



[2019] UKFTT 0742 (TC)

TC07500

VAT – assessment – penalty – late appeal – questions over grounds of appeal – application for postponement – denied – Martland applied – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2018/02430

BETWEEN

AMER NAWAZ

Appellant

-and-

**THE COMMISSIONERS FOR
HER MAJESTY'S REVENUE AND CUSTOMS**

Respondents

TRIBUNAL: JUDGE JAMES AUSTEN

**Sitting in public at Taylor House, 88 Rosebery Avenue, London EC1R 4QU on 28
November 2019**

Jonathan Lam, Accountant, for the Appellant.

Victor Olamide, Litigator of HM Revenue and Customs' Solicitor's Office, for the Respondents.

DECISION

INTRODUCTION

1. HMRC contended that the appellant's turnover meant that he should have registered for VAT by 1 January 2012, but he had failed to do so. The appellant disputed HMRC's contention.
2. HMRC issued a VAT assessment to the appellant (in the absence of a VAT return by him) on 6 October 2014, and issued a penalty notice relating to that assessment on 8 October 2014.
3. This hearing took place pursuant to case management directions by Judge Barbara Mosedale which were confirmed in a letter dated 15 May 2019 from the Tribunal to Mr Lam. The hearing was to determine several issues and applications – the precise number and scope of which were not agreed between the parties.
4. In prior correspondence between the Tribunal and Mr Lam, Judge Mosedale required the appellant to clarify the grounds of appeal: in particular, whether an appeal was intended in respect of both the VAT assessment and the penalty. In a reply dated 3 December 2018, Mr Lam confirmed that the appeal was intended to include both.
5. The two issues identified by Judge Mosedale for determination in the hearing before me were:
 - (1) The lateness of the appellant's appeal in respect of both VAT and penalties; and
 - (2) The Tribunal's jurisdiction in respect of the VAT appeal.
6. At the beginning of the hearing, Mr Lam made an oral application – unopposed by HMRC – for a postponement of the hearing due to the unavailability of the appellant to give evidence.
7. During the hearing, a further issue arose as to whether or not the appeal before the Tribunal – properly construed – included an appeal against HMRC's decision to register the appellant for VAT.
8. Mr Lam's summary of the issues before the Tribunal also included the substantive points under appeal, but I did not interpret this to imply that Mr Lam expected those points to be determined at the hearing before me.
9. Mr Lam's summary also raised the perceived unfairness of the penalty, which the appellant considered "unreasonably harsh".

PRELIMINARY ISSUES

10. Mr Lam informed me at the beginning of the hearing that the appellant was unable to be present. The appellant had flown to Australia on business the day before, having bought his ticket two days prior. The appellant had been hoping that someone else would have been able to deal with his business affairs in Australia, but that had proved impossible to arrange.
11. As a result, Mr Lam made an oral application to postpone the hearing to another date more convenient to the appellant. Mr Olamide, for HMRC, confirmed that he had no objection to the appellant's postponement application.
12. Mr Olamide drew my attention to an email from him to Mr Lam dated 27 November 2019. The email confirmed that Mr Olamide had read the appellant's witness statement and documents bundle, which had been filed with the Tribunal and copied to Mr Olamide the day before. He had written:

It appears that the matters in dispute have been added to and new factors cited as reasons for lateness. It is disappointing that these factors were not mentioned previously as this would have been helpful when considering reasonable excuse. The witness statement states that the mental health issues were discussed prior to submitting the notice of appeal.

To assist matters going forward could you please provide more detail as to when these medical issues (dyslexia, depression etc) were diagnosed and to what extent and all relevant reports and/or correspondence supporting the medical issues...

The new grounds/outline argument is disputing the assessment and the amount owing extensively where the notice of appeal only states the penalty is being appealed. Why at this late stage as the emphasis shifted quite heavily to an issues [*sic*] that wasn't even detailed in the initial appeal?

