[2016] UKFTT 0769 (TC)

TC05496

Appeal number: TC/2014/05097

PROCEDURE – application for extension of time to apply for permission to appeal to Upper Tribunal – factors to be taken into account – Data Select criteria – effect of BPP

FIRST-TIER TRIBUNAL
TAX CHAMBER

DECISION
ON AN APPLICATION IN THE CASE OF

STEPHEN WEST **Appellant**

- and -

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

TRIBUNAL: JUDGE JOHN CLARK

DECISION

1. The Respondents to this appeal have applied as described below for extension of time to apply for permission to appeal.

2. For reasons which I will explain below, this decision is a replacement for one which was issued to the parties on 16 November 2016.

Background to the application

3. On 3 August 2016 the decision of the Tribunal in this case was released. By my casting vote, the Tribunal allowed the appeal. (I refer to that decision as "the Decision".)

4. The Decision included the normal notification in the final paragraph to state the right of any party dissatisfied with the decision to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. (I refer to these as "the Tribunal Rules".) It further stated that the application must be received by the Tribunal no later than 56 days after the decision was sent to that party.

5. The normal period for an application for permission to appeal therefore expired on 28 September 2016.

6. On 28 September 2016 at 16.28 the Respondents ("HMRC") sent an email message to HM Courts & Tribunals Service ("HMCTS") in the following terms:

> "Dear Sirs,
>
> **West v HMRC (TC/2014/05097)**
>
> 1. We write further to the above decision, which was released by the Tribunal on 3 August 2016.
>
> 2. We here apply on behalf of the Respondents for an extension of time of 14 days to comply with the 56-day deadline by which a party must apply to the First-tier Tribunal for permission to appeal the decision to the Upper Tribunal. Such an application is due today (28 September 2016), and so we apply for an extension until 12 October 2016.
>
> 3. The primary reason for the Respondents' application is that this is a very complicated issue, with a broad impact across the tax code and HMRC have therefore been required to seek the views of a number of operational and policy areas to consider the decision and its position on an appeal. This has naturally taken some time. Judge Clark recognised the complexity of this area in his decision (at paragraph 93):
>
> > "I do not consider that the legislation in its current state is sufficient to deal with the problems to which [Tribunal Member O'Neil] refers. Any changes to the legislation would have to take account not only of the tax implications but also of the much wider legal

> implications. There is a case for seeking change, but only after careful consultation with all relevant professional and commercial bodies and other interested parties."
>
> 4. The Respondents also note that the Tribunal were split in this decision, with Tribunal Member O'Neil providing a dissenting opinion, and highlighting the wide impact and policy considerations in play (at paragraph 100):
>
> > "It would appear to me that Judge Clark's decision to allow the appeal leaves the door open for owner/managers of small businesses that are about to fail and go into liquidation to make preferential and potentially unfair payments to themselves at the expense of trade or other creditors, like HMRC, who are then unable to receive their rightful distribution from a liquidation of the companies' assets. I do not feel that this can be an appropriate interpretation of the regulations in the circumstances of this and similar cases."
>
> 5. Further, the decision was released on 3 August, which unfortunately fell in a period when a number of the relevant HMRC stakeholders were invariably on annual summer leave. This impacted HMRC's ability to quickly come to a full policy decision on whether an application for permission to appeal should be made and on what terms. We say that it is in the interest of the overriding objective that HMRC be able to take the requisite time in these circumstances to consider these complicated issues and come to a full position.
>
> 6. HMRC have thoroughly considered the matter and have instructed Counsel to consider HMRC's grounds in anticipation of an application for permission, and that it would not be in the interests of fairness and justice, particularly taking account of the Tribunal's own comments, for HMRC not to be able to apply for permission in these circumstances.
>
> Should the Tribunal require any further submissions, please do not hesitate to contact Laura Williams (copied).
>
> Yours faithfully,
>
> Ben Brzezicki"

(According to the description at the end of the message, Mr Brzezicki is a lawyer in the Personal Tax Litigation Team in HMRC's Solicitor's Office.)

7. HMRC's application for extension of time was not immediately communicated to me. I was informed at a subsequent stage by HMCTS that this application was copied to the Appellant, Mr West, or to his adviser to allow them to comment on this application. As I will further explain, Mr West's representative Mr Slater has subsequently confirmed that he received this on 3 October 2016.

