



TC02650

Appeal number: TC/2012/7795

APPLICATION FOR PERMISSION TO APPEAL LATE – whether appeal would have any prospect of success – no – whether any good reason for delay in bringing appeal – no – permission refused

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ANNIE W GIBBS

Appellant

- and -

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

TRIBUNAL: JUDGE BARBARA MOSEDALE

Sitting in public at Bedford Square, London on 26 March 2013

Mr T R Shaw, Chartered Accountant, for the Appellant

Mr Corbett and Mrs Hayes, HMRC officers, for the Respondents

DECISION

1. On 6 August 2012 Mr Shaw, on behalf of the appellant, lodged an appeal with this Tribunal against various assessments to tax and penalties amounting to £23,935.97. On the appellant's behalf he applied for permission to appeal late. HMRC objected to the appeal being lodged late and the question of whether permission should be given was dealt with as a preliminary issue.

The facts

2. Mr & Mrs R Gibbs traded in partnership up to some time in 2007. HMRC opened an enquiry into the partnership tax returns for two years (the years ended 2004 and 2005). The enquiries were closed on 28 January 2008 and this closure included an amendment of the partnership tax returns. On the same date HMRC amended the returns for years ended 2002 and 2003 by assessment.

3. Mr & Mrs Gibbs' tax adviser, Mr Shaw, lodged an appeal against these four amendments with HMRC on 29 February 2008.

4. The grounds of appeal included a challenge to the District Valuer's valuation of lease premium works. Mrs Hayes referred the matter of the valuation back to the District Valuer who revised his estimate in favour of the partnership.

5. On 14 July 2008 HMRC imposed a misdeclaration penalty on each of the two partners.

6. Mrs Hayes wrote to Mr Shaw on 31 December 2009 copying to him the letter of the same date to Mr Gibbs. This letter notified Mr Shaw of a 30 day deadline. The letter to Mr Gibbs on 31 December 2009 stated Mrs Hayes' view of the matters under appeal. It was a long letter but in broad outline it restated Mrs Hayes' earlier amendments to the partnership's tax returns but the assessments and penalties were revised downwards to take account of the District Valuer's valuation of the lease premium works.

7. I find that it stated clearly on the first page and in the last paragraph that the taxpayer had the option within 30 days to ask for an independent HMRC review or appeal to this Tribunal. It was also clearly stated in the section on the valuation that the revised valuation could be objected to within 30 days under S 42(2) ICTA 1988.

8. As no review was requested or appeal lodged within the 30 days, Mrs Hayes treated the matter as settled under s 54 TMA and proceeded to raise assessments against the individual partners. Two assessments, two amendments and one penalty determination (relating to the four years) were issued to Mrs Gibbs on 1 March 2010. This letter did not notify Mrs Gibbs of any appeal rights.

9. On 12 March 2010, Mr Shaw wrote to the "business head" at HMRC. It appears that this was in response to two Notices warning Mrs Gibbs that HMRC were about to

take legal action to collect unpaid debts. In this letter he says Mrs Hayes told him his 2008 appeal would be lodged with the General Commissioners and says:

5 “We have not yet heard from the Commissioners, and had assumed that our grounds for appeal were well founded and that you did not therefore wish to proceed with this assessment...

I have phoned your Tribunal service. They tell me they act independently of HMRC and do not deal with decisions made before 1 April 2009.

...”

10 10. On 29 March 2010, Mrs Hayes wrote again to Mr Shaw. This was in reply to Mr Shaw’s letter of 12 March 2010 as although the letter had been sent to HMRC's 's business head', Mrs Hayes was asked to deal with it. Her reply stated:

15 “In your letter 28 January 2010 I noted that you did not want a review conducted by an independent HMRC reviewer unconnected with my enquiry. Therefore the only other route available to your clients is to have their cases heard via the Tribunal Service.

The General Commissioners were replaced on 1 April 2009 by the Tax Tribunal – I attach a sheet “Tribunal Service Tax About Us” which explains this further.

20 [reference to further helpful leaflets attached]

Your clients (or you acting on their behalf) must ask the Tribunals Service to hear your case. I cannot ask the Tribunals Service to hear your case on your behalf.

25 The HMRC decision which you may wish to notify to them for hearing is contained in my letter of 31 December 2009. This superseded the earlier decisions made 11 March 2008. The date of decision required by the Tribunals Service (in section 3 of their form) is therefore 31 December 2009 and it is a copy of this letter which you should attach to the form as required by section 11 of the form...”

