[2015] UKFTT 0424 (TC)

TC04601

Appeal number:TC/2014/01735

PROCEDURE – applications for permission to notify late appeals – discretion – Data Select Ltd v HM Revenue & Customs and Advocate General for Scotland v General Commissioners for Aberdeen City applied – applications refused

FIRST-TIER TRIBUNAL
TAX CHAMBER

INDIGO MEDIA PARTNERSHIP **Appellant**

- and -

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

TRIBUNAL: JUDGE JONATHAN CANNAN
MR ROLAND PRESHO FCMA

Sitting in public in Edinburgh on 28 and 29 January 2015

Mr Robert Crawford, partner appeared for the Appellant

Mr Brendan Hone of HM Revenue & Customs appeared for the Respondents

DECISION

Background

1. The Appellant is a partnership known as Indigo Media Partnership, comprising 17 individual partners. We shall refer to it either as the Appellant or the Partnership. Mr Robert Crawford is one of the partners and he appeared on behalf of the Appellant.

2. In 2001 and 2002 the Appellant made certain investments in various films for which it claimed relief under section 42 Finance (No 2) Act 1992 ("Section 42") and section 48 Finance (No 2) Act 1997 ("Section 48"). The claims were made in tax years 2000-01 and 2001-02. We describe the nature of those reliefs and the circumstances in which the Appellant came to claim relief in more detail below.

3. The Appellant has applied for an extension of time in which to appeal against amendments made by way of closure notices following enquiries into the Partnership tax returns for tax years 2000-01 and 2001-02. The closure notice for tax year 2000-01 was issued on 30 November 2007. The closure notice for 2001-02 was issued on 11 May 2012.

4. An appeal against the amendment to the Partnership tax return for 2000-01 was notified to HMRC on 21 December 2007. It was not notified to this tribunal until 30 March 2014. The appeal against the amendment to the Partnership tax return for 2001-02 was notified to this Tribunal on 30 March 2014. In both cases the substantive grounds of appeal may be summarised as follows:

(1) HMRC had incorrectly identified the dates on which the Appellant was properly constituted and had commenced trading.

(2) HMRC had incorrectly identified the dates on which expenditure had been incurred and the amount of qualifying expenditure.

(3) As a matter of law, the revocation in 2007 of certain certificates issued by the Department of Culture, Media and Sport in 2001 could not affect relief for expenditure on films in tax years 2000-01 and 2001-02.

5. The grounds of appeal also raise issues in relation to the statutory review procedure which we consider below.

6. The issue before us is whether we should give permission to the Appellant to notify late appeals for each tax year. In relation to the amendment for tax year 2000-01 there is also a prior issue as to whether the appeal was in fact in time.

7. The evidence before us for the purposes of these applications comprised two volumes of documentation. We did not hear any witness evidence. Save in relation to one matter referred to below there were no issues of fact.

Availability of Film Reliefs

8. Both parties were content to proceed on the basis that the Appellant had at least a reasonable prospect of establishing entitlement to relief in relation to expenditure on films in 2000-01 and 2001-02. We do not therefore need to make any findings in relation to the underlying merits of the appeals.

9. In the relevant tax years, relief by way of capital allowances was available under Section 42 where production expenditure was incurred on a qualifying film or where expenditure was incurred on acquiring a qualifying film. The film must be certified as a "British film" by the Department for Culture, Media and Sport ("DCMS"). Section 42 had been modified by Section 48. Expenditure on small qualifying films could be written off over a one year period rather than the original three year period. Otherwise relief would be available under the unmodified Section 42.

10. We understand that the appeals raise two broad issues. Firstly, the extent to which relief is available, if at all, under Section 42. Secondly whether relief can be withdrawn if, some years later, the DCMS certificates are withdrawn.

Statutory Review and Appeals Process

11. Before considering the statutory review and appeals procedure in the Taxes Management Act 1970 ("TMA 1970") we should also briefly say something about the tax treatment of partnerships and individual partners.

12. The scheme of the TMA 1970 involves the making of partnership returns by the partner or partners who are given notice by HMRC that they are required to do so. Any enquiry into a partnership return is commenced by a notice of enquiry to a partner who made the partnership return or his successor. Such an enquiry automatically opens an enquiry into all the partners' personal returns. The closure notice is given to the partner or partners to whom the notice of enquiry was given. Where an amendment to the partnership return is made, HMRC will also give a "notice" to each of the partners amending their personal returns so as to give effect to the amendment to the partnership return.

13. An appeal against an amendment to a partnership return is generally pursued by the partner who was given notice of the requirement to make a return. We were referred to the decision of one of us (Judge Cannan) in *MCashback 6 LLP v Commissioners for HM Revenue & Customs [2013] UKFTT 679 (TC)*. At [52] to [78] it was held that an individual partner has no right to appeal the consequential amendment of a personal tax return following an amendment of the partnership tax return. However an individual partner does have a right of appeal against an amendment to the partnership return by HMRC.

14. We now consider the statutory review and appeals process, in so far as relevant for present purposes.

15. Prior to 1 April 2009, where a taxpayer disputed the amendments made by a closure notice he was required to give notice of appeal to HMRC within a period of 30 days. The taxpayer was entitled to elect that the appeal be to the Special Commissioners. Once the notice of appeal had been given, either party could serve notice on the clerk to the Special Commissioners to fix a date for a hearing. There was no time limit within which such notice was to be given. In practice, once notice was given the Presiding Special Commissioner would decide what directions were necessary for the conduct of the appeal.

