell into error in its analysis of the Appellant’s accrued EU law right to interest FTT [98–103]. The accrued right in question is a right to interest under EU law in respect of ongoing disputes about liability which start before 1 April 2009, as recognised in *Emblaze Mobility Solutions Ltd v HMRC* [2014] UKFTT 0679 (TC) and on appeal in *Emblaze Mobility Solutions v HMRC* [2018] UKUT 373 (TCC). HMRC did not appeal the conclusion that the taxpayer had a right under EU law to interest on repayments of tax wrongly withheld and that ruling is binding on HMRC. The FTT erred in failing to give effect to this accrued right.

38. Further, paragraph 4 TTFO and/or s. 85A VATA must be read in light of general principles of EU law, which were directly effective at the time: *Lipton v BA Cityflyer* at [66]-[68]. In particular, it runs counter to EU law principles of equivalence and effectiveness artificially to guillotine the interest that an Appellant can recover in the course of an ongoing and long-running dispute. The FTT erred in failing to give effect to these EU general principles when interpreting paragraph 4 TTFO and/or s. 85A VATA.

39. Accordingly, the FTT erred in law when it failed to give a *Marleasing* compliant interpretation to paragraph 4 TTFO and/or s. 85A VATA.

40. **Ground 3:** the FTT found as a fact that the Company’s cost of borrowing was the Bank of England base rate plus 2.27%. However, the FTT held at FTT [75] that the company was entitled to interest at base rate plus 1.5%. The Company appeals on the basis that the FTT erred in law when it found that the Company was only entitled to interest at base rate plus 1.5%.

⁶ Case C-106/89 *Marleasing SA v La Comercial Internacional de Alimentacion SA* [1990] ECR I-4135, [1992] 1 C.M.L.R. 305, CJEU at [8]-[9].

THE SECTION 80 OBJECTION - SUBMISSIONS (IN OUTLINE) AND DISCUSSION

HMRC's Ground 1

HMRC's Ground 1 – HMRC's submissions

41. Mr Moser KC, appearing with Mr Macnab for HMRC, submitted that the FTT had no jurisdiction to award interest under section 84(8) VATA in respect of the section 80 Appeals. The scheme of the legislation, Mr Moser submitted, was that section 84(8) provided a restitutionary remedy for repayment of principal and payment of interest only where appeals fall within section 84(3), i.e. where HMRC had compelled a trader to pay VAT rather than where a trader had self-assessed itself to the VAT in question. Where a trader had overpaid VAT section 80 represented the only and exclusive restitutionary remedy. Furthermore, there had to be a causal connection between the demand issued by HMRC and the payment in order to bring the appeal within the provisions of section 84(8).

42. The Company's repayment claims, Mr Moser said, were made pursuant to section 80. Since 1 January 1990 (when the predecessor of section 80 – section 24 Finance Act 1989 – came into effect) section 80 was the exclusive remedy for obtaining a refund of over-declared and overpaid VAT from HMRC (*Investment Trust Companies (in liquidation) v HMRC* [2017] UKSC 29 (“*Investment Trust Companies*”) and *Littlewoods Limited*). An appeal against a refusal of a section 80 claim had to be made pursuant to section 83(t). Section 84(3) contained no reference to appeals against decisions in respect of matters mentioned in section 83(t) (i.e. section 80 claims). Instead, section 84(8) referred only to “*any amount paid or deposited in pursuance of [section 84(3)]*” and imposed an obligation on HMRC to repay “*so much of that amount as is found not to be due.*”

43. Therefore, Mr Moser contended, that because section 84(8) imposed no obligation on HMRC to repay overpaid principal in a successful section 83(t) appeal, it followed that section 84(8) imposed no obligation and gives no discretion to pay interest on that overpaid principal (*FJ Chalke Ltd and another v HMRC* [2009] EWHC 952 (Ch) at [70]).

44. Furthermore, Mr Moser submitted that the Company's appeals were not against any decision with respect to any of the matters mentioned in section 83 (b), (n), (q), (ra) or (zb). In particular, the Company's appeals were not against any decision of HMRC as to “*the VAT chargeable on the supply of any goods or services*” for the purposes of section 83(b). HMRC did not determine any amount to be payable as VAT by the Company within the meaning of section 84(3). Moreover, the Company did not pay or deposit any amount with HMRC in pursuance of section 84(3). Therefore, there was no relevant “amount” for the purposes of section 84 (8) in respect of which the FTT could award interest. Mr Moser also submitted that there was a discrete threshold jurisdictional condition in section 84(3) to pay to or deposit an amount of tax which HMRC had determined. Section 84(3) imposed no similar discrete threshold jurisdictional condition in relation to tax repayment claims under section 83 (t) appeals, since the tax would, by definition, have already been paid.

45. Therefore, Mr Moser submitted, section 84(8)(a) provided a specific restitutionary remedy as regards repayment of principal and payment of interest only where (1) HMRC had determined that an amount was payable as VAT, in the context of an appeal under section 84 (3), and (2) consequently, the trader paid or deposited that amount with HMRC as a condition of appealing i.e. the trader paid or deposited the VAT in pursuance of that determination.

46. Thus, Mr Moser contended that section 84(3) and section 84(8), on the one hand, addressed different situations from section 80(1) on the other, reflecting the fact that VAT was a self-assessed tax. Section 84(3) and section 84(8) concerned a situation where a taxable person has correctly accounted for and paid VAT and successfully resists (incorrect) enforcement action by HMRC. Section 80(1) concerns a situation where a taxable person, for whatever reason, accounted for and paid VAT that was not properly due (and who may have passed on the charge to its customers).

47. Mr Moser submitted that the FTT failed to appreciate that section 80 was the exclusive remedy for recovery of over-declared output tax, whether or not that over-declaration also caused the taxpayer to overpay VAT to HMRC. The FTT's conclusion, Mr Moser contended, would result in a difference in treatment between (1) a "payment trader" who over-declares output tax and consequently overpays VAT to HMRC and (2) a "repayment trader" who over-declares VAT, but who does not pay VAT to HMRC, because his allowable input tax exceeds his output tax liability. The repayment trader claiming credit for over-declared output tax has, ex hypothesi, not paid or overpaid any sum to HMRC. The repayment trader's claim cannot, therefore, fall within the scope of section 84 (3) since there would be no relevant amount that HMRC have determined to be payable as VAT and no question of the trader paying or depositing any sum with them. Further, section 84 (8) could not be engaged, because no sum has been paid, whether pursuant to section 84 (8) or otherwise.

48. In circumstances where the disputed tax had already been accounted for and paid to HMRC (in circumstances outside the scope of section 84(3), where HMRC had not determined the amount to be payable as VAT and the taxpayer had not paid or deposited that amount pursuant to the determination), Mr Moser argued that the conclusion of the Court of Appeal in *Cresta* was that the FTT (the successor to the VDT) was, necessarily, that the previous practice, either that outlined in *Williams & Glyn's* or *Customs and Excise Commissioners v Fine Art Developments plc* [1989] 1 AC 914⁷ ("*Fine Art Developments*") did not survive the enactment of section 80. Moreover, the Supreme Court's decisions in *Littlewoods Limited* and *Investment Trust Companies* made it clear that section 80 provided an exclusive remedy for recovery of over declared and overpaid VAT.

HMRC's Ground 1 – The Company's submissions

49. Mr Beal KC, appearing with Mr Lowenthal for the Company, submitted that the FTT's conclusion, that it had jurisdiction to award additional interest in relation to Section 80 Appeals, was consistent with both the text and purpose of section 84(8). By contrast, HMRC's interpretation gave rise to absurd consequences.

50. Section 84 (8) makes it clear that the power to award additional interest is available where an amount which is not due is either "paid" or "deposited in pursuance of" section 84(3). The first of these conditions, Mr Beal submitted, was met in the present case.

51. The FTT was correct (at FTT [136]), Mr Beal argued, to hold that section 84(8) empowers the FTT to award additional interest to "any situation in which, on an appeal, it is determined that amounts have been paid to HMRC which were not due to HMRC." It was

⁷ whereby taxable persons recovered overpaid tax by using the machinery for correcting errors

necessary to identify the meaning borne by the words in question in the particular context: *R (O) v SSHD* [2022] UKSC 3 per Lord Hodge at [29].

52. Mr Beal contended that HMRC wrongly argued that the natural meaning of section 84(8) should be disregarded and instead, contrary to the natural syntax, hold that the words “in pursuance of” should qualify both limbs (i.e. both the word “paid” and the word “deposited”). HMRC’s interpretation rendered at least one of those words redundant. The Company’s interpretation of those words, by contrast, reflected the two concepts in the VATA and gave meaning both to cases where money had to be deposited before an appeal could be brought pursuant to section 84 (3) (i.e. “deposit”) and other cases where money has been paid and an appeal is subsequently successful. The word “paid” was used because there may not be, in such a case, a direct relationship between the payment and the appeal proceeding.

