[2016] UKFTT 0184 (TC)

TC04970

Appeal number: **TC/2014/03863**
TC/2015/05512

VAT – INCOME TAX – Late notices of appeal – s 83G Valued Added Tax Act 1994 – whether leave to appeal out of time should be granted – no – application dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

BALJIT SINGH **Appellant**

- and -

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

TRIBUNAL: JUDGE ROBIN VOS
BEVERLEY TANNER

Sitting in public at Centre City Tower, Birmingham on 16 November 2015

Mr S J Vaghela, accountant for the Appellant

Mr David Wilson, Presenting Officer, HMRC, for the Respondents

DECISION

Request for full decision

1. The Tribunal issued a summary decision on 10 December 2015.

2. By a letter dated 6 January 2016 and received by the Tribunal on 11 January 2016, Mr Singh's accountant (Mr Vaghela) applied on his behalf to the Tribunal for a decision notice setting out full written findings and reasons.

3. Under rule 35(5) of the Tribunal Procedure (First Tier Tribunal) (Tax Chamber) Rules 2009, an application for full written findings and reasons must be received by the Tribunal within 28 days of the date the Tribunal sent out the original decision notice. In this case, the 28 day period expired on 7 January 2016 – i.e. the day after Mr Vaghela's letter was dated but three days before it was received by the Tribunal. Mr Vaghela referred to the Christmas/New Year holidays and delays in the postal system when this was pointed out to him.

4. HMRC has confirmed that it has no objection to Mr Singh's late application for full written findings and reasons.

5. Given the fact that the letter was written before the expiry of the time limit, the very short period of delay and the points referred to by Mr Vaghela, the Tribunal has agreed to accept the late application.

6. Since the hearing and the original decision notice, the Court of Appeal's decision in *BPP Holdings v HMRC* [2016] EWCA Civ 121 has been published. Whilst the Court of Appeal in that case has endorsed a stricter approach to compliance with rules (including time limits), suffice it to say that, given the minor nature of the breach in this case, it does not affect our decision to allow the late application.

Introduction

7. This case deals with two separate appeals but as they relate to the same matters we heard them together.

8. The first appeal is an appeal against a VAT assessment for the period from 1 November 2003 to 31 December 2008 in the sum of £98,891 which was issued by HMRC on 22 November 2011. It is also an appeal against HMRC's refusal to accept revised figures contained in a VAT return for the same period submitted by the appellant on 8 January 2014 showing a VAT liability for that period of £44,667.32. These appeals have been given the appeal number TC/2014/03863.

9. The second appeal is an appeal relating to the appellant's self-assessment returns for the tax years ended 5 April 2003 – 5 April 2009. The returns for the tax years ended 5 April 2003 – 5 April 2006 were the subject of a previous enquiry which was settled by agreement under section 54 Taxes Management Act 1970 ("TMA 1970") in December 2009/February 2010. This appeal has been allocated appeal number TC/2015/05512.

10. All of these appeals were notified to the Tribunal out of time except for the appeal against HMRC's refusal to accept the revised figures shown in the appellant's VAT return submitted on 8 January 2014 which HMRC had treated as an error correction notification. HMRC accept that this appeal was made in time and we agree.

11. This is therefore an application by the appellant for the Tribunal to give permission for the remaining appeals to be made after the end of the period specified by statute.

Absence of the appellant

12. The appellant did not attend the hearing as he was in India due to his father being unwell.

13. Mr Vaghela confirmed that Mr Singh had received notice of the hearing and that Mr Singh wished for the hearing to go ahead in his absence. Mr Singh's son, Mr Mandeep Singh who attended the hearing confirmed that his father wished the hearing to go ahead.

14. Mr Wilson, on behalf of HMRC, had no objections to proceeding with the hearing in Mr Singh's absence.

15. Although there were certain aspects on which it might have been helpful to have Mr Singh's clarification, Mr Vaghela was confident that the documentary evidence provided together with Mr Mandeep Singh's evidence was sufficient to enable him to put the appellant's case before the Tribunal.

16. Having considered all of the factors, the Tribunal was satisfied that Mr Singh had received notice of the hearing and that it was in the interests of justice to proceed with the hearing, pursuant to Tribunal Procedure Rule 33.

Evidence/facts

17. The evidence consisted of a bundle of documents and correspondence provided by HMRC, a bundle of documents and correspondence prepared by Mr Vaghela on behalf of the appellant and oral evidence from Mr Mandeep Singh. Based on this evidence, we find the following facts.

