

[2016] UKFTT 840 (TC)



TC05565

Appeal number: TC/2015/01815

*INCOME TAX – application to extend time for appeal – whether reasonable
excuse – no – application refused*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

DR PAUL CAESAR

Appellant

- and -

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

TRIBUNAL: JUDGE ANNE SCOTT

Sitting in public at Eagle Building, Glasgow on Monday 12 December 2016

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DECISION

Introduction

1. This was a preliminary hearing to determine the appellant's application for extension of time to lodge the appeal. The appellant had intimated that he had been unable to obtain legal aid and had no representative but because he had an anxiety disorder he was unable to travel and therefore would not attend the Tribunal.
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2. The first issue for me was to decide whether or not to proceed in the absence of the parties. I had due regard to Rules 33 and 2 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the Rules"), and a copy of those two Rules are annexed at Appendix A.
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3. Fortunately, in addition to the bundle which had been produced by HMRC, and served on Dr Caesar, I had a copy of the Tribunal file. This appeal has had a chequered procedural history. In particular, from the outset, Dr Caesar had requested a hearing in Dumfries as he was unable to travel long distances because of his health. There is no Hearing Centre in Dumfries.
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4. As long ago as 11 February 2016, a hearing having been fixed for 25 February 2016 in Edinburgh, Dr Caesar had formally applied for the appeal to be determined on the papers without the requirement of a hearing. On 19 February 2016, the respondents ("HMRC") acceded to that request. That being the case it is only proper to proceed in the absence of the parties and on the basis of the available papers.
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Background

5. On 6 September 2011, HMRC wrote to Dr Caesar opening an enquiry into his tax return for the year ended 5 April 2010. That enquiry was made under Section 9A of the Taxes Management Act ("TMA") 1970. HMRC indicated that, in the first instance, they only intended to look at one item of equipment, namely, a computer server which it was alleged that he had purchased whilst a Director of a company which had owned it. Dr Caesar was asked to provide information by no later than 16 October 2011.
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6. On 10 October 2011, he telephoned HMRC, indicated that the invoice price was £65,000 and that the company had not paid for it and was in Administration. He was asked to send detailed information in writing. He did not do so until 16 December 2016, despite a number of prompts.
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7. In that letter, he apologised if he had not been very helpful and had delayed matters but stated that because of ongoing health issues he did not wish to deal with it because it provided him "with bad memories". He explained that the supplier had put the company into administration since no payment had been made for the server and he had transferred the ownership of the server to himself for £1 being the value of his shareholding in the company. All company records were with the Administrator.
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8. In January and March 2012, HMRC again corresponded with the appellant asking for further information and ultimately indicating that they would be raising an assessment. There was no response so on 2 April 2012, a Closure Notice in terms of Section 28A TMA 1970 was issued together with an assessment in the sum of £10,127.70. That assessment made it clear that if Dr Caesar disagreed with the assessment then he could ask for a review or ask an independent tribunal to decide the matter.

9. The Notice of Appeal (incorrectly) identifies the 14 March 2012 letter as the decision to be appealed and the 2 April 2012 correspondence as the review.

10 *Contact thereafter*

HMRC's view

10. HMRC are very clear that there was no further communication from Dr Caesar until 12 February 2014 when he replied to a notice to pay by HMRC's Debt Management department. The decision-maker in the case responded to the appellant on 25 March 2014 sending him a further copy of the letter of 14 March 2012. The appellant's response dated 1 April 2014 was treated as an application for a late appeal which was refused. I have not been provided with a copy of that letter.

11. On 1 May 2014, HMRC wrote to Dr Caesar stating that they refused to accept the late appeal and telling the appellant that he should apply to the Tribunal. He was advised that he could download an appeal form from the Tribunal Service website or by telephoning the Order Line. Nothing happened.

12. On 12 February 2015, some 288 days later, the appellant lodged a Notice of Appeal with the Tribunal.

13. On Monday 12 January 2015, the appellant telephoned the Late Stage Debt Resolution at HMRC saying that he had complained to HMRC on 19 December 2014 and that he had contacted his MP. HMRC wrote to him on 14 January 2015 requesting information about that and there is no record of a response in the bundle.

Dr Caesar's view

14. By contrast Dr Caesar states that he first wrote to HMRC on 29 March 2012 asking for details of the complaints procedure and the appeals process. He alleges that he telephoned on 11 April 2012 and was told that the letter had been received and a call back would be arranged. He says that he followed that up on 3 July 2012 when he appealed a Notice of Penalty assessment dated 12 June 2012.