We the respondents appreciate the appellant and their agents efforts [*sic*] to inform their case as completely as possible but we also not [*sic*] that this late divulging of information doesn't allow for thorough and complete consideration of the additional issues raised prior to the hearing. The new information submitted has the possibility to [*sic*] significantly prejudice HMRC's case and without the evidence to support the planes HMRC have been precluded from testing the credibility of the statements.

13. Mr Lam told me that Mr Olamide's email was incorrectly addressed and he had not received it.

14. I expressed to Mr Lam my dissatisfaction that the appellant had bought a ticket to Australia three days before a Tribunal hearing which he had known about since 11 July 2019. I shared Mr Olamide's concern that the appellant's witness statement – for the first time – gave more details about the reasons for the lateness of his appeal. In the appellant's absence, it was impossible for HMRC to cross-examine him, or for the Tribunal to satisfy itself as to his evidence.

15. I reminded Mr Lam that late applications for postponements – especially when made orally in the hearing to be postponed – adversely affected the efficient administration of justice for all matters before the Tribunal, not just the appellant's case.

16. With that in mind, I decided to make as much progress as possible on the matters before me during the hearing. In particular, I decided that the second issue identified by Judge Mosedale, i.e. the Tribunal's jurisdiction over the VAT appeal, could be dealt with in the absence of the appellant. This was because it was a pure point of law, on which no evidence was required.

17. I would then hear arguments on the postponement application and, insofar as possible, the lateness issue. I took the general view that the context of the latter was relevant to the former.

18. I decided that, once I had disposed of the jurisdiction question, and having heard any further arguments, I would reserve judgment on the postponement application and the lateness issue.

JURISDICTION IN THE VAT APPEAL

19. In a letter to Mr Lam dated 27 September 2018, pursuant to a review by Judge Mosedale, the Tribunal noted:

...[I]t appears that the Tribunal may have no jurisdiction to entertain an appeal against the assessment as it appears it may have been an assessment made in the absence of any VAT returns. The appellant must clarify whether he did

(as the letter of 6/10/14 from HMRC invited him to do) file VAT returns to displace the assessment.

20. The point was repeated in a letter from the tribunal to Mr Lam on 9 January 2019. In that letter, the tribunal set a deadline of 28 days from the date of the letter for the appellant to clarify his position on the question of the Tribunal's jurisdiction.

21. Mr Lam replied to the tribunal on behalf of the appellant on 6 February 2019. He wrote:

To address the Tribunals [*sic*] question, we can confirm that the Appellant managed to contact the previous accountant who confirmed that no VAT returns were filed by them to displace the assessment.

The Appellant still believes that the Tribunal has jurisdiction over the assessments as the Appellant believes the initial decision to charge him VAT was incorrect. Therefore filing VAT returns would in turn serve as obstructive to his case.

The Appellant has instructed us where the Tribunal does not have the jurisdiction over the assessments to commence preparation of the VAT Returns to displace the assessment. However the appellant is prepared to take a view in how the VAT Returns are prepared based upon the belief that the initial HMRC decision was incorrect.

22. The third paragraph quoted is difficult to interpret. However, I understand it to mean that should the tribunal not have jurisdiction over the VAT assessment in question, the appellant had instructed Mr Lam to prepare and file the necessary VAT returns. The preceding paragraph confirms the appellant's view that, notwithstanding Judge Mosedale's stated concerns, the tribunal did have jurisdiction over the VAT appeal.

23. At the hearing, I asked Mr Lam to explain his position on the jurisdiction question. I asked him to confirm: (1) under which provision of the Value Added Tax Act 1994 (VATA 1994) HMRC's assessment had been made; and (2), in consequence, which provision of the same Act made that assessment subject to appeal before this Tribunal.

24. Mr Lam was unable to do so.

25. Mr Olamide confirmed that the assessment was made pursuant to s.73(1) VATA 1994:

(1) Where a person has failed to make any returns required under this Act (or under any provision repealed by this Act) or to keep any documents and afford the facilities necessary to verify such returns or where it appears to the Commissioners that such returns are incomplete or incorrect, they may assess the amount of VAT due from him to the best of their judgment and notify it to him.

