Procedure – application to bar HMRC from proceedings– unreasonable conduct – no – application refused

FIRST-TIER TRIBUNAL
TAX CHAMBER

TC07147

Appeal number: TC/2016/01479
TC/2016/04317
TC/2016/04318
TC/2016/07306
TC/2017/02939
TC/2017/05385
TC/2018/00728
TC/2018/01535

BETWEEN

SPRING CAPITAL LIMITED **Appellants**

-and-

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

TRIBUNAL: JUDGE ANNE SCOTT

Sitting in public at George House, Edinburgh on 24 April 2019

Mr Michael Upton, Advocate instructed by Russel + Aitken LLP, for the Appellant

Mr Graham McIver, Advocate, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. On 5 November 2018 the appellant applied to the Tribunal under Rule 8(7) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the Rules") for the respondents ("HMRC") to be barred from taking further part in the proceedings on the basis that HMRC had persistently failed to cooperate with the Tribunal. It was argued that HMRC's failure to cooperate meant that the Tribunal could not deal with the proceedings fairly and justly.

2. That application was lodged in response to HMRC's application for an extension of time for two weeks from 31 October 2018 to 14 November 2018 to provide the documents bundle in these appeals.

3. It is not disputed that were I to grant the application that that would be an exercise of a discretionary sanction for failure to co-operate with the Tribunal.

4. Both parties agreed that, whilst, of course, *BPP Holdings Ltd v HMRC*[1] ("BPP") and *Mitchell v News Group Newspapers Ltd*[2] (which had been cited by the appellant in the application) were of relevance, nevertheless, *Martland v HMRC*[3] ("Martland") which reviewed, *inter alia*, those cases set out with clarity at paragraphs 43 to 47, the process to be followed when considering the exercise of judicial discretion. A copy is annexed hereto at Appendix 1,

Rule 8

5. Rule 8, insofar as it is relevant, reads:

> " 8
>
> ….
>
> (3) The Tribunal may strike out the whole or a part of the proceedings if—
>
> ….
> (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
> ….
>
> (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."

---

[1] [2017] UKSC 55
[2] [2013] EWCA Civ 1537
[3] [2018] UKUT 178 (TCC)

Discussion incorporating Findings in Fact

6. I was not referred to it but in *First Class Communications Ltd v HMRC*[4] Judge Mosedale commented at paragraphs 50-52 on a discretionary bar. That reads:

"Barring?

> 50. The Tribunal has power to bar HMRC from taking any further part in the proceedings. Barring HMRC from some or all of the proceedings does not necessarily mean HMRC will lose its appeal although in many cases that would be the effect as it would leave HMRC unable to offer evidence: however, in a usual appeal the burden of proof is on the appellant and the appellant would still need to make out a prima facie case to succeed. In this case, I understand the burden of proof is on the appellant. Nevertheless, barring HMRC is likely to have much the same effect as summary judgment against HMRC and I approach it on that basis.
>
> 51. In my view, I agree with counsel for HMRC that there are at least two situations where Rule 8(3)(b) could apply.
>
> 52. Firstly, Rule 8(3)(b) could apply where the appellant has already been so prejudiced by HMRC's conduct in a manner which cannot be remedied and that therefore the proceedings cannot be fair and just. In such a case HMRC should normally be barred from the proceedings. Secondly, I consider that Rule 8(3)(b) could apply where there has been a course of conduct by HMRC which, while it has not yet meant it is not possible to deal with the appeal fairly and justly, nevertheless is part of a pattern of conduct which, if it continues, will mean that the appeal cannot be dealt with fairly and justly. In such a case, I consider it might be appropriate to bar HMRC from proceedings."

7. I agree with that and much of that is relevant here. In these appeals the onus is on the appellant in relation to Corporation Tax and on HMRC for the penalties. Clearly, if HMRC were to be barred then the penalties would fall.

8. Both parties argued that there are very large sums of money at stake in this matter. As far as corporation tax is concerned for the years 2010-2014 the total corporation tax at issue is £3,899,373. In respect of the years 2007-2012 the total penalties at stake are £3,229,432. The overall total is £7,128,805.

9. For the avoidance of doubt, although I note the position in regard to the sums involved, and of course I am aware that

> (a) the appellant would benefit considerably if I grant the application as the penalties would fall and the litigation with its attendant costs both financially (and that includes the opportunity cost of management time and energy) and reputationally would be much slimmed down, and
>
> (b) HMRC potentially stand to benefit if I refuse the application because they would be able to litigate,

nevertheless, those are irrelevant considerations which form no part of my decision making.[5]

The background

10. It is undoubtedly the case that these proceedings are complex and that, as is not infrequently the case in such litigations, the position has evolved considerably over time. The appeals for the years 2011 and 2012 were joined to Appeal TC/2016/01749 on 31 October 2016 and the penalty appeals for 2007, 2008 and 2009, together with substantive appeals for 2013 and 2014 were joined on 9 October 2017. The penalty appeal for 2010, 2011 and 2012 was joined on 10 April 2018 and a further Closure Notice for 2013 joined on 26 August 2018.

11. Thus far, HMRC have lodged a Statement of Case on 31 May 2016, a further extensive Statement of Case on 21 December 2017 and a Consolidated Statement of Case on

---

[4] [2013] UKFTT 90 (TC)

[5] BPP Holdings Ltd v HMRC [2017] UKSC 55 at paragraph 32

5 October 2018. In addition there is a Statement of Case for the Penalty Appeal (00728) dated 6 April 2018.

12. The appellant's Revised Consolidated Grounds of Appeal were lodged on 17 August 2018.

13. I record that because the background cited by the appellant in the application is that HMRC had first been directed to provide the paginated documents bundle by 26 February 2018 in terms of Directions issued on 9 October 2017. However, the fact is that correspondence had ensued and various extensions of time requested by both parties or, of consent, were granted.

14. Ultimately I issued new Directions following a Case Management Hearing on 26 July 2018. The terms of those Case Management Directions were agreed by the parties at that Hearing. At that stage the bundle was directed to be provided by 19 September 2018.

