TC01516

Appeal numbers: TC/2010/09208
TC/2010/09269
TC/2011/03667
TC/2011/03668

Income Tax – Proceeds of Crime Act 2002 – application by Appellants to stay proceedings in appeals against assessments and penalty determinations on grounds of lack of resources due to subjection of their properties to civil recovery proceedings – held, availability of resources not relevant to issues to be determined in substantive hearing or to ability to pursue appeals – issues in civil recovery proceedings and present appeals different and so possible overlap of evidence no reason to stay proceedings – application refused

FIRST-TIER TRIBUNAL

TAX

MAXINE ELLEN PERIES **First Appellant**

ANSELM PERIES **Second Appellant**

- and -

THE SERIOUS ORGANISED CRIME AGENCY **Respondent**

TRIBUNAL: JOHN CLARK (TRIBUNAL JUDGE)

Sitting in public at 45 Bedford Square, London WC1 on 3 October 2011

Timothy Peun of Morgan Rose, Solicitors, for the First and Second Appellants

Nicholas Chapman of Counsel for the Respondent

DECISION: REASONS FOR DIRECTIONS

1. At the hearing on 3 October 2011, the parties requested that my reasons for whatever decision might be taken following the hearing should be set out in a full reasoned decision. In separate Directions, I have directed that the application by the First and Second Appellants ("the Appellants") to vacate that hearing is refused, and that the application by the Appellants to stay the above numbered appeals against tax assessments and penalty determinations pending the outcome of any alternative proceedings, namely the civil recovery proceedings under POCA No 11065 of 2009, Claim No CO/11064/2009, or any applications either contemplated or pending therein, is refused. I have also given various case management directions, which do not need to be considered in this decision.

2. Pursuant to s 317 of the Proceeds of Crime Act 2002 ("POCA 2002"), on 9 November 2010 the Respondent raised assessments to tax in an aggregate sum of £305,355.43 (plus interest due on late payment) in relation to the First Appellant and in an aggregate sum of £327,830.65 (plus interest due on late payment) in relation to the Second Appellant. By Notices of Appeal dated 7 December 2010 the First and Second Appellants respectively appealed against those assessments.

3. On 13 April 2011 the Respondent raised penalty determinations totalling £122,142.16 against the First Appellant and £147,168.26 against the Second Appellant. On 9 May 2011 the Appellants appealed against those penalty determinations.

4. At the hearing I informed the parties that I was aware as a result of another appeal, namely that of *Blue Sphere Global Ltd* ((2008) VAT Decision 20901), of evidence relating to the activities of the First Appellant while she was working for a company named Xicom Ltd. I offered to pass the case to another Judge if any of the parties did not wish me to be involved in considering the present appeals. As none of the parties objected to my involvement, I continued with the hearing.

5. Confiscation proceedings had been brought against the Second Appellant (who is also known as Anslem Peries) following conviction on certain charges. These proceedings were stayed because the Second Appellant's legal aid did not provide sufficient funding to pay for necessary representation.

6. The Metropolitan Police referred the matter to the Respondent, which commenced a civil recovery investigation under Part 8 POCA 2002 in respect of both Appellants.

7. In November 2008, on application by the Respondent, the High Court made a disclosure order against both Appellants. Those orders were granted on the basis (inter alia) that there were reasonable grounds for suspecting that property held by the Appellants had been obtained through unlawful conduct. The unlawful conduct alleged was summarised before me by the Respondent as involvement in MTIC fraud and/or the laundering of the proceeds of MTIC fraud.

8. Thereafter, in October 2009, the High Court made a property freezing order under s 245 POCA 2002 against each of the Appellants. These orders were made on the basis (inter alia) that there was a good arguable case that property held by the Appellants had been obtained through unlawful conduct; before me, the Respondent referred to such conduct as MTIC fraud and/or the laundering of the proceeds of MTIC fraud.

9. Subject to certain difficulties encountered by the Appellants, described below, the civil recovery proceedings are continuing.

Whether the 3 October 2011 directions hearing should be vacated

10. The Appellants' solicitors had indicated on 14 September 2011 that they intended to file an application in the High Court for a legal costs exclusion to the freezing order over the property of the Appellants, that in the absence of funds, counsel could not be briefed to appear at the directions hearing relating to these appeals, and asked for the Respondent's consent to vacate the directions hearing. The Respondent did not consent. For various reasons the Respondent did not accept that the Appellants were unable to fund the proceedings in these appeals. The application for the legal costs exclusion had not been made, and there was no indication when it would be made. The Respondent referred to various other issues, and did not consider that an indefinite postponement of the directions hearing was appropriate.

