Neutral Citation: [2026] UKFTT 368 (TC)

Case Number: TC09812

FIRST-TIER TRIBUNAL
TAX CHAMBER

Taylor House, London

Appeal reference: TC/2023/09996

CONSTRUCTION INDUSTRY SCHEME ("CIS") – whether Appellant took reasonable care to comply with the CIS requirements – regulation 9(3)(a) The Income Tax (Construction Industry Scheme) Regulations 2005 – no – appeal dismissed

Heard on: 23 and 24 February 2026
Judgment date: 11 March 2026

Before

TRIBUNAL JUDGE MARK BALDWIN
HELEN MYERSCOUGH

Between

KALINGA HOLDINGS LIMITED

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Neill Staff of Raffingers LLP

For the Respondents: Calypso Blaj of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION

1. The Appellant ("Kalinga") appeals against HMRC's decision dated 24 March 2023 to refuse to make a direction under regulation 9(5) of The Income Tax (Construction Industry Scheme) Regulations 2005 (the "CIS Regulations") relieving Kalinga of liability to make payments to HMRC in respect of amounts under-deducted from payments to subcontractors within the Construction Industry Scheme ("CIS"). HMRC's case is that Kalinga failed to deduct a total of £383,337.32 from payments to subcontractors as it was required to do under the CIS regime.

THE LAW

2. By way of introduction, the CIS is a set of rules governing how payments to sub-contractors for construction work must be handled by contractors in the construction industry and certain other businesses. In broad terms, under the scheme, all payments made by contractors to sub-contractors must take account of the sub-contractor's tax status, as determined by HMRC. Depending on a sub-contractor's tax status, the CIS may require the contractor to make a deduction, which they then pay to HMRC, from that part of any payment to a sub-contractor that does not represent the cost of materials incurred by the sub-contractor. All contractors must register with HMRC for the CIS. Sub-contractors who do not wish to have deductions made from their payments at the higher rate of deduction also need to register. Effectively, the CIS operates as a pre-payment of a sub-contractor's tax liabilities, as CIS deductions suffered by a sub-contractor can be set against its PAYE and National Insurance Contributions liabilities, its own CIS liabilities (on payments it makes to its sub-contractors) and its own tax liabilities.

3. The primary legislation governing the CIS is to be found in Chapter 3 of Part 3 of the Finance Act 2004 ("FA 2004").

4. Section 61 FA 2004 contains the primary obligation on a contractor to deduct tax from payments to which the CIS applies and, in respect of each tax period, regulation 7 of the CIS Regulations requires a contractor to pay to HMRC all amounts they were liable to deduct from contract payments in that period within 17 days of the end of the period.

5. Section 57 FA 2004 contains the definition of "contractor". It provides:

> "(2) In this Chapter "construction contract" means a contract relating to construction operations (see section 74) which is not a contract of employment but where—
>
> (a) one party to the contract is a sub-contractor (see section 58); and
>
> (b) another party to the contract ("the contractor") either—
>
> (i) is a sub-contractor under another such contract relating to all or any of the construction operations, or
>
> (ii) is a person to whom section 59 applies."
>
> (3) In sections 60 and 61"the contractor" has the meaning given by this section.

6. Section 59 FA 2004 (so far as relevant) provides:

> "(1) This section applies to the following bodies or persons—
>
> (a) any person carrying on a business which includes construction operations;"

7. In certain circumstances HMRC may discharge the contractor's obligation to make payments to it under the CIS. Regulation 9(5) provides that a HMRC officer 'may' direct that a contractor is not liable to pay any shortfall between the amounts it should have deducted under CIS and the amounts deducted if one of two conditions is met. The two conditions are:

> "(3) Condition A is that the contractor satisfies an officer of Revenue and Customs—
>
> (a) that he took reasonable care to comply with section 61 of the Act and these Regulations, and
>
> (b) that—
>
> (i) the failure to deduct the excess was due to an error made in good faith, or
>
> (ii) he held a genuine belief that section 61 of the Act did not apply to the payment.
>
> (4) Condition B is that—
>
> (a) an officer of Revenue and Customs is satisfied that the person to whom the contractor made the contract payments to which section 61 of the Act applies either—
>
> (i) was not chargeable to income tax or corporation tax in respect of those payments, or
>
> (ii) has made a return of his income or profits in accordance with section 8 of TMA (personal return) or paragraph 3 of Schedule 18 to the Finance Act 1998 (company tax return), in which those payments were taken into account, and paid the income tax and Class 4 contributions due or corporation tax due in respect of such income or profits;
>
> and
>
> (b) the contractor requests that the Commissioners for Her Majesty's Revenue and Customs make a direction under paragraph (5)."

8. So far as HMRC's refusal to make a direction under regulation 9(5) is concerned, regulation 9 goes on to provide:

> "(6) If condition A is not met an officer of Revenue and Customs may refuse to make a direction under paragraph (5) by giving notice to the contractor ("the refusal notice") stating—
>
> (a) the grounds for the refusal, and
>
> (b) the date on which the refusal notice was issued.
>
> (7) A contractor may appeal against the refusal notice—
>
> (a) by notice to an officer of Revenue and Customs,
>
> (b) within 30 days of the refusal notice,
>
> (c) specifying the grounds of the appeal.
>
> (8) For the purpose of paragraph (7) the grounds of appeal are that—
>
> (a) that the contractor took reasonable care to comply with section 61 of the Act and these Regulations, and
>
> (b) that—

(i) the failure to deduct the excess was due to an error made in good faith, or

(ii) the contractor held a genuine belief that section 61 of the Act did not apply to the payment.

(9) If on an appeal under paragraph (7) that is notified to the tribunal it appears that the refusal notice should not have been issued the tribunal may direct that an officer of Revenue and Customs make a direction under paragraph (5) in an amount the tribunal determines is the excess for one or more tax periods falling within the relevant year."

9. There is no right of appeal against a refusal by HMRC to make a direction under regulation 9(5) in relation to condition B. A contractor's only right of appeal in that respect would be by way of judicial review; *R (Beech Developments Manchester) Ltd v HMRC*, [2024] EWCA Civ 486 at [53].

THE ISSUES BETWEEN THE PARTIES

10. Kalinga purchased a property ("the Property") called Sapphire House in Telford, Shropshire for approximately £3m. The Property was a large office building that was previously owned by the Ministry of Defence. The building had been empty for several years.