26. I reminded Mr Lam that the VATA 1994 is prescriptive in respect of appeal rights for VAT decisions taken by HMRC.

27. I directed Mr Lam to s.83(1) VATA 1994, which set out the appeal rights in respect of s.73. Insofar as relevant, this read as follows (emphasis supplied):

(1) Subject to sections 83G and 84, an appeal shall lie to the tribunal with respect to any of the following matters—...

(p) an assessment—

(i) under section 73(1) or (2) in respect of a period *for which the appellant has made a return under this Act...*

or the amount of such an assessment;

28. I asked Mr Lam whether the appellant had submitted a VAT return to displace HMRC's assessment pursuant to s.73(1) – the question that Judge Mosedale had previously posed. Mr Lam confirmed that he had not (as also confirmed in the letter from Mr Lam to the Tribunal dated 6 February 2019).

29. Accordingly, I determined that, as intimated by Judge Mosedale, the Tribunal did not have jurisdiction to hear the appellant's appeal against the VAT assessment and I duly struck it out pursuant to Rule 8(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (the "Rules") for want of jurisdiction.

APPEAL AGAINST REGISTRATION

30. Mr Lam explained that the intended ground for the appeal against the VAT assessment had been that HMRC had wrongly registered the appellant for VAT. He acknowledged that he had been in error in believing that this point could be argued in the context of an appeal against the assessment. Following my decision to strike out that element of the appeal, he recognised that his understanding had been incorrect.

31. I directed Mr Lam to s.83(1)(a) VATA 1994, which provided the right of appeal against "the registration or cancellation of registration of any person under [the VATA 1994]". Mr Lam then appreciated that the two appeal rights were separate and that an appeal against the registration of the appellant to VAT could not be made as a collateral matter in an appeal against a s.73(1) assessment where the Tribunal had no jurisdiction to determine the latter.

32. However, an issue then arose as to whether the appellant's Notice of Appeal, properly construed, did in fact include an appeal against registration under s.83(1)(a) VATA 1994. Mr Lam's case was that it did. The grounds of appeal, in relevant part, read as follows:

We ask that the penalties be reduced to nil, Mr Nawaz' actions were completely unintentional and due to incorrect advice from professionals...

Mr Nawaz would also like to query the actual decision by the HMRC officer that the full amount entering Mr Nawaz' bank should be classed as his income rather than the percentage of commission he took as an agent which was his actual personal income.

All expenses incurred by Mr Nawaz were reducing his commission that was the difference from [*sic*] what the venues paid for an artist to be delivered for an after party minus the artist fees and expenses

33. It appears that HMRC did not interpret the Notice of Appeal to include an appeal against HMRC's registration of the appellant to VAT. This finds support in the terms of the email from Mr Olamide to Mr Lam of 27 November 2019 quoted at [12] above.

34. Similarly, when the Tribunal wrote to Mr Lam on 27 September 2018 to clarify the scope of the appeal, no mention was made of an appeal against registration. I interpret this to mean that neither Judge Mosedale nor the Tribunal had identified the Notice of Appeal to include an appeal against VAT registration.

35. Nevertheless, what is to be made of the word "query" in the context of the phrase "the actual decision by the HMRC officer" contained in the "Grounds for appeal" section of the notice of Appeal? How should "query" be interpreted if not to mean a statutory appeal pursuant to s.83(1)(a) VATA 1994?

36. In his letter to the Tribunal dated 3 December 2018, Mr Lam wrote:

... The appellant confirms that whilst the appeal relates to the assessment and penalties, the basis of the decision made by HM Revenue and Customs is also the subject of the appeal. The appellant will say that there was no requirement

for him to be VAT Registered because his turnover was below the VAT Threshold.

37. Similarly, in his letter to the tribunal dated 6 February 2019, Mr Lam wrote:

... the appellant believes the initial decision to charge him VAT was incorrect.

