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## STATUTORY INSTRUMENTS

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# 2002 No. 3196

## The Tax Credits (Appeals) (No. 2) Regulations 2002

### PART 3

#### APPEAL TRIBUNALS FOR TAX CREDITS

##### CHAPTER 5

###### DECISIONS OF APPEAL TRIBUNALS AND RELATED MATTERS

###### **Decisions of appeal tribunals**

**21.**—(1) Every decision of an appeal tribunal shall be recorded in summary by the chairman, or in the case of an appeal tribunal which has only one member, by that member and shall be referred to as a decision notice.

(2) The decision notice specified in paragraph (1) shall be in such written form as shall have been approved by the President and shall be signed by the chairman, or in the case of an appeal tribunal which has only one member, by that member.

(3) As soon as may be practicable after an appeal or an application for a direction has, or penalty proceedings have, been decided by an appeal tribunal, a copy of the decision notice prepared in accordance with paragraphs (1) and (2) shall be sent or given to every party to the proceedings who shall also be informed of—

- (a) his right under paragraph (4); and
- (b) the conditions governing appeals to a Commissioner.

(4) A party to the proceedings may apply in writing to the clerk to the appeal tribunal for a statement of the reasons for the tribunal's decision within one month of the sending or giving of the decision notice to every party to the proceedings or within such longer period as may be allowed in accordance with regulation 22.

(5) Following the application made under paragraph (4), the chairman, or in the case of an appeal tribunal which has only one member, that member, shall record a statement of the reasons and a copy of that statement shall be given or sent to every party to the proceedings as soon as may be practicable.

(6) If the decision is not unanimous, the decision notice specified in paragraph (1) shall record that one of the members dissented and the statement of reasons referred to in paragraph (5) shall include the reasons given by the dissenting member for dissenting.

###### **Late applications for a statement of reasons of tribunal decision**

**22.**—(1) The time for making an application for the statement of reasons for a tribunal's decision may be extended where the conditions specified in paragraphs (2) to (8) are satisfied, but, subject to paragraph (13), no application shall in any event be brought more than three months after the date of the sending or giving of the notice of the decision of the appeal tribunal.

(2) An application for an extension of time under this regulation shall be made in writing and shall be determined by a legally qualified panel member.

(3) An application under this regulation shall contain particulars of the grounds on which the extension of time is sought, including details of any relevant special circumstances for the purposes of paragraph (4).

(4) The application for an extension of time shall not be granted unless the panel member is satisfied that it is in the interests of justice for the application to be granted.

(5) For the purposes of paragraph (4) it is not in the interests of justice to grant the application unless the panel member is satisfied that—

- (a) the special circumstances specified in paragraph (6) are relevant to the application; or
- (b) some other special circumstances are relevant to the application,

and as a result of those special circumstances it was not practicable for the application to be made within the time limit specified in regulation 21(4).

(6) For the purposes of paragraph (5)(a), the special circumstances are that—

- (a) the applicant or a partner or dependant of the applicant has died or suffered serious illness;
- (b) the applicant is not resident in the United Kingdom; or
- (c) normal postal services were disrupted.

(7) In determining whether it is in the interests of justice to grant the application, the panel member shall have regard to the principle that the greater the amount of time that has elapsed between the expiration of the time within which the application for a copy of the statement of reasons for a tribunal's decision is to be made and the making of the application for an extension of time, the more compelling should be the special circumstances on which the application is based.

(8) In determining whether it is in the interests of justice to grant the application, no account shall be taken of the following—

- (a) that the person making the application or any person acting for him was unaware of, or misunderstood, the law applicable to his case (including ignorance or misunderstanding of the time limits imposed by these Regulations); or
- (b) that a Commissioner or a court has taken a different view of the law from that previously understood and applied.

(9) An application under this regulation for an extension of time which has been refused may not be renewed.

(10) The panel member who determines an application under this regulation shall record a summary of his determination in such written form as has been approved by the President.

(11) As soon as practicable after the determination is made, notice of the determination shall be sent or given to every party to the proceedings.

(12) Any person who under paragraph (11) receives notice of the determination may, within one month of the determination being sent to him, apply in writing for a copy of the reasons for that determination and a copy shall be supplied to him.

(13) In calculating the time specified for applying in writing for a statement of the reasons for the tribunal's decision there shall be disregarded any day which falls before the day on which notice was given of—

- (a) a correction of a decision or the record thereof pursuant to regulation 24; or
- (b) a determination that a decision shall not be set aside following an application made under regulation 25, except where the decision was not set aside because of a refusal to extend the time for applying.

## **Record of tribunal proceedings**

**23.—(1)** A record of the proceedings at an oral hearing, which is sufficient to indicate the evidence taken, shall be made by the chairman, or in the case of an appeal tribunal which has only one member, by that member, in such medium as he may direct.

(2) Such record shall be preserved by the clerk to the appeal tribunal for six months from the date of the decision made by the appeal tribunal to which the record relates and any party to the proceedings may within that period apply in writing for a copy of that record and a copy shall be supplied to him.

## **Correction of accidental errors**

**24.—(1)** The clerk to the appeal tribunal or a legally qualified panel member may at any time correct accidental errors in any decision, or the record of any such decision, of an appeal tribunal made under the 2002 Act.

(2) A correction made to, or to the record of, a decision shall be deemed to be part of the decision or record of that decision and written notice of it shall be given as soon as practicable to every party to the proceedings.