11. Planning permission was granted by Telford and Wrekin Council in two phases: on 28 April 2017 to convert some of the office space into 51 residential apartments and again on 10 August 2017 to convert the remaining office space into 80 residential apartments. Kalinga subsequently developed the Property into 131 residential flats.

12. Between the tax years 2018/19 to 2020/21, Kalinga made payments ("the Payments") totalling approximately £1.45m to three subcontractors (B&O Construction Ltd, D&L Build Ltd, and J&I Contractors Ltd). There is no suggestion that the Payments were not consideration for construction operations. Kalinga did not make any deductions from the Payments under the CIS and did not account to HMRC for any amounts under CIS in respect of the Payments. HMRC say that under-deducted tax amounts to £383,337.32.

13. 51 flats were sold in January 2020 for £3.5M to an associated company, Kalinga Management Ltd, and the remaining 80 flats were sold to another associated company, Kalinga Homes Ltd, in August 2020 for £5.5M.

14. Kalinga applied for a direction under regulation 9(5) based on Condition A and Condition B. HMRC refused both requests. For the reason explained at [9], we are not concerned with HMRC's refusal to make a direction based on Condition B.

15. One of Kalinga's grounds of appeal was that it was not a contractor within section 59(1)(a) FA 2004, on the basis that it was a property investment company and so its business did not "include" construction operations. Kalinga would only be a contractor within section 59 if it fell within section 59(1)(a). Accordingly, Kalinga asserted, the Payments were not within section 61 FA 2004 and it was right not to operate CIS in respect of them.

16. HMRC disputed that, relying on the judgment of Sir Francis Ferris in *Mundial Invest SA v Moore,* [2005] EWHC 1735 (Ch), where he held that section 59(1)(a) (as is) does not embrace persons whose construction operations, although carried on by way of business, are de minimis, but is otherwise not subject to any qualification.

17. During argument Mr Staff conceded that Kalinga's business included construction operations, that it was a contractor within section 59(1)(a) FA 2004 and accordingly the Payments were within the CIS.

18. So far as Condition A is concerned, HMRC accept that Kalinga (through its director and shadow director) held a genuine belief that section 61 FA 2004 did not apply to the Payments so that the requirement (b) in regulation 9(3) is met.

19. The sole remaining issue between the parties, therefore, is whether Kalinga "took reasonable care" to comply with its obligations under the CIS, so that requirement (a) in regulation 9(3) is met.

PROCEDURAL ISSUES

20. We have just mentioned that one of Kalinga's original grounds of appeal was that the Payments were not within CIS. Now that it accepts that it was a contractor within section 59(1)(a) FA 2004, this ground has fallen away. This is not a point which HMRC raised, but we did wonder as we wrote up this decision whether, on an appeal under regulation 9(7), we had jurisdiction to hear this ground, as opposed to the identified grounds in regulation 9(8).

21. Mr Neal Patel ("Neal") did not attend the hearing for health and family reasons which Mr Staff explained to us and which we accept and entirely understand. HMRC invited us to place less weight on his witness statement than if it had been tested in cross-examination. In principle, that is the correct approach. However, Mr Mukund Patel ("Mr Patel"), Neal's father, confirmed in cross-examination that he endorsed what his son had said in his witness statement. More importantly, both witness statements overlap enormously and there was nothing of moment in Neal's witness statement that Mr Patel did not address personally, so nothing turns on this point.

22. HMRC applied to the Tribunal, under paragraph 13 of the Tribunal's directions dated 20 February 2025 and rule 15 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, to exclude the witness statement of Mr Richard Clutterbuck dated 28 April 2025 which Kalinga had sought to admit. The ground for this application was that the witness statement comprised inadmissible legal opinion which ought properly to be addressed by way of legal submission. Having read Mr Clutterbuck's witness statement, we agreed with HMRC's submission and excluded it. Mr Clutterbuck sat with Mr Staff and assisted him in his presentation. From our vantage point, this enabled Mr Clutterbuck to make all the points he had sought to address in his witness statement.

HMRC'S GUIDANCE ON THE CIS

23. Kalinga says that it took reasonable care to comply with its obligations under the CIS because it read and followed HMRC's published guidance on the CIS, and it is to that that we turn now.

24. HMRC publish a document (which we will refer to by its number "CIS340") entitled "Construction Industry Scheme Guide for Contractors and Subcontractors". Looking at the version of CIS340 which was in issue at the time of the events we are concerned with, we see the following comments:

(1) Chapter 1 is an introduction to the CIS. Paragraph 1.4 says this about Contractors:

> **"Contractor**
>
> A contractor is a business or other concern that pays subcontractors for construction work.
>
> Contractors may be construction companies and building firms, but may also be government departments, local authorities and many other businesses that are normally known in the industry as 'clients'.

Some businesses or other concerns are counted as contractors if their average annual expenditure on construction operations over a period of three years is £1m or more.

Private householders are not counted as contractors so are not covered by the scheme."

(2) Chapter 2 expands on the terms used for the scheme. These paragraphs are relevant for us:

"2.4 A contractor is a business or other concern that pays subcontractors for construction work. Under the scheme, there are two groups of contractors:

• 'mainstream' contractors

• 'deemed' contractors

2.5 **'Mainstream' contractors**

'Mainstream' contractors include the following.

• Any businesses that include construction operations and pay others for work carried out under the scheme. There is more information on construction operations in paragraphs 2.41 to 2.45 and Appendix A.

• Any property developers or speculative builders, erecting and altering buildings in order to make a profit.

2.6 **'Deemed' contractors**

Under the scheme, some businesses, public bodies and other concerns outside the mainstream construction industry but who regularly carry out or commission construction work on their own premises or investment properties are deemed to be contractors.

2.7 These concerns are deemed to be contractors if their average annual expenditure on construction operations in the period of three years ending with their last accounting date exceeds £1m.

2.10 The following bodies or businesses are examples of those that are 'deemed' to be contractors if they spend an average of more than £1m a year on construction operations.

• Non-construction businesses such as large manufacturing concerns, departmental stores, breweries, banks, oil companies and property investment companies.

More information: For more information on deemed contractors, see Appendices A, B and C.

…

More information: If you are unsure whether you are a contractor under the scheme, phone the CIS Helpline on 0300 200 3210."

25. At that time HMRC's Manual (at CISR12080) read as follows:

"The Scheme: contractors: property developers and property investment businesses

Property developers

Property developers are included within the meaning of mainstream contractors because their business activity is the creation of new buildings, or the renovation or conversion of existing buildings, or other civil engineering works. The same is true of a speculative builder.