16. With effect from 1 April 2009, section 31A TMA 1970 continues to require notices of appeal to be given to HMRC within 30 days. Section 49 TMA 1970 makes provision for late appeals where HMRC agree or where the tribunal gives permission. The tribunal's discretion is to be exercised by reference to the principles described below.

17. Where notice of appeal has been given to HMRC, there is then provision either for a statutory review by HMRC or for the appellant to notify the appeal to the tribunal. The statutory review procedure was a new procedure introduced with effect from 1 April 2009.

18. Once notice of appeal has been given to HMRC, HMRC may offer the taxpayer a statutory review, or the taxpayer may ask for a review (TMA s 49A and 49B). Alternatively the taxpayer may simply notify the appeal to the tribunal (TMA s 49D).

19. Section 49A provides as follows:

> " *(1) This section applies if notice of appeal has been given to HMRC.*
>
> *(2) In such a case—*
>
> *(a) the appellant may notify HMRC that the appellant requires HMRC to review the matter in question (see section 49B),*
>
> *(b) HMRC may notify the appellant of an offer to review the matter in question (see section 49C), or*
>
> *(c) the appellant may notify the appeal to the tribunal (see section 49D)....*"

20. We are not concerned in this appeal with section 49B. Section 49C applies to the offer of a review by HMRC. It is particularly relevant for present purposes and provides as follows:

> "*49C (1) Subsections (2) to (6) apply if HMRC notify the appellant of an offer to review the matter in question.*
>
> *(2) When HMRC notify the appellant of the offer, HMRC must also notify the appellant of HMRC's view of the matter in question.*

(3) If, within the acceptance period, the appellant notifies HMRC of acceptance of the offer, HMRC must review the matter in question in accordance with section 49E.

(4) If the appellant does not give HMRC such a notification within the acceptance period, HMRC's view of the matter in question is to be treated as if it were contained in an agreement in writing under section 54(1) for the settlement of the matter.

(5) The appellant may not give notice under section 54(2) (desire to repudiate or resile from agreement) in a case where subsection (4) applies.

(6) Subsection (4) does not apply to the matter in question if, or to the extent that, the appellant notifies the appeal to the tribunal under section 49H.

(7) ...

(8) In this section "acceptance period" means the period of 30 days beginning with the date of the document by which HMRC notify the appellant of the offer to review the matter in question."

21. If on review the review officer upholds the original decision, and the taxpayer wishes to notify his appeal to the Tribunal, he must do so within 30 days of the date of the review letter (TMA s 49G(2), (5)(b)(ii)).

22. If a statutory review is neither offered nor requested, the taxpayer can notify his appeal to the Tribunal (TMA s 49D).

23. If a statutory review is offered but not accepted, the appellant may notify the appeal to the tribunal within the acceptance period, as defined in section 49C (TMA s49H). Section 49H provides as follows:

"*49H(1) This section applies if —*

(a) HMRC have offered to review the matter in question (see section 49C), and

(b) the appellant has not accepted the offer.

(2) The appellant may notify the appeal to the tribunal within the acceptance period.

(3) But if the acceptance period has ended, the appellant may notify the appeal to the tribunal only if the tribunal gives permission.

(4) If the appellant notifies the appeal to the tribunal, the tribunal is to determine the matter in question.

(5) In this section "acceptance period" has the same meaning as in section 49C"

.

24. Finally, for present purposes we should identify section 54 TMA 1970 which provides as follows:

> " *(1) Subject to the provisions of this section, where a person gives notice of appeal and, before the appeal is determined by the tribunal, the inspector or other proper officer of the Crown and the appellant come to an agreement, whether in writing or otherwise, that the assessment or decision under appeal should be treated as upheld without variation, or as varied in a particular manner or as discharged or cancelled, the like consequences shall ensue for all purposes as would have ensued if, at the time when the agreement was come to, the tribunal had determined the appeal and had upheld the assessment or decision without variation, had varied it in that manner or had discharged or cancelled it, as the case may be.*
>
> *(2) Subsection (1) of this section shall not apply where, within thirty days from the date when the agreement was come to, the appellant gives notice in writing to the inspector or other proper officer of the Crown that he desires to repudiate or resile from the agreement.*"

Circumstances

25. As mentioned above, for the most part we can set out the circumstances which led to the appeals being notified to the tribunal without having to resolve any factual issues. We make the following findings of fact.

26. The Partnership tax returns, as submitted, claimed relief for expenditure on qualifying films of £14,060,012 in 2000-01 and £578,721 in 2001-02. Relief was claimed in relation to eleven films in total. Ten in 2000-01 and one in 2001-02.

27. On 9 January 2003 HMRC issued a notice under section 12AC(1) TMA 1970 informing the Appellant that they intended to enquire into the 2000-01 Partnership tax return. A closure notice was issued on 30 November 2007 pursuant to section 28B(1) TMA 1970. The effect of the closure notice was to deny relief for all losses claimed in 2000-01. The Appellant notified an appeal to HMRC on 21 December 2007, and elected that the appeal should be held before the Special Commissioners in Edinburgh. The appeal was never notified to the Special Commissioners. On 31 March 2014 the Appellant lodged a notice of appeal with the Tribunal seeking permission for a late appeal in so far as necessary.

28. On 9 January 2003 HMRC issued another notice under section 12AC(1) TMA 1970 informing the Appellant that they intended to enquire into the 2001-02 Partnership tax return. For some reason further notices were given on 20 January 2004 but nothing turns on that. A closure notice was issued on 11 May 2012 pursuant to section 28B(1) TMA 1970. The effect of the closure notice was to amend the original profit figure of £578,525 to a net trading loss of £3,667,337. No notice of appeal was

given to HMRC. On 31 March 2014 the Appellant lodged a notice of appeal with the Tribunal seeking permission for a late appeal.