15. I have reviewed the correspondence in the file held by the Tribunal and, of consent, whether or not caused in part by confusion engendered by correspondence from the Tribunal, which seems to be the case, an extension of time to 31 October 2018 was granted for compliance with delivery of the bundle.

16. There is no doubt that the bundles (save 4 documents) were delivered some six days late. That was four working days. The bundle had become bundles and extended to 660 pages.

17. Whilst, of course, time limits imposed by Directions should be both respected and adhered to, I accept HMRC's argument that that minimal delay was caused by illness and last minute physical problems with both software and hardware failures.

18. By definition, because the appellant lodged the application to bar HMRC on 5 November 2018, the appellant has suffered no prejudice by the late lodging of the bundles.

19. I do not accept the argument advanced by the appellant that HMRC did not begin to prepare the bundles until 23 October 2018. In fact, on 23 October 2018, Officer Gill of HMRC, wrote to the appellant pointing out that Officer Jones had been off work due to illness but that he, and she, had been working on the bundles of documents and indeed he listed a number of documents where he asked for copies from the appellant. It is clear to me from the facts that because

> (a) HMRC approached the appellant on 30 October seeking agreement to a short extension of time,
>
> (b) the application for an extension of time was lodged on 31 October 2018, and
>
> (c) the bundles were lodged four working days later

that that work had been ongoing for some time.

20. On the balance of probability I find that if Officer Jones, who has had conduct of these appeals for a long time, had not been unwell two weeks before the deadline (and when she returned she was beset with the software and printer issues), HMRC had reasonably anticipated that they would be compliant.

21. In summary, although the decision to grant the application for the extension of time in relation to the bundles was predicated on Mr Upton's withdrawal of opposition, nevertheless, had he continued to maintain his opposition I would have considered the delay to have been marginal, that minimal prejudice was suffered by the appellant and I would have granted HMRC's application.

22. I understand Mr Upton's argument that that default on the part of HMRC, in isolation, would not have led the appellant to seek to bar HMRC from participating in the proceedings

but that the Tribunal should look at all of the other circumstances in this case. Indeed, that is what I am required to do if I am to follow *Martland*, which I do.

23. The appellant founds on the fact that HMRC conceded that they did not wish to defend Ground 3 of the appellant's appeal at a very late date. For the reasons set out in my Decision in relation to costs, a copy of which is annexed hereto at Appendix 2, I do not find that HMRC had acted unreasonably. Accordingly I do not find that that would be a factor which would lead me to bar them from participating further.

24. The appellant founds on the fact that HMRC did not take up the appellant's offers of meetings with its accountants to seek to resolve or narrow the parties differences. Whether any such meeting(s) would have achieved that objective is quite impossible for me to comment upon. What I am aware of is that, although from time to time HMRC seek and attend meetings with taxpayers, it is certainly infinitely more common for them to prefer to conduct matters by correspondence. That is not, in itself, unreasonable.

25. Undoubtedly, HMRC sought an extension of time to lodge the witness statement and that deadline was extended twice and there was compliance with the later time limit. In approximately the same timescale there was an extension of time for lodgement of the Consolidated Statement of Case which was lodged timeously on 5 October 2018. However, those delays were acceded to by the appellant and the Tribunal (see paragraph 15 above).

26. I observe in relation to the extension of time for lodging the Consolidated Statement of Case that the appellant complains that that was agreed on the basis that HMRC would review their position on the "impairment provisions" but that no intimation of the conclusion of that review has been intimated. Whilst that may well be the case, and it would no doubt have been preferable if HMRC had done so, nevertheless it is clear from the email dated 21 August 2018 that that is not the whole story.

27. The relevant part of that email reads:-

> "I write further to Mr Rod Thomas's email of 17 August 2018 (at 16:11). Mr Thomas has provided HMRC with further documentation and an extract from his draft witness statement in respect of the 2011/2012 impairment provisions. He has asked the Respondents to take this further information into account **when drafting their consolidated Statement of Case and/or to reconsider the matter**.
>
> The Respondents are willing to review their position regarding the impairment provisions in light of the contents of Mr Thomas's email. However it will not be possible to complete this task before the statement of case deadline of 24 August 2018 …".

28. I have highlighted in bold the key wording. In lodging the Consolidated Statement of Case it should have been implicit that HMRC's stance had not changed.

29. Bluntly, although undoubtedly HMRC could and should have endeavoured to do more and more quickly, in the context of such complex litigation, the delays can largely be attributed to the hurly-burly of this type of litigation.

30. I see the force in Mr Upton's argument that is the cumulative effect of the delays that has led the appellant to make this application but I find that any potential ongoing delay is capable of remedy by the use of robust case management.

31. The appellant argued that the Consolidated Statement of Case advances defences to the appeals which "… are in parts vague and skeletal; they fail to give practical and fair notice of what it may be seeking to argue, and at times simply misrepresent the appellant's Grounds of Appeal". Eight examples are cited in support of the contention that that is evidence of a failure to co-operate on the part of HMRC.

32. I do not comment on any possible misrepresentation of the appellant's Grounds of Appeal as that is a matter for argument in the substantive appeal and, in any event, simply reflects HMRC's understanding; whether or not that is correct.

33. I was not referred to any law on the adequacy or otherwise of pleadings but I draw the parties' attention to Lord Woolf MR in *McPhilemy v Times Newspapers Ltd*[6] at pages 792 and 793 which reads:

> "The need for extensive pleadings including particulars should be reduced by the requirement that witness statements are now exchanged. In the majority of proceedings identification of the documents upon which a party relies, together with copies of that parties witness statements, will make the detail of the nature of the case the other side has to meet obvious. This reduces the need for particulars in order to avoid being taken by surprise. This does not mean that pleadings are now superfluous. Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular they are still critical to identify the issues and the extent of the dispute between the parties. What is important is that the pleadings should make clear the **general** nature of the case of the pleader".

34. I observe that the Consolidated Statement of Case in this matter runs to some 30 pages of argument and 130 paragraphs. The Appendices run to 14 pages.

35. Without analysing that Statement of Case in detail the general nature of the case for HMRC seems to be made out. It is open to the appellant to lodge an application for Further and Better Particulars of the Statement of Case.

