[2017] UKFTT 077 (TC)

TC05595

Appeal number: TC/2016/02360

Income Tax – Capital Gains Tax – Assessments – Penalties - application for permission to admit appeal out of time – Data Select criteria – BPP Holdings – good explanation – reasonable excuse -application allowed

FIRST-TIER TRIBUNAL
TAX CHAMBER

MANOWAR HUSSAIN **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS **Respondents**

TRIBUNAL: JUDGE RUPERT JONES

Sitting in public at Fox Court, London on 21 November 2016

Mr Dhiren Doshi, Doshi & Co accountants, for the Appellant

Mrs Bisi Sanu, Presenting Officer of HM Revenue and Customs, for the Respondents

© CROWN COPYRIGHT 2017

DECISION

1. This an application by the appellant, Mr Manowar Hussain, for the tribunal to grant permission to admit his late appeal.

2. The appeal proceeds by way of appeal notice dated 25 April 2016. It is an appeal against tax assessments, closure notices and penalty determinations issued by HMRC on 15 October 2015 to the appellant for the seven tax years ending 5 April 2008 to 5 April 2014 and against penalty determinations issued on 5 November 2015.

3. The appeal notice was lodged outside the statutory 30-day time limit for appeals being over five months after notification of the decisions subject to appeal.

The Facts

4. HMRC issued a check notice for the appellant's 2009-2010 tax return on 8 March 2011. The enquiry was for the whole of his tax return.

5. There was also an enquiry into a company called Manpower Hussain & Sons Ltd, of which the appellant was a director, for the accounting period (APE) 30/09/2009 and 30/09/2012.

6. Following the opening of the enquiries, a meeting between HMRC's officers and the appellant was held on 13 April 2011, at one of the appellant's shop premises, 128-130 Cookham Road, Maidenhead, SL6 7HR.

7. HMRC extended the scope of its enquiries to include the appellant's tax return for 2011-2012, and on 2 December 2013, a check notice was issued for 2011-2012.

8. The enquiries progressed slowly, and during the course of the enquiries, HMRC issued Information notices under Paragraph 1 of Schedule 36 to the Finance Act 2008 against the appellant. The first such notice (Notice to provide information and produce documents) was issued on 5 August 2011, others were issued on 13 June 2012, 26 March 2014 and 21 November 2014.

9. On 4 August 2015 HMRC issued a pre-decision letter detailing HMRC's proposal to assess the appellant on income from various sources, including letting income and capital gains on a sale of a property in the appellant's name.

10. On 15 October 2015 HMRC issued assessments for the periods ending 5 April 2008, 2009, 2012 and 2013 under Section 29 Tax Management Act ("TMA") 1970 and for the periods ending 5 April 2010, 2011 and 2014 assessments under Section 28A (1) & (2) TMA 1970 were also issued.

11. Also on 15 October 2015 penalty determinations (for inaccuracy in tax returns) under Schedule 24 to the Finance Act 2007, were issued to the appellant, for the periods, 2008/09, 2009/10, 2010/11, 2011/12, 2012/13 and 2013/14.

12. The total assessed tax, penalties and interest amounted to over £500,000 (£385,674.40 in income tax and capital gains tax, interest of £59,536.68 and penalties of £69,337.51.)

13. On 5 November 2015, a penalty determination under Section 95(1) (a) TMA 1970 was issued for the period ending 5 April 2008 in the sum of £144,021.

14. The Personal Liability Notice relating to the corporation tax aspect of the enquiries into Manowar Hussain & Sons Ltd was issued on 13 November 2015.

15. On 22 December 2015 Doshi & Co, the appellant's agent, sent a letter to HMRC saying that the liabilities issued to his client were without basis.

16. On 7 January 2016, HMRC sent a reply to Doshi & Co, explaining the basis for the assessments issued to his client in respect of his company. The letter also explained that the appeal period for all of the assessments had expired, but if he wished for a late appeal to be considered, he should specify which of the notices he would like to appeal against and also state his grounds for each appeal.