8. On 5 October 2016, HMRC applied to the Tribunal for permission to appeal against the Decision. They lodged the completed Application Form and a separate document setting out HMRC's Grounds of Appeal. (I refer to this application as "the PTA Application".)

9. Such applications for permission to appeal are not normally copied to the other party to the appeal. Thus it could not be assumed that either Mr West or Mr Slater would have been aware of the contents of the PTA Application.

10. I must now set out the reasons why I have had to replace the decision which was released to the parties on 16 November 2016.

11. HMRC's application for extension of time was emailed to me by HMCTS on 25 October 2016 together with the PTA Application.

12. It appears that the reason why HMCTS did not send me the extension of time ("EOT") application before then was that they had allowed further time for Mr West and his adviser to comment on HMRC's application for extension of time. HMCTS told me that they had not received any such comments from either Mr West or his adviser.

13. When Mr Slater received the decision on 16 November 2016, he immediately telephoned HMCTS to inform them emphatically that he had made representations. He had emailed HMCTS on 5 October 2016 to inform them that he would be making representations, and on 11 October 2016 he had sent another email with the representations attached. He had received an immediate automated acknowledgment.

14. Following that conversation on 16 November 2016, he sent an email to HMCTS to confirm the position. His message was forwarded to me by HMCTS later that afternoon, with various attachments including a copy of his email dated 11 October 2016 and the attached representations commenting on HMRC's EOT application.

15. It appears that there must have been some form of failure in the HMCTS email system. Mr Slater referred to this in the following terms:

> "You have said that you carried out a number of searches to find this email since I telephoned you today and it cannot be found. You say that such a loss has been known before and that you [*sic*] systems are "not perfect"."

16. He made other comments as to the effect that the loss of the email had had on the position of Mr West as the other party. I return to that subject when referring to the representations which Mr Slater made in the document attached to his 11 October 2016 email.

17. I am satisfied that this email was indeed received by HMCTS on 11 October 2016. As a result, I have given instructions that the decision which was released to the parties on 16 November 2016 must be withdrawn to enable me to reconsider HMRC's EOT application in the light of the representations which Mr Slater has made on Mr West's behalf. I set these out in summary form in the following paragraphs.

Mr Slater's representations

18. Mr Slater made the following points:

(1) The Tribunal should have little sympathy if HMRC overshoot a time limit; they traditionally leave matters until the last minute. They should have prepared for the possibility of the decision going against them. Even if every relevant member of HMRC staff had been away on 3 August, it could be expected that all of them would be back by the beginning of September, which would have given them adequate time to deal with the appeal process. The period from then to 28 September was generous as compared with the 3 week period in the civil courts.

(2) HMRC had referred to the issue as being very complicated. In Mr Slater's submission, it was telling that although they needed more time to consider the complexities, they only needed six more days before the PTA Application was submitted. He compared HMRC's position with their stance in relation to reasonable excuse cases; it was inconceivable that HMRC would ever permit a taxpayer to claim a reasonable excuse for a late tax return (so as to avoid a penalty) just because the due date followed a holiday period or because the appropriate staff were not present. HMRC should at least be held to the same standards that they demand from taxpayers.

(3) By 3 October 2016 when Mr Slater had been notified of HMRC's EOT application, Mr West had every reason to believe that the matter had been finally concluded. He had been distressed by the very long time it had taken to resolve the dispute. Mr Slater and Mr West very strongly opposed any application which would allow HMRC to continue the process still further when they had had the opportunity to appeal within the normal time period, but had not done so. HMRC's claim that the period should be extended in the interests of fairness and justice "did not wash", and was outweighed by Mr West's entitlement to finality in the time that the law intended to give, and no more – otherwise, why have a time limit at all?