Property investment businesses

A 'property investment business' is not the same thing as a 'property developer'. A property investment business acquires and disposes of buildings for capital gain or uses the buildings for rental; it need not be involved in the construction, alteration or extension of buildings. Even so, if its property estate is substantial enough, its expenditure on construction operations may well cause it to fall within the meaning of a 'deemed contractor' (see CISR12050 (https://web.archive.org/web/20190724023207/https://www.gov.uk/hmrc-internalmanuals/construction-industry-scheme-reform/cisr12050)).

Where a business that is ordinarily a property investor undertakes some activities attributed to those of 'property development', they will not usually be considered a mainstream contractor during the period of that development. This is because the usual nature of the business is "property investment" and not "property development".

Where the property investment business enters into multiple or substantial contracts relating to construction operations for the purposes of development of one or more properties, you will need to decide if the nature of that business has now changed from "property investor" to "property developer", in which case they would now be considered to be mainstream contractors as the nature of their business has changed. Where, at a future date, they revert to property investment activities only, then their status as a deemed contractor should be applicable once again. If their expenditure is likely to remain below £1m annually, then deregistration from CIS may also be considered appropriate.

However, where it is clear that further property development is likely to be undertaken in the future, it may be more appropriate for the business to remain registered for CIS. Where property development appears to be a regular and substantial activity of any business purporting to be a property investment business, then they are likely to be a property developer and therefore a mainstream contractor within CIS.

Example

A property investment business acquires a number of properties which it intends to let, but before letting, minor refurbishment is required to bring the properties up to a suitable standard to be able to let them. For CIS purposes we would see this as the normal activities of a property investor, and where the average annual expenditure on such activities exceeds £1m then CIS applies.

The property investment business then acquires a large dilapidated hotel to add to its portfolio, and decides to convert the building into a series of flats which it will then individually let out. As a result, substantial development is required to the property to change the building to its new use. In respect of this particular development and contract we would regard the property investment business as having taken on the mantle of a mainstream contractor as its business activity is now that of construction operations."

26. At the time we are concerned with CIS340 did not signpost CISR12080.

27. CIS340 was revised in November 2018 and June 2021, but not in a way which is materially different for our purposes.

28. CIS340 was revised in June 2024 but this time there were material changes to the text we are concerned with.

> "2.2 **Contractor**
>
> Under the scheme, the term 'contractor' has a special meaning that is much wider than it normally has in the construction industry.
>
> A contractor is a business or other concern that pays subcontractors for construction work. Under the scheme, there are 2 groups of contractors:
>
> - mainstream contractors
> - deemed contractors
>
> **Mainstream contractors**
> Mainstream contractors include the following:
> - any businesses that include construction operations and pay others for work carried out under the scheme — there is more information on construction operations in paragraphs 2.18 to 2.20 and Appendix A
> - any property developers or speculative builders, whose business activity is the creation of new buildings, or the renovation or conversion of existing buildings
>
> **Deemed contractors**
>
> …
>
> The following bodies or businesses are examples of those that are 'deemed' to be contractors if they spend more than £3 million in the previous 12 month period on construction operations:
>
> - non-construction businesses such as large manufacturing concerns, departmental stores, breweries, banks, oil companies and property investment companies
>
> …
>
> **Consider if the business is a property investor or property developer**
> A property investment business acquires and disposes of buildings for capital gain or uses the buildings for rental.
> A property investment business can change from 'property investor' to 'property developer' where the property investment business undertakes multiple or substantial contracts relating to construction operations for the purposes of development of one or more properties.
> If its activities include the construction of an entirely new property or a redevelopment of a property, leading to change in its nature of use, then that part of its activities will amount to property development, and it will be immediately within the scope of CIS as a mainstream contractor.
> For more information and examples read the [hyperlink to CISR12080]"

THE WITNESS EVIDENCE

29. We heard from two witnesses, Mr Patel for Kalinga and Officer Nichola Mitton ("Officer Mitton") for HMRC. We found them both to be straightforward witnesses and have no difficulty in accepting their evidence.

Mr Patel

30. Mr Patel is the father of Neal, who is the sole director of Kalinga. Mr Patel told us that he assists his son with the running and management of Kalinga. He said that he had read Neal's witness statement and what Neal says is completely in line with his understanding and recollection of events. In fact, as we have already noted, Neal's witness statement is very similar to Mr Patel's and neither adds much to the other.

31. Mr Patel said that Kalinga was formed in February 2017 to purchase and develop the Property, which was purchased with the intention of developing the office building into flats to sell for a profit. The project to develop the Property was Kalinga's first and only project. However, very soon after the purchase was made, they realised that the nature of the building and its location made it highly unlikely that any of the developed flats could be sold. So, they decided that rather than develop the Property to sell the flats, they would retain the flats for investment and rent them out. Neal added that this decision was made quickly as the planning permission requirement needed development of at least 80 flats within a very tight 11-month period.

32. Mr Patel said that he was aware that Neal spoke to their accountant, Jack Silver ("Mr Silver") of Precision Tax, as soon as Kalinga had been set up. He is also aware that Mr Silver told Neal that he should check to see if Kalinga should apply to register for CIS. Mr Silver is an experienced accountant whom Mr Patel has used for his personal and company tax affairs for many years. However, he never professes to be an expert in something that he is not completely sure about. Mr Patel understands that Mr Silver said that he was not an expert in CIS but understood the CIS rules that property investment companies need not register. He did however recommend that both Mr Patel and Neal read the guidance provided by HMRC in the form of CIS340. Neal added that Mr Silver had a broad understanding that property investment companies need not register, but to be sure he recommended that he should read the guidance provided by HMRC in the form of the CIS340.

33. Mr Patel says that he reviewed CIS340 in early/mid 2018 with Neal and it was clear to them that a company that retains its developed property is called a property investment company. It is not a property development company, and it does not have to register for CIS for this reason. Ms Blaj pointed out to Mr Patel that nowhere in CIS340 is there an explanation of what a property investment company is. Mr Patel says that, if you spoke to an accountant, they would tell you that a property investment company is one which keeps its assets. The flats have not been sold in the open market. They have all been retained and are all rented out. He says that the instructions in CIS340 were completely clear to Neal and himself. They did not seek professional advice, despite Mr Silver's warning that he (despite being an experienced accountant Mr Patel trusts) was not comfortable advising on CIS, as the guidance was clear to them.

