



TC02346

Appeal number: TC/2011/06829

TYPE OF TAX – VAT – application by HMRC to strike out appeal – application refused on grounds no prejudice to HMRC if appellant allowed to make late appeal and for this matter to be stood behind two similar cases as previously directed by Tribunal

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**P B GOLF CLUB LIMITED
operating as POTTERS BAR GOLF CLUB
- and -**

Appellant

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

Respondents

**TRIBUNAL: JUDGE SANDY RADFORD
RICHARD THOMAS**

Sitting in public at Bedford Square, London WC1B 3DN on 19 July 2012

Mr A Dawbarn for the Appellant

Mrs Carroll for the Respondents

DECISION

5 1. This is an application by HMRC to strike out the appeal by the appellant dated 22 September 2011.

2. The appellant had sought an extension of time to make the appeal and asked that the appeal be stood behind two similar cases.

Background and facts

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3. Following the judgement in the case of *HMRC v Canterbury Hockey Club & another v HMRC* [2008] EUECJ C-253/07, the appellant made two claims dated 30 January 2009 and 16 February 2009 in respect of VAT paid on green fees and buggy fees supplied to persons taking part in sport.

15 4. On 23 July 2009 HMRC rejected the claim and the appellant asked for the decision to be reviewed.

5. On 17 August 2009 the reviewing officer rejected the claim, advising the appellant of its right to appeal to the Tribunal within 30 days, but nothing was done by the appellant until 5 May 2010. On that date the appellant wrote to HMRC referring to their original claims and pointing out that the Revenue and Customs Brief issued on 29 March 2010 appeared to indicate that some supplies of sporting facilities were now to be treated as exempt and asking if their claims could now be accepted.

20 6. On 21 May 2010 HMRC again rejected the claims, and referred the appellant back to the letter of 17 August 2009 which, as they pointed out, outlined the options for appeal. HMRC did not point out that the deadline for appeal had long since passed.

7. However an appeal was made by the club but not until 22 August 2011. The appellant asked for the late appeal to be admitted and asked for the appeal to be stood over behind the case of *Bridport and West Dorset Golf Club*.

30 8. On 19 September 2011 the Tribunal directed that the appeal should be stood over and all time limits extended until the earlier of 60 days after the case of *Chipping Sodbury Golf Club* [MAN/2008/0270] or the case of *Bridport and West Dorset Golf Club Limited* [TC/2009/1226] was finally resolved in the courts or settled by the parties.

35 9. On 22 September 2011 HMRC gave notice that they opposed the appellant's application for an extension of time and applied to have the appeal struck out. The grounds for the application were that the claims had been rejected on 17 August 2009 and the appellants had failed to prosecute the appeal with reasonable diligence.

10. Ms Louise Alabaster gave evidence. She had started working for the club in 2005 and was responsible for accounts and payroll. She explained that Mr Harvey Rose had become treasurer of the appellant in 2007. From the start he proved to be a difficult person to with whom to work. He regarded everything that had been done as
5 wrong and wanted it done differently. He was extremely protective over the accounts and unprepared to discuss them even when he made mistakes. He kept all VAT matters to himself. She did not know about the claims in relation to the green fees etc.

11. The members of the club thought that he knew what he was doing and he was at
10 the golf club every day. It was he who made the original claims and received the rejection from HMRC but he told nobody else. Mr Rose fell out with every successive chairman of the appellant and was always resigning. The appellant produced minutes of meetings which confirmed this.

12. Mr Dawbarn for the appellant produced minutes of a meeting held on 25
15 February 2009 and explained that Mr Rose had resigned as director and treasurer but was to continue to oversee the accounts for the time being. This was the fourth time he had resigned.

13. Finally in 2011 Mr Rose stood down as treasurer and Wilkins Kennedy was
20 asked to look at the accounts. They made the appeal at the earliest time they could when they realise that it was still outstanding.

14. Mr Dawbarn explained that up until then the appellant had relied on solely on Mr Rose as they believed that he knew what he was doing. The appellant believed that Mr Rose in failing to make a timely appeal was motivated by malice.

15. Mr Carroll for HMRC pointed out that the decision letter was dated 17 August
25 2009, some two years before the appeal, and that even if the letter of 21 May 2010 were taken as a decision letter, which he denied, the appeal would still be fifteen months late.

Findings

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16. In considering late appeals the Tribunal has to perform a balancing exercise. On the one hand finality in litigation is highly desirable, and as time passes evidence may become stale and memories fade. On the other there may be cases where there is no prejudice to HMRC. We found that allowing this appeal out of time would cause
35 no serious prejudice to HMRC. There was no danger of any of the evidence becoming stale, and since the appeal had been stayed behind cases which have not yet been resolved (indeed in *Bridport & West Dorset* the Upper Tribunal has recently referred the case to the CJEU) it could not have been decided any earlier.

17. We found that in the interests of fairness and justice the appeal should be allowed to stand behind the relevant cases as previously directed by the Tribunal which direction we now confirm.

5 **Decision**

18. HMRC's application for the appeal to be struck out is hereby refused and the appellant's application for an extension of time to make the appeal out of time is hereby granted.

10 19. We confirm that the appeal should stand behind the cases as stipulated in the Tribunal's direction as set out in paragraph 8 above.

15 20. 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.

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**SANDY RADFORD
TRIBUNAL JUDGE**

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RELEASE DATE: 8 October 2012