



Neutral Citation: [2025] UKFTT 01273 (TC)

Case Number: TC09674

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

Taylor House, Rosebery Avenue, London

Appeal references: TC/2023/08373  
TC/2023/08157

*Keywords – withdrawal of underlying decisions and assessments during hearing – application to strike-out the appeals under rule 8(2)(a) Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 – whether tribunal retained jurisdiction over the proceedings – no – application granted*

**Heard on:** 1, 2 and 3 October 2025  
**Judgment date:** 16 October 2025

**Before**

**JUDGE ASHLEY GREENBANK  
MOHAMMED FAROOQ**

**Between**

**ORIENTAL BU TRADING LIMITED**

**Appellant**

**and**

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

**Respondents**

**Representation:**

For the Appellant: Michael Firth KC and Ben Blades of counsel

For the Respondents: Esther Hickey and Miles Matthews, litigators of HM Revenue and Customs’ Solicitor’s Office

## DECISION

### INTRODUCTION

1. This decision relates to two appeals by the Appellant, Oriental Bu Trading Limited (“OBT”), against decisions of the Respondents, His Majesty’s Revenue and Customs (“HMRC”), in relation to value added tax (“VAT”).

(1) The first appeal, which has reference number TC/2023/08157, is an appeal by OBT against HMRC’s decision on 10 February 2023 to reduce OBT’s input tax credit for the 10/21 period from £782,239.00 to £205,056.00. This appeal was made under section 83(1)(c) of the Value Added Tax Act 1994 (“VATA”).

(2) The second appeal, which has reference number TC/2023/08373, relates to assessments issued by HMRC on 5 May 2023 under section 73 VATA in the aggregate amount of £2,074,501.26 in respect of periods from 11/21 to 11/22. This appeal was made under section 83(1)(p) VATA.

2. Both appeals concerned input VAT on purchases by OBT of luxury goods such as high-value clothes and watches from certain suppliers in the UK for export primarily to China. The underlying reason for the denial of input tax credit and the assessments was the same for both appeals. In summary, it was that OBT did not hold a valid VAT invoice or satisfactory alternative evidence of the payment of VAT on the purchase of certain high-value watches.

3. The hearing of the appeals took place over three days from 1 October 2025 to 3 October 2025. On 1 October 2025, the Tribunal heard opening submissions from Mr Firth KC and Mr Blades on behalf of OBT and evidence from several witnesses for OBT who were cross-examined for HMRC by Mr Matthews. On 2 October 2025, the Tribunal completed the hearing of evidence from the Appellant’s witnesses and then heard evidence from the HMRC officer responsible for the decisions to which we have referred above, Officer Neil Bamford. Officer Bamford was then cross-examined by Mr Firth KC on behalf of OBT.

4. That cross-examination was due to be completed on the morning of 3 October 2025 and then to be followed by closing submissions on behalf of both parties. However, on the morning of 3 October 2025, HMRC’s representatives informed the Tribunal that HMRC had withdrawn the decisions and the assessments that formed the subject of the appeals, and that the input tax that had been disallowed would be credited to OBT’s account. Ms Hickey and Mr Matthews agreed to send a copy of the relevant email to the Tribunal. They have since done so. Ms Hickey and Mr Matthews also submitted that the effect of the withdrawal of the decisions and the relative assessments was that the Tribunal had no jurisdiction to determine the appeals and the appeals must be struck out.

5. Having heard argument on behalf of both parties, the Tribunal gave its decision at the hearing to strike out the proceedings under rule 8(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (the “FTT Rules”) on the grounds that the Tribunal did not have jurisdiction in relation to them. The Tribunal based its reasons for that decision on the decision of the First-tier Tribunal (“FTT”) in *Align Technology Switzerland GmbH and Align Technology BV v HMRC* [2024] UK FTT 001100 (TC) (“*Align*”). At Mr Firth KC’s request, the Tribunal also agreed to provide written reasons for its decision. This decision notice contains those written reasons.