15. This appeal is not concerned with the penalty assessments. I note however that there are attached to the Notice of Appeal copy penalty assessments dated 12 June 2012 (30 days late), 13 November 2012 (6 months late), and 14 May 2013 (12 months late). It certainly does not seem that the penalties have been appealed since they feature in subsequent statements of liability.

16. When a statement of liability was issued on 27 July 2012, HMRC pointed out that they had contacted Dr Caesar at least three times about the outstanding tax and gave him a telephone number to contact if he did not believe that he owed the monies.

17. Further similar letters followed. There is no doubt that Dr Caesar wrote to Debt Management on 12 February 2014 as described in paragraph 10 above. I do not have a copy of that letter.

The available evidence

18. The Bundle furnished by HMRC included

Notice of Appeal to Tribunal Service	
Notices under Appeal	
02/04/2012	2009/2010 Closure Notice
02/04/2012	2010/2011 Notice of Assessment
Appellants Representations dated 12 June 2016	
Respondents Submission	
Correspondence	
06/09/2011	Letter from HMRC to appellant opening enquiry
10/10/2011	Note of telephone call
24/10/2011	Letter from HMRC to appellant
25/11/2011	Note of telephone call
16/12/2011	Letter from HMRC to appellant
16/12/2011	Letter from appellant to HMRC
19/01/2012	Letter from HMRC to appellant
14/03/2012	Letter from HMRC to appellant
02/04/2012	Letter from HMRC to appellant
25/03/2014	Letter from HMRC to appellant
01/05/2014	Letter from HMRC to appellant

19. The Notice of Appeal dated 12 February 2015, had 42 appendices, some of which were duplicates. With no exceptions they were copies of either letters or demands from HMRC Debt Management, Notices of Assessment (including the Assessment dated 2 April 2012 which is the subject matter of this appeal), and Letters from HMRC Specialist Investigations.

20. Apart from Dr Caesar's documentation in the Bundle, there was also a letter dated 4 July 2016 in the Tribunal File replying to HMRC's Submission. The Tribunal had copied it to HMRC on 22 July 2016. There does not seem to be a reply.

Issues with the evidence

21. In his submission dated 12 June 2016, Dr Caesar stated that

5 (a) his emails of 7 February 2015 and the Notice of Appeal provided the reason for the late submission of the appeal. There is no email of 7 February 2015 to the Tribunal. The first email received from Dr Caesar was the Notice of Appeal with multiple enclosures dated 12 February 2015,

10 (b) a copy of a letter sent by recorded delivery to HMRC had been emailed to the Tribunal. It had not. The only reference to any recorded delivery mail was a copy of a letter in the Bundle (Folio 1 at page 10) dated 14 January 2015. It was from HMRC's Late Stage Debt Resolution to Dr Caesar asking for information from him about an alleged recorded delivery letter,

15 (c) he referred the Tribunal to "the communications I made in writing and by telephone to HMRC". Of course the Tribunal is entirely independent of HMRC and has no access to any of that information. If Dr Caesar wishes to refer to communications he made in writing then he would require to produce his copies thereof.

20 (d) he alleged that the Bundle provided by HMRC was incomplete as it did not contain a list of all of the calls made. In terms of Rule 27 of the Tribunal Rules, a copy of which is also annexed at Appendix A, the parties must furnish their own copies of any documents upon which they wish to rely. There is a presumption that there should be full disclosure as set out in *Dorset Health Care NHS Foundation Trust v MH¹* but that must be read in the context of the Rules. Rule 27 expressly relates to documents which a party intends to rely upon or produce in proceedings. There is nothing to say that a party has to produce all documents including those which may assist the other party's case.

25 22. In the letter of 4 July 2016

30 (a) at paragraph 2(a) he referred to "already submitted evidence" which he alleged was in the hands of the Tribunal. Only the letter dated 16 December 2011 is in the bundle. (Folio 5 at pages 7 and 8). There is no copy of a letter dated 2 November 2011 and nor is there a letter dated 28 January 2012. In regard to the January letter, Dr Caesar alleges that that letter had enclosed copy invoices. In fact, since HMRC wrote to Dr Caesar on 14 March 2012 stating "In the absence of a reply to my letter of 19 January 2012 ..." it would not appear that they had received any letter dated 28 January 2012. Dr Caesar states that HMRC had already provided copies of these letters in the Bundle. They have not,

35 (b) at paragraph 3 Dr Caesar states that he had sent copies of letters dated 3 July 2012, 6 December 2012 and 6 August 2012 to the Tribunal. They have certainly not been received by the Tribunal,

(c) at paragraph 4 Dr Caesar refers again to a letter of 3 July 2012 and to a letter of 29 March 2012. These are not in the Bundle,

¹ 2009 UKUT 4 (ACC)

(d) at paragraph 11 Dr Caesar states that invoices had been submitted to the Tribunal. They have not.

