[2017] UKFTT 539 (TC)

TC05988

Appeal number: TC/2016/03306

PROCEDURE – application for permission to notify a late appeal – application refused

FIRST-TIER TRIBUNAL
TAX CHAMBER

IAN CURRIE **Appellant**

- and -

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

TRIBUNAL: JUDGE JONATHAN CANNAN

Sitting in public in Manchester on 28 April 2017

The Appellant appeared in person

Mr James Henderson of counsel instructed by HM Revenue & Customs Solicitor's Office and Legal Services appeared for the Respondents

DECISION

Background

1. This is an application by the Appellant to extend time to notify an appeal to the tribunal pursuant to section 49G Taxes Management Act 1970 ("TMA 1970"). The decision which the Appellant wishes to appeal was the subject of a review dated 6 April 2016. The Appellant was therefore required to notify his appeal to the tribunal on or before 6 May 2016. In the event, it was not notified until 16 December 2016.

2. I set out below my findings as to the circumstances in which the appeal came to be notified to the tribunal. Those findings are based on evidence from the Appellant, from his accountant Mr Brides and from the documentary evidence before me.

Circumstances in which the Appeal was notified to the Tribunal

3. HMRC commenced an enquiry into the Appellant's self-assessment return for 2006-07 on 19 January 2009. The enquiry was an aspect enquiry, including an enquiry into a claim for relief on a gift of shares by the Appellant in Baa Bar Group Plc ("the Company") in or about November 2006. HMRC disputed the value attributed to the shares by the Appellant on the date of the gift. A number of other taxpayers also gifted shares in the Company and HMRC was enquiring into claims for relief made by those taxpayers. HMRC were also investigating a number of cases where gifts of shares in other companies had been made. The Appellant was a director of Zeus Partners and was involved in the flotation of the Company and other companies where valuations were being challenged.

4. It is not clear how the enquiry progressed, and it appears that there was little if any contact between HMRC and the Appellant in relation to the value of shares in the Company until 14 April 2014, when HMRC offered the Appellant an opportunity to agree a value of 31.5p per share. In the absence of agreement, HMRC said that they intended to issue a closure notice. Mr Currie did not accept the offer, although he did make two proposals by way of counter-offers in a letter dated 7 May 2014. There was no reply to the proposals until 6 October 2015 when the second proposal was rejected. HMRC said that they would consider the first proposal but I understand that they did not subsequently give any specific response.

5. On 4 August 2015, HMRC invited the Appellant to attend an "open forum" with HMRC, other taxpayers and their agents to discuss the enquiries, the valuation of the Company's shares and the way forward. On 17 September 2015 the Appellant was sent a list of FAQs in advance of the forum which included the following:

> "**Q- What will happen if I choose not to settle now?**
>
> If you choose not to settle following the forum, then once we issue closure notices you will have the option of either accepting the decision contained in the closure notice or appealing the decision."

6. The forum took place on 28 October 2015. On the same date HMRC wrote to the Appellant enclosing a letter of offer if the Appellant wished to settle. It was based

on a value of 31.5p per share and quantified an additional tax liability of £105,800 together with interest of £33,537. That is the sum in dispute in the present appeal. The Appellant candidly accepted that the sum in dispute was not very significant in the context of his finances generally.

7. On 23 November 2015 HMRC wrote to the Appellant enclosing notes of the forum discussion and maintaining their value of the shares at 31.5p. The letter identified that the Appellant had an opportunity to agree that value. The letter stated that a closure notice would be issued if the Appellant did not agree the valuation and the closure notice would include information about his appeal rights.

8. The forum notes are in the form of questions and answers and include the following:

> " **If I receive a closure notice you mentioned that I could ask for a review. What does the review look at?**
>
> Yes; it will consider whether we have opened the enquiry on time and issued the correct notification and the process followed. The review will look at the process and not the valuation.
>
> **When will these cases be listed at Tribunal?**
>
> Once you have received a closure notice, it will be your choice how to proceed and appeal to Tribunal. It is the Tribunal service which sets the hearing date."

