



TC05206

Appeal number: TC/2015/04396

PROCEDURE – application to the tribunal for permission to notify a late appeal – jurisdiction of the tribunal in the absence of a prior request for HMRC to agree to a late appeal – section 49 TMA 1970 – merits of application – discretion – Data Select Ltd v HM Revenue & Customs applied – BPP Holdings v HM Revenue & Customs considered – application refused and appeal struck out

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MOHAMMED ASHRAF

Appellant

- and -

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

TRIBUNAL: JUDGE JONATHAN CANNAN

Sitting in public in Manchester on 4 March 2016

Mr Mohammed Ashraf appeared in person

Mr Phil Jones of HM Revenue & Customs appeared for the Respondents

DECISION

Background

5 1. This is an application by the Appellant, Mr Mohammed Ashraf, for permission to give a late notice of appeal to HM Revenue & Customs (“HMRC”). The background facts, as to which there is no dispute are as follows.

2. Mr Ashraf is a self-employed taxi driver. On 29 November 2011 HMRC commenced an enquiry into Mr Ashraf’s self-assessment tax return for 2009-10. He was represented throughout the enquiry by Mr Ahmad of Riaz Ahmad & Co, a firm of accountants. A closure notice was issued on 3 September 2013 making an amendment to the 2009-10 return. On the same date HMRC also issued various discovery assessments. The amendment and assessments (“the Assessments”) gave rise to the following tax liabilities:

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Tax Year	Tax Due £
2007-08	6,497
2008-09	11,635
2009-10	9,806
2010-11	6,302
2011-12	6,230

3. A penalty of £1,737 pursuant to section 95(1)(a) Taxes Management Act 1970 (“TMA 1970”) for tax year 2007-08 was issued on 3 September 2013. Penalties totalling £6,370 pursuant to Schedule 24 Finance Act 2007 for tax years 2008-09 to 2011-12 were also issued on 15 October 2013. Together I shall refer to these sums as “the Penalties”.

4. I deal with the circumstances in which Mr Ashraf came to appeal the Assessments and the Penalties in more detail below.

5. Section 31A TMA 1970 requires a notice of appeal to be given to an officer of HMRC within 30 days of the date on which a notice of assessment or penalty is issued. The issue before me is whether I should give permission to the Appellant to notify late appeals against the Assessments and the Penalties. There is also a prior issue raised by Mr Jones for HMRC as to whether the tribunal has any jurisdiction where Mr Ashraf has still not given a written notice of appeal to HMRC.

30 *Findings of Fact*

6. I heard evidence from Mr Ashraf. Based on his evidence and the documentary evidence before me I make the following findings of fact.

7. During the course of the enquiry HMRC issued an information notice to Mr Ashraf which required production of a substantial amount of material. That material was not supplied and HMRC issued penalties for non-compliance. Later in the enquiry Mr Ahmad told HMRC that he could not dispute the position set out by HMRC but that Mr Ashraf claimed that he simply could not afford to pay the sums HMRC were intending to assess.

8. Mr Ahmad also told HMRC at one stage that he was concerned that his client may have mental health problems. During the hearing before me Mr Ashraf did say that he was not well and that he was struggling trying to make a living and “to keep myself normal”. He worked 7 days a week, regularly at nights. At the same time he was trying hard to cope with a number of family problems involving his wife and children. His wife suffered from depression and his children were being bullied. In his own words he was “totally shattered”. I accept that Mr Ashraf has been struggling in the way he described for some years, although he is not on any medication.

9. Mr Ashraf is an educated person. He has a postgraduate degree in electronics from Bradford University. He said that he would pay any tax due if he had to, but that the amount assessed by HMRC was not justified.

10. The Assessments were notified to Mr Ashraf on 3 September 2013, with copies sent to Riaz Ahmad & Co. The notices set out what Mr Ashraf should do if he disagreed with the Assessments as follows:

“... you need to write to us within 30 days of the date on this assessment, telling us why you think our decision was wrong... If we cannot come to an agreement ... you can either:

- *have the matter reviewed by an HMRC officer... or*
- *ask an independent tribunal to decide the matter.*

If you opt for a review you can still go to the tribunal if you are not satisfied with the outcome.”