30 11. Mr Shaw had also written earlier on 5 March 2010 to the HMRC enforcement team in Croydon in response to their Notices saying:

“...

35 [Mrs Hayes] wrote on 31 December 2009 suggesting that my clients appeal to an independent tax tribunal or HMRC officer not previously involved in this case. (We had understood that these services were only available for tax decisions made on or after 1 April 2009. This is what it states in the fact sheet she provided.

My clients are now considering such an appeal.

.....”

40 12. Mrs Hayes also replied to this letter. Her reply was on 15 April 2010 and referred Mr Shaw to the advice on “what actions you may wish to take” given in her letter of 29 March 2010.

13. Mr Shaw wrote then to the HMRC Debt Management Team in Ty Glas on 6 July 2010 stating that appeals had been lodged in 2008 with the General Commissioners.

14. Mrs Hayes replied to this on 15 July 2010 repeating that Mr Shaw should read her letter of 29 March 2010 for “what action you may wish to take”.

5 15. Mr Shaw then wrote to Ty Glas on 4 August repeating the statement that the General Commissioners had to determine the appeal. Mrs Hayes replied on 27 September 2010 saying:

“I have still received no notification of any actions from the Tribunal Service”.

10 16. After that it seems HMRC proceeded to enforcement action. At a hearing attended by Mr Shaw in the County Court the District Judge awarded HMRC judgment for £23,798.48 on 20 March 2012. An application to set aside that judgment was dismissed by the same Judge on 6 July 2012.

Appellant’s submissions

15 17. Mr Shaw’s stated grounds for applying for permission to appeal out of time are:

(a) he does not need permission because the appeal was lodged with the General Commissioners;

20 (b) and/or he thought the appeal was lodged with the General Commissioners and he did not understand he needed to lodge an appeal with the tax tribunal.

Is permission to appeal out of time necessary?

The law

25 18. I will deal with the first question which is whether the appellant’s appeal is out of time or not. If it is, permission of this Tribunal would be needed before the appeal could be heard.

19. The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (“the 2009 Order”) provides:

Schedule 3

General

30 1.—(1) In this Schedule—

.....

“tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.

35 (2) For the purposes of this Schedule there are “current proceedings” if, before the commencement date—

- (a) any party has served notice on an existing tribunal for the purpose of beginning proceedings before the existing tribunal, and
- (b) the existing tribunal has not concluded proceedings arising by virtue of that notice.

5

.....

Matters formerly heard by existing tribunals (except VAT and duties tribunals)

5.—(1) This paragraph applies if, before the commencement date—

- (a) a notice of appeal has been given to HMRC; but
- (b) no party has served notice on an existing tribunal for the purpose of beginning proceedings before the existing tribunal in relation to that appeal.

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(2) Where the date on which a review is required or offered falls on or before 31 March 2010, the period for HMRC to give notice of their conclusions for the purposes of the relevant provision is to be 90 days (but without prejudice to any power to agree to a different period).

(3) In this paragraph—

“review” means a review under—

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(a) section 49B or 49C of the Taxes Management Act 1970(14), or

(b) any other enactment which, as amended by this Order, contains provisions corresponding to section 49B or 49C for review to be required or offered;

“relevant provision” means—

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(a) in the case of a review under section 49B or 49C of the Taxes Management Act 1970, section 49E(6) of that Act, or

(b) in the case of a review under any other enactment amended by this Order, the provision that corresponds to section 49E(6) of the Taxes Management Act 1970 in relation to that review.

30

6 Any current proceedings are to continue on and after the commencement date as proceedings before the Tribunal.

Conclusion on whether appeal out of time

20. Mr Shaw's position is that he does not need permission to appeal out of time because an appeal was lodged with the General Commissioners.

35

21. As set out above Mr Shaw did lodge the appellant's appeal against the four 2008 amendments/assessments with HMRC. No appeal against the penalty assessments was lodged.

40

22. Under the law as it applied before 1 April 2009, it was for HMRC to transmit the appeal to the General Commissioners. There was no requirement to do this at any particular time. This allowed the parties time to negotiate. In this case I find that the

parties were, to Mr Shaw's knowledge, attempting to resolve the appeal without recourse to the General Commissioners and as part of that process the question of valuation had been referred by HMRC to the District Valuer.