9. On 30 November 2015 there was a meeting between the Appellant and HMRC's Share and Asset Valuation team in Nottingham. There were no notes of this meeting before me, and I understand that it was directed at share valuation issues generally, not just in relation to the Company.

10. On 9 December 2015 HMRC sent a closure notice to the Appellant, with a copy to his accountants, Champion Consulting Ltd ("Champion"). Champion had been the Appellant's accountants for many years. They acted generally in relation to his tax affairs, which are complex. They also acted for at least one other client who had gifted shares in the Company and therefore the Appellant preferred to deal with HMRC personally in relation to issues concerning valuation of the shares.

11. The conclusion in the closure notice was that the Appellant's claim for relief was reduced to reflect a market value of 31.5p per share. It also set out the Appellant's appeal rights as follows:

> "If you disagree with my decision, you can appeal. You need to write to us by 8 January 2016, telling us why you think my decision is wrong. We will then contact you to try to settle the matter. If we cannot come to an agreement, we will write to you and tell you why. We will then offer to have the matter reviewed by an HMRC officer who has not been involved in your case. We will also tell you about your right to go to an independent tribunal."

12. On 22 December 2015 the Appellant wrote to HMRC indicating that he had paid the outstanding tax in full, but that he wanted to appeal the share valuation of 31.5p. He also said that he would like a review "as per forum notes".

13. On 26 January 2016 HMRC wrote to the Appellant. In that letter the officer explained that his view of the matter set out on 9 December 2015 had not changed. The matter would be reviewed by the review team. A copy of this letter was sent to Champion. The Appellant provided some further information for the purposes of the review on 23 February 2016. He was also concerned that he had received no explanation of matters he had raised in Nottingham.

14. The review decision was sent to the Appellant in a letter dated 6 April 2016 ("the Review Letter"). The Review Letter was copied to Champion on the same date. The conclusion of the review was that relief in respect of the Appellant's gift of shares in the Company should be based on a value of 31.5p per share. Having stated the conclusion and the reasons for it, the Review Letter continued:

> "**Next Steps**
>
> If you do not agree with my conclusion you can ask an independent tribunal to decide the matter. If you want to notify the appeal to the tribunal, you must write to the tribunal within 30 days of the date of this letter. You can find out how to do this on the GOV.UK website …
>
> *If you do not notify the appeal to the tribunal within 30 days of the date of this letter, the appeal will be determined in accordance with my conclusion, by virtue of section 49F Taxes Management Act 1970.*
>
> …
>
> I am sending a copy of this letter to your agents."

15. It is this Review Letter which engages the 30 day time limit for notifying the appeal to the tribunal. The Appellant received the Review Letter. It is not disputed that a copy of the Review Letter was sent by HMRC to Champion on or about 6 April 2015, although there is an issue as to whether the copy was received by Champion. No appeal was notified to the tribunal until Champion lodged a notice of appeal with the tribunal on 16 December 2016. It is common ground that the time limit for notifying the appeal to the tribunal pursuant to section 49G TMA 1970 was 6 May 2016. The appeal is therefore 7 months late.

16. On 1 September 2016 there was a meeting in Manchester between the Appellant and officers from HMRC's Shares and Assets Valuation team. The meeting was principally about the valuation of shares in another company where similar issues of valuation arose. At the conclusion of the meeting the Appellant expressed his desire to have the enquiry into his gift of shares in the other company closed. He made a without prejudice offer to settle all his claims to relief which he said was "in addition to the payment he had made in respect of the Baa Bar shares". It does not appear that HMRC have ever responded to the offer, although it is not clear how the offer related to relief for the Appellant's gift of the Company shares.

17. There are eight taxpayers with appeals before the tribunal where the issue is the value of shares in the Company at various gifting dates. Those taxpayers were present or represented at a case management hearing I held on 24 October 2016, following which I gave directions released on 3 November 2016. The directions included a direction that three of the appeals should proceed as lead cases. It is very likely that the present Appellant, whether or not his appeal proceeds, will be a witness at the hearing of the lead cases. This is because of his role in the flotation of the Company shares.

