



**TC02258**

**Appeal number: TC/2010/07109 & TC/2010/07047 C/10/07047**

*Strike out application – non compliance with directions – repeated non co-operation – Tribunal Rules – overriding objective – Application granted*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**CHRISTOPHER O'BRIEN**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE ANNE SCOTT, LLB, NP**

**Sitting in public at George House, 126 George Street, Edinburgh on Friday  
7 September 2012**

**Mr T O'Brien and Mr T Mackie for the Appellant**

**Mrs C Cowan, for the Respondents**

## DECISION

### Introduction

1. This is an application by HMRC to strike out two conjoined appeals. It is not a hearing of the substantive appeals themselves.
2. To deal with the application properly, since large sums of money are involved and the striking out of an appeal is a very serious matter, it is necessary to set out some basic details of the underlying dispute between the Appellant and HMRC and the history behind the issue of the various assessments, penalties, etc which are potentially the subject of these appeals.

### Summary of the penalty appeal

3. The penalty appeal (“the first appeal”) relates to a penalty notice, which was issued to the Appellant on 29 April 2010. Daily penalties of £60.00 per day had been charged for 111 days, from 8 January 2010 to 27 April 2010 (inclusive), in respect of Mr C O’Brien’s failure to provide information and produce documents requested by HMRC to enable it to check his self-assessment (SA) tax return for the year to 5 April 2008. The grounds of the appeal in the Notice of Appeal, were that because of flooding at his premises he was unable to comply with the request within the specified time frame and, the records having been destroyed in the flood and having to be reconstituted was a reasonable excuse for being unable to comply with the request for information.
4. The substantive issue therefore was whether or not Mr O’Brien had a reasonable excuse under paragraph 45(1) Schedule 36 Finance Act 2008 “Sch 36 FA 2008” for his failure to produce the documents and information requested, and if so, under paragraph 45(2)(c) whether or not he remedied the failure without unreasonable delay after the excuse ceased. HMRC argued that there was no such reasonable excuse.

### Summary of the conjoined appeal

5. In the conjoined appeal (“the second appeal’), Mr C O’Brien has appealed against the assessments made under section 29 of the Taxes Management Act “TMA” 1970 in respect of each of the eight years from 1999-2000 to 2006-2000 inclusive and the amendment to the self-assessment for 2007-2008 made under section 28A TMA 1970 all issued on 21 June 2010. Accordingly the second appeal comprises nine appeals and there is noted below a brief Summary of Amended Assessments made under sections 29 and 28 TMA 1970.

Assessments	Assessed	Charged
Year ended 1999-00	£227,738	£85,514.00
2000-01	£231,755	£87,294.05
2000-02	£235,236	£88,538.35
2000-03	£242,599	£91,387.55

2000-04	£248,624	£96,161.24
2000-05	£256,523	£99,222.83
2000-06	£263,084	£101,725.24
2000-07	£275,000	£106,429.00
2008 Closure Notice issued – Amendment assessment S.28A (1) & (2) TMA 1979		£74,953.45

6. The grounds of the appeal, in the Notice of Appeal, as opposed to the appeal to HMRC (see paragraph 19 below), were that due to flooding at his business premises and an injury he had sustained Mr C O'Brien had reasonable excuses for being unable to comply with requests for information and further that the assessments and the amended assessment were estimated and not based on any documentary or other reliable evidence.

7. HMRC's arguments were that they were entitled to raise the assessments since they were unable to be satisfied that the declared profit figures were correct. Mr C O'Brien had not made timeous, full and correct returns for the years concerned and he has failed to make and deliver the returns by the prescribed dates as required by section 8(1)(a) TMA 1970. Further he had failed to meet the requirements of section 8(1)(b) TMA 1970 to make returns containing such information as may reasonably be required, as he has not provided the information required of him in the self-assessment pages of the returns. In addition Mr C O'Brien is required under section 12B TMA 1970 to keep all such records as may be requisite and to preserve those records until the end of the relevant day. The initial request for those records was made more than one year before the assessments were raised but nothing had been received. They argued that it was within Mr O'Brien's power to obtain duplicates of some of the records but that had not been done nor had he produced damaged or reconstituted records.

