



Neutral Citation: [2024] UKFTT 00374 (TC)

Case Number: TC09159

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

In public by remote video hearing

Appeal reference: TC/2023/00223

PROCEDURE – application to make late appeal against penalties imposing personal liability on the appellant for underpaid VAT and corporation tax due from a company – application dismissed

Heard on: 8 April 2024

Judgment date: 9 May 2024

Before

**TRIBUNAL JUDGE NIGEL POPPLEWELL
MR JOHN ROBINSON**

Between

CHARLES CATON

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: In person

For the Respondents: Mr David Lewis litigator of HM Revenue and Customs’ Solicitor’s Office

DECISION

INTRODUCTION

1. This decision deals with an application by the appellant for permission to make a late appeal against penalty assessments dated 12 April 2019. These penalties amount, in total, to nearly £700,000.
2. They have been visited on the appellant as it is HMRC's view that a company which he controlled (The Grove (SW 19) Ltd ("**the company**")) had deliberately failed to account for corporation tax on gains made on the sale of real property, and for "tax" under section 455 Corporation Tax Act 2010 ("**section 455 tax**") on the extraction of the proceeds of that sale. HMRC also say that the company owed VAT as a result of that sale and on car parking fees it received between 2009 and 2015. And that the appellant is liable for that VAT as the company's failure to pay it results from the appellant's deliberate behaviour.
3. Accordingly, HMRC have assessed the company to £768,109.60 for additional corporation tax and VAT ("**the company assessments**").
4. They have assessed the appellant to; a corporation tax penalty of £371,119.03; a VAT penalty of £113,749.54 arising from the deliberate omission of VAT from the company's tax return; and for a civil evasion penalty in respect of the disposal of land of £211,743 (together "**the penalty assessments**").
5. As mentioned above, the penalty assessments were dated 12 April 2019. The appellant's appeal was not made until 16 January 2023. In HMRC's view this is about three years and eight months after the date on which the appellant should have appealed. The appellant has applied for permission to bring a late appeal which HMRC oppose.

THE LAW

Substantive appeal

6. We were not addressed on the relevant law applicable to the company assessments nor indeed the penalty assessments. Simply stated, however:

- (1) Section 455 tax is liable from a close company where that company makes a loan to a participator.
- (2) A company may be liable for a penalty where it has submitted an inaccurate corporation tax or VAT return and that inaccuracy is due to careless or deliberate behaviour on the part of the company.
- (3) Where a penalty for submitting an inaccurate return is payable by a company for a deliberate inaccuracy which was attributable to an officer of the company, the officer is liable to pay such portion of the penalty (which may be 100%) as HMRC may specify by written notice to the officer.
- (4) For there to be a "deliberate" inaccuracy HMRC have to establish an intention to mislead HMRC on the part of the taxpayer as to the truth of the relevant statement.
- (5) A civil evasion penalty may be visited on a company where that company has acted dishonestly for the purpose of evading VAT. That penalty can be visited on a director of the company if the company's dishonesty can be attributed to that director.

Late appeal

7. When deciding whether to give permission, the tribunal is exercising judicial discretion, and the principles which should be followed when considering that discretion are set out in *Martland v HMRC* [2018] UKUT 178 (TCC), (“*Martland*”) in which the Upper Tribunal considered an appellant’s appeal against the FTT’s decision to refuse his application to bring a late appeal against an assessment of excise duty and a penalty. The Upper Tribunal said:

“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”.

THE EVIDENCE AND THE FACTS

8. We were provided with two bundles of documents. The appellant gave oral evidence. Oral evidence on behalf of HMRC was given by Officer Chris Peake (“**Officer Peake**”). From this evidence we find the following:

Background

(1) The company owned a pub and an associated car parking site. It disposed of the pub on 16 March 2012 for a consideration of £1 million. It disposed of the car park on 19 June 2015 for a consideration of £1.1 million.

(2) The company did not account for corporation tax on any gains made on these disposals.