18. The Appellant said in evidence and I accept that he knew nothing of the case management hearing or that there were appeals ongoing before the tribunal in relation to the valuation of the Company shares until he was approached by one or two of the lead appellants following the hearing.

19. The Appellant's notice of appeal sets out various reasons why the appeal was late. In his notice of appeal the Appellant relied on the following matters:

(1) When he received the review letter dated 6 April 2016 he was in the middle of a large building and renovation project at his home. On first reading the letter he did not recognise the requirement to make an appeal to the tribunal and he put the letter to one side.

(2) It was only by chance when reviewing his paperwork after the building works had finished that he spotted the appeal requirement.

(3) No copy of the letter was received by Champion.

20. In an email to the tribunal dated 22 March 2017 the Appellant stated that when he received the letter of 6 April 2016 he saw that it was also sent to Champion and therefore knew that Champion would lodge an appeal. That is inconsistent with what the Appellant stated in his notice of appeal, namely that he did not recognise the requirement to make an appeal to the tribunal.

21. In a letter to the tribunal dated 18 April 2017 the Appellant explained his reliance on the building works at his house. In particular he relied on the upheaval and associated "organisational pressures" as having caused him not to appreciate the need to notify the appeal to the tribunal.

22. The Appellant told me that his day to day work involves managing businesses with assets worth over £3 billion. It is all the more surprising therefore that he should not have recognised the need to notify the appeal to the tribunal even with the pressure of building works at home. There was no suggestion that the Appellant's other business interests suffered as a result of the building works.

23. In the Appellant's email dated 22 March 2017 in connection with the present application the Appellant briefly described the nature of his tax affairs. I accept that they are not straightforward and that apart from the present appeal they have been efficiently dealt with by himself and Champion.

24. In fact, it was not by pure chance that the Appellant reviewed his paperwork and spotted the appeal requirement. In his email dated 22 March 2017 and in his oral

evidence at the hearing the Appellant stated that it was only when he spoke to one or two other taxpayers who were appealing the valuation to the tribunal that he had cause to look for the Review Letter. However, I accept that it might fairly be described as "by chance" from the Appellant's perspective that the other taxpayers contacted him.

25. The Appellant relied on a witness statement of Mr David Brides who is head of tax compliance at Champion. Mr Brides' evidence was to the effect that Champion did not receive a copy of the Review Letter from HMRC. Mr Brides was not available to be cross examined on his witness statement, which affects the weight I can give to that evidence in relation to matters which are not accepted by the Respondents.

26. On or about 6 November 2016 the Appellant retrieved the Review Letter from storage and re-read it. He sent it to Mr Brides in an email dated 7 November 2016 stating that he had found the Review Letter which he "hadn't fully read". He acknowledged that he had "missed baa bar appeal dates" according to the letter and he wanted to know whether Champion had received a copy of the letter. Mr Brides' evidence, which I accept is that he first became aware of the Review Letter when he received the Appellant's email dated 7 November 2016. I accept that Champion had no record of receiving the Review Letter and I infer that they did not receive it. Mr Brides emailed the Appellant on the same date to say that a late appeal could possibly be sent. He agreed with the Appellant that he would prepare a late appeal for submission to the tribunal.

27. The appeal was not in fact submitted until 16 December 2016, almost 6 weeks after the Appellant had retrieved it. The Appellant's explanation for this further delay is that he was abroad at the end of November and he did not think 3 or 4 weeks at that stage was material.

28. The Appellant said in evidence that based on the forum notes, he regarded the review as "process" not "valuation". He had understood that the review was not concerned with the amount of tax due, which is consistent with the forum notes mentioned above. The Appellant said that he had therefore expected the review to deal with why the enquiry had taken so long. He appeared to suggest that because the review was concerned with the process of enquiry rather than the conclusion on valuation that he was somehow unclear as to how and when he would have an opportunity to challenge the valuation. If that is part of the Appellant's case then I do not accept it. The correspondence in connection with the closure notice and the Review Letter were clear that they were confirming the valuation of 31.5p per share. It should have been clear to the Appellant from the correspondence that in order to challenge the valuation he would have to notify his appeal to the tribunal within 30 days of the review letter.