36. Lastly, Mr McIver conceded that he had failed to comply with the Direction in the amended Notice of Hearing dated 30 January 2019 which stated:-

> "Both parties are directed to provide to the Tribunal and to each other, no later than seven days before the hearing, an outline of the arguments that they will put at the hearing of the application".

37. However, I have now had an opportunity to look at the letter from the Tribunal which was not in front of me, or the parties, at the Hearing.

38. The application referred to was HMRC's application for an extension of time. In the event Mr McIver added nothing to the original application. The original Notice of Hearing included the same Direction and also again only referenced the application for the extension of time.

39. Ultimately, of course, the hearing dealt not only with the application for extension of time but also the appellant's application for costs, the application for the barring order and an application for a preliminary hearing. Although it was argued by Mr Upton that the Tribunal had directed that argument on all of the applications should have been lodged, in fairness to HMRC, and it is the error of the Tribunal, the listing notice did not direct them to do so. To the extent that there was any omission it was very minor.

Decision

40. I have given careful consideration to all of the matters that have been brought to my attention. The delays have been comparatively minor in the context of complex litigation and are easily explained, albeit not excused, by that context. I have considered the question of prejudice and that means to both parties.

41. Whilst I cannot approve of the repeated small delays in this matter, I do not find that HMRC have persistently failed to cooperate with the Tribunal. They have been in regular contact both with the appellant and with the Tribunal. There has not been a course of conduct

[6] [1999] 3 A11 ER 775

on the part of HMRC that has so prejudiced the appellant that there is no remedy other than to bar HMRC.

42. If I were to bar HMRC it would cause extensive and potentially expensive prejudice.

43. I have no doubt that the proceedings can be administered fairly and justly and to ensure that there is no further delay the Tribunal has the option to issue Directions subject to an UNLESS Order in terms of Rule 8 of the Rules. I have already done so in relation to the question of a preliminary hearing.

44. In all these circumstances I refuse to grant the application to bar HMRC from the proceedings.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

45. 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: 20 MAY 2019

Appendix 1

Martland v HMRC [2018] UKUT 178 (TCC)

43. The clear message emerging from the cases – particularised in *Denton* and similar cases and implicitly endorsed in *BPP* – is that in exercising judicial discretions generally, particular importance is to be given to the need for "litigation to be conducted efficiently and at proportionate cost", and "to enforce compliance with rules, practice directions and orders". We see no reason why the principles embodied in this message should not apply to applications to admit late appeals just as much as to applications for relief from sanctions, though of course this does not detract from the general injunction which continues to appear in CPR rule 3.9 to "consider all the circumstances of the case".

44. When the FTT is considering applications for permission to appeal out of time, therefore, it must be remembered that the starting point is that permission should not be granted unless the FTT is satisfied on balance that it should be. In considering that question, we consider the FTT can usefully follow the three-stage process set out in *Denton:*

> (1) Establish the length of the delay. If it was very short (which would, in the absence of unusual circumstances, equate to the breach being 'neither serious nor significant'), then the FTT 'is unlikely to need to spend much time on the second and third stages' – though this should not be taken to mean that applications can be granted for very short delays without even moving on to a consideration of those stages.
>
> (2) The reason (or reasons) why the default occurred should be established.
>
> (3) The FTT can then move onto its evaluation of 'all the circumstances of the case'. This will involve a balancing exercise which will essentially assess the merits of the reason(s) given for the delay and the prejudice which would be caused to both parties by granting or refusing permission.

45. That balancing exercise should take into account the particular importance of the need for litigation to be conducted efficiently and at proportionate cost, and for statutory time limits to be respected. By approaching matters in this way, it can readily be seen that, to the extent they are relevant in the circumstances of the particular case, all the factors raised in *Aberdeen* and *Data Select* will be covered, without the need to refer back explicitly to those cases and attempt to structure the FTT's deliberations artificially by reference to those factors. The FTT's role is to exercise judicial discretion taking account of all relevant factors, not to follow a checklist.

46. In doing so, the FTT can have regard to any obvious strength or weakness of the applicant's case; this goes to the question of prejudice – there is obviously much greater prejudice for an applicant to lose the opportunity of putting forward a really strong case than a very weak one. It is important however that this should not descend into a detailed analysis of the underlying merits of the appeal. In *Hysaj*, Moore-Bick LJ said this at [46]:

> "If applications for extensions of time are allowed to develop into disputes about the merits of the substantive appeal, they will occupy a great deal of time and lead to the parties' incurring substantial costs. In most cases the merits of the appeal will have little to do with whether it is appropriate to grant an extension of time. Only in those cases where the court can see without much investigation that the grounds of appeal are either very strong or very weak will the merits have a significant part to play when it comes to balancing the various factors that have to be considered at stage three of the process. In most cases the court should decline to embark on an investigation of the merits and firmly discourage argument directed to them."

Hysaj was in fact three cases, all concerned with compliance with time limits laid down by rules of the court in the context of existing proceedings. It was therefore different in an important respect from the present appeal, which concerns an application for permission to notify an appeal out of time – permission which, if granted, founds the very jurisdiction of the FTT to consider the appeal (see [18] above). It is clear that if an applicant's appeal is hopeless in any event, then it would not be in the interests of justice for permission to be granted so that the FTT's time is then wasted on an appeal which is doomed to fail. However, that is rarely the case. More often, the appeal will have some merit. Where that is the case, it is

important that the FTT at least considers in outline the arguments which the applicant wishes to put forward and the respondents' reply to them. This is not so that it can carry out a detailed evaluation of the case, but so that it can form a general impression of its strength or weakness to weigh in the balance. To that limited extent, an applicant should be afforded the opportunity to persuade the FTT that the merits of the appeal are on the face of it overwhelmingly in his/her favour and the respondents the corresponding opportunity to point out the weakness of the applicant's case. In considering this point, the FTT should be very wary of taking into account evidence which is in dispute and should not do so unless there are exceptional circumstances.