53. HMRC’s interpretation would lead to the absurd result that taxpayers who have wrongly accounted for VAT (but in accordance with an HMRC interpretation) and who then submit a reclaim under section 80 would be disadvantaged when compared with a taxpayer who did not account for such contested amounts but who successfully challenged assessments wrongly raised by HMRC. Such a regime would wrongly favour a taxpayer, who deliberately chose not to pay the assessed amounts under protest, thereby incurring the additional risk of HMRC also imposing non-compliance penalties, over a taxpayer who paid amounts under, in accordance with HMRC’s views, but subsequently sought to recover those amounts on appeal. Moreover, the evident statutory purpose behind section 84(3) was to ensure that appeals were not entertained without the relevant tax having been accounted for (unless “hardship” was shown). There could be no room for showing “hardship” in a section 80 claim since the tax had already been paid.

54. As regards HMRC’s argument, that the obligation on HMRC to pay or repay overpaid principle was exclusively contained in section 80 itself, with provision for an award of statutory interest on section 80 claims in section 78(1) (so that section 84(8) had no application to an appeal against a refusal of the section 80 claim) was, Mr Beal submitted, simply wrong. VATA 1994 distinguished between section 80 claims (governed by section 80 and section 78(1)) and section 80 appeals. Where there was a successful appeal – and in the present case HMRC wrongly refused a repayment claim and the Company was required to appeal to vindicate its position – the duty to make repayment and power to award additional interest were laid down by the express terms of section 84(8): *Infinity Distribution v HMRC* [2010] EWHC 1393 (Ch) per Simon J at [30].

55. Furthermore, HMRC’s reliance on *FJ Chalke Ltd v HMRC* [2009] EWHC 952 (Ch) at [70] and *Prudential Assurance Co Ltd v HMRC* [2019] AC 929 at [69]-[80] was misplaced. Those cases both concerned whether the statute had ousted a common law remedy, rather than how the various parts of VATA interacted.

56. Mr Beal submitted that the FTT had been correct to conclude that section 80 creates a right to repayment, subject to the unjust enrichment defence, but that the situation before the FTT would always be that HMRC had wrongly refused to honour that right. The FTT had held that, in circumstances where HMRC’s refusal had been appealed and found wrongful, that section 84(8) “imposes the mandatory obligation “shall be repaid” in all situations in which tax has been paid.” With the proceedings concluded and the taxpayer vindicated, the unconditional

“mandatory obligation” to repay (or credit) per the FTT’s decision arose pursuant to section 84(8) and with it, the jurisdiction to award additional interest.

57. Mr Beal took issue with HMRC’s assertion that where output tax was due on an erroneous basis, they had not “determined” the amount to be paid when that basis is applied to the taxpayer to subsequent accounting periods, with the excess output tax then being reclaimed pursuant to section 80. In such circumstances, Mr Beal argued, the taxpayer applied HMRC’s basis of assessment, believing it to be wrong and it follows that it is HMRC – not the taxpayer – that “determines” the amount to be paid within the meaning of section 84(8)(a).

58. The procedural history of the Contents, Verandas, Bingo and Gaming Disputes, summarised in FTT [4], demonstrated, in Mr Beal’s submission, that in each case HMRC had determined that certain supplies were standard-rated. They were dealing with actual supplies which had taken place, not prospective ones. The value of the VAT paid on those supplies was notified to HMRC. HMRC’s decisions were targeted at those specific supplies and refused repayment of identified bouts of output tax. This was not a case where the Company had made an unnoticed clerical error in its accounting and sought a repayment of overpaid VAT as a result of its mistake. The tax in all cases had been disputed, with HMRC contesting the VAT treatment of all the supplies all the way to the Upper Tribunal or beyond. It was only after HMRC had admitted defeat that the sums had been repaid.

59. The Company’s primary case was, Mr Beal submitted, that all of their appeals were against either assessments (section 83(p)) or determinations of liability (section 83(b)). The fact that there were claims for repayment of VAT does not mean that the appeals were not engaging with determinations of liability, since the two heads of appeal were not mutually exclusive.

60. Construing section 84 (4) in accordance with its ordinary terms, its clear purpose was to empower the FTT to make an award of discretionary interest where the VAT had been overpaid as output tax, the taxpayer has been out of pocket and that situation had arisen as a result of a dispute between HMRC and the taxpayer as to the treatment of the liability in question. The fact that the consequences of a dispute about liability were addressed through a combination of assessments, rulings and claims for repayment did not alter the basis for the FTT’s jurisdiction. Indeed, it was telling that section 80(1A) also envisaged that an overpayment of VAT may occur where HMRC had assessed the taxpayer for too much output tax. Thus, since all the appeals could be classified as appeals under section 83(b) or section 83(p), HMRC’s objection based on appeals under section 83(t) was not determinative.

61. In response to Mr Moser’s argument that the FTT’s conclusion gave rise to unequal treatment between payment and repayment traders, Mr Beal submitted that no such unequal treatment arose. Section 84(8) VATA 1994 made specific provision for the taxpayer who claimed to be entitled to more VAT credit than it had received (regardless of whether or not a separate claim was made under Regulation 29).

Discussion – HMRC’s Ground 1

62. Both parties relied on the decision of the Court of Appeal in *Customs & Excise v Cresta Holidays Ltd & Ors* [2001] EWCA Civ 215 (“*Cresta*”). This was a case involving Insurance Premium Tax (“IPT”) the statutory provisions concerning which were closely analogous to the

VAT provisions involved in the present appeal.⁸ In our description of the relevant statutory provisions, for ease of reference, we state the corresponding provisions of VATA in square brackets.

63. IPT was payable by insurers and certain intermediaries. Cresta and other companies (“**the tour operators**”) were tour operators who sold holidays and travel insurance. Under arrangements made between the tour operators and insurers, the tour operators funded the payment by the insurers to HMRC of IPT on premiums on policies sold to their customers. The Finance Act 1997 introduced two different rates of IPT: a higher rate was chargeable on travel insurance where the insurance was sold by a tour operator and a lower (standard) rate which was otherwise chargeable on travel insurance. During the relevant period the insurers paid IPT at the higher rate and the tour operators paid equivalent sums to fund the insurers. In 1998, by decisions of the Divisional Court and the Court of Appeal, it was established that the application of differential rates of IPT was unlawful. The tour operators requested from HMRC a decision confirming how much IPT was properly payable and a decision on their claim for repayment. HMRC decided that: (i) that the amount paid during the relevant period was the amount of IPT chargeable; and (ii) that the claim for repayment should be rejected. The tour operators requested a review of both HMRC’s decisions. HMRC confirmed their decisions. The tour operators appealed. HMRC sought to strike out the appeals on the grounds that the reviewed decisions were not on matters lying within sections 59(1)(b) or (l) [sections 83(b) or (t)]. The tribunal refused the application and HMRC appealed. The tour operators contended, *inter alia*, that they were persons affected by a decision on a matter within section 59(1)[section 83] and might as such require reviewed decisions under section 59(2) and appeal under s 60 [section 84].

64. Lightman J allowed HMRC’s appeal, holding: (i) that there were two distinct and mutually exclusive regimes applicable where the entitlement of HMRC to IPT was in issue. A question on the amount chargeable in respect of a premium could only fall within section 59(1)(b) [section 83(b)] if it were raised before the payment of the tax had been made. Then the taxpayer could appeal against the reviewed decision under section 59(1)(b) [section 83(b)] (subject to the provisions of section 60(4) [section 84(3)]). That regime was quite separate from the provisions for repayment under section 59(1)(l) [section 83(t)] where a payment in respect of which there was a claim to repayment had already been made to HMRC and where para 8 of Sch 7 [section 80(3)] gave HMRC a defence of unjust enrichment. HMRC’s decisions on the amount chargeable (which were required and given after the IPT which HMRC had determined to be chargeable had been paid) were not, therefore, decisions on matters falling within section 59(1)(b) [section 83(b)]. Moreover, only the taxpayer could require a decision on the amount chargeable to be reviewed and appeal against a reviewed decision. The tour operators appealed to the Court of Appeal.

65. At [7]-[8] Simon Brown LJ, with whom Robert Walker LJ agreed (Keene LJ dissenting), set out the historical background to the appeals jurisdiction. Simon Browne LJ disagreed with

⁸ Simon Brown LJ at [9] said: “I recognise, of course, that the VAT scheme and the IPT scheme are not in all respects identical, but there appears to me no sound basis for contending that they should be construed and operated differently in the respects now at issue.”

Lightman J's conclusion that the two regimes (section 59(1)(b) [section 83(b)]) and section 59(1)(l) [section 83(t)] were distinct and mutually exclusive:

“Conclusion 2 - paragraphs (b) and (l) are mutually exclusive

6. In arriving at this conclusion the Judge appears to have been influenced by two considerations in particular: first, the language and scheme of the legislation (paragraph 15); second, the apparent incompatibility between sub-sections (4) and (6) of s.60 [section 84(3) and section 84(8)] with regard to paragraph (b) [section 83(b)] appeals on the one hand and the unjust enrichment defence provided for by paragraph 8(3) of Schedule 7 [section 80(3)] with regard to paragraph (l) [section 83(t)] appeals on the other...Mr Lasok [Counsel for HMRC] argues that the Judge was right in both respects and right too to reject Mr Barling QC's [Counsel for Cresta] reliance on two Tribunal decisions in the cognate field of VAT appeals.