17. The nature and extent of this correspondence is dealt with in more detail below.

18. On 25 April 2016, a late appeal against all the assessments was submitted to the Tribunal by the appellant's agent, Mr Doshi. The appeal was therefore made over five months after the assessments and determinations of 15 October 2015 and 5 November 2015 and over 4 months after the statutory deadline of 30 days in which to lodge an appeal.

The Law

19. In accordance with legislation at Section 31A Taxes Management Act 1970 ("TMA"), an appeal should have been made in writing to HMRC and within 30 days after the specified dates. In this case the specified dates were 14th November 2015 and 4th December 2015, but this was not complied with. Section 31A (5) also requires the ground of the appeal to be given.

20. In accordance with legislation at Section 49 TMA 1970, HMRC may agree to accept an appeal which has been made late if it is made in writing, if the appellant has a reasonable excuse for making the appeal out of time and has submitted their appeal to HMRC as soon as the excuse for the lateness has ceased.

21. HMRC are allowed by statute to accept a late appeal, but only if the taxpayer has a reasonable excuse for the delay (TMA s 49(2)(a) and (5)). If HMRC refuse to allow a taxpayer to make a late appeal, the Tribunal can nevertheless give permission (TMA s 49(2)(b)). There is however no statutory time 30 limit within which the taxpayer has to ask the Tribunal for permission to make a late appeal.

22. A second 30-day time limit only comes into play where HMRC accept the late appeal and review the decision (TMA s 49G). That provision is not relevant here. However, an appeal cannot be notified to the Tribunal until it has first been made to

HMRC (TMA s 49D). If the appeal is late, and HMRC refuse to accept it, the Tribunal can give permission (TMA s 49(2)(a) and (b)).

23. The tribunal also has the power to give permission to admit an appeal under Rule 20(4)(b) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ('Tribunal Rules') if it is provided after the end of any period specified in an enactment. It may also extend time for the notice of appeal under Rule 5(3)(a) of the Tribunal Rules.

24. The tribunal must also apply the overriding objective under Rule 2(1) of the Tribunal Rules to deal with cases fairly and justly. This is supplemented by Rule 2(2) which provides:

(2) Dealing with a case fairly and justly includes— (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties; (b) avoiding unnecessary formality and seeking flexibility in the proceedings; (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; (d) using any special expertise of the Tribunal effectively; and (e) avoiding delay, so far as compatible with proper consideration of the issues.

25. The tribunal notes the useful summary provided by the First-Tier Tribunal (Tax Chamber) at paragraph 4 of its decision in *Assaf Ali Butt v The Commissioners for Her Majesty's Revenue & Customs* [2014] UKFTT 95 (TC) on applications to appeal out of time:

'In terms of the tests and general approach that we must adopt in dealing with applications to appeal out of time we have considered the recent decisions of the Court of Appeal in *Mitchell v News Group Newspapers Ltd* [2103] EWCA Civ 1537 and *Denton v T H White Ltd* [2014] EWCA Civ 906, and those of the Upper Tribunal in *McCarthy & Stone (Developments) Limited* [2014] UKUT 196 (TCC), *Data Select Limited* [2012] UKUT 187 (TCC) and *Leeds City Council* [2014] UKUT 350 (TCC). Taking together all those decisions, we concur with the conclusion reached by this Tribunal in the recent case of *Aeron Mathers* [2014] UKFTT 893 (TC) (at [25]):

> "… briefly, we consider the main points to be that:
>
> - even if Tribunals are not required to follow the full requirements of the latest guidance given to the higher courts in terms of seeking to ensure much stricter adherence to time limits and other directions, in order to ensure the efficient and most cost-effective conduct of litigation, we must certainly pay some regard to that intended stricter adherence to such matters;
> - as Tribunals, we are entitled to approach matters slightly more flexibly than the higher courts are now encouraged and directed to do;
> - we must certainly not, however, allow litigation to be side-tracked by other parties in litigation seeking to rely on, and exploit, trivial procedural steps that their opponents may have failed to address; and
> - in considering generally how to deal with late applications (for instance to bring an appeal, as in this case) we should still

address the list of points summarised by Mr. Justice Morgan in *Data Select*. Those points are that we should address the questions:

(1) What is the purpose of the time limit?