47. Shortage of funds (and consequent inability to instruct a professional adviser) should not, of itself, generally carry any weight in the FTT's consideration of the reasonableness of the applicant's explanation of the delay: see the comments of Moore-Bick LJ in *Hysaj* referred to at [15(2)] above. Nor should the fact that the applicant is self-represented – Moore-Bick LJ went on to say (at [44]) that "being a litigant in person with no previous experience of legal proceedings is not a good reason for failing to comply with the rules"; HMRC's appealable decisions generally include a statement of the relevant appeal rights in reasonably plain English and it is not a complicated process to notify an appeal to the FTT, even for a litigant in person.

Appendix 2

[2019] UKFTT ** (TC)**

TC ***

COSTS - judicial discretion - complex case - what is success - was withdrawal of defence reasonable and timely – yes - application refused

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2016/01479
TC/2018/00728

BETWEEN

SPRING CAPITAL LIMITED **Appellant**

-and-

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS **Respondent**

TRIBUNAL: JUDGE ANNE SCOTT

Sitting in public at George House, Edinburgh on 24 April 2019

Mr Michael Upton, Advocate instructed by Russel + Aitken LLP, for the Appellants

Mr Graham McIver, Advocate, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

INTRODUCTION

46. The appellant had lodged an opposed application in respect of costs relating to:

(a) Appeal reference TC/2016/01479 in regard only to the respondents' ("HMRC's") conclusions in its Closure Notice dated 5 October 2015 for the period ended 30 April 2010 assessing £3,454,913 as chargeable profits ("the substantive appeal"); and

(b) Appeal reference TC/2018/00728, against the penalty of £537,667.39 imposed by the Penalty Notice dated 24 November 2016 ("the penalty appeal").

47. The application was made under Rule 10 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the Rules").

48. The parties sought a decision in principle only.

Summary of the appellant's argument

49. Although the paperwork was voluminous with the appellant's bundle relating to the costs application extending to some 37 folios with further representations referring thereto extending to 11 pages, nevertheless the essence of the appellant's case was relatively straightforward, albeit in the context of complex appeals.

50. In summary it was argued that:-

(a) These two appeals were categorised as complex cases in terms of the Rules.

(b) The Notice of Appeal dated 8 March 2016 had indicated that:

> "There is no reasonable basis for construing that the sums injected by the shareholders (and associate) into the company in the year were anything other than loans. … The company invites the Tribunal to accept the appellant's evidence and dismiss the Revenue's recategorisation (sic) of the shareholder loans as income".

(c) In the Stated Grounds of Appeal lodged by the appellant in response to Tribunal Directions dated 9 October 2017, Ground 3 read: "3.H.M.R.C. (sic) erred in treating the injections of shareholder funds in 2010 as income."

(d) Although the Closure Notice issued by HMRC dated 5 October 2015 was issued on the ground that the appellant had not provided information in relation to shareholders' funds the appellant argued that that information was outwith the scope of what was required by both the original enquiry notice and the formal information notice.

(e) HMRC's original Statement of Case dated 31 May 2016, at paragraph 31, referring to the appellant's Ground of Appeal stated "It is the respondents' contention that the source of the sums recorded as having been introduced by shareholders remains unclear." and that was restated as follows in the consolidated Statement of Case dated 21 December 2017 at paragraphs 93 and 94 which read:-

> Injection of shareholder funds – the Respondents' Case
>
> 93. It is the Respondents' contention that the source of sums recorded as having been introduced by shareholders remains unclear or otherwise must be evidenced by the appellant to the satisfaction of the Tribunal.
>
> 94. The Respondents have reviewed the income declarations made within the shareholders' personal tax returns and have been unable to identify or verify any likely income stream or savings that would enable them to transfer the amounts in question to the Appellant. It is submitted that,

> until such time that the Respondents' (sic) have been able to fully trace the origin of the amounts in question they should be treated as taxable income to the Appellant."

It was unreasonable of HMRC to maintain that stance in the face of the decision of the Tribunal in *Spring Capital Limited v HMRC*[7]("the 2016 Decision").

(f) The appellant had furnished HMRC with all relevant information by no later than December 2016 having provided information in emails dated 24 and 25 March 2015, 24 July 2016, 24 November 2016 and 9 December 2016.

(g) It was only on 20 June 2018 that HMRC, at paragraph (h) on page 5 of a very long letter, intimated that £2,153,713 would not be treated as income of the appellant. There remained the issue of two payments of £650,000 and, following correspondence on 12 July 2018, 12 days before a hearing, HMRC wrote to the appellant stating:

> "I can now confirm that HMRC will in respect of Spring Capital Ltd not be contending that these three transactions allocated to capital introduced were income of Spring Capital Ltd.
>
> HMRC will not therefore be pursuing this argument and the resultant tax and penalties that arose on the treatment of this being Company income will now fall away".

That was far too late.

(h) In terms of Section 54 Taxes Management Act 1970 ("TMA") the matter was therefore treated as settled and therefore "… the like consequences shall ensue for all purposes as would have ensued if, at the time when the agreement was come to, the Tribunal had determined the appeal".

(i) The appellant having succeeded, then costs should follow success.

(j) Those costs should include the costs of the appellant's application to strike out HMRC's defence on this issue (being paragraphs 93 and 94, see (e) above).

Summary of HMRC's argument

51. HMRC lodged a four page letter dated 25 September 2018.

52. HMRC's argument is more straightforward and that is that the *2016 Decision* made it explicit that the appellant had not furnished the relevant information and that it was only in July 2018 that HMRC had sufficient information to come to an informed view that there was evidence of the source of the funds.

53. HMRC had therefore only been successful in eliciting the relevant information after more than six years and three litigations. They had been put to considerable cost due to the dilatory behaviour of the appellant. (At the Case Management Hearing on 24 July 2014 the appellant withdrew their then incomplete Costs Application and HMRC intimated that they were considering whether to lodge a counter application. In the event they did not.)

The Law

54. Both parties relied on *Versteegh Ltd and Others v HMRC*[8] ("Versteegh") at paragraphs 9, 10 and 11, the relevant parts of which read as follows:-

> "9. Each of the appeals was designated as a Complex case in respect of which none of the Appellants has opted-out. Accordingly, under Rule 10(1)(c) of the Tribunal Procedure (First-tier Tribunal) (Tax

[7] [2016] UKFTT 232 (TC)
[8] [2014] UKFTT 397 (TC)

Chamber) Rules 2009 ("the Tax Tribunal Rules"), this Tribunal has a full costs-shifting jurisdiction. The matter is therefore one of discretion for the Tribunal.