34. Mr Patel accepted that the HMRC Manual was publicly and easily available and he could have looked at it or other material, but CIS340 was clear to him. He agrees that the example of an investor refurbishing a property in CISR12080 is close to Kalinga's position and might have suggested that Kalinga was a contractor, but he felt no need to look at anything beyond CIS340.

35. Ms Blaj took Mr Patel to a note HMRC made of a conversation with Mr Silver on 12 July 2021 where Mr Silver told Officer Wallis (who was looking into an input tax claim for £473k on the acquisition of the Property) that there were around 130 flats in the converted office building and "The plan was always to sell these flats. No flats are rented out. The intention was to put on market and sell the flats piece by piece, there was even interest for a buyer to buy the whole building as one however this failed." As a result, there was a

restructuring, and the flats were sold to two subsidiaries, and these transactions were zero rated. Mr Patel said he had not seen this before and said the original plan changed from sale to retention for letting.

36. We asked Mr Patel about the restructuring. He said he and Neal were advised to do the restructuring. He cannot remember why; it may have been to do with VAT, but he cannot be sure. The final structure (influenced, he thought, by banking/borrowing issues) was that Kalinga retained the freehold of the Property but granted long (he thinks 99 or 125 year) leases at premiums to the subsidiaries.

37. Ms Blaj took Mr Patel to an email from Mr Staff to HMRC dated 13 July 2022 (written in the context of a separate VAT issue involving Kalinga) in which he said (when discussing whether it was reasonable for a contractor to invoice the project as a whole) that "it is important for the reviewing officer to fully appreciate the size of the conversion project and the nature of the materials being invoiced. … With such a large construction project it is entirely reasonable to invoice the project as a whole rather than individual units or areas." She also took Mr Patel to various representative invoices for construction work, all of which added up to £1.45m over three years. She asked Mr Patel whether, given this level of spend, Kalinga should have had a system of checks for the CIS. Mr Patel replied that his understanding was that there was no need for Kalinga to register for the CIS if it spent under £1m, and so there was no need to employ anyone to check anything.

38. Ms Blaj raised with Mr Patel the position of a company called Sedgemoor Campus Limited ("Sedgemoor"). Sedgemoor registered for CIS in 2018 before Neal became a director of Sedgemoor in April 2019. Sedgemoor was converting offices to residential flats with the intention that the flats would be sold to third parties on the open market. Mr Patel said this was Kalinga's original plan, but what it ended up doing was completely different to what Sedgemoor did. Mr Patel said that there was no reason to think, once Neal took over as a director of Sedgemoor and knew it was CIS registered, that they should revisit their analysis of Kalinga's position.

Officer Mitton

39. Officer Mitton has worked for HMRC for 26 years. She has worked as a Technical Officer for the Construction Industry Functional Lead Team since September 2021. She was previously a compliance caseworker dealing with PAYE since 1999 and the CIS since the start of the current scheme in 2007. She is the HMRC Officer who refused Kalinga's claims under regulation 9(3) (Condition A) and regulation 9(4) (Condition B).

40. In correspondence between HMRC and Mr Staff before Officer Mitton made her decision, having confirmed that the guidance the director of Kalinga read was CIS340, Mr Staff made these comments (among others):

> "The guidance specifically aimed at contractors does not make any meaningful reference to the CIS position of the differences between property developing and investing and it is not reasonable for HMRC to assume or expect contractors to interpret written guidance which is not particularly clear, in the same way that HMRC does."
>
> "The facts that the director applied to this case were that the property was bought for investment purposes and to remain within the group and it is this reason why the director interpreted the HMRC guidance that the works undertaken at Sapphire House was not a development. HMRC's guidance, although not being very clear, does talk about CIS not applying to works being carried out on investment properties and this formed the basis of the director's decision not to operate CIS. You have asked if the director contacted HMRC

> but he had read the guidance and believed he had fully understood that CIS did not apply because the company had acquired and retained a property investment asset. As is the case with anyone who believes they fully understand a subject, there is no driving force for them to reaffirm or check facts that they believe to be correct and true, because they believe those facts to be correct and true. The above facts and explanations also explain why he interpreted the guidance the way that he did and led him to the conclusion that CIS did not apply."

41. She considered that Kalinga would be a mainstream contractor under section 59(1)(a) FA 2004 and therefore CIS should have been operated, and she was not satisfied that Kalinga had taken reasonable care to comply with the provisions of the CIS.

42. Her reasons for reaching her conclusion on regulation 9(3) were:

(1) Mr Staff stated that Mr Patel believed he had fully understood the guidance he had consulted and therefore there was no need for him to confirm or check the position. This was despite the guidance (according to Mr Staff) not making any meaningful reference to the CIS position of the differences between property development and investment and it not being particularly clear.

(2) If, as stated, the view was taken that the guidance was not particularly clear on this, it would in her view have been reasonable to expect that further professional advice be sought to clarify the situation.

(3) There was no mention of this matter ever being discussed with Kalinga's agent for VAT affairs, Mr Silver.

(4) Mr Staff stated that the Property was bought for investment purposes and to remain in the group. However, HMRC have since been told that the original intention was to sell the flats, but that this changed due to advice from estate agents and surveyors. The statements of intention in relation to the project therefore seemed inconsistent to her.

43. Officer Mitton drew attention to the webpage from which CIS340 could be accessed at the time. It signposted related content, including links to the CIS Manual and CIS forms and guidance.

44. Mr Staff asked Officer Mitton what she thought amounted to taking reasonable care. She said that it would vary from case to case. Here, Mr Silver had said that he was not confident in advising on the CIS and so she would have expected Kalinga to seek alternative professional advice or speak to HMRC.

45. Officer Mitton explained that the purpose of HMRC guidance is to help people with their tax affairs. She would expect people to read the guidance in full, not just the parts that obviously seem relevant. If not, they should speak to an adviser or (here) the CIS Helpline. Mr Patel was spending a lot of money, so she would have expected him to take these further steps even if he thought he understood CIS340. There are points in CIS340 where readers are pointed to other places if they need help, but CIS340 does not say that readers should always go elsewhere too.