29. The Appellant suggested that matters were not clear to him in that he thought he had already appealed the closure notice and he was awaiting a response to the first proposal contained in his letter dated 7 May 2014. I do not accept that he could reasonably have believed that the time limits in relation to making and notifying an appeal were suspended pending a response to his first proposal. If there was no response by HMRC to the proposal then that is regrettable, but I do not consider that

the absence of a response adds anything to the Appellant's explanation as to why he was late in notifying his appeal to the tribunal.

30. Based on the evidence before me I accept that the Appellant failed to properly read the Review Letter when he received it in April 2016. As a result he did not appreciate that there was a 30 day time limit for notifying his appeal to the tribunal, or indeed that he had to notify the appeal to the tribunal at all. He only realised his omission when he was approached by other appellants in November 2016. Despite what the Appellant said in his email dated 22 March 2017 he had no reason to think that Champion would lodge an appeal on his behalf.

31. I am not satisfied that it was the building work that caused the Appellant's failure to appreciate the need for action before 6 May 2016. He is a successful businessman working in a fast-moving environment. It seems more likely and I find that at least part of the explanation is that the sum involved is not very significant in the context of the Appellants finances generally. It was not high up on his list of priorities. Hence he did not devote the care he might otherwise have given to the matter.

Approach in relation to Late Appeals

32. The approach to applications to extend time was considered by Morgan J sitting in the Upper Tribunal in *Data Select Ltd v Commissioners for HM Revenue & Customs [2012] UKUT 187 (TCC)* where he said as follows:

> "34. … 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.
>
> 35. The Court of Appeal has held that, when considering an application for an extension of time for an appeal to the Court of Appeal, it will usually be helpful to consider the overriding objective in CPR r 1.1 and the checklist of matters set out in CPR r 3.9: see Sayers v Clarke Walker [2002] 1 WLR 3095; Smith v Brough [2005] EWCA Civ 261. That approach has been adopted in relation to an application for an extension of the time to appeal from the VAT & Duties Tribunal to the High Court: see Revenue and Customs Commissioners v Church of Scientology Religious Education College Inc [2007] STC 1196.
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> 36. I was also shown a number of decisions of the FTT which have adopted the same approach of considering the overriding objective and the matters listed in CPR r 3.9. Some tribunals have also applied the helpful general guidance given by Lord Drummond Young in Advocate General for Scotland v General Commissioners for Aberdeen City [2006] STC 1218 at [23]-[24] which is in line with what I have said above.

> 37. In my judgment, the approach of considering the overriding objective and all the circumstances of the case, including the matters listed in CPR r 3.9, is the correct approach to adopt in relation to an application to extend time pursuant to section 83G(6) of VATA. The general comments in the above cases will also be found helpful in many other cases. Some of the above cases stress the importance of finality in litigation. Those remarks are of particular relevance where the application concerns an intended appeal against a judicial decision. The particular comments about finality in litigation are not directly applicable where the application concerns an intended appeal against a determination by HMRC, where there has been no judicial decision as to the position. Nonetheless, those comments stress the desirability of not re-opening matters after a lengthy interval where one or both parties were entitled to assume that matters had been finally fixed and settled and that point applies to an appeal against a determination by HMRC as it does to appeals against a judicial decision."

33. Rule 3.9 of the Civil Procedure Rules ("CPR") has been amended since the decision in Data Select and now reads as follows:

> " (1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order, the court will consider all the circumstances of the case, so as to enable it to deal justly with the application, including the need –
>
> (a) For litigation to be conducted efficiently and at proportionate cost; and
>
> (b) To enforce compliance with rules, practice directions and orders."

