[2016] UKFTT 742 (TC)

TC05470

Appeal number: TC/2015/06223

Income Tax – whether valid notice of appeal – no - application to extend time for appeal – whether reasonable excuse – no - refused – strike out application granted

FIRST-TIER TRIBUNAL
TAX CHAMBER

EDWIN McLAREN **Appellant**

- and -

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

TRIBUNAL: JUDGE ANNE SCOTT

Sitting in public at Glasgow on Wednesday 19 October 2016

Having heard the Appellant in person

Mrs E Wilson, Counsel, instructed by Mrs M Gibson, Solicitor to HM Revenue and Customs, for the Respondents

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DECISION

Introduction

1. This was a preliminary hearing to determine the appellant's application for an extension of time to lodge the appeal and the respondents ("HMRC") strike out application dated 11 October 2016. That application was on the basis that the Tribunal had no jurisdiction to hear Mr McLaren's appeal, that any application to appeal late should be refused and that the appeal should be struck out in terms of Rule 8(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the Rules").

Background

2. On 24 July 2014, HMRC wrote to the appellant intimating that they had information which suggested that there might be a serious loss of tax and enclosing assessments for the years ending 5 April 2006-2012 inclusive ("the assessments") which amounted in total to £360,255.85.

3. Both the covering letter and the notices of assessment pointed out that if the appellant disagreed with the assessment he could appeal and that to do so he needed to write to HMRC within 30 days of the date on the assessment. Accordingly the last day for lodging the notices of appeal timeously was 24 August 2014.

4. HMRC are adamant that no notices of appeal were ever received. Mr McLaren argues that he did appeal to HMRC but has produced no evidence in support of that assertion other than his own oral evidence and letters.

5. On 6 October 2015, the Tribunal received a notice of appeal which stated that Mr McLaren requested permission to appeal outside the relevant time limit. The reason offered for the late appeal was:-

> "Was in prison on remand from September 2014 till February 2015 and spoke to Inland Revenue about my mental illness the date I was to appeal by 24 Aug I was ill".

6. On 13 November 2015, HMRC requested a sist of all time limits for a period of no less than 150 days, up to and including Monday 11 April 2016 on the basis that the appeal date of 6 October 2015 had no legal standing because Mr McLaren had been sequestrated on 5 October 2015 the day before the notice of appeal was lodged with HMCTS. HMRC intended to clarify the legal position with the Trustee.

7. On 10 June 2016 the agent for the Trustee in the sequestration confirmed that the Trustee would not be pursuing the appeal in place of Mr McLaren and did not wish to be included as a party to the appeal.

Procedural matters

8. We were provided with one Bundle containing the joint list of documents for the parties. That included a witness statement of Officer Egan. It also included a

succession of emails which Mr McLaren had produced dated between 30 November 2015 and 13 October 2016 between Mr McLaren and HMRC and Mr McLaren's wife and HMRC. Mr McLaren's wife was not present. I repeatedly made it absolutely explicit to Mr McLaren that under no circumstances could the Tribunal consider any issues relating to his wife's tax affairs. The fact that HMRC had evidently allowed her to lodge a late appeal in regard to an issue was not a factor that I could consider.

9. We heard evidence from Mr McLaren and from Mr Egan. After Mr Egan had given evidence, Mr McLaren vigorously objected to the fact that he had not been aware that Mr Egan was to be a witness. In the event, in order to expedite matters, Mr McLaren having become very heated, since Mr Egan spoke only to confirm that he had issued the assessments and he commented on a number of notes of telephone calls which were in the Bundle, HMRC agreed to withdraw the witness statement and Officer Egan's oral evidence. I have disregarded both in their entirety.

10. In the course of the hearing (see paragraph 16 below) Mr McLaren intimated that he wished to refer to a number of emails (possibly as many as some 300) and I indicated to him that they had not been produced for the Bundle and that they could only be admitted if they were relevant and if I directed that they should be admitted. He decided not to pursue that course of action.

11. At an early point in the hearing Mr McLaren was happy to refer to the Judgement of Sheriff Pettigew dated 6 July 2016 which HMRC had lodged in process since it corroborated his evidence that he had emailed the High Court. Much later in the proceedings he vigorously objected to it being referred to since it set out a chronology which the Sheriff stated had not been disputed by Mr McLaren. I decided that that Judgement was relevant evidence which had been timeously lodged. There was no reason to exclude it.