10. … it is clear to me, and indeed it was common ground, that the principles applicable under the Civil Procedure Rules ('CPR'), and the relevant authorities in that respect, are equally applicable to the exercise by this Tribunal of its power to award costs. These are a reflection of the same overriding objective, namely to deal with cases fairly and justly.

11. I start therefore with the more detailed guidance that is afforded by the CPR. Under CPR 44.2, the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party. However, the Court is required to have regard to all the circumstances, including, relevantly, whether a party has succeeded on part of its case, even if that party has not been wholly successful. Conduct is to be taken into account, including whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue. Orders may be for a party to pay a proportion of another party's costs or costs relating only to a distinct part of the proceedings."

55. Neither party referred me to paragraphs 20 and 21 which I also consider to be pertinent. The relevant parts read as follows:-

"20. The identification of the successful party is only the starting point. It does not determine the costs order. Whilst the general rule is that a successful party is normally entitled to its costs, it is necessary to take account of all the circumstances. In doing so, it is appropriate, in my view, to consider the individual elements of the case, and the success or failure by each party in those respects.

21. One of the circumstances to which the Court is directed by the CPR to have regard is the conduct of the parties, including, as I mentioned earlier, whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue."

56. Of course the exercise of judicial discretion always requires that the Tribunal should have regard to the overriding objective which is set out in Rule 2 of the Rules and a copy is annexed hereto at Appendix 1. I have done so.

The Facts

57. The appellant's Unaudited Financial Statements for the year ended April 2010 were submitted to HMRC on 28 April 2011. At page 9, Note 13 of the Notes to the Financial Statements read:

13	**Other shareholders' funds**	**2010**	**2009**
		£	**£**
	Shareholders' loans to the company secured by debentures and repayable on demand	6,628,707	3,173,794
	Shareholders' loans would be expected to be repaid only as funds permit.		

58. It is apparent from that, that in that year there was an injection of capital from shareholders in the sum of £3,454,913.

59. On 24 February 2012, within the 12 months allowed, HMRC issued a Notice of Enquiry in terms of paragraph 24 Schedule 18 Finance Act 1998. Ten matters were identified for investigation but item 7 is pertinent to this application and reads:-

"Note 9 to the accounts refers to a net increase in shareholders loans of £3,454.913. This is a material sum. Please provide—

(a) An analysis of the net amount of £3,454,913 as between the shareholders.

(b) Copies of the shareholders loan accounts with the company to show the amounts introduced and withdrawn, and the dates introduced and withdrawn.

(c) Your advice as to the source of all introductions/loans over £20,000."

60. On 14 March 2012, the appellant appealed to the Tribunal and the Notice of Appeal stated that the decision being appealed was the said Notice of Enquiry. That appeal[9] (the *"2013 Decision*") is discussed in more detail at paragraphs 61 and 62 below.

61. On 29 March 2012, HMRC issued an Information Notice in terms of paragraph 1 Schedule 36 Finance Act 2008 ("Schedule 36") requesting information about the 10 items specified in the Notice of Enquiry.

62. On 13 April 2012, HMRC applied to strike out the appeal which is the subject matter of the *2013 Decision*.

63. At the hearing of the strike out application on 17 October 2012, both parties confirmed that there had been no compliance with the Information Notice.

64. The decision of the Tribunal in the *2013 Decision,* striking out the appeal, was issued on 28 December 2012.

65. A further Information Notice in terms of Schedule 36 was issued on 5 March 2013. It sought 11 items of information and documents which had to be lodged with HMRC by no later than 14 April 2013.

66. Paragraph 8 of that Information Notice was in precisely the same terms as paragraph 7 of the Notice of Enquiry. That Information Notice required only statutory documents and could not be appealed to the Tribunal.

67. On 30 August 2013, HMRC issued a £300 penalty under paragraph 39 of Schedule 36 on the basis that the appellant had failed to comply with the Information Notice.

68. The appellant appealed to the Tribunal. The hearing was on 22 December 2014 and the decision was released on 12 January 2015 *(*the *"2015 Decision").* Before the appeal was heard, the appellant provided to HMRC the information and documents in items 2, 10 and 11. There was compliance with item 1 in the course of the hearing.

69. The appeal was dismissed and the penalty upheld. I comment on that decision in greater detail at paragraphs 63-68 below.

70. In the face of continued failure by the appellant to comply with items 3-9 of the Information Notice, on 20 February 2015, HMRC issued daily penalties under paragraph 40 of Schedule 36 for the period 20 August 2013 to 19 February 2015 totalling £16,110. The appellant appealed and on review the penalties were reduced to £10,950 covering only the period 20 February 2014 to 19 February 2015 on the grounds that HMRC had been out of time to assess the earlier non-compliance to daily penalties (paragraph 46(2) Schedule 36). HMRC charged the penalties at the rate of £30 a day.

71. In an email to HMRC dated 13 March 2015, the appellant complied with items 3-7 and 9 but claimed to be unable to provide an analysis of the £3,454,913. Indeed it was stated that: "separate analyses of the amounts as between shareholder are not available".

[9] 2013 UKFTT 041 (TC)

72. However, on 24 March 2015, the appellant wrote to HMRC stating that the following "injections" of capital had been made, namely, Mrs Sarah Thomas had contributed £2,135,713 on 1 February 2010 and £650,000 on 3 February 2010 and Stuart and Rebecca Thomas had jointly injected £650,000 on 3 February 2010.

73. On 24 March 2015, HMRC accepted that the analysis of the £3,454,913 had provided the information required by item 8(a) of the Information Notice but pointed out that items 8(b) and (c) remained outstanding. On the same day, because those were still outstanding, HMRC imposed further penalties at the maximum daily rate of £60 for the period 21 February to 22 March 2015, totalling £1,800.

