[2015] UKFTT 0185 (TC)

TC04379

Appeal number: TC/2014/04513

VAT – strike - out application – additional years added to existing claim – application of four year time limits in section 80(4) VATA – HELD – additional years were new claim – could not override statutory time limit by adding years to existing claim – sist cannot override statutory time limits – no appealable decisions for most recent four years – strike out allowed.

FIRST-TIER TRIBUNAL
TAX CHAMBER

NAIRN GOLF CLUB **Appellant**

- and -

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

TRIBUNAL: JUDGE ANNE SCOTT, LLB, NP
MEMBER: MRS EILEEN A SUMPTER, WS

Sitting in public at Royal Highland Hotel, Inverness on Tuesday 24 March 2015

Mr Young for the Appellant

Mr Brooke, Officer of HMRC, for the Respondents

DECISION

Background

1. This is an application by HMRC to strike-out the appellant's appeal in relation to a claim for a repayment of output VAT for the period 1 October 2007 to 30 September 2013 in the sum of £185,532.66. That claim was made by way of a letter dated 30 January 2014 ("the 2014 claim").

2. The application for strike-out, dated 13 October 2014, was made in terms of Rule 8(3)(c) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the Rules"). We annex a copy of all relevant extracts from the rules at Appendix 1.

3. On 12 February 2015, HMRC clarified the basis of their application for strike-out and argued that:-

(a) the claims for the period 1 October 2007 to 31 December 2009 could not be admitted as those periods fall outside the provisions of section 80(4) Value Added Tax Act 1994 ("VATA"). The statutory limit is that a VAT reclaim has to be made within four years of the end of the prescribed accounting period.

(b) there could be no valid appeal in respect of the claim for the period 1 January 2010 to 30 September 2013 as the claim for that period had not been rejected, and

(c) any claim falls to be made in terms of Regulation 37 of the VAT Regulations 1995; in essence the calculations must be by reference to VAT periods which in the case of the appellant must be by reference to the quarterly VAT periods and not by reference to the annual adjustment.

4. The appellant argues that the claims for the period 1 October 2007 to 1 December 2009 should be treated as made in time since they are amendments to an earlier claim made on 26 March 2009 ("the 2009 claim").

The 2009 claim and appeal

5. The 2009 claim covered the periods 1 April 1991 to 31 December 1996 in the sum of £81,692 and the period 1 October 2005 to 30 September 2007 in the sum of £52,972.41. That total claim, in the sum of £134,664.4, was rejected by way of a letter dated 5 June 2009. The appellant appealed that decision to the Tribunal and it is an appeal reference TC/2009/12696. It is currently sisted.

6. The 2009 claim was intimated by way of a letter with calculations covering each of the relevant years. It was broadly stated to be a Fleming claim pending the outcome of the ECJ's decision in the *Canterbury Hockey Club* case. The relevant paragraphs on which the appellant now founds reads as follows:-

"I have therefore used an approximation to prepare the later years in the 1990s and in order to progress we have also used an approximation in the 2006 and 2007 claims.

When it is announced that the Revenue are going to process claims to implement the *Canterbury* decision then I would expect that I would be able to go through the individual invoices for the later years to extract the information to be able to refine the claim further. The input tax involved in these two categories is of course relatively minor.

If of course you feel that there is anything further that should be done to protect the Club's position in view of the impending time limits it would be helpful if you could bring this to my attention."

7. That claim was rejected on 5 June 2009 on the basis that the *Canterbury* decision had no impact on the restriction of the exemption for sporting services in Article 134(b) of EC VAT Directive 2006/112 (previously Article 13(A)(2)(b) of the Sixth Directive.

8. In fact, the Fleming claim was only the claim in relation to 1 April 1991 to 31 December 1996. Further the appeal was sisted originally behind the *Chipping Sodbury* case and latterly behind *Bridport* and *West Dorset.* The current position in that regard is that Judge Bishopp issued Directions released on 29 January 2015 following a hearing on 22 January 2015 stating that:

"All the appellants whose names appear on the attached list and which are not represented by KPMG LLP shall by, no later than 4 April 2015, inform the Tribunal that:

(a) they wished their appeals to be stayed, as related appeals; or

(b) they do not so wish (giving reasons for not wishing that their appeals be related cases);

and, in either case, shall state whether there are any issues additional to those set out in the list of common related issues referred to at paragraph 7 above which remain outstanding in their appeals, and if so identifying them."