11. Although the Appellants were unable to brief counsel to appear at the directions hearing, they were represented by their solicitors. Mr Peun did not seek to argue at the hearing that it should not proceed.

Whether the appeals should be stayed

Arguments for the Appellants

12. Mr Peun referred to the "overriding objective" in Rule 2(1) of the Tribunal Rules, and to the factors set out at Rule 2(2)(a)-(e). Both 2(2)(a) and (b) were relevant. The Appellants contended, although the Respondent now indicated that it did not accept this contention, that as the only assets of value belonging to the Appellants were subject to the freezing order and were already being claimed by the Respondent, the assessments to tax would have no prospect of realising any benefit for the Respondent (or for the general body of taxpayers) if the Respondent was successful in the civil recovery proceedings.

13. In relation to the question of complexity, in his submission it was clear that the cases were substantially complex, requiring detailed consideration of a large number of bank account transactions. In respect of costs, these were likely to be prohibitive because of the length of time since the transactions occurred, the need to retain accountants to advise, and the need to review previous evidence in criminal proceedings brought against the Second Appellant.

14. The Appellants had no resources to pay for the tax and penalty appeals or the civil recovery proceedings; the only assets that they had which could fund the tax and penalty appeals were the three real properties that had been frozen under the 2009 order. The Appellants were seeking the legal costs exclusion, and the Respondent was now suggesting that in relation to the civil recovery proceedings they were in contempt of court because of a pre-existing loan taken out by the Second Appellant. The Appellants owed their present legal advisers a substantial sum of money both in respect of the work relating to the civil recovery proceedings and the present appeals.

15. Mr Peun submitted that there was a clear and substantial inequality of arms as between the Appellants and the Respondent.

16. The Respondent had indicated that the appeals would have to be determined, regardless of the outcome of the High Court proceedings. If this was correct, Mr Peun submitted that a stay was likely to shorten the tax and penalty appeals (in the event that the Respondent was unsuccessful in the civil recovery proceedings), or could even obviate completely the need for the tax and penalty appeal proceedings (should the Respondent be successful in the civil recovery proceedings). Mr Peun could see no direct prejudice in allowing the Appellants to consider one case first.

17. It was not prudent to have two sets of proceedings in different forums involving the same evidence, and findings of fact. The properties had been the subject of a detailed tracing exercise, and the Respondent was also claiming their value in these proceedings. Either the amounts were proceeds of crime, or they were income, and taxable. It would be illogical to have conflicting findings as between the civil recovery proceedings and the tax and penalty appeals, based on the same facts.

18. The Respondent was relying to a significant extent in the present appeals on the Appellants' witness statement evidence obtained in the context of the civil recovery proceedings. Mr Peun argued that under the Civil Procedure Rules ("CPR") part 32.12, it was not open to the Respondent to use that evidence in the tax and penalty appeals without the permission of the witness, the permission of the High Court for some other use, or the witness statement having been put in evidence at a hearing heard in public. This issue could be resolved by a stay in the proceedings in the tax and penalty appeals.

19. He referred to *Khan v Director of Assets Recovery Agency* (SPC 00523), [2006] STC (SCD) 154, *Swallow v Revenue and Customs Commissioners* [2010] UKFTT 481 (TC), (TC/2010/00742), and *Global Active Holdings* (2006) VAT Decision 19715.

20. In reply to Mr Chapman's submissions, Mr Peun stated that the Appellants were not arguing that the appeals should be vacated or conceded by the Respondent. If the Respondent were to win in the High Court, the Respondent could pursue the assessments against the Appellants, although Mr Peun could not see the point of doing so. If the respective proceedings were run in parallel, they concerned the same subject matter.

21. The Respondent had referred to monies not being taxable because they represented the proceeds of crime, yet (for example) an additional sum had been referred to in the Respondent's Statement of Case as having been assessed on the Second Appellant because he used various receipts originating from one company to finance his purchase of a property. In the civil recovery proceedings the Respondent was contending that the Appellants had the benefit of monies which were the proceeds of crime. If the Respondent was arguing this, the Appellants would meet the case. If such monies were proceeds of crime, they could not also be treated as income for the purposes of the tax assessments.