Preliminary matters

12. On 17 October 2016, HMRC wrote to HMCTS seeking a postponement of the hearing set down for 19 October 2016 on the basis that firstly, Mr McLaren had not intimated an outline of the legal arguments upon which he sought to rely and secondly the Serious and Organised Crime Division of the Crown Office had expressed concerns that the Tribunal hearing might lead to an airing of some matters in a public forum which might compromise or prejudice the ongoing criminal proceedings. That application was refused on the basis that the hearing was purely to determine the preliminary issue and the substantive appeal could be sisted if required.

13. That application for postponement was again rehearsed at the outset of this hearing. I refused that application on the basis that Mr McLaren was very anxious to proceed and, on the basis of the information before me, it seemed unlikely that any detail of the subject matter of the High Court proceedings would be even remotely considered in the course of this hearing. That proved to be the case.

14. As Mr McLaren was unrepresented I explained to him, and indeed had to do so repeatedly, that this hearing was restricted to looking at whether the time limit for lodging an appeal could be extended and whether the appeal should be struck out.

Was the appeal late?

15. Mr McLaren argued that his wife had lodged an appeal for him with HMRC by emailing Officer Egan. He stated that he could not produce any copy of that email or indeed any other emails because all of his computers and electronic equipment had been seized by Police Scotland. Initially, and for most of the hearing, he repeatedly argued that those seizures had been in January 2013, September 2014 and December 2015. At the end of Mr McLaren's case I drew his attention to his own productions and asked if there was anything in them to which he wished to refer. He then drew my attention to an email from him to HMRC on 15 June 2016 stating that the computers had been seized "… in January 2013 September 2014 and December 2014 when I was in prison on remand".

16. It was at that juncture, when it was explained to him that that was in serious conflict with all of his earlier evidence, that he then interrogated his iPad and decided that he might wish to lodge some emails. He did suggest that he would have difficulty interrogating the emails on his iPad because he was not computer literate. I pointed out that that did not sit well with his use of a personal hotspot to access the internet. In any event, his evidence had been that it had been his wife who had lodged the appeal with Officer Egan. He had also said that she had lodged her own appeal at the same time. Her late appeal had been accepted by HMRC.

17. Mr McLaren had been referred to four notes of telephone calls with HMRC which were included in the Bundle. The first recorded that he had contacted Officer Egan on 21 August 2014 at 11:44am and that the officer had told him that the 30 day appeal period was still open. The officer then telephoned Mr McLaren at 12:15 and explained that Mr McLaren could appeal in writing himself and that he should view the HMRC website which gave advice on making appeals and listed a number of entities whom he could approach, and indeed it transpired that he had had done so. Mr McLaren conceded that that note of telephone call was accurate.

18. The second note of telephone call was dated 28 August 2014 at 10:44 where the officer had recorded that Mr McLaren had said that he had managed to get someone to assist him with his appeal and that it would be lodged as soon as possible. The officer recorded that he had pointed out that the appeal period had passed and that HMRC would be pursuing recovery but that that could be suspended upon receipt of the appeals. Mr McLaren denied point blank ever having had that telephone conversation.

19. The third note of telephone call was dated 10 February 2015. The first half of that note of telephone conversation had been redacted. Mr McLaren argued that that redaction was a "cover up". There had been minor redactions in the earlier two notes of telephone conversations and I find that the redactions relate to Mrs McLaren and that that redaction is entirely appropriate. The Note of telephone call went on to state that

> "I explained that in the absence of an appeal, the assessments remained payable. I said it was possible that a late appeal may be considered although I could not guarantee that this would happen and the matter may have to go through a Tribunal. … Mr McLaren said that he was due to speak to an accountant next week to try and bring his own tax affairs in order. He also re-iterated that he had been in jail and this was why he had not got an appeal in on time in the first instance … He asked if collection would now be suspended. I advised that it would continue until such time as a valid appeal was received, considered and accepted."

20. Mr McLaren did confirm that he had called Officer Egan when he came out of prison and that that would have been at or about that time but he denied completely that it was an accurate report of the telephone conversation. He went so far as to allege that HMRC were on a "witch hunt" and that the records of the second and third telephone calls had been fabricated. However, he did concede that one paragraph, not replicated above, where he had asked if he should bankrupt himself (and the officer declined to comment) probably was accurate since he had been angry with the officer's attitude.