74. The appellant responded the following day arguing that items 8(b) and (c) could not possibly be viewed as forming part of the company's statutory records and that nothing further was required from them. In those circumstances the penalty notice issued the previous day should be vacated.

75. On 9 June 2015, HMRC wrote to the appellant having reviewed the two decisions imposing daily penalties. That letter quoted paragraphs 13, 25, 36, 45, 48, 52 and 63 of the *2015 Decision* in support of its position that HMRC reasonably required all of the information specified in the Information Notice.

76. In the face of continued failure by the appellant to comply with items 8(b) and (c), further daily penalties at the maximum rate of £60 per day were imposed on 9 July 2015 for the period 25 March 2015 to 9 July 2015, totalling £6,420.

77. On 5 October 2015, HMRC issued a Closure Notice, referring at page 2 to both of the *2013* and *2015 Decisions* and, in particular, to Judge Mosedale's finding in the *2015 Decision*, at paragraph 63, that the appellant did not have a reasonable excuse for its non-compliance with the Information Notice.

78. The Closure Notice made it clear that HMRC still required compliance with items 8(b) and (c) evidencing the sums claimed to have been introduced by the shareholders.

79. The appellant appealed that Closure Notice on 3 November 2015.

80. On 8 February 2016, HMRC wrote to the appellant concluding the review and upheld the relevant part of the Closure Notice. It stated in particular that:

(a) "the onus will be upon the company to prove to the tribunal that the closure notice under appeal is excessive."

(b) "The company have been given ample opportunity to provide evidence to support the accounts entry regarding the shareholder loans during the enquiry."

(c) "Given the company's unwillingness to comply with the information notice, HMRC have been left with no alternative but to conclude the enquiry on the basis that the credit of £3,454,913 has been mis-described as an increase in shareholder loans in the accounts for APE 30/04/10; and should be re-categorised as income."

(d) "It is not for HMRC to demonstrate that the revised figure for the company's income is reasonable; it is for the company to provide evidence to demonstrate that the revised figure is incorrect."

(e) That decision was in line with the findings of the Tribunal in the previous appeals.

81. On 8 March 2016, the present substantive appeal was lodged with the Tribunal.

82. The appellant's appeal against the daily penalties, (the "*2016 Decision"),* was heard by the Tribunal on 6 April 2016 and the penalties upheld. That decision was issued on 13 April 2016.

83. On 7 June 2016, HMRC again wrote to the appellant in relation to the shareholder loan account pointing out that in the *2016 Decision*, Judge Mosedale had found as fact that "item 8(c) remained outstanding to this day" and she had stated at paragraph 110 that "… I do not consider that the appellant had a good reason for 8(c) being outstanding in the period for which the third daily penalties were assessed".

84. On 20 July 2016, the appellant wrote to HMRC in regard to shareholder capital injections stating that it intended to rely on:

(a) a Deed of Assignment between Sarah Thomas and the appellant dated 1 February 2010 "assigning her Nine Regions Ltd loans" to the appellant,

(b) a debenture from the appellant securing amounts owed to Sarah Thomas dated 1 February 2010,

(c) bank statements for the appellant showing receipt of £650,000 from Sarah Thomas on 3 February 2010, and

(d) bank statements for the appellant showing receipt of £650,000 from Stuart and Rebecca Thomas on 3 February 2010.

85. On 21 October 2016, HMRC wrote to the appellant with a Penalty explanation letter stating that penalties of £537,667.39 would be issued for the period 1 May 2009 to 30 April 2010 for deliberate behaviour which was "Failure to disclose source of credits to shareholders loans". The covering letter reiterated the points made in the letter of 7 June 2016 referring to the *2016 Decision* (see paragraph 38 above).

86. The appellant responded at length on the same day stating that it was "…a simple matter of fact that the shareholders injected the capital into the company…" arguing that HMRC had failed to adduce any evidence in support of their stance.

87. On 24 November 2016, a penalty determination in that sum was issued to the appellant.

88. On the same day the appellant sent HMRC three emails. The first of those referred to a £1m mortgage taken out by Mrs Thomas who introduced those funds to TML (see paragraphs 49 and 50 below). The second email enclosed a bank statement dated 31 March 2010. The third email referred to the two earlier emails and asked that the assessment be adjusted or alternatively HMRC should explain why they refuse to do so.

89. Although the email of 20 July 2016 (see paragraph 39 above) referred to bank statements, the appellant enclosed only a copy of one page of a bank statement in the name of Spring Seafoods Ltd dated 31 March 2010 and covering entries from 4 January 2010 to 17 February 2010.

90. However, there had been a change of name to Spring Capital Ltd on 12 February 2010. The statement showed two credits of £650,000 described as "additional new secured shareholder loan advance" from each of Stuart James Thomas and Sarah Jane Thomas but there is no mention of Rebecca notwithstanding the fact that the covering email referred to her again. It is now accepted that she was not the source of any of those funds.

91. There is then an entry for a debit of £2,100,000 on 5 February 2010 which, after a number, reads "… re Nine Regions Ltd Loan Advance in respect of agreement dated 4.2.10". Although there are numerous other entries on that page no other entry except one for bank fees carries an explanation and only eight carry even a name.

92. A copy of the unsigned Deed of Assignment was also lodged (the signed version was provided on 9 December 2016 but I have not had sight of it).

93. The unsigned Deed of Assignment stated at paragraph 2:

> "In consideration for a credit in the amount of £2,135,713 to her shareholder account with the Assignee, the Assignor hereby assigns the Debt, (the value of which is £2,135,731) and all rights in relation to it, with limited title guarantee, to the Assignee".

94. The Schedule to the Deed identified that that "Debt" comprised loans totalling £1,796,525.83 from a Thomas McLennan Ltd ("TML") to Nine Regions Ltd (and two other men). In the email dated 24 November 2016 the appellant had explained that TML had assigned the Nine Regions debt to cover capital injections by Mrs Thomas into TML and "…thus Spring Capital Ltd".