7. I have not found this at all an easy point but in the end have concluded that Mr Barling is right and that s.59(1)(b)[section 83(b)] is not to be read as restrictively as Mr Lasok contends and the Judge below held. The argument has to be considered in a historical context. When initially VAT was introduced by the Finance Act 1972, the appeal provision, s.40, provided only for appealing the CCE's decisions with regard to the tax chargeable and the like, not for a specific restitutionary claim equivalent to that provided for under the IPT scheme by s.59(1)(l)[section 83(t)]. On its face s.40 appeared to contemplate appeals only by the taxpayer (i.e. the supplier of the relevant goods or services). In addition it contained provisions (now substantially re-enacted as sub-sections (3) and (8) of s.84 of the VAT Act 1994) equivalent to sub-sections (4) and (6) of s.60 of the Finance Act 1994 with regard to IPT. Nevertheless, despite those provisions, the VAT Tribunal in *Processed Vegetable Growers Association Limited v CCE* [1973] VATTR 87 and *Williams & Glyn's Bank Limited v CCE* [1974] VATTR 262 permitted appeals to be brought (a) by the *recipient* of the supplies (provided only that he had a sufficient interest) and not merely by the supplier, and (b) did so notwithstanding that the disputed tax had already been paid and accounted for to [HMRC]. In the second of the two cases it was held in addition that the [HMRC] were bound to give effect to the Tribunal's decision by repaying the tax to the (non-appellant) supplier (or allowing the supplier to take credit for it in his next tax return) whereupon the supplier would hold the monies so repaid or credited as constructive trustee for the appellant recipients.

8. Whether or not [HMRC] followed that approach with regard to repayment is unclear. What, however, is clear is that a practice developed whereby taxable persons recovered overpaid tax by using the machinery made available for correcting errors, a practice challenged by [HMRC] but ultimately vindicated by the House of Lords in *CCE v Fine Art Developments PLC* [1989] 1 AC 914. That decision proved to be the springboard for an amendment to the VAT legislation by way of s.24 of the Finance Act 1989 to introduce specific provision for the recovery of overpaid tax subject to a defence of unjust enrichment together with a related right of appeal. These provisions, substantially re-enacted, are now s.80 of the VAT Act 1994 (the equivalent of paragraph 8 of Schedule 7 of the Finance Act 1994 with regard to IPT), and s.83(t) of the VAT Act 1994 (equivalent to our section 59(1)(l)).

9. Against this background it would seem to me inappropriate to confine s.59(1)(b)[section 83(b)] to what Mr Lasok describes as "current, on-going or

contemporaneous disputes"⁹ unless there are compelling reasons to do so and unless the Court takes the view that the 1989 amendment to the VAT scheme operated to overturn the two longstanding Tribunal decisions. I recognise, of course, that the VAT scheme and the IPT scheme are not in all respects identical, but there appears to me no sound basis for contending that they should be construed and operated differently in the respects now at issue.

10. For my part I can see no compelling reason to confine paragraph (b) [section 83(b)] in the way Mr Lasok invites. True, the paragraph is couched in the present tense but, as I understand to be common ground, this has no temporal connotation: the words "is chargeable" here refer to the incidence of the tax which is "charged" on receipt of the premium by reference to the "chargeable amount". Mr Lasok's argument is rather that, once the tax has been paid (otherwise than under the provisions of s.60(4)[section 84(3)]), it will in any event be necessary for the taxpayer to claim its repayment so that any issue that might originally have arisen under paragraph (b) [section 83(b)] will now inevitably be subsumed in an appeal under paragraph (l) [section 83(t)]. In these circumstances a paragraph (b) [section 83(b)] appeal becomes, submits Mr Lasok, "futile", "of no utility", "wholly otiose". S.59(1)(b) [section 83(b)] is simply not necessary and so should not be available for "historical disputes".

11. Generally speaking I have no doubt that this will be so. In *Gil*, for example - the "white goods" case also concerning the consequences of imposing differential rates of IPT, in which the Tribunal's judgment is currently awaited - the appeal to the Tribunal (which Richards J held on the merits to have been rightly not struck out - *CCE v Gil Insurance* [2000] STC 204) was brought (by the insurers) under paragraph (l) [section 83(t)] alone. But there may perhaps be other cases in which the taxpayer will wish to have some point of principle resolved before finally formulating his repayment claim or before deciding whether to involve himself in expensive unjust enrichment litigation. And if, say, the dispute arises whilst the tax at issue is still being charged (as it would have been here had the reviewed decisions been sought whilst the differential rates remained in force), and then the tax regime changes before the appeal is heard, it would seem quite wrong to have to discontinue an existing paragraph (b) [section 83(b)] appeal so as to replace it with a retrospective paragraph (l) [section 83(t)] appeal. How, one wonders, would that affect the taxpayer's rights to recover any tax paid under s.60(4) [section 84(3)]?

12. That brings me to the conundrum presented by the contrast between subsections (4) and (6) of s.60 [section 84(3) and (8)] which apply in a s.59(1)(b)[section 83(b)] case and the unjust enrichment defence available to the CCE [HMRC] in a repayment case. Various possible solutions were suggested to us. To my mind, however, it is unnecessary for present purposes to resolve this difficulty. If it were not regarded as insuperable in the two Tribunal cases in the 1970s, still less should it be so regarded here. After all, in a case like this, by definition the disputed tax will have been paid.

13. In short, I would hold that those affected by a [HMRC] ruling on the chargeability of tax are entitled to bring and maintain a paragraph (b) [section

⁹ Which Mr Beal submitted was, in any event, how the current appeals should be described.

83(b)] appeal irrespective of whether they or others have brought or are entitled to bring in addition an appeal under paragraph (1)[section 83(t)].”

66. Keene LJ, dissenting, said:

“[27] It is clear that s 60(6) [section 84(8)] requires repayment of the tax found not to be due, together with interest, when the s 59(1)(b) [section 83(b)] mechanism is used, and nothing in those provisions makes the commissioners' obligation to repay subject to any defence of unjust enrichment. There is no reference to para 8(3) of Sch 7 [section 80(3)] if Parliament had intended this obligation to be subject to that defence, it would have so provided. But if that is right, then if the s 59(1)(b) [section 83(b)] mechanism could be used even when the tax had already been paid, it would provide an alternative for the taxpayer to a para 8 of Sch 7 [section 80(3)] claim and an easy means of circumventing the unjust enrichment defence which might otherwise be available to the commissioners.

[28] The response of Mr Barling QC, for the Airtours companies, to this difficulty was twofold. First, he contended that the s 60(6) [section 84(8)] obligation on the commissioners to repay only arises where the money has been paid or deposited 'in pursuance of' s 60(4) [section 84(3)] and that that would not be the case if it had been paid in the normal course of making quarterly returns. It was argued that s 60(6) [section 84(8)] only operates if the reason for the payment was in order to comply with s 60(4) [section 84(3)]. The fact that the terms of s 60(4) [section 84(3)] had been met would not be enough.

[29] I find that unpersuasive. The object of s 60(4) [section 84(3)] is simply to ensure that the taxpayer's request for a decision as to whether or how much tax is chargeable does not become, through the review and appeal process, a device for delaying payment. Once payment has been made, irrespective of the taxpayer's motive, the precondition for an appeal set out in s 60(4) [section 84(3)] would have been met. That would then bring s 60(6) [section 84(8)] into play. There would be considerable practical difficulties in applying the interpretation suggested by Mr Barling, with its need for an investigation into the motive behind the payment.

[30] The second response by [Cresta] to this dilemma was to argue that s 60(6) [section 84(8)] is in the statute only to provide for the payment of interest on sums found not to be due. On such a construction one might then be able to regard the obligation to repay as subject to para 8(3) of Sch 7 [section 80(3)], the unjust enrichment provision. Apart from the difficulties with such an argument already referred to earlier, the structure of s 60 [section 84] indicates that the point is not a good one. Section 60(6) [section 84(8)] has its counterparts in s 60(7) and (8), which provide for the payment by the taxpayer of amounts found to be due, together with interest. It seems impossible to confine the effect of these three provisions simply to the interest part of each of them. They create obligations as to payment of the capital sums as well.

[31] It seems to me that there must be a clear distinction between the two regimes, that is to say, between s 59(1)(b) [section 83(b)] with its associated provisions in s 60(4) and (6) [section 84(3) and (8)] on the one hand and the restitutionary mechanism of para 8 of Sch 7 [section 80(3)], with the possibility of a review under s 59(1)(l) [section 83 (t)] on the other. The latter will apply where money has been paid by way of tax before there has been any decision by the commissioners on what is due. That will be a common

situation, because normally this tax is paid by registered persons without the need for any decision by the commissioners. The former regime is there where the taxpayer seeks a decision from the commissioners before he pays the tax. Hence the need for s 60(4) and (6) [section 84(3) and (8)].”

67. In our view, with respect, we consider that there are significant difficulties with the Court of Appeal’s majority analysis in *Cresta*. In the first place, there appears to be little discussion of, or the significance of, the counterpart of (in VAT legislation), section 80(7) VATA, which provides¹⁰:

“(7) Except as provided by this section, the Commissioners shall not be liable to repay an amount paid to them by way of VAT by virtue of the fact that it was not VAT due to them.”