9. The appellant argued that HMRC's position was unclear in regard to the 2009 claim and asked that this Tribunal recall that sist. We intimated that we could only consider the subject matter of the application for strike-out and that any arguments or applications in regard to the 2009 appeal would have to be considered in the context of that appeal itself.

10. We therefore refuse the application by the appellant to "lift the sist" in TC/2009/12696 since that appeal is not the subject matter of today's hearing. Any such application should be submitted to the Tribunal administration under that reference.

11. Mr Brooke very helpfully confirmed that it was anticipated that there would be a repayment in regard to the 2009 claim. However, it would be subject to an argument on unjust enrichment. HMRC's stance on that was very clear.

12. Mr Young argued that the 2009 claim had been outstanding for an exceedingly long time and that it could not have been Parliament's (*sic*) intention in promoting this legislation to penalise taxpayers if it takes over seven years, and still running, to provide the taxpayer with certainty from the State (*sic*) Courts to determine their tax obligations and the State should not be allowed to benefit from that delay. If it did

have that expectation then it would appear to be in breach of Article 6 of the European Convention on Human Rights and Article 47 of the Charter of Fundamental Rights of the European Union.

13. We reiterated that the jurisdiction of the Tribunal in this hearing did not extend to consideration of the 2009 claim other than to the very limited extent of deciding whether the subject matter of this appeal was an extension of that claim. Accordingly, we could not, and would not, consider those arguments.

Strike out Application

14. The first issue for the Tribunal was to decide exactly what the issues were before us. Mr Young advanced an argument that there was a live appeal in regard to 01 January 2010 to 31 December 2010. We do not accept that. The relevant extract from the decision letter under appeal reads as follows:-

"Your claim, received 3 February 2014 was therefore partly out of time. Any VAT periods ending before 3 February 2010 are too late to be corrected.

The element of your claim that refers to 01/10/07 to 31/12/10 is therefore rejected.

The absence of any indication that you wished to take part in the reimbursement scheme laid out in Public Notice 700/45 (sections 9 and 10), requires that I place the remainder of the claim on hold to be considered under phase 2 as described in brief 25/14."

15. That was subsequently rectified in a letter dated 8 October 2014 stating that the period that was rejected was 1 October 2007 to 31 December 2009. We accept that the original decision letter contained a clerical error since if the middle paragraph is deleted the letter makes perfect sense. There has never been an appealable decision in regard to 2010.

16. Accordingly we are considering only the matters referred to in paragraph 3 above and those are included in the 2014 claim.

2014 claim

17. The 2014 claim was made by letter and the relevant paragraphs read:-

"… I understand the UK court has yet to make a determination to finally conclude the Bridport case … however in anticipation of the implementation of either an agreement or the ruling by the Tribunal I enclose a claim for the periods from December 2007 to September 2013. The periods up to September 2007 have already been submitted and are the subject of the appeal.

As far as December 2013 is concerned, those contain an annual adjustment for the Club's VAT year to 30 September 2013. We have dealt with this under the normal VAT filing regime.

The claims are summarised. However, I enclose a sample of how the claims have been calculated."

Claims for the period 1 October 2007 to 31 December 2009

The arguments

18. HMRC argue that the appeal cannot succeed because the 2014 claim cannot be treated as an amendment to the 2009 claim because it relates to prescribed accounting periods which were not included in that claim. In support of that approach HMRC relied on Section 80(4) VATA and referred to the following cases:-

University of Liverpool v HMRC MAN/96/728
Reed Employment Ltd v HMRC 2011 UKFTT 200 (TC) (*Reed 1*)
Reed Employment Ltd v HMRC 2013 UKUT 0109 (TCC) (*Reed 2*)
Bratt Auto Services Ltd and Bratt Auto Contracts Ltd v HMRC 2014 UKFTT 676 (*"Bratt")*
HMRC v Abdoul Noor 2013 UKUT 071 (TCC) ("*Noor*")
Hadley Wood Golf Club v HMRC TC 2014 05589 (*"Hadley")*

The appellant

19. The appellant's principal arguments submitted in writing, and as stated for them are:-

(1) The time limit – Section 80(4) VATA is not the point in issue.

(2) The point in issue is what constitutes a claim for the purposes of Section 80(2) VATA.

(3) The Club has an outstanding appeal reference TC/2009/12696 but the appellant is not clear what the status of that appeal currently might be. (We have already dealt with that point in the preceding paragraphs.)