46. Her understanding was that this was Kalinga's first and only project. It therefore could not be said that the business was ordinarily a property investor as no previous investments had been made or were held at that time. As this was Kalinga's first project, it would in her view have been reasonable to expect that professional advice be sought to ensure that the company fulfilled its tax obligations, especially given the scale of works to be completed. Instead, Mr Patel relied on his own interpretation of the limited guidance he had read, despite not being an expert in these matters.

47. Officer Mitton accepts that Mr Patel understood the parts of CIS340 he read (those relevant to a property investor), but she does not accept that he read the totality of the guidance and viewed it objectively.

48. On the 2024 amendments to CIS340, Officer Mitton explained that HMRC guidance is rewritten and reviewed from time to time as a matter of course and for a variety of reasons. A change does not mean that the previous guidance was deficient.

THE PARTIES' SUBMISSIONS

49. At the end of the first day of the hearing, before the parties made their submissions, we raised with them the question whether the nature of this project had a particular impact on the question whether Kalinga was a property investment or development company. As we have already seen, when the Property was purchased, it was an unused office building. The Property was to be converted from commercial to residential use. VAT in excess of £450k had been incurred on the acquisition of the Property and VAT would be incurred on the cost of conversion, albeit only at a 5% rate. To recover this VAT, it would be necessary for Kalinga to grant a major interest in the land, to generate a zero-rated supply to which this VAT could be attributed. We can see echoes of this in the discussion between Mr Silver and Officer Wallis. A major interest in land for VAT purposes is a freehold interest or a lease for a term of more than 21 years.

50. To recover its input tax as it incurred it, it would be necessary for Kalinga to intend to grant such a major interest at some point after it had acquired "person converting" status.

51. Any leasehold interest would not necessarily need to be a lease at a premium, although that was what Kalinga granted; a pass-through lease, where the person to whom Kalinga granted the lease paid by way of rent on its lease amounts equal to the rents that it received from tenants, would be sufficient. Nevertheless, Kalinga would need to do something, and our question was whether that imperative had any implications for the question whether Kalinga was an investment company (for the purposes of reading CIS340) or a company whose business involved construction operations (for the purposes of reading section 59(1)(a), at least as originally interpreted by Kalinga).

Kalinga

52. In his opening submissions, Mr Staff said that, if Kalinga granted long leases to subsidiaries, it would not be an investment company. It would be a holding company of an investment group. He observed that there is nothing in the CIS legislation or guidance that talks about groups.

53. If Kalinga is not an investment company, then issues to be considered would include when did it cease to be an investment company. We looked at the company's accounts, and they show the Property as a fixed asset, with its value in increasing year by year, presumably to reflect the money being spent on it. The company was incorporated in February 2017 as a trader, but certainly by 31 January 2018 it had decided to account for the Property as an investment asset, because of its decision late in 2017 to develop the flats for rental.

54. This was the point at which Mr Patel and Neal read the CIS guidance and concluded that Kalinga became an investment company when it decided to keep the flats and stayed as such until it decided to hive them down.

55. Mr Staff accepts that HMRC has not always been provided with a consistent picture by all of Kalinga's advisers, himself included, but says that these were mistakes made in good faith. When Mr Silver was talking to Officer Wallis, he was talking about VAT and HMRC's notes of the discussion were never shared with and checked by Mr Silver.

56. On the question of reasonable care, Mr Staff points to the fact that CIS340 was updated in 2024. The guidance which discusses the difference between property and investment and property developer companies for CIS purposes is now plainly visible, but this was not the case where Mr Patel looked at the guidance. Mr Staff submits that HMRC would not have felt the need to revise the guidance in this way if they thought the original guidance was perfectly clear.

57. Kalinga is the holding company of an investment group. On reading the CIS legislation and guidance its position is not addressed. Mr. Patel and Neal thought that Kalinga was an investment company and that is how they interpreted the guidance. They now realise that Kalinga is not an investment company, but the passages they looked at (2.6, 2.10 and 2.11 in CIS340) would lead them to believe that a property investment company, which is what they thought Kalinga was at the time, was outside the scope of CIS.

58. It was not reasonable to expect them to read the Manual, because this was internal guidance. It is unreasonable for HMRC to say that someone should look at their internal guidance before forming a view. Nor was there any need for Mr Patel to seek any professional advice, because he believed that he had formed the correct view based on reading CIS340, which makes it clear that a property investment company is not within CIS. He is an experienced and intelligent businessman, perfectly capable of looking at contracts and other documents, including HMRC guidance, and coming to a conclusion. Although it is now conceded that Kalinga is not an investment company, Mr Patel could not be expected to know that at the time he read CIS340.

59. His reading was not selective; he read the parts of CIS340 that mattered. It is wrong to align Kalinga with Sedgemore, because they were very different projects. Sedgemore was already CIS registered before Neal became a director and Mr. Silver carried on filing reports with HMRC, but it is reading too much into Neal becoming a director of Sedgemore, with its very different business and existing registration, to say that he should have thought again about Kalinga's CIS status.

60. Although Kalinga now accepts that it is within section 59(1)(a), this is with the benefit of hindsight and that is not something which Mr Patel or Neal would know at the time. The question is, what was it reasonable for them to think at the time? Was it reasonable for them to think that the company was an investment company outside the CIS because it was not going to sell the flats in the open market? Was it reasonable for them to think the Kalinga was not going to cease to be an investment company just because it was selling the flats within the group?

61. In terms of authority on "reasonable care" Mr Staff took us to the following passages:

> "The standard required by Regulation 9 is that the business must take reasonable care in its compliance with the CIS. It does not require that mistakes must never be made. We consider that the standard of "reasonable care" is one that must be appropriate and proportionate to the particular contractor's business. The compliance systems to be expected of a substantial multi-national contractor with a large and sophisticated accounting department are very different from the systems to be adopted by a small business. In the case of PDF, we are satisfied that it took reasonable care to meet its obligations under the CIS. The fact that this is the only error that PDF has ever made under the CIS in ten years is the practical evidence of this."
>
> *PDF Electrical Ltd v HMRC*, [2012] UKFTT 708 (TC) at [18]
>
> "Again quoting Judge Berner in *Barrett* at [161] "The test is one of reasonableness. No higher (or lower) standard should be applied. The mere fact that something that could have been done has not been done does not of

itself necessarily mean that an individual's conduct in failing to act in a particular way is to be regarded as unreasonable. It is a question of degree having regard to all the circumstances, including the particular circumstances of the individual taxpayer. There can be no universal rule. What might be considered an unreasonable failure on the part of one taxpayer in one set of circumstances might be regarded as not unreasonable in the case of another whose circumstances are different.""