29. The combined effect of the closure notices was to deny relief for eight of the films in respect of which relief had been claimed. Relief was allowed in relation all the expenditure claimed in relation to two films, albeit in 2001-02 rather than 2000-01 which was the year in which relief had been claimed. Relief was partly allowed in relation to a third film, again in 2001-02 rather than 2000-01.

30. In the light of that bare summary we can describe the circumstances in more detail.

31. On 30 July 2001 HMRC gave the Appellant a notice of intention to enquire into the Appellant's claim for loss relief in tax year 2000-01. That notice was given under Schedule 1A(5) TMA 1970. The notice was given to the Appellant by an Inspector of Taxes, Mr D Duthie. Mr Duthie was the head of a specialist film anti-avoidance unit. Mr Crawford then corresponded on behalf of the Appellant. A copy of the notice was also given to Scotts Media Tax Limited ("Scotts") who had promoted investment in the Appellant to the individuals who later became partners in the Appellant.

32. The enquiry commenced on 30 July 2001 was under separate provisions to that commenced on 9 January 2003 and has never been closed. It was an enquiry into claims for relief, rather than the Partnership tax returns. However nothing turns on that for present purposes and neither party attached any significance to it for the purpose of the applications before us.

33. When the closure notice was issued for 2000-01 on 30 November 2007, Mr Duthie set out his reasons for refusing all relief in 2000-01 in Appendix A to the notice. There are factual issues in relation to those reasons which go to the underlying merits of the appeals. For present purposes we can record that Mr Duthie considered:

(1) Seven films had not been certified by DCMS as at 5 April 2001;

(2) In relation to one of those seven films, no application for qualifying status had ever been submitted to DCMS;

(3) For five films, whilst DCMS had granted certificates in 2001, those certificates were subsequently revoked in 2007.

(4) The Appellant had not commenced trading until after 5 April 2001.

(5) Expenditure on the films was not incurred until after 5 April 2001.

34. Mr Duthie indicted that he would consider claims for relief in 2001-02 and noted that the enquiry into the partnership return for 2001-02 remained open. He said that any claims would be capped to verified production costs actually incurred.

35. As noted above, an appeal against this closure notice was given to HMRC but neither party asked the Special Commissioners for a hearing date.

36. On 10 June 2008 Mr Duthie wrote to the Appellant referring to specific documentation and information held in relation to all the films. The last paragraph of his letter was as follows:

> "*It is only because we have recently entered into a phase of civil proceedings in relation to the Partnership's appeal against the 2001 closure notice that I am now in a position to provide this information to the Partnership and its agents.*"

37. Mr Crawford stated that this came as a complete shock to the Appellant because it inferred, he said, that consideration had been given to criminal proceedings, possibly against the promoter or film producers involved if not the Appellant. It does not seem to us that the letter does necessarily suggest there was consideration of criminal proceedings, certainly in the context which has been described to us. It is equally consistent with a reference to the notice of appeal which had been given which might be described as formal civil proceedings following the closure of an enquiry into the 2000-01 partnership return.

38. On 31 July 2008 Mr Duthie wrote to Scotts asking whether they were now in a position to agree proposals he had made for settlement of the appeal against the 2000-01 closure notice and the 2001-02 open enquiry. On 15 January 2009 Mr Duthie requested a progress report which was followed by further correspondence and information from Mr Crawford.

39. On 7 October 2009 Mr Duthie invited the Appellant to withdraw its appeal against the 2000-01 closure notice. If the appeal was withdrawn, Mr Duthie undertook not to make any amendment to the partners' self assessment returns until the 2001-02 enquiry was settled. On the same date Mr Crawford sought clarification of that offer. He described the request to withdraw the appeal as coming "*out of the blue*". He also submitted that the extensive information now collected related to both the 2000-01 and 2001-02 returns.

40. Mr Duthie replied on 13 October 2009. Under a heading "*2001 Enquiry Closure Notice Appeal*" Mr Duthie said that he had been working on the premise that it was agreed that no relief was available for 2000-01. In the circumstances, if the appeal was being pursued, he would implement the new appeals procedures. He set out the Appellant's options as follows:

> (1) The Appellant could make a formal request for HMRC to review the matter;
>
> (2) HMRC could offer a review of the matter;
>
> (3) The Appellant could notify the appeal directly to the Tribunal.

41. Mr Duthie's letter contained a formal offer of a review, which must have been pursuant to section 49A(2)(b) TMA 1970.

42. Under a separate heading in the letter of "*2002 Enquiry*", Mr Duthie invited Mr Crawford to submit additional documents and information in order to make progress towards settlement of the 2002 appeal, by which he clearly meant the open enquiry.

43. On 21 October 2009 Mr Bill Fenton, an Inspector of Taxes and colleague of Mr Duthie wrote to Mr Crawford formally setting out HMRC's view of the matter which must have been pursuant to section 49C(2) TMA 1970. The view was that no relief was available in 2000-01 for reasons previously given. In the absence of agreement, Mr Crawford was told that the Partnership could either ask to have the decision reviewed or notify the appeal to the Tribunal within 30 days from the date of the letter. The period of 30 days must have been a reference to the "acceptance period" referred to in section 49C. The final paragraph of Mr Fenton's letter read as follows:

> "*If Mr Duthie or I do not hear from you and you do not notify your appeal to the tribunal, your appeal will be treated as settled by agreement under section 54(1) of the Taxes Management Act on the basis of the view of the matter as set out above, and the tax chargeable based on that view will be due and payable.*"

44. The reference to section 54(1) TMA 1970 was a reference to the effect of section 49C(3)-(5). If within the acceptance period an offer of review is not accepted and the appeal is not notified to the tribunal then HMRC's view of the matter is treated as if it were contained in a settlement agreement under section 54(1). Further there is no opportunity for a taxpayer to resile from that agreement under section 54(2) because it is treated as an agreement in writing.