(2) How long was the delay?

(3) Is there a good explanation for the delay?

(4) What will be the consequences for the parties of a refusal to extend time or the grant of such an extension?

- We also consider it appropriate in this case to pay some regard to whether we consider that the Applicant was likely to have been able to raise valid and compelling points, should an appeal proceed, particularly because it seemed that the tax and penalties being imposed would be a serious matter for the particular appellant; and
- It is also relevant to pay some regard to the whole conduct of the enquiries, and to the issue of whether there have been repeated delays, non-cooperation and failures to advance points, arguments and explanations at many earlier times."'

26. Subsequent to this decision the Court of Appeal handed down judgment in *BPP Holdings v HMRC* [2016] EWCA Civ 121; 2016 1 WLR 1915 in which the Senior President of Tribunals stated at paragraph 15-16 and 37-38 of his judgment:

15.There are two conflicting decisions of the UT about the principles that are to be applied when non-compliance with rules and directions falls to be considered by a tax tribunal. The first in time is the decision of Judge Sinfield in *McCarthy & Stone (Developments) Ltd v HMRC* [2014] UKUT 197 (TCC), [2014] STC 973 and the second is the decision of Judge Bishopp in *Leeds City Council v HMRC* [2014] UKUT 350 (TCC) where he declined to follow Judge Sinfield's approach. The *Leeds* decision was promulgated after Judge Mosedale's determination in this case and accordingly she could not have known of it. Judge Bishopp followed his earlier reasoning in *Leeds* in coming to the conclusion that the FtT in this case had erred in law.

16.The key question underlying the two decisions can be characterised in the following way: whether the stricter approach to compliance with rules and directions made under the CPR as set out in *Mitchell v News Group Newspapers Ltd* [2014] 1 WLR 795 and *Denton v TH White Ltd* [2014] 1 WLR 3926 applies to cases in the tax tribunals. The two conflicting decisions of the UT on the point came to different conclusions. For the reasons I shall explain, I am of the firm view that the stricter approach is the right approach.

……..

37. There is nothing in the wording of the relevant rules that justifies either a different or particular approach in the tax tribunals of FtT and the UT to compliance or the efficient conduct of litigation at a proportionate cost. To put it plainly, there is nothing in the wording of the overriding objective of the tax tribunal rules that is inconsistent with the general legal policy described in *Mitchell* and *Denton*. As to that policy, I can detect no justification for a more relaxed approach to compliance with rules and directions in the tribunals and while I might commend the Civil Procedure Rules Committee for setting out the policy in such clear terms, it need hardly be said that the terms of the overriding objective in the tribunal rules likewise incorporate proportionality, cost and timeliness. It should not need to be said that a

tribunal's orders, rules and practice directions are to be complied with in like manner to a court's. If it needs to be said, I have now said it.

38. A more relaxed approach to compliance in tribunals would run the risk that non-compliance with all orders including final orders would have to be tolerated on some rational basis. That is the wrong starting point. The correct starting point is compliance unless there is good reason to the contrary which should, where possible, be put in advance to the tribunal. The interests of justice are not just in terms of the effect on the parties in a particular case but also the impact of the non-compliance on the wider system including the time expended by the tribunal in getting HMRC to comply with a procedural obligation. Flexibility of process does not mean a shoddy attitude to delay or compliance by any party.

27. Although he did not expressly analyse *Data Select Limited v HMRC*, at [44] of the judgment in *BPP Holdings* the Senior President said: "Morgan J applied CPR 3.9 by analogy…in just the manner I have suggested is appropriate".