Brian Mabe v HMRC, [2016] UKFTT 340 (TC) at [33] quoting from *Barrett v HMRC*, [2015] UKFTT 329 (TC)

"Following the Tribunal's decision in *PDF*, the Tribunal considered that the standard required by Regulation 9 is that the business must take reasonable care in its compliance with CIS. This does not require that mistakes must never be made. Consequently, the Tribunal consider that the standard of "reasonable care" is one that must be appropriate and proportionate to the particular contractor's business."

J&M Interiors (Scotland) Ltd v HMRC, [2014] UKFTT 183, at [59]-[60]

62. He also took us to two passages dealing with carelessness and reasonable excuse. In *HMRC v Hicks* [2020] UKUT 12 (TCC), the Upper Tribunal held at [120] that:

"Whether acts or omissions are careless involves a factual assessment having regard to all the relevant circumstances of the case. There are many decided cases as to what amounts to carelessness in relation to the completion of a self-assessment tax return. The cases indicate that the conduct of the individual taxpayer is to be assessed by reference to a prudent and reasonable taxpayer in his position: see, for example, *Atherton v HMRC* [2019] STC 575 (Fancourt J and Judge Scott) at [37]."

63. In *Perrin v HMRC* [2018] UKUT 156 (TCC) the Upper Tribunal considered the test for a "reasonable excuse", and held at [81(3)] that the Tribunal had first to find the facts, and then decide:

"…whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In doing so, it should take into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times. It might assist the FTT, in this context, to ask itself the question "was what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?"

64. In *Hextall v HMRC* [2023] FTT 00390 (TC) at [74] the Tribunal (Judge Sinfield and Mr Howard) held at [74] that there was no "meaningful distinction" between the two criteria of "reasonable care" and "reasonable excuse".

65. Finally, he took us to *Harbron Recruit Ltd v HMRC* (TC/2022/00215) where the appellant failed to make CIS deductions from payments made to agents because it misunderstood the interaction of the CIS with some new provisions which deemed workers to be employed by agencies if they were subject to "supervision, direction or control" by the agency. Harbron understood that, because of these changes, it did not need to apply CIS to the payments made to the agencies, because the workers were all being paid net of tax under PAYE. It was wrong, but the question was whether it had taken "reasonable care" for the purposes of regulation 9. Judge Redston held that it had. She said:

"101. I have no hesitation in agreeing with Mr Harbron and Mr Clutterbuck that HRL, acting through Mr Harbron, acted with the level of care which the

reasonable person in his position would have showed. That is for the following reasons:

(1) The interaction of the two sets of provisions was technically complex.

(2) Mr Harbron recognised that this was the case, and realised he was out of his depth.

(3) He acted reasonably when he instructed CISTAL, a subsidiary of a highly reputable large firm and a specialist in CIS and employment taxes.

(4) He also acted reasonably in relying on Mr Clutterbuck, a former HMRC Senior Manager with over thirty years experience in CIS and employment law who was familiar with the law and guidance on CIS and the agency rules.

(5) HRL asked for and received professional advice about both CIS and the agency rules.

(6) Mr Harbron also ensured that the staff within HRL were professionally qualified and had the requisite skills, and it was reasonable to rely on them as well as on CISTAL.

102. This case is a clear example of a situation where, despite Mr Harbron doing his best to ensure that the correct steps were taken, a mistake was nevertheless made. However, a mistake does not prevent Condition A being met. As HMRC themselves say in their Compliance Manual at CH1140:

> "People do make mistakes. We do not expect perfection. We are simply seeking to establish whether the person has taken the care and attention that could be expected from a reasonable person taking reasonable care in similar circumstances, taking into account the ability and circumstances of the person in question at the time the irregularity was submitted to HMRC.""

HMRC

66. HMRC say that Kalinga failed to take reasonable care to comply with the CIS because a reasonable person in the shoes of its director would have read the relevant publicly available HMRC guidance and checked the position with a competent adviser particularly in light of (i) Mr Silver's recommendation, (ii) the size of the payments made, and (iii) the fact that another company of which Neal was director (Sedgemoor) had been making CIS deductions since January 2018.

67. A reasonable person in the director's position would have sought professional advice as to whether CIS applied. Mr Silver, himself an "experienced accountant" as described by Mr Patel, was not comfortable enough to advise Neal whether CIS applied and recommended that he check the position. Notwithstanding this recommendation from a tax professional, Neal chose not to seek specialist advice and instead relied on his own assessment of some sentences in CIS340 without cross-referring to any other guidance. HMRC say that is not the behaviour of a reasonable taxpayer particularly in circumstances where the payments were significant.

68. Mr Patel does not identify which part of the guidance he relied on. In the version of CIS340 that was published at the start of the relevant period, the only part that he could conceivably have been referring to was paragraphs 2.6 and 2.10 (see above). Nowhere here, or elsewhere in CIS340, does it say that retention of developed property means a company is classed as a property investment company so that CIS registration is not needed. Nor does CIS340 define what is meant by an investment company or properties. However, the HMRC Manual at CISR12080 was also available at the time and is devoted to the distinction between property developers and property investment businesses.

69. Numerous statements are made by Kalinga's advisers (Mr Staff and Mr Silver) about the plans for the Property. They cast doubt on whether Kalinga ever intended to hold the Property long-term, and certainly on how confidently Neal and Mr Patel could hold that view. Looking at comments Mr Silver made, Ms Blaj took us to:

(1) In an email dated 16 July 2017 to HMRC concerning Kalinga's VAT affairs, Mr Silver stated: "My Clients bought an office block with planning permission to convert to residential, with the intention to sell off individual flats after the development completes. […] The company does not hold any stock other than the actual Property in development."

(2) In an email dated 4 November 2018 to Cardiff VAT TRUCE (Transaction Risking Upstreaming in the Connect Environment), Mr Silver stated: "The business is carrying out a property development."

(3) In notes of a telephone conversation dated 12 July 2021, Mr Silver is recorded as saying: "There are approximately 130 flats that have been converted and this has been completed. The plan was always to sell these flats. No flats are rented out. The intension [sic] was to put on market and sell the flats piece by piece, there was even interest for a buyer to buy the whole building as one however this failed."