21. The fourth note of telephone call is dated 25 August 2015 at 9:52 and recorded that Mr McLaren had telephoned stating that he had been in court the previous day regarding his own tax assessments and that he was still disputing the amounts, that he had spoken to Mrs Hudson in HMRC Debt Management and that the "HMRC solicitor" and the Sheriff had agreed that he should submit a late appeal. He had explained that he had been in prison and had suffered health issues. The officer had pointed out that he did not go to prison until after the time for appeal had expired and that at this juncture a late appeal would not be considered and would have to be submitted to the Tribunal. Again Mr McLaren questioned the veracity of that note of telephone call.

22. The fourth note of telephone call is accurate insofar as Mr McLaren had been in court the previous day and by his own admission the sheriff had been "very helpful" and the case had been continued for four weeks to enable Mr McLaren, who was unrepresented, to progress matters. The advice which the officer is recorded as having given is precisely the type of advice that one would expect. Further, although I was not referred to it, there is another note of telephone call in the Bundle and that is dated 19 November 2015. Presumably it was not in dispute. That records that Mr McLaren had again telephoned the officer indicating that he wished to query the assessments and that he had now lodged an appeal with the Tribunal Service. Again the advice contained therein is precisely what one would expect from HMRC.

23. I pointed out to Mr McLaren that I would have to decide on the balance of probability whether or not the records of the telephone calls, which were in the standard HMRC format, were an accurate account. I find that they were. They are inherently consistent.

24. I find that no notice of appeal was ever lodged with HMRC by Mr McLaren, or by his wife on his behalf, and that the only notice of appeal that was lodged in regard to these assessments was that which was emailed to the Tribunal.

Notice of Appeal

25. Rule 20 of the Rules reads as follows:

> **20.— Starting appeal proceedings**
>
> [(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.][1]
>
> (2) The notice of appeal must include—
>
> (a) the name and address of the appellant;
>
> (b) the name and address of the appellant's representative (if any);
>
> (c) an address where documents for the appellant may be sent or delivered;
>
> (d) details of the decision appealed against;
>
> (e) the result the appellant is seeking; and
>
> (f) the grounds for making the appeal.
>
> (3) The appellant must provide with the notice of appeal a copy of any written record of any decision appealed against, and any statement of reasons for that decision, that the appellant has or can reasonably obtain.
>
> [(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 must be made or notified after that period with the permission of the Tribunal—
>
> (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
>
> (b) unless the Tribunal gives such permission, the Tribunal must not admit the appeal.][2]

26. In the course of the hearing Mr McLaren argued that he had sent the notice of appeal to the Tribunal on 2 October 2015, having downloaded and completed the form on 1 October 2015. That is in conflict with an email that he sent to the Tribunal on 30 November 2015 where he stated that he confirmed that he had posted the appeal on 1 October 2016. Further, as Sheriff Pettigiew narrates in his decision dated 6 July 2016, Mr McLaren had sent an email to the Sheriff Clerk Depute at Paisley at 16:45 on 2 October 2015 in the following terms:-

> "Thanks Rhona, I will be unable to attend court personally on Monday as I am the accused in a High Court trial @ Glasgow High Court Could you please advise the court of this I am representing Myself in This Regard can you also let the court known that I intend (my

[1] Substituted by Tribunal Procedure (Amendment No.3) Rules 2010/253 rule 6(5)(a) (November 29, 2010)

[2] Substituted by Tribunal Procedure (Amendment No. 3) Rules 2010/2653 rule 6(5)(b) (November 29, 1010)

emphasis) to lodge an appeal against all of the tax Due to the tax commissioners as I am not due this amount of Tax."

Clearly on the afternoon of 2 October 2015 Mr McLaren had still not posted a notice of appeal. No paper Notice of Appeal with enclosures has ever been received by the Tribunal.

27. Sheriff Pettigrew also set out a chronology which he describes as "not disputed" and that records:-

"6th October 2015 – Applicant lodged appeal against tax assessments to Tax Tribunal".

27. Mr McLaren produced a photocopy of the final page of the notice of appeal which suggested that he had signed it on 1 October 2016. However, as long ago as 12 November 2015, HMRC had written to the Tribunal pointing out that the notice of appeal was incomplete as only pages 1, 2, 3 & 4 had been sent. The page showing the actual grounds for appeal was missing as was the signature page. Furthermore none of the attachments were included. That is entirely accurate.

28. I have checked the Tribunal file and on 6 October 2015 at 21:21, 21:26 and 21:27 Mr McLaren submitted only pages 1, 2, 3 and 4 together with a letter from HMRC Debt Management with a statement of the outstanding liabilities as at 9 July 2015, part of a letter from HMRC indicating that a penalty might be levied and a letter from Debt Management of HMRC relating to a complaint Mr McLaren had made about the behaviour of sheriff officers.