45. There is then an issue as to what happened next. Mr Duthie and Mr Crawford spoke on the telephone on 27 October 2009 and they agreed a period of time for the provision of further information. Mr Crawford told us, in the course of submissions rather than by way of evidence, that he had agreed an extension of time of 3 months until 27 January 2010 for the provision of further information. He would not have agreed an extension of 2 months because his office was closed over Christmas and he is never in the country at that time of year.

46. Mr Fenton, who was dealing with matters together with Mr Duthie, understood that the extension of time was 2 months to 27 December 2009.

47. Neither party wished to adduce evidence in relation to this issue, over and above what was contained in the correspondence. We can see how matters were dealt with in correspondence. Mr Fenton wrote to Mr Crawford on 12 January 2010 stating that "*as no further information or response have been received within the extended period of time you requested, your appeal is now treated as being settled … by virtue of section 49C(4) Taxes Management Act 1970*". At the same time Mr Fenton asked for additional documentation which had been promised in order to finalise the position in relation to 2001-02.

48. Mr Crawford replied on 14 January 2010. He said that he had asked for a 3 month extension of time and Mr Duthie had agreed. He did not accept the position outlined by Mr Fenton and said he would submit further information by 27 January 2010. The letter also stated: "*In all the circumstances please treat this letter as revocation of your alleged position under 54(2) of the Taxes Management Act 1970*".

49. Mr Duthie wrote to Mr Crawford on 18 January 2010 quoting extracts from his file note of the telephone conversation on 27 October 2009. The extracts identified that Mr Crawford had asked for two months and Mr Duthie had agreed a period of 2 months before formalising any settlement action under section 54. Mr Duthie said that he had immediately confirmed matters to Mr Fenton and they agreed that the case should be put on ice until Christmas 2009. In his letter, Mr Duthie clearly maintained that 2000-01 had been formally determined and requested all additional information with a view to resolving the 2001-02 appeal, by which he clearly meant the open enquiry.

50. On 27 January 2010 Mr Crawford provided considerable further information in relation to three of the films. He did not refer to either of the two tax years and provided no response to Mr Duthie's letter.

51. We would be reluctant to determine what was precisely agreed in relation to an extension. The documentary evidence is not determinative of the issue and to resolve it fairly we would have to hear oral evidence from Mr Duthie, Mr Fenton and Mr Crawford. For present purposes and for reasons which follow later in this decision it is sufficient for us to find that that there was at least some misunderstanding between Mr Duthie and Mr Crawford as to whether the extension was 2 months or 3 months. It is significant however that Mr Crawford did not engage with Mr Duthie's letter dated 18 January 2010.

52. In October and November 2009 Mr Crawford had also been in correspondence with DCMS about certification of the films. For one film in particular Mr Duthie had said that no application for certification had been received by DCMS. Mr Crawford enquired with DCMS about the position and provided a copy of the application he believed had been made. By letter dated 9 November 2009 DCMS replied that they were awaiting clarification on the issue from HMRC and would respond once they had received that information. Mr Crawford wrote on 10 November 2009 effectively asking DCMS why they needed to liaise with HMRC. On 27 November 2009 DCMS replied that they consult as appropriate to ensure that they have all relevant information.

53. Mr Crawford took us to the correspondence between himself and DCMS referred to above. We have summarised the content of that correspondence. Mr Crawford suggested that HMRC had not acted in good faith, in particular in their dealings with DCMS and in connection with the revocation of certificates by DCMS. It does not seem to us that that allegation is relevant to the issues we have to determine. In any event and as we indicated at the hearing, we would not be able to make any finding of bad faith on the part of HMRC based on the limited material provided to us and in the absence of oral evidence.

54. On 12 February 2010 Mr Fenton acknowledged the documentation and information provided by Mr Crawford on 27 January 2010. He stated that he was reviewing it with a view to determining "*what relief may be due to [the Appellant] for tax year 2001-02*". He also gave Mr Crawford the opportunity to provide further

information, which Mr Crawford did in relation to two further films on 12 April 2010 and 28 May 2010.

55. It is clear that Mr Fenton was addressing tax year 2001-02 in his correspondence. On 26 August 2010 he wrote to Mr Crawford setting out HMRC's position in relation to the eleven films, in each case for tax year 2001-02. Five films were denied relief on the basis that DCMS had revoked their certification. Three films were denied relief on other grounds. Relief was offered for three films on a without prejudice basis.

56. There was subsequent discussion between the parties and on 7 April 2011 Mr Fenton made further without prejudice proposals, again specifically in relation to tax year 2001-02. Those proposals included proposals to deal with the individual partners' tax liabilities and the issuing of amendments to the individual partners' self assessment returns.

57. There was then a meeting on 30 September 2011 attended by Mr Crawford, Mr Fenton and another HMRC officer. Mr Crawford said that there was a "*disparate view amongst the partners on settlement*". Various aspects of the enquiry and potential tax liabilities were discussed without agreement. There was no reference to specific tax years.

58. There followed a period when there were discussions about settlement between the individual partners. The partners were unable to agree the position and on 11 May 2012 Mr Fenton issued a closure notice in relation to the enquiry into the 2001-02 partnership return. The notice referred to the Partnership's appeal rights, the 30 day time limit to notify an appeal to HMRC and the statutory review procedure that would follow. In fact no notice of appeal was ever given to HMRC.