23. By the time that the District Valuer had given his valuation, the law had changed.
5 The new law in the sections 49A-49H Taxes Management Act 1970 ("TMA") was that, after the appeal had been notified to HMRC, it became the responsibility of the taxpayer to lodge the appeal with the Tribunal. It was envisaged that this would normally be after a review by a different HMRC officer but this was not compulsory. The significant point is that before 1 April 2009 HMRC had the responsibility to
10 lodge the appeal with the appropriate tribunal and after 30 March 2009 that responsibility became the taxpayer's.

24. I find that this applied in the appellant's case. Although the appeal against the partnership amendments had been lodged with HMRC in 2008 in time, it was not 'current proceedings' for the purpose of the 2009 Order because under Schedule 3
15 paragraph 1(2)(a) (see [19] above) neither HMRC nor the appellant had served notice on the General Commissioners for the purpose of bringing proceedings before them. Because the appeal was not 'current proceedings' the tribunal which replaced the General Commissioners (this tribunal) was not vested with jurisdiction to hear the appeal.

20 25. That this is what was intended is made clear by paragraph 5(2) (above) where it extends the time for HMRC to notify reviews for certain cases in which notices of appeal were lodged with HMRC before 1 April 2009. From this it can be deduced that the new provisions contained in s 49A-H of TMA were intended to apply to any appeal which was notified to HMRC before 1 April 2009 but which had not been
25 notified by them to the General or Special Commissioners by that date.

26. Therefore, I reject Mr Shaw's argument that, because he lodged the appeals with HMRC in 2008, these appeals were current proceedings and that therefore the appeals are already before this tribunal.

27. On the contrary, on 1 April 2009 the four 2008 appeals became subject to the
30 new provisions of the TMA and in particular HMRC were able to notify an offer of review and at the same time to state their 'view' of the partnership amendments and assessments (see s 49C(2) TMA). Mrs Hayes did that in her letter of 31 December 2009. As Mrs Hayes stated in her letter, the effect of the letter was that, if a review was not requested or an appeal to the tax tribunal not lodged, her 'view' would become
35 final. This was a reflection of the law, as set out in s 49C(4):

'(4) If the appellant does not give HMRC such a notification within the acceptance period, HMRC's view of the matter in question is to be treated as if it were contained in an agreement in writing under s 54(1) for the settlement of this matter.'

40 28. As neither Mrs Gibbs nor Mr Gibbs gave any notice requiring a review or notifying the tax tribunal of an appeal, the effect was that Mrs Hayes' view became

final. This is no doubt the explanation of why the County Court gave judgment against Mrs Gibbs on the consequential amendments to her tax returns in 2012.

29. So having determined that the appeals were not before the General Commissioners, and having determined that they should have been lodged (as per s 49C) with this tribunal within 30 days of 31 December 2009, and they were not, the question for the Tribunal is whether to give permission to appeal out of time.

30. I note in passing that I was not shown an appeal against the penalty determinations but Mrs Hayes in her letter of 31 December 2009 treated the appellant as having appealed against the penalty determination too and I will do the same: it would be a nonsense for the penalty determinations to stand if the assessments fall.

Should permission to appeal out of time be given?

Applicable principles

31. This Tribunal has power to extend time in which to lodge an appeal.

32. The Upper Tribunal recently considered the applicable principles in the case of *Data Select Limited* [2012] UKUT 187 (TC). It said:

“34.Applications for extensions of time limits of various kinds are commonplace and the approach to be adopted is well established. 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.”

33. I make the point that these are general principles. It is clearly relevant to consider the likely success of the appeal if permission were granted: this issue was no doubt subsumed in the judge’s items (4) and (5) above. It is also obviously relevant to consider whether the Tribunal has jurisdiction to hear the appeal: if it has no jurisdiction, there is no point in giving permission to appeal late as the appeal cannot be entertained at all.

34. I will consider three matters before reaching my conclusion:

- (a) Jurisdiction;
- (b) Likely success of the appeal if permission granted;
- (c) Reasons why the appeal was lodged late.

Jurisdiction

35. When considering whether to give permission to appeal out of time, I must first consider whether the Tribunal has jurisdiction to hear the appeal at all, because if it does not there is no point to extend time in which to appeal.

5 36. It seems to me that there are three possible issues on jurisdiction: the first relates to the County court judgement, the second relates to Mrs Gibbs' status and the third to the amendments to Mrs Gibbs' personal returns.

37. The County Court Judgment

10 38. Jurisdiction on tax matters is split between the Tax Tribunal and the County Court in that the Tax Tribunal has jurisdiction to deal with all matters allocated to it by statute which roughly equates to any matter of liability to tax; the County Court deals with the enforcement of assessments.