- (3) The company had made an option to tax for VAT purposes over both pieces of land. The company did not account for output tax on the disposals.
- (4) Payments for use of the car park were made largely in cash and paid into the till in the pub. VAT was accounted for on these payments as part of the company's quarterly VAT returns.
- (5) Following the sale of the pub, there was a dispute between the appellant and his co-investors/shareholders regarding the distribution of the proceeds.
- (6) Following that sale, the car park continued to be operated by the company, and the money paid therefore was extracted by the appellant's business partner and her son.
- (7) On 6 July 2017 HMRC opened an enquiry into the company's tax return for the period ended 31 July 2015.
- (8) Following correspondence, and the issuing of an information notice, on 16 January 2018, HMRC told the appellant in his capacity as director of the company that they were intending to issue a jeopardy amendment to protect HMRC's position.
- (9) The company's accountants Doshi & Co ("**Doshi**") appealed against the jeopardy amendment.
- (10) At the end of May/beginning of June 2018, the appellant was contacted by an organisation called Greenfield Recovery ("**Greenfield**") which appeared to specialise in insolvency procedures. Alex Dunton, of Greenfield, had a conversation with the appellant, and then, according to the appellant, sent the appellant a document indicating that the company owed VAT to HMRC of approximately £113,000. The appellant was not able to supply a copy of this document either to us or to HMRC. However, it was the appellant's evidence that he sent a copy of that document to Doshi who said that they would deal with it and lodge an appeal with HMRC.
- (11) The appellant's oral evidence was also that Mr Dunton had told him that if the company continued to trade, he could be made personally liable for the company's debts. This included tax debts. His evidence was that Mr Dunton told him that liquidating the company would be his best option as HMRC would take steps to liquidate the company in any event for any tax debts.
- (12) On 1 June 2018 HMRC was notified that the company had entered into a creditors voluntary liquidation and that Greenfield had been appointed as the liquidator.
- (13) A meeting of the creditors was held by way of a telephone call on 14 June 2018. It was attended by, amongst others, Officer Peake, the appellant and Mr Dunton.
- (14) During that call, Officer Peake explained that it was not possible to make a valid appeal against the jeopardy amendment.
- (15) In the second half of 2018, HMRC attempted to obtain further information from Doshi and from the appellant regarding the activities and disposals made by the company with a view to assessing the company to corporation tax and to VAT.
- The assessments*
- (16) On 29 November 2018, HMRC issued VAT assessments to the company for £401,926 for the period March 2012 to June 2018. These were not appealed.
- (17) On 7 February 2019 the appellant sent an email to Officer Peake. In that email he explained that he had not received letters inviting him to various meetings; the company's accountant had been filing dormant accounts since 2012 as the company had not been trading; no VAT was due as the company had not been trading; neither he nor the company owed any money to HMRC as Officer Peake had alleged in correspondence.
- (18) In a letter dated 12 March 2019 ("**the March 2019 letter**") from Officer Peake, to the appellant, Officer Peake explained that he did not agree that the company had been dormant as the appellant had alleged; no capital gains of VAT had been declared when the company sold the land notwithstanding that an option to tax for VAT purposes was in place; it was

Officer Peake's view that both VAT and corporation tax was due (as regards the former, as per the assessments raised on 29 November 2018).

(19) That letter went on to allege that Officer Peake had written to the company and the appellant on numerous occasions and invited the appellant to two meetings, which the appellant had not attended. It went on to say that as assessments were now to be issued, the appellant should refer to guidance (a website address was hyperlinked) as to what to do if the appellant disagreed with the decision. In the letter under a heading "What happens next", the appellant was told that if he wished to appeal against the VAT and corporation tax assessments, further information could be found at that hyperlink; that Officer Peake would shortly be issuing penalties relating to the inaccuracies; and what the appellant should do if he disagreed with those penalties. A further hyperlink was given. The letter went on to say that "if you have any questions about the contents of this letter, please do not hesitate to contact me".

(20) It was the appellant's evidence that he telephoned and had a conversation with Officer Peake in response to the March 2019 letter. It was Officer Peake's evidence that he received no telephone call from the appellant and did not have a conversation with him at that time. We return to this below.

(21) In an email dated 12 March 2019, Officer Peake thanked the appellant for confirming that the appellant was happy to communicate via email and "please find attached my response". The attachment was the March 2019 letter.

(22) The appellant's evidence was that "Exactly one month later the 12th of April 2019, I received a notice of Mr Peake's decision to transfer the debt to the me personally, the total figure transferred to me was over £730,000".

(23) On 12 April 2019 HMRC issued penalty assessments to the company in relation to both corporation tax and VAT. The company did not appeal against these assessments.