34. Data Select is a decision of the Upper Tribunal and it is binding upon me. I must take into account all the circumstances including the overriding objective of dealing with cases fairly and justly in conducting a balancing exercise and ask myself:

(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?

(5) What will be the consequences for the parties of a refusal to extend time?

35. I also have regard to the decision of the Court of Appeal in *BPP Holdings Limited v Commissioners for HM Revenue & Customs [2016] EWCA Civ 121* which was concerned with non-compliance with Tribunal Rules and directions in the light of a divergent approach in the Upper Tribunal. It referred to the application by analogy of CPR 3.9 in Data Select although it did not consider the decision in Data Select in detail.

36. BPP Holdings was concerned with the imposition of sanctions for non-compliance with Tribunal directions. It clearly supports the application of the CPR to this Tribunal by way of analogy. The Court of Appeal was referred to the decision of Morgan J in Data Select but it decided that it was not appropriate to analyse that decision because it was not a case where there had been a history of non-compliance.

37. Prior to the decision of the Court of Appeal in BPP Holdings, the Upper Tribunal in *Romasave (Property Services) Limited v Commissioners for HM Revenue & Customs [2015] UKUT 254 (TCC)* considered and endorsed the approach in Data Select. Having considered the divergent approach in the Upper Tribunal to non-compliance with directions and relief from sanctions for breach it stated at [89]:

> " 89. It is not necessary for us to describe the history of this debate. The outcome, in our view, is that in this tribunal, and in the FTT, the factors identified by the courts in the revised form of CPR r 3.9 as having particular weight or importance, that is to say the need for litigation to be conducted efficiently and at proportionate cost and to enforce compliance with rules, practice directions and orders, are relevant factors, but have no special weight or importance. The weight or significance to be afforded to those factors, along with all other relevant factors, in applying the overriding objective to deal with cases fairly and justly, will be a matter for the tribunal in the particular circumstances of a given case."

38. It remains to be seen whether it is necessary in applications such as the present to give particular weight to the two factors identified in CPR 3.9, namely the need for litigation to be conducted efficiently and at proportionate cost and the need to enforce compliance with rules, practice directions and orders. For present purposes I shall apply the decisions in Data Select and Romasave without giving any special weight to those two factors.

39. In Romasave the Upper Tribunal gave additional guidance to the First-tier Tribunal as to how it should conduct the balancing exercise. At [92] to [94] it stated:

> " 92. … Nonetheless, helpful guidance can be derived from the three-stage process set out by the Court of Appeal in *Denton* in order to provide first instance judges with a "clear exposition of how the provisions of rule 3.9(1) should be given effect". Although the third stage of that guidance, as set out by the majority, includes the requirement to give particular weight to the efficient conduct of litigation and the compliance with rules etc, and to that extent, for the reasons we have explained, would not have application in this tribunal or in the First-tier Tribunal, everything else said by the Court of Appeal translates readily into useful guidance on the approach to be adopted, in these tribunals as well as in the courts."
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> 93. By way of summary, the majority in the Court of Appeal in *Denton d*escribed the three-stage approach in the following terms, at [24] (the references to "factors (a) and (b)" being to the particular factors referred to in CPR r 3.9):
>
> > " We consider that the guidance given at paras 40 and 41 of *Mitchell* remains substantially sound. However, in view of the way in which it has been interpreted, we propose to restate the approach that should be applied in a little more detail. A judge should address an application for relief from sanctions in three stages. 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)]'. …"

94. Once the factors (a) and (b) are afforded no special weight or significance, that approach is no different in principle to that set out in *Data Select*. The seriousness and significance of the relevant failure has always been one of the factors relevant to the tribunal's determination. That is encompassed in the reference in *Data Select*, at [34], to the purpose of the time limit and the length of the delay. The reason for the delay is a common factor in *Denton* and *Data Select*, as is the need to evaluate the circumstances of the case so as to enable the tribunal to deal with the matter justly."