68. In our view, this supports HMRC’s contention that when section 80 was introduced (by section 24 Finance Act 1989 in the wake of the House of Lords decision in *Fine Arts Development*) it was intended to be an exclusive remedy for the repayment of VAT that had already been paid (otherwise than pursuant to section 84(8)).

69. We accept, of course, that section 84(8) provides for a repayment of VAT paid pursuant to section 84(3). We do not, however, accept that the repayment obligation contained in that provision goes beyond a payment made in order to bring about an appeal under section 84(3).

70. Moreover, we also consider that section 80(7) excludes any other common law claim in respect of unjust enrichment. This was, effectively, the conclusion of the Supreme Court in *Littlewoods Limited* and *Investment Trust Companies*.

71. Against this background, in our respectful view, we find that the points made by Lightman J and Keene LJ in relation to the unjust enrichment defence provided by paragraph 8 (3) Schedule 7 to the Finance Act 1994 [section 80(3)] are compelling. These arguments are in substance made by reference to the legislative context. In short, if a trader is always allowed to claim a repayment of tax pursuant to section 83(b) (rather than under section 80) in relation to a tax dispute where the tax has already been paid (otherwise than pursuant to section 84(3)), the unjust enrichment defence is effectively undermined. We consider, in respectful agreement with Lightman J and Keene LJ, that Parliament cannot have intended this result.

72. We acknowledge that the equivalent provision to section 80(3) in the IPT legislation (paragraph 8 (3) Schedule 7 to the Finance Act 1994) was fully before and was considered by the Court of Appeal. It is therefore not possible to conclude that the decision in *Cresta* on this point was *per incuriam*. Nonetheless, we consider the views of Lightman J and Keene LJ to point clearly towards the conclusion that HMRC are correct on Ground 1, when the legislative framework is considered as a whole.

¹⁰ with effect from 20 July 2005 section 80 (7) provided: “(7) Except as provided by this section, the Commissioners shall not be liable to credit or repay any amount accounted for or paid to them by way of VAT that was not VAT due to them.”

73. Can the majority decision in *Cresta* properly be distinguished in the present case? In our view it can.

74. It is clear from Simon Brown LJ's judgment at [11]¹¹ that the court was envisaging that usually an appeal for a repayment of VAT would fall within section 80 and section 83(t). He did, however, give examples of other cases which might fall within section 83(b). For example, also at [11], Simon Browne LJ gave the example of a point of principle being resolved before a repayment claim was formulated or before a taxpayer decided whether to involve itself in expensive unjust enrichment litigation. A further example was of a change in law. None of these examples apply in the present case. In our view, the majority decision in *Cresta* can fairly be confined to these examples. We consider that *Cresta* should not be given a more general interpretation. Thus, in the present case, in our view, section 80 and section 83 (t) provide the exclusive basis for a reclaim in the circumstances of the present appeals.

75. We also acknowledge that VATA has been continually amended and re-amended, to the extent that in some cases it is difficult to discern a clear legislative purpose. However, in the present case we entertain no such doubts. We consider that section 80 was originally introduced in order not only to provide persons who were not the taxpayers making the supplies (in other words, the recipient of the supplies) a statutory means of reclaiming overpaid tax (not just tax overpaid by means of an administrative error but also tax which was wrongly considered to be payable by HMRC) but also to provide a comprehensive statutory basis for reclaiming tax which had been unduly paid. Otherwise, the defence of unjust enrichment makes no sense and can easily be circumvented.

76. Mr Beal argued that such an interpretation produces an absurd result, viz that taxpayers who have wrongly accounted for VAT (but in accordance with a HMRC interpretation) and who then submit a reclaim under section 80 would be disadvantaged when compared with a taxpayer who did not account for such contested amounts but who successfully challenged assessments wrongly raised by HMRC. That is a powerful argument but it is not, in our view, sufficient to displace what we consider to be the plain statutory scheme enacted as section 80 and section 83 (t).

77. Similarly, as regards Mr Beal's further argument that "paid" and the word "deposited" must be read disjunctively, so that an overpayment of VAT for which repayment is now being sought can constitute VAT which has been "paid" for the purposes of section 84 (3), we do not think that the language can override the statutory scheme whereby claims for repayment of VAT must be made exclusively under section 80.

78. Accordingly, whilst paying tribute to the FTT's careful analysis of a difficult issue, we allow HMRC's appeal on Ground 1, set aside the Decision and remake it on the basis that (i) the Company's applications for further interest in relation to the appeals listed at 9-17, 21-22 and 25-27 (1) of the Appendices are dismissed, and (ii) the Company's applications for further interest in relation to the appeals listed at lines 18-20, 23-24 and 27 (2) are dismissed.

¹¹ "Generally speaking I have no doubts that this will be so."

HMRC's Ground 2

79. Ground 2 of HMRC's appeal poses the question whether the amounts which have been repaid were *amounts determined as payable by HMRC* in respect of an appeal under section 83(b)? In the light of our conclusion in respect of Ground 1, it is strictly unnecessary to consider HMRC's Ground 2) but since it was fully argued before us, we shall express our views in outline.

HMRC's Ground 2 – HMRC's submissions

80. Mr Moser submitted that the FTT had wrongly decided that the amounts in issue in the appeals were amounts "paid in pursuance of section 84(3)" and that the conditions for the application of (8) were met. In short, Mr Moser's argument was that the FTT wrongly decided that they were amounts "which the Commissioners have determined as payable" in connection with an appeal under section 83 (b).

81. Mr Moser argued that where HMRC did not assess the Company, and where the company's appeals were brought under section 80(1) (i.e. lines 17 to 27 (1)) the FTT's reasoning and conclusions were inconsistent with *Cresta* and *BUPA No 2*.¹² Secondly, Mr Moser submitted that in those cases where HMRC did assess the Company and where the Company's appeals were brought under section 80(1A), the appeals were against refusals of claims under section 80(1A) not against the underlying assessments. The requirement under section 84(3) was for a determination to be made in relation to a specific supply and a specific VAT period.

82. Furthermore, Mr Moser contended that the FTT had erred in relying on *HBOS plc and others v HMRC* [2023] STC 245 ("**HBOS**"). That case concerned the interpretation of section 78 VATA and, in particular, whether the opening words "where due to an error on the part of the Commissioners" were limited to an error by HMRC as a body or included a statutory error. In that case, the taxpayer would have no right to interest unless it had an entitlement under section 78. By contrast, in the present case if, as HMRC contended, the Company has no right to interest under section 84 (8), it has a right to statutory interest under section 78, which right has already been exercised by the Company and satisfied by HMRC by payment.

83. Mr Moser also relied on a decision of the VDT in *Peoples Bathgate & Livingston Ltd v CCE* [1996] Lexis Citation 1656 and *Seaton Sands v HMRC* [1998] Lexis Citation 783 to support his argument that the Company did not pay or deposit any amount with HMRC in pursuance of section 84(3).

HMRC's Ground 2 – The Company's submissions

84. Mr Beal submitted that all the appeals were against decisions in principle of the "VAT chargeable on the supply of any goods or services" and were properly brought under what is now section 83(1)(b). The majority of the appeals were brought either against assessments or were expressly made under section 83(1)(b). Moreover, each of the relevant appeals related to decisions by HMRC as to "the VAT chargeable on the supply of any goods or service" (the

¹² *BUPA Purchasing Limited and others v CEC No 2* [2008] STC 101

relevant supplies being removable contents of caravans, verandas, bingo participation, and gaming machines). Sections 83(1)(b) and section 83(1)(t) were not mutually exclusive (*Cresta*).¹³

85. HMRC's submissions to the contrary were wrong. It depended entirely on HMRC's submission that HMRC had not, in the section 80 claims at issue, determined any amount to be payable.

86. There had been, according to Mr Beal, rulings as to the standard rating of each of the supplies is a necessary precursor to each of the relevant decisions. The reasoning of the FTT at [140]-[148] discloses no error of law. Moreover, claims for repayment will inevitably involve a determination of the underlying liability to tax, except in cases of purely clerical error (which was not relevant in the present case).

87. This was not a case where there was no decision. As the FTT noted in *Mather*, a refusal to process a repayment claim was a rejection of the repayment claim and could be appealed. In that case (see [27]), it was a deliberate refusal to give a decision of any type.¹⁴

Discussion – HMRC's Ground 2

88. We accept the submission that *Mather* at [19] was correct in that a refusal to process a repayment claim was, in effect, a rejection of that claim. In relation to the Contents Dispute HMRC refused to process the Company's claims for repayment stating "your claim for £2,177,925.16 will be withheld from payment until the underlying liability query has been resolved." In our view, the continued refusal to pay the Company's claims constituted a rejection of those claims and, accordingly, constituted a determination by the Commissioners of amounts of VAT payable for the purposes of section 84(3).

89. We were not taken through, in any detail, the voluminous correspondence between HMRC and the Company and its advisers in relation to the main four issues in dispute, summarised above under the heading "Factual Background". Nonetheless, as Mr Beal submitted, claims for repayment and appeals against assessments will necessarily involve determination of the underlying liability to tax. To say that HMRC has not determined an amount of VAT payable, against that background, seems to us unrealistic. HMRC appears to have indicated that the various supplies should be or should have been standard rated and that each appeal or reclaim of overpaid VAT effectively addressed HMRC's position.