11. HMRC also sent Mr Ashraf a “Penalty Explanation” document and a “Penalty Determination” document, both dated 3 September 2013. The Penalty Explanation stated that HMRC intended to charge penalties for careless conduct of £6,370 for tax years 2007-08 to 2011-12 at a rate of 18.75% of the potential lost revenue. It stated that “*you cannot appeal against or request a review of anything to do with the penalties at this time. If we send you a penalty assessment notice, you will be able to appeal or ask for a review then. We will tell you more about this in the notice*”.

12. The Penalty Determination related to tax year 2007-08 and charged a penalty of £1,737 for negligent conduct. The Penalty Determination in the bundle before me included only page 2, which did not have any information about appealing. It may be that the information was on page 1, but in any event it is clear from what follows that Mr Ashraf was aware of his appeal rights.

13. The Tribunal records show that a notice of appeal was received by the Tribunal from Mr Ashraf on 16 September 2013. It was returned to Mr Ashraf on 19 September 2013 because the information provided was insufficient to allow the appeal to be registered.

5 14. Mr Ashraf told me and I accept that the notice of appeal had been sent to the Tribunal on his behalf by Mr Ahmad. He recalled that the notice of appeal had been acknowledged by the Tribunal and that they had asked for more information. He thought that further information had been sent to the Tribunal but he could not really recall.

10 15. There is no evidence that any further information was sent to the Tribunal after 19 September 2013 and I find that there was no further contact between Mr Ashraf or Mr Ahmad and the Tribunal until 2015.

15 16. There is no evidence that HMRC had become aware of the notice of appeal which had been sent to the Tribunal in September 2013. In the ordinary course, where an appeal is rejected because insufficient information is provided, HMRC will not be advised by the Tribunal that an appeal has been lodged but returned.

20 17. Mr Jones told me that on 15 October 2013 penalty determination for tax years 2008-09 to 2011-12 was sent to Mr Ashraf. The documents before me did not include a copy of that penalty determination but Mr Ashraf did not suggest that he had not received it.

25 18. In the course of HMRC's debt collection procedures during 2015 Mr Ashraf told HMRC that the sums in issue were the subject of an appeal to the Tribunal. He produced a notice of appeal stamped as having been received by the Tribunal. I find that this was the notice of appeal which had been returned to Mr Ashraf on 19 September 2013 although there was no copy before me.

30 19. Mr Ashraf was notified by HMRC by letter on 22 June 2015 that the notice of appeal he had produced had been returned to him on 19 September 2013 on the basis that it provided insufficient information. The letter stated that if Mr Ashraf was still contesting the Assessments and the Penalties then he would have to submit a late appeal explaining why it was late, although it did not specify who the late appeal should be submitted to. A copy of the letter was sent to Riaz Ahmad & Co.

35 20. The Tribunal records show that a notice of appeal was lodged with the Tribunal on 20 July 2015, but it seems that this was also returned. The circumstances in which it was returned are not entirely clear, but Mr Ashraf then lodged the present notice of appeal with the Tribunal on 1 December 2015. It was dated 26 November 2015. His grounds of appeal are that the assessments are "highly excessive" and based on assumptions and findings which are not sustainable. In box 6 Mr Ashraf set out reasons why the appeal was made or notified late as follows:

"Appeal has previously been made but not received by HMCTS."

21. Mr Ashraf still instructs Mr Ahmad. He told me that when HMRC started trying to collect the debt he had asked Mr Ahmad what was happening and this led to Mr Ahmad completing a second notice of appeal for him. The reason given for the appeal being notified late suggests that either the original notice of appeal in 2013 or the July 5 2015 notice of appeal had been re-submitted to the Tribunal by Mr Ahmad. There is no evidence to suggest that the original notice of appeal had been resubmitted to the Tribunal, and I do not accept that either Mr Ashraf or Mr Ahmad would simply assume that it had been received by the Tribunal without any acknowledgment. I find that in the period from September 2013 to June 2015 Mr Ashraf was simply hoping 10 that the matter would go away. It is not clear to what extent if at all Mr Ahmad was responsible for the failure to appeal in the period after September 2013. However whilst Mr Ahmad was clearly intending to appeal on behalf of Mr Ashraf he does not appear to have given a notice of appeal to HMRC prior to notifying the appeal to the Tribunal.
- 15 22. On 14 December 2015 HMRC notified the Tribunal that it wished to oppose the application for permission to make or notify a late appeal. At no time prior to the hearing did HMRC tell Mr Ashraf that because he had not sent a written notice of appeal to HMRC the Tribunal did not have jurisdiction in the matter. That was a new issue raised by Mr Jones at the hearing. As it is a matter which goes to the jurisdiction 20 of the Tribunal it is right that I should consider it.