(4) When asked what was being done with the flats following the sale from Kalinga to associated business, for example whether they would be rented out or sold again, Mr Silver wrote on 2 September 2021 that: "Those are being let short term and at the same time being marketed for sale too as bulk sale."

70. HMRC submit that a reasonable taxpayer in Neal's position would have read beyond the sentences above in the CIS340 guidance and found the other easily and publicly available guidance, such as CISR12080, that provided a more detailed answer to Kalinga's position. There is no evidence that Neal or Mr Patel did look beyond CIS340, or even to the rest of CIS340, which was clear that "construction" is a broad term covering a wide range of works (see e.g. paragraphs 1.2, 2.42-2.43, A.13). Relying on his own analysis that CIS did not apply to the payments in question was a very low level of diligence (*Tayfield Homes Ltd v HMRC* [2016] UKFTT 112 (TC) ("*Tayfield*") at [21]) and it does not matter that Neal's belief may have been genuinely held (*Doocey North East Ltd v HMRC* [2014] UKFTT 863 (TC) at [26]).

DISCUSSION

71. Kalinga did not operate the CIS in relation to the Payments. As a result of its acceptance that it was a contractor within section 59(1)(a) FA 2004, that was a mistake. However, Kalinga says that it took reasonable care to comply with the CIS and held a genuine belief that the CIS. did not apply to the Payments. HMRC accept the Kalinga held a genuine belief that the CIS did not apply to the Payments. However, HMRC say that Kalinga failed to take reasonable care to comply with section 61 and the CIS Regulations.

72. Mr Patel says that he and Neal read CIS340, learned from it that property investment companies were outside the CIS and so concluded that the Payments were not within the CIS. Two questions advise in the light of that assertion. The first is whether the conclusion that Kalinga was a property investment company (as they understood that term) was one reached after reasonable care. The second is whether they also failed to take reasonable care when they confined their research to CIS340 and as a result failed to realise that "property investment company" had a particular meaning when used in CIS340.

73. Mr Patel said that, although property investment company is not defined or further explained in CIS340, everyone knows what it means. His evidence was that, if you asked an

accountant, they would tell you that a property investment company is one which holds onto its property assets in the long-term.

74. Although we should not judge matters with the benefit of hindsight, we can see that Kalinga did not retain the flats for very long at all. Looked at with the benefit of hindsight, it was not a property investment company in the sense that Mr Patel understood that term. More importantly for us, there is no evidence of Mr Patel or Neal doing anything to check whether Kalinga would be a property investment company in the way they understood that term.

75. We have seen that Kalinga's need to recover over £0.5m of VAT meant that it would need to grant a major interest in the Property. It may be, if it granted a pass-through rental lease, that doing so would not involve an effective disposal of the flats, and Kalinga's VAT planning would still mean that it was a property investment company as Mr Patel/Neal understood that term. That is beside the point. The important point for us is that Mr Patel and Neal do not seem to have thought about, or sought any advice about, Kalinga's wider tax position and the effect that might have on its ability to retain the Property long-term.

76. We have also seen that, when it came to restructuring the ownership of the Property, Kalinga granted two long leases, each of a part of the Property, to associated companies for a premium. That is more sophisticated than would be required just to secure Kalinga's VAT position, which could have been achieved by granting a major interest in the Property to a single company. We do not know when it was decided that this should be done or precisely why.

77. Mr Patel intimated that the structure finally adopted might have something to do with banking. We can see how creating two separate property assets held in separate companies might be helpful, as it would enable each company to take out its own entirely separate debt finance using its own leasehold interest in part of the Property as security. Clearly, those leases could not be "pass through" leases (as granting leases on such terms would leave all the value in Kalinga and achieve nothing) and would need to be granted for market value consideration, so that any debt provider would feel confident that its borrower had a robust asset to pledge by way of security. This is what Kalinga ended up doing, and the grant of the two leases to the subsidiaries effectively disposed of Kalinga's interest in the Property. It did not retain the Property/flats as a long-term investment at all.

78. What Kalinga ended up doing is not (of itself) particularly important, but what is important is that there is no evidence that Mr Patel or Neal gave any thought at all to how the Property was going to be held and financed in the long-term, and the implications for Kalinga's retention (or not) of the Property of what might need to be done, when they concluded the Kalinga was a property investment company in the sense they understood that term.

79. Finally, at the time that all this expenditure was being incurred and well beyond it, Mr Silver was telling HMRC that Kalinga was a property developer and that the Property would be disposed of. Mr Silver did not give evidence before us, so we do not know why he thought something different from Mr Patel and Neal, but what this does tell us is that Kalinga's VAT advisor was very well aware of the need for Kalinga to have a current intention of granting a major interest in the Property and that he thought that this would take place by way of an effective disposal of the flats. Clearly, and rather surprisingly, Mr Patel and Neal seem to have reached their conclusions about how Kalinga was going to deal with Property and that it was an investment company without speaking to their principal tax adviser.

80. We consider that it was careless of Mr Patel and Neal not to think about the effect of any of these matters on Kalinga's ability to do what they understood it needed to do to be treated as a property investment company, i.e. to retain the Property long-term. Just looking at the

narrow conclusion Kalinga reached, that it was a property investment company as Mr Patel and Neal understood that term, that was not a decision reached after taking reasonable care.

81. Next, there was no evidence of Mr Patel or Neal asking anyone whether a property investment company could only be a contractor if its construction spend exceeded the threshold.

82. Looking at the wording of CIS340 at the relevant time, we can see why someone might think that a property investment company would only be a contractor if its expenditure on construction operations exceeded a given threshold (which was not the case here). This is because CIS340 tells its readers that there are two types of "contractor" ("mainstream" and "deemed" contractors). As far as "deemed" contractors are concerned, it says that "some businesses, public bodies and other concerns outside the mainstream construction industry but who regularly carry out or commission construction work on their own premises or investment properties are deemed to be contractors … if their average annual expenditure on construction operations in the period of three years ending with their last accounting date exceeds £1m" . It then gives some examples of businesses that are "deemed" to be contractors if their construction spend exceeds this threshold. This list includes "Non-construction businesses such as … property investment companies".

83. However, CIS340 also gives as examples of "mainstream" contractors "Any businesses that include construction operations and pay others for work carried out under the scheme" and "Any property developers or speculative builders, erecting and altering buildings in order to make a profit". The other two examples are "gang-leaders" and foreign businesses carrying out construction operations in the UK. The guidance does not elaborate on what is meant by the first example, but it is clearly a wide category that encompasses more than just people carrying on a property development trade, as that is a separate example. It seems to us that a property investment company which carries out a substantial project to construct, convert or renovate a building is a very good example of a business which includes construction operations. Real estate is of the essence of that business, and the construction operations are key to it, because without those operations there would be no (or at least not the intended) real estate investment asset.