(4) The issue before the Tribunal is whether the 2014 claim is a new claim or rather the implementation of the decision in the lead case and that would apply to "all periods antecedent to the periods under appeal". The calculation contained in the 2014 claim included the period up to 2007 which was the period in the appeal before the Tribunal and also all subsequent periods on the basis that these will be the natural consequence of the implementation of the Tribunal's (*sic)* determination of the appeal.

(5) That is not an unreasonable expectation with no hope of success.

(6) If it is found that the 2014 claim is a new claim then the interpretation of what constitutes a claim for the purposes of section 80(2) VATA becomes important since by engaging in the appeal process that amounts to a "sufficient intimation of a claim that it is expected that the law will be applied in subsequent periods".

(7) An undetermined appeal already within the Court process should be accepted as adequate intimation of a claim for all in-time periods going forward from the period before the Court. Section 80(2) of VATA refers to a claim being made to recover over-paid VAT.

(8) The sist in the 2009 claim does not exclude the time limit in section 80(4) VATA and the original Direction was made at a time when the time limits in that section were not an issue. If the provisions of section 80(4) VATA had been excluded then there would be sufficient time to enable the claim to be lodged within the time limit.

(9) The claim in respect of the years 2010-2014 have been "simply parked behind the original appeal" and that is inconsistent with treating those as new claims.

20. Orally, Mr Young relied extensively on *Fleming (t/a Bodycraft) v Revenue and Customs* [2008] UKHL 2 to the effect that section 80 VATA should be disapplied. He also argued that this Tribunal has no jurisdiction in regard to legitimate expectation since he accepted the judgement in *Noor* but that as the appellant had had a legitimate expectation that the claims for the years to 2009 would be accepted then the appeal should be remitted "to a higher authority" in terms of Rule 5(3)(k)(ii) of the Tribunal Rules.

Claim re period 1 January 2010 to 30 September 2013

21. We have no hesitation in finding that there are no appealable decisions for this period and therefore they are not for consideration by this Tribunal. The appeal insofar as it relates to that period is accordingly struck out.

The Law

Section 80 VATA

22. Section 80 VATA sets out the time limits for making a reclaim of output tax from HMRC and reads as follows:-

"Section 80

(1) Where a person—

(a) has accounted to the Commissioners for VAT for a prescribed accounting period (whenever ended), and

(b) in doing so, has brought into account as output tax an amount that was not output tax due,

the Commissioners shall be liable to credit the person with that amount.

(2) The Commissioners shall only be liable to [credit or] repay an amount under this section on a claim being made for the purpose.

(2A) Where—

(a) As a result of a claim under this section by virtue of subsection (1) or (1A) above an amount falls to be credited to a person, and

(b) After setting any sums against it under or by virtue of this Act, some or all of that amount remains to his credit.

the Commissioners shall be liable to pay (or repay) to him so much of that amount as so remains.

(3) It shall be a defence, in relation to a claim [under this section by virtue of subsection (1) or (1A) above, that the crediting] of an amount would unjustly enrich the claimant.

….

[(4) The Commissioners shall not be liable on a claim under this section—

(a) to credit an amount to a person under subsection (1) or (1A) above, or

(b) to repay an amount to a person under subsection (1B) above,

if the claim is made more than [4 years] after the relevant date.]

[(4ZA) The relevant date is—

(a) in the case of a claim by virtue of subsection (1) above, the end of the prescribed accounting period mentioned in that subsection, unless paragraph (b) below applies;

(b) in the case of a claim by virtue of subsection (1) above in respect of an erroneous voluntary disclosure, the end of the prescribed accounting period in which the disclosure was made;

(c) in the case of a claim by virtue of subsection (1A) above in respect of an assessment issued on the basis of an erroneous voluntary disclosure, the end of the prescribed accounting period in which the disclosure was made;

(d) in the case of a claim by virtue of subsection (1A) above in any other case, the end of the prescribed accounting period in which the assessment was made;

(e) in the case of a claim by virtue of subsection (1B) above, the date on which the payment was made.

In the case of a person who has ceased to be registered under this Act, any reference in paragraphs (b) to (d) above to a prescribed accounting period includes a reference to a period that would have been a prescribed accounting period had the person continued to be registered under this Act.]

…..

…..

(6) A claim under this section shall be made in such form and manner and shall be supported by such documentary evidence as the Commissioners prescribe by regulations; and regulations under this subsection may make different provision for different cases.

…..".