Statutory Framework

23. It is necessary for me to set out and consider the statutory framework for appeals in some detail. I appreciate that what follows may not be easy for Mr Ashraf 25 to fully understand but I must refer to the statutory language and framework set down by Parliament.

24. The TMA 1970 sets out the procedure for appealing the Assessments and the Penalties. Section 31A TMA 1970 requires a notice of appeal to be given in writing to HMRC within 30 days of the date on which the notice of assessment was issued. It 30 provides as follows:

“31A Appeals: notice of appeal

(1) *Notice of an appeal under section 31 of this Act must be given -*

(a) *in writing,*

(b) *within 30 days of the specified date,*

35 (c) *to the relevant officer of the Board.”*

25. Section 49 TMA 1970 makes provision for late appeals to be given where HMRC agree or where the tribunal gives permission. The tribunal’s discretion is to be exercised by reference to the principles which I describe below. Section 49 provides as follows:

“ 49 Late notice of appeal

(1) This section applies in a case where—

(a) notice of appeal may be given to HMRC, but

(b) no notice is given before the relevant time limit.

5 (2) Notice may be given after the relevant time limit if—

(a) HMRC agree, or

(b) where HMRC do not agree, the tribunal gives permission.

(3) If the following conditions are met, HMRC shall agree to notice being given after the relevant time limit.

10 (4) Condition A is that the appellant has made a request in writing to HMRC to agree to the notice being given.

(5) Condition B is that HMRC are satisfied that there was reasonable excuse for not giving the notice before the relevant time limit.

15 (6) Condition C is that HMRC are satisfied that request under subsection (4) was made without unreasonable delay after the reasonable excuse ceased.

(7) If a request of the kind referred to in subsection (4) is made, HMRC must notify the appellant whether or not HMRC agree to the appellant giving notice of appeal after the relevant time limit.

20 (8) In this section “relevant time limit”, in relation to notice of appeal, means the time before which the notice is to be given (but for this section).”

26. Where a notice of appeal has been given to HMRC, there is provision either for a statutory review by HMRC or for the appellant to notify the appeal to the tribunal. The statutory review procedure was a new procedure introduced with effect from 1 April 2009.

25 27. Once notice of appeal has been given to HMRC, HMRC may offer the taxpayer a statutory review, or the taxpayer may ask for a review (TMA s49A and 49B). Alternatively the taxpayer may simply notify the appeal to the tribunal (TMA s49D).

28. Section 49A provides as follows:

“ (1) This section applies if notice of appeal has been given to HMRC.

30 (2) In such a case—

(a) the appellant may notify HMRC that the appellant requires HMRC to review the matter in question (see section 49B),

(b) HMRC may notify the appellant of an offer to review the matter in question (see section 49C), or

(c) the appellant may notify the appeal to the tribunal (see section 49D)....”

29. Section 49D provides as follows:

5 “(1) *This section applies if notice of appeal has been given to HMRC.*

(2) The appellant may notify the appeal to the tribunal.”

30. It is clear from section 49 TMA 1970 that where an appellant is out of time in giving a notice of appeal to HMRC he must first obtain HMRC’s agreement or the Tribunal’s permission to give a late notice of appeal. Pursuant to Section 49(3)
10 HMRC must agree to a late notice of appeal where the appellant has made a request in writing for HMRC to agree to a late notice of appeal, they are satisfied that there was a reasonable excuse for the notice of appeal being late and the appellant made the request without unreasonable delay after the reasonable excuse ceased. If HMRC do not agree and the matter comes before the Tribunal then the Tribunal has an
15 unfettered discretion to grant permission for a late appeal. It is not restricted to circumstances where there is a reasonable excuse for failing to give the notice of appeal in time.