(24) On the same date, HMRC issued personal liability notices to the appellant (i.e. the penalty assessments). These effectively transferred 100% of the company penalties to the appellant.

(25) The penalty assessments clearly set out the appellant's appeal rights.

(26) On 15 June 2019, in an email from the appellant to Officer Peake which refers to the March 2019 letter, the appellant explains that "I have not yet received your decision letter mentioned in your letter attached. The reason I am contacting you regarding the letter is, as I understand it, I will need that letter and the appeal form that I believe comes with it?".

(27) It was Officer Peake's evidence that he cannot recall receiving that email. In any event, there was no response to it. And it was not until an email dated 27 June 2023 from the appellant to Officer Peake that communications resumed between them.

(28) In the meantime, however the appellant had made an application to the tribunal dated 11 July 2022 to direct that HMRC close their enquiry. This application was given reference 2022/11854 ("**the closure application**"). This application was misconceived given that there was no enquiry into the appellant's affairs and was thus struck out by the tribunal.

(29) On 16 January 2023, the appellant submitted an appeal to the tribunal against the penalty assessments, together with an application for permission to make a late appeal. This appeal should have been made to HMRC, something which was pointed out to him by HMRC once the tribunal had sent them the appellant's appeal. In June 2023, HMRC told the appellant they were not prepared to accept his application to make a late appeal, and on 20 July 2023, HMRC confirmed that to avoid confusion, HMRC would be willing to agree that the appellant's notice of appeal and application, which had been sent to the tribunal on 16 January 2023, could be treated as an appeal and application to HMRC.

(30) We were supplied with HMRC's telephone records of two telephone conversations. The first is dated 22 December 2017 and reflects a conversation between Officer Peake and

Doshi. The second is dated 3 October 2018 and reflects a telephone conversation between Officer Peake and the appellant's business partner. There were no other telephone records.

(31) We were also supplied with emails between the appellant and Officer Rose of HMRC and, separately, Officer Lowe of HMRC. Officer Lowe worked for the targeted enforcement recovery unit of HMRC. The email exchange which we have seen between the appellant and Officer Lowe starts in April 2022.

(32) It was the appellant's evidence (see below) that he only realised that he might be able to bring a late appeal (following his telephone conversation with Officer Peake (the telephone conversation which the officer denies ever having taken place)) when he was told of this by Officer Lowe. We find as a fact that in none of these emails does the appellant mention his purported telephone conversation with Officer Peake.

(33) However, in his email to Officer Rose of 3 December 2019, the appellant does refer to speaking to someone at HMRC in a conference call. It is our view that this refers to the CVA telephone call referred to at [8(13)] above.

The appellant's oral evidence

(34) In his witness statement and his oral evidence the appellant made the following points which are relevant to this application.

(35) He received documents from Officer Peake on 12 March 2019 which confirmed that the officer would be transferring the debt to him personally and "I immediately telephoned Mr Peake (which Mr Peake says the telephone conversation did not take place)".

(36) In that call, which lasted about 30 minutes, the appellant tried to explain the true circumstances of the situation. Officer Peake did not accept the appellant's explanation and told the appellant that the process would proceed.

(37) Because he had spoken to Officer Peake and had been told that his reasons for appealing were inadequate, he did not contact the officer again once he received the penalty assessments of 12 April 2019. He thought there was no point in doing so as he did not have any grounds for appealing. Those grounds had been "already verbally dismissed as inadequate". He thought these were HMRC's reasons rather than those of just Officer Peake.

(38) However, at or around the end of April 2019, he accepted that it was likely that he would be made bankrupt. He was admitted to hospital with a suspected heart attack. On examination, it was clear that he had heart and circulatory issues. These would be made worse by stress and worry.

(39) He was dissatisfied with the situation which was the reason he engaged with Officer Rose who had contacted him in December 2019 demanding payment. He wanted someone else to look at the case. When, therefore, Officer Lowe contacted him, he thought that that was because of his request for that other person to consider his case. And that was what Officer Lowe was doing.

(40) In March 2020 the country went into lockdown. He thought this was a nationwide lockdown and did not consider that HMRC would be operating at that time. However, he took no action to check this.

(41) He also thought that the government had closed down.

(42) It was only when Officer Lowe told him that he would be able to make an appeal late, that he then considered doing so.

