# TC02743

**Appeal number: TC/2012/05857**

***PROCEDURE – appeal out of time – Article 1 First Protocol and Article 6 European Convention on Human Rights – whether 30 day time limit in which to appeal infringes appellant's Convention rights – application to disapply the time limit – application dismissed***

**FIRST-TIER TRIBUNAL**
**TAX CHAMBER**

**AQUA PRODUCTS LIMITED** **Appellants**

**- and -**

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

**TRIBUNAL: JUDGE JONATHAN CANNAN**

**Sitting in public in Birmingham on 29 April 2013**

**Andrew Young of counsel instructed by Neil Davies & Partners LLP for the Appellant**

**Gary Griffin of HM Revenue & Customs for the Respondents**

## DECISION

*Background*

1. This application follows an application by the Appellant for permission to make a late appeal. In a decision released on 22 January 2013 ("the First Decision") I refused the appellant's application for permission to make a late appeal. I did so as a matter of discretion. For the reasons given at [1] to [6] of the First Decision I dealt with the exercise of discretion as a preliminary issue. It now remains for me to consider the appellant's submission that it is entitled to a hearing of its appeal notwithstanding the 30 day time limit.

2. This decision should be read together with the First Decision and treated as incorporating the findings of fact made at [10] to [27] of that decision.

3. The appellant's submissions are based on Article 1 of the First Protocol and Article 6 of the European Convention on Human Rights ("the Convention") which provide as follows:

*Article 1*

> " *Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*
>
> *The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.*"

*Article 6*

> " *1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law …*
>
> *2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*
>
> *3. Everyone charged with a criminal offence has the following minimum rights:*
>
> > *(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*
> >
> > *(b) to have adequate time and the facilities for the preparation of his defence;*
> >
> > *(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*

*(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*

*(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.*"

4. Article 1 and Article 6 are introduced into UK law by means of the *Human Rights Act 1998* ("HRA 1998"). Section 3 HRA 1998 provides:

"*(1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.*

*(2) This section--*

*(a) applies to primary legislation and subordinate legislation whenever enacted;*

*(b) does not affect the validity, continuing operation or enforcement of any incompatible primary legislation; and*

*(c) does not affect the validity, continuing operation or enforcement of any incompatible subordinate legislation if (disregarding any possibility of revocation) primary legislation prevents removal of the incompatibility.*"

5. HMRC accept that the penalty in the present case is a criminal charge for the purposes of Article 6. It was a tax-geared penalty pursuant to *paragraph 20 Schedule 18 Finance Act 1998* for negligently filing an incorrect return. There are also assessments to tax, mainly corporation tax, which the appellant seeks to appeal. The appellant contends that it is entitled to a hearing of the appeals against the underlying tax and penalties.

6. The statutory provisions governing appeals against such assessments are contained in the *Taxes Management Act 1970*. The following provisions are relevant for present purposes:

"*31(1) An appeal may be brought against –*

…

*(d) any assessment to tax which is not a self-assessment."*

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

*(a) in writing*

*(b) within 30 days after the specified date*

*(c) to the relevant officer of [HMRC]*

…

*(4) In relation to an appeal under section 31(1)(d) of this Act –*

*(a) the specified date is the date on which the notice of assessment was issued, and*

*(b) the relevant officer of [HMRC] is the officer by whom the notice of assessment was given.*

*(5) The notice of appeal must specify the grounds of appeal.*"

"*100(1) …an officer of the Board … may make a determination imposing a penalty under any provision of the Taxes Acts and setting it at such amount as, in his opinion, is correct or appropriate.*"

"*100B(1) An appeal may be brought against the determination of a penalty under section 100 above and, subject to the following provisions of this section, the provisions of this Act relating to appeals shall have effect in relation to an appeal against such a determination as they have effect in relation to an appeal against an assessment to tax …*"

7. The effect of these provisions was to give the appellant 30 days from the date of the assessments to appeal against the assessments. By the time the appellant took steps to appeal the assessments the 2009 tribunal reforms had been introduced. The following provisions of TMA 1970 (as amended) are relevant.

8. Section 49 makes provision for HMRC to agree that a notice of appeal may be given to HMRC after the 30 day time limit. However HMRC can only agree to a late appeal where certain conditions are satisfied, including a condition which requires HMRC to be satisfied that there was a reasonable excuse for not giving the notice in time.