Regulations

23. The relevant Regulations are included in the VAT Regulations 1995 SI 2518/1995 which reads as follows:

"25 Making of returns

(1) Every person who is registered or was or is required to be registered shall, in respect of every period of a quarter or in the case of a person who is registered, every period of 3 months ending on the dates notified either in the certificate of registration issued to him or otherwise, not later than the last day of the month next following the end of the period to which it relates, make to the Controller a return [in the manner prescribed in regulation 25A] showing the amount of VAT payable by or to him

and containing full information in respect of the other matters specified in the form and a declaration, [signed by that person or by a person authorised to sign on that person's behalf], that the return is [correct] and complete;

Provided that—

35

Where a taxable person has made an error—

(a) in accounting for VAT, or

(b) in any return made by him,

then, unless he corrects that error in accordance with regulation 34, he shall correct it in such manner and within such time as the Commissioners may require.

37 [Claims for credit for, or repayment of, overstated or overpaid VAT]

Any claim under section 80 of the Act shall be made in writing to the Commissioners and shall, by reference to such documentary evidence as is in the possession of the claimant, state the amount of the claim and the method by which that amount was calculated."

VAT Notice 700/45 'How to Correct VAT errors and make adjustment claims

24. The relevant paragraphs read:-

"4.4 Method 2: for errors of a net value between £10,000 and £50,000 which exceed the limits described below, or errors which exceed £50,000 or for errors of any size

You must use this method if:

- the net value of errors found on previous returns is between £10,000 and £50,000 and exceeds 1% of the box 6 (net outputs) VAT return declaration due for the current return period during which the error was discovered, or
- the net value of errors found on previous returns is greater than £50,000 or
- the errors on previous returns were made deliberately

You may, if you wish, use this method for errors of any size which are below the limits at paragraph 4.3 above instead of a Method 1 error correction. If you use this method you must not make adjustment for the same errors on a later VAT return.

When notifying HMRC of an error correction you should use form VAT 652. This can be printed from our website at hmrc.gov.uk or you can request a form by contacting the VAT Helpline on Telephone: 0300 200 3700.

If you are unable to obtain a form you should, by reference to business records in your possession, write to the appropriate office at paragraph 4.11 and provide full details of the errors including:

- how each error arose
- the VAT accounting period in which it occurred
- if it was an input tax or output error

- the VAT underdeclared or overdeclared in each VAT period
- how you calculated the VAT underdeclared or overdeclared
- whether any of the errors resulted in you paying us an amount that wasn't due, and
- the total amount to be adjusted

If the error was an amount underdeclared please include sufficient detail about the error on a separate sheet if necessary, to enable us to decide whether we should charge interest. You can find further information about interest in Notice 700/43 Default interest."

Discussion in regard to the period 1 October 2007 to 31 December 2009

25. There was no dispute that the 2009 claim is still outstanding. Therefore it falls within the type of claim specified in Liverpool such that it might be possible to extend and amend a claim.

26. Both parties focussed on paragraphs 110-112 of *Reed 1*. It is worth setting out the wording therein:-

"110 There is no definition of 'claim' in VATA, nor any provision for amendment of a claim. The starting point, therefore, we think is that any insertion of a right to repayment must be regarded as an individual, discrete claim, separate from any other, unless it is shown to be in essence as one with an earlier claim.

111 That test, in our view, will be satisfied only if the later claim arises out of the same subject matter as the original claim, without extension to facts and circumstances that fall outside the contemplation of the earlier claim. Without deciding matters outside of this appeal, we consider, for example, that this would generally include cases where a particular computation was not made at the time of the original claim, but the subject matter of the claim was sufficiently identified for such a calculation made subsequently to be related back to the original claim. Simple calculation errors would similarly be included. It should also cover, we think, cases where particular items within the category of the subject matter of the original claim are unknown or not fully identified at the time of the original claim, and would but for that fact have been included in the original claim, but only subsequently come to light.

112 The line in each individual case will be for the tribunal, on the particular facts before the case before it, to draw. What is necessary is for the tribunal to determine the subject matter of each claim. This cannot, in our view, be cast too wide, as that would permit claims that are clearly discrete on any analysis potentially to be drawn in. Thus, it would not be right, in our view, to regard a later claim as an amendment to an earlier one simply because it relates to the same period, is a claim under the same statutory provision, or relies upon the same legal argument or the same error on the part of the taxpayer. It follows also that no combination of these factors would result in a later claim being treated as part of an earlier one."