Medical evidence

23. In the letter of 4 July 2016 Dr Caesar also reiterated that his mental health disability “makes dealing with issues like this very difficult”.

24. The Tribunal already held a medical certificate dated 1 July 2015 which stated:-

“... Paul Caesar ... does suffer from severe anxiety associated with depression and has done for many years. Paul is on two long-term medications for his anxiety and depression but still suffers from significant anxiety that manifests itself in physical symptoms ... when anxiety is particularly bad. Paul finds it particularly difficult to travel due to the anxiety surrounding this ...”.

25. That certificate had been sent to the Tribunal on 30 July 2015 by his then solicitors. Their covering letter stated:

“We have acted for Dr Casear (*sic*) on and off for over 10 years. We enclose a copy of a letter which he has received from the Greyfriars Medical Centre dated 1st July 2015 which describes severe anxiety associated with depression. While we are not doctors this description of our client is very much consistent with our experience of him over the years. He has a tendency to allow things to get on top of him and then he does not function in the way that people without such problems are able to function”.

26. In October 2015, when a hearing had been scheduled, they again wrote and requested that a hearing should be scheduled for Dumfries so that Dr Caesar would be able to attend.

The Notice of Appeal

27. In regard to the late appeal the appellant stated:

“Since 2012 I have repeatedly requested that the HM Revenue & Customs send me details of their complaints procedure and appeals process.

You will find in the letters that and telephone calls with HM Revenue & Customs that I did request to appeal the decision and that I did submit appeals to their penalty notices.”

28. The Grounds of Appeal were stated to be “...HM Revenue & Customs based their decision solely on a verbal conversation...and that use of such was unlawful”.

Application for admission of a late appeal

The Law

29. The Tribunal’s power to admit a late appeal is contained in Section 49 Taxes Management Act 1970 which reads as follows:-

“49 **Late notice of appeal**

(1) This section applies in a case where—

- (a) notice of appeal may be given to HMRC, but
 - (b) no notice is given before the relevant time limit.
- (2) Notice may be given after the relevant time limit if—

- (a) HMRC agree, or
- 5 (b) where HMRC do not agree the tribunal gives permission.”

30. The Tribunal has a wide discretion. The general approach to such discretionary decisions is set out by Lord Drummond Young in *Advocate General for Scotland v General Commissioners for Aberdeen City*² (“Aberdeen”) and in particular at paragraphs 22-24. I have set those out in full at Appendix B.

10 31. In summary, *Aberdeen* states that the 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
15 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.

20 32. I was referred to the case, and I agree with the decision of Judge Berner at paragraph 36 in, *O’Flaherty v HMRC*³ and that reads:-

25 “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.”

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

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

I agree entirely.

² 2006 STC 1218

³ 2013 UKUT 161 (TCC)

34. Paragraph 38 reads:-

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

That is the approach which I adopt and is the reason that I have rehearsed the medical evidence and the procedural history.

10 35. HMRC referred me to *Data Select Ltd v RCC*⁴ (“Data Select”), which is of course an English Authority and we are in Scotland, but it explicitly endorses *Aberdeen* at paragraph 36 indicating that both Authorities are broadly in line. That can be seen from the questions that Data Select indicates should be considered namely:

- 15 (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?

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

30 37. HMRC did not refer me to *R (on the application of Cook) v General Revenue Commissioners*⁶ (“Cook”), *Indigo Media Partnership v HMRC*⁷ (“Indigo”) and *Romasave (Property Services) Ltd v HMRC* (“Romasave”)⁸ all of which are of relevance.

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

⁴ 2012 STC 2195

⁵ 2014 EWCA Civ 906

⁶ 2009 STC 1212

⁷ 2015 UKFTT 0424

⁸ 2015 UKUT 254

5 “... The exercise of a discretion to allow a late appeal is a matter of material import, since it gives the Tribunal a jurisdiction it would not otherwise have. Time limits imposed by law should generally be respected. In the context of an appeal right which must be exercised within 30 days from the date of the document notifying the decision, a delay of more than three months cannot be described as anything but serious and significant.”

39. Lastly, at all times I have had in mind Rule 2 of the Rules to which I have already referred.

Discussion

10 40. Do the issues with the evidence have a material impact? Whether or not Dr Caesar corresponded with HMRC or the Tribunal, he did not appeal the assessment date of 2 April 2012 within 30 days either to HMRC or the Tribunal and nor did he launch an appeal with the Tribunal when HMRC refused his application for a late appeal on 1 May 2014. I have simply highlighted the issues so that there is
15 clarity about the quality and extent of the evidence tabled. I see no reason to adjourn since much of the purported “missing” material post-dates the assessment or relates to the substantive appeal and therefore is not a matter for this hearing.