9. If HMRC do not agree to a late notice of appeal, section 49(2)(b) provides that the tribunal can give permission for a late appeal. The tribunal has a general discretion to give permission, and is not limited to circumstances where there was a reasonable excuse for not giving the notice within time.

10. Once a notice of appeal has been given to HMRC, sections 49A-I make provision for a review of the assessments by HMRC. Subject to those provisions, the appellant may notify the appeal to the tribunal pursuant to section 49D either within 30 days of being offered a review, if not accepted, or within 30 days of receiving the decision on the review. The tribunal then has jurisdiction in relation to the matter under appeal.

11. In this application we are concerned with the 30 day time limit within which an appeal must be notified to HMRC. On the facts found in the First Decision the time for notifying an appeal to HMRC expired in or about November 2009.

*Discussion*

12. The principal submission of Mr Young, on behalf of the appellant, was that the 30 day time limit to appeal the penalty assessment breached the appellant's Convention rights under Article 1 and Article 6. The same time limit in relation to the

tax assessments breached the appellant's Convention rights under Article 1. I shall deal with each article separately.

*Article 1*

13. The possession which Mr Young argued the appellant had been deprived of was its right to challenge the decisions of HMRC by way of appeal. In support of that argument he submitted that a right to litigate was an asset for the purposes of capital gains tax – see *Zim Properties Ltd v Proctor [1985] STC 90*. Mr Griffin did not argue that there was no relevant possession for the purposes of Article 1, and I proceed on the basis that Article 1 is at least engaged.

14. Article 1 does not on its face refer to any procedural requirements. However in *Jokela v Finland (2003) 37 EHRR 26* (not cited) the European Court of Human Rights ("ECtHR") considered that procedural safeguards were implicit in Article 1. At [45] it said:

> "*45. Although Article 1 of Protocol No. 1 contains no explicit procedural requirements, the proceedings at issue must also afford the individual a reasonable opportunity of putting his or her case to the responsible authorities for the purpose of effectively challenging the measures interfering with the rights guaranteed by this provision. In ascertaining whether this condition has been satisfied, a comprehensive view must be taken of the applicable procedures (see, for example, AGOSI v. the United Kingdom, judgment of 24 October 1986, Series A no. 108, p. 19, § 55, and Hentrich v. France, judgment of 22 September 1994, Series A no. 296-A, p. 21, § 49).*"

15. Mr Young relied on the decision of the ECtHR in *Hentrich v France* (1994) 18 EHRR 40. In that case the applicant complained of a breach of Article 1. The court upheld a challenge to French legislation which conferred on the revenue a right of pre-emption entitling it to acquire for the purchase price plus 10 per cent any property which it considered to have been sold below its real value. The right of pre-emption was not designed to punish tax evasion, rather the purpose was to prevent non-payment of higher registration fees. It was therefore immaterial whether the purchaser was acting in good faith or bad faith. However there was no procedure whereby the purchaser, Mrs Hentrich could challenge the revenue's assessment of value or even know the reasons for its assessment of value. The unfairness of the legislation in that case was extreme.

16. A significant concern of the Strasbourg court related to the fact that the pre-emption procedure did not include basic procedural safeguards. At [42] the court said this:

> "*42. … [T]he Court considers it necessary to rule on the lawfulness of the interference.*
>
> *While the system of the right of pre-emption does not lend itself to criticism as an attribute of the State's sovereignty, the same is not true where the exercise of it is discretionary and at the same time the procedure is not fair.*
>
> *In the instant case the pre-emption operated arbitrarily and selectively and was scarcely foreseeable, and it was not attended by the basic procedural*

*safeguards. In particular, Article 668 of the General Tax Code, as interpreted up to that time by the Court of Cassation and as applied to the applicant, did not sufficiently satisfy the requirements of precision and foreseeability implied by the concept of law within the meaning of the Convention.*

*A pre-emption decision cannot be legitimate in the absence of adversarial proceedings that comply with the principle of equality of arms, enabling argument to be presented on the issue of the underestimation of the price and, consequently, on the Revenue's position - all elements which were lacking in the present case. "*

17. The ECtHR held that there were breaches of both Article 1 and Article 6. There are certain limitations to the application of Article 6. In particular both parties in the present appeal agree that Article 6 only applies to the penalty assessments and not to the tax assessments (*Ferrazzini v Italy [2001] STC 1314*). However in a case such as Hentrich, and indeed in Mr Young's submissions on the present appeal, there is an overlap between the procedural requirements implicit in Article 1 and the right of access to a court provided by Article 6. In the circumstances I deal with "procedural fairness" below as a discrete issue taking into account all the authorities cited to me in relation to both Article 1 and Article 6. In doing so I do not lose sight of the fact that there is a wide margin of appreciation given to States in raising and collecting taxes which is recognised in Article 1. Having said that, as Mr Young pointed out the present application does not affect the right of HMRC to levy taxes or to enforce the assessments which is a matter before the High Court.