28. Mr Justice Morgan referred to Rule 3.9 of the Civil Procedure Rules ("CPR") at [37] of his judgment in *Data Select*. Rule 3.9 has since been amended and now reads:

> "(1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order, the court will consider all the circumstances of the case, so as to enable it to deal justly with the application, including the need–
>
> (a) for litigation to be conducted efficiently and at proportionate cost; and
>
> (b) to enforce compliance with rules, practice directions and orders."

29. In *R (oao Dinjan Hysaj) v SSHD* [2014] EWCA Civ 1633 ("*Hysaj*"), Moore-Bick LJ, giving the judgment of the Court of Appeal, gave guidance on whether the merits of a substantive appeal should be considered in applications for extension of time. His Lordship stated at [46]:

> "If applications for extensions of time are allowed to develop into disputes about the merits of the substantive appeal, they will occupy a great deal of time and lead to the parties' incurring substantial costs. In most cases the merits of the appeal will have little to do with whether it is appropriate to grant an extension of time. Only in those cases where the court can see without much investigation that the grounds of appeal are either very strong or very weak will the merits have a significant part to play when it comes to balancing the various factors that have to be considered at stage three of the process. In most cases the court should decline to embark on an investigation of the merits and firmly discourage argument directed to them. Here too a robust exercise of the jurisdiction in relation to costs is appropriate in order to discourage those who would otherwise seek to impress the court with the strength of their cases."

30. In *Raymond Harvey v HMRC* [2016] UKFTT 597 (TC) the First-Tier Tribunal in considering an application for permission to appeal out of time adopted the approach of using the structure and the criteria set down by Mr Justice Morgan in *Data Select* at paragraph 34 of that decision:

> As a general rule, when a court or tribunal is asked to extend a relevant time limit, the court or tribunal asks itself the following questions: (1) what is the purpose of the time

limit? (2) how long was the delay? (3) is there a good explanation for the delay? (4) what will be the consequences for the parties of an extension of time? and (5) what will be the consequences for the parties of a refusal to extend time. The court or tribunal then makes its decision in the light of the answers to those questions.

Submissions

Appellant

32. The appellant's notice of appeal contends that the appeal was made late because:

"*It was only by letter dated 1 March 2016, from Diane Bankier that we were informed of a sum of penalty £69,337.95 plus income/capital gains tax of £385,673.40 = £455,011.35 was being demanded from Mr Hussain.*

Mr Lewis' letter of 4 August 2015 was never received.

The sum being demanded is now £798,511.32. We cannot reconcile the amount being demanded to the letter of 1 March 2016. There is a difference of £343,499.97.

There must have been various letters issued by HMRC over a period of time, which we have not received and thereby we could not have appealed or ask for a review."

33. Mr Doshi expanded upon and amended these grounds in his oral submissions at the hearing.

34. He submitted that two letters dated 15 October 2015 sent by HMRC which contained the relevant assessments subject to the appeal were not received by the appellant nor him.

35. The first letter dated 15 October 2015 was addressed to the appellant at his address of 14 Sperling Road. It enclosed the notices and computations of liability, interest and penalties and a copy of the letter to his accountant, Mr Doshi.

36. The second letter dated 15 October 2015 was addressed to Mr Doshi at his business address. It set out the computations of additional liability, closure notices, amendments and discovery assessments against the appellant together with the interest and penalties raised. This letter also enclosed the appropriate tax assessments and closure notices and informed the appellant of the statutory appeal period of 30 days.

37. Mr Doshi submitted that if either he or the appellant had received these letters they would have responded to them. It was only after Mr Doshi received the letter dated 1 March 2016 from HMRC, in the circumstances set out below, that he came to know about these personal assessments against the appellant. HMRC's letter of 1 March 2016 enclosed the two letters of 15 October 2015 and notices of assessment in a reply to Mr Doshi's letter of 18 February 2016.

38. Mr Doshi submitted that he received HMRC's letter dated 1 March 2016 on 8 March 2016 and he was away on holiday until 20 March 2016. I return to this below.

