TC04289

Appeal number: TC/2014/03300

VAT – protective Fleming claims pending outcome of Bridport - late appeal - strike out application – Data Select – City of Aberdeen – lengthy delay but reasonable excuse and prompt expedition when discovered – extension of time granted – strike-out application refused

FIRST-TIER TRIBUNAL
TAX CHAMBER

NORTH BERWICK GOLF CLUB **Appellant**

- and -

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

TRIBUNAL: JUDGE ANNE SCOTT, LLB, NP
MR IAN MALCOLM, BSc, BA, JP

Sitting in public at George House, 126 George Street, Edinburgh on Wednesday 4 February 2015

Charles K Rumbles, for the Appellant

Mrs E McIntyre, Officer of HMRC, for the Respondents

DECISION

1. The Notice of Appeal in this case included an application for permission to lodge a late appeal. HMRC objected and in turn made an application to strike out the appellant's appeal under Rule 8 of Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the Rules") on the basis that the appeal was made four years and ten months out of time.

2. The substantive appeal concerns the VAT treatment of membership fees and visitors' green fees charged by the Appellant (North Berwick Golf Club) ("the Club"), the details of which are narrated at paragraph 10 below.

3. **Relevant legislation**

4. The time limits for making an appeal in respect of a decision by HMRC concerning VAT are set out at Section 83G(1)(a) Value Added Tax Act 1994 ("VATA"). It is not in dispute that that stipulates that appeals must be made within 30 days of the date of the notification of the decision by HMRC.

5. We annex at Appendix 1, Rules 2, 5 and 8 of the Tribunal Rules.

The facts

6. The Club's accountants ("the accountants") provide accountancy and tax services to the Club and have done so since 2002. A predecessor firm provided the same services for decades before that. Specifically, they review and assist with the quarterly VAT returns, and correspond with HMRC in regard to all taxation matters. They complete and submit the Annual Returns to Companies House. They also assist with management information and IT matters.

7. They pay a subscription to VAT specialists who alert them to changes in VAT law and practice.

8. Having taken advice from them, on 18 February 2009, the accountants wrote to the Secretary of the Club advising in regard to protective claims for VAT pending the outcome of litigation in a lead case, *Bridport and West Dorset Golf Club v HMRC ("Bridport")*. That letter pointed out that the opportunity to intimate a back-dated claim to 1973 would end on 31 March 2009. It recommended that a protective claim be made to HMRC. At the meeting of the Finance Committee of the Club on 20 February 2009 it was agreed that that should be pursued and at the Committee meeting of the Club on 5 March 2009 it was reported that the Club had put in a protective claim to cover the VAT paid on visitors' green fees since 1973.

9. We accept that the use of the word "had" was an error and that the accountants had simply been instructed to submit a claim.

10. The accountants took further advice from the VAT specialists in regard to the format, detail and years to be covered by any claim. By Recorded Delivery on 23 March 2009, the accountants wrote to the Fleming Claims team at HMRC in Liverpool enclosing a "protective" Fleming claim in relation to members subscriptions in the sum of £140,983 for the years ended 31 December 1973 to 31 December 1989 inclusive. The following day, they again wrote to HMRC by Recorded Delivery, this time submitting further "protective" Fleming claims in regard to overpaid output tax on green fees income in the sums of £494,389 (for the period from 1973 to 4 December 1996) and £153,794 (for the period from 1 January 2006 to 31 December 2008), a total of £648,167.

11. The letters sought interest on any sums found to be due to the Club. Those letters made it explicit that the claims were protective and had been lodged in anticipation of the successful outcome of lead cases challenging HMRC's interpretation of the law.

12. The accountants then telephoned HMRC in Liverpool seeking, and receiving, confirmation that the claims had been received.

13. At the next Committee meeting of the Club, on 14 April 2009, it was reported that there had been no further news on the test case in regard to VAT on visitors fees. At the Annual General Meeting of the Club in April 2009 the Chairman intimated in general terms that a claim for VAT had been made stating that "such claims depend on the outcome of the legal cases and are entirely speculative but we have submitted a protective claim prior to 31 March deadline".

