HMRC - VATDSAG07350 - Appeals Against A Notice Of Direction

The First Tier Tribunal will apply the standard Wednesbury reasonableness tests to the decision to issue the Notice of Direction. If, as part of a local reconsideration or review, anything comes to light which raises doubt about whether all the relevant facts were taken into account, you will need to consider whether the direction should be withdrawn.

What is Wednesbury reasonableness?

The definition of ‘Wednesbury reasonableness’ was provided by Lord Greene MR in Associated Provincial Picture Houses Ltd -v- Wednesbury Corporation, CA [1948] 1 KB 223. The case concerned an application by Associated Provincial Picture Houses Ltd (APPH) to Wednesbury Corporation for a license to open its cinema on a Sunday. The corporation was entitled by law to issue licenses ‘subject to such conditions as the authority think fit to impose’. In the event, they issued the license on the condition that ‘. . . no children under the age of fifteen years should be admitted to any entertainments whether accompanied by an adult or not’. APPH took the corporation to court insisting that the condition was ‘unreasonable’.

Lord Greene MR held that the local authority had not acted unreasonably or unlawfully in imposing the condition. He further held that:

‘The court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters which they ought not to take into account, or, conversely, have refused to take into account or neglected to take into account matters which they ought to take into account. Once that question is answered in favour of the local authority it may be still possible to say that, although the local authority have kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it.’

So, with regards to having issued a Notice of Direction, we must be able to demonstrate to the First Tier Tribunal, or to higher courts where necessary, that

we took into account all the relevant matters that we should have taken into account, and

we did not take any extraneous or irrelevant matters into account.

That is why it is so important that you gather as much information about the organisation of the various business activities, and the relationship between them, as you possibly can.

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