59. On 5 December 2012, having been contacted by an agent for one of the partners, Mr Fenton confirmed that HMRC would not be seeking penalties from any of the partners as a result of the incorrect partnership returns. This was said to be without prejudice to any other action HMRC might take as a consequence of the recently concluded enquiries. We infer that this referred to the possibility of civil recovery proceedings in relation to tax and interest arising from consequential amendments to the partners self assessment returns.

60. We understand from both parties that there was then a period where HMRC were negotiating with the individual partners in relation to their consequential liabilities to tax and interest. We did not see specific evidence of those negotiations or the outcome thereof.

61. On 26 February 2014 Mr Fenton wrote to Mr Crawford in his personal capacity as a member of the Appellant. The letter was headed in relation to tax years 2000-01 and 2001-02 and stated:

> "*As it has not been possible to conclude a contract settlement with you for the additional liabilities due as a result of the enquiry, I am writing to advise you*

that I will shortly begin the process of formally amending your tax returns to bring the additional liabilities into charge"

62. Mr Hone suggested that it was this letter which prompted Mr Crawford to make late appeals on behalf of the Appellant. Mr Crawford refuted that suggestion. Mr Crawford stated that the reason the Appellant chose to make a late appeal in relation to the 2001-02 closure notice was because of concerns the Partnership had surrounding the conduct of Mr Duthie during the enquiry. We have no reason to doubt what Mr Crawford told us.

63. On 17 June 2013 an article had appeared in *The Times* with the headline "*£31m tax case halted as Revenue official arrested*". The case did not involve the Appellant but the official in question was named as Mr Duthie and the article referred to allegations of criminal behaviour relating to his role as a tax official. A solicitor was quoted as saying "*anyone who has received an assessment from this individual may wish to seek a review of the decision*".

64. On 31 October 2013 an accountant acting on behalf of two of the partners in the Partnership made a formal request under the Freedom of Information Act 2002 for correspondence between HMRC and DCMS in relation to the films on which the Partnership had incurred expenditure. The request was made during the course of negotiations between the two partners and HMRC in relation to the tax and interest payable as a result of the enquiries. The accountants stated that concerns about dealings between HMRC and DCMS had been exacerbated by the arrest of Mr Duthie. HMRC claimed an exemption under the 2002 Act and refused to confirm or deny that the requested information was held.

65. Mr Crawford on behalf of the Appellant made a similar Freedom of Information request on 26 March 2014. The request was expressed to be made so that certain partners would be in a better position to assess a without prejudice offer made by Mr Fenton in relation to tax liabilities and interest arising from the enquiries. We were not told the outcome of that request.

66. Another article in the *Sunday Times* probably in early 2014 referred to Mr Duthie as having retired from HMRC in April 2013 and having joined Newport Tax Management LLP as a partner in December 2013. His role was to advise taxpayers. The headline was "*Turncoat taxman ready to help you beat the Revenue*".

67. Surprisingly, at some stage probably in early 2014, Mr Duthie contacted Mr Crawford and offered his assistance to the Appellant in relation to its tax affairs.

Reasons

68. In the light of our findings of fact we now set out our decision on the applications with reasons. Firstly we address the issue of whether the appeal against the amendment to the partnership tax return for 2000-01 was in time. We then

consider whether permission to appeal out of time the amendment for 2001-02, and if necessary 2000-01 should be granted.

Is the Appeal for 2000-01 in time?

69. The Appellant contends that the appeal for 2000-01 was notified to HMRC on 21 December 2007 and was therefore in time.

70. We can deal with this point quite shortly. It is accepted that there was no appeal before the Special Commissioners in relation to the amendment for 2000-01. An appeal was given to HMRC in December 2007. The Appellant elected for the appeal to be heard by the Special Commissioners but the appeal was never notified to them. Until 1 April 2009 there was no time limit within which such an appeal was to be notified to the Special Commissioners. In theory therefore it could have been notified to the Special Commissioners and a hearing requested at any time up to 31 March 2009.

71. When the new tribunal procedure was introduced with effect from 1 April 2009 there were transitional provisions in the *Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009* ("the 2009 Order"). Schedule 3 contained the transitional provisions.

72. Mr Crawford relied on *paragraph 6 Schedule 3* of the 2009 Order in support of his argument that the appeal in relation to 2000-01 was not out of time. That paragraph applies to "current proceedings" and states that they are to continue on and after 1 April 2009 as proceedings before the F-tT. During the course of the hearing Mr Crawford conceded this argument and accepted that the appeal against the 2000-01 amendments did not amount to current proceedings. He was clearly right to do so. Current proceedings are defined *by paragraph 1(2)* as proceedings where, before 1 April 2009 "*any party has served notice on an existing tribunal for the purpose of beginning proceedings before the existing tribunal*".

73. It was common ground that no notice had been served on the Special Commissioners or indeed the General Commissioners at any time prior to 1 April 2009.

74. *Paragraph 5 Schedule 3* of the 2009 Order provides as follows:

"*5(1) This paragraph applies if, before the commencement date –*

(a) a notice of appeal has been given to HMRC; but

(b) no party has served notice on an existing tribunal for the purpose of beginning proceedings before the existing tribunal in relation to that appeal.

(2) Where the date on which a review is required or offered falls on or before 31 March 2010, the period for HMRC to give notice of their conclusions for the purposes of the relevant provision is to be 90 days (but without prejudice to any power to agree a different period)."

75. It is clear that the appeal given by the Appellant to HMRC on 21 December 2007 and which was not notified to the Special Commissioners did not fall within the description of current proceedings. It fell within *paragraph 5* of the transitional provisions, the effect of which is simply to give HMRC 90 days rather than 45 days in which to conclude a review.