38. Likewise, the appellant's Witness Statement includes the following:

My accountant advised me that as [*sic*] I am not appealing the assessment amount. I am appealing the fact [that the] original decision by Ms Davidson of HMRC was incorrect and that I should never have been VAT registered, therefore no VAT liability should have arisen and no penalty should have arisen due to the fact.

39. To my mind, it is not immediately clear from the passages quoted from the Notice of Appeal and Mr Lam's letters to the Tribunal whether the appellant is objecting to the *unfairness* of HMRC's decision to register him for VAT (and to charge him to tax – albeit subject to my decision above), or whether the appellant is challenging the *correctness* of that decision in law. But the passage quoted from the appellant's Witness Statement does clearly suggest the latter.

40. Of course, this Tribunal does not have a general Judicial Review jurisdiction to consider the 'fairness' of HMRC's decisions. Such an appeal lies to the Administrative Court and not to this Tribunal. Conversely, as noted above, the Tribunal does have jurisdiction s.83(1)(a) VATA 1994 to hear appeals against a decision to register a taxpayer for VAT.

41. As a consequence of the lack of clarity in the appellant's stated grounds of appeal, it is not surprising that neither HMRC nor the Tribunal identified the appeal as including a s.83(1)(a) appeal against VAT registration. Nevertheless, I consider that the terms of the Notice of Appeal are – just – sufficient to include an appeal under that provision. This interpretation is supported by the consistent terms of the subsequent correspondence sent by Mr Lam to the Tribunal. In my opinion, the appellant intended throughout to appeal against the correctness of HMRC's decision to register him for VAT. Mr Olamide was therefore not in my view correct in his email of 27 November 2019 to say that disputing the assessment and the amount owing were "new grounds".

42. I have therefore decided that the Notice of Appeal did include a s.83(1)(a) appeal against VAT registration. The length of the delay in making that appeal is the same as that for the other matters under appeal.

43. In common with the appeal against the VAT assessment (which I have already struck out) and the appeal against the associated penalty (which I have not yet determined), this appeal was not made within the period of time allowed by statute. It follows that the permission of the Tribunal will be required if the appellant is to be given the opportunity to proceed with these appeals.

POSTPONEMENT

44. The Tribunal has power to postpone a hearing (Rule 5(3)(h) of the Rules). In exercising its case management powers (including the power to postpone), the Tribunal is to have regard to the overriding objective of dealing with cases fairly and justly at Rule 2(1) (Rule 2(3)(a)). Rule 2(2)(e) reminds the Tribunal that dealing with cases fairly and justly includes "avoiding delay, so far as compatible with proper consideration of the issues."

45. As noted above, Mr Lam made an oral application to postpone the hearing on account of the unavailability of the appellant due to business commitments in Australia.

46. Guidance was given to the Tribunal on the exercise of its discretion to adjourn hearings in *MHA v Secretary of State for Work and Pensions* [2009] UKUT 211 (AAC). The Tribunal's

powers of adjournment and postponement (arising in the same Rule) are, in my view, interchangeable for these purposes. The Upper Tribunal relevantly held as follows:

14. How should a tribunal consider whether to adjourn a hearing using the overriding objective? The answer inevitably begins with the words ‘it all depends’. Having said that, it is likely that the tribunal’s inquiries and consideration will focus on three issues.

What would be the benefit of an adjournment?

15. The starting point is the reason for the application. In this case, it was to obtain further evidence. A tribunal is always entitled to consider whether this evidence is likely to be helpful. In making its assessment, it is relevant to take into account: (i) the evidence that is already before the tribunal; (ii) the evidence that is likely to be obtained if the proceedings are adjourned; (iii) how long it will take to obtain it; and (iv) whether the tribunal could use its expertise to compensate for the lack of additional evidence...

Why was the party not ready to proceed?

20. Parties are under a duty to co-operate with the tribunal generally. That involves ensuring as far as possible that their case is ready by the time of the hearing...

What impact will an adjournment have on the other party and the operation of the tribunal system?

21. The interests of the claimant are likely to be resolved when considering the value of an adjournment...

23. The interests of the functioning of the tribunal system as a whole are unlikely to be of great significance in the vast majority of cases. It will surely be exceptional for an adjournment that would otherwise be granted to be refused solely on account of the needs of the system as a whole.

