



**TC05390**

**Appeal number: TC/2015/02998**

*PROCEDURE – Strike out application by Respondents – BPP Holdings v HMRC considered – Denton v TH White Ltd and Data Select Ltd v HMRC criteria applied – Application allowed – Appeal struck out*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**EUROGRAPH COMPUTER SUPPLIES LIMITED      Appellant**

**- and -**

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

**TRIBUNAL: JUDGE JOHN BROOKS**

**Sitting in public at Eastgate House, Newport Road, Cardiff on 26 September  
2016**

**Faye Debono, of Martyn F Arthur Limited, for the Appellant**

**Joanna Vicary, counsel, instructed by the General Counsel and Solicitor to HM  
Revenue and Customs, for the Respondents**

## DECISION

1. This is the application of HM Revenue and Customs (“HMRC”), dated 25 June 2015, to strike out the appeal of Eurograph Computer Supplies Limited (“Eurograph”). At the conclusion of the hearing I announced my decision to allow the application and strike out the appeal. I explained that I would give my reasons in writing and do so now.

2. On 24 June 2014 HMRC issued a C18 Post Clearance Demand Note (“C18”) in the sum of £118,026.36 (being £98,005.20 Customs Duty and £20,021.16 Import VAT). The C18 was upheld on 3 October 2014 following a review. The letter from HMRC of 3 October 2014 notifying Eurograph of the outcome of the review clearly stated that Eurograph had the right to appeal to an independent Tribunal and that such an appeal should be made directly to the Tribunal within 30 days. Eurograph appealed to the Tribunal on 29 April 2015.

3. The 30 day time limit in which to bring an appeal, to which HMRC’s letter of 3 October 2014 referred, is contained in s 16(1C)(b) of the Finance Act 1994 (in respect of Customs Duty) and s 83G of the Value Added Tax Act 1994 (in relation to Import VAT). It is accepted that the appeal in this case was not made within the statutory time limit.

4. In its Notice of Appeal Eurograph applied for permission to appeal out of time on the grounds that:

“The taxpayer did not understand the options available to him, had been unwell and had not been properly advised by his accountant”

5. By a direction of the Tribunal, dated 24 August 2016, Eurograph was required to notify the Tribunal and HMRC if it was content for the hearing of 26 September 2016 to determine HMRC’s strike out application (the hearing having originally been listed to determine hardship and that application that had fallen away as it had been overtaken by events). If it was content for the strike out application to be determined, the directions required Eurograph to provide HMRC:

... with a copy of any documentary evidence on which it wishes to rely on later than **9 September 2016**. (emphasis as stated in the direction)

6. No documents were provided to HMRC by that date. However, at the hearing on 26 September 2016 Mrs Faye Debono, representing Eurograph, sought to introduce several documents into evidence. Miss Joanna Vicary, who appeared for HMRC objected to these being produced at such a late stage in the proceedings and contrary to the Tribunal’s clear direction.

7. In *Mobile Export 365 Ltd v HMRC* [2007] EWHC 1727 (Ch) at [20(2)] Lightman J said:

“The presumption must be that all relevant evidence should be admitted unless there is a compelling reason to the contrary.”

8. Although there was some doubt as to the relevance of the material, much of which pre-dated HMRC's letter of 3 October 2014, as Lightman J went on to observe in *Mobile Export 365*, at [21], springing surprises on opponents and the Tribunal:

“...are not acceptable conduct today in any civil proceedings. They are clearly repugnant to the Overriding Objective laid down in CPR [Civil Procedure Rules]1.1 (where applicable) and the duty of the parties and their legal representatives to help the court to further that objective. The objection to them is not limited to proceedings to which the CPR are applicable”

9. Although *Mobile Export 365* was a decision of the Chancery Division of the High Court it is clear from the comments of the Senior President of Tribunals in *BPP Holdings v HMRC* [2016] STC 841 that the Tribunal should adopt a similar approach. He said:

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

38. A more relaxed approach to compliance in tribunals would run the risk that non-compliance with all orders including final orders would have to be tolerated on some rational basis. That is the wrong starting point. The correct starting point is compliance unless there is good reason to the contrary which should, where possible, be put in advance to the tribunal. The interests of justice are not just in terms of the effect on the parties in a particular case but also the impact of the non-compliance on the wider system .... Flexibility of process does not mean a shoddy attitude to delay or compliance by any party.

10. In the circumstances I refused to admit any late evidence including the oral evidence of Mr Mohamed Rahim, Eurograph's director. No witness statement or indication of what he might have said had been provided, either by 9 September 2016 or at all. This was despite a letter, dated 13 September 2016, from Eurograph's representatives, Martyn F Arthur Limited stating that “we are also asking the appellant to provide a witness statement and will forward this within the next few days”.