95. It subsequently transpired that TML was jointly owned by Mr Rod Thomas (a Director of the appellant) and his wife Mrs Sarah Thomas, no company accounts had been filed after 31 October 2008, the appellant had acquired TML's money lending business in February 2010, no accounting records existed and Mrs Thomas had apparently lent TML £1,250,000 in 2007. In February 2010 she was owed £2,135,713. TML had assigned debts due to it by Nine Regions Ltd to Mrs Thomas in consideration of that indebtedness. (No explanation has been provided to me as to the discrepancy between the £2,135,713 and the £1,796,525.83).

96. On 19 December 2016, HMRC responded pointing out that:

(a) Those documents should have been lodged during the course of the enquiry.

(b) This was the first intimation, 13 months after issue of the Closure Notice, that TML had furnished Mrs Thomas with the £2,135,713.

(c) TML had been struck off the company register in February 2011.

(d) The bank statement reflected the loan of £2,100,000 from the appellant to Nine Regions Ltd on 5 February 2010.

(e) Further information was requested such as copies of the loan agreements between TML and Nine Regions Ltd referred to in the Deed of Assignment.

97. On 23 January 2017, the appellant's then agent responded disputing the need for that information.

98. There was correspondence in 2017 including on 8 March 2017 when HMRC wrote to the individual directors.

99. Until March 2018, further correspondence ensued with the appellant and appellant's agent, which has not been produced to the Tribunal but which is referred to in HMRC's submissions and is reported in a letter from HMRC dated 20 June 2018 on which both parties relied and to which no exception was taken. Essentially it appears from the terms of paragraph 24:

> " Subsequent correspondence focussed on the fact that HMRC had seen no evidence concerning the source of the claimed capital introduced and requested this documentation whereas your letters focused on the requirements of Spring Capital Limited."

100. Eventually, on 21 February 2018, HMRC were furnished with unsigned copies of the loan agreements relating to the loan, agreements between TML and Nine Regions Ltd (see paragraph 51(e) above).

101. The original loan agreements were furnished to HMRC at an unspecified date thereafter.

102. The letter of 20 June 2018 made it explicit at paragraph (h) on page 5 that it was only on sight of those signed documents and in the context of information provided latterly that HMRC could accept that the relevant information had been furnished to them.

103. In that letter HMRC yet again requested further information in relation to the two payments of £650,000 referring to, and relying on, paragraphs 50 to 62 of the *2016 Decision*.

104. The relevant information was ultimately provided in the form of a copy bank statement and a bank account number on 29 June 2018 and 10 July 2018.

105. On 12 July 2018 HMRC confirmed that the matter was now settled.

The 2013 Decision

106. The appellant argued that the Notice of Enquiry was both a Notice of Enquiry and a Closure Notice which failing it was an amendment or an assessment and there was a right of appeal. The Tribunal found that:

(a) The Notice of Enquiry did not simultaneously close the enquiry.

(b) There is no right of appeal against a Notice opening an enquiry.

(c) It was not an amendment or assessment.

(d) The appellant had nothing to appeal.

(e) The appeal was struck out for lack of jurisdiction.

107. At paragraph 34, in discussing a possible application for a Closure Notice, Judge Mosedale stated very clearly that "I…note that a Tribunal is unlikely to order closure where it is satisfied that the taxpayer has not yet provided answers to relevant questions about its tax affairs under enquiry.".

The 2015 Decision

108. The appellant argued that:

(a) The Information Notice had been appealed and that the penalty for non-compliance could not be issued until that appeal had been resolved.

(b) Compliance with items 8 and 9 would breach the Data Protection Act ("DPA").

(c) The Information Notice was a "fishing expedition".

(d) There had been partial compliance with the Information Notice and that had been very time consuming.

109. Judge Mosedale confirmed at paragraph 25 that there can be no appeal against an Information Notice and that all of the information demanded at items 3-9 inclusive of the Information Notice comprised part of the appellant company's statutory records. That therefore included item 8.

110. She had also observed at paragraphs 10 and 62 that it was conceded that there had been no compliance with *inter alia* item 8. At paragraph 35 she stated:

> "From what Mr Stewart said at the hearing, it appeared to me that he did have concerns about some of the entries in the accounts which he considered to be unusual (the introduction of £3.5million from shareholders in particular). Mr Thomas considered these concerns groundless as (he said) similar loans had been made in respect of this and other companies controlled by the same shareholders. I do not need to decide the point, because I do not consider it relevant. HMRC do not need suspicions in order to lawfully

issue an information notice. They are entitled to check any taxpayer's tax return and to reasonably require reasonable information to that end."

111. At paragraph 44 Judge Mosedale concluded that compliance with the Information Notice would not involve a breach of the DPA.

112. At paragraph 60 Judge Mosedale stated:

"While it is clear from the correspondence that from the first the appellant had questioned HMRC's right to demand the information, nevertheless I had no evidence the appellant genuinely believed HMRC did not have the right to demand the information. And I do not accept that even if it genuinely believed this, that it was reasonable for it to believe this. There is no evidence that it took any steps to check what HMRC was entitled nor did it present a case to me at Tribunal as to why HMRC should not be entitled to randomly check their accuracy of tax returns. ".

113. Lastly, in the context of a possible reasonable excuse for non-compliance, at paragraphs 61 and 62 Judge Mosedale rejected the argument that the appellant had not had the time to comply with items (3)-(9). Item 1 had been complied with at the hearing in one sentence.

The 2016 Decision

114. The relevant issues in this context were:

(a) Whether there was no non-compliance with item 8(b), and

(b) Whether there was no non-compliance with item 8(c).

Item 8(b)

115. It was a matter of agreement that individual shareholder loan accounts did not exist. The appellant had hinted at that on 13 March 2015 and said so outright on 2 April 2015 (paragraph 109). Judge Mosedale found that item 8(b) asked for documents that did not exist and therefore could not be produced (paragraph 29). Accordingly the appellant could not be in breach.

Item 8(c)

116. At paragraph 49 Judge Mosedale found that the appellant could not argue that item 8(c) was invalid.

117. At paragraph 55 in looking at what was required by item 8(c) she stated:

" … the natural meaning of the words …is that HMRC wanted to know from where the company obtained the money".

She saw nothing ambiguous in item 8(c) and said it had the meaning stated at paragraph 52 namely:

"…to know the origin of the credit and in particular whether it was transferred in from an outside source or was money already held by the company."