76. There was no other basis on which Mr Crawford could submit that any appeal in relation to 2000-01 was notified to a tribunal before 31 March 2014. The appeal in relation to 2000-01 was therefore out of time.

77. We can also conveniently deal under this heading with a submission of Mr Hone that the appeal against the 2000-01 amendment became the subject of a deemed agreement under section 54. Mr Hone's submission was as follows:

> (1) In HMRC's letters dated 13 October 2009 and 21 October 2009 HMRC formally offered a review of the matter, namely the amendment in the 2000-01 closure notice. That offer was made pursuant to section 49A(2)(b) TMA 1970.
>
> (2) Section 49C was therefore engaged which meant that within the period of 30 days from 21 October 2009 (the acceptance period) the Appellant had to either accept the offer or notify the appeal to the tribunal.
>
> (3) The Appellant did neither, and by virtue of section 49C(4) HMRC's view of the matter is to be treated as if it were contained in an agreement in writing under section 54(1).
>
> (4) By section 49C(5) the Appellant is precluded from resiling from that agreement.

78. We are satisfied that the letter dated 13 October 2009 was an offer to review within section 49A(2)(b). Section 49C(2) requires HMRC to notify the appellant of HMRC's view of the matter in question when they notify the appellant of the offer. We do not think it could sensibly be suggested that the combination of that letter and the letter dated 21 October 2009 in the present case did not satisfy those sections. Mr Crawford did not make any submission to that effect.

79. We accept Mr Hone's submissions as to the effect of the provisions described above on the facts of the present case. We noted during the course of the hearing that there does not appear to be any provision whereby HMRC can extend the acceptance period, either unilaterally or by agreement with an appellant. We also note that in the context of VAT there are express provisions dealing with extensions of time – see *section 83D Value Added Tax Act 1994*. We cannot read such provisions into section 49C. However, the effect of section 49H(3) is that even after the acceptance period has ended an appellant can notify an appeal to the tribunal if the tribunal gives permission. It is implicit in the scheme of the TMA 1970, if not expressly stated, that in circumstances where the tribunal does give permission then the deemed agreement under section 54 will cease to have effect.

80. In the present appeal, HMRC accept that they did purport to extend the period for acceptance of the offer. Mr Crawford says that he agreed to an extension. However there is a dispute as to the period of extension.

81. We have indicated our reservations about determining that evidential issue on the evidence before us. Even if we were to resolve it in favour of Mr Crawford, the position would remain that as a matter of law the acceptance period was 30 days and the Appellant had not accepted the offer of a review or notified the appeal to the tribunal. The Appellant would then require permission to notify a late appeal outside the acceptance period, which it seeks in any event.

82. It is for these reasons that it is sufficient for us to have found that there was some misunderstanding between Mr Duthie and Mr Crawford as to the period of the extension.

83. The issue before us therefore in relation to 2000-01 is whether we should grant permission to notify a late appeal to the tribunal.

Extension of Time

84. This section of our decision is concerned with whether we should grant permission to notify late appeals in relation to the amendments to the 2000-01 and 2001-02 Partnership returns.

85. The due date by which the 2000-01 appeal should have been notified to the tribunal was the end of the acceptance period for the purposes of section 49C TMA 1970. That was 20 November 2009. The appeal was therefore out of time by approximately 4 years and 4 months.

86. The due date by which the 2001-02 appeal ought to have been notified to the tribunal was 30 days from the date of the closure notice. That was 10 June 2012. The appeal was therefore out of time by approximately 1 year and 9 months.

87. Both parties made submissions on the approach we should take in exercising our discretion to extend the time for appealing.

88. Mr Crawford relied in particular on *Advocate General for Scotland v General Commissioners for Aberdeen City [2006] STC 1218* where Lord Drummond Young stated as follows:

> " *[22] Section 49 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 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.

[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 section 49, 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. 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. 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 for other cases that have long since been concluded. This is essentially the policy that underlies the proviso to section 33(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. 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.

[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 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 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."

89. The approach to applications to extend time was considered by the Upper Tribunal in *Data Select Ltd v HMRC [2012] UKUT 187 (TCC)*, where Morgan J endorsed the guidance given by Lord Drummond Young:

> "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.*
>
> *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.*

90. In *Leeds City Council v HMRC [2014] UKUT 350 (TCC)* the Upper Tribunal recently endorsed the approach in *Data Select Ltd*. It also held that the amendments to the civil procedure rules reflecting a stricter approach to compliance in England and Wales described by the Court of Appeal in *Mitchell v Associated Newspapers Ltd [2013] EWCA Civ 1537* have not been incorporated into the rules of this tribunal (See also the decision of the Chamber President to the same effect in *Kumon Educational UK Co Ltd v HMRC [2014] UKFTT 772 (TC)*). In any event in Scotland the equivalent is Rule 2.1 of the Scottish Civil Procedure Rules which provides for discretionary relief from sanction where the failure to comply is "*due to mistake, oversight or other excusable cause …*".

91. At [22] Lord Drummond Young referred to a central feature of provisions for an extension of time, being that they are exceptional in nature. We agree with Mr Crawford that this does not amount to a separate test requiring exceptional circumstances before an extension of time should be granted. That point was confirmed by the Upper Tribunal in *O'Flaherty v HMRC [2013] UKUT 1619 (TCC)* where Judge Berner states at [38]:

> " *38. 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.*"

92. In the light of these authorities we must take into account all the circumstances and ask ourselves:

(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?