14. On 7 July 2009, HMRC, having transferred the claims to an office in Northern Ireland, wrote to "North Bewick Golf Club" but at the correct address and postcode, rejecting those claims and pointing out the rights to review and appeal (the "Decision"). They did not write to the accountants at any stage until receipt of a new protective claim in 2014 for another period. There is no entity called North Bewick Golf Club.

15. The Club officials are adamant that no such letter was received. An extensive search of all records produced nothing.

16. The unchallenged evidence of Mr Spencer, the managing secretary of the Club at that time, and now, was to the effect that the Club did not receive much mail most of the time, perhaps between two and 12 items per day. There was detailed evidence as to the opening and date stamping and handling of mail. He was clear that in July of most years not much mail was received. The course is really busy but the office is not.

17. The Club had VAT visits on at least four occasions in the relevant period. There were visits on 7 January 2009 and 14 May 2009 and then again on 13 June 2012 and 25 July 2012. One of the partners of the accountants was present at at least three of those meetings. It was noted in 2012 that there was no mandate in place but that was marked as being "n-a".

18. On 31 March 2014, *Bridport* having been decided in the taxpayer's favour, the accountants wrote to HMRC stating that they wished to make a further protective claim for VAT output tax declared on visitors greens fees from 1 April 2010 to 31 December 2013 and that claim was quantified in the sum of £407,112.

19. On 28 April 2014, HMRC responded saying that they did not have authority to correspond with the accountants as there was no mandate in place. They wrote direct to the Club on the same day. That letter pointed out that there was a four year cap on any such claim and further that the previous claim of 23 March 2009 had been rejected on 7 July 2009 and that that had not been appealed. The letter did not refer to the claim dated 24 March 2009.

20. An appropriate mandate was lodged with HMRC by the accountants on 8 May 2014 and they pointed out that no letter of 7 July 2009 had been received by either the Club or the accountants. HMRC's response to that letter was dated 22 May 2014 and confirmed that Royal Mail had not returned any undelivered mail relating to the Club. HMRC's stance therefore was to assume that the Decision was delivered soon after the posting date.

21. In the response dated 2 June 2014, the accountants requested a departmental review which was rejected by HMRC on 5 June 2014 on the basis that HMRC had not made a decision but simply intimated an opinion. The Club, with the assistance of the accountants, immediately lodged a Notice of Appeal with the Tribunal on 6 June 2014 requesting permission to make a late appeal.

Reasons for Decision

22. The Tribunal has a wide discretion.

23. There is considerable case law in this field and we annex at Appendix 2(a) the cases to which we were referred and at 2(b) the cases which we draw to the attention of the parties.

24. In the recent decision in *Leeds,* Judge Bishopp stated at paragraph 19

> "In my judgment therefore the proper course in this Tribunal, until changes to the Rules are made, is to follow the practice which is applied hitherto, as it was described by Morgan J in *Data Select*."

25. Mr Rumbles relied heavily on *Data Select.* The practice to which Judge Bishopp referred is to be found at paragraph 34 where Justice Morgan stated clearly:

> "Applications for extensions of time limits of various kinds are common place and the approach to be adopted is well established. As a general rule, when a court or tribunal is asked to extend a relevant time limit, the court or tribunal asks itself the following questions: What is the purpose of the time limit? How long was the delay? Is there a good explanation for the delay? What will be the consequences for the parties of an extension of time?, and What will be the consequences for the parties if a refusal to extend the time?

The court or tribunal then makes it decision in the light of the answers to those questions."

26. In paragraph 36 he goes on to say that some tribunals have also applied the helpful general guidance given by Lord Drummond Young in *Aberdeen* which is in line with what I have said above. Lastly at paragraph 37, he states:

> "In my judgment, the approach of considering the overriding objective and all the circumstances of the case … is the correct approach to adopt in relation to an application to extend time".

27. The general approach to such discretionary decisions set out at paragraph 23 in *Aberdeen* is authority for the proposition that considerations or circumstances which would be relevant to the question as to whether proceedings should be allowed beyond the time limit include:

(1) whether there was a reasonable excuse for not observing the time limit,

(2) whether matters had proceeded with reasonable diligence once the excuse had ceased to operate,

(3) whether there is prejudice to one or other party if the appeal proceeds or is refused,

(4) are there considerations affecting the public interest and

(5) has the delay affected the quality of available evidence.