8. Lastly HMRC held information regarding property transactions over a number of years and contends that the money received from the sale of the properties is taxable but has not been returned in the "SA" returns.

### **Background and history to the two appeals**

9. Mr C O'Brien is a self-employed accountant, the business being TOC Accountants ("the representative"), his representative in these appeals.

10. Mr O'Brien's SA returns for 1999-00 to 2003-04 were submitted late, on 21 October 2005 and his SA returns for the years 2004-05 to 2007-08 were also submitted late in 17 February 2009. None of the returns submitted showed the income or expenses of the business or a summary of the balance sheet. They all showed only a net profit figure varying between £4,000 and £4,400 in each year.

HMRC was not satisfied that those figures accurately reflected the profits of the business in the said years. HMRC had obtained details of property transactions carried out by Mr O'Brien over a number of years. No tax had been declared in respect of property sales.

11. On 3 September 2009, HMRC opened an inquiry into the 2007-08 SA return under section 9A TMA 1970. Correspondence ensued and then on 26 October 2009, HMRC received a call from an employee of the representative who stated that a flood had affected the business and there were no records available for review. HMRC were unable to obtain any of the books or records of the business from either Mr C O'Brien or the representative and nor were they able to obtain any details about the date and extent of the flood.

12. On 3 November 2009, HMRC issued a Notice to Provide Information and Produce Documents ("the notice") to Mr C O'Brien under paragraph 1 Sch 36 FA 2008. It warned that if he did not comply with the notice he may have to pay a standard penalty of £300, and thereafter he may have to pay daily penalties of up to £60.00 per day if he continued not to comply with the notice. Nothing happened.

13. On 3 December 2009, HMRC issued a Penalty Warning letter to Mr C O'Brien, which advised that a £300.00 penalty would be charged if the information and documents requested in the notice were not provided by 17 December 2009. That letter also issued a reminder in regard to the daily penalties. Mr C O'Brien failed to comply with the notice and HMRC issued a Penalty Notice for £300.00 on 7 January 2010 under paragraphs 39 and 46 Sch 36 FA 2008. A further reminder in regard to the daily penalties was issued at the same time.

14. On 3 March 2010, duly authorised HMRC officers attempted to carry out an unannounced inspection of the representative's premises but were unsuccessful as he was not present.

15. By 29 April 2010, none of the information and documents requested had been produced and, on that date HMRC issued a Penalty Notice in respect of the 111 days from 8 January 2010 to 27 April 2010 under paragraphs 40 and 46 Sch 36 FA 2008. The maximum penalty of £60.00 per day was charged for each day.

16. On 29 April 2010, HMRC requested copies of States for Settlement for all properties bought and sold by Mr C O'Brien since the 1990s or authority to approach the solicitor(s) who acted for him in respect of the property transactions. Nothing was forthcoming.

17. On 17 June 2010, HMRC wrote to Mr C O'Brien to advise him that in the absence of any meaningful cooperation with the inquiry into the 2007-08 SA return they would now proceed along formal lines and issue assessments in respect of the years 1999-2000 to 2006-2007 and make a Revenue Amendment to the self-assessment for 2000. Nothing was forthcoming and on 21 June 2010 HMRC issued assessments in respect of the years 1999-00 to 2006-07 and a Closure Notice in respect of 2007-08 all as indicated in paragraph 5 above.

18. On 5 July 2010, the representative wrote to HMRC to appeal against the penalty notice issued on 29 April 2010. The grounds of appeal are as set out in paragraph 3 above. That appeal was late and rejected by HMRC on 23 July 2010 when HMRC wrote to the representative and advised that the letter of 5 July 2010 offered no reasonable excuse as to why a timeous appeal could not have been made, irrespective of the flood, nor any explanation as to why the representative, in the six months between the initial formal request for information and the issue of the daily penalties notice, had not sought copy statements from banks, building societies and credit card companies. No information had been furnished to HMRC, either in regard to the date or the extent of the flood, the damage caused thereby, or any information in regard to the records retained in electronic format.