47. The 3-stage guide in *MHA* is not a ‘test’ as such and it would be a mistake to apply it too rigidly. As the Upper Tribunal in that case noted, the guidance is an illustration of how to approach an application for an adjournment – or, here, a postponement – using the overriding objective. I respectfully agree that the three categories identified by the Upper Tribunal are helpful in that exercise.

48. Taking the three *MHA* categories in turn:

(1) The purpose of a postponement in this case would be to permit the appellant to attend the hearing. This is potentially significant because he has provided evidence as to the reasons for his late appeal in a Witness Statement. He may, in oral evidence, be able to expand upon this. Likewise, HMRC would have the opportunity to cross-examine him on his evidence. It may also be possible for new third-party evidence to be produced to corroborate the appellant’s evidence. The appellant, supported by Mr Lam, was responsible for preparing his case. No reason was given as to why there was presently no independent evidence before the Tribunal (for example, medical notes) corroborating the appellant’s evidence.

(2) The appellant was not able to provide oral evidence at the hearing listed before me because he had flown to Australia the day before, apparently on business. He had booked his ticket three days before the hearing. The hearing had been arranged since 11 July. The date had been arranged having taken into account the appellant’s dates to avoid, which Mr Lam had provided.

(3) Whilst HMRC had objected to the late appeal, Mr Olamide told me that he did not oppose the appellant’s application for a postponement. As I understood it, this was

because the appellant had provided new information – for the first time – in his Witness Statement which HMRC would need to consider. As HMRC did not object to the postponement application, it would be difficult to say that it would be prejudiced by the delay (except, perhaps, in respect of costs – but no mention was made of that at this stage).

49. Having considered the overriding objective in general and these three factors in particular, I was minded to dismiss the application for a postponement. However, the evidence provided by the appellant in his Witness Statement was clearly relevant both to the issue of lateness, and (in part, at least) to the substance of the appeal.

50. With that in mind, I concluded that I should allow the postponement application if – but only if – I considered that the written evidence provided by the appellant (assuming for the moment that it could be accepted at face value) indicated that his case had sufficient merit to warrant proceeding when applying the *Martland* test (below). In that eventuality, the appellant should have the opportunity to expand upon his evidence in oral testimony, and HMRC should have the chance to test it in cross-examination. However, if the appellant’s evidence did not satisfy me at this stage that his case was, at least potentially, sufficiently meritorious in light of *Martland*, it seemed to me futile to allow the postponement application and add unnecessarily to the time and costs of the matter.

51. Accordingly, I left coming to a firm conclusion as to the postponement application until I had come to a view on the lateness issue, applying the *Martland* test.

LATENESS

52. Section 49H Taxes Management Act 1970 gives the Tribunal power to grant permission for a late appeal at its discretion. HMRC opposes the appellant’s application.

53. HMRC directed me to the following cases in relation to the Tribunal’s exercise of its s.49H discretion: *Romasave (Property Services) Ltd v RCC* [2015] BVC 518 and *Martland v HMRC* [2018] UKUT 178 (TCC) (Judge Roger Berner and Judge Kevin Poole). *Martland* at [44] to [46] sets out the proper test, as follows:

44. When the FTT is considering applications for permission to appeal out of time, therefore, it must be remembered that the starting point is that permission should not be granted unless the FTT is satisfied on balance that it should be. In considering that question, we consider the FTT can usefully follow the three-stage process set out in *Denton*:

(1) Establish the length of the delay. If it was very short (which would, in the absence of unusual circumstances, equate to the breach being “neither serious nor significant”), then the FTT “is unlikely to need to spend much time on the second and third stages” – though this should not be taken to mean that applications can be granted for very short delays without even moving on to a consideration of those stages.

(2) The reason (or reasons) why the default occurred should be established.