Together with paragraph 22 of that judgment which is also pertinent, the full texts of those paragraphs are set out in full at Appendix 3.

28. We adopt an approach based on both *Aberdeen* and *Data Select*.

29. HMRC argued that leave to appeal out of time, particularly where there was a very long delay should be wholly exceptional.

30. We were not referred to the case, but we drew it to the attention of the parties because we agree with the decision of Judge Berner at paragraph 36 in *O'Flaherty* 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."

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

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

32. 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 we adopt.

33. Our starting point is that a failure to meet a deadline set by Parliament is always a serious and significant matter. However, it is also Parliament that has given the Tribunal discretion to allow such a case to proceed.

Reason for time limit

34. We do accept that time bar provisions are created for a reason and that is that they provide finality and certainty and that is not a matter that should be lightly disregarded.

Reasons for the failure and is there a good explanation or reasonable excuse?

35. This is really a consideration of all of the factors affecting why the default occurred. Taxpayers are expected to act with reasonable prudence and diligence in dealing with their affairs. Did the Appellant (and the accountants) do so?

36. This is deceptively simple: either we accept or we do not that the Decision dated 11 July 2009 did not reach the club – were they notified of the Decision? We have carefully considered all of the evidence in this case. In our view it is not as straightforward as HMRC suggest in that they allege that they have no record of Royal Mail returning mail as undelivered and so it must have been delivered.

37. The first and obvious point is the addressee was not correctly identified. Secondly, we have absolutely no evidence as to HMRC's procedures at the time for recording undelivered mail. On the contrary when we enquired why the case handling had been transferred to Northern Ireland it was explained that the shear bulk of *Fleming* claims at that time, because of the short time limit, had meant that HMRC had been inundated with work. There was an inference that it was for that reason that there had been no written response to the accountants. In our view, there must be a possibility that even the usual systems would have been under significant pressure.

38. As far as the Appellants are concerned, they provided us with considerable detail as to their manner of dealing with post. We are not dealing here with a large anonymous organisation receiving vast quantities of mail. It is very clear from the first page of the Decision that large sums of money are involved. That would have been a most unusual occurrence for the Club. The management of the Club was clearly "hands on" and at a high level with Mr Spencer taking a detailed interest and reporting directly to Mr Phillips.

39. We find that on the balance of probabilities the Decision was not received by the Club.

40. Having made that finding, the next question is whether or not either the accountants or the Club or both should have pursued HMRC in the period thereafter. HMRC's argument was that if they had done so then they would have been aware that the Decision had been issued.

41. We have little difficulty with that question. Firstly, as far as the Club were concerned, they were aware both from their accountants and from "chat" with other golf clubs that the *Bridport* case was proceeding very slowly to the European Court. Nothing was expected to happen very quickly, and it did not. Since these were protective claims it was logical to take the view that, the claims having been submitted, nothing would happen until such time as HMRC had assessed the outcome of *Bridport*.

42. What then about the accountants who would be expected to have a greater knowledge of how much matters should progress? Again we have no difficulty in that regard. The accountants had made every possible effort to ensure that they were certain that the claims had been lodged in time. They had the recorded delivery receipts and they had telephoned the Liverpool Office and had had confirmation that the claims had been received. They had heard absolutely nothing back in response. They were aware that *Bridport* was progressing. In the absence of any communication from HMRC that the claims had been rejected, a prudent tax adviser would have absolutely no reason for chasing HMRC, since the only likely outcome of that would be to provoke a further consideration of the matter and that would have carried every prospect of triggering a refusal. It would not have been in the interests of the client. All they knew, and needed to know, was that the claims had been received. Indeed when the new claim was submitted in 2014 some three months after the outcome of *Bridport* was known, HMRC's response was to say that they would not be dealing with it since they were still assessing the impact of the decision. We find it wholly unsurprising that the accountants did not chase HMRC. To have done so, in circumstances where, as far as they were concerned, two claims had been submitted and not rejected, would not have been in their clients' interests and would have caused further expenditure on professional fees.

43. Since we accept that the Decision was not received by the Club and that there was no particular reason why they should have been in contact with HMRC about this matter before 2014 we find that there is both a good explanation for the default and that that amounts to a reasonable excuse.

