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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**

**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.