18. Mr Baljit Singh was a sub-contractor in the construction industry. He was actively trading between January 2003 and June 2007 when he ceased trading due to health problems. During that period, he had one main client, Bell Formwork Services Limited.

19. Mr Singh has had a number of accountants who have dealt with his tax compliance. The first was a Mr Rana based in Smethwick who acted for Mr Singh from 2003 – 2005. Mr Rana ended up in prison.

20. Mr Singh then engaged Mr Premji in Leicester who acted for him until 2007. Mr Premji was not a chartered accountant.

21. In 2007, Mr Singh appointed Farmiloes in Birmingham as his accountants. The individuals involved at Farmiloes were a Mr Poon and Mr Lipman. Unfortunately, Mr Lipman died in November 2010 but Mr Poon continued advising Mr Singh until December 2012 when Mr Singh engaged Mr Vaghela.

22. At some point in 2006 or 2007, HMRC opened an enquiry into Mr Singh's self-assessment tax return for the year ended 5 April 2005. Various adjustments were agreed with Mr Singh's accountants. The final adjustment turned on whether Mr Singh should have been registered for VAT. This was determined by the First Tier Tribunal on 25 September 2009 ([2009] UK FTT 245) which rejected Mr Singh's appeal against his compulsory registration for VAT.

23. Following this decision, HMRC wrote to Mr Singh's accountants on 23 December 2009 confirming the amount of the adjustments to be made to Mr Singh's self-assessment tax returns for each of the tax years ended 5 April 2003, 5 April 2004, 5 April 2005 and 5 April 2006 and advising Mr Singh that his "appeals against enquiry and revenue amendments have now been settled under s 54 Taxes Management Act 1970". Mr Singh's accountants, Farmiloes replied to HMRC on 8 February 2010 confirming that "our client is in agreement with your adjustments".

24. Concurrently with this, HMRC's hidden economy team had been dealing with the VAT aspects. It had compulsorily registered Mr Singh for VAT from 1 September 2003 on 22 December 2008 and, in the absence of any VAT return having been submitted, issued a VAT assessment on 16 November 2009 for the period from 1 September 2003 to 31 December 2008 in the amount of £143,832.

25. This sort of assessment (i.e. where no VAT return has been submitted) is referred to by HMRC as a "prime assessment". It is not possible to appeal against such an assessment as the right of appeal in s 83(1)(p)(i) Valued Added Tax Act 1994 ("VATA 1994") only applies where the appellant has made a return. Mr Singh's accountants (Mr Lipman writing under the name Dextron Limited rather than Farmiloes LLP) nonetheless purported to appeal against the VAT assessment and wrote to HMRC on 8 February 2010 and 8 March 2010 applying for hardship in order to allow the appeal to the Tribunal to proceed without the VAT having been paid.

26. On 12 April 2010, HMRC pointed out to Dextron that it was not possible to appeal against the 2009 assessment and there is no evidence that any further action was taken in relation to this by Mr Singh or by his accountants.

27. Instead, on 30 April 2010, Mr Singh's accountants lodged an application to de-register Mr Singh for VAT with effect from 1 September 2003 together with a nil VAT return for the period from 1 September 2003 to 31 December 2008.

28. HMRC treat a VAT return as overriding a prime assessment. The December 2009 assessment was therefore in effect withdrawn.

29. HMRC did nothing further until 15 June 2011 when it notified Mr Singh that it was enquiring into the nil return submitted in April 2010 and requested Mr Singh to attend a meeting with HMRC on 7 July 2011. Mr Singh was told that he could bring an adviser with him but that "HMRC does not deal with Mr Poon either by telephone or in interviews. We only deal with Mr Poon by written correspondence and Mr Poon is aware of this."

30. There is no evidence that Mr Singh responded to HMRC's letter of 15 June 2011. He did not attend the meeting on 7 July 2011.

31. HMRC wrote to Mr Singh again on 3 August 2011 to explain that his lack of co-operation may adversely affect HMRC's ability to mitigate any potential penalties.

32. Having heard nothing further, HMRC issued a new VAT assessment on 22 November 2011 for the period from 1 November 2003 to 31 December 2008 in the sum of £98,891. The reduction was due partly to HMRC's calculation that Mr Singh was not required to be registered for VAT until 1 November 2003 rather than 1 September 2003 and also as a result of using the figures contained in Mr Singh's self-assessment tax returns for the relevant years.