15 39. The County Court had given judgment against Mrs Gibbs on the amendments to her personal tax returns. It has refused to set aside that judgment. I was not told whether the decision was under appeal.

40. I considered whether there was any point in giving Mrs Gibbs permission to appeal out of time assessments and amendments when, even if successful, judgment has already been given against her for the full amount of the amendments and assessments.

20 41. I have come to the conclusion that the County Court's judgment against Mrs Gibbs does not deprive this Tribunal of the jurisdiction to determine liability: nevertheless, it may render such a determination pointless. A finding by this Tribunal that the assessment was excessive would certainly not overturn the County Court's judgment on debt. I am doubtful to what extent it would even give a ground to appeal or set
25 aside the County Court judgment.

42. The sensible course for a taxpayer, faced with debt action in the County Court, who wishes to challenge liability on the assessment but is out of time to do so, is to ask the County Court to stay proceedings while an application is made to this Tribunal for permission to make a late appeal. I was not told why this course of
30 action was not followed in this case.

43. However, my conclusion is that I would not refuse permission on this ground: if the appellant could demonstrate to the tax tribunal that the assessment was excessive, this might give grounds to appeal and/or set aside the judgment of the County Court.

44. The partnership assessments & Mrs Gibbs' status

35 45. The second issue on jurisdiction relates to Mrs Gibbs's status as far as the partnership's tax affairs are concerned. Mr Gibbs and not Mrs Gibbs was the nominated partner under s12AA TMA. Mr Corbett suggested that his opinion was that only the nominated partner could bring an appeal, but indicated that HMRC did not object to the appeal against the partnership assessments and amendments being

admitted late on the grounds that Mrs Gibbs was not the proper person to lodge the appeal.

5 46. Whatever HMRC's view, if Mrs Gibbs could not bring an appeal in law against the partnership assessments and amendments on the grounds that she was not the nominated partner, the appeal would have no prospect of success and it would be pointless to give her permission to appeal late. However, I consider my decision in *Phillips v HMRC* [2009] UKFTT 335 (TC) to be correct and any partner is entitled to bring an appeal against partnership assessments or amendments:

10 [106] 'In my view a partner does have a sufficient legal interest in an amendment to a partnership return under s30B as it leads automatically to an amendment to his personal tax return. He can therefore exercise the right of appeal under s31 against assessments of the partnership or amendments to partnership returns.'

15 47. The reasons for this is that there is nothing in s 31 TMA which expressly limits the right of appeal to the nominated partner and to imply such a limitation would not be consistent with the European Convention for the Protection of Human Rights and Fundamental Freedoms or the Bill of Rights 1688.

48. Therefore, I find this is not a ground on which to refuse Mrs Gibbs permission to appeal late.

20 49. The consequential amendments to Mrs Gibb's personal returns

50. HMRC were of the opinion that there was no right of appeal against the amendments to Mrs Gibbs' personal returns made under s 28B(4) in so far as it was consequential to the closure of the enquiries into the partnership returns and under s 30B(2) in so far as it was consequential to a discovery assessment on the partnership.
25 This view explains why the letter to Mrs Gibbs on 1 March 2010 (see paragraph XXX above) did not notify any right to an appeal.

51. The right of appeal is contained in the four sub-sections of s 31 TMA. S 31(1)(b) is inapplicable as it applies to amendments made during s 9C enquiries (in other words enquiries into personal returns).

30 52. Contrary to the view I expressed in *Phillips*, I would agree that there is nothing in s 31(1)(b) which would permit an appeal to a consequential amendment because it only applies to

'any conclusion stated or amendment *made by a closure notice* under section ...28B'. (my emphasis)

35 While this covers the amendment to the partnership return, strictly I do not think it can be said to apply to the consequential amendments to the partners' returns because the amendment to the personal returns does not take effect by the issue of the *closure notice* (s 28B(2)(b)), but by issue of a separate and subsequent notice under s 28B(4). It is an amendment but not one made by a closure notice.

53. Section 31(1)(c) would also not appear to permit an amendment to a personal return to be appealed. It provides for appeals against amendments under s 31B(1) which is an amendment following a discovery assessment in respect of a partnership return. The consequential amendments to the partners' returns are made under s 31B(2) as I have said above: as I noted in the *Phillips* case at paragraph [104], there is nothing in s 31(1)(c) that would permit an appeal against a s 31B(2) amendment.

54. Section 31(1)(d) only gives a right of appeal against 'an assessment'. The alterations to the personal tax returns of partners under s 28B(4) and 30B(2) are expressed to be amendments and not assessments.