19. In his representations, Mr Slater also commented on the matters raised in HMRC's PTA Application. In general, such points are relevant only to the consideration of that application in the event that extension of time is granted to HMRC, but certain matters are relevant to this decision. First, Mr Slater argued that in their PTA Application, HMRC had made several points which were not argued in front of the Tribunal, thereby denying Mr West the opportunity to rebut them at the correct time. On behalf of Mr West, Mr Slater strongly objected to HMRC being given leave to extend the appeal period so that they could have "a second bite of the cherry". Secondly, as the Tribunal had decided that PAYE had been deducted, it had not needed to consider the second question whether Mr West knew that his employer had wilfully failed to deduct tax. HMRC had had their chance to test Mr West's stated belief when he appeared before the Tribunal and gave evidence and told the Tribunal that he believed that PAYE had been deducted. Mr Slater questioned whether HMRC wished to have Mr West in the witness box to subject him to this stressful process again.

20. In his email dated 16 November 2016, Mr Slater referred to the harm which the loss of the 11 October email had caused to him and his client. He also mentioned the conclusion which I had reached in my decision as released to the parties on 16

November. He asked whether, if I now made a fresh decision with the benefit of his representations made on Mr West's behalf, I would be less likely to make a decision in Mr West's favour than I would have been if I had had those representations in the first place.

21. Mr Slater also made reference to financial matters; I consider these questions at a later point.

Consideration of the issues

22. At this stage I am not required to consider the substance of the PTA Application. The question that I have to consider is whether it is appropriate to allow HMRC's EOT application. The next step will depend on the result of my decision on that application. If I grant it, I will proceed separately to review and decide whether to grant HMRC permission to appeal. If I refuse to grant the extension of time, it will be for HMRC to consider their course of action following such refusal.

23. To deal first with Mr Slater's question concerning the effect of the failure of the representations to reach me before 16 November, I can confirm that as far as possible I have viewed the matter afresh and kept an open mind as to the outcome of HMRC's EOT application, taking into account the matters raised in those representations.

24. Rule 39 of the Tribunal Rules sets out the requirements for making an application for permission to appeal. After referring at Rule 39(2) to the 56 day period, rule 39(4) provides:

> "(4) If the person seeking permission to appeal sends or delivers the application to the Tribunal later than the time required by paragraph (2) or by any extension of time under rule 5(3)(a) (power to extend time)—
>
> (a) the application must include a request for an extension of time and the reason why the application notice was not provided in time; and
>
> (b) unless the Tribunal extends time for the application under rule 5(3)(a) (power to extend time) the Tribunal must not admit the application."

25. HMRC had sent the email set out above just before the end of the last day for lodging the PTA Application. In the completed form they referred to the email:

> "Please see the attached email which sets out the reasons. An application for extension was sent to the Tribunal on Wednesday 28 September 2016. We have not yet received a response to this application. Mr West's representative has been informed accordingly."

26. Tribunal Rule 39(4) indicates that the normal way of requesting an extension of time for making an application for permission to appeal is to include that request in the application. In practical terms, by attaching to the PTA Application a copy of their email dated 28 September 2016, HMRC have followed that procedure.

27. In a number of recent cases, the courts and the Upper Tribunal have considered the approach to be taken to the application of the Tribunal Rules. In *Data Select Ltd v Revenue and Customs Commissioners* [2012] UKUT 187 (TCC), [2012] STC 2195, Morgan J considered the approach to be taken to an application for extension of time to lodge a Notice of Appeal with the First-tier Tribunal. That approach is clearly equally applicable to considering whether to grant an extension of time to apply for permission to appeal against a decision of the First-tier Tribunal.

28. In *Data Select* at [34] he set out a series of questions:

> "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."

29. In the next paragraph, [35], he referred to the checklist of matters set out in CPR (Civil Procedure Rules) r 3.9. The version of r 3.9 differed from that now in force. A comparison between the two versions is set out in the decision of Judge Sinfield in *Revenue and Customs Commissioners v McCarthy & Stone (Developments) Ltd* [2014] UKUT 196 (TCC) at [27]-[28]. In the latter decision, Judge Sinfield refused to grant permission to HMRC to extend time for filing a Notice of Appeal to the Upper Tribunal, which had been filed 56 days late.