44. We observe that we have in mind, in conducting this exercise, the fact that discretion to allow a late appeal is wider than the discretion exercised when determining whether circumstances constitute a reasonable excuse for the purposes of specific legislation. The reasonableness of the excuse, albeit important, is only one factor of many to be weighed in the balance in this context.

How long was the delay and did the Appellant act with reasonable diligence once the excuse ceased to operate?

45. Although the delay in this case is very long at four years and ten months it is nevertheless wholly unsurprising since the Appellant only became aware that the Decision had been issued in 2014 and they acted very promptly immediately.

46. Realistically, therefore the long delay was absolutely inevitable.

Is there prejudice to either party if the application for an extension of time is granted?

47. On the question of prejudice, if the application to allow the late appeal is refused, the Appellant will be deprived of the opportunity of relying on the outcome of the long running litigation. It will be shut out of effective litigation. We have also weighed in the balance the possibility of success in the appeal and the sums of money at stake. The merits of the Appellant's case can only take it some way but it is relevant that there is a possibility of success.

48. We find that if we were to "shut out" the Appellant from effective litigation there would be an undoubted substantial prejudice to the Appellant and we take that finding into accounting in conducting our balancing exercise.

49. It was not argued by HMRC but the Upper Tribunal in *Graham* stated:-

> "There is prejudice to the Government in having to meet large, unexpected claims …".

50. Undoubtedly, in this case, HMRC would have reasonably expected that the claim by the Club would not progress since it had not been appealed. However, in this instance, even if an appeal had been lodged timeously absolutely nothing would have happened in the interim until the time the accountants wrote to HMRC in 2014 and indeed until now. Further as we, and HMRC, are aware even although the taxpayer was successful in *Bridport* there is still ongoing litigation in regard to the question of "unjust enrichment". Accordingly even those decisions which had been appealed are not currently progressing. Therefore the prejudice to HMRC is not nearly as serious as it might be in other circumstances.

51. HMRC's right to certainty has to be balanced with the Appellant's right to pay or be repaid the correct amount of tax.

Are there public interest considerations?

52. There is undoubtedly the issue of the policy of finality in litigation and other legal proceedings. Although the delay in this matter is very long, nevertheless in the context of the litigation on this subject, it is not long at all and the final outcome of the litigation may yet take some years.

53. We do not consider that if we grant leave to appeal in this instance that it has any implication for any other cases. Each case must turn on its own particular facts and the facts here are unique.

54. On the face of it the delay in this case at four years and ten months is both serious and significant. In the normal course of events that would be an extremely long delay.

55. The Upper Tribunal in *Graham* also stated:

> "Time bar provisions satisfy the need for a degree of legal certainty which should not be lightly overridden. A good reason to do so is usually required."

We agree with that.

56. Is there a good reason? Logically, we find that there is a good reason. There are only two reasons why an appeal was not timeously made in this case. Firstly, the Club did not receive the Decision which was incorrectly addressed, and secondly HMRC had contributed to the problem by failing to reply to the two letters sent to them by the accountants.

57. Every application for admission of a late appeal depends on its own facts and circumstances. At all stages in the consideration of this matter we have had Rule 2 of the Rules very much in mind. It is imperative that any decision should be fair and just. We have weighed every factor and authority that was brought to our attention in the balance and, as can be seen, also some that were not.

58. Taking all of these factors, and the others mentioned in the course of this decision, and weighing them in the balance, and the decision is certainly not lightly taken, we conclude that it would be proportionate, fair and just to allow the Appellant's application to the Tribunal insofar as it seeks an extension of time.

59. Accordingly HMRC's application for strike-out of these proceedings is refused.

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.

ANNE SCOTT
TRIBUNAL JUDGE

RELEASE DATE: 19 February 2015

Appendix 1

Rule 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.

Rule 5.—Case Management powers

(1) Subject to the provisions of the 2007 Act and any other enactment, the Tribunal may regulate its own procedure.

(2) The Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.