19. On 5 July 2010, the representative also wrote to HMRC to appeal the eight assessments and the amended assessment issued on 21 June 2010. The grounds for those appeals were that the assessments and the amended assessment were estimated and excessive, no inspection of Mr C O'Brien's records had been carried out prior to the issue of the assessment and previous correspondence had been ignored by HMRC.

20. On 15 July 2010, HMRC wrote to the representative noting the appeal on the second appeal and asking for details of the flood damage and copies of insurance claims and correspondence etc. It was not forthcoming and on 23 July 2010, HMRC rejected the appeal.

21. The representative subsequently lodged late appeals in both matters with the Tribunal and on 7 October 2010, HMRC withdrew their objection to the late appeals.

### **Subsequent events**

22. In accordance with normal procedure, on 19 November 2010, both parties were directed to serve on the other a list of the documents upon which they intended to rely in the appeals. HMRC complied with that Direction timeously. The representative sent an extensive list of documents ("the Document List") to the Tribunal but not to HMRC, an omission for which they apologised in February 2012.

23. On 6 February 2011, HMRC wrote to the Tribunal to request further case management Directions as they had never received the Document List. At that juncture, the Tribunal sent to HMRC the Document List provided by the representative in 2010. On 8 February 2012, HMRC then wrote to the representative pointing out that Mr C O'Brien had failed to comply with the requirements of Rule 27 of the Tribunal Procedure (First-Tier Tribunal) (Tax Chamber) Rules 2009 ("the Rules") regarding the submission of a list of documents on which they intended to rely in the appeal. They then indicated that in terms of Rule 27(3) of the Rules they wished sight of the said documentation.

24. In early 2011, when HMRC, complying with the Directions issued on 19 November 2010, sent the Statement of Case to Mr C O'Brien it was returned undelivered and the representative declined to give HMRC Mr C O'Brien's current address. HMRC gave the representative a contact telephone number but no contact

was made. The Tribunal listed the appeals for hearing on 5 September 2011 and on 10 March 2011 HMRC requested that the Tribunal issue Directions for case management since the correspondence with Mr C O'Brien continued to be returned undelivered. On 6 April 2011, Directions were issued "upon the application of the respondent and the non-opposition of the appellant". HMRC complied with those Directions but Mr C O'Brien did not comply. In particular there were Directions which required compliance by the 42<sup>nd</sup> day before the hearing. On 2 August 2011, which was less than 42 days before the hearing set down for 5 September 2011, the representative sought a postponement of the hearing for a matter of 12 weeks since they wished to instruct new solicitors and Mr C O'Brien had apparently been unable to give the matter his "full attention" because of his illness. There had been no compliance with any of the Directions. The hearing was postponed on 11 August 2011. The Tribunal wrote to the representative indicating that the Directions of 6 April 2011 had not been obeyed and indicating that if more time was required, an application therefore should be made. On 12 August 2011, that application was received and an extension granted to 18 October 2011. On 17 October 2011, there had been no compliance with those Directions and a further request for postponement of the hearing and extension of time was sought by the representative who stated "we have made only limited progress" and requested a postponement to the end of January 2012 due to Mr C O'Brien's ill-health as he was described as being "constantly anxious". He was on moderate medication for depression and his doctor had opined that he should be recovered sufficiently to deal with matters by the end of November 2011.

25. On 17 February 2012, the Tribunal listed the appeals to be heard on 2 July 2012 and further Standard Directions were issued by the Tribunal. In response thereto, on 20 February 2012, HMRC made formal application to the Tribunal in terms of Rule 5(3)(d) of the Rules seeking a Direction requiring Mr C O'Brien to provide HMRC with the documents and information specified on the Document List.

26. There was also a formal application for an amendment of the Directions in terms of Rule 6 of the Rules.

27. The representative responded on 23 February 2012 stating that Mr C O'Brien's health had improved, that they opposed HMRC's application, that they required a further extension of time but that they guaranteed that they could provide the information.