### LEGISLATION

6. It will assist our explanation if we first set out the relevant legislative background.

7. Section 83 VATA sets out the matters in relation to which a person can appeal to the Tribunal. So far as relevant, it provides as follows:

### **83. Appeals**

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

...

(b) the VAT chargeable on the supply of any goods or services or, subject to section 84(9), on the importation of goods;

(c) the amount of any input tax which may be credited to a person;

...

(p) an assessment—

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

(ii) under subsections (7), (7A) or (7B) of that section;

or the amount of such an assessment;

...

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

8. Section 85 VATA concerns cases in which an appeal is settled by agreement between an appellant and HMRC. Subsection (1) is in the following form:

#### **85. Settling appeals by agreement.**

(1) Subject to the provisions of this section, where a person gives notice of appeal under section 83 and, before the appeal is determined by a tribunal, HMRC and the appellant come to an agreement (whether in writing or otherwise) under the terms of which the decision under appeal is to be treated—

(a) as upheld without variation, or

(b) as varied in a particular manner, or

(c) as discharged or cancelled,

the like consequences shall ensue for all purposes as would have ensued if, at the time when the agreement was come to, a tribunal had determined the appeal in accordance with the terms of the agreement.

9. Rule 8 FTT Rules deals with circumstances in which the Tribunal may strike out a party's case. Rule 8(2)(a) FTT Rules provides as follows:

#### **8. Striking out a party's case**

...

(2) The Tribunal must strike out the whole or a part of the proceedings if the Tribunal—

(a) does not have jurisdiction in relation to the proceedings or that part of them;

...

## THE PARTIES' SUBMISSIONS IN OUTLINE

10. As we have mentioned above, the appeals made by OBT in this case comprise: (i) an appeal under section 83(1)(c) against HMRC's decision that it was not entitled to input tax credit in respect of certain purchases from its suppliers; and (ii) appeals under section 83(1)(p) against the VAT assessments issued by HMRC on 5 May 2023. HMRC withdrew the decision and the related assessments by email on the morning of 3 October 2025, the third day of the hearing.

11. Mr Matthews submitted on behalf of HMRC that the effect of the withdrawal of the decision and the related assessments was that there was no appealable decision before the Tribunal. He referred to the decision of the Court of Appeal in *R (on the application of Chichvarkin) v Secretary of State for the Home Department* [2011] EWCA Civ 91 ("*Chichvarkin*") as authority for the proposition that HMRC had power to withdraw its decision as a matter of general public law unless such a power was excluded (*Chichvarkin* [63]-[64]). The power was not excluded and so HMRC was entitled to withdraw the decision and the assessments. Having done so, there was no appealable decision. The Tribunal had no jurisdiction and must strike out the proceedings under rule 8(2)(a) FTT Rules. Mr Matthews referred the Tribunal to the decision of the FTT in *Align* in support of that conclusion.

12. Mr Firth KC, for OBT, agreed that there was no appealable decision under section 83(1)(p) VATA as that section expressly referred to an appeal against an "assessment". However, he submitted that there remained an appealable matter under section 83(1)(c) VATA. Section 83(1)(c) did not refer to a decision or an assessment. It simply referred to "the amount" of input tax credited to a person. The point was emphasised by section 83(2) VATA, which provided for matters within section 83(1), which did not involve a decision, to be treated as a decision for the purposes of the relevant part of VATA. Furthermore, section 85(1) VATA provided for matters, which were before the Tribunal to be settled by agreement. It was implicit that if there was no such agreement, the matter remained before the Tribunal and for the Tribunal to determine. He sought to distinguish the FTT decision in *Align*. That decision related to an appeal under section 83(1)(b) VATA not section 83(1)(c). Furthermore, the Tribunal was not bound by that decision.