(3) The FTT can then move onto its evaluation of “all the circumstances of the case”. This will involve a balancing exercise which will essentially assess the merits of the reason(s) given for the delay and the prejudice which would be caused to both parties by granting or refusing permission.

45. That balancing exercise should take into account the particular importance of the need for litigation to be conducted efficiently and at proportionate cost, and for statutory

time limits to be respected. By approaching matters in this way, it can readily be seen that, to the extent they are relevant in the circumstances of the particular case, all the factors raised in *Aberdeen* and *Data Select* will be covered, without the need to refer back explicitly to those cases and attempt to structure the FTT's deliberations artificially by reference to those factors. The FTT's role is to exercise judicial discretion taking account of all relevant factors, not to follow a checklist.

46. In doing so, the FTT can have regard to any obvious strength or weakness of the applicant's case; this goes to the question of prejudice – there is obviously much greater prejudice for an applicant to lose the opportunity of putting forward a really strong case than a very weak one. It is important however that this should not descend into a detailed analysis of the underlying merits of the appeal ...

54. I set out the relevant considerations in this case as I find them, applying *Martland*, as follows.

55. The length of delay in this case was over 1,250 days (approximately 3½ years). That was, on any basis, a particularly serious and significant delay.

56. The reasons given for the delay by the appellant are as follows:

(1) The appellant felt unable to discuss HMRC's inquiry into his tax affairs with his wife. She nevertheless discovered it shortly before giving birth to the couple's daughter. This led to an estrangement between the appellant and his wife, and ultimately the ending of their marriage in May 2017.

(2) As a result, the appellant moved back to his parents' house. This caused him what he describes in his Witness Statement as "even greater disgrace on my part" as a result of the views of the local Islamic community, of which he and his family were members.

(3) The appellant notes that his Islamic community traditionally treats men as being the "guardian" of their families. The appellant states that whilst he is a "firm believer in equality, the stereotypes from my community forced me into a deep depression, feeling like I had failed my family and lost them completely. I could not bring myself to speak to my parents about it, I shut myself off from them."

(4) As regards the depression and anxiety that the appellant says he experienced, he notes that mental health was not then easily spoken about – particularly in his local community, and he was in fear of the "stereotypical views" of older relatives.

(5) From 2014, the appellant has found it extremely difficult to access his children as his (ex-)wife blocked access.

(6) The appellant "buried [his] head in the sand" and did not appeal or make payments at the time the assessment was issued.

(7) Subsequently, in April 2015, the appellant was contacted by an HMRC Field Force Officer, Gareth Garland. Mr Garland apparently told the appellant that if he could not afford to pay the VAT liability and penalty in a lump sum, he should agree a repayment plan. It was either that or be forced by HMRC into bankruptcy.

(8) The appellant's evidence is that he asked Mr Garland about appealing the amounts, to which he was told "...you have to stick to an agreed payment plan, show goodwill and you can appeal at a later date. This will help your appeal."

(9) At that time, the appellant "simply had no willpower to appeal".

(10) The appellant claims that he was economically not in a position to appeal any earlier, as his necessary outgoings sometimes exceeded his income.

(11) In February 2018, the appellant had instructed Mr Lam to prepare his company accounts. At that point, Mr Lam asked him “whether [he] wanted to finally appeal the HMRC liability.” The appellant adds: “I was finally able to appeal. I was healing mentally, and I had better contact with my children. My life finally had some stability and I was ready to defend myself, which is as I would have done in 2014.”

57. *Martland* emphasises the importance of adhering to statutory time limits at [45]. This point was reinforced by the Upper Tribunal in *HMRC v Katib* [2019] UKUT 189 (TCC) at [17].

58. Some of the factors at [56(1)] above are relevant to the delay in notifying this appeal to the Tribunal. I do fully take into account that attitudes to mental health issues have improved significantly in recent years. I am also prepared to accept for these purposes the appellant’s contention that the stigma attaching to marital breakdown and mental health issues might conceivably be especially problematic in the community of which he is a part.