39. Mr Doshi submitted that one had to understand the background to the enquiries against the appellant.

40. Mr Doshi submitted that he had received the letter from HMRC addressed to him dated 31 July 2015 regarding the appellant's company, Manowar Hussain & Sons Ltd but this did not raise any assessments and concerned the VAT liability of the company and not the appellant personally. Mr Doshi also received the letter addressed to him on 21 October 2015 regarding the company and additional corporation tax liability. He also received letters dated 6 and 13 November 2015 addressed to Mr Doshi and the company regarding penalties for the company and the appellant as director of the company.

41. On 22nd December 2015 Mr Doshi replied to the letters of 6 and 13 November 2015 by stating that the company and the appellant denied any wrong doing or any tax liability in respect of the Corporation Tax or VAT. He requested a meeting with HMRC on 25 January 2016 to try to resolve this.

42. On 7 January 2016 HMRC replied to Mr Doshi stating it was not clear whether it was intention to appeal the tax and penalty assessments against the appellant's company but pointing out that if so the appeal would be out of time. The reference line of the letter as 'Manowar Hussain & Sons Ltd (and Mr Manowar Hussain)' and it primarily focussed on the appellant's company and its tax affairs.

43. The second page of the letter did mention that tax and penalty assessments and determinations had been raised against the appellant personally on 13 (sic) October and 5 November 2015 and that no appeals had been received. Mr Doshi submitted that this reference in the letter did not state the size of the personal assessments nor enclose the copies that had been sent so that neither he nor the appellant were on proper notice of the personal assessments against the appellant of 15 October and 5 November 2015.

44. On 4 February 2016 HMRC sent the appellant directly a letter warning of bankruptcy to his address at 130 Cookham Road. This was received by him. This letter included a breakdown and statement of a total liability of £661,590.98 including interest and penalties and demanded immediate payment.

45. On 18 February 2016 Mr Doshi replied to HMRC in respect of their letters of 7 January and 4 February 2016. His letter stated that the appellant disagreed with the bankruptcy action and requested HMRC to provide a full breakdown to illustrate how the appellant had been asked to pay the sum of £661,590.68. The letter suggested a meeting with HMRC after 15 April 2016 to conclude the matter.

46. Mr Doshi submitted that if he or the appellant had been aware of the personal assessments that had been issued against the appellant with the letters of 15 October 2015 with the corresponding notice of the 30 day time limit in which to appeal – Mr Doshi would not have responded as he did in his letters of 22nd December 2015 and 18 February 2016. However he and the appellant were not aware of the assessments. This was evidenced by his request to see a breakdown of how the figures were arrived

at. Both the letters dated 15 October 2015 with enclosed assessments had been sent out by normal post by HMRC.

47. As referred to above, it was submitted that it was only by letter dated 1 March 2016 to Mr Doshi that he received the personal assessments raised against the appellant on 15 October 2015 when HMRC enclosed them in reply to his letter of 18 February 2016. In this letter HMRC declined to hold a meeting with the appellant. The letter informed Mr Doshi that that the tax and penalty assessment had been issued and that he was significantly outside the 30 day statutory appeal period and he had not indicated that he had wished to make a late appeal application.

48. Mr Doshi submitted that his firm received the letter on 8 March 2016 and he was on holiday until 20 March 2016. He did not deal with the letter on his first week of return from holiday for which he apologised. He had requested a meeting with HMRC after 15 April 2016 which had been declined. He submitted that in effect the tribunal should look at the period between 20 March and 25 April 2016 and that the appeal had been notified only just outside a 30-day time period from actual notification of its contents.

49. On 21 April 2016 the appellant was sent a statutory demand by HMRC to his address at 14 Sperling Road. This was for the total sum of £798,511.32 in respect of the unpaid self-assessed income and capital gains tax, self-assessment penalties and surcharges, taxes act penalty for inaccuracy in the return and self-assessment late payment penalties. It also included a sum of £115,158.47 in respect of penalties imposed on the appellant's company, Manowar Hussain & Sons Ltd, for which the appellant was personally liable.