28. A case management hearing was scheduled by the Tribunal, and after a deferral because, Mr T O'Brien, the Appellant's brother had suffered a stroke, it was held on 16 April 2012. After having heard detailed submissions from both parties, as to precisely what information was capable of being produced, the representative having indicated in the said letter of 23 February 2012 that some documents did not exist, detailed Directions were issued. Those Directions related to the production of the documentation specified in the Document List and the supporting information relating thereto. The Appellant did not comply either fully or wholly timeously with those Directions. On 22 May 2012, HMRC wrote both to the Tribunal and to the representative referring to the Directions and confirming that neither Direction 1 (for

which the compliance date was 30 April 2012) or Direction 2 (for which the compliance date was 7 May 2012) had been fully complied with as not all of the documentation requested had been received and what had been received was submitted late and after the date specified in the Directions. In those circumstances, having included considerable detail of what was omitted, they sought an application that the Tribunal consider striking out the case under Rule 8(3)(b) of the Rules which failing they sought a formal application under Rule 5(2) of the Rules to have the Directions issued on 16 April 2012 amended to the effect that the proceedings would automatically be struck out if there was continued failure to comply with the Directions. The representative responded on 1 June 2012 opposing the application for strike out and on 6 June 2012 applied to the Tribunal for amendment to the Directions issued on 16 April 2012 and on 7 June 2012 sought a further extension of time to enable witness statements to be collected. The Tribunal then held a further case management hearing on 18 June 2012 at which Mr C O'Brien was represented by Counsel. Mr T O'Brien attended the hearing.

29. On Friday 10 August 2012, the deadline for compliance with the Directions being Monday 13 August 2012, the Appellant wrote to HMRC apparently complying with some of the Directions. That letter was sent by conventional post and was received by HMRC on 14 August 2012. Accordingly there had not been compliance with the Directions. HMRC's response was to write to the Tribunal identifying that the Appellant had failed to comply in full with the Directions and requesting that the Appellant's case be struck out. The basis of the strike out application was firstly, that the case should be struck out in terms of Rule 8(1) as referred to in Direction 12 of the Tribunal's Directions of 18 June 2012 and, secondly, that the appeal should be struck out on the basis that the second appeal must have little or no prospect of success since the relevant documentary evidence had not been provided.

30. On 20 August 2012, the representative applied to the Tribunal to have "the cases against our client dismissed". On 21 August 2012, the representative wrote to the Tribunal formally opposing the motion to strike out the appeals and enclosing a letter which purported to have been written by them on 28 May 2012 to HMRC appeared to suggest a degree of compliance.

31. Although the Tribunal is not under an obligation to allow Mr C O'Brien or the respondent to make representations in relation to a proposed striking out, it has the power to allow them to do so, and did so. The question of whether there has been a breach of a direction referring to Rule 8 is a matter of fact.

### **The Tribunal Rules**

“2—

- (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.
- (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.
- (3) The Tribunal must seek to give effect to the overriding objective when it—
- (a) exercises any power under these Rules; or
  - (b) interprets any rule or practice direction.
- (4) Parties must—
- (a) help the Tribunal to further the overriding objective; and
  - (b) co-operate with the Tribunal generally.”

“5—

- (1) ....
- (2) The Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.
- (3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Tribunal may by direction –
  - (a) ....
  - (b) ....
  - (c) ....
  - (d) permit or require a party or another person to provide documents, information or submissions to the Tribunal or a party;”

“8.—

- (1) The proceedings, or the appropriate part of them, will automatically be struck out if the appellant has failed to comply with a direction that stated that failure by a party to comply with the direction would lead to the striking out of the proceedings or that part of them.
- (2) ....
- (3) The Tribunal may strike out the whole or a part of the proceedings if—
  - (a) ....
  - (b) the appellant has failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings fairly and justly; or  
....”

“27—

- (1) This rule applies to Standard and Complex cases.
- (2) Subject to any direction to the contrary, within 42 days after the date the respondent sent the statement of case (or, where there is more than one respondent, the date of the final statement of case) each party must send or deliver to the Tribunal and to each other party a list of documents –
  - (a) of which the party providing the list has possession, the right to possession, or the right to take copies; and
  - (b) which the party providing the list intends to rely upon or produce in the proceedings.
- (3) A party which has provided a list of documents under paragraph (2) must allow each other party to inspect or take copies of the documents on the list (except any documents which are privileged).”