118. At paragraph 62 she indicated that, at most HMRC had suggested that production of bank statements alone might not suffice and that, as at the date of the hearing the appellant had not specified the source of the funds shown as loans from shareholders.

119. At paragraph 68 she stipulated that: " …item 8(c) did not require the company to state from where its lenders obtained the funds, only from where the company obtained the funds."

120. At paragraph 110 she stated:-

"110. However, item 8(c) remained outstanding as it does to this day. The appellant actively disputed with HMRC what 8(c) required, giving it the wider meaning they put in this hearing and refusing to

provide what Mr Stewart said it meant, which is what I have found it meant. I see no good reason why the appellant did not provide the more limited information which is what Mr Stewart said, and I have found, the information notice required to be provided. It said it found it ambiguous but I consider that no explanation of (a) why it did not seek to clarify the meaning much earlier and (b) why it did not provide HMRC with the information on the basis of the narrow meaning HMRC ascribed to it. In conclusion, I do not consider that the appellant had a good reason for 8(c) being outstanding in the period for which the third daily penalties were assessed."

Discussion

121. At first glance, and at a superficial level, it appeared that the appellant had been successful in that at, effectively, the "eleventh hour" HMRC had withdrawn their defence so the effect was that the appellant's appeal on Ground 3 succeeded. Closer examination, and in particular the litigation history, showed that that was far from the whole story. It is for that reason that I have therefore set out the history at length and in detail.

122. As paragraph 20 of *Versteegh* makes clear, the starting point is to identify the successful party. Although in one sense the appellant is successful, nevertheless there is an argument that, in fact, HMRC were successful. Their objective in instigating the enquiry on the shareholder point was to obtain answers to relevant questions about the appellant's tax affairs.

123. That was made explicit in the *2013 Decision* (see paragraph 62 above). The appellant should have been aware of that since 28 December 2012.

124. Furthermore, from the date of the issue of the *2015 Decision* on 12 January 2015, which was almost ten months before the issue of the Closure Notice, the appellant should also have been aware that the Tribunal considered that the request at item 8(c) was not only relevant but valid; as was the request at item 8(b) since at that juncture the appellant had not disclosed that no shareholders' loan accounts existed.

125. I am clear that the *2016 Decision,* which was issued on 13 April 2016, should have left the appellant in no doubt about what was required and HMRC pointed that out on 7 June 2016 (see paragraphs 38 and 72 above).

126. Whilst I understand Mr Upton's argument that HMRC were at all times looking for the source of the source of the funds, I do not accept that and for the same reason that Judge Mosedale did not accept that. It seems to me that all HMRC has ever wanted to establish is that the money came from an external source; in other words that the shareholders had indeed provided the funds. That is a subtly different point.

127. I have no information on the point, and simply do not understand why the appellant stated in March 2015 and July and November 2016 (see paras 27, 39 and 45 above) that some of the funds were derived from Rebecca Thomas. Furthermore, the argument (see paragraph 41 above) that HMRC should simply accept a bald statement that it was a fact that shareholders had injected capital into the company (without any evidence), is indefensible in a context where the statements made repeatedly by the appellant about Rebecca Thomas were quite simply inaccurate and unsupportable.

128. In the same email as Rebecca Thomas was mentioned for the second time on 20 July 2016 (see paragraph 39 above), the reference to the assignment of the Nine Regions Ltd loan did not make the link to the associated company, TML (see paragraphs 49 and 50 above) and that link only became apparent in November 2016.

129. If everything had been at arm's length there might well have been no need to mention TML. However, it is unsurprising that HMRC had reservations about the quality or accuracy

of the information that was belatedly provided. The context is that it had been made explicit by the Tribunal that HMRC were entitled to establish that the injection of funds had come from the shareholders and, by implication, not circuitously from the appellant, and not only that it had been established that the information about Rebecca Thomas was inaccurate but that all of the parties named were closely linked.

130. There has been no explanation why, for example, on 21 October 2016 (see paragraph 41 above), the appellant was still declining to produce evidence of the shareholder injection. Instead the appellant continued to rely on mere assertions and did so in the face of Judge Mosedale's commendably clear statements six months earlier that that would not suffice.

131. I am wholly unsurprised that HMRC wished, and were entitled to request, evidence establishing that the funding had been provided by Mr Stuart Thomas and his sister-in-law Mrs Sarah Thomas and had not been provided by the appellant whether directly or indirectly. This is a specialist Tribunal and in my experience, even where everything is at arm's length, bland assertions, unsupported by solid evidence will rarely suffice.

132. The evidence of the appellant's bank statement (see paragraphs 45 and 46 above) is not proof of anything beyond the fact that quite possibly, and in my view on the balance of probability, the appellant had furnished the information to the bank. The Bank is unlikely to have been aware of the agreement or the date of it or that why the monies had been advanced.

133. In the absence of verification that it was indeed Mrs Thomas who had provided the funds, in a situation where there was very limited information about TML and indeed what was available raised what appear to be relevant questions (see paragraph 50 above) it was reasonable for HMRC to seek clarity as to source of the funds to the appellant.

134. I do not accept that by the end of 2016, HMRC had credible evidence showing from whence the appellant had derived the funds.

135. I find that it was only when the signed loan agreements were produced in 2018 that HMRC could reasonably find that Mrs Thomas was in fact the source of the major part of the funds.

136. The provision of the evidence that the two payments recorded on the appellant's bank statement came from Mr and Mrs Thomas was only produced thereafter. It was suggested that HMRC should have specifically asked for that long before then. I do not accept that, not least because Judge Mosedale had put the appellant on clear notice that there was a possibility that something more than the appellant's own bank statements alone might be required.

137. The appellant has been successful but only to the pyrrhic extent that by producing information that the Tribunal had repeatedly stated was reasonably required by HMRC, HMRC no longer required to litigate on that point. In reality, it was HMRC who were ultimately successful. They acted promptly once they had the relevant information and their withdrawal of the defence was timely.

Decision

138. In all these circumstances the application for costs is refused.

Right to apply for permission to appeal

139. 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:

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.