50. On 25 April 2016 Mr Doshi lodged the notice of appeal on behalf of the appellant against the personal tax and penalty assessments.

51. Additionally, Mr Doshi sought to rely on the fact that the appellant had certain personal issues and had not been staying at 14 Sterling Road but at 130 Cookham Road during the relevant period. This was the address at which the appellant was staying and receiving correspondence and from which he passed it to Mr Doshi. Hence Mr Doshi had received the letter to the appellant of 4 February 2016 and referred to this letter in his reply of 18 February 2016 to HMRC.

52. Mr Doshi submitted that if the letter of 15 October 2015 with the notices of personal assessments addressed to the appellant had arrived at 14 Sperling Road, the appellant's wife, with whom he was not living, did not pass the letter onto the appellant. Whether or not the letter arrived at 14 Sperling Road, the appellant certainly did not receive this letter.

53. In conclusion Mr Doshi submitted that there was a good explanation and reasonable excuse for the delay in lodging the notice of appeal.

54. Throughout the history of the enquiries into the appellant's tax affairs he and the appellant had responded within reasonable time and the appellant had been willing to meet HMRC inspectors. There had been 4 formal meeting and 6 inspections on site which the appellant had voluntarily given HMRC. This was not a case of taxpayer

only waking up to act upon receiving the bankruptcy petition. The reality was that two letters had gone astray. The first was the letter to the appellant at Sterling road, where he wasn't staying and the second to Mr Doshi's office which was never logged as being received by his firm. Once the notice of the assessments had been received by Mr Doshi's firm on 8 March 2016 the appeal was lodged within a reasonable time thereafter.

55. Mr Doshi submitted that when considering the purpose of time limit the tribunal should also consider the overriding objective and the importance of the case and dealing with it proportionately. The substantive appeal involved a very large sum, over £700,000, and would involve complex issues.

56. Mr Doshi submitted that the substantive merits of the appeal ought to be heard. The appeal grounds set out in the notice of appeal were that the appellant denied the income tax assessed and that the rental income did not exist and the capital gains tax relates to a property owned by his brother for whom the appellant was merely a nominee.

57. Mr Doshi submitted that if permission was not granted to admit the appeal then the appellant would not have sufficient assets to pay the sum demanded and faced the likelihood of bankruptcy, which action HMRC had already initiated.

Respondents

58. HMRC submitted that the assessments to tax covering the periods from 5 April 2008 to 5 April 2014 (2007/08, 2008/09, 200910, 2010/11 2011/12, 2012/13 & 2013/14) were issued to the Appellant on 15 October 2015 and copies were sent to Mr Doshi as agent.

59. The notice clearly stated that the appellant had to take action within 30 days from the date of the assessment if they did not agree with the amount of assessment. Therefore, for those assessments issued on 15 October 2015, the appeal period expired on 14 November 2015, but the appellant failed to appeal within this 30 day legislated period. The appeal was made 194 days after the decision.

60. The penalty determination notice was issued to the appellant on 5 November 2015. The notice clearly stated that the Appellant had to take action within 30 days from the date of the determination if they did not agree with the amount charged by the determination. The appeal period for this notice therefore expired on 4 December 2015, but the Appellant did not appeal within this 30 day period. The appeal was made 173 days after the decision.

61. The appellant's agent, Mr Doshi, wrote to HMRC on 22 December 2015, apologising for the delay in responding to HMRC's letter of 6 November 2015 and requested a meeting with Ms Bankier, the enquiry caseworker.

62. HMRC sent a reply to the agent on 7 January 2016, explaining that the appeal period for the various assessment was over. However, HMRC would be willing to consider a late appeal if a full explanation was provided for the reason why the appeal was not made within the statutory time limit.

63. HMRC also stated clearly, in that letter, that if they wish for a late appeal to be considered by HMRC, they must ensure that (all of) the information requested was submitted to Ms Diane Bankier, the enquiry case worker by 28 January 2016 at the latest. The letter went on to say that if she had not heard from the agent by that date, she would close her file and consider the compliance check settled.