(3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Tribunal may be direction—

(a) extend or shorten the time for complying with any rule, practice direction or direction, unless such extension or shortening would conflict with a provision of another enactment setting down a time limit;

(b) consolidate or hear together two or more sets of proceedings or parts of proceedings raising common issues, or treat a case as a lead case (whether in accordance with rule 18 (lead cases) or otherwise);

(c) permit or require a party to amend a document;

(d) permit or require a party or another person to provide documents, information or submissions to the Tribunal or a party;

(e) deal with an issue in the proceedings as a preliminary issue;

(f) hold a hearing to consider any matter, including a case management hearing;

(g) decide the form of any hearing;

(h) adjourn or postpone a hearing;

(i) require a party to produce a bundle for a hearing;

(j) stay (or, in Scotland, sist) proceedings;

(k) transfer proceedings to another tribunal if that other tribunal has jurisdiction in relation to the proceedings and, because of a change of circumstances since the proceedings were started—

(i) the Tribunal no longer has jurisdiction in relation to the proceedings; or

(ii) the Tribunal considers that the other tribunal is a more appropriate forum for the determination of the case;

(l) suspend the effect of its own decision pending the determination by the Tribunal or the Upper Tribunal, as the case may be, of an application for permission to appeal, a review or an appeal.

Rule 8

(1) The proceedings, or the appropriate part of them, will automatically be struck out if the appellant has failed to comply with a direction that stated that failure by a party to comply with the direction would lead to the striking out of the proceedings or that part of them.

(2) The Tribunal must strike out the whole or a part of the proceedings if the Tribunal—

(a) does not have jurisdiction in relation to the proceedings or that part of them; and

(b) does not exercise its power under rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them.

(3) The Tribunal may strike out the whole or a part of the proceedings if—

(a) the appellant has failed to comply with a direction which stated that failure by the appellant to comply with the direction could lead to the striking out of the proceedings or part of them;

(b) the appellant has failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings fairly and justly; or

(c) the Tribunal considers there is no reasonable prospect of the appellant's case, or part of it, succeeding.

(4) The Tribunal may not strike out the whole or a part of the proceedings under paragraphs (2) or (3)(b) or (c) without first giving the appellant an opportunity to make representations in relation to the proposed striking out.

(5) If the proceedings, or part of them, have been struck out under paragraphs (1) or (3)(a), the appellant may apply for the proceedings, or part of them, to be reinstated.

(6) An application under paragraph (5) must be made in writing and received by the Tribunal within 28 days after the date that the Tribunal sent notification of the striking out to the appellant.

(7) This rule applies to a respondent as it applies to an appellant except that—

(a) a reference to the striking out of the proceedings must be read as a reference to the barring of the respondent from taking further part in the proceedings; and

(b) a reference to an application for the reinstatement of proceedings which have been struck out must be read as a reference to an application for the lifting of the bar on the respondent taking further part in the proceedings.

(8) If a respondent has been barred from taking further part in the proceedings under this rule and that bar has not been lifted, the Tribunal need not consider any response or other submissions made by that respondent, and may summarily determine any or all issues against that respondent.

Appendix 2(a)

Kirken Ltd [2012] UKFTT 646 (TC) ("*Kirken*")

Black Pearl Entertainments Ltd [2011] UKFTT 368 (TC)

Xs & Os Paisley Cross Ltd [2012] UKFTT 645 (TC)

Yeovil Golf Club [2013] UKFTT 490 (TC) ("*Yeovil*")

PB Golf Club Limited Operating as Potters Bar Golf Club [2012] UKFTT 675 (TC)

Former North Wiltshire District Council (now Abolished and Replaced by Wiltshire Council) [2010] UKFTT 449 (TC)

Preston Golf Club [2014] UKFTT 1068 (TC) ("*Preston*")

Data Select Ltd [2012] UKUT 187 (TCC) ("*Data Select*")

Mitchell v News Group 2013 EWCA Civil Division 1537

McCarthy & Stone Ltd 2014 UKUT 196 (TCC)

Leeds City Council 2014 UKUT 0350 (TCC) ("*Leeds*")

Appendix 2(b)

Advocate General for Scotland v General Commissioners for Aberdeen City 2006 STC 1128 ("*Aberdeen*")

O'Flaherty v HMRC [2013] UKUT 01619 (TCC) ("*O'Flaherty*")

Graham v HMRC [2014] UKUT 75 ("*Graham")*

Appendix 3

Aberdeen

[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; mattes 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.