31. It is important to recognise that what is being notified to the Tribunal under section 49D is a written notice of appeal which the appellant has already given to
20 HMRC. The statutory scheme involves separate stages where a notice of appeal has not been given to HMRC within the 30 day time limit. The appellant must first seek agreement from HMRC to give a late appeal. If HMRC do not agree the appellant can seek permission from the Tribunal to give a late notice of appeal. It is only once such agreement or permission has been granted that a late notice of appeal can be given to
25 HMRC. Further, it is only once a notice of appeal has been given to HMRC that it can be notified to the Tribunal.

32. When it was originally enacted, section 49 provided for HMRC to agree to an appeal out of time. If HMRC did not agree then it was HMRC who were required to refer the application for a late appeal to what was then the general commissioners. See
30 *R (Browallia Cal Ltd) v General Commissioner [2003] EWHC 2779 (Admin)*.

33. Finally, the Tribunal procedure rules provide that proceedings before the Tribunal are to be commenced by sending or delivering a notice of appeal to the Tribunal. Rule 20 of the Tribunal Rules provides as follows:

“20 Starting appeal proceedings

35 *(1) A person making or notifying an appeal to the Tribunal under any enactment must start proceedings by sending or delivering a notice of appeal to the Tribunal.*

...

(4) *If the notice of appeal is provided after the end of any period specified in an enactment referred to in paragraph (1) but the enactment provides that an appeal may be made or notified after that period with the permission of the Tribunal —*

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(a) the notice of appeal must include a request for such permission and the reason why the notice of appeal was not provided in time; and

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(b) unless the Tribunal gives such permission, the Tribunal must not admit the appeal.”

Reasons

34. Mr Jones submitted that even as at the date of the hearing Mr Ashraf had not submitted a written notice of appeal to HMRC. In the circumstances he submitted that the Tribunal did not have jurisdiction to extend time for notification of the appeal. In any event Mr Jones submitted that there was no good reason for the Tribunal to extend time.

35. I have identified above the separate stages in the statutory scheme where no notice of appeal is given to HMRC in time. The present application is concerned with the first stage, namely whether permission should be granted for the appellant to give a late notice of appeal to HMRC. I do not consider it relevant at this stage that no written notice of appeal has been given to HMRC. A valid notice of appeal can only be given with the agreement of HMRC or with permission of the Tribunal. At this stage Mr Ashraf has neither agreement nor permission and so could not have given a valid notice of appeal to HMRC. The statutory review procedure in sections 49A – C has not yet been engaged. Nor has Mr Ashraf’s opportunity to notify the appeal to the Tribunal under section 49D.

36. The absence of a written notice of appeal specifically directed to HMRC does not mean that the Tribunal has no jurisdiction over the application for permission to give late notice of appeal. HMRC have not agreed that a late notice of appeal can be given. There is no requirement that they should have a written notice of appeal before agreeing or refusing to agree to a late notice being given. What section 49(3) provides is that they shall give agreement where the conditions are satisfied, including a requirement that the appellant shall have made a written request to HMRC to agree to a late notice of appeal. However I accept that there must be some request to HMRC for their agreement to the giving of a late appeal.

37. I reached the same conclusion in *Advance Consulting (Partnership) v Commissioners for HM Revenue & Customs [2012] UKFTT 567 (TC)*. At [6] I stated:

40 “ 6. *It is clear that there must be some request to HMRC for it to agree to a late appeal. The jurisdiction of the tribunal to give permission under Section 49(2)(b) only arises where HMRC does not agree.”*

38. On the facts of that case I was satisfied that there had been an oral request to HMRC for their agreement for the taxpayer to give a late appeal. A similar issue arose before the First-tier Tribunal (Judge Anne Redston and Ms Helen Myerscough) in *Mathew v Commissioners for HM Revenue & Customs [2015] UKFTT 1397 (TC)*, where the Tribunal stated as follows:

“46. We explained to the parties that the Tribunal had no jurisdiction to hear an appeal made by way of a direct application to the Tribunal. We could only hear an appeal which had been first made to HMRC. The parties asked for a short adjournment which we granted.