84. The overall discussion of contractors starts with a warning that "Under the scheme, the term 'contractor' has a special meaning that is much wider than it normally has in the construction industry". CIS340 does not say in terms that property investment companies cannot be "mainstream" contractors, only that they will be "deemed" contractors if their construction spend goes over the threshold.

85. CIS340 was clearly not drafted as clearly as it might have been (or as clearly as it is now). We readily acknowledge that a reader might think that a property investment company would only be a contractor if its construction spend exceeded the threshold, but equally a thoughtful reader of the explanation of "mainstream" contractor might conclude that there is some overlap here and that a property investment company could (at least in certain circumstances) be a "mainstream" contractor. Even if a thoughtful reader might not work out exactly what HMRC thought the position to be, they should have been alerted by this ambiguity to the fact that there was more to the issue than just asking whether a company was an investor or a trader.

86. Did Mr Patel and Neal act with reasonable care when they "self-advised", based on their reading of CIS340, that a property investment company could not be a "mainstream" contractor?

87. The cases Mr Staff referred us to make it clear that reasonable care for these purposes is something of a movable feast. What amounts to reasonable care depends on the nature and sophistication of the taxpayer and on the importance of the decision or step being taken.

88. Kalinga was a new company set up for this project. It had no other assets or activities. It purchased the Property and entered a conversion programme which involved spending nearly £1.5m on construction work. This project and these payments were, therefore, significant in absolute (even for a very large company, we do not accept that expenditure of £1.5m is not a material expense to be taken seriously) and relative (it related to Kalinga's sole activity) terms. The decision was also a seminal one. A decision in principle whether a company is a contractor within the CIS has knock-on implications for all payments for construction work that company makes. Accordingly, it is a decision of a very different order to individual compliance actions within the CIS. For these reasons, it is a decision to be approached carefully and thoughtfully.

89. In addition to these general points about the significance of this decision, Neal had been told by Mr Silver, an experienced accountant whom Mr Patel respected, that advising on the CIS was beyond his competence. Mr. Patel says that Mr Silver pointed Neal at CIS340. We find that a slightly surprising thing for Mr Silver to have done. He was perfectly capable of getting a copy of CIS340 and reading it for himself; indeed, we assume he had read it for himself to be able to point Neal at it in the first place. If he doubted his ability to give reliable advice on the CIS, despite having access to CIS340, it is hard to see how he could think that pointing a layman at CIS340 and telling him to get on with things on his own was a sensible thing to do. No one has suggested that Neal and Mr Patel are not telling the truth when they say that Mr Silver merely pointed Neal at CIS340, and therefore we accept that is what he did. However, that was a patently unreasonable course of action for him to suggest and for Mr. Patel and Neal to adopt. Mr Silver had access to CIS340, but he still thought (despite all his experience and general tax expertise) that he could not give competent, reliable advice on the CIS. Against that background, it was wholly unreasonable of Mr Patel and Neal to think that they could self-advise with no more than a copy of CIS340.

90. In *Tayfield*, the taxpayer did even less than Kalinga did here. There the directors decided that the CIS did not apply based on their own untested belief as to how it worked. What we have here is Mr Patel and Neal reading CIS340 and concluding for themselves, based on what they read, that Kalinga was outside the CIS. Whether it was or not turned on whether Kalinga was a property investment company and whether a property investment company could never be a "mainstream" contractor. Mr Patel took no advice about this, because he thought that he knew the answer to the question whether Kalinga was a property investment company and that this was the only question he needed to ask, just as the directors in *Tayfield* thought they knew how the CIS worked. This view, of course, was wrong. HMRC had a very different, more nuanced view of the position (that, whilst a property investment company carrying out modest works would be a property investment company for CIS340 purposes, a property investment company carrying out a substantial construction project would be a property developer and not a property investment company), which was explained in CISR12080, although not at the time in CIS340.

91. If Mr Patel had sought advice from a competent professional, he would have been told that property investment company in CIS340 had a different, special meaning (which did not include a property investment company carrying out works on the scale Kalinga was) and CIS340 was not (on this point at least) to be taken at face value. Given the ambiguity in the wording of CIS340, the value and importance of this project and Mr Silver's warning, Kalinga did not take reasonable care when it failed to take professional advice.

92. Through the agency of Mr Patel and Neal, Kalinga concluded that it was not a "mainstream" contractor based on their conclusions that a property investment company was one which retained its property assets long-term, and that this is what Kalinga would be doing. Those conclusions were not reached after taking reasonable care. There is no evidence of any thought being given (or advice sought) about what property investment company meant in

CIS340 or about the likelihood of Kalinga meeting the required criteria for a property investment company as they (mistakenly) took them to be.

93. That conclusion is sufficient to dispose of this appeal. However, we should go on to mention a much wider point made by HMRC, which is that simply reading and following their guidance in CIS340 would not of itself amount to taking reasonable care. HMRC say that, although individual pieces of guidance are produced to help taxpayers, taxpayers should always "read around the subject". As Officer Mitton pointed out, even where particular pieces of guidance do not contain hyperlinks or pointers to other materials, the webpage from which guidance is accessed will often have links to the relevant Manual and other forms and guidance. At the very least, a taxpayer who is going to self-advise should look at all these materials. They may overlap, but (as here) different issues may be covered in different sources, so a complete picture may only be obtained by looking at all the materials. In addition, HMRC say, if a taxpayer is in any doubt (and possibly in all cases where an important, high value project is concerned), they should always seek appropriate professional advice.

94. This submission raises some very interesting (and with that difficult and no doubt controversial) questions. Given our conclusion (that, just looking at what Kalinga did, without considering what else it might have done, it did not take reasonable care), we have decided that it would be as unwise as it is unnecessary for us to consider the broader questions raised by this submission, which should be left for a case where it would make a difference.

DISPOSITION

95. For the reasons discussed above, we have concluded that Kalinga did not take reasonable care to comply with section 61 FA 2004 and the CIS Regulations and that HMRC were right to refuse to make a direction under regulation 9(5) of the CIS Regulations.

96. This appeal is dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

97. 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: 11TH MARCH 2026