*Article 6*

18. Mr Young relied on the following authorities in support of his submission that the 30 day time limit infringed the appellant's entitlement to a fair hearing in breach of Article 6.

19. In *Golder v UK [1975] ECHR 1* the ECtHR was concerned with rights of access to the courts for prisoners. It held that the right of access was not an absolute right. At [37] and [38] it said:

" *37. Since the impediment to access to the courts, mentioned in paragraph 26 above, affected a right guaranteed by Article 6 para. 1 (art. 6-1), it remains to determine whether it was nonetheless justifiable by virtue of some legitimate limitation on the enjoyment or exercise of that right.*

38. *The Court considers, accepting the views of the Commission and the alternative submission of the Government, that the right of access to the courts is not absolute. As this is a right which the Convention sets forth (see Articles 13, 14, 17 and 25) (art. 13, art. 14, art. 17, art. 25) without, in the narrower sense of the term, defining, there is room, apart from the bounds delimiting the very content of any right, for limitations permitted by implication.*"

39. Mr Griffin for HMRC also referred to the decision in *Ashingdane v UK [1985] ECHR 8* where the ECtHR said as follows at [57]:

*"57. This of itself does not necessarily exhaust the requirements of Article 6 para. 1 (art. 6-1). It must still be established that the degree of access afforded under the national legislation was sufficient to secure the individual's "right to a court", having regard to the rule of law in a democratic society (see the above-mentioned Golder judgment, Series A no. 18, pp. 16-18, paras. 34-35, and paragraph 92 of the report of the Commission in the present case).*

*Certainly, the right of access to the courts is not absolute but may be subject to limitations; these are permitted by implication since the right of access "by its very nature calls for regulation by the State, regulation which may vary in time and in place according to the needs and resources of the community and of individuals" (see the above-mentioned Golder judgment, p. 19, para. 38, quoting the "Belgian Linguistic" judgment of 23 July 1968, Series A no. 6, p. 32, para. 5). In laying down such regulation, the Contracting States enjoy a certain margin of appreciation. Whilst the final decision as to observance of the Convention's requirements rests with the Court, it is no part of the Court's function to substitute for the assessment of the national authorities any other assessment of what might be the best policy in this field (see, mutatis mutandis, the Klass and Others judgment of 6 September 1978, Series A no. 28, p. 23, para. 49).*

*Nonetheless, the limitations applied must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired (see the above-mentioned Golder and "Belgian Linguistic" judgments, ibid., and also the above-mentioned Winterwerp judgment, Series A no. 33, pp. 24 and 29, paras. 60 and 75). Furthermore, a limitation will not be compatible with Article 6 para. 1 (art. 6-1) if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved."*

40. In *Stubbings v UK [1996] ECHR 44* the ECtHR was concerned with a 6 year limitation period in a case where the claimant sought damages for alleged sexual abuse. She alleged a breach of Article 6. The court said at [50]:

*" 50. The Court recalls that Article 6 para. 1 (art. 6-1) embodies the "right to a court", of which the right of access, that is, the right to institute proceedings before a court in civil matters, constitutes one aspect.*

*However, this right is not absolute, but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State. In this respect, the Contracting States enjoy a certain margin of appreciation, although the final decision as to the observance of the Convention's requirements rests with the Court. It must be satisfied that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 para. 1 (art. 6-1) if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see the Ashingdane v. the United Kingdom judgment of 28 May 1985, Series A no. 93, p. 24, para. 57 and, more recently, the Bellet v. France judgment of 4 December 1995, Series A no. 333-B, p. 41, para. 31)."*

41. In the light of these authorities Mr Young accepted that the right of access to a court may be subject to procedural limitations. However he submitted, correctly, that any restriction on the right of appeal:

(1) must not impair its very essence,

(2) must have a legitimate aim, and

(3) must be proportionate to the objective of achieving that aim.