90. Therefore, if we had been required to decide HMRC's Ground 2 we would have decided in favour of the Company.

¹³ See also the extract from the HMRC Manual *VAT Manual VRM15000 - Appeals against refusal of a claim* which stated that: "Section 83(1)(t) of the VAT Act 1994 gives a right of appeal against any decision we make in relation to a claim brought under section 80 of the VAT Act 1994... An appeal under this subsection will also, almost certainly, fall within section 83(1)(b)."

¹⁴ See also *Colaingrove Limited* VATTD 10 16981 (2000)

91. Accordingly, had it been necessary to do so, we would have dismissed HMRC's appeal on Ground 2.

THE COMPANY'S APPEAL

The Company's Ground 1 – post-April 2009: Domestic law

92. Mr Beal submitted that the FTT had erred in law when it concluded that as a matter of statutory interpretation it had no jurisdiction to award additional interest pursuant to section 84(8) in respect of an appeal filed after 1 April 2009, but which depended on a pre-1 April 2009 decision of principle (assessments and refusals) as to VAT liability. As we shall see, in relation to the Company's Ground 2, it is also contended that the FTT erred not just as a matter of domestic law but as a matter of EU law as well.

93. In the light of our decision on HMRC's Ground 1, it is strictly unnecessary for us to consider the Company's Ground 1 and, accordingly, we dismissed the Company's appeal on this Ground. However, because the point was fully argued before us, we set out briefly below the reasons why we would have dismissed the Company's appeal on Ground 1 in any event.

The Company's Ground 1 – the Company's submissions

94. Mr Beal argued that, as a matter of domestic law, the TTF Order preserved the FTT's power to award interest in relation to decisions taken on or after 1 April 2009 which either depended upon a prior decision taken before that date or which related to VAT incurred and repaid prior to that date. This was, Mr Beal said, a matter of statutory construction.

95. First, the ordinary and natural meaning of the words used in paragraph 4 of Schedule 3 to the TTF Order preserve the power to award additional interest where no appeal has yet been brought but where "HMRC have notified a decision relating to a matter to which section 83 applies." Section 83 (1) (b) provides that one such matter is "the VAT chargeable on the supply of any goods or services." Accordingly, Mr Beal submitted that there had to be (i) a "decision" notified (ii) which must "relate to" (iii) "the VAT chargeable on the supply of any goods or services."

96. Thus, in Mr Beal's submission, there was a "decision" notified to the Company i.e. a decision of principle as to the liability of a particular supply predating 1 April 2009 – which was given effect in subsequent assessments postdating 1 April 2009. This was a matter to which section 83 applied and therefore in respect of which section 84(8) was preserved. The Company's post-April 2009 appeals were not against an "abstract or notional" decision of principle, as HMRC suggested. It was entirely normal for HMRC to reach a decision of principle and which is then applied in future assessments on an ongoing basis. The Company appealed against decisions applying the disputed decision of principle, and in doing so brought into issue the decision of principle predating April 2009 (to which every subsequent application "relates").

97. Secondly, the words used in the TTF Order were, according to Mr Beal, intended to be deliberately broad – Parliament had used the word "decision" which was broader than "assessment" or "rejection". The issue in the present case, which HMRC's submissions failed to address, was the treatment by the TTF Order of the relationship between a decision of

principle and a (properly appealed) subsequent decision applying that earlier decision of principle.

98. The FTT erred when it concluded (FTT [96]) that the “decision” needed to be “adverse to the [Company] in a specific and identified in regard being an assessment or rejected claim” and (FTT [97]) that “there must be an amount which is identified within the scope of the appeal by reference to the decision under appeal i.e. the individual decision of HMRC adverse to the taxpayer in a specific and identifiable amount.” There was, Mr Beal submitted, no such requirements in the TTF Order.

99. Thirdly, the FTT failed to have regard to the purpose of the TTF Order which was to ensure that taxpayers were not prejudiced in longer-running disputes about decisions of principle with HMRC which started before 1 April 2009 and continue thereafter.

100. Thus, a taxpayer which finds itself in a lengthy dispute with HMRC receives only partial protection, despite the fact that the dispute started at a time when there was a power in the Tribunal to award additional interest. The FTT’s interpretation effectively rewarded HMRC for delaying the conclusion of the statutory appeal process.

101. Furthermore, a taxpayer is incentivised to settle the dispute of principle, rather than insist on their legal rights, in order to avoid HMRC issuing further assessments in respect of which no additional interest can be claimed.

The Company’s Ground 1 – HMRC’s submissions

102. Mr Moser submitted that the FTT had made no error of law on this issue. The FTT correctly concluded that the effect of Schedule 3 to the TTF Order was that section 84 (8) cannot in any event apply to any of the relevant decisions or to any (relevant) “decision” of HMRC notified to the Company on or after 1 April 2009.

103. The FTT was correct, Mr Moser said, in its conclusions recorded at FTT [96]-[97]. The Company’s contention that the relevant appealable “decisions” were taken before 1 April 2009 failed both as a matter of primary fact and as a matter of law. The Company did not appeal against some abstract or notional “decision of principle” nor could it had done so as a matter of law and having regard to the jurisdictional basis on which it seeks to base its claim for additional interest.

104. First, Mr Moser submitted that, as a matter of fact, the Company appealed against specific identified decisions made by HMRC. As to the Company’s section 80 claims, the Company appealed against HMRC’s specific decisions rejecting the Company’s section 80 claims, which were made in respect of specific prescribed accounting periods.

105. Secondly the Company’s case was inconsistent with the scheme of the VAT legislation, whereby VAT was accounted for and paid by reference to prescribed accounting periods. HMRC was only liable to credit or repay an amount under section 80 on a claim being made for the purpose by reference to individual prescribed accounting periods.

106. Thirdly, the Company’s argument depended on an interpretation of section 83(b) which gives the FTT jurisdiction in respect of a decision as to “the VAT chargeable on the supply of any goods or services...”. However, section 83(b) is subject to the jurisdictional requirement

in section 84 (3) that an appeal shall not be entertained unless HMRC “have determined [the amount] to be payable as VAT.” The scenario put forward by the Company was premised on a “pre-1 April 2009 decision of principle as to the underlying VAT liability” having been taken in advance of (i) any supply by the Company, (ii) any over-declaration and overpayment of VAT by the Company, (iii) any section 80 claim by the Company and (iv) any decision on that claim by HMRC. In the circumstances, HMRC could not have determined any amount to be payable as VAT.

Discussion – the Company’s Ground 1

107. In the course of the hearing, we were provided with a schedule of the decisions relevant to the post-April 2009 Objection. The post-April 2009 objection applied to lines 18-20 (Removable contents), 23-24 (Verandas) and 27(2) (Gaming machines). The relevant decisions of HMRC were as follows:

Line	Appeal (original ref)	Decision type (Assessment/section 80 claim)	Decision date
18	TC/2011/09696	Section 80	27. 10. 11
19	TC/2013/06544	Section 80	3.9.13.
20	TC 2009/12645	Section 80	22. 6. 09
23	TC/2011/09696	Section 80	27. 10. 11
24	TC/2013/09462	Section 80	3. 9. 13
27 (2)	TC/2011/03844	Recovery assessment (sections 80(4A), 78A)	20. 4. 11

108. We have no doubt that the FTT was correct in its conclusions recorded at FTT [96]-[97].

109. As the FTT noted, each of the appeals in lines 18-20, 23-24 and 27 (2) were made in respect of individual appealable decisions, being assessments or rejected claims. In each case the decision post-dates 1 April 2009. The FTT correctly concluded, therefore, that the appeals in respect of those decisions were not within the terms of the transitional provisions of Schedule 3 TTF Order.

110. As the FTT correctly observed a “decision” for the purposes of paragraph 4 Schedule 3 to TTF Order means a decision “relating to a matter to which section 83 of the Value Added Tax Act 1994 applies. In other words it must be an appealable decision in the sense that it relates, as the FTT stated, to “matters within section 83 VATA which are adverse to the Appellant.”

111. We agree that the individual decisions listed above cannot be disregarded in favour of a more generalised disputed decision concerning the correct generic VAT treatment of the supplies in question. As the FTT said at FTT [97]:

“... For present purposes in order for there to be an amount determined as repayable on an appeal there must be an amount which is identified within the scope of the appeal by reference to the decision under appeal i.e. the individual decision of HMRC and first of the taxpayer in a specific and identifiable amount. It is such a decision which must’ve been made and notified prior to 1 April 2009 in order for section 84(8) Interest to be payable.”

112. We regard the FTT’s reasoning in this regard to be unimpeachable.

113. Accordingly, had it been necessary to do so, we would have dismissed the Company’s appeal on its Ground 1.

The Company’s Ground 2: post-April 2009: EU law

114. Again, in the light of our decision on HMRC’s Ground 1, it is unnecessary for us to consider the Company’s Ground 2, and we formally dismissed the Company’s appeal on this Ground. However, we summarise below the reasons why we would have dismissed the Company’s appeal on Ground 2 in any event.