27. Therefore what is the subject matter of each claim with which we are dealing in this appeal? We understand that Mr Young genuinely believed that when he put in the 2009 claim, and it was sisted, that he thought that nothing further required to be done in regard to green fees until such time as there was a decision in the lead case. However, we must look objectively at the claim. It is absolutely clear that the 2009 claim dealt only with the period up until 2007. It would seem from paragraph 6 above that the 2007 claim was very clearly limited to two periods before 2007. The claim in regard to 2006 and to 2007 does not meet the statutory requirements since approximate figures have been utilised. It was clear that Mr Young expected that he would have to amend that aspect of the claim (although that has not been done in

2014 claim) since he indicates that he would be able to go through the individual invoices for the later years and the input tax involved is relatively minor. He could say that because he had the figures available.

28. There is nothing in that letter suggesting that there is in any sense a protective claim for future years. In any event, if one looks to the legislation, any claim must be linked to prescribed accounting periods in terms of Regulations 35 and 37 of the VAT Regulations 1995. At the time of the 2009 claim it would not have been possible to even imagine which later periods would be involved or to link the claim to prescribed periods. The 2009 claim specifies the prescribed accounting periods to which it relates and those claimed periods ended with the period 30 September 2007.

29. The 2014 claim is evidently dealing with later periods and relates again to different prescribed accounting periods. Technically we observe that the 2014 claim is not compliant with the statutory requirements.

30. Undoubtedly the core subject matter of both the 2009 and 2014 claims is the question of green fees and the legislation utilised to make the claim is the same in both cases. The primary issue for the appellant is that the two claims relate to completely different periods. In our view, therefore, this appeal falls squarely within the parameters of paragraph 112 of *Reed 1*.

31. We have no doubt that when Mr Young referred to "later years" in the 2009 claim he was referring to the years 2006 and 2007.

32. Mr Young asked the Tribunal to determine precisely what amounted to a claim in terms of section 80 VATA. The answer to that is to be found at paragraph 30 in *Bratt* where Judge Berner states:

"It may be helpful … if I summarise my conclusions as to the principles to be applied in determining whether a claim has been made for section 80 purposes:

> (1) For there to be a 'claim' it must constitute a demand for repayment of overpaid VAT.
>
> (2) The requirements of reg 37 of the VAT Regulations are mandatory, in the sense that, even if there is a demand for repayment, such a demand that does not comply with reg 37 will not be a claim for the purpose of s80 VATA.
>
> (3) The requirements of reg 37 are, on the other hand, exhaustive. It is not a requirement that the claim must set out the prescribed accounting period or periods for which the claim is made. That is part of the enquiry as to whether HMRC are liable to credit or repay overpaid VAT, but is not a requirement in order that a claim may be made.
>
> (4) Similarly, it is not a requirement that the claim must be such as to enable HMRC to determine the issue of overpayment, or that the claim should continue sufficient information as to enable a reasonably competent VAT officer to understand the way in which the amount claimed has been calculated. …
>
> (5) It is not sufficient to refer to a prospective claim, with a promise that details will be sent in due course. However, if the demand does constitute a claim within reg 37, the fact that such a claim does not include the full figures, or has been made at a time when the claimant has not gathered all the information required, but where further details are to be provided as soon as possible, will not prevent that demand from being a claim for s80 purposes. The question then will be whether the provision of the further information relates to the same subject matter as the original claim, without extension to facts and circumstances outside the contemplation of the

original claim, and is therefore an amendment of the original claim and not a new and separate claim."

That is a very clear exposition of the law and one with which we entirely agree. Accordingly, the fact that there was an extant appeal for certain periods prior to 2007 was not, and could not be, an intimation of a claim for later periods.

33. We also agree entirely with Judge Short in *Hadley* where she states at paragraphs 24 and 25:-

"22 It is clear from the authorities that some types of amendment to existing claims will be accepted as not giving rise to a new claim, but these are in the main limited to either changes of reasons for making the claim without a change to the quantum of the claim (Vodafone) and changes in calculation methods or to correct errors (as suggested in *Reed*). The *Reed* case itself … stressed that what amounts to an amendment rather than a new claim is 'very much a question of fact and degree'.