42. The court in Stubbings also noted at [51]:

> *" 51. … limitation periods in personal injury cases are a common feature of the domestic legal systems of the Contracting States. They serve several important purposes, namely to ensure legal certainty and finality, protect potential defendants from stale claims which might be difficult to counter and prevent the injustice which might arise if courts were required to decide upon events which took place in the distant past on the basis of evidence which might have become unreliable and incomplete because of the passage of time.*"

43. The ECtHR upheld the 6 year limitation period. At [56] and [57] it concluded:

> *" 56. …since the very essence of the applicants' right of access was not impaired and the restrictions in question pursued a legitimate aim and were proportionate, it is not for the Court to substitute its own view for that of the State authorities as to what would be the most appropriate policy in this regard.*
>
> *57. Accordingly, taking into account in particular the legitimate aims served by the rules of limitation in question and the margin of appreciation afforded to States in regulating the right of access to a court (see paragraphs 50-51 above), the Court finds that there has been no violation of Article 6 para. 1 of the Convention taken alone (art. 6-1)."*

44. It is clear that the same principles apply to the right of access to a court in criminal proceedings – see *Papon v France [2002] ECHR 623.*

45. One factor the court took into account in Stubbings was the injustice which might arise if courts were required to decide upon events which had taken place in the distant past and where the passage of time might adversely affect the quality of the evidence. Mr Young submitted that there were no such considerations in the present case. The 30 day time limit was a "drop in the ocean" in the context of an appeal which might in any event take many months if not years to come on for hearing.

46. Mr Griffin referred to the judgment of the Supreme Court in *R (otao Halligen) v Secretary of State for the Home Department [2012] UKSC 20*. The Supreme Court in that case was concerned with various appeals against extradition orders. In particular the "short and inflexible time limits introduced by the Extradition Act 2003". The periods in which a notice of appeal had to be both filed and served were 7 and 14 days

from the date of the relevant order or decision. There was no power to extend the time limits.

47. Having decided that the proceedings against Mr Halligen engaged Article 6, Lord Mance stated as follows:

> *"34. I cannot regard the provisions regarding appeals contained in the 2003 Act as meeting the standard set in Tolstoy Miloslavsky. Indeed I note that the Review of the United Kingdom's Extradition Arrangements of 30 September 2011 identified the time limits as an "unsatisfactory feature about the appeals process", and mentioned a number of trenchant judicial criticisms, some already set out, as well as the particular difficulties posed for those remanded in custody. In the end, however, after identifying as possible mechanisms for alleviating potential injustice either extending the time limit for Part 1 from seven to fourteen days or giving the court a discretion to extend the time limit in the interests of justice, the Review said that "On the whole we prefer the former, as this is an area in which certainty and finality is important".*
>
> 35. *Finality and certainty are important legal values. But, although the cases to date may not be large in absolute numerical terms, they indicate that neither finality nor certainty has been achieved to date. Even on the more relaxed view of the statutory conditions which I consider appropriate, the statute will be capable of generating considerable unfairness in individual cases, unless some further relief is available. More importantly, it is not sufficient under article 6(1) if in most or nearly all cases the right of appeal can be or should be capable of being exercised in time. The "very essence" of the right may be impaired in individual cases and there may still be no "reasonable relationship of proportionality between the means employed and the aim sought to be achieved".*
>
> 36. …
>
> *37 … I am not persuaded that the interests of finality and certainty outweigh the interests of ensuring proper access to justice by appeal in the limited number of extradition cases where this would otherwise be denied. There would not be "a reasonable relationship of proportionality between the means employed and the aim sought to be achieved".*
>
> …
>
> *39. In the present case, there is no reason to believe that Parliament either foresaw or intended the potential injustice which can result from absolute and inflexible time limits for appeals. It intended short and firm time limits, but can only have done so on the basis that this would in practice suffice to enable anyone wishing to appeal to do so without difficulty in time. In these circumstances, I consider that, in the case of a citizen of the United Kingdom like Mr Halligen , the statutory provisions concerning appeals can and should all be read subject to the qualification that the court must have a discretion in exceptional circumstances to extend time for both filing and service, where such statutory provisions would otherwise operate to prevent an appeal in a manner conflicting with the right of access to an appeal process held to exist under article 6(1) in Tolstoy Miloslavsky. The High Court must have power in any*

*individual case to determine whether the operation of the time limits would have this effect. If and to the extent that it would do so, it must have power to permit and hear an out of time appeal which a litigant personally has done all he can to bring and notify timeously.*"

37. I was also referred to a decision of the VAT & Duties Tribunal from 2003 in *Designspeedy Limited v Commissioners for HM Customs & Excise (Decision 18309)*. This involved an application for permission to appeal out of time. The applicant claimed that there would be an infringement of his human rights if time was not extended but there were no substantive arguments in support of that assertion. The tribunal referred to Article 6 but said:

"*We do not see how a fair and public hearing implies an obligation on a tribunal to admit late appeals which are considerably dated.*"

38. Finally Mr Young referred to the decision of the ECtHR in *Västberga Taxi Aktiebolag and Vulic v Sweden (Application no 36985/97)*. In that case the principal complaint by the taxpayers was that enforcement proceedings were taken against them prior to any determination by a court of the underlying tax issues. The Court applied the principles described above and held on the facts that there had been a violation of Article 6.