64. The Appellant submitted an application to the Tribunal on 25 April 2016 to ask the Tribunal to give permission for them to appeal to HMRC outside of the statutory time period.

65. HMRC contended that the appellant failed to prosecute his appeal with reasonable diligence, in that the appeal was brought to HMRC over 5 months out of time. They asked that permission to admit the appeal be refused.

66. HMRC submitted that 1) the purpose of the time limit was to ensure the finality of litigation; 2) there was long delay before the appellant filed its appeal; 3) the appellant did not have a good explanation or reasonable excuse for the delay; 4) the consequences of granting an extension would mean HMRC would have to expend significant resources in defending an appeal which they were entitled to conclude was out of time; 5) the consequences of not granting an extension is that the appellant's appeal would fall away and HMRC's assessments would stand.

Discussion and Decision

67. The Tribunal adopts the approach of considering the *Data Select* questions in the context of the stricter approach in *BPP Holdings*.

Purpose of the time limit

68. The purpose of the time limit in which to bring an appeal is in pursuit of a clear public interest in the finality of the decisions of HMRC. Time limits enshrine the need to bring the conduct or prospect of litigation to a speedy conclusion. As time limits, whether imposed by statute, tribunal rule or tribunal directions, serve the public interest, compliance is normally to be expected.

69. In *John O'Gaunt v HMRC* TC/2014/04510, the Tribunal explained the purpose of such time limits at paragraph 21 of its decision: '*It is designed to provide certainty and it is not in the interest of justice to permit appeals after long periods of delay. There is a public interest in the finality of decisions of the commissioners.*' In *North Berwick Golf Club* [2015] UKFTT 0082 (TC) at [33] the Tribunal stated '*time bar provisions are created for a reason and that is that they provide finality and certainty and that is not a matter that should be lightly disregarded*'.

70. Rule 2(2)(e) of the Tribunal Rules, part of the overriding objective, requires the tribunal to avoid delay so far as compatible with proper consideration of the issues.

71. In applying the law to the facts of this case, the purpose of the time limit in which to bring an appeal, is in pursuit of a clear public interest in the finality of

decisions of HMRC. Time limits enshrine the need to bring the conduct or prospect of litigation to a speedy conclusion.

Length of the delay

72. The length of the delay in this case before a notice of appeal was lodged by the appellant at the Tribunal, on 25 April 2016, was long. It amounted to a minimum of five months later than the 30-day deadline and six months after the decision appealed of 15 October 2015. The Tribunal notes that the Upper Tribunal in *Romasave (Property Services) Limited v Revenue and Customs Commissioners* [2015] UKUT 254 (TCC) at paragraph 96 stated that 'a delay of more than three months cannot be described as anything but serious and significant.' It also notes that the Upper Tribunal in *O'Flaherty v Revenue and Customs Commissioners [2013]* UKUT 0161 (TCC) stated that permission to appeal out of time should only be granted exceptionally, meaning that it should be the exception rather than the rule and not granted routinely.

Reasons for the delay - Good Explanation or Reasonable Excuse

73. The appellant's explanation for the delay rests upon the Tribunal accepting that neither the appellant nor Mr Doshi received the letters containing the personal assessments dated 15 October 2015. The appellant also submits that the letters of 15 October and 5 November 2015 were sent to the address at 14 Sperling Road but the appellant had been living at 130 Cookham Road for some time. The appellant accepts that the letters may have been received by his wife but if so, they were not passed on to him due to the nature of their relationship at this time.

74. The Tribunal is entitled to be somewhat sceptical that neither Mr Doshi nor appellant received the letters of 15 October 2015 and notices of assessment in this case. It is right to note that both of these letters were sent by first class post rather than being sent by recorded delivery so it is always possible that they did not arrive, being lost in the post, or were not received as intended.