29. Accordingly no valid notice of appeal has in fact even been lodged on 6 October 2015 with the Tribunal.

30. I also find that the notice of appeal, such as it was, was only lodged after Mr McLaren had been sequestrated.

Application for admission of a late appeal

The Law

31. The Tribunal's power to admit a late appeal is contained in Section 49 Taxes Management Act 1970 which reads 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.

(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."

32. The general approach to such discretionary decisions is set out by Lord Drummond Young in *Advocate General for Scotland v General Commissioners for Aberdeen City*[3] ("Aberdeen") and in particular at paragraphs 22-24. Those read as follows:-

> "[22] Section 49 [of the Taxes Management Act] is a provision that is designed to permit appeals out of time. As such, it should in my opinion be viewed in the same context as other provisions designed to allow legal proceedings to be brought even though a time limit has expired. The central feature of such provisions is that they are exceptional in nature; the normal case is covered by the time limit, and particular reasons must be shown for disregarding that limit. The limit must be regarded as the judgment of the legislature as to the appropriate time within which proceedings must be brought in the normal case, and particular reasons must be shown if a claimant or appellant is to raise proceedings, or institute an appeal, beyond the period chosen by Parliament.
>
> [23] Certain considerations are typically relevant to the question of whether proceedings should be allowed beyond a time limit. In relation to a late appeal of the sort contemplated by s49, these include the following; it need hardly be added that the list is not intended to be comprehensive. First, is there a reasonable excuse for not observing the time limit, for example because the appellant was not aware and could not with reasonable diligence have become aware that there were grounds for an appeal? If the delay is in part caused by the actings of the Revenue, that could be a very significant factor in deciding that there is a reasonable excuse. Secondly, once the excuse has ceased to operate, for example because the appellant became aware of the possibility of an appeal, have matters proceeded with reasonable expedition? Thirdly, is there prejudice to one or other party if a late appeal is allowed to proceed, or if it is refused? Fourthly, are there considerations affecting the public interest if the appeal is allowed to proceed, or if permission is refused? The public interest may give rise to a number of issues. One is the policy of finality in litigation and other legal proceedings; matters have to be brought to a conclusion within a reasonable time, without the possibility of being reopened. That may be a reason for refusing leave to appeal where there has been a very long delay. A second issue is the effect that the instant proceedings might have on other legal proceedings that have been concluded in the past; if an appeal is allowed to proceed in one case, it may have implications for other cases that have long since been concluded. This is essentially the policy that underlies the proviso to s33(2) of the Taxes Management Act. A third issue is the policy that is to be discerned in other provisions of the Taxes Acts; that policy has been enacted by Parliament, and it should be respected in any decision as to whether an appeal should be allowed to proceed late. Fifthly, has the delay affected the quality of the evidence that is available? In this connection, documents may have been lost, or witnesses may have forgotten the details of what happened many years before. If there is a serious deterioration in the availability of evidence, that has a significant impact on the quality of justice that is possible, and may of itself provide a reason for refusing leave to appeal late.
>
> [24] Because the granting of leave to bring an appeal or other proceedings late is an exception to the norm, the decision as to whether they should be granted is typically discretionary in nature. Indeed in view of the range of considerations that are typically relevant to the question, it is difficult to see how an element of discretion can be avoided. Those considerations will often conflict with one and another, for example, in a case where there is a reasonable excuse for failure to bring proceedings and clear prejudice to the applicant for leave but substantial quantities of documents have been lost with the passage of time. In such a case the person or body charged with the decision as to whether leave should be granted must weigh the conflicting considerations and decide where the balance lies."

[3] [2006] STC 1218

33. I was not referred to the case but I agree with the decision of Judge Berner at paragraph 36 in *O'Flaherty v HMRC*[4] and that reads:-

> "I was referred to … where Sir Stephen Oliver refused permission to appeal out of time. In the course of his decision, Sir Stephen made the point that permission to appeal out of time will only be granted exceptionally. It is in my view important that this comment should not be thought to provide a qualitative test for the circumstances the FTT is required to take into account. It should properly be understood as saying nothing more than that permission should not routinely be given; what is needed is the proper judicial exercise of a discretion, taking account all relevant factors and circumstances."

34. He goes on to record at paragraph 37 that: -

> "Time limits are prescribed by law, and as such should as a rule be respected".

I agree entirely.