(43) Since 2019 he has had mental health issues for which he is on medication. About 18 months before the penalty assessments, his parents had died. If HMRC succeed in this application then it will be of no benefit to them. He will be made bankrupt which will terminate a lease on the property which he uses for his business. There will be no money coming in. There will be nothing therefore to repay his commercial loans, nor the debt to HMRC.

Officer Peake's oral evidence

(44) In his witness statement and oral evidence, Officer Peake made the following points.

(45) He did not have a conversation with the appellant between the March 2019 letter and issuing the penalty assessments, as asserted by the appellant, or at all. There is no record of such a conversation and he has no recollection of it.

(46) In any event, if the appellant had telephoned him and asked him to reconsider the appellant's position, he would have asked the appellant to put any further submissions in writing. That is HMRC's standard practice. They do not accept evidence verbally. They would need to see documentary evidence on which the submissions were based. There is no evidence that the appellant did so.

(47) He was unaware of the exchange of emails between the appellant and other officers of HMRC. As far as he was concerned, he heard nothing from the appellant between 15 June 2019, and 27 June 2023.

DISCUSSION

9. It is for the appellant to persuade us that we should exercise our judicial discretion to allow him to bring a late appeal.

10. We approach this in light of the three criteria set out in *Martland*, and which are set out in more detail at [7] above.

The length of the delay

11. The first issue is whether the appeal is late in the first place and if it is, the length of that delay and whether it is serious and significant. In fact, at this stage we simply need to assess the length of the delay and whether it is serious or significant is a matter which weighs in the balance at the final evaluation stage. *Martland* simply says that if we were to decide that the delay was not serious or significant, there may be no need to go on to consider the other two criteria.

12. The appealable decisions i.e. the penalty assessments were dated 12 April 2019 and issued to the appellant on or around that date. The evidence shows that the appellant received these. We find that as a fact. The date, therefore, for appealing against these assessments was around 14 May 2019. HMRC are prepared to accept that the appellant's appeal to the tribunal on 16 January 2023 comprises an appeal to them against the penalty assessments. This is some three years and eight months after the date on which an in-time appeal should have been made. Even if the application of 11 July 2022, to close HMRC's enquiries is treated as an appeal, this would still be more than three years after the expiration of the statutory time limit.

13. We therefore agree with HMRC that the appeals were submitted very late. And so, we now go on to consider the remaining *Martland* criteria.

The reasons for the delay

14. The appellant has provided a number of reasons for the delay. He contacted Officer Peake within 30 days of receiving March 2019 letter. Having explained the situation to the officer, he was told that he did not have any grounds for appeal. He accepted this. He was then hospitalised and following his discharge, the country went into lockdown. He thought that this meant that both the government, and HMRC, were not operating at that time. It was only once he engaged in correspondence with Officer Lowe, in 2022 that he realised that he might be able to bring an appeal out of time, which he then did. He also has mental health issues, and his parents had died about 18 months before the date of issue of the penalty assessments which affected that mental health.

15. As far as the underlying appeals are concerned, he was not aware that the company was required to pay corporation tax on gains, and although he was responsible for opting to tax the premises, any failure to account for VAT on the proceeds of sale was not a deliberate act. He has never deliberately sought to avoid his, or the company's, corporation tax or VAT obligations. There were cogent reasons for putting the company into liquidation. This was not

done to avoid tax. If HMRC succeed in opposing the application, then the appellant will not be able to pay any tax or penalties as his business will fold.

16. It is HMRC's position that these are not good reasons. It is clear from Officer Peake's evidence and the surrounding circumstances that there was no telephone conversation in or around March 2019 between the appellant and the officer. Indeed, there was no communication between the appellant and Officer Peake, after the appellant's email to the officer on 15 June 2019. Both the March 2019 letter and the penalty assessment themselves made clear that the appellant had a 30-day appeal window within which to challenge the assessments. The appellant has been involved in a VAT case before the first-tier tribunal in the past. He is, therefore, reasonably familiar with the system.

17. Furthermore, the appellant's case in the underlying appeals is weak. His behaviour is demonstrably deliberate, and it is clear that the company owes both corporation tax and VAT. There is no challenge to the validity of the company assessments, nor the penalty assessments. The appellant has provided no evidence of any alternative figures to challenge the company assessments.