41. Although he may not have realised it, it is for Dr Caesar to establish the basis on which the time limits for appeal to the Tribunal should be extended. In large part he
20 has concentrated on his contact, or not, with HMRC and the merits of the substantive appeal.

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

42. I am looking here at the 30 day time limit for appealing to the Tribunal. In his letter of 4 July 2016, Dr Caesar alleges that the delay was caused because of a change
25 in medication as well as obtaining financial help with the appeal. He has produced no evidence other than the “To whom it may concern” medical certificate that addressed his ability to travel. As can be seen it specifically requested a hearing in Dumfries. There is no suggestion whatsoever of cognitive impairment, indeed it is anticipated that he could handle such a hearing. Further his solicitors requested a hearing that he would
30 be able to attend or “...appoint someone to attend on his behalf...” That too does not suggest cognitive impairment.

43. The only possible argument is that advanced by the solicitors (see paragraph 25 above) to the effect that for more than 10 years he has had a tendency to let things get on top of him and then does not function conventionally. What that means is less than
35 clear. On the other hand, it is abundantly clear that Dr Caesar has suffered from this condition for in excess of 10 years.

44. In that period, as he makes clear in his letter of 4 July 2016, he had been a company director of several limited companies prior to, and including, the one
40 involved in this appeal and the subsequent company. Clearly he has been functioning. He has obviously been able to instruct solicitors from time to time during that period. He has continued to meet his self-assessment obligations with the earliest submission of his returns to HMRC each year.

45. Looking at the totality of the evidence provided in regard to his mental state, whilst I certainly accept that his anxiety is such that he is unable to travel long distances, I do not accept that it provides a reason for failing to lodge an appeal with the Tribunal.

5 46. I went on to consider the assertion that it was the change in medication that had given him problems. This is a specialist Tribunal and I am expected to deploy any specialist knowledge. I have extensive experience of mental health and for very many years have chaired tribunals involving issues surrounding the functional impact of mental ill-health across a wide spectrum. Whilst I accept that a change in medication
10 can cause a period of instability and unfortunate side effects, in the absence of any compelling evidence I would be very surprised to discover that the medication was not quickly titrated to an optimal level. I certainly would not expect a change in medication to have a significant and long lasting impact on both cognitive and functional ability.

15 47. The basic point is that by his own admission Dr Caesar states that he was asking about appeal procedures on 29 March 2012. Four days later the assessment which is the subject matter of this appeal was issued and that made the appeal process absolutely explicit. The numerous letters sent to Dr Caesar thereafter, many of which he has produced, all drew his attention to the fact that he had a substantial debt
20 outstanding so he cannot have reasonably believed that he had appealed the assessment.

48. Lastly in that regard I noted from the letter of 4 July 2016 that when Dr Caesar was justifying the transfer of the server to himself for £1.00 at paragraph 1(a) he made it quite clear that the "...several dissolved limited companies that I had been a company director of
25 ..." had all owed, and continued to owe VAT to HMRC. Indeed he argues that he transferred the server to himself precisely to avoid HMRC attempting to utilise it to meet outstanding debts.

49. He should therefore have been acutely aware of the importance of time limits within which to appeal assessments and decisions. By his own admission he is no
30 novice in his dealings with HMRC.

50. An inability to find finance is not a reasonable excuse. Tribunals are frequently used by unrepresented appellants and few would have Dr Caesar's educational achievements (PhD Comp Sci).

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

51. Even if I am wrong in finding that Dr Caesar's mental ill-health was such that he did have a reasonable excuse, it is abundantly clear from the letter of 14 January 2015 that, if he is accurate in his assertions, he was vigorously pursuing HMRC in December 2014 and that continued into January 2015. Clearly he felt able to, and was
40 dealing with, his financial affairs at that stage, yet he did not lodge the appeal until almost two months later.

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

52. Clearly there is prejudice to Dr Caesar if the appeal is not permitted to proceed since he would be unable to litigate. In his view there should be no assessment and therefore a five figure sum of money is at stake. Without entering into the merits of
5 the substantive appeal I note that although he contests the conversation where the value of the server was put at £80,000, nevertheless on a subsequent occasion he told HMRC that the value was £65,000. If this matter proceeded to litigation, Dr Caesar would have the burden of proving what the actual value of the server was as at the date of transfer. He says very clearly in his letter of 4 July 2016 that he had told
10 HMRC that “I would sell the high valued assets to myself for £1 ...”. He reiterates that the server was of high value elsewhere in that letter. Accordingly the actual quantum in dispute may not be nearly as large as Dr Caesar assumes.