55. My decision is therefore that HMRC are right and there is no right of appeal for a partner to appeal a consequential amendment under s 28B(4) or s 30B(2). While this might superficially appear surprising, it would be consistent with the scheme of the TMA. S111 taxes each partner in accordance with his share of the partnership profits. Each partner must declare his share of the profits as disclosed on the partnership return. The partners' liability is driven entirely by the partnership return. Amendments to that return automatically are carried on to the partners' returns (s 28B(4) and s 30B(2)). If a partner were allowed an individual appeal against his own return, this might lead to a situation of over or under taxation of the partnership profits as a whole as there is a risk that a different partnership profit figure would be used for different partners' tax returns.

56. It seems to me that a proper interpretation of s 31 and one that is consistent with logic is that only the partnership returns can be appealed. But as I said in *Phillips*, any partner can bring the appeal. The effect of succeeding in the appeal would be a reduction in the partnerships' taxable profits and this would flow through to benefit all partners under s 50(9).

57. In conclusion, Mrs Gibbs has no right to appeal the decisions dated 1 March 2010 as she has no right of appeal against consequential amendments. Therefore, as the Tribunal has no jurisdiction to hear such an appeal I will not give her permission to appeal these decisions late. Had such an appeal been brought in time, it should have been struck out for lack of jurisdiction.

58. In passing, I mention one other matter. An assessment must contain notice of rights of appeal: see s30A TMA. The consequential amendments notified on 1 March 2010 contained no notice of any right of appeal. I consider that this was strictly correct because as I have just said there is no right of appeal against consequential amendments. Their failure to carry such notification could therefore not be a ground of appeal even if there was a right to appeal (which there is not).

59. However, as I have said I consider that as a partner in the partnership, s31 did give her the right to appeal the partnership assessments and amendments and I go on to consider whether she should be given permission to appeal the 'view' on these expressed by HMRC on 31 December 2009 out of time.

Grounds on which to grant permission to appeal late?

Likelihood of success in appeal if permission granted

60. Mr Shaw informed me that Mrs Gibbs had two grounds of appeal:

5 (a) The assessments were not properly raised against Mrs Gibbs because although sent to the right address they were addressed to Mrs R Gibbs whereas the appellant's initials are A W;

10 (b) The assessments were not properly raised against Mrs Gibbs or the partnership because they were issued without Mr Shaw's agreement to the valuation put forward by the District Valuer.

However from what else he said it appears Mrs Gibbs may wish to bring other grounds of appeal:

15 (c) Mr Shaw alleges that Mrs Hayes' calculations of the assessments are also flawed.

(d) He alleges that HMRC have not pursued Mr Gibbs on the assessments raised against him.

20 (e) The appeals relate in part to expenditure incurred before 2001 and it is not reasonable to expect the partners to have records for this

(f) The purported assessments of 31 December 2009 were statute barred.

Name of taxpayer on assessment

25 61. There is no right of appeal against the consequential amendments. The name on the assessment could therefore only be a ground to be raised in the County Court in enforcement proceedings. The tax tribunal has no jurisdiction.

30 62. And I note in passing that even in the County Court it would not have afforded a good defence. Section 114 TMA provides that a 'mistake...as to...(i) the name or surname of a person liable' would not enable an assessment or determination to be impeached. In any event, I do not think that HMRC made a mistake in referring to the appellant as Mrs R Gibbs. I understand that at the time she was married to Mr R Gibbs and in common usage of the English language was properly referred to as Mrs R Gibbs.

35 63. This is therefore hopeless as a ground of appeal and I would not give permission to appeal late if this were the only ground of appeal to be raised.

No agreement with valuation

64. It was Mr Shaw's case that Mrs Hayes could not express her 'view' in her letter of 31 December 2009 because the appellant (or Mr Shaw on behalf of Mrs Gibbs) had not agreed the valuation put forward by the District Valuer. He cited no authority in support of this rather surprising proposition. Certainly there is no authority in the s 42 ICTA which is the section under which the notice was given. Rather it provides for a 30 day time in which the appellant can object to the determination and for such objection to be treated as an appeal. All this was set out in Mrs Hayes' letter of 31 December 2009.

65. This is therefore hopeless as a ground of appeal and I would not give permission to appeal late if this were the only ground of appeal to be raised.

Mrs Hayes' calculations are flawed?