75. Other correspondence from HMRC relating to the appellant's bankruptcy and his company's tax enquiries were sent to the appellant's address at 130 Cookham Road. While the appellant accepted he should have notified HMRC of this being his address for all purposes, the use of two addresses by the appellant and HMRC did leave some scope for miscommunication. However it is the appellant's responsibility to ensure that HMRC are informed of his proper address and if notice is received an address to which the appellant is registered then he is duly deemed to be served.

76. Weighing up all the circumstances, the Tribunal is not prepared to reject the appellant's and Mr Doshi's account that they did not receive the letters of 15 October 2015 or the notices of assessment thereby enclosed and that these letters may not have arrived at the relevant addresses.

77. When Mr Doshi did receive letters of 6 and 13 November 2015 from HMRC to him and the company he did respond to these in his letter of 22 December 2015. When Mr Doshi received letters from HMRC of 7 January addressed to him and 4 February 2016 to the appellant, Mr Doshi responded to these in his letter of 18

February 2016. Whilst Mr Doshi's replies were not speedy, they were within a reasonable timescale. Neither of Mr Doshi's reply letters suggest that he or the appellant were aware of the large personal assessments of 15 October 2015 outstanding against the appellant and the 30-day time period in which they were required to appeal.

78. Whilst Mr Doshi's reply letters do not request appeals against the assessments raised against the company, they do dispute the assessments and bankruptcy and indicate that the appellant and he would like to meet HMRC to discuss outstanding liabilities. If Mr Doshi and the appellant had not received the letters of 15 October 2015 then they would not have been aware of the 30-day time period in which to appeal.

79. That being the case therefore, the Tribunal is prepared to accept that the first time the appellant and Mr Doshi were on notice of the specific tax and penalty assessments of 15 October 2015 and 5 November 2015 which are the subject of the appeal, was on receipt of the letter dated 1 March 2016 which enclosed them. It was only on receipt of this letter that they were informed of the statutory 30-day time limit to appeal the decisions.

80. While there was some mention of personal assessments against the appellant in HMRC's letter of 7 January 2016 these were not detailed and Mr Doshi did request to see these in his reply letter of 18 February 2016.

81. The Tribunal is also prepared to accept that HMRC's letter of 1 March 2016 was only received by Mr Doshi's firm on 8 March 2016.

82. Mr Doshi did not lodge the appellant's appeal until 25 April 2016. This is a further six weeks from notification until the appeals were lodged. The appellant and Mr Doshi might have acted with more expedition following 8 March 2016 given the history of the case, including the appellant's non-compliance with information requests, and impending bankruptcy proceedings. The appellant is not entitled to rely on any inaction of Mr Doshi to provide him with a reasonable excuse for the delay. Nor is the Tribunal prepared to take into account any backlog of work or holiday taken by Mr Doshi as affording a good explanation.

83. However, the time period in question of six weeks is not so long or so egregious that Tribunal considers it should be determinative of the application given that 30 days from notification is stipulated as the statutory deadline for lodging appeals.

84. Therefore, on balance the Tribunal is satisfied that there is reasonable and perhaps good, if by no means perfect, explanation for the delay in lodging the appeals at the tribunal.

Consequences of extending time or refusing to extend time

85. The consequence for the appellant of extending time to admit the appeal is that the substantive merits of the appeal will be heard. The tax and penalty assessments under appeal are substantial, over £700,000, and the issues will not be straightforward. The consequence for HMRC is that they will have to devote

resources to defending the appeal following what has been a long enquiry process, during which the appellant has not always cooperated as hoped.

86. The consequence of refusing to extend time to admit the appeal would be very serious for the appellant. He would be liable to meet the substantial assessments and if not able to do so, would be made bankrupt.

Conclusion

87. On balance, the Tribunal considers that weighing up all the factors it is in accordance with the interests of justice and be just and fair under the overriding objective to grant the application and give permission to admit the appellant's late appeal. This was a finely balanced decision and the appellant and his representative would be expected to deal promptly with all further steps to expedite the hearing of the appeal.

88. 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.

TRIBUNAL JUDGE
RUPERT JONES

RELEASE DATE: 9 JANUARY 2017