53. There is considerable prejudice to HMRC if the appeal is allowed to proceed. There will then be litigation which would be at considerable cost to the public purse.
15 I find that the delay in this matter is a significant and serious delay. I agree with Dyson LJ in *Cook* at paragraph 22 which reads:-

“.. there was prejudice to HMRC in not being to close its books.”

Are there considerations affecting the public interest?

54. Dyson LJ in *Cook* at paragraph 22 goes on to say:-

20 “... there is public interest in promoting the policies that challenges assessments by way of appeal should be brought in the short period specified by the statute.”

I entirely agree.

Has the delay affected the quality of available evidence?

55. It is frankly impossible to make any findings in regard to the quality of evidence
25 that Dr Caesar might be able to produce. Certainly the stated ground of appeal to the effect that HMRC cannot rely on something that he told them would not suffice. As far as HMRC are concerned there must have been an inevitable lack of institutional memory given the very long elapse of time.

56. The only point arising out of *Aberdeen* and *Data Select* which I have not covered
30 is to confirm the purpose of the time limit and that is quite simply to avoid delay and to provide certainty. This is a time limit provided by statute and as a general principle is there to be observed unless there is a good explanation for the delay.

Conclusion

57. Every application for admission of a late appeal depends on its own facts and
35 circumstances. At all stages in the consideration of this matter I have had Rule 2 of the Rules very much in mind. It is imperative that any decision should be fair and just. I weighed every fact and authority that was brought to my attention in the balance and some that have not. Taxpayers are expected to act with reasonable

prudence and diligence in dealing with their affairs. Patently, even allowing for ill-health, Dr Caesar has not. At best the delay in lodging an appeal with the Tribunal was significant. He was told quite unequivocally on 1 May 2014 that the only way that he could appeal was to go to the Tribunal and he was told how to do so. He did not do so until 12 February 2015. At worst it was even more serious and significant, being from 2 April 2012 to 12 February 2015.

58. On the balance of probability I find that Dr Caesar has not discharged the onus of proof in establishing good reason for extending the time limit in the circumstance of this case. I decline to exercise my discretion and the application to notify a late appeal is refused. Accordingly the appeal is not admitted.

59. 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.

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**ANNE SCOTT
TRIBUNAL JUDGE**

RELEASE DATE: 20 DECEMBER 2016

2.—Overriding objective and parties’ obligations to co-operate with the Tribunal

- 5 (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—
- 10 (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;
- € 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
- 15 € 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—
- 20 (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
- 25 (b) co-operate with the Tribunal generally.

33.— Hearings in a party’s absence

If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal—

- 30 (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and
- (b) considers that it is in the interests of justice to proceed with the hearing.

27.— Further steps in a Standard or Complex case

- 35 (1) This rule applies to Standard and Complex cases.
- (2) Subject to any direction to the contrary, within 42 days after the date the respondent sent the statement of case (or, where there is more than one respondent, the date of the final statement of case) each party must send or deliver to the Tribunal
- 40 and to each other party a list of documents—
- (a) of which the party providing the list has possession, the right to possession, or the right to take copies; and
- 45

(b) which the party providing the list intends to rely upon or produce in the proceedings.

- 5 (3) A party which has provided a list of documents under paragraph (2) must allow each other party to inspect or take copies of the documents on the list (except any documents which are privileged).

Paragraphs 22 to 24 of *Aberdeen* read as follows:-

5 “[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
10 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.

15 [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.
20 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.
25 One is the policy of finality in litigation and other legal proceedings; matters have to be brought
to a conclusion within a reasonable time, without the possibility of being reopened. That may
be a reason for refusing leave to appeal where there has been a very long delay. A second issue
is the effect that the instant proceedings might have on other legal proceedings that have been
concluded in the past; if an appeal is allowed to proceed in one case, it may have implications
30 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.
35 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.

40 [24] Because the granting of leave to bring an appeal or other proceedings late is an exception
to the norm, the decision as to whether they should be granted is typically discretionary in
nature. Indeed in view of the range of considerations that are typically relevant to the question,
it is difficult to see how an element of discretion can be avoided. Those considerations will
often conflict with one and another, for example, in a case where there is a reasonable excuse
for failure to bring proceedings and clear prejudice to the applicant for leave but substantial
45 quantities of documents have been lost with the passage of time. In such a case the person or
body charged with the decision as to whether leave should be granted must weigh the
conflicting considerations and decide where the balance lies.”