30. Judge Sinfield referred to the decisions of the Court of Appeal in *Andrew Mitchell MP v News Group Newspapers Ltd* [2013] EWCA Civ 1537 and *Durrant v Avon & Somerset Constabulary* [2013] EWCA Civ 1624. At [47] he said:

> "[47] As the Court of Appeal recognised in *Mitchell* at [49], regard must still be had to all the circumstances of the case but the other circumstances should be given less weight than the two considerations which are specifically mentioned. In this case, applying the principles of the new CPR 3.9, as explained in *Mitchell* and *Durrant*, means that, in considering whether to grant relief from a sanction, I should take account of all the circumstances, including those listed in the old CPR 3.9, but I should give greater weight to the need for litigation to be conducted efficiently and the need to enforce compliance with the UT Rules, directions and orders."

31. At [48] he stated:

> ""[48] Accordingly, in considering HMRC's application to be allowed to serve a notice of appeal after the time limit for doing so has passed, I have treated the need for appeals to be conducted efficiently and the need to enforce compliance with the UT Rules as important issues which carry greater weight than the other issues in the case. I turn to consider those issues next. As discussed below, I have also had regard to the different matters listed in the old CPR 3.9 but I have given them

> less weight in making my decision. They are discussed in more detail below."

32. In *Revenue and Customs Commissioners v BPP Holdings Ltd and others* [2016] EWCA Civ 121, [2016] STC 841, CA, the Court of Appeal considered the approach to be taken in considering relief for sanctions for non-compliance. In its unanimous judgment, it compared the respective approaches taken by the Upper Tribunal in two cases, *McCarthy & Stone* and *Leeds City Council v Revenue and Customs Commissioners* [2014] UKUT 350 (TCC), [2015] STC 168.

33. In *BPP* at [16], Ryder LJ expressed the firm view that the stricter approach taken in *McCarthy & Stone* towards non-compliance with rules and directions was the right approach. The stricter approach to compliance with rules and directions made under the CPR as set out in *Mitchell* and in *Denton v TH White Ltd* 2014 1 WLR 3926 applied to cases in the tax tribunals.

34. As a result of the Court of Appeal's conclusions in *BPP*, the three stages referred to by the Court of Appeal in *Denton* at [24] for consideration of an application for relief from sanctions are relevant to tax appeals:

> "[24] . . . 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 including [factors (a) and (b)]".

35. The Court of Appeal indicated in *BPP* at [44] that it did not consider *BPP* to be an appropriate case in which to analyse the decision in *Data Select*, in which the question had been the principle to be applied to an application to extend time where there had been no history of non-compliance. In *BPP*, HMRC had not acknowledged that they had breached a time limit or made an application for extension of time.

36. In the present case, HMRC have made an application for extension of time. In the light of the views expressed by the Court of Appeal in *BPP* and by Judge Sinfield in *McCarthy & Stone*, I take it to be the correct approach, in considering an application to appeal out of time, to follow the same course as Judge Sinfield in his decision at [48] as set out above.

37. The first criterion is therefore the need for appeals to be conducted efficiently and the need to enforce compliance with the Tribunal Rules. This can be considered together with the first of Morgan J's questions in *Data Select*; what is the purpose of the time limit in issue?

38. The answer is that the purpose is precisely the same as the first criterion as mentioned in the previous paragraph. In *BPP*, Ryder LJ said at [37]:

> "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 the 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*. As to that policy, I can detect no justification for a more relaxed approach to compliance with rules and directions in the tribunals and while I might commend the Civil Procedure Rules Committee for setting out the policy in such clear terms, it need hardly be said that the terms of the overriding objective in the tribunal rules likewise incorporate proportionality, cost and timeliness. It should not need to be said that a tribunal's orders, rules and practice directions are to be complied with in like manner to a court's. If it needs to be said, I have now said it."

39. The effect of Rule 39(4)(b) is plain; it assumes that an application for permission to appeal should not be admitted unless the Tribunal sees fit to use its discretion under the Tribunal Rules to allow an extension of the normal 56 day period. It is essential for parties to know whether a decision of the First-tier Tribunal is or is not to be treated as final. The question when they should be provided with a definite indication as to the position depends in part on the next of the points raised in *Data Select*.

40. This second question addresses the length of the delay. In various other cases, the length of the delay has been substantial. For example, the delay in *McCarthy & Stone* was 56 days. Other cases have involved even longer periods.