25 We do not agree with the appellant's description of the 2013 Claim as '*an extension of the original calculations to cover the intervening period*'; adding new prescribed accounting periods to the 2009 claim is going beyond extending the calculation of that claim, it is adding new demands for repayment of tax. Following the approach of Mr Justice Roth in the *Reed* decision and giving 'claim' its ordinary meaning:

> '*In this context it means a demand for repayment of overpaid tax. It may relate to one accounting period or many, to one particular supply or many, and to a part of the taxpayer's business or the whole of its business. There is no reason in my view, why any of these cannot constitute a self-standing claim'."*

34. We can find no basis on which the 2014 claim could be found to be an amendment or extension of the 2009 claim. As in Hadley, it is introducing wholly new accounting periods.

35. That then leaves us with the argument that the delay in bringing the claim for the 2008 and 2009 years was because of HMRC's delay in concluding the *Bridport* litigation and providing information to taxpayers about the consequences of that case. Mr Young relied heavily on HMRC's Brief issued on 24 August 2012 which he had considered at the time. That stated:-

"**HMRC's position**

The position remains as advised in Revenue and Customs Brief 30-11. Decisions of the First-tier Tribunal are binding only on the parties to the decision. Consequently, we do not propose to pay any other claims already submitted and we are not inviting new claims in the wake of the decision. Any claims that are submitted will be rejected."

36. HRMC were, and are, perfectly entitled to state their position. Equally, it was, and is, for the taxpayer to ensure that claims are made in time and it was widely understood that there was a need to make protective claims in time as the *Bridport* decision proceeded through the courts. It was unfortunate that Mr Young was not aware of that and laboured under the misapprehension that a sist meant that all time limits were suspended.

37. We should make it clear that a sist can only affect the appeal which is sisted. By definition that relates to a claim which has been made in time. It cannot affect claims which have not yet been made or might never be made.

38. Regrettably it is not that uncommon for a litigation which is referred to the CJEU to last for many years and for hundreds or thousands of cases to be sisted pending the

outcome of such litigation. It is incumbent upon the taxpayer to ensure that its position is protected regardless of the outcome.

39. We cannot accept Mr Young's argument that section 80 VATA should be disapplied because of the dicta in *Fleming*. The factual context is entirely different. In *Fleming* the three year cap had been announced with immediate effect and that had been successfully challenged. Since March 2009 there has been absolutely no doubt that section 80 VATA is good law.

40. We do not accept that the appellant had a legitimate expectation that because the 2009 claim had been sisted then all subsequent years would be treated in the same way. That is simply a misunderstanding of the law.

41. Even if we are wrong on that Rule 5k(ii) simply could not apply since these proceedings were started in 2014 (and we can only be concerned with these proceedings) and there has been no change of circumstances.

Summary

42. We find that there are two separate claims in this instance. The 2014 claim is a new claim. The 2009 claim did not, and could not, include a claim, in terms of the relevant legislation, for subsequent periods.

43. A sist of proceedings cannot operate to amend a statutory time limit.

44. There is no appealable decision for the four in-date claims in the 2014 decision and therefore this Tribunal has no jurisdiction at this juncture.

45. The claim in respect of the claims for the period 1 October 2007 to 31 December 2009 have not been submitted in accordance with the statutory time limit and therefore the prospects of success in this appeal are negligible, if not, nil. Accordingly the appeal falls to be struck out in terms of the Rules.

46. 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: 30 April 2015

Appendix 1

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.

5.— Case Management powers

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

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

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

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

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

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

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

(e) deal with an issue in the proceedings as a preliminary issue;
(f) hold a hearing to consider any matter, including a case management hearing;
(g) decide the form of any hearing;
(h) adjourn or postpone a hearing;
(i) require a party to produce a bundle for a hearing;
(j) stay (or, in Scotland, sist) proceedings;
(k) transfer proceedings to another tribunal if that other tribunal has jurisdiction in relation to the proceedings and, because of a change of circumstances since the proceedings were started—
(i) the Tribunal no longer has jurisdiction in relation to the proceedings; or
(ii) the Tribunal considers that the other tribunal is a more appropriate forum for the determination of the case;
(l) suspend the effect of its own decision pending the determination by the Tribunal or the Upper Tribunal, as the case may be, of an application for permission to appeal, a review or an appeal.

8(3)—Striking out a party's case

The Tribunal may strike out the whole or a part of the proceedings if—
(a) the appellant has failed to comply with a direction which stated that failure by the appellant to comply with the direction could lead to the striking out of the proceedings or part of them;
(b) the appellant has failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings fairly and justly; or
(c) the Tribunal considers there is no reasonable prospect of the appellant's case, or part of it, succeeding.