22. At the time of the letters notifying the assessments, the Respondent had not particularised what basis it had to assume revenue powers, or what the basis of the assessments was. Once it had become clear what the Respondent was assessing, the Appellants had reserved the right to amend their grounds of appeal once the full legal and factual basis for the Respondent's respective decisions was more clearly stated, and following the disclosure and review of the documents upon which the Respondent intended to rely.

23. It had since become apparent that the Respondent was arguing that everything deposited was income. This involved six years' bank statements. The information as to the Respondent's contentions had not been available to the Appellants in the decision letters, or until May 2011 when the Respondent's Statement of Case had been served; even now, the position was not fully clear.

24. There was a need for the Appellants to go through six years of records. They had not had the finances to instruct an accountant. Mr Peun submitted that the Respondent was making too much of a discrepancy. The Appellants had had to take a pragmatic approach in circumstances where it had not been clear at first what needed to be done.

25. The Appellants were not submitting that they wanted the appeals conceded, merely a stay. If the civil recovery proceedings went ahead, there were no other assets available apart from a loan agreement. Mr Peun emphasised that there was no evidence of the existence of other assets, only a loan. He referred to the history of the enquiries, and submitted that it ill behoved the Respondent to say that there was no evidence as to the absence of other assets. The loan had been taken out before the property freezing order. This was because of the difficulty of obtaining any income from anywhere else.

26. From April 2011 onwards, the Respondent had known that the two Appellants had no assets with which to fund the civil recovery proceedings or the Tribunal proceedings. Mr Peun submitted that this should be a factor in deciding whether the Tribunal proceedings should be stayed.

27. The whole purpose of the correspondence between the solicitors had been to try to reduce costs and ensure that the Tribunal and the High Court did not make conflicting findings. Money was being claimed on two alternative bases. Here there were two different jurisdictions involved in determining the treatment of the same money; Mr Peun submitted that this did not appear logical.

28. There had been talk of concealment, involving an allegation that the Appellants had not declared their taxable income. It was accepted that the Appellants' tax affairs were not up to date, but they were not concealing their income.

29. In relation to CPR 32.12 and the legislation cited by Mr Chapman (see below), it appeared that the legislation was not to oust the High Court. It appeared to relate to the Respondent's internal operations. The hearing in June 2011 had not been a public hearing, so the point made for the Respondent against the Appellants' submissions on the CPR did not engage. Mr Peun submitted that it would be illogical for the Tribunal to have overriding jurisdiction to set aside part of the CPR. The position remained that the evidence given in the High Court proceedings was not admissible. The Appellants were not arguing that the Respondent could not assess; they accepted that they were appealing against assessments. It was open to the Appellants to challenge the basis for the Respondent making the assessment, namely the criteria for assuming the powers of Her Majesty's Revenue and Customs ("HMRC").

30. The tax assessments had not been made until a year after the commencement of the civil recovery proceedings. They could have been made once the witness statements had been served. It was therefore "hollow" for the Respondent to argue that timely prosecution of the tax and penalty appeals was required. [Mr Chapman intervened to refer to the Appellants' failure to co-operate.] The appeals had progressed on the basis of what had been presented to the Appellants. The decision letters had been issued in November 2010, covering a period of six tax years, the latest being six years earlier. It was therefore not fair to say that the appellants could have done more to pursue their appeals. Mr Peun suggested that there was no prejudice to the Respondent in delaying the tax proceedings. However, there was prejudice to the Appellants in having to pursue them at the present stage. It was likely that the High Court proceedings would determine the income issue.

31. The application was emphatically not a tactical device, as the Respondent was arguing. The Appellants had informed the Respondent about the matter in May 2011. It was desirable for the tax proceedings to be stayed, to allow consideration of the issues. The determination as to the treatment of the money would be made by the High Court.

Arguments for the Respondent

32. Mr Chapman submitted that it was wrong to suggest that the Respondent had brought claims in respect of the tax liabilities; these were appeals made by the Appellants against assessments and penalty determinations. The assessments would stand unless the Appellants could show reason for their amendment or discharge.

33. The Appellants' application amounted to a tactical device to enable them to avoid the difficulty of serving evidence and explaining their position. In the High Court civil recovery proceedings the Appellants had each stated:

> "It is correct that I am not up to date with my declarations for tax. The fact that my declared income to Revenue and Customs is not consistent

> with my actual income and capital is therefore no indication that my income and capital are unlawfully derived."

In stark contrast, in their respective grounds of appeal against the assessments and penalties, the Appellants contended:

> "The assessments for tax pursuant to s 18 Schedule D ICTA 1988 (Case 1) are not correct in that the sums on which SOCA have assessed the Appellant are not '*annual profits or gains . . . from any trade profession or vocation*' within the meaning of s 18 Schedule D ICTA 1988 (Case 1)."