The evaluation stage

18. We can now consider at the third, final evaluation, stage of the *Martland* test.

19. At this stage we need to conduct a balancing exercise assessing the merits of the reasons for the delay, taking into account its seriousness and significance, with the prejudice which would be caused by granting or refusing permission. And we remind ourselves that when conducting this balancing exercise, litigation must be conducted efficiently and at proportionate cost, and statutory time limits should be respected.

20. We must take into account all relevant factors, and one of these is any obvious strength or weakness of the appellant's case.

21. The delay in bringing the appeal against the penalty assessments is clearly serious and significant. It was brought more than three years after the due date.

22. We have considered the reasons given by the appellant for this delay. There is a clear conflict of evidence. The appellant says that his conversation with Officer Peake in March/April 2019 is "very important as it took place within the 30-day period". The officer denies that any such conversation took place.

23. Although the appellant has not couched his submission in these terms, we can see that if he had been unequivocally told by Officer Peake that he had no basis for bringing a timely appeal, that might be a very cogent reason for having brought a late appeal. It might be eminently reasonable, in these circumstances, to have taken the officer's word at face value.

24. So, we need to decide whether the appellant's evidence that the telephone conversation took place is reliable.

25. We are conscious of cases such as *Gestmin SGPS SA v Credit Suisse (UK) Ltd & Anor* [2013] EWHC 3560 (Comm) *Kogan v Martin* [2019] EWCA Civ 1645 and *Re B-M (children: findings of fact)* [2021] EWCA Civ 1371 which deal with the fallibility of human recollection and evidence based thereon and the relative importance of contemporary documentation in both commercial and other cases.

26. It is clear from these cases that although human memory is fallible, witness evidence, especially sworn witness evidence, cannot simply be disregarded. Our role is to assess witness evidence in its proper place alongside contemporaneous documentary evidence and evidence upon which undoubted or probable reliance can be placed.

27. The appellant attested that the evidence he gave was truthful. And we don't doubt that for a moment. The question is not whether, as far as he was concerned, he was telling the truth. The question is whether that evidence is reliable and the alleged telephone conversation actually took place. Officer Peake says that it did not. We therefore need to test the appellant's evidence against the contemporary documentary evidence to come to a conclusion.

28. We take the view that had the telephone conversation taken place and in it the appellant had explained why he did not think that the penalty assessments were justifiable, nor indeed why the company assessments were justifiable, and that Officer Peake had told him that he had no justifiable grounds for appeal, then that would have been reflected in correspondence between the appellant and both Officer Peake, and the other HMRC officers with whom he corresponded thereafter.

29. Officer Peake sent the March 2019 letter to the appellant with an email of 12 March 2019 and went on to issue the penalty assessments on 12 April 2019. The documentary evidence shows that on 15 June 2019, the appellant sent Officer Peake an email saying that he had not received "...your decision letter mentioned in your [email of 12 March 2019]. The reason I am contacting you regarding the letter is, as I understand it, I will need that letter and the appeal form that I believe comes with it?"

30. No mention is made in this email of 15 June 2019 about any telephone conversation with the officer. We think it is unlikely that had Officer Peake told the appellant that he had no grounds for appeal in an earlier telephone conversation, that would not have been reflected in the appellant's email of 15 June 2019. Why, we ask ourselves, if Officer Peake had told the appellant that he had no grounds of appeal, was the appellant writing to the officer asking for the letter and saying that he understood that he needed the appeal form which came with it. The clear implication is that he wanted the letter and the appeal form to bring an appeal. That is wholly inconsistent with his evidence that he had been told, and accepted at face value, that he had no grounds of appeal in an earlier telephone conversation with the officer.

31. Furthermore, no mention is made of this telephone conversation, nor of the appellant's view that he had no grounds of appeal based on the information given to him by Officer Peake in a telephone conversation, in the emails with Officer Rose, and Officer Lowe. It was the appellant's oral evidence that Officer Lowe told him that he might be able to bring a late appeal. But we then find it very surprising that the appellant had not told Officer Lowe that the reason he had not brought an appeal before was because he had been told by another HMRC officer that he had no justifiable grounds for bringing that appeal. If the telephone conversation between the appellant and Officer Peake had been along the lines as suggested by the appellant, then it is our view that the appellant would have referred to that conversation, in his emails to the other HMRC officers.