41. Here, there is a question as to the precise length of the delay. In the email applying for the extension of time, sent to HMCTS during the last working hour of the final day for lodging the PTA Application, HMRC requested an extension of 14 days to 12 October 2016. The PTA Application was in fact lodged on 5 October 2016, seven days after the normal time limit. As I have stated, Rule 39(4) makes provision for a request for extension of time to be included in the application for permission to appeal.

42. There is a question, with which I deal later in this decision, whether a stricter approach should be applied to HMRC than to other parties in relation to the length of the delay. This is also relevant to the first stage referred to in *Denton*, consideration of the seriousness and significance of the failure to comply with the normal time limit. Again, I consider this at a later point in this decision. In absolute terms, the delay does not appear on its face to be particularly long. However, evaluation of the length of the delay is also bound up with the next of the *Data Select* points, namely the explanation of the reasons for the delay.

43. This point may be combined with the second stage mentioned in *Denton* at [24] (see above); why did the default occur? HMRC's reasons for the delay are set out in their email message reproduced at [6] above. In summary, their reasons amount to this; in colloquial terms, they had not been able to "get their act together" within the normal time for lodging an application for permission to appeal. In my view, an organisation as substantial as HMRC should be ready to deal with Tribunal decisions

in a prompt and appropriate fashion at whatever point in the year such decisions are released. I am aware that HMRC have argued for a strict approach in cases where they have sought to resist applications by other parties for extension of time or for reinstatement of appeals which have been struck out, although as I have stated, these have generally involved lengthier delays. I note the reference by Ryder LJ to irony in *BPP* at [36]. The point in issue here is not dissimilar. I do not consider that HMRC's explanation demonstrates adequate reasons for the delay, given the resources available to them. I find Mr Slater's arguments as set out in [18](1) and (2) above persuasive in support of the conclusion which I have reached.

44. The next issue to be considered in accordance with *Data Select* is the effect on Mr West as the Appellant of granting HMRC's application for extension of time to lodge the PTA Application. Mr West may have assumed that his successful appeal would not be challenged by HMRC, as Mr Slater submitted. However, it would not have been appropriate for Mr West to make that assumption until quite some time after the period for them to lodge such an application had expired. It was on 3 October 2016 that HMCTS notified Mr Slater of HMRC's EOT application. That application was made just before the very end of the 56 day period for making the PTA Application. Despite Mr Slater's submissions, I do not consider that granting an extension of time would affect Mr West's position; he would have had to wait some considerable time before he could be satisfied that HMRC would not be taking steps to pursue an appeal. The very existence of Rule 39(4) shows that the possibility of an application being made for permission to appeal remains open after the expiry of the 56 day period, and all the more so where the time which has elapsed since that expiry is not particularly lengthy, subject to the decision in the individual case whether or not extension of time should be granted following the relevant party's application.

45. The final *Data Select* question is the effect on HMRC of refusing to grant an extension of time. The result would be that they could not pursue an appeal in the hope of persuading the Upper Tribunal to come to a different view from that reached by the Tribunal pursuant to my casting vote. They would have no prospect of seeking to recover the PAYE income tax for which they argued that Mr West should be personally liable.

46. It is clear from their email application that they now wish to treat Mr West's appeal as some form of test case. They refer to the involvement of a number of their operational and policy areas in the decision whether to pursue an appeal.

47. This appears to mark a change in approach from the way in which HMRC conducted the appeal before the Tribunal. Both members of the Tribunal panel formed the impression that HMRC did not appear to be pursuing their arguments with much vigour.

48. It appears to me that if HMRC wish to pursue a test case, it may be better for them to do so with a different one involving similar facts in which they have had the opportunity to put their detailed arguments by reference to the policy and other considerations which were not canvassed with a requisite degree of detail in the course of Mr West's appeal.

49. In his representations, Mr Slater has raised a point which may have some relevance to this issue, even though it was made in the context of commenting on HMRC's PTA Application. This is that the PAYE liabilities went unpaid not because of the failure of the tax system or an incorrect First-tier Tribunal decision, but because of the incorrect application of insolvency law. This raises the question whether the circumstances which occurred in Mr West's case would never be encountered in other cases where insolvency law was properly applied. If they would not, it would be open to question whether it would be appropriate for the matter to be tested on appeal as being an issue of wider interest.