## **Setting aside decisions on certain grounds**

**25.—(1)** On an application made by a party to the proceedings, a decision of an appeal tribunal made under the 2002 Act, may be set aside by a legally qualified panel member in a case where it appears just to set the decision aside on the ground that—

- (a) a document relating to the proceedings in which the decision was made was not sent to, or was not received at an appropriate time by, a party to the proceedings or the party's representative or was not received at an appropriate time by the person who made the decision;
- (b) a party to the proceedings in which the decision was made or the party's representative was not present at a hearing relating to the proceedings.

(2) In determining whether it is just to set aside a decision on the ground set out in paragraph (1)(b), the panel member shall determine whether the party making the application gave notice that he wished to have an oral hearing, and if that party did not give such notice the decision shall not be set aside unless that member is satisfied that the interests of justice manifestly so require.

(3) An application under this regulation shall—

- (a) be made within one month of the date on which—
  - (i) a copy of the decision notice is sent or given to the parties to the proceedings in accordance with regulation 21(3); or
  - (ii) the statement of the reasons for the decision is given or sent in accordance with regulation 21(5),whichever is the later;
- (b) be in writing and signed by a party to the proceedings or, where the party has provided written authority to a representative to act on his behalf, that representative;
- (c) contain particulars of the grounds on which it is made; and
- (d) be sent to the clerk to the appeal tribunal.

(4) Where an application to set aside a decision is entertained under paragraph (1), every party to the proceedings shall be sent a copy of the application and shall be afforded a reasonable opportunity of making representations on it before the application is determined.

(5) Notice in writing of a determination on an application to set aside a decision shall be sent or given to every party to the proceedings as soon as may be practicable and the notice shall contain a statement giving the reasons for the determination.

(6) The time within which an application under this regulation must be made may be extended by a period not exceeding one year where the conditions specified in paragraphs (7) to (11) are satisfied.

(7) An application for an extension of time shall be made in accordance with paragraph (3)(b) to (d), shall include details of any relevant special circumstances for the purposes of paragraph (9) and shall be determined by a legally qualified panel member.

(8) An application for an extension of time shall not be granted unless the panel member is satisfied that—

- (a) if the application is granted there are reasonable prospects that the application to set aside will be successful; and
- (b) it is in the interests of justice for the application for an extension of time to be granted.

(9) For the purposes of paragraph (8) it is not in the interests of justice to grant an application for an extension of time unless the panel member is satisfied that—

- (a) the special circumstances specified in paragraph (10) are relevant to the application; or
- (b) some other special circumstances exist which are wholly exceptional and relevant to that application,

and as a result of those special circumstances, it was not practicable for the application to set aside to be made within the time limit specified in paragraph (3)(a).

(10) For the purposes of paragraph (9)(a), the special circumstances are that—

- (a) the applicant or a partner or dependant of the applicant has died or suffered serious illness;
- (b) the applicant is not resident in the United Kingdom; or
- (c) normal postal services were disrupted.

(11) In determining whether it is in the interests of justice to grant an application for an extension of time, the panel member shall have regard to the principle that the greater the amount of time that has elapsed between the expiry of the time within which the application to set aside is to be made and the making of the application for an extension of time, the more compelling should be the special circumstances on which the application for an extension is based.

(12) An application under this regulation for an extension of time which has been refused may not be renewed.

### **Provisions common to regulations 24 and 25**

**26.—(1)** In calculating any time specified for appealing to a Commissioner from a decision of an appeal tribunal there shall be disregarded any day falling before the day on which notice was given of—

- (a) a correction of a decision or the record thereof pursuant to regulation 24; or
- (b) a determination that a decision shall not be set aside following an application made under regulation 25, except where the decision was not set aside because of a refusal to extend the time for applying.

(2) There shall be no appeal against a correction made under regulation 24 or a refusal to make such a correction or against a determination made under regulation 25.

(3) Nothing in this Chapter shall be construed as derogating from any power to correct errors or set aside decisions which is exercisable apart from these Regulations.

### **Application for leave to appeal to a Commissioner from a decision of an appeal tribunal**

27.—(1) Subject to section 14 of the Act (as applied and modified by the Appeals Regulations), an application for leave to appeal to a Commissioner from a decision on an appeal under section 12 or 13 of the Act (as applied and modified by the Appeals Regulations) shall—

- (a) be sent to the clerk to the appeal tribunal within the period of one month of the date of the applicant being sent a written statement of the reasons for the decision against which leave to appeal is sought; and
- (b) have annexed to it a copy of that written statement of the reasons for the decision.

(2) Where an application for leave to appeal to a Commissioner is made by the Board, the clerk to an appeal tribunal shall, as soon as may be practicable, send a copy of the application to every other party to the proceedings.

(3) A person determining an application for leave to appeal to a Commissioner shall record his determination in writing and send a copy to every party to the proceedings.

(4) Where there has been a failure to apply for leave to appeal within the period of time specified in paragraph (1)(a) but an application is made within one year of the last date for making an application within that period, a legally qualified panel member may, if for special reasons he thinks fit, accept and proceed to consider and determine the application.

(5) Where an application for leave to appeal against a decision of an appeal tribunal is made—

- (a) if the person who constituted, or was the chairman of, the appeal tribunal when the decision was given was a fee-paid legally qualified panel member, the application may be determined by a salaried legally qualified panel member; or
- (b) if it is impracticable, or would be likely to cause undue delay, for the application to be determined by whoever constituted, or was the chairman of, the appeal tribunal when the decision was given, the application may be determined by another legally qualified panel member.