32. There are other reasons why we do not think that the appellant's oral evidence regarding the telephone conversation is reliable.

33. The appellant suggested that he had some written record of that conversation but couldn't find it and had certainly not produced it for the hearing. But the appellant had provided some documents to go into the bundle, including emails with Officer Lowe. If, as he submitted, the telephone conversation was so crucial to his case, and there was a written record, we are very surprised that he left no stone unturned to ensure that it was included in the bundle. The fact that it was not suggests to us that there was no such written record, and that reflects the fact that there was no such telephone conversation.

34. We also think that it is more likely than not that had the telephone conversation taken place, there would have been a written record of it on HMRC's records. Not only do we take judicial notice that this is standard HMRC practice, but also there are records of two telephone conversations which had taken place between Officer Peake and Doshi on 22 December 2017, and Officer Peake and the appellant's business partner, on 3 October 2018. It is our opinion that had a telephone conversation taken place following receipt by the appellant of the March 2019 letter, Officer Peake would have made a telephone call record of that conversation and given its importance, its contents. The fact that no such record was made strongly suggests to us that there was no such telephone conversation.

35. Finally, we accept Officer Peake's evidence that if the appellant had explained his and the company's circumstances over the phone, he would have asked for written evidence of

the basis for that explanation. It is our view that the fact that no such written evidence was forthcoming from the appellant, nor indeed that there was any follow-up letter from Officer Peake confirming that he wanted such written evidence, demonstrates that there was no such telephone conversation.

36. For the foregoing reasons, therefore, we find as a fact, that no telephone conversation took place between the appellant and Officer Peake (as asserted by the appellant and which he has convinced himself actually took place) following receipt by the appellant of the March 2019 letter. In our view the appellant's memory has let him down. And consequently, the appellant was not told by Officer Peake that he had no justifiable grounds for appealing against the company assessments nor the penalty assessments which were to be issued.

37. The appellant has suggested other reasons to justify the lateness of his appeal. Firstly, he says that he was hospitalised with a heart condition at the end of April 2019. And this meant that he was unable to bring an appeal as he was laid up for about two months following an operation. And he was told that stress would be detrimental to his condition. Yet the appellant was able to send the email of 15 June 2019 to Officer Peake in which it is clear that he was requiring information in order to enable him to bring an appeal.

38. And on 1 July 2019 he was capable of giving oral evidence at a face-to-face hearing in London in his appeal [2019] UKFTT 0549, the issue in that appeal being whether he was carrying on one or two distinct businesses.

39. So, we give little weight to this submission. We give equally little weight to his further submission that shortly after he was both emotionally and physically able to bring an appeal, the country went into lockdown. The country went into lockdown in March 2020, many months after he was able to attend court and give evidence at a face-to-face hearing.

40. Nor do we accept his evidence that his understanding was that the effect of lockdown was that both the government and HMRC simply stopped operating and therefore he thought there was little point in trying to appeal as HMRC would not be capable of dealing with an appeal. Government ministers were on television every day explaining what was happening during lockdown, and had the appellant seriously thought that HMRC was not operating, he could readily have verified that view by undertaking an online investigation.

41. The reasons given by the appellant for failing to appeal in time are largely unmeritorious. They are, in our view, wholly outweighed by the serious and significant delay in bringing the appeal which is over three years. We have undertaken a review of any obvious strengths or weaknesses of the appellant's case, and we can see no obvious strengths.

42. Litigation must be conducted efficiently and at proportionate cost. We accept that if we reject the appellant's application, he will be prejudiced in that he will not be able to run an appeal against personal liability for penalties amounting to approximately £700,000. However, that is simply a consequence of the appellant's failure to bring his appeal in time. As we say, we cannot see any obvious strengths of his underlying appeal. And any strengths come nowhere close to outweighing the seriousness and significance of the delay in light of the reasons given for it.

43. We have considered the appellants submission that it is unlikely, if we deny his application, that he will be able to pay any of his outstanding debts whether to commercial third-party lenders, or to HMRC. However, that is simply a commercial consequence of his failure to appeal in time for which, as we say, there are no meritorious reasons.

DECISION

44. For the foregoing reasons we dismiss this application.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

45. 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.

**NIGEL POPPLEWELL
TRIBUNAL JUDGE**

Release date: 09 May 2024