59. Nevertheless, there is no independent evidence of the fact or severity of the appellant’s mental ill-health during this period. It is conceivable that further evidence could be provided if I allowed the postponement application. However, such evidence (if it existed) would not be new – it would date back several years – and there is no reasonable justification for failing to produce it before now.

60. Relevantly, the appellant noted that he had “buried [his] head in the sand” (quoted at [56(6)]) and “simply had no willpower to appeal” (quoted at [56(9)]).

61. The representation purportedly made to the appellant by Mr Garland is certainly germane to the question of reasonable excuse. However, that representation (on which I have not seen any evidence from HMRC) was apparently made in April 2015. The assessment to VAT was made in October 2014 – six months earlier. The delay to that point alone was “serious and significant” given the applicable 30-day statutory appeal window.

62. I remind myself that if I find there to have been a reasonable excuse for the appellant’s late appeal, his appeal should have been “...made without unreasonable delay after the reasonable excuse ceased” (s.49(2)(b)(6) TMA 1970).

63. Given the extreme severity of the delay in this case, only the most cogent reasons would satisfy me that the delay was reasonable. I would also need to be satisfied that the appeal was made within a reasonable period of those reasons ceasing to apply. I am not satisfied on either point.

64. Whilst mental ill-health, matrimonial breakdown, community and family pressures and representations by HMRC officers might all constitute – or contribute towards – a reasonable excuse for delay, there is insufficient evidence before me on any of those points for me to conclude that the delay was reasonable here.

65. No reason has been given for the change in the appellant’s ability to make an appeal when it was proposed to him by Mr Lam in February 2018. If the appellant’s appeal was to have been made within a reasonable period of the relevant excuse(s) ceasing to apply, I should have expected the impetus for the appeal to come from the appellant, not from his accountant. I should, at the least, expect more of an explanation of why the excuse(s) had come to an end.

66. Having considered the factors at [44] and [45] of *Martland*, I proceeded to stand back and consider (in outline) the strengths and weaknesses of the appellant’s substantive appeal. I had the following factors particularly in mind:

(1) The funds flowing through the appellant's bank account clearly consisted of different aspects, including moneys due to others as part of his business arrangements and his own fees. That fact does give rise to the possibility that the appellant might be able to argue that his turnover was below the VAT registration threshold for the period in question.

(2) However, the relevant facts were known to Mrs L Davidson of HMRC when she wrote to the appellant on 22 January 2014 to explain why in her view the appellant should have registered for VAT. In that letter, Mrs Davidson raised a number of technical impediments to the appellant's stated view that his turnover was below the threshold. It appears from the papers before me that those issues have never satisfactorily been addressed.

(3) VAT is a particularly formulaic and prescriptive tax regime and it is important that traders should have proper advice on how it might apply to their business and how their affairs should be structured as a result. It is clear in this case that the appellant was ill-informed on VAT matters during the relevant period.

67. Accordingly, I consider that the appellant's case shows no sign of being especially strong.

68. As a result, I have concluded that the factors relevant to lateness do not meet the requirements set out in *Martland* and that the appropriate course of action is for me to dismiss this appeal.

69. I acknowledge that the appellant will be prejudiced by the dismissal of this appeal but the implications of this are those set out in statute for failing to make a timely appeal.

70. It is sad that the appellant's tax affairs apparently contributed to the breakdown of his marriage and his lack of access to his children, and that they were a factor in his declining mental health and the difficulties he experienced with his family and in his community. However, those outcomes stemmed not from HMRC's assessment but from the appellant's failure to deal positively with the issues when they arose.

71. As appears above, I have considered the terms of the substantive appeal sufficiently to form a general impression of its strengths and weaknesses – though without descending into a detailed consideration of its merits (per *Martland* at [46]). Having done so, I have concluded that the appellant's case is not sufficiently strong to merit allowing his appeal to proceed.

DISPOSAL

72. In light of my decision above, permission for a postponement is denied.

73. I dismiss the whole of this appeal and strike out these proceedings.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

74. 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.

**JAMES AUSTEN
TRIBUNAL JUDGE**

RELEASE DATE: 09 DECEMBER 2019