## DISCUSSION

13. We agree with HMRC, our reasons are set out below.

14. As a starting point, the case law is clear. The Tribunal is a creature of statute. Its jurisdiction is entirely statutory (*R & J Birkett v HMRC* [2017] UKUT 89 (TCC) at [30]).

15. In the present case, the matters that can be brought before the Tribunal are those that fall within section 83(1) VATA. As we have mentioned, OBT's appeals are made under section 83(1)(c) and section 83(1)(p) VATA.

16. We were referred by Mr Matthews to the decision of the FTT in *Align* in which similar arguments were raised by HMRC. The appellants in that case brought appeals under both section 83(1)(b) VATA and section 83(1)(p) VATA. The appeals under section 83(1)(b) related to HMRC's decision that certain supplies made by the appellants were subject to VAT at the standard rate. The appeals under section 83(1)(p) were against assessments made by HMRC for various periods on the basis that supplies made by the appellants were subject to VAT at the standard rate.

17. Following the notification of the appeals to the FTT, but before the hearing of the appeals, HMRC withdrew the decision and the assessments and asked for the hearing of the appeals to be vacated. At a case management hearing to consider that request, the FTT (Judge Sinfield) decided that the FTT had no jurisdiction to hear the appeals against

assessments because there was no longer any matter within section 83(1)(p) against which to appeal. After referring to the decision of Judge Bailey in *Charles Kendall Freight Ltd v HMRC* [2024] UKFTT 492 (TC) (“*C K Freight*”) – and agreeing with her comments (at *C K Freight* [48]) on the desirability of HMRC withdrawing from an appeal under rule 17 FTT Rules rather than withdrawing the underlying decision – Judge Sinfield said this (at *Align* [52]):

52. At [52]-[57] of *C K Freight*, Judge Bailey set out the consequences that must follow from the withdrawal of a decision (which includes an assessment). I agree with her analysis which, in my view, can be summarized as follows. If HMRC withdraw a decision or assessment before the taxpayer makes an appeal to the FTT, there is no right to appeal under section 83 VATA because there is no matter within the section to appeal against (see *Furtado v City of London Brewery Company* [1914] 1 KB 709 as discussed by the Upper Tribunal in *LS v HMRC and RS v HMRC* [2017] UKUT 257 (AAC) (“*LS and RS*”) at [20]). Accordingly, the FTT never has jurisdiction in relation to the matter. Where HMRC withdraw a decision or assessment after an appeal has been made to the FTT, the FTT ceases to have jurisdiction from that point and must strike out the proceedings or the relevant part of the proceedings (see *LS and RS* at [25] and rule 8(2)(a) FTT Rules). However, that does not necessarily mean that the proceedings are at an end. There may be an application for costs in some cases. The FTT has jurisdiction to deal with an application for costs under rule 10 of the FTT Rules even where the substantive appeal has been struck out. Accordingly, where a decision is withdrawn, the appropriate direction will usually be to strike out that part of the proceedings, i.e. the substantive appeal, and invite the appellant to make any application in consequence, e.g. for costs, within a specified period of time. Only after all ancillary matters have been dealt with should the case be closed.

18. The FTT therefore struck out the appeals against the assessments under rule 8(2)(a) FTT Rules. Judge Sinfield confirmed that the same reasoning (with the same consequences) would apply to the appeals under section 83(1)(b) if HMRC had withdrawn the decision that the appellant’s supplies were subject to VAT at the standard rate (*Align* [54]). However, on the facts, the FTT found that HMRC had not withdrawn that decision. This was because, although the decision was withdrawn in relation to the periods that had been assessed, HMRC had not conceded that their decision was wrong in law (*Align* [57]). The question of principle – whether the appellants’ supplies were subject to VAT at the standard rate – remained, and was potentially relevant to later periods in which the appellants had made similar supplies (*Align* [58]-[59]).

19. The FTT therefore directed that the appeals under section 83(1)(b) VATA should proceed to a hearing.

20. The decision of the FTT in *Align* is not binding upon us. It is of persuasive authority only. However, we have no reason to believe that it is wrong. And so, we propose to follow the principles in it.