93. In relation to both closure notices it was common ground that the circumstances of 2000-01 fall within *section 49(H)(1) TMA 1970*. In other words, HMRC had offered to review the amendments in the closure notices but the Appellant had not accepted the offer. The Appellant was therefore entitled to notify the appeal to the tribunal within the acceptance period. In relation to 2001-02 no notice of appeal was ever given by the Appellant to HMRC pursuant to section 31A TMA 1970. Instead it simply lodged a notice of appeal with the Tribunal on 30 March 2014.

94. Mr Crawford submitted that there was one claim for relief made in tax year 2000-01. The enquiry into the partnership return commenced on 9 January 2003 and

lasted almost 5 years. He submitted that section 28B(1) TMA 1970 makes provision for a closure notice when the inspector "*has completed his enquiries*". However whilst the closure notice was issued on 30 November 2007 there were still enquiries on-going. Those enquiries continued until at least September 2011 and the closure notice for 2001-02 was not issued until 11 May 2012. We understood Mr Crawford's submission to be that we should consider both appeals together and on that basis treat the date on which both appeals were due as being 10 June 2012.

95. We do not accept that submission. The correspondence from HMRC separately identified in clear terms issues relating to 2000-01 and issues relating to 2001-02. Separate time limits applied and there was no good reason why the Appellant should not have dealt with matters on that basis. Having said that, were we to permit a late appeal in relation to 2001-02 then that may be a factor in favour of exercising our discretion to permit a late appeal in relation to 2000-01. For that reason, we propose to consider first the application in relation to 2001-02.

96. Mr Crawford relied on the decision of the Supreme Court in *Commissioners for HM Revenue & Customs v Tower MCashback LLP 1 [2011] UKSC 19* where at [18] Lord Walker stated as follows:

> "*18. … In issuing a closure notice an officer is performing an important public function in which fairness to the taxpayer must be matched by a proper regard for the public interest in the recovery of the full amount of tax payable. In a case in which it is clear that only a single, specific point is in issue, that point should be identified in the closure notice. But if, as in the present case, the facts are complicated and have not been fully investigated, and if their analysis is controversial, the public interest may require the notice to be expressed in more general terms…*"

97. Mr Crawford appeared to suggest that the 2000-01 closure notice was in some way defective.

98. The 2000-01 closure notice was drafted in very general terms and referred only to a conclusion that no losses were available for relief. However it was accompanied by a letter of the same date including various appendices which clearly set out the reasoning behind HMRC's conclusions in relation to all the films for which relief had been claimed in 2000-01. The fact that enquiries then continued in relation to the relief available in 2001-02 does not in our view affect the validity of the 2000-01 closure notice. In any event, that would be a point relevant to the substantive merits of the appeal if permission for a late appeal is granted.

2001-02 Appeal

99. We now consider the factors relevant to our discretion to permit a late appeal against amendments in the 2001-02 closure notice.

(i) Purpose of the Time Limit

100. Mr Crawford submitted that the purpose of the time limit of 30 days was well established. It was to promote finality. We agree with that submission, and note that the 30 day time limit is relatively short. That is because in most cases, including the present case, the decision does not come out of the blue. The closure notice for 2001-02 followed detailed enquiries where the parties were debating the issues

101. Mr Hone submitted that the purpose of the time limit was identified in Data Select where Morgan J 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 we are satisfied that HMRC were entitled to assume after 10 June 2012 that the both closure notices had become final. It was only when accountants for two of the partners made a freedom of information request in relation to Mr Duthie on 31 October 2013 that there was any suggestion of a possible challenge to the closure notices.

(ii) The period of delay

102. Mr Crawford said that the closure notice issued on 11 May 2012 was not appealed because he thought matters could be resolved by negotiation. The delay was not long.

103. The period of delay was 1 year 9 months. On any view that is a substantial period in the context of a time limit of 30 days.

(iii) Explanation for the Delay

104. Mr Crawford's explanation for the delay was that he thought matters could be resolved by negotiation. We do not accept that as an explanation for the delay in appealing amendment of the Partnership return. The only negotiations after May 2012 which have been described to us were with individual partners. We have not been pointed to any correspondence or communication between HMRC and the Appellant between May 2012 and February 2014. In that period HMRC believed that the enquiries into the Partnership tax return had been settled and it was dealing with the individual partners in relation to consequential liabilities to tax and interest. There were no negotiations in relation to the Partnership tax returns.

105. Mr Crawford suggested that HMRC had itself caused some of the delay. There was no evidence to that effect.

106. We accept that the reason the Appellant sought to appeal the amendments in March 2014 was because of the arrest of Mr Duthie. However even if the arrest of Mr Duthie crystallised concerns over HMRC's dealings with DCMS or generally in relation to the enquiries, we are not satisfied that provides a good reason for failing to appeal in the period after June 2013 when Mr Duthie's arrest was publicised. Whether or not the Appellant is entitled to film relief will depend on the factual and legal arguments at the time the expenditure was incurred or when DCMS revoked the certificates for five of the eleven films. We are not satisfied that any criticism of Mr Duthie, even if made out, would affect the Appellant's entitlement to relief certainly before this tribunal.

107. There is no evidence of any change in circumstances between June 2013 and March 2014 to cause the Appellant to take a different view as to the merits of whether to appeal or not.

(iv) Consequences for the Parties of Extending Time

108. Mr Crawford recognised that by extending the time for appealing HMRC would lose finality. However he submitted that HMRC had not in fact had finality with all the partners. Each partner had his or her own adviser and Mr Crawford was not aware of the position of individual partners. He submitted that HMRC would not be financially harmed to any great degree because in his words the way in which the "film scheme" operated gave rise to a deferral of tax rather than avoidance of tax. On this latter point we were not addressed as to how the film scheme operated for individual partners. In addition Mr Crawford also believed that HMRC had reached contractual settlements with a number of individual partners, although Mr Crawford did not know the details. The appeals themselves would be highly focussed.