33. Mr Singh took advice from Mr Poon at Farmiloes in relation to the November 2011 assessment and was advised simply to do nothing.

34. This is exactly what he did until, as a result of HMRC's attempts to enforce the VAT liability, he instructed Mr Vaghela in December 2012.

35. Mr Vaghela wrote to HMRC on 8 January 2013 asking HMRC to treat the letter as a late appeal against the 2011 assessment.

36. On 14 January 2013, HMRC issued a revised certificate of registration for VAT with an effective date of 1 November 2003. This certificate required Mr Singh to submit a VAT return in respect of the period from 1 November 2003 to 31 March 2013.

37. HMRC treated Mr Vaghela's letter of 8 January 2013 as a request for a review but refused the review on the basis that there was no reasonable excuse for Mr Singh's delay in making the request. HMRC's letter of 25 January 2013 to Mr Vaghela notifying him of this decision stated that Mr Singh

> "now needs to apply to the Courts & Tribunal Service for permission to appeal 'out of time'."

38. Rather than submitting an appeal to the Tribunal, Mr Singh lodged a new VAT return for the period from 1 November 2003 to 31 December 2008 with HMRC on 8 January 2014.

39. Having already received a nil VAT return for the period from 1 September 2003 to 31 December 2008, HMRC treated the new VAT return as an error correction notice under paragraph 35 of the VAT Regulations (SI 1995/2518) even though it had

not been submitted on the correct form (VAT 652). HMRC declined to accept the figures in the new VAT return as an error correction as no evidence had been provided to support these figures whereas HMRC did have evidence to support the figures in the November 2011 VAT assessment.

40. HMRC notified its review decision in relation to the new VAT return on 18 June 2014. Mr Singh submitted his appeal to the Tribunal on 11 July 2014. This was therefore less than 30 days after HMRC's review of its refusal to accept what it had treated as an error correction notification but 2½ years after the November 2011 assessment had been issued.

41. Mr Singh notified his appeal against his self-assessment tax returns for the tax years ended 5 April 2003 – 5 April 2009 to the Tribunal on 18 August 2015.

The Law

42. Section 83G(1)(a) VATA 1994 provides that a VAT appeal must be made to the Tribunal by the end of the period of thirty days beginning with (in this case) the date of the assessment – i.e. by 21 December 2011 – but that the Tribunal may give permission for an appeal to be made after the end of this period.

43. The position in relation to the self-assessment tax returns is not so straightforward. The adjustments to the returns for the tax years ended 5 April 2003 - 5 April 2006 were settled by an agreement under s 54 TMA 1970. On the face of it, no further appeal is permitted.

44. We were not told whether any enquiries into Mr Singh's self-assessment tax returns for the years ended 5 April 2007, 5 April 2008 and 5 April 2009 have been opened. If not, it is difficult to see what Mr Singh can appeal against.

45. We have in any event proceeded on the basis that Mr Singh has some (unspecified) right of appeal in respect of his self-assessment tax returns for the relevant years and that any delay in appealing to the Tribunal is a matter of years rather than days, weeks or months.

46. The law in relation to late appeals is well understood. The function of the Tribunal is to give effect to the overriding objective of dealing with cases fairly and justly. The Tribunal must conduct a balancing exercise taking into account all of the circumstances of the case. This will include the matters listed in Rule 3.9 of the Civil Procedure Rules both in its current form and in the previous form which contained a more detailed list of factors. However, none of the factors is to be given any special weight: Romasave (Property Services) Limited v HMRC [2015] UKUT 254; Data Select Ltd v HMRC [2012] UKUT 187.

47. Mr Justice Morgan in Data Select at [34] summarised the questions which the Tribunal should ask itself:

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

(2) How long was the delay?

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

(4) What will be the consequences for the parties of an extension of time?

(5) What will be the consequences for the parties of a refusal to extend time?

48. Judge Berner in Romasave approved this approach and also referred to helpful guidance from the Court of Appeal in Denton v T H White Ltd (and related appeals) [2014] EWCA Civ 906 at [24].