40. In summary, therefore, the approach I shall take is as follows:

(1) I shall consider the factors set out by the Upper Tribunal in Data Select.

(2) In doing so, I shall take into account but not give special weight to the need for litigation to be conducted efficiently and at proportionate cost and the need to enforce compliance with time limits.

(3) I shall also bear in mind the 3 stage process described by the Court of Appeal in Denton, that is:

(a) to identify and assess the seriousness and significance of the failure,

(b) to consider why the default occurred, and

(c) to evaluate all the circumstances of the case, so as to deal justly with the application.

Reasons

41. I now turn to consider the factors referred to above and all the circumstances of the case in deciding whether to grant permission to the Appellant to notify a late appeal.

(i) Purpose of the Time Limit

42. The purpose of the time limit of 30 days is clearly to promote finality. Morgan J in Data Select stressed the desirability of not re-opening matters after a lengthy interval where one or both parties were entitled to assume that matters had been finally fixed and settled. In the present case I am satisfied that HMRC were entitled to assume from 6 May 2016 onwards that the closure notice was final. At that stage there was no need for HMRC to separately address the Appellant's first proposal which they had said they would consider in their letter dated 6 October 2016. It would have been better if they had done so, but it was implicit in the closure notice that the proposal had been rejected.

43. In relation to the offer made by the Appellant at the meeting on 1 September 2016, at that stage the Appellant was already well out of time to appeal the decision on valuation, even if it did relate to the Company's shares.

(ii) The period of delay

44. The period of delay in the present case is from 6 May 2016 to 16 December 2016 when the appeal was notified to the tribunal. That is a period of some 7 months. It is plainly a significant period and amounts to a 'serious breach' in the language of

the Court of Appeal in Denton. Indeed, the Upper Tribunal in Romasave referred to a delay of 3 months as serious and significant.

45. The Appellant relied on the fact that the enquiry had been conducted over a very long period of time and had been characterised by long periods of silence on the part of HMRC. Mr Henderson argued that this was irrelevant to the issue. The focus of the tribunal ought to be on the period of delay in notifying the appeal.

46. On the facts of the present application I agree with Mr Henderson that the period of time taken for the enquiry is irrelevant to the discretion of the tribunal in considering whether to extend the time for notifying an appeal. There are clear statutory time limits within which appeals must be sent to HMRC and thereafter notified to the tribunal. There is no suggestion that HMRC in any way encouraged the Appellant to think that those time limits should not be applied. Indeed their correspondence highlighted the time limits.

47. In certain circumstances I can see that delay during the period of an enquiry might be relevant to the discretion as to whether to extend time for notifying an appeal to the tribunal. For example, if the recall of witnesses was likely to be affected any prejudice may already have been suffered because of a delay in the enquiry rather than a delay in notifying the appeal. That is not the present case and neither party relied on any such specific prejudice caused by delay.

(iii) Explanation for the Delay

48. The burden is on the Appellant to satisfy the tribunal as to any explanation for the delay.

49. I have set out above my findings in relation to the explanation for the delay. Essentially, it is oversight on the part of the Appellant over a long period of time. Having not read the Review Letter properly, the Appellant apparently gave no thought to the future conduct of the valuation dispute. The reason for that is because it was not a high priority for him.

50. Whilst the Appellant referred to his reliance on Champion, I am satisfied that he was not relying on them to lodge an appeal on his behalf or to advise him in relation to the appeal. The significance of Champion not receiving the Review Letter is simply that if they had received it, then it is likely that they would have alerted the Appellant to the need to lodge an appeal within 30 days. It does not explain why the Appellant did not himself recognise the need to lodge an appeal or give consideration as to how the appeal should be dealt with.

51. The Appellant discovered on or about 6 November 2017 that he was out of time to appeal. He immediately contacted Champion and agreed that they would prepare and submit an appeal to the tribunal. It is striking that even after becoming aware that he had missed the 30 day time limit, it was not until 16 December 2016 that the appeal was notified to the tribunal. The Appellant's explanation that he was abroad at the end of November and that he did not think 3 or 4 weeks was material are inadequate explanations of the delay from 6 November 2016 to 16 December 2016.