35. Paragraph 38 reads:-

> "These references to permission being granted exceptionally should not be elevated into a requirement that exceptional circumstances are needed before permission to appeal out of time may be granted. That is not what was said in *Ogedegbe* nor in *Aston Markland*, and it is not the case. The matter is entirely in the discretion of the FTT, which must take account of all relevant circumstances. There is no requirement that the circumstances must be exceptional."

That is the approach which I adopt.

36. I have considered, and weighed in the balance, all of the relevant circumstances including, but not restricted to, the circumstances identified in *Aberdeen*. In so doing, I have concurrently applied the three stage process set out by the Court of Appeal in *Denton & Others v T H Whyte & Another; Decadent Vapours Ltd v Bevan & Others* and *Utilise TDS Ltd v Davies & Others* ("Denton")[5]. The first of those is to identify the seriousness and significance of the failure to lodge an appeal in relation to which the relief sought. The second is to consider why the default occurred and the third is to evaluate all the circumstances of the case so as to deal justly with the application of the factors.

37. HMRC also relied upon and referred me to R (*on the application of Cook*) v General Revenue Commissioners[6] *("Cook"*), *Indigo Media Partnership v HMRC* [7] *("Indigo"*) and *Romasave (Property Services) Ltd v HMRC* (*"Romasave"*)[8].

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[4] [2013] UKUT 161 (TCC)

[5] [2014] EWCA Civ 906

[6] [2009] STC 1212

[7] [2015] UKFTT 424

[8] [2015] UKUT 254

38. I am bound by and entirely agree with Judges Berner and Falk at paragraph 96 of *Romasave* which reads:-

> "… The exercise of a discretion to allow a late appeal is a matter of material import, since it gives the Tribunal a jurisdiction it would not otherwise have. Time limits imposed by law should generally be respected. In the context of an appeal right which must be exercised within 30 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."

39. Lastly, at all times I have had in mind Rule 2 of the Rules which reads:-

> "**2.—Overriding objective and parties' obligations to co-operate with the Tribunal**
>
> (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.
>
> (2) Dealing with a case fairly and justly includes—
> (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
> (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
> (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
> (d) using any special expertise of the Tribunal effectively; and
> (e) avoiding delay, so far as compatible with proper consideration of the issues.
>
> (3) The Tribunal must seek to give effect to the overriding objective when it—
> (a) exercises any power under these Rules; or
> (b) interprets any rule or practice direction.
>
> (4) Parties must—
> (a) help the Tribunal to further the overriding objective; and
> (b) co-operate with the Tribunal generally."

Discussion

Is there a reasonable excuse for not observing the time limit?

39. In summary, and I repeatedly recapped this with Mr McLaren to ensure that there was no dubiety, Mr McLaren's argument is firstly that his wife lodged a Notice of Appeal with HMRC but there is no evidence to that effect and as I indicate above I find that there was no appeal to HMRC. Secondly, he states that although by June or July 2015 he was aware that HMRC were collecting the tax due in terms of the assessments his priority had been preparation for the proceedings in the High Court and he had been ill which had given him short term memory problems. He said that he had been "fire fighting" and his head had been "in a bad place".

40. I note that Sheriff Pettigrew recorded that Mr McLaren told him that following his telephone conversation with Officer Egan in February 2015 he had complained to the officer's superior Dr Branagan and that the outcome had been:-

> "He advised me Dr Branagan had subsequently informed him, in or about May 2015, that his only option was to lodge an Appeal to the Tax Tribunal. Despite that advice from Dr Branagan the Petitioner stated he 'just buried his head in the sand.' There were other matters, he said, to

> which he had to attend. He stated he had not done anything further, his reasoning being that he knew it would 'ultimately come to Court and I could explain my position in a proper hearing'. He accepted, however, with the benefit of hindsight, that if he did nothing, there would not in fact be a hearing".

Although Mr McLaren did not mention Dr Branagan, that is entirely consistent with what Mr McLaren told me in regard to his approach to the question of an appeal in the summer of 2015.

41. In June 2015, Mr McLaren's then solicitors had submitted to HMRC a Debt and Mental Health Evidence Form. That had been completed by Mr McLaren's GP and stated that his mental health problem was poor sleep, reduced concentration and anxiety and that the treatment or support being received by Mr McLaren did not affect his ability to manage money and that "no cognitive side effects of current treatment known. Takes occasional sedative". He was also recorded as being "currently fully competent". It was observed that there had been an increase in his depressive symptoms in the preceding four months which as associated with episodes of acute anxiety and he was awaiting psychiatric assessment.