> "We consider that the guidance given at paras 40 and 41 of Mitchell remains substantially sound. However, in view of the way in which it has been interpreted, we propose to restate the approach that should be applied in a little more detail. A Judge should address an application for relief from sanctions in three stages. The first stage is to identify and assess the seriousness and significance of the "failure to comply with any rule, practice, direction or Court Order" which engages Rule 3.9(1). If the breach is neither serious nor significant, the Court is unlikely to need to spend much time on the second and third stages. The second stage is to consider why the default occurred. The third stage is to evaluate "all the circumstances of the case so as to enable [the Court] to deal justly with the application....".

49. As mentioned earlier in this decision, the Court of Appeal has issued its judgment in *BPP Holdings* since the date of our original decision. That case considered whether the stricter approach to compliance with rules resulting from changes to Rule 3.9 of the Civil Procedure Rules and the subsequent decisions in *Mitchell v News Group Newspapers Limited* [2014] 1 WLR 795 and *Denton* should apply in the First Tier Tribunal and Upper Tribunal. The Senior President of Tribunals (with whom the other judges agreed) was clear that it should. He said at [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 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*".

Although that case (and *Mitchell* and *Denton*) dealt with breaches of court/Tribunal rules rather than time limits for an appeal from a decision of HMRC, it is clear from Mr Justice Morgan's comments in *Data Select* (see paragraph 52 below) that similar principles apply when conducting the balancing exercise in relation to an appeal from a determination by HMRC.

50. It is worth noting that the Senior President of Tribunals in *BPP Holdings* referred with approval to Mr Justice Morgan's application by analogy in *Data Select*

of Rule 3.9 of the Civil Procedure Rules. The Tribunal must therefore, in considering the overriding objective of dealing with cases fairly and justly, take into account the requirement for litigation to be conducted efficiently and at proportionate cost and to enforce compliance with rules, practice directions and orders.

The balancing exercise

51. Mr Wilson on behalf of HMRC submitted that the purpose of time limits for appeals in tax matters is to give both parties finality in relation to the tax affairs of a particular taxpayer and also to allow the Treasury to budget without the risk of tax being clawed back by late appeals.

52. In relation to this, Mr Justice Morgan said at [37] in Data Select:

> "The particular comments about finality in litigation are not directly applicable where the application concerns an intended appeal against a determination by HMRC, where there has been no judicial decision as to the position. Nonetheless those comments stress the desirability of not reopening matters after a lengthy interval where one or both parties were entitled to assume that matters had been finally fixed and settled and that point applies to an appeal against a determination by HMRC as it does to appeals against a judicial decision."

53. Judge Berner in Romasave was influenced (at [96]) by:

> "the comments of Sir Stephen Oliver, sitting in the First-Tier Tribunal in Ogedegbe v Revenue and Customs Commissioners [2009] UKFTT 364 (discussed in Markland v Revenue and Customs Commissioners [2011] UKFTT 559 and by this Tribunal in O'Flaherty v Revenue and Customs Commissioners [2013] UKUT 0161) 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."

54. Mr Vaghela did not make any submissions on this point. We accept the need for finality in tax matters and this is therefore a factor which weighs in the balance against granting leave to appeal out of time.

55. The next matter for us to consider is the length of the delay or, in the words of the Court of Appeal in Denton, the seriousness and significance of the failure to comply.

56. Mr Wilson referred to the comments of Judge Berner in Romasave who said at [96] that:

> "In the context of an appeal right which must be exercised within thirty days from the date of the document notifying the decision, a delay of more than three months cannot be described as

> anything but serious and significant. We note, although judgement was given only after we heard this appeal, that in Secretary of State for the Home Department v SS (Congo) and others [2015] EWCA Civ 387 the Court of Appeal, at [105], has similarly described exceeding a time limit of twenty eight days for applying to that Court for permission to appeal by twenty four days as significant, and a delay of more than three months as serious."

57. In this case, the delay in appealing the adjustments to Mr Singh's self-assessment tax returns is uncertain given what we have said above about appeal rights but there is no doubt that the delay is measured in years rather than days or months.

58. On the face of it, the delay in appealing against the November 2011 VAT assessment is 2½ years – the notice of appeal being lodged with the Tribunal in July 2014. Even on the best interpretation that Mr Vaghela's letter of 8 January 2013 constitutes an appeal, the delay is still over a year.

59. In our view, in the context both of the appeal relating to the self-assessment tax returns and the VAT appeal, this is both significant and serious.