21. As we have mentioned above, Mr Firth KC conceded that as a consequence of HMRC’s withdrawal of the decision and the assessments, there was no longer any appealable matter under section 83(1)(p) VATA. It followed that the appeals against the assessments must be struck out under rule 8(2)(a) FTT Rules because the Tribunal no longer had jurisdiction. Mr Firth KC was clearly right to make that concession. However, Mr Firth KC submitted that the Tribunal continued to have jurisdiction over the appeal under section 83(1)(c).

22. We reject Mr Firth KC’s submission.

23. The question for us is whether there remains in issue between the parties a decision of HMRC regarding “the amount of any input tax” which may be credited to OBT.

24. The decision which is the subject of the appeal under section 83(1)(c) is HMRC’s decision to reduce OBT’s input tax credit for the 10/21 period from £782,239 to £205,056. The basis of that decision was HMRC’s refusal, in the absence of a valid VAT invoice, to exercise its discretion under regulation 29(2) of the Value Added Tax Regulations 1995 to accept the alternative evidence provided by OBT that it incurred the input tax.

25. It was common ground between the parties that the Tribunal’s jurisdiction in such cases is supervisory. This is the case whether the challenge is to a decision by HMRC not to consider alternative evidence or to a decision by HMRC decision that the alternative evidence was not sufficient (see, for example, *FS Commercial Limited v HMRC* [2025] UKUT 13 (TCC) at [107] (“*FS Commercial*”). The exercise of discretion can only be challenged by the taxpayer on the ground that it is a decision that no reasonable decision-maker could have reached (*FS Commercial* [107] and [109]).

26. The appeal under section 83(1)(c) therefore involves an enquiry into the particular decision of the particular decision-maker, in this case, Officer Bamford. It is necessary to take into account the relevant facts and circumstances in which he made that decision including, for example, the information that was before him at the time. In our view, that is a very different question from that which arose in the section 83(1)(b) appeals that were before the FTT in *Align*. In that case, the FTT concluded that there was no real withdrawal of the decision that the appellants were making standard-rated supplies. Even if the purported withdrawal had some practical effect in relation to the periods under assessment, the question of principle remained. The question of “the VAT chargeable on the supply of... goods or services” (section 83(1)(b)) was still in issue. In contrast, in the present case, the enquiry is into the decision itself and the manner in which it was made. Once the decision is withdrawn, there is no remaining question of principle for the Tribunal to determine in relation to any “amount” of tax for the purposes of section 83(1)(c) VATA.

27. We should deal briefly with the arguments put to us by Mr Firth KC.

(1) As regards Mr Firth KC’s submissions in relation to section 83(2), in our view, that sub-section is simply an interpretative provision that is intended to assist in the application of the remaining provisions of Part V VATA. It does not affect our conclusion on the scope of section 83(1)(c).

(2) On the reading of section 85(1) VATA and the inferences to be drawn from it, in our view, that provision is intended to give effect to agreements between HMRC and taxpayers in settlement of appeals. It does not inform the treatment of a withdrawal of a decision to which an appeal relates.

28. For the reasons that we have set out above, once it is accepted that HMRC has withdrawn the decision, the Tribunal has no jurisdiction in relation to the proceedings relating to the appeal under section 83(1)(c). That appeal must also be struck out under rule 8(2)(a) FTT Rules.

29. In accordance with the FTT’s decision in *Align* (*Align* [52]), the Tribunal retains jurisdiction to deal with any consequential matters even where the substantive appeal has been struck out. It is for OBT to decide whether it wishes to make any such consequential applications.

#### **DISPOSITION**

30. We strike out these appeals.

**RIGHT TO APPLY FOR PERMISSION TO APPEAL**

31. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

**Release date: 16<sup>th</sup> OCTOBER 2025**