34. If the tax appeal proceedings were stayed, the Appellants could remain silent. The Respondent had no idea what the Appellants were saying about their income.

35. Mr Peun had said that it would be prejudicial for both sets of proceedings to continue at the same time. However, this was not the case where statements were inconsistent. Mr Chapman referred to s 32 of the Serious and Organised Crime and Police Act 2005, which stated:

> "Information used by SOCA in connection with the exercise of any of its functions may be used by SOCA in connection with the exercise of any of its other functions."

The Civil Procedure Rules did not trump statutory proceedings. In any event, the witness statement had been put in evidence in June 2011, which therefore excluded the application of the Civil Procedure Rules. Under the Tribunal's own Rules, the Tribunal could hear any evidence, whether or not it would be admissible in other proceedings. It was therefore not necessary for the Respondent to make any application to the High Court. Mr Chapman suggested that the Appellants were trying to avoid the inevitable, namely to state what their case was.

36. The Appellants had argued that there were three reasons justifying a stay. The first was that they only had the three properties, and if the civil recovery proceedings were successful, they would have nothing to pay the tax liabilities. The Respondent considered that this was totally irrelevant. The Appellants had appealed against the assessments and penalty determinations; it was for them to show good reason why they should not be assessed. The question of payment was irrelevant to the proceedings. Further, the Respondent did not accept that the Appellants had no other assets; they had received significant sums in their bank accounts, and over £80,000 in cash over three years. There was no reason for the Respondent not to defend the assessments and determinations and thereafter seek recovery of the debts.

37. The second reason had been the close evidential matrix. The Respondent accepted that there would be an evidential overlap. The question was not whether the cases involved consideration of the same evidence, but rather whether they involved consideration of the same issues. Mr Chapman submitted that the issues were different. In the civil recovery proceedings, the question for the High Court would be whether it was satisfied that the property which was the subject of the claim was or represented the proceeds of crime. In the tax and penalty appeals, the issue for the Tribunal would be whether the Appellants had overcome the burden on them to show

that the assessments and/or the penalty determinations were wrong; the only real factual issue would be whether the Appellants' incomes were taxable. As this was a completely different issue to the one before the High Court, it provided no basis for staying these proceedings behind those in the High Court.

38. On the third reason, costs, an absence of funding did not amount to a good basis for delaying proceedings. Mr Chapman referred to *Khan* at paragraphs 22 and 30. Here the Appellants were able to be present, to give evidence and to conduct proceedings (in person, if necessary). Inability to pay their representatives could not amount to a good reason to excuse them from prosecuting their appeals. Further, the Respondent did not accept that the Appellants were unable to fund their appeals.

39. The Respondent could not understand how the proposed stay could assist, in any event. If the Appellants made a legal costs application to the High Court and that application was successful, the Appellants would be able to fund both sets of proceedings, and there would thus be no difficulty. If such an application were not made, or if it were unsuccessful, the Appellants would be unable in any lawful manner to fund either set of proceedings, and the stay would achieve nothing. If the civil recovery proceedings were to be successful, the Appellants would appear (on the basis on which they were arguing their case) to have no mechanism of then funding the present tax and penalty appeals. It followed that the only possible chain of events in which a stay could assist was if the High Court were to reject the Appellants' application for a legal costs exclusion but were then to go on and find for the Appellants in the civil recovery proceedings. In the Respondent's submission, the likelihood of this chain of events was remote, and the Tribunal should not stay the proceedings on that basis.

40. The Appellants had referred to the overriding objective. This required the Tribunal to weigh the competing interests of both parties. The proposed stay would be prejudicial to the Respondent for various reasons:

(1) The stay would have the effect of restraining the Respondent from collecting unpaid tax and national insurance for which the Appellants had been assessed, and the penalties thereon. These sums remained owing. Interest continued to accumulate on a daily basis. The Respondent was entitled to expect the Appellants to settle their debt promptly or to prosecute their appeals timeously. The following reason was also relevant to this one.

(2) The Appellants had advanced no cogent reason to explain why their appeals had any merit whatever, in particular why the assessments and penalties were wrong. Mr Chapman referred to the witness statements served in the High Court proceedings.

(3) There was a turnover of HMRC officers seconded to the Respondent for the purposes of adopted revenue functions. The longer the appeals took before being prosecuted by the Appellants, the more officers would be required to take over conduct of the case, with obvious resource implications.