*The 30 Day Time Limit*

39. I now consider, in the light of the above authorities both in relation to Article 1 and Article 6, whether the 30 day time limit with a discretion to extend time in appropriate cases gives rise to any infringement of the appellant's Convention rights. In particular:

(1) Whether there is any procedural unfairness amounting to an infringement of the appellant's rights under Article 1 to peaceful enjoyment of his possessions.

(2) Whether the very essence of the appellant's right of access to a court has been impaired.

(3) Whether the 30 day time limit has a legitimate aim.

(4) Whether the 30 day time limit is proportionate to meeting a legitimate aim.

40. It seems to me that Mr Young's arguments based on Article 1 really amount to a submission that the 30 day time limit even with a discretion to extend time is procedurally unfair.

41. By the time the decision is notified the issues giving rise to the disputed decision will have been canvassed over many months. The notice of appeal requires a statement of the grounds of appeal. There is no necessity for this to be a detailed statement of all facts and matters relied upon by the appellant. It should however identify the issues which the appellant contends arise for determination by the tribunal.

42. In support of his argument that there was procedural unfairness in a 30 day time limit, Mr Young relied upon the procedural time limits once an appeal had been made in time. He gave as an example the fact that HMRC have 60 days following

notification of an appeal within which to serve a statement of case. He also referred to the 3 month time limit to apply for permission to commence judicial review proceedings.

43. I do not consider that this comparison between time limits assists the appellant's argument. It is not possible to establish any overall scheme which rationalises the myriad of statutory and procedural time limits within the sphere of tax law. Still less to undertake a comparative exercise with a view to establishing that certain time limits should be longer or shorter. The real issue is whether the particular time limit of 30 days gives rise to any unfairness.

44. I accept Mr Young's submission that the process of enquiry by HMRC and the subsequent appeal process often involves a gradual distillation of views. Further, there is a public interest in the notice of appeal being properly drafted. However I do not accept that 30 days, in the context of what will have gone before renders it impractical or unduly difficult for an appellant to obtain and implement any necessary professional advice as to the contents of the notice of appeal. A taxpayer is told of his appeal rights at the time of the decision, and that there is a 30 day time limit in which to appeal. The decision will not have come out of the blue. If in any particular case there is some difficulty in obtaining professional advice or some other reason which causes the 30 day period to be insufficient then that is something that can be addressed on an application for permission to make a late appeal. Alternatively on an application to amend the grounds of appeal if the notice of appeal is given within the 30 days.

45. Statutory 30 day time limits have existed in relation to tax appeals for many, many years. I accept that what is perceived as fair may, with the passage of time and changing views, come to be perceived as unfair. However I was not referred to any body of opinion or commentary which suggests that the 30 day time limit for tax appeals with provision for the tribunal to grant permission for a late appeal operates unfairly.

46. Mr Young argued that in fact the 30 day time limit in practice gives an appellant much less than 30 days to lodge an appeal. This is because time runs from the date of the assessment and a combination of HMRC's internal procedures and use of the postal system mean that an appellant may not be aware of the assessment until much less than 30 days remain to lodge an appeal.

47. In practical terms Mr Young is correct. However such eventualities are adequately catered for in the provision enabling HMRC or the tribunal to give permission for a late appeal.

48. Mr Young argued that the discretionary power of the French tax authorities in Hentrich offended Article 1. By way of analogy he argued that a discretion to extend the time for appealing in TMA 1970 could not cure a breach of Article 1 arising from the absence of an effective right of appeal. Firstly Mr Young says that the outcome of an application for permission to serve a late appeal depends upon the discretion of HMRC or the tribunal and the way in which it will be exercised cannot reasonably be foreseen. Secondly he says that such a discretion will always be exercised using the 30 day time limit as a benchmark.