66. Mr Shaw stated that he considered Mrs Hayes' calculations to be flawed but gave me very little in the way of reasons why. He referred me to paragraph 6 of his written notes but this mostly appears to repeat the contention that the valuation was not agreed by him and should not in his opinion be used. He did not satisfy me that his challenges to Mrs Hayes' calculations had a reasonable prospect of success.

Mr Gibbs not pursued

67. It was Mr Shaw's case that no enforcement action was taken against Mr Gibbs. I found that neither Mr Shaw nor the HMRC officers in the hearing knew whether or not Mr Gibbs had paid the consequential amendments and assessments in respect of his personal tax returns. If he had paid them, this would explain why no enforcement action was taken against him. Therefore I am not satisfied that HMRC had made a decision to treat the two partners differently.

68. Even if I had been so satisfied, this Tribunal does not have a judicial review function and therefore this could not form a ground of appeal even if HMRC had been shown to have made a decision to treat the partners differently. Mr Shaw has therefore failed to satisfy me that either this allegation was true or that it would form a ground of appeal.

Lack of records

69. In so far as this is put forward as a ground of appeal, it is hopeless. The assessments were raised within time and the partners were required to keep their records for a period at least equivalent to that time limit. If they failed to do so they have only themselves to blame. If they destroyed them after the time period for keeping them expired, this must have been after the assessments were raised, and again they have only themselves to blame.

Statute barred

70. One of Mrs Gibbs' grounds of appeal was that the assessments and amendments against the partnership were statute barred. Mr Shaw did not explain to me why he thought this was so. There was no suggestion that the enquiries were commenced
5 outside the enquiry window and the closure notice can not be out of time: unless the Tribunal orders closure there is no time limit. And there was no suggestion in this case that the General Commissioners had specified a time for the closure notice.

71. Similarly it appears that there is no time limit for the subsequent amendments to the partners' personal returns under s 28B(4) or s 30B(2).

10 72. There is a time limit on assessments in s 34 TMA. However, this cannot have been intended to apply to amendments following enquiries and in any event the amendments and assessments were within the s 34 time limit in force at the time raised. This is because the assessments were raised on 28 January 2008 and the
15 earliest of them related to the year ended April 2002 when the time limit was 5 years after the 31st January following the end of the year of assessment ie 31 January 2008. I can see no grounds for a claim that the assessments were statute barred.

Summary

73. All the grounds of appeal put forward by Mr Shaw were hopeless with the possible exception of a challenge to Mrs Hayes' figures, and even there the lack of
20 explanation given by Mr Shaw means that I was not satisfied that it had a reasonable prospect of success. Had this appeal been made in time, it would therefore have been appropriate to strike it out as not having a reasonable prospect of success. That means it is not appropriate for me to give permission for the appeal to be brought late.

Other considerations

25 74. Even putting aside the consideration that I was not satisfied that the appeal had a reasonable prospect of success, I would not extend time. Taking into account the other considerations mentioned in *Data Select* (set out in paragraph 32 above) I find that the taxpayer does not have good grounds for lodging the appeal late.

30 75. Mr Shaw's case was that he believed that the appeal was properly lodged with the General Commissioners. Whatever his actual beliefs, I find that such a belief was not reasonably held once he had received Mrs Hayes letter of 31 December 2009. The belief if genuine would have been wholly unjustified in the face of her further letters of 29 March 2010, 15 April 2010 and 15 July 2010.

35 76. Mr Shaw is Mrs Gibbs's representative. Mrs Gibbs did not attend the hearing so I do not know if Mrs Gibbs personally saw the letters setting out the need to lodge an appeal with the tax tribunal within 30 days of 31 December 2009. She was not the nominated partner so the letter was not sent to her: it was sent to Mr Shaw and Mr R Gibbs. The later letters were sent solely to Mr Shaw.

5 77. However, Mr Shaw stated in his letter of 5 March 2010 that 'my clients are now considering such an appeal'. There is nothing to suggest that this assertion was false so I take from it that the two partners, including Mrs Gibbs, and of course Mr Shaw, did know that an appeal needed to be lodged. I have been given no satisfactory explanation of why such an appeal was not lodged between the date of that letter (March 2010) and the actual lodgement in August 2012, over two years later.

10 78. The time limit of 30 days in which to lodge an appeal exist for a reason and that is that there needs to be finality in tax affairs. There was no good explanation for the very lengthy delay of nearly 3 years. If allowed in, the appeal would have very little prospect of success. Taking all this into account, I refuse permission to appeal out of time.

15 79. 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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**BARBARA MOSEDALE
TRIBUNAL JUDGE**

RELEASE DATE: 17 April 2013

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