42. Mr McLaren told the Tribunal that his mental health currently is worse than it had been in 2015. He handled the large amount of paperwork in this appeal with ease and indeed pointed out to me and to HMRC that he knew precisely what was in his paperwork. On the balance of probability, although he was, and is, undoubtedly suffering from ill-health I would agree with the opinion of the doctor that he suffered from no cognitive impairment.

43. Obviously the proceedings in the High Court would have been a high priority for Mr McLaren and he reported very regular meetings with both his solicitors and counsel. However, there is no doubt that he was aware of the 30 day time limit. He did not go to prison until approximately one month after the expiry of that time limit. Quite apart from the telephone conversations with Officer Egan, which I find to have taken place in the terms recorded, he should have known that there was no appeal as soon as proceedings commenced to collect the tax.

44. HMRC had lodged in process a copy of the Certificate of Citation by the Sheriff Officers which records that the Petition for Sequestration was served **personally** on Mr McLaren on 10 August 2015. Mr McLaren vehemently denied that that citation had been served on him personally. However, that was entirely inconsistent with a letter which he himself had produced dated 3 August 2015 from the Sheriff Officers which made the appointment to serve the citation personally. I find that he most certainly did know about the Petition for Sequestration at the very latest on 10 August 2015. I also find that after he appeared in Court on 24 August 2015 he had indeed been encouraged to lodge an appeal with the Tribunal. He did not do so.

45. Mr McLaren only lodged a notice of appeal, and an incomplete one at that, after he had been sequestrated. I find that there is no reasonable excuse for the delay in lodging the appeal.

Did matters proceed with reasonable diligence once the excuse had ceased to operate?

46. Since I find that there was no excuse at any stage the answer must be no. Even if there had been an excuse at an earlier stage there was certainly no excuse for the period between 10 August 2015 and 6 October 2015.

Is there prejudice to one or other party if the appeal proceeds or is refused?

47. I find that the delay in this matter which is in excess of a year, is a significant and serious delay. I agree with Dyson LJ in *Cook* at paragraph 22 which reads:-

> "… there was prejudice to HMRC in not being able to close it books. Thirdly, there is a public interest in these cases in achieving finality in litigation. There is a public interest in promoting the policy that challenges to assessments by way of appeal should be brought in the short period specified by the statute."

48. There would undoubtedly be prejudice to Mr McLaren if the appeal is not allowed to proceed. Large sums of money are at stake and he would be unable to litigate.

49. If the application is granted there will be a considerable cost to the public purse.

Are there considerations affecting the public interest?

50. There is undoubtedly the issue of the policy of finality in litigation and other legal proceedings and the delay in this matter is significant.

Has the delay affected the quality of available evidence?

51. Since Mr McLaren has failed even to state grounds of appeal other than to say he is not due the tax, it is impossible to make any findings in regard to the quality of evidence he might be able to produce. As far as HMRC are concerned the assessments are discovery assessments and for that reason are estimates. It is worthy of note that the appellant has not submitted tax returns for any of the years in question and his engagement with HMRC and HMCTS has been negligible. If the appeal proceeds the onus would be on Mr McLaren to discharge the onus of proof in regard to the quantum of the assessments.

52. In summary, he has produced absolutely nothing to HMRC and not even specified any grounds of appeal to the Tribunal. He told me that the Crown had produced a forensic report showing payments of £10,000 but that has not been lodged with HMRC or the Tribunal.

53. In the recent Supreme Court judgment of *Global Torch Ltd v Apex Global Management Ltd (No 2)* Lord Neuberger said at [29] and [30] that the strength of a party's case on the ultimate merits of the proceedings is generally irrelevant when it comes to considering whether time should be extended unless the party concerned has a case whose strength would entitle him to summary judgement. That is patently not the case here.

Conclusion

54. Every application for admission of a late appeal depends on its own facts and circumstances. At all stages in the consideration of this matter I have had Rule 2 of the Rules very much in mind. It is imperative that any decision should be fair and just. I have weighed every factor and authority that was brought to my attention in the balance. Taxpayers are expected to act with reasonable prudence and diligence in dealing with their affairs. Patently, even allowing for ill-health, Mr McLaren has not.

55. On the balance of probability, I find that Mr McLaren has not discharged the onus of proof in establishing good reason for extending the time limit in the circumstances of this case. I decline to exercise my discretion and the application for permission to notify late appeals is refused.

56. In the circumstances I therefore strike out the appeal.

57. 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.

ANNE SCOTT
TRIBUNAL JUDGE

RELEASE DATE: 3 NOVEMBER 2016