The Company’s Ground 2 – the Company’s submissions

115. Mr Beal argued that the FTT erred in failing to give a *Marleasing* compliant interpretation to Schedule 3, paragraph 4 TTFO and/or s. 85A VATA. Even if the FTT lacks jurisdiction to award additional interest as a matter of domestic law, it was nevertheless required as a matter of EU law to read the relevant provisions in such a way as to grant it that power in order to protect the Company’s accrued rights to an “adequate indemnity” in the form of interest under EU law. In finding that statutory interest would always be sufficient, the FTT failed to give effect to the Company’s accrued right. The FTT did not properly analyse the case through the lens of the principles of equivalence and effectiveness.

116. The accrued right is a right to interest under EU law in respect of ongoing disputes about liability which start before 1 April 2009 (*Emblaze* (FTT and UT)). National law must provide an “adequate indemnity” for wrongfully being kept out of money and the FTT erred in its interpretation that *Littlewoods* CJEU precluded any argument that statutory interest did not provide an adequate indemnity. The finding by the Supreme Court in *Littlewoods Limited* that some (Company’s emphasis) interest is prescribed by domestic law does not exempt the national judicial authorities from their task of determining whether there has been an adequate indemnity in this case.

117. The FTT’s interpretation of paragraph 4 TTFO and/or s.85A VATA 1994 breaches the principles of equivalence and effectiveness by applying different regimes for enforcing rights to interest recovery under EU law in an ongoing dispute involving linked decisions pre and post April 2009 without objective justification and makes the enforcement of taxpayers’ rights excessively difficult by closing off consideration of whether there was an adequate indemnity post April 2009.

The Company’s Ground 2 – HMRC’s submissions

118. Mr Moser submitted that this Ground is without merit. The FTT correctly concluded that the Company's EU argument is conclusively determined by *Littlewoods Limited* which establishes that statutory interest satisfies the requirements of EU law, specifically the principle of effectiveness. The Company has no EU law right to additional interest and the issue must be determined solely by reference to UK law.

119. Section 84(8) was repealed, subject to savings and transitional provisions to preserve accrued rights. It was replaced by s. 85A which satisfied the principle of effectiveness.

120. The Company's reliance on *Emblaze* for the proposition that it had an accrued EU law right to interest is misguided. In that case, the VDT's jurisdiction had been engaged before 1 April 2009. Moreover, whether or not the Company had an accrued EU law right to interest is irrelevant in circumstances where the Company did not satisfy the conditions under section 84(8) and it had a right to statutory interest which itself satisfies the principle of effectiveness (relying on *Test Claimants in the FII Group Litigation v RCC* [2021] UKSC 31).

121. *Lipton v BA CityFlyer* added nothing to the Company's argument: the FTT decided the EU law issues correctly by reference to the correct principles of EU law. A *Marleasing* interpretation would concern the interpretation of domestic law intended to implement EU directives and rights derived therefrom, not interpretation of, for instance, national procedural rules whereby effect is given to a claimant's directly effective rights derived from general principles of EU law.

Discussion – The Company's Ground 2

122. The FTT's reasoning is set out at FTT [61 – 64] as follows:

“61. HMRC rightly did not dispute that in light of *Littlewoods CJEU* where, as here, there has been an overpayment of VAT in consequence of the misapplication/misinterpretation of EU law the taxpayer has a right to be repaid the overpaid VAT with interest. The dispute between the parties centres on the amount of interest and in particular whether having received interest under s78 at the statutory rate of Bank of England base rate minus 1% the Appellant's EU law rights have been satisfied.

62. Resolution of that dispute is, in our view, to be found in *Littlewoods SC*. In our view the Supreme Court has clearly and unequivocally confirmed that where sums have been overpaid by way of VAT contrary to EU law an adequate indemnity must be provided through the payment of "some form" of interest (see paragraph 53) and that what represents an adequate indemnity or reasonable redress will fall within a range of possible outcomes (see paragraph 55). The Supreme Court has also confirmed that it is ultimately a question for Parliament to set the parameters by reference to which interest is payable and has done so through the enactment of s78 which provides for the payment of simple interest at the statutory rate (see paragraphs 34 and 54). Prior to its repeal s84(8) also provided a statutory route for interest to be payable at the discretion of the VDT/FTT in respect of sums determined as repayable to appellants who had been required to litigate a dispute whilst HMRC held disputed tax. In the period from 1 April 2009 and 1 January 2023 section 85A VATA provided an alternative vehicle for the payment of simple interest at the statutory rate. These provisions were noted by the Supreme Court as being

part of the statutory infrastructure for providing an adequate indemnity (see paragraphs 38 and 39).

63. As we interpret the judgment in *Littlewoods SC* the Supreme Court was confirming that the statutory regime adopted by the UK principally through s78 but also s84(8) and, importantly, section 85A VATA meets the UK obligation under EU law to provide for an adequate indemnity and/or reasonable redress.

64. That conclusion closes out any asserted scope for a conforming interpretation.”

123. At FTT [98] – [104] the FTT stated:

“98. We have also considered whether, to the extent that the decisions which post-date 1 April 2009 relate to prescribed accounting periods prior to that date, an inchoate right to interest had accrued. In this regard we have carefully considered the FTT judgment in *Emblaze*.

99. We have concluded that there was no such right.

100. In *Emblaze* the taxpayer had been given an appealable decision by which it was denied input tax credit to which it was entitled and it had appealed that decision. The inchoate or contingent right accrued "when HMRC wrongly refused to pay the amount of input tax claimed" (see paragraph 31 of the FTT judgment). The fact that the right was contingent on an appeal being brought and a positive judgment from the Tribunal requiring repayment of the VAT claimed did not preclude a conclusion that there was an inchoate right which was then protected by virtue of section 16 IA on the repeal of s84(8).

101. By contrast, in the present case the Appellant had overpaid the VAT in question period by period pre-dating 1 April 2009 but the inchoate right arising from such overpayment was the right to be repaid the tax with an adequate indemnity by way of statutory interest under s78. Further inchoate rights accrued to those who had overpaid VAT but who had received an appealable decision from HMRC prior to 1 April 2009 and in respect of which an appeal had been brought or the time limit for appeal was running. Those inchoate rights were protected by section 16 IA as per *Emblaze*.

102. For the reasons given at paragraph 96 such rights had not accrued to the Appellant regarding lines 18 - 20, 23 - 24 and 27(2).

103. Such rights did however accrue in respect of the decision in the Gaming Dispute at line 27(1). That appeal relates to HMRC's refusal of a section 80 claim (the Section 80 Objection is considered below), the appealable decision was issued prior to 1 April 2009 and an appeal was lodged in time and before 1 April 2009. The Appellant therefore had the inchoate right to invite the Tribunal to exercise its discretion to pay interest in the event that sums were repayable in the appeal. On or shortly before 20 April 2011 HMRC repaid sums due to the Appellant on the claims made. Without reference to the protective assessment the Appellant thereby succeeded in their appeal. We are therefore of the view that the Appellant's inchoate right to seek a direction for the payment of further interest had crystallised. There is no time limit by reference to which an application for additional interest must be made

under s84(8). There is not even a requirement that the appeal remain live, though in this case the Tribunal's file on the line 27(1) appeal was never closed. It is therefore our view that the Appellant's invitation that the payment of further interest be directed in respect of the appeal at line 27(1) is not barred under the Post-1 April 2009 objection. We deal below with the broader implications for the payment of interest on that appeal.

104. For the reasons already stated above on the Adequacy issue we see no basis for applying a conforming interpretation as invited by the Appellant as the statutory provisions provide an adequate indemnity.”

124. The FTT carefully considered the relevant authorities. In *Littlewoods Limited*, the Court held at [53]- [55]:

“53. In the courts below, emphasis was placed on the CJEU’s use of the word “reimbursement” in para 25 when it speaks of the reimbursement of losses constituted by the unavailability of money. We do not attach such significance to a single word, considered in isolation. It is necessary to consider para 25 in the context of the judgment as a whole. In our view, consistently with the conclusion expressed in para 26, **reimbursement of loss means no more than recompense or compensation, which is achieved through the payment of some form of interest.** In relation to the principal sums, whether of tax, interest or penalties levied by the member state, the compensation would be full compensation in order to achieve restitution of those principal sums. But interest is a means of compensating a person for being kept out of his money. **The measure of such compensation is not as straightforward as the calculation of the principal sums which must be repaid.** The Court does not specify the level of the compensation for the unavailability of money which that interest is to provide. Instead, the CJEU confirms in this first part **that there is an EU principle that a member state must repay with interest charges which it has levied in breach of EU law. It is in the second part that the CJEU lays down what EU law requires member states to provide by way of interest.**

54. In the second part, which is paras 27 to 29, the CJEU restates the principle that it is for the internal order of each member state to lay down the conditions in which such interest must be paid. The member state is given a discretion both as to the interest rate and also as to the method of calculation, in particular whether it is simple or compound interest. That discretion is qualified by the established EU law principles of equivalence and effectiveness...

55. The phrase, “an adequate indemnity” has a less definitive meaning than “full reimbursement”. The French text of the judgment speaks of “une indemnisation adéquate” and the German text refers to “eine angemessene Entschädigung”. In both languages, as in English, the words chosen can support a range of meanings, including the meaning of “adequate compensation” or “reasonable redress”, which are not tied into the idea of full compensation for the time value of money.”