32. The Tribunal have a general obligation to give effect to the overriding objective, expressed in Rule 2 of the Tribunal Procedure (First tier Tribunal) (Tax Chamber) Rules 2009 (“the Rules”) to deal with cases fairly and justly when it “exercises any power under these Rules” or “interprets any rule or practice direction” (Rules 2(3)(a) and (b)). This includes “insuring, so far as practicable, that the parties are able to participate fully in the proceedings” and “avoiding any delay so far as compatible with proper consideration of the issues (see Rule 2(2)(c) and (e)). This general obligation must be borne in mind when the Tribunal exercises its case management power under Rule 5 of the Rules (Rule 2(3)(a)). The Tribunal did so and at all times in the management of these cases has had the overriding objective in mind.

## **Findings in Fact and reasons for decision**

33. Mr C O'Brien alleged that he had complied with the directions and that therefore Rule 8(1) should not be invoked.

34. Throughout the process leading up to the final hearing in this matter the Tribunal has accepted that Mr C O'Brien had health issues and, in particular, that he suffered from an anxiety depressive illness. At each hearing the Tribunal enquired as to the state of his health. An example is that at the substantive hearing for the strike out application, the Tribunal pointed out to Mr T O'Brien that the medication referred to in the letter from the doctor was at half the level that would be expected for an adult. In response thereto Mr T O'Brien confirmed that Mr C O'Brien was much better and doing quite well. Considerable leeway has been given to Mr C O'Brien in order to accommodate any problems he might have had with his illness and to allow participation in the proceedings in accordance with the Rules. In particular, the timescale for the Directions issued on 18 June 2012 was entirely predicated around his stated abilities. It was clear at that stage that he had been giving instructions to his agents, his brother and to Counsel both in regard to these issues and the proceedings relating to VAT.

35. Was there compliance with the Directions issued on 18 June 2012? The Tribunal finds that there was not complete or timeous compliance. It was argued for Mr C O'Brien that the letter of 28 May 2012, which it was alleged had been sent to HMRC, was the first part of that compliance. HMRC argued that they were not aware of the existence of the letter of 28 May 2012 until 21 August 2012 when the representative opposed the strike out application. They suggested that the letter rather looked like a draft letter since it was incomplete. Both parties were well aware that the "States for Settlement" were a crucial part of the Directions and there is simply nothing in the paragraph headed that on the second page. Mr Mackie, the author of the letter was present at the hearing and volunteered the information that "it looks like someone's deleted bits". He was asked to expand upon that explanation and then stated that "all I can think is that I didn't finish the letter: it does look like bits have been deleted". He was unable to offer any further explanation as to why he might have deleted something. He could not explain why what purported to be a copy letter might have been altered after issue. It transpired that the correspondence was held on his personal computer and that he alone had access to it. The Tribunal found Mr Mackie to be wholly incredible and the inconsistencies in what he was stating were incapable of being clarified.

36. It was pointed out to Mr Mackie and Mr T O'Brien that at the case management hearing on 18 June 2012 each item in the Directions had been discussed with Counsel and those present. If the letter of 28 May 2012, which purported to comply with some of those Directions, had been issued and they had had the information at that stage then there would have been no need for the detailed discussions on 18 June 2012. Furthermore, and in particular, at the hearing on 18 June 2012 there was particularly detailed discussion about whether or not a business credit card existed. It had been alleged at that hearing that there was no business credit card statement in existence. It was drawn to the representative's attention that not only had they said that there was a

business credit card at the previous hearing (and at the VAT hearing) but that they had also agreed that they would be in a position to provide the statements. Shortly put, if the credit card statement had been sent to HMRC on 28 May 2012 as the said letter seems to say (a) there would have been no need to have debated it on 18 June 2012, and (b) there would have been no need for a Direction in that regard. Neither Mr Mackie nor Mr O'Brien were in a position to answer that point other than to say that they had not properly reviewed their files before the hearing on 18 June 2012. That did not sit well with the conduct of the hearing on 18 June 2012.