47. After the adjournment, the parties informed us that Mr Mathew had made an oral appeal to [the Revenue Officer]. Although the statute provided that the appeal be in writing, HMRC had used their care and management powers to accept the oral appeal. They had also accepted that Mr Mathew had a reasonable excuse for making the appeals late.”

39. The position in the present case is that Mr Ashraf has lodged a notice of appeal to the Tribunal. In box 6 he has requested permission to make or notify the appeal outside the relevant time limit. The Tribunal in accordance with its ordinary procedures notified HMRC that it had received the notice of appeal and asked whether they objected to the application for permission to make a late appeal. HMRC did object to the merits of that application and as a result the present hearing was listed to determine that application.

40. There is no evidence that Mr Ashraf or Mr Ahmad made any request to HMRC, whether orally or in writing, for HMRC’s agreement to a late notice of appeal prior to submitting the notice of appeal to the tribunal on 1 December 2015. In those circumstances I accept that the Tribunal does not have jurisdiction to grant permission for Mr Ashraf to notify a late appeal to HMRC.

41. The cases referred to above were not cited to me during the hearing and no consideration was given to whether HMRC would be prepared to accept an oral request during the course of the hearing to cure the issues relating to jurisdiction, as appears to have happened in *Mathew v HM Revenue & Customs*. HMRC have made it clear that they would not agree to any such request but at least the jurisdiction of the Tribunal would have been engaged.

42. It seems to me that the only way forward would involve Mr Ashraf now making a request to HMRC for their agreement to him bringing a late appeal which would no doubt be refused. Mr Ashraf would then be entitled to make his application to the Tribunal and there would be a re-hearing of the merits of that application before the Tribunal.

43. I have heard all the arguments in relation to the merits of Mr Ashraf’s application and so I do not propose to let the matter rest there. In case I am wrong in

relation to jurisdiction I will set out my decision on the merits of Mr Ashraf's application to the Tribunal for permission to give a late appeal to HMRC.

5 44. The approach to applications to extend time was considered by the Upper Tribunal in *Data Select Ltd v HMRC* [2012] UKUT 187 (TCC) where Morgan J stated as follows:

10 “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.

15 35. The Court of Appeal has held that, when considering an application for an extension of time for an appeal to the Court of Appeal, it will usually be helpful to consider the overriding objective in CPR r 1.1 and the checklist of matters set out in CPR r 3.9: see *Sayers v Clarke Walker* [2002] 1 WLR 3095; *Smith v Brough* [2005] EWCA Civ 261. That approach has been adopted in relation to an application for an extension of the time to appeal from the VAT & Duties Tribunal to the High Court: see *Revenue and Customs Commissioners v Church of Scientology Religious Education College Inc* [2007] STC 1196.

25 36. I was also shown a number of decisions of the FTT which have adopted the same approach of considering the overriding objective and the matters listed in CPR r 3.9. Some tribunals have also applied the helpful general guidance given by Lord Drummond Young in *Advocate General for Scotland v General Commissioners for Aberdeen City* [2006] STC 1218 at [23]-[24] which is in line with what I have said above.

35 37. In my judgment, the approach of considering the overriding objective and all the circumstances of the case, including the matters listed in CPR r 3.9, is the correct approach to adopt in relation to an application to extend time pursuant to section 83G(6) of VATA. The general comments in the above cases will also be found helpful in many other cases. Some of the above cases stress the importance of finality in litigation. Those remarks are of particular relevance where the application concerns an intended appeal against a judicial decision. 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 re-opening 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.

5 45. Rule 3.9 of the Civil Procedure Rules (“CPR”) has since been amended and now reads as follows:

10 “(1) *On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order, the court will consider all the circumstances of the case, so as to enable it to deal justly with the application, including the need –*

(a) For litigation to be conducted efficiently and at proportionate cost; and

(b) To enforce compliance with rules, practice directions and orders.”

15 46. Data Select is a decision of the Upper Tribunal and it is binding upon me. I must take into account all the circumstances including the overriding objective of dealing with cases fairly and justly and ask myself:

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

(2) How long was the delay?

20 (3) Is there a 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?

25 47. I also have regard to the decision of the Court of Appeal in *BPP Holdings Limited v Commissioners for HM Revenue & Customs [2016] EWCA Civ 121* which was concerned with the approach of this Tribunal to non-compliance with Tribunal Rules and directions. It referred to the application by analogy of CPR 3.9 in Data Select although it did not consider the Upper Tribunal’s decision in detail.