(our emphasis)

125. In light of the above, we do not accept that the FTT was incorrect in its interpretation and application of *Littlewoods SC* and we do not find any error of law in its approach or conclusion that there was no scope for a conforming interpretation

126. We do not accept the Company's submission that the FTT erred in treating *Littlewoods Limited* as finding that section 78 interest and section 85A interest (the latter was not addressed by the Supreme Court) are adequate regardless of the facts. The FTT clearly gave careful consideration to the judgment which stated at [56] and [59]:

“56. In using the principle of effectiveness to require the existence of “an adequate indemnity” but not expressing a definitive view on the adequacy of simple interest, the CJEU was less categorical than Advocate General Trstenjak, who opined (paras 33 and 34) that the payment of simple interest clearly complied with that principle and that that principle would be breached only if the interest rate were so low as to deprive the claim of substance. In support of that view she recited (para 37) the amounts of principal and interest which HMRC had paid and recorded that the latter exceeded the former by over 25%. But it would be wrong to overstate the extent of the CJEU’s departure from the Advocate General’s approach. In what we see as the third part of the relevant passage in its judgment (para 30) the CJEU, after stating that it was for the referring court to decide whether the national rules for the calculation of interest would deprive the taxpayer of “an adequate indemnity”, recorded what HMRC had already paid and repeated the comparison which the Advocate General had made between the amount of principal and the amount of interest on that principal.

59. In summary, we interpret the CJEU’s judgment as (i) requiring the repayment of tax with interest, without specifying the form of that interest (ii) stating that the principle of effectiveness requires that the calculation of that interest, together with the repayment of the principal sum, should amount to reasonable redress for the taxpayer’s loss, and (iii) suggesting that the referring court might consider that interest which is over 125% of the amount of the principal sum **might** be such reasonable redress.”

(Our emphasis)

127. The FTT recognised that the issue of adequacy would be a question of fact, stating at [65]:

“...it is our view that our role is to apply the statutory provisions as drafted to the facts of the present case... However, and by reference to the conclusion in *Littlewoods SC*, we consider that the remedy provided under section 85A VATA and subsequently under section 102 FA 09 to be an adequate indemnity simply at a lower point in the range of possible but nevertheless adequate remedies.”

128. Similarly, we consider that the FTT’s reasons for distinguishing the facts of *Emblaze* from those in the present case on the basis that in *Emblaze* the VDT’s jurisdiction had been engaged before 1 April 2009 and therefore its inchoate rights were protected whereas, in contrast, the appeals referred to at FTT [96] each related to an identified decision which post-dated 1 April 2009 and consequently inchoate rights had not accrued to the Company, was a finding open to it and a conclusion it was entitled to reach.

129. Accordingly, had it been necessary to do, we would have dismissed the Company's appeal on Ground 2.

The Company's Ground 3 – Rate of Interest

130. Ground 3 avers that the FTT erred in holding that the Company was only entitled to interest at base rate plus 1.5%.

The Company's Ground 3 –The Company's submissions

131. It is submitted that, the FTT having found that the Company's cost of borrowing was BoE base rate plus 2.27% and that the sums overpaid "were not available to the Appellant in the running of its business and therefore either directly or indirectly the borrowing requirements of the Appellant were increased as a consequence of the overpayments", the FTT erred in concluding that the Company "is entitled to interest at base plus 1.5%".

132. Mr Beal submitted that the correct approach in determining whether to award additional interest is set out in *Emblaze*. The FTT erred in concluding that anything less than reimbursement of the actual costs of borrowing provided an adequate indemnity as a matter of EU law. There was no particular reason to justify a lower figure.

133. Furthermore, the FTT erred in having regard to the Settlement Agreement in reaching its Decision. The FTT accepted the evidence of Mr MacMillan on behalf of the Company and to reduce the interest payable below the Company's true cost of borrowing without any challenge to that evidence is unfair.

The Company's Ground 3: HMRC's submissions

134. HMRC submitted that whether, and if so at what rate, to award additional interest under s. 84(8) were matters for the FTT in the exercise of its discretion.

Discussion: The Company's Ground 3

135. The FTT analysed the evidence, both oral and documentary, and made findings of fact at FTT [30] – [33]. The general principles applicable to the exercise of discretion in awarding interest were fully set out from FTT [34] – [46].

136. The FTT set out its application of the relevant principles and authorities to the facts at FTT [68] – [76]. In doing so, the FTT took into account the evidence of Mr MacMillan, however the FTT took the view (at FTT [75]) that:

"...we consider it more appropriate to use the rate set in the settlement agreement agreed between these parties in respect of the Contents Dispute. The Appellant considered base plus 1.5% an appropriate rate to apply in that context and that was a rate that HMRC considered to be reasonable in the event that there was a further delay in repayment of the overpaid tax in circumstances in which it might have been considered appropriate to apply a penal rate. We do not consider base plus 1.5% to be a penal rate in the context of the rates that the Appellant was paying at the time (as per the table at paragraph 33(7) the Appellant was paying 2.51% against a base rate of 0.5% i.e. a margin of 2.01%)."

137. The settlement agreement formed part of the evidence before the FTT, and we consider that it was entitled to have regard to this evidence in reaching its Decision.

138. In exercising its discretion, we are entirely satisfied that there was no error of law in the FTT's application of the legislation and relevant authorities to the facts of the present case, as found by the FTT. The Decision reached fell within the FTT's discretion and we see no basis upon which to interfere with it. Accordingly, we dismiss the Company's appeal on Ground 3.

CONCLUSION

139. For the reasons set out above, we allow HMRC's appeal in relation to its Ground 1 and set aside the FTT's decision on this Ground and remake it on the basis that (i) the Company's applications for further interest in relation to the appeals listed at 9-17, 21-22 and 25-27(1) of the Appendices are dismissed, and (ii) the Company's applications for further interest in relation to the appeals listed at lines 18-20, 23-24 and 27 (2) are dismissed.

140. The Company's appeal is dismissed on all Grounds.

COSTS

141. 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 GUY BRANNAN
JUDGE JENNIFER DEAN

UPPER TRIBUNAL JUDGES

Release date: 22 October 2025

APPENDIX 1

	Appeal Reference	Type of Appeal	Consolidated to:	Assessment or Section 80 claim?	Date of assessment or claim	Date of rejection	Date of appeal	VAT periods covered	VAT paid	Date repaid	Gross Interest claimed	Interest paid	Net interest claimed
1	LON/2001/1203	Contents	LON/2000/0765	Assessment	3.7.01 23.10.01		14.11.01	03/01 06/01	£199,362.52	15/12/14	£135,412.81	£58,232.54	£77,180.27
2	LON/2002/0112	Contents	LON/2000/0765	Assessment	31.12.01		8.2.02	09/01	£99,681.26	15/12/14	£64,740.38	£27,566.43	£37,173.95
3	LON/2002/0271	Contents	LON/2000/0765	Assessment	14.3.02		22.3.02	12/01	£99,681.26	15/12/14	£62,839.23	£26,714.35	£36,124.88
4	LON/2002/0462	Contents	LON/2000/0765	Assessment	22.5.02		31.5.02	03/02	£99,681.26	15/12/14	£61,152.40	£25,976.98	£35,175.42
5	LON/2002/0788	Contents	LON/2000/0765	Assessment	14.8.02		9.9.02	06/02	£99,681.26	15/12/14	£59,408.72	£25,231.42	£34,177.30

	Appeal Reference	Type of Appeal	Consolidated to:	Assessment or Section 80 claim?	Date of assessment or claim	Date of rejection	Date of appeal	VAT periods covered	VAT paid	Date repaid	Gross Interest claimed	Interest paid	Net interest claimed
6	LON/2003/0205	Contents	LON/2000/0765	Assessment	29.11.02		20.2.03	09/02	£99,681.26	15/12/14	£57,589.22	£24,477.67	£33,111.55
7	LON/2003/0323	Contents	LON/2000/0765	Assessment	10.3.03		17.3.03	12/02	£99,681.26	15/12/14	£55,952.48	£23,723.91	£32,228.57
8	LON/2004/1945	Contents	LON/2000/0765	Assessment	29.10.04		26.11.04	06/03-06/04	£498,406.30	15/12/14	£246,268.64	£104,850.49	£141,418.15
9	LON/2005/0755	Contents	LON/2000/0765	“Decision dated 11 July 2005 that claims to recover VAT in respect of assessed amounts for periods from March 2003 to March 2005 would not be processed”	12.6.03 (assessment)	11.7.05	19.7.05	03/03	£99,681.26	15/12/14	£54,358.02	£22,986.54	£31,371.48
10		Contents	LON/2000/0765	“Decision dated 11 July 2005 that claims to recover VAT in respect of assessed amounts for periods from March 2003 to March 2005 would not be processed”	11.11.04 (assessment)	11.7.05	19.7.05	09/04	£99,681.26	15/12/14	£43,774.00	£18,759.80	£25,014.20
11		Contents	LON/2000/0765	“Decision dated 11 July 2005 that claims to recover VAT in respect of assessed amounts for periods from March 2003 to March 2005 would not be processed”	10.2.05 (assessment)	11.7.05	19.7.05	12/04	£99,681.26	15/12/14	£42,004.65	£17,757.54	£24,247.11
12		Contents	LON/2000/0765	“Decision dated 11 July 2005 that claims to recover VAT in respect of assessed amounts for periods from March 2003 to March 2005 would not be processed”	4.5.05 (assessment)	11.7.05	19.7.05	03/05	£99,681.26	15/12/14	£40,492.82	£16,774.38	£23,718.44
13	LON/2006/0601	Contents	LON/2000/0765	“Claim for repayment of the sums assessed in periods 06/05 to 12/05 would not be processed”	3.8.05 (assessment)	23.5.06	26.5.06	06/05	£99,681.26	15/12/14	£38,930.04	£15,780.30	£23,149.74
14		Contents	LON/2000/0765	“Claim for repayment of the sums assessed in periods 06/05 to 12/05 would not be processed”	15.11.05 (assessment)	23.5.06	26.5.06	09/05	£99,681.26	15/12/14	£37,367.25	£14,843.57	£22,523.68