49. I do not accept that either of these two factors gives rise to any procedural unfairness. The procedural unfairness which was identified in Hentrich was the absence of any right of appeal against the exercise of a discretionary power by the State to insist that the purchaser should sell the property to the State. It was not suggested that a procedure which involved the exercise of discretion by a court or tribunal following a hearing would be procedurally unfair.

50. It is certainly the case that where a court or tribunal has discretion to extend the time to do an act it will have regard to the time within which the act was originally required to be done. Indeed I recognised as much in the First Decision at [40] and [42] in the course of considering how to exercise my discretion. However that is simply one factor amongst many. It is all the circumstances of the case which will be considered in the context of dealing with an appeal fairly and justly in accordance with the overriding objective. There are many examples of permission being granted for a late appeal many months and even years after the 30 day time limit expired. I do not accept that using the 30 day time limit as a benchmark gives rise to any procedural unfairness.

51. Mr Young invited me to have regard to my experience of how the 30 day time limit operates in practice. In my experience most but not all appeals are lodged in time. In the case of many of those that are notified late, HMRC consent to an extension of time. Usually there will have been a short period of delay and/or a reasonable excuse for failing to give notice of appeal in time. A small number of appeals are subject to applications to the tribunal where HMRC do not consent to a late appeal and the tribunal is required to consider as a matter of general discretion whether to extend time. The principles on which the tribunal exercises its discretion are well established. I accept that in a borderline case one judge might come to a different conclusion to another as to whether permission should be granted for a late appeal. That is in the nature of any discretion. However the fact that there is no absolute certainty as to how the discretion will be exercised does not give rise to any procedural unfairness.

52. In short and taking into account all Mr Young's submissions I do not consider that there is any procedural unfairness in the 30 day time limit. For the same reasons I do not consider that the 30 day time limit with a discretion to extend impairs the very essence of the appellant's right of access to a court. In this regard the discretion to extend the time limit is important. In Halligen it was the absence of such a discretion which caused the Supreme Court to find an infringement of Article 6. It did not perceive anything unfair in a discretionary power to extend time.

53. Mr Griffin submitted that the 30 day time limit pursued a legitimate aim and was a proportionate means to achieve that aim. He described the legitimate aim as being "the efficient use of resources and certainty of law".

54. I am not convinced that the efficient use of resources in itself is a legitimate aim in the context of the 30 day time limit. However it does seem to me that certainty is a legitimate aim. Finality and certainty were recognised as "*important legal values*" by the Supreme Court in Halligen. In *Data Select v HM Revenue & Customs [2012] UKUT 187 (TCC)*, to which I was referred in the First Decision, Morgan J reviewed the authorities in a tax context and said at [37]:

"*… 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.*"

55. Mr Young argued that the 30 day time limit was disproportionate in the sense that it went much further than was necessary to achieve any legitimate aim. I doubt very much whether a 30 day time limit on its own would be a proportionate way to achieve the legitimate aim of certainty and finality. In particular as Mr Young submitted it is a very short period in the context of a tax dispute. It would be a blunt tool to achieve certainty and finality. It would be even blunter if it were intended to address issues such as stale evidence. However it is necessary to look at the procedural regime as a whole, including as it does the discretion to extend the time limit. I consider that the 30 day time limit with a discretion to extend time gives a reasonable balance between the right of access to a court and the legitimate aim of achieving certainty and finality.

56. Mr Young cautioned against reliance on the decision of the VAT Tribunal in Designspeedy Ltd given that there did not appear to have been full argument on the issue. I do approach that decision with caution but it seems to me that the intuitive decision in *Designspeedy*, without the benefit of the submissions I have heard, was correct.

57. Mr Young submitted that if the time limit was not effective for the purposes of the penalty by virtue of Article 6 then it would make no sense to restrict any appeal hearing to the penalty assessment. Consideration of the penalty assessment would necessarily involve examination of the underlying tax assessments out of which the penalty arose.

58. I have decided that the 30 day time limit, with provision for an extension in appropriate cases, is a reasonable and proportionate procedural limitation on the right of appeal. In the circumstances the same conclusion must apply to the assessments to tax.

*Conclusion*

59. For the reasons given above I am firmly of the view that there has been no infringement of the appellant's Convention rights. In the light of that conclusion I do not need to consider what remedies the appellant might have had if his Convention rights had been infringed. In the circumstances the application is dismissed.

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.

**JONATHAN CANNAN**
**TRIBUNAL JUDGE**

**RELEASE DATE: 10 June 2013**