(4) The longer the appeals took before being determined, the greater the legal costs associated with them.

41. The Tribunal itself had an interest in ensuring that matters before it were litigated efficiently and timeously so that its own resources were effectively managed and its process was not abused.

42. By the Appellants' own admissions, it was clear that both received incomes through their employment and/or self-employment and that they did not pay tax thereon. Mr Chapman submitted that the only issue before the Tribunal in these appeals would be as to quantum of the debt. The Appellants had asserted in their Grounds of Appeal that their incomes were not taxable; this assertion was wholly unparticularised and was totally inconsistent with their assertions to the High Court. The Appellants had failed to serve evidence or to set out in their Grounds of Appeal any contention that the assessments and penalties were excessive nor, consequently, any basis for such a contention. The overriding objective referred to the avoidance of delay. If quantum was to be in issue, there was no reason why this narrow and comparatively straightforward issue could not be litigated before the Tribunal without delay. Mr Chapman referred to the civil limb of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

43. Mr Chapman referred again to the inconsistency between the Appellants' statements in the High Court proceedings and their apparent case in the tax proceedings. In the Respondent's view, the application for the stay amounted to a tactical device; it would be to the Appellants' advantage if they were not required to particularise their case and serve evidence in respect of these appeals, as this would almost certainly damage their case in the civil recovery proceedings and/or render the tax and penalty appeals wholly unarguable.

44. He referred to the separate question whether it would be onerous for the Respondent to oppose the tax and penalty appeals if the civil recovery proceedings were successful. The Appellants had suggested that if the civil recovery proceedings were successful, they would have no remaining assets and so it would be oppressive of the Respondent not to concede the tax and penalty appeals. The assertion had not been further particularised. In the Respondent's submission, it was as a matter of principle misconceived. If the Appellants owed tax (as they appeared to have accepted in their High Court witness statements), it was not appropriate for them to suggest that the Respondents should concede the appeals that they as Appellants had made. In any event, the Respondent was entitled to, and would continue to, oppose the tax and penalty appeals and enforce the debt that the Appellants owed to the revenue. Further, the Respondent did not accept as a matter of fact that all of the Appellants' assets were frozen, nor, therefore, that they would have no assets left if the civil recovery proceedings were to be successful.

45. In a response to Mr Peun's reply, Mr Chapman referred to the loans as being from companies which had had involvement in MTIC-related activities. Over a period of three years £90,000 had been drawn, a party involved being the Second Appellant's brother, a convicted MTIC fraudster.

46. Mr Chapman emphasised that the first limb of the Appellants' argument was based on a misconception of law. It was wrong to say that proceeds of crime were not

in law taxable income. It followed that the High Court's findings would not resolve the issue for the Tribunal, and the Tribunal's findings would not resolve the issue for the High Court. With reference to *Khan*, the fundamental question was whether there would be any problem if the proceedings in these appeals took place before the High Court proceedings; the firm answer was that there would not be any such problem.

Discussion and conclusions

47. In considering this application, it is not appropriate for me to consider questions of fact that are more relevant to the decisions to be taken in a substantive hearing. A detailed witness statement was provided by Mr Gerald O'Mahoney, a partner in the firm of solicitors advising the Appellants. This statement has assisted in providing background information, but in the absence of any evidence from the Respondent or any cross-examination of the witness, neither of which would have been appropriate steps to take at this stage in the proceedings, I am not in a position to give the statement (or any particular part of it) any significant weight in the process of deciding on the Appellants' application for a stay of the tax proceedings.

48. On the Appellants' first reason justifying a stay, I accept Mr Chapman's submission at paragraph 36 above. The nature of the proceedings in this Tribunal is that they are appeals against the assessments (and the associated penalty determinations). As confirmed by the Special Commissioners in *Khan*, the questions which can be considered by the Tribunal under s 50(6) of the Taxes Management Act 1970 ("TMA 1970") on an appeal against an assessment fall into two categories. The first is whether ". . . the appellant is overcharged by an assessment other than a self-assessment". Under that sub-section, if on appeal the Tribunal decides that the appellant is not so overcharged, the assessment is to stand good. The burden of proof on that issue is therefore on the appellant in such an appeal. The other category of question which *Khan* shows to be within the Tribunal's jurisdiction is any issues concerning the validity of the assessment; see *Khan* at paragraphs 15 to 17. Again, these are matters on which the appellant in such proceedings must satisfy the Tribunal.