11. With regard to the late appeal Miss Vicary contended that following *BPP I* should follow the guidance given by the Court of Appeal in *Denton & Ors v TH White Ltd & Ors* [2014] EWCA Civ 906 at [24], and adopt a three stage approach:

“The first stage is to identify and assess the seriousness and significance of the "failure to comply with any rule, practice direction or court order" which engages rule 3.9(1). If the breach is neither serious nor significant, the court is unlikely to need to spend much time on the second and third stages. The second stage is to consider

why the default occurred. The third stage is to evaluate "all the circumstances of the case, so as to enable [the court] to deal justly with the application including [factors (a) and (b)]."

12. Miss Vicary contends that a six month delay in filing a Notice of Appeal is a serious breach; that the reasons given are inadequate – the 3 October 2014 letter from HMRC clearly stated the options available also, Eurograph is a limited company and there is no evidence of the health of its director or why he was the only person who could lodge a Notice of Appeal; additionally, having regard to all the circumstances of the case, she contends that Eurograph failed to properly pursue the matter with due regard. Although the appeal involves a significant sum, citing the above passage from *BPP*, Miss Vicary says that I should not tolerate a “shoddy attitude to delay” and HMRC should be entitled to treat the matter as having been concluded.

13. Mrs Debono, for Eurograph, accepted that the appeal had not been made in time. She explained that its director, Mr Rahim had not been in good health and unable to comply with the statutory time limit and referred me to the 3 October 2014 letter from HMRC which was addressed to Mr Rahim. It stated:

“On 11 June 2014 you replied to Officer Stephenson stating that you had undergone surgery in April and had not been in the office for some time. ...

Officer Stephenson replied the same day stating that she appreciated you have been out of your office; however, you are expected to have procedures in place to cover sick absences ...”

14. Mrs Debono also referred to Eurograph’s advisers at the time the C18 was issued who, although they had made a timely request for a review, had not gone on to file a Notice of Appeal within the statutory timeframe when the decision to issue the C18 was upheld on 3 October 2014. She submits that, in the circumstances, the appeal should be admitted notwithstanding it was out of time.

15. In *Data Select Ltd v HMRC* [2012] UKUT 187 (TCC) Morgan J, at [34], said:

“Applications for extensions of time limits of various kinds are commonplace 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: (1) what is the purpose of the time limit? (2) how long was the delay? (3) is there a good explanation for the delay? (4) what will be the consequences for the parties of an extension of time? and (5) what will be the consequences for the parties of a refusal to extend time. The court or tribunal then makes its decision in the light of the answers to those questions.”

16. The purpose of the time limits is to provide certainty and avoid delay in litigation. As Judge Bishopp said in *Leeds City Council v HMRC* [2014] UKUT 350 (TCC) at [24] the purpose of the time limit:

“... is to require a party asserting a right to do so promptly, and to afford his opponent the assurance that, after the limit has expired, no claim will be made.”

17. The length of the delay in this case is almost six months, the appeal should have been made by 2 November 2014 but was received by the Tribunal on 29 April 2015.

18. The reason or explanation advanced to explain the delay, similar to the second stage in the *Denton* approach, is that Mr Rahim was unwell and unable to file the Notice of Appeal. Additionally, there is the apparent failure of Eurograph’s then advisers to do so on its behalf within the required timescale. However, there was no medical evidence or explanation of why Mr Rahim undergoing surgery in April 2014 meant that Eurograph was unable to file a Notice of Appeal in October of that year especially as a timely request for a review had been made following the issue of the C18 on 24 June 2014.

19. As for the consequence of granting or not granting an extension of time to appeal or directing the appeal be struck out, it is clear that Eurograph will suffer a detrimental effect by not being permitted to continue with its appeal. However, as the Senior President observed in *BPP*, “The interests of justice are not just in terms of the effect on the parties in a particular case but also the impact of the non-compliance on the wider system.”

20. The decision whether or not to strike out the appeal or give permission to bring an appeal out of time is essentially a balancing exercise. In reaching a conclusion it is necessary to have regard to the overriding objective of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 to deal with cases “fairly and justly”. This includes “avoiding delay” (see rule 2(1)(e)).

21. Having regard to all the circumstances of this case, in particular the lack of any explanation for the delay in lodging a Notice of Appeal within 30 days of receipt of the notice of the outcome of a review when the request for that review had been made without delay, and, taking account of the approach in *Denton* and *Data Select* to applications such as the present, I do not consider it appropriate to allow Eurograph to appeal out of time. Therefore, HMRC’s application succeeds.

22. Accordingly, I direct that the appeal be struck out.

23. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

**JOHN BROOKS  
TRIBUNAL JUDGE**

**RELEASE DATE: 28 September 2016**