(i) Purpose of the Time Limit

30 48. The purpose of the time limit of 30 days is clearly to promote finality. I note that the 30 day time limit is relatively short. I infer that is because in most cases, including the present case, the decision does not come out of the blue. The Assessments and the Penalties followed detailed enquiries over a period of nearly 2 years.

35 49. Morgan J in Data Select stressed the desirability of not re-opening matters after a lengthy interval where one or both parties were entitled to assume that matters had been finally fixed and settled. In the present case I am satisfied that HMRC were entitled to assume after 14 November 2013 that the Assessments and the Penalties had become final.

(ii) The period of delay

50. The period of the delay in the present case is from November 2013, when the time for appealing the second set of penalties expired, to December 2015. That is a period of over 2 years which on any view is an extremely long delay. Even if the relevant period of delay is November 2013 to July 2015 the delay is still extremely long.

(iii) Explanation for the Delay

51. Mr Ashraf told me that he did not understand the documents that he had been sent by HMRC and that he had had to read them again and again. He was referring to the calculation of the liability. I do not accept that was the case in relation to appeal rights. He is an intelligent man who had accountants acting for him. However I do accept that throughout the period of 2 years he was struggling to work and deal with various family issues as described above. It is likely and I find as a fact that the pressure of work and family issues meant that Mr Ashraf did not give the Assessments and the Penalties the priority which they demanded. Essentially he buried his head in the sand.

52. Mr Ashraf told me that he had asked Mr Ahmad to attend the tribunal hearing of this application but Mr Ahmad told him that he should just go on his own. Whether or not that is a fair reflection of discussions between Mr Ashraf and Mr Ahmad I am left in the position that there is no explanation for the period of delay between November 2013 and December 2015. I do not accept that Mr Ashraf was entitled to proceed on the basis that the original notice of appeal had been re-submitted. He ought to have sought confirmation from the Tribunal that his appeal had been accepted by the Tribunal or least discussed the position with Mr Ahmad.

53. Even taking into account that a notice of appeal was lodged with the Tribunal in July 2015 there was a delay of some 18 months, and no explanation as to what happened between July 2015 and December 2015. Nor was there any explanation as to why the notice of appeal lodged with the Tribunal in September 2013 was not re-submitted.

(iv) Consequences for the Parties of Extending Time

54. If I give permission for Mr Ashraf to notify the appeal to HMRC then HMRC will lose the finality which from November 2013 onwards they were entitled to expect. Mr Jones did not rely on any specific prejudice to HMRC beyond that. In particular he did not suggest that the evidence, documentary or oral, would have been affected by the period of delay. Having said that it is not in dispute that HMRC instigated debt recovery procedures to enforce the debt.

55. If permission is granted then the Appellant will have the opportunity to pursue his arguments. The issues would be determined on their merits. The sum in dispute is very significant to Mr Ashraf.

(v) Consequences for the Parties of Refusing to Extend Time

56. The effect of refusing permission would be that Mr Ashraf would lose the opportunity to pursue his appeal on the merits. Whilst Mr Ahmad had told HMRC that he could not dispute the position set out by HMRC in the Assessments, Mr Ashraf maintained that the Assessments were highly excessive. I am not in a position to readily assess the merits of Mr Ashraf's proposed appeal, but I do take into account Mr Ahmad's view of the merits. Having said that I shall assume that Mr Ashraf has at least some prospect of success and would lose the opportunity to challenge the Assessments and the Penalties if time is not extended.

(vi) Generally

57. I must balance all the factors set out above, in the context of the circumstances as a whole. Having done so, I am not persuaded that the time for appealing the Assessments and the Penalties should be extended. In particular the length of the delay and the absence of any good reason for that delay outweigh the other factors described above. In my view the overriding objective is served by refusing the application.

Conclusion

58. For the reasons given above, both in relation to jurisdiction and on the merits, I refuse Mr Ashraf's application for permission to notify a late appeal. In the circumstances I must strike out the appeal.

59. 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.

**JONATHAN CANNAN
TRIBUNAL JUDGE**

RELEASE DATE: 27 JUNE 2016