52. The real explanation for the delay in this case is that the Appellant failed to read the Review Letter properly and thus to recognise that he had to notify his appeal to the tribunal if he wanted to challenge the valuation. Further, he failed to consider at any time after reading the review letter how the dispute on valuation should be progressed. I take into account that the Appellant is an experienced businessman used to dealing with complex matters. He himself described his own tax affairs as complex.

53. The procedure in this case was straightforward. The Review Letter clearly set out how the Appellant could take the matter to the tribunal. It clearly set out the 30 day limit, referred the Appellant to further information on appealing available on the gov.uk website, and set out the consequences of not notifying the appeal to the tribunal, namely the appeal would be determined in accordance with the conclusion in the closure notice.

54. It is clear from any reading of the Review Letter that the conclusion included the valuation of 31.5p per share. There was no scope for confusion on the part of the Appellant that somehow the time limit for appealing did not apply to any challenge to the valuation.

(iv) Consequences for the Parties of Extending Time

55. If the Appellant is given permission to make a late appeal then HMRC will suffer prejudice because they will lose the finality which for a long period of time they were entitled to expect. On the other hand, if permission is granted then the Appellant will have the opportunity to pursue his arguments on valuation.

56. The Appellant submitted that HMRC have been well aware throughout that he disputes their valuation of the Company shares. Further, that he has offered his assistance to HMRC to understand the valuation, in particular at the forum meeting and in Nottingham. Mr Henderson submitted that this was irrelevant to the present issue. Alternatively, if it is relevant then it supports the Respondents' case. The Appellant's involvement in the question of valuation and his dispute in relation to valuation should have meant he was fully appraised of the issues and the need to lodge an appeal.

57. I accept that the Appellant engaged with HMRC during the enquiry in relation to the valuation. It is clear that he was actively disputing the valuation. However that engagement ceased after 6 April 2016 when the review upheld the conclusion in the closure notice.

58. The Appellant contends that HMRC suffer no prejudice in this case because even if he had appealed in time his appeal would have been stayed behind the lead appeals. Whilst I do not accept that HMRC suffer no prejudice, I do consider that this is a relevant factor in favour of extending time to notify the appeal.

(v) Consequences for the Parties of Refusing to Extend Time

59. If time is not extended HMRC will retain the finality they were entitled to expect.

60. I am not in a position to readily assess the merits of the Appellant's proposed appeal. For present purposes only I assume that it would have at least a reasonable prospect of success and both parties were content for me to proceed on that basis. The Appellant would therefore lose his opportunity to pursue a meritorious appeal. I also take into account that the sum in dispute is not terribly significant for the Appellant.

61. The Appellant relies on the fact that he will be a witness at the hearing of the lead cases in any event. In my view that fact has no bearing on my discretion to extend time. If the Appellant has relevant evidence to give, and it appears that he does, then he will no doubt give evidence whether or not his appeal is allowed to proceed. What is relevant is that the lead cases will determine the very issue which the Appellant wishes to argue in his appeal.

(vi) Generally

62. I have had regard to the need to ensure compliance with time limits generally, and to the wasted costs and resources involved in applications such as the present. I have not given any special weight to the need for litigation to be conducted efficiently and at proportionate cost or to the need to enforce compliance with time limits, but I have treated both those factors as relevant considerations in the exercise of my discretion.

63. I must balance all the circumstances and factors described above. The length of the delay and the absence of any good explanation for the delay weigh heavily in the balance. So too does the fact that it is desirable for disputes to be resolved on their merits and that the issue which the Appellant seeks to raise will be determined by the lead appeals. Taking into account the circumstances as a whole, on balance I am not persuaded that it would be fair and just to extend the time for appealing.

Conclusion

64. For the reasons given above I refuse the application to extend time.

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

JONATHAN CANNAN
TRIBUNAL JUDGE

RELEASE DATE: 03 JULY 2017