49. Neither category of question is affected by or concerned with the ability or otherwise of an appellant to pay the tax assessed (and any associated penalties determined). These Tribunals, and those which they have replaced, have never been concerned with the question of recoverability by the revenue authorities of tax assessed on appellants, but simply with such issues as appropriateness of assessments, their validity, and their quantum.

50. Whether or not the Appellants in the present case have funds available beyond those represented by the property assets (net of liabilities) is a matter for the civil recovery proceedings in the High Court. In the context of an application for a stay of these tax and penalty appeals, it is not appropriate for me to consider their ultimate ability or inability to pay the tax and penalties if the eventual substantive hearing of these appeals determines that the assessments and penalty determinations made in respect of them by the Respondent are to be confirmed.

51. On the second ground, the close evidential matrix as between the evidence relating to the civil recovery proceedings and that relating to the present appeals, I agree with Mr Chapman's submission at paragraph 37 above that the issues in the respective proceedings are different. I therefore also agree that the similarity of the evidence which may be considered by, respectively, the High Court and these Tribunals does not amount to a justification for a stay of the tax and penalty appeals. Whether there is some form of overlap between the amounts sought by the Respondent in the civil recovery proceedings and the tax assessments and penalty determinations against which the Appellants have appealed to the Tribunal, is a matter which will have to be considered in the civil recovery proceedings and not by the Tribunal.

52. In arriving at this conclusion, I am satisfied that there is a clear distinction between the present case and *Swallow*. That case involved an application by HMRC for a stay of proceedings for six months to permit them to continue a criminal investigation into circumstances surrounding the marketing of a tax avoidance scheme. The present appeals are not in my view affected by the state of progress of the civil recovery proceedings, as the latter concern the separate question whether the property subject to the civil recovery claim is, or represents, the proceeds of crime.

53. In the same way, the issue in *Global Active Holdings* was whether there should be a stay pending criminal proceedings against the shareholders and directors of the two companies involved. The Tribunal held that there was a risk of prejudice to a criminal trial if certain findings were to be made in the Tribunal appeal, and therefore granted a stay of nine months or, if earlier, until the conclusion of the criminal proceedings. For the reasons given in the preceding paragraph, I consider the issue in *Global Active Holdings* to be clearly distinct from that arising in respect of the present appeals.

54. The Appellants' third ground for seeking a stay was that of costs. I do not consider that the cost of the proceedings is a matter for the Tribunal's consideration, except in determining whether, in cases where there is power to award costs, such an award should be made to a party. In the latter context, I note that these cases have been allocated to the Complex category, and I am not aware of any request by the Appellants under Rule 10(1)(c)(ii) of the Tribunal Rules for exclusion of the proceedings from liability for costs under Rule 10(1)(c).

55. I accept Mr Chapman's submission at paragraph 38 above that the absence of funding does not amount to an appropriate basis for delaying the progress of proceedings in these tax and penalty appeals. In these Tribunals, a certain proportion of appeals are conducted by appellants in person. It is thus open to the Appellants to pursue their appeals by some means or other, whether or not it would be preferable for them to be professionally represented. Their position is not like that of the appellant in *Khan*, as there appears to be no reason to prevent them from attending the substantive hearing and, if necessary, putting their case as appellants in person. For the reasons I have already stated, I am not able to make any findings as to the Appellants' financial position, and in any event this is not a matter which I would be able to take into account.

56. On the question of the apparent inconsistency between the witness statements made for the purposes of the civil recovery proceedings and the basis for the appeals against the assessments and penalty determinations, I do not consider it necessary to take such factual issues into account in determining whether or not a stay of these proceedings is appropriate. Whether it will be necessary or desirable for those witness statements to be included as part of the evidence before the Tribunal for the substantive hearing of these appeals is a matter which will require to be determined in due course, having regard to the nature of the appeals as considered above and the consequent burden of proof falling on the Appellants.

57. Having weighed the respective arguments put by both parties, I consider that the overriding objective will best be served by refusing the Appellants' application for a stay of proceedings and allowing the appeals to progress in the normal way, irrespective of what may or may not happen in respect of the civil recovery proceedings in the High Court. I therefore refuse the application and have made other directions relating to the future progress of the appeals. I make no order as to costs in respect of the application, and accordingly leave these to be considered once the appeals have been determined.

Right to apply for permission to appeal

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

JOHN CLARK

TRIBUNAL JUDGE
RELEASE DATE: 20 October 2011