60. Mr Wilson made the additional point that, having been told in July 2013 that Mr Singh's only remedy is to lodge an appeal with the Tribunal, no action was taken until the amended VAT return was lodged in January 2014, almost a year later and the appeal was not notified to the Tribunal for a further six months. This is in our view also a relevant factor in deciding whether to grant leave to appeal out of time.

61. Mr Vaghela's explanation for Mr Singh's delay in appealing against the November 2011 assessment is that he had sought professional advice (from Farmiloes/Dextron) and had been advised to do nothing. He had therefore followed this advice until, as a result of HMRC's enforcement action, it became clear that he needed to engage with HMRC if he was to have any chance of avoiding the tax liability which had been assessed.

62. The previous version of Rule 3.9 of the Civil Procedure Rules refers specifically, in item (f), to whether the failure to comply was caused by the party or by his legal representative. It is therefore relevant to take into account whether the failure to comply was caused by Mr Singh's advisers rather than by Mr Singh.

63. Mr Wilson submitted that, when faced with a tax assessment for almost £100,000, a reasonable and prudent taxpayer would not follow his accountant's advice if that advice was simply to do nothing.

64. Mr Vaghela on the other hand argued that Mr Singh was relying on his accountant, was ill advised by his previous accountant and that it would be neither fair not just to penalise Mr Singh as a result.

65. We were told that Mr Singh is virtually illiterate and did not therefore understand everything that was going on. However we also heard evidence from Mr

Mandeep Singh that he had become involved in 2011 in order to help his father in relation to his tax affairs. Mr Singh therefore not only had his accountant as adviser but also had his son to help him understand and to consider the advice which he was being given.

66. We would agree that, if a taxpayer acted (or failed to act) on the basis of professional advice which, on the face of it, appeared to be reasonable (even though it may turn out to be incorrect), this would be a factor which would count in favour of the taxpayer when considering an application for leave to appeal out of time. However, in this case, we agree with Mr Wilson that the advice given by Farmiloes/Dextron to do absolutely nothing was so obviously inappropriate that Mr Singh cannot be given any credit in the balancing exercise as a result of having decided to follow that advice.

67. Mr Vaghela also submitted that Mr Lipman should have appealed against the original 2009 VAT assessment but failed to do so. As explained above, it was not possible for Mr Singh to appeal against this assessment as he had not submitted a VAT return for the relevant period. This is therefore of no assistance to Mr Singh's case.

68. As far as the delay between January 2013 and January 2014 is concerned, Mr Vaghela told us that this was a result of having to collect all of the information in order to support an appeal. Part of the difficulty with this is that Mr Singh's previous accountants (Farmiloes/Dextron), refused to provide any assistance. We were provided with correspondence between Mr Vaghela and Farmiloes in December 2012 which confirms that Farmiloes refused to give any information to Mr Vaghela saying that, following the death of Mr Lipman, his cases were now being dealt with by a Mr D. Fisher who in turn refused to provide any assistance unless he was paid £3,000 in advance to cover his costs.

69. We do not however have any correspondence which took place in 2013. Neither HMRC nor the Tribunal have been provided with any evidence of any further information which has been gathered which would support the figures in the return submitted by Mr Singh in January 2014. Mr Vaghela accepted that HMRC did not have any new information and that, if the appeals were to go ahead, he would have to try and obtain all of the documents to back-up the revised figures.

70. The fact that this information has still not been obtained after such a long delay is another factor which, in our view, weighs in the balance against granting leave to appeal out of time. The beginning of the VAT period in question is now some twelve years ago and it seems to us that the likelihood of being able to obtain accurate and reliable information from such a long time ago (given that it has not yet been obtained), must be relatively low.

71. Mr Vaghela made the point that HMRC had issued an amended certificate of VAT registration on 14 January 2013. There was no explanation as to why this had been issued in January 2013 and not in November 2011 when HMRC had issued the new VAT assessment which was based on Mr Singh having become registerable on 1

November 2003 rather than 1 September 2003. The new VAT registration certificate invited Mr Singh to submit a return for the period from 1 November 2003 to 31 March 2013. We heard no argument as to what the effect on the previous assessment might had been had Mr Singh done so. However, the fact is that he did not and that he went on to submit a further VAT return for the period from 1 November 2003 to 31 December 2008. We therefore place little weight on this as a reason for the delay.

72. Mr Vaghela contends that the figures in Mr Singh's self-assessment tax returns are incorrect and that, as HMRC had relied on these figures in producing the November 2011 VAT assessment, this assessment is also incorrect. This does not however help us in our balancing exercise in order to decide whether to grant leave to appeal against either the self-assessment matters or the VAT assessment out of time.