50. I now turn to the more general questions, both on the applicable standard concerning the length of the delay, and as to the consideration of HMRC's application in the light of all the circumstances.

51. On the first of these questions, Judge Sinfield made the following comments in *McCarthy & Stone* at [44]:

> "An informal and flexible approach may mean that a self-represented litigant is granted relief from a failure to comply with the rules, including time limits, in circumstances where a more experienced and better resourced party is not. That difference in treatment between different parties does not mean that the UT is applying dual standards but only that the level of experience and resources of a party are factors which should be taken into account in considering all the circumstances of the case. Such factors will, however, carry less weight than the two principal matters which must be considered in the new CPR 3.9."

52. Thus it is not appropriate to apply a different standard to HMRC, but their experience and resources should be taken into account in considering all the circumstances.

53. In *BPP* at [39] Ryder LJ expressed the following views concerning HMRC's approach to compliance:

> "I found the approach of HMRC to compliance to be disturbing. At times it came close to arguing that HMRC, as a State agency, should be treated like a litigant in person and that the constraints of austerity on an agency like the HMRC should in some way excuse unacceptable behaviour. I remind HMRC that even in the tribunals where the flexibility of process is a hallmark of the delivery of specialist justice, a litigant in person is expected to comply with rules and orders and a State party should neither expect to nor work on the basis that it has some preferred status – it does not."

54. The question is whether, in all the circumstances, HMRC's delay should be regarded in *Denton* terms as "serious and significant", even though in absolute terms it is not particularly lengthy.

55. I have already concluded that HMRC have not shown adequate reasons for the delay. Taking that conclusion together with the length of the delay, I am drawn

towards the further conclusion that this delay on the part of HMRC as a specialist organisation with considerable resources and frequent involvement in Tribunal proceedings should in these circumstances be regarded as serious and significant. However, without further guidance either from the Upper Tribunal or the courts as to this question, I do not find it possible to make a definitive finding that the delay was serious and significant.

56. Given the comments of the Court of Appeal in *R (oao Hysaj) v Secretary of State for the Home Department* [2014] EWCA (Civ) 1633 at [46], in which caution was expressed as to considering the merits of the substantive appeal when hearing an applications for extension of time, I do not consider it appropriate to examine the merits of HMRC's PTA Application when considering all the circumstances of the case at the third stage as set out in *Denton*.

57. One consideration on which I place considerable weight is the possible effect on Mr West if I were to decide to refuse to grant the extension of time to HMRC. I consider that there would be a strong likelihood that HMRC would seek permission to appeal against this decision, and that in all probability such permission would be granted. In the course of his evidence at the hearing of his appeal, Mr West stated that he was on benefits. There was no reason to test that evidence or seek corroboration of it. If that evidence could be treated as sufficient evidence as to his financial position, there may be a risk that he could be put to further expense in the event that he or Mr Slater considered it necessary to be involved in any proceedings relating to an appeal by HMRC against this decision. In his email dated 16 November 2016 to HMCTS, Mr Slater has indicated that in the context of costs, he is carrying out the work almost on a pro bono basis, and is willing to see the matter through to the end. As a result, I am satisfied that Mr West would not be unrepresented in any appeal by HMRC. Mr Slater has referred to the possibility of an award of costs against Mr West following a substantive hearing in the Upper Tribunal of HMRC's appeal. That is not a matter which is relevant to HMRC's EOT application. However, I am conscious that an appeal by HMRC against refusal of their EOT application could also give rise to a costs award against Mr West in the event that such appeal were to be successful. The question of such an award would of course be entirely a matter for the Upper Tribunal. I think it preferable that time and resources should not be spent on a possible appeal against this decision.

Decision on the application

58. Taking all the circumstances together, and in particular my conclusion that Mr West should not be unduly disadvantaged by a decision to permit HMRC to pursue the PTA Application, I grant HMRC's application for extension of time to lodge the PTA Application.

59. I will therefore proceed as a separate matter to consider the PTA Application in the normal way.

Right to apply for permission to appeal

60. 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.

JOHN CLARK
TRIBUNAL JUDGE

RELEASE DATE: 23 NOVEMBER 2016