109. For reasons already given, the finality in question relates to the Partnership returns. We are satisfied that HMRC will lose that finality. The liabilities of individual partners flow from the Partnership returns.

110. We accept that if permission for a late appeal is granted then the Appellant would have the opportunity to pursue its arguments. The issues would be determined on their merits. A significant amount of tax and interest would depend on the outcome of that appeal and this application.

111. We also accept Mr Crawford's submission that the delay has probably not affected the quality of the evidence that would be produced at a hearing of the appeals. No documents have been lost and the factual issues appear to rely heavily on documentary evidence rather than oral evidence.

112. Mr Hone did not identify any specific prejudice to HMRC. He submitted that HMRC had worked on the basis that there had been no appeal against the 2001-02 closure notice. We took that to be a reference to the negotiations HMRC have had with individual partners since May 2012. If the Partnership return for 2001-02 is re-opened then we are satisfied HMRC would be prejudiced above and beyond losing their expectation of finality. Their negotiations with individual partners will to some extent have been a waste of time and resources.

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

113. There is a significant amount of tax and interest at stake, although as we have said we were not addressed on how the film scheme operated for individual partners. It was suggested that the consequences for individual partners could involve bankruptcy, although Mr Crawford was not aware what settlements individual partners may have agreed with HMRC. The Partnership would lose its opportunity to pursue the appeal on its merits.

(vi) Generally

114. We must balance all the factors set out above, in the context of the circumstances as a whole. Having done so, we are not persuaded that the time for appealing the amendments to the 2001-02 Partnership return should be extended. In particular the length of the delay and the absence of any good reason for that delay outweigh the other factors described above. The overriding objective is served by refusing the application.

2000-01 Appeal

115. Many of the factors described above in relation to 2001-02 apply equally to our discretion in relation to 2000-01. The purpose of the time limit is the same and the consequences of extending or refusing to extend time are the same.

116. Mr Crawford submitted that finality was not such a significant factor in relation to 2000-01 because matters were not finalised by the closure notice for 2000-01. The enquiries in relation to all the films continued until September 2011. The Appellant was not seeking to open something that had been treated as fixed and final.

117. To some extent that submission is right, but only in relation to some of the issues. HMRC continued to consider the availability of relief albeit in 2001-02. It is not right in relation to the question of when the Partnership was constituted and on what date the Partnership commenced trading. As far as HMRC was concerned those issues were resolved by the 2000-01 closure notice which had not been appealed.

118. Mr Crawford submitted that the information he was providing in the period after October 2009 related to the 2000-01 appeal. That appeal had been the subject of an offer of review in October 2009. The offer was not accepted and no appeal was notified to the tribunal. For the reasons given above it became subject to a section 54 agreement at the end of the acceptance period on 20 November 2009. Having said that, we accept that there was a good reason for Mr Crawford not to appeal until 27 January 2010. There was what we are prepared to accept was an excusable misunderstanding on the part of Mr Crawford that he had until 27 January 2010 to accept the offer of a review or give notice of appeal to HMRC.

119. The correspondence from HMRC in October 2009 could not have been plainer. If the Appellant did not agree with HMRC's view of the matter in relation to 2000-01 it could either accept the offer of a review or notify the appeal to the tribunal. Mr Crawford did neither. He simply provided further information in relation to several of the films in response to a request for such information for the purposes of enquiry into 2001-02. Mr Crawford could have approached HMRC for assistance or guidance if he was in any doubt about the position. Instead he waited until March 2014 before notifying the appeal to the tribunal.

120. The real period of delay therefore for the 2000-01 appeal is from January 2010 to March 2014. We take into account that the circumstances were not entirely straightforward. Notwithstanding, for the reasons given above we do not consider that there is any good explanation for that delay. Mr Crawford failed to engage with Mr

Duthie's letter dated 18 January 2010 in which Mr Duthie was clearly maintaining HMRC's position that the 2000-01 closure notice was final.

121. Mr Crawford submitted that the case for extending time in relation to 2001-02 was not nearly as strong as that in relation to 2000-01. We understand Mr Crawford was suggesting that the case for 2000-01 was stronger because that is where the bulk of the claim for relief was originally made and therefore there was greater prejudice if the Appellant could not pursue that appeal. However some of the relief denied by HMRC in 2000-01 was allowed in the closure notice for 2001-02. We take into account that there is a more significant sum which has been denied in 2000-01 relating to expenditure which could not be relieved in 2001-2. The prejudice suffered by the Appellant through loss of the opportunity to pursue that appeal is therefore greater. Equally, the delay in notifying the appeal to the tribunal has been much longer.

122. HMRC continued their enquiries into the 2001-02 amendment on the basis that from December 2009 or January 2010 onwards the 2000-01 appeal had been finally determined. All HMRC's correspondence after January 2010 was clearly marked in connection with 2001-02.

123. Again, we must balance all the factors set out above, in the context of the circumstances as a whole. Having done so, we are not persuaded that the time for appealing the amendments to the 2000-01 Partnership return should be extended. In particular the length of the delay and the absence of any good reason for that delay outweigh the other factors described above. We do not consider that the application in relation to 2000-01 is any stronger than the application in relation to 2001-02. Indeed given the longer period of delay it is somewhat weaker. The overriding objective is served by refusing the application.

Conclusion

124. For the reasons given above the applications for permission to notify late appeals are refused. In the circumstances we must strike out the appeals.

125. 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: 25 AUGUST 2015