73. It is apparent from the decision of Moore-Bick LJ in *R (Dinjan Hysaj) v Secretary of State for the Home Department* [2014] EWCA Civ 1633 at [46-47] that, in most cases, the merits of an 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."

74. We did not hear any argument on the merits of the appeals. We are prepared to assume that there is some merit in the appeals Mr Singh is seeking to make although it is not at all clear to us that this is in fact the case given the lack of any evidence supporting the figures in the January 2014 VAT return but, for the reasons given in *Dinjan Hysaj*, we do not attach must weight to this factor.

75. Mr Vaghela made an important point relating to fairness. He submitted that there has been no loss of tax to HMRC. Had Mr Singh charged VAT on his invoices, his customers would simply have claimed that VAT as input tax, thus reducing their own VAT bills. It is therefore he says unfair that HMRC should seek to collect almost £100,000 of VAT from Mr Singh which it would not otherwise have received.

76. In normal circumstances, a trader in Mr Singh's position would have been able to issue a revised invoice to his customers including the VAT which he should have charged originally. However, as Mr Singh is no longer registered for VAT as he has ceased trading, he is no longer able to do this.

77. However, even if we were to allow Mr Singh to appeal out of time, this would not change the result that HMRC would be able to collect VAT from Mr Singh which is in effect a windfall. The only effect of allowing the appeal would be for Mr Singh to contest the figures and potentially reduce the amount of VAT for which he is liable if he could persuade the Tribunal that HMRC's figures are wrong. We do not therefore give significant weight to the fact that the law allows HMRC in these circumstances to collect VAT which, had it been charged correctly in the first place,

would not have resulted in any increased revenue to HMRC due to the fact that it would be claimed as input tax by the recipient of the services.

78. We come now to the consequences for the parties of granting or refusing leave to appeal out of time. Clearly there is a significant prejudice to Mr Singh if we refuse leave to appeal out of time as there is approximately £45,000 of VAT in dispute (the difference between the November 2011 assessment and the figures shown in Mr Singh's VAT return lodged in January 2014) which he will not have the opportunity to contest.

79. As far as HMRC is concerned, the only prejudice referred to by Mr Wilson if we allow Mr Singh to appeal out of time is the costs which would be incurred by HMRC in having to continue to defend the appeal and, in the case of the self-assessment tax returns, reopening matters which were closed six years ago.

Our decision

80. We have considered very carefully all of the factors which need to be weighed in the balance in the context of dealing with these cases fairly and justly.

81. In favour of granting Mr Singh permission to appeal is the significant amount of tax at stake, the fact that he relied on an adviser, our assumption that he has an arguable case and the fact that there is no real prejudice to HMRC if the appeals proceed.

82. Against this, we have taken account of the very significant and serious delay stretching in both cases to years rather than months or days, the fact that Mr Singh's accountants' advice in 2011 was so clearly wrong that he should not have accepted it, the fact that information backing up the figures in the revised VAT return have still not been produced and that the ability to obtain such figures after such a long period must be in doubt, as well as the need for finality in tax matters, particularly in relation to the self-assessment tax returns where (in relation to most of the relevant tax years) there has already been an enquiry which was settled by agreement.

83. We have also taken into account that, in dealing with cases fairly and justly, we must consider the need for litigation to be conducted efficiently and at proportionate cost and that compliance with rules (in this case time limits) should be enforced. We should however stress that we have not given these two factors any special weight as we had already reached our decision that the application should not be allowed for the reasons mentioned above before the publication of the decision in *BPP Holdings*.

84. Taking all of these factors into account, we have decided that, despite the significant amount of tax at stake, it would not be in the interests of fairness and justice to allow Mr Singh to pursue his appeals out of time.

85. Mr Singh does still have an in time appeal against HMRC's refusal to accept the figures in the January 2014 VAT return as an error correction and we have separately issued Directions for Mr Singh to provide clarification for his grounds for that appeal.

86. We also note in passing that Mr Singh may have a remedy against his former accountants, whose advice was so clearly flawed, assuming he can provide evidence of the advice given, although this is not a factor we have taken into account in our balancing exercise.

87. 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.

ROBIN VOS
TRIBUNAL JUDGE

RELEASE DATE: 16 MARCH 2016