37. In a similar vein the letter of 28 May 2012, when dealing with Bank of Scotland Account 372498 states that statement 224 is missing. The letter of 10 August 2012 says exactly the same thing. If the letter of 28 May 2012, had been issued it would be expected that there would be no need to reiterate the point in the same terms. The only reference in the letter of 10 August 2012 to the letter of 28 May 2012 is in regard to the credit card statements, referred to above, and in the letter of 10 August 2012 it states that the February, March and April statements had been sent on 28 May 2012. The letter of 28 May 2012 purports to suggest that statements for the period February 2008 to December 2008 are enclosed. The two letters are incompatible. The statements have not been received by HMRC. The Tribunal finds on the balance of probabilities that the letter of 28 May 2012 certainly was not received by HMRC and in fact is highly unlikely to have been issued by the representative.

38. Turning to the letter of 10 August 2012 itself, the Directions stated very clearly that the documentation should be delivered to HMRC by 4.30pm on 13 August 2012. No courier was used, the letter and enclosures were received on the following day. There was not compliance.

39. Even if it were accepted that the letter of 10 August 2012 had been compliant in the sense that information had been given to HMRC the Tribunal finds that it was not adequately compliant. HMRC has been asking for details of the flood since 2009. That which was sent with the letter of 10 August 2012 simply repeats that there was a flood. There is no detail of what was destroyed, there is no detail of any electronic records, there is no detail of any backup which was retrieved. Turning to the bank accounts there is a copy letter to the Bank of Scotland in regard to missing statements which was dated 6 July 2012 and a follow-up on 8 August 2012 relating to only one part of that. No action seems to have been taken by the representative to access the information before 6 July 2012.

40. As far as the States for Settlement are concerned, the letter of 10 August 2012 blandly states: "We believe that copies of these had already been submitted to HMRC ...". The enclosures with that letter included two States for Settlement. At the case management hearing on 16 April 2012 it was stated that three of the seven States for Settlement which were requested were in the records held by the representative and they were at that juncture awaiting copies of the remaining ones and expected to receive them within two or three weeks. They reiterated that they held three States for Settlement at the hearing on 18 June 2012. In the bundle attached to the letter of 10 August 2012 there are copies of letters to solicitors requesting copies of States for Settlement for three properties but those letters commence on 19 June 2012. There is

no information in regard to the remaining two properties. Overall there would not appear to be compliance in any meaningful way with the Directions repeatedly issued on this point. Further there is inconsistency since it would appear that notwithstanding the Statements made at the case management hearings no effort was made to obtain this information until summer 2012. No witness statements have been lodged. Even if there were an explanation for Mr C O'Brien being unable to lodge a witness statement, no adequate reason was advanced as to why witness statements for both Mr Mackie and Mr Thomas O'Brien, who have been intimately involved with these appeals could not have been produced, at least in draft. On 24 August 2012, the representative applied to the Tribunal to extend the time for delivery of the witness statements to 5 September 2012. Those statements have not been lodged.

41. The crux of the matter in this case is that the representative submitted the Document List on which they intended to rely in the appeals in December 2010. In terms of Rule 27(3) HMRC have the right to see those documents. Repeated Directions have been issued by the Tribunal after detailed consultation with the representative and Counsel and there has been a repeated failure to obtemper those Directions. Mr C O'Brien and the representative have repeatedly failed to comply with the overriding objective of the Rules. There has been extensive delay. Mr C O'Brien was put on formal notice that if he failed to comply with those Directions the appeals would be struck out. He has so failed. Looking to the Tribunal Rules, the Tribunal finds that the application from HMRC should be granted and the appeals are struck out.

42. In any event even if it were not appropriate to strike out the appeals on the basis of Rule 8(1) HMRC argued that the case had no realistic prospect of success since even after they received the information included with the letter of 10 August 2012 they were little further forward than they had been at the case management hearing on 18 June 2012. The Tribunal finds that in the absence of appropriate and relevant documentation the second appeal has no realistic prospect of success and therefore that appeals should be struck out in accordance with Rule 83(c) as requested by HMRC.

43. 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.

**ANNE SCOTT, LLB, NP  
TRIBUNAL JUDGE**

**RELEASE DATE: 13 September 2012**