	Appeal Reference	Type of Appeal	Consolidated to:	Assessment or Section 80 claim?	Date of assessment or claim	Date of rejection	Date of appeal	VAT periods covered	VAT paid	Date repaid	Gross Interest claimed	Interest paid	Net interest claimed
				would not be processed"									
15		Contents	LON/2000/0765	"Claim for repayment of the sums assessed in periods 06/05 to 12/05 would not be processed"	1.2.06 (assessment) 19.5.06 (s.80)	23.5.06	26.5.06	12/05	£99,681.26	15/12/14	£35,844.62	£14,089.81	£21,754.81
16		Contents	LON/2000/0765	"Claim for repayment of the sums assessed in periods 06/05 to 12/05 would not be processed" [HB/60/560]	28.4.06 (assessment) 19.5.06 (s.80)	23.5.06	26.5.06	03/06	£99,681.26	15/12/14	£34,451.89	£13,352.45	£21,099.44
17 (1)	LON/2000/0765	Contents	LON/2000/0765	Section 80	30.6.00	12.7.00	14.7.00	06/97-09/99	£5,327,366.34 (Footnote:2)	15/12/14	£6,116,134.50	£2,949,666.00	£3,166,468.50
17 (2)	LON/2002/0789	Contents	LON/2000/0765	Section 80	13.8.02	23.8.02	4.9.02	03/89-12/92 03/93-06/95	£5,327,366.34 (Footnote:3)	15/12/14	£6,116,134.50	£2,949,666.00	£3,166,468.50
17 (3)	LON/2008/1365	Contents	LON/2000/0765	Section 80	22.1.08	23.5.08	20.6.08	03/89-06/07	£5,327,366.34 (Footnote:4)	15/12/14	£6,116,134.50	£2,949,666.00	£3,166,468.50
18	TC/2011/09696	Contents	LON/2000/0765	Section 80	13.9.11	27.10.11	11.11.11	09/07-06/08	£496,748.86	15/12/14	£109,923.84	£28,614.93	£81,308.91
19	TC/2013/06544	Contents	LON/2000/0765	Section 80	30.9.12	3.9.13	19.9.13	09/08-03/09 06/09-12/11	£2,081,704.38	15/12/14	£260,405.49	£45,765.97	£214,639.52
20	TC/2009/12645	Contents	LON/2000/0766	Section 80	14.11.08	22.6.09	17.7.09	03/87-09/96	£2,257,236.72	15/12/14	£3,549,030.70	£2,271,852.09	£1,277,178.61
21	LON/2008/1365	Verandas	LON/2000/0765	Section 80	22.1.08	23.5.08	20.6.08	03/89-06/04;	£825,351.00	15/12/14	£728,850.44	£407,186.00	£321,664.44
22	LON/2008/1365	Verandas	LON/2000/0765	Section 80	22.1.08	23.5.08	20.6.08	12/04-06/07;	£283,638.00	15/12/14	£96,180.92	£39,627.00	£56,553.92
23	TC/2011/09696	Verandas	LON/2000/0765	Section 80	13.9.11	27.10.11	11.11.11	09/07-06/08	£151,353.75	07/05/2015	£34,455.10	£13,248.38	£21,206.72
24	TC/2013/09462	Verandas	LON/2000/0765	Section 80	30.9.12	3.9.13	19.9.13	09/08-03/09 06/09-12/11	£1,334,101.86	07/05/2015	£164,204.24		£164,204.24
25	LON/2009/0572	Bingo Participation fees		Section 80	18.12.08	29.1.09	2.3.09	03/06-09/08	£897,167.95	04/05/2010	£121,470.21	£88,686.00	£32,784.21
26	LON/2008/2228	Bingo Participation fees		Section 80	14.11.07 14.12.07 31.3.06 30.6.08	2.10.08	17.10.08	03/75-12/02	£2,535,114.09	04/05/2010	£2,002,693.23	£1,360,024.00	£642,669.23
27 (1)	LON/2008/2227	Gaming machines		Section 80	19.10.05 9.12.05 30.6.06 30.6.06 14.11.07	2.10.08	17.10.08	12/02-12/05	£5,620,790.28	16/11/20	£3,312,543.10	£1,665,867.20	£1,646,675.90
27 (2)	TC/2011/03844	Gaming machines		Recovery Assessments (ss.80(4A), 78A)	20.4.11		16.5.11	12/02-12/05	£5,620,790.28	16/11/20	£3,312,543.10	£1,665,867.20	£1,646,675.90

APPENDIX 2

	Appeal Reference	Type of Appeal	Interest payable
1	LON/2001/1203	Contents	Yes margin between statutory interest and 1.5% above base for period from when tax paid to when repaid

	Appeal Reference	Type of Appeal	Interest payable
2	LON/2002/0112	Contents	Yes margin between statutory interest and 1.5% above base for period from when tax paid to when repaid
3	LON/2002/0271	Contents	Yes margin between statutory interest and 1.5% above base for period from when tax paid to when repaid
4	LON/2002/0462	Contents	Yes margin between statutory interest and 1.5% above base for period from when tax paid to when repaid
5	LON/2002/0788	Contents	Yes margin between statutory interest and 1.5% above base for period from when tax paid to when repaid
6	LON/2003/0205	Contents	Yes margin between statutory interest and 1.5% above base for period from when tax paid to when repaid
7	LON/2003/0323	Contents	Yes margin between statutory interest and 1.5% above base for period from when tax paid to when repaid
8	LON/2004/1945	Contents	Yes margin between statutory interest and 1.5% above base for period from when tax paid to when repaid
9	LON/2005/0755	Contents	Yes margin between statutory interest and 1.5% above base for period from when tax paid to when repaid
10		Contents	Yes margin between statutory interest and 1.5% above base for period from when tax paid to when repaid
11		Contents	Yes margin between statutory interest and 1.5% above base for period from when tax paid to when repaid
12		Contents	Yes margin between statutory interest and 1.5% above base for period from when tax paid to when repaid
13	LON/2006/0601	Contents	Yes margin between statutory interest and 1.5% above base for period from when tax paid to when repaid
14		Contents	Yes margin between statutory interest and 1.5% above base for period from when tax paid to when repaid
15		Contents	Yes margin between statutory interest and 1.5% above base for period from when tax paid to when repaid
16		Contents	Yes margin between statutory interest and 1.5% above base for period from when tax paid to when repaid
17(1)	LON/2000/0765	Contents	Yes margin between statutory interest and 1.5% above base for period from when tax paid to when repaid
17(2)	LON/2002/0789	Contents	Yes margin between statutory interest and 1.5% above base for period from when tax paid to when repaid
17(3)	LON/2008/1365	Contents	Yes margin between statutory interest and 1.5% above base for period from when tax paid to when repaid
18	TC/2011/09696	Contents	No – post 1 April 2009 Objection applies
19	TC/2013/06544	Contents	No – post 1 April 2009 Objection applies
20	TC/2009/12645	Contents	No – post 1 April 2009 Objection applies
21	LON/2008/1365	Verandas	Yes margin between statutory interest and 1.5% above base for period from when tax paid to when repaid
22	LON/2008/1365	Verandas	Yes margin between statutory interest and 1.5% above base for period from when tax paid to when repaid
23	TC/2011/09696	Verandas	No – post 1 April 2009 Objection applies
24	TC/2013/09462	Verandas	No – post 1 April 2009 Objection applies
25	LON/2009/0572	Bingo Participation fees	Yes margin between statutory interest and 1.5% above base for period from when tax paid to when repaid
26	LON/2008/2228	Bingo Participation fees	Yes margin between statutory interest and 1.5% above base for period from when tax paid to when repaid
27(1)	LON/2008/2227	Gaming machines	Yes margin between statutory interest and 1.5% above base for period from when tax paid to repayment of the claim in 2011
27(2)	TC/2011/03844	Gaming machines	No – post 1 April 2009 Objection applies

¹⁵By 2009 an appeal could not be entertained without the payment of amounts determined by HMRC as due by way of penalty or surcharge under sections 59 to 69B, 76 and paragraph 10(1) Schedule 11 VATA and a joint and several liability notice under section 77A VATA.

¹⁶Aggregate figures for LON/2008/1365, LON/2002/0789, LON/2000/0765.

¹⁷Aggregate figures for LON/2008/1365, LON/2002/0789, LON/2000/0765.

¹⁸Aggregate figures for LON/2008/1365, LON/2002/0789, LON/2000/0765.