Neutral Citation: [2024] UKFTT 957 (TC)

Case Numbers: TC09338

FIRST-TIER TRIBUNAL
TAX CHAMBER

In public by remote video hearing

Appeal reference: TC/2017/08323
TC/2019/01139
TC/2019/04314

INCOME TAX – penalties – long running case management saga – late appeal – yes – application for permission for late appeal - allowed – HMRC application to strike out – dismissed –ADR mooted - further directions

Heard on: 3 and 4 September 2024
Judgment date: 24 October 2024

Before

TRIBUNAL JUDGE NIGEL POPPLEWELL

Between

ROBERT CRAWFORD

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Andrew Thornhill KC instructed by the Appellant

For the Respondents: Philip Simpson KC instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION

1. This decision deals with the two matters which have been the subject of a number of case management decisions by Judge McNall ("**JM**"). In 2020 HMRC had applied to strike out the appeals for want of jurisdiction and on the basis that they had no realistic prospect of success. In his decision reference [2022] UKFTT 00037 ("**the decision**"), JM rejected HMRC's applications and allowed the appeal to proceed. He then went on to issue directions.

2. In 2022 HMRC took the view that the appellant had not complied with those directions, and applied, again, to strike out the appeals.

3. JM dealt with this the papers. He found that two of the three directions had been complied with, but Direction 1(c) (**Direction 1(c)**") had not been complied with. He directed compliance within 30 days failing which the appeal should be struck out ("**the Unless Order**"). The appellant submitted a suite of documents within the 30 day period.

4. It is HMRC's view that these do not comply with that Direction, and have hence applied, once again, to strike out the appeals.

5. This decision deals with that application.

6. In August 2023, following a consideration of the papers, it was my view that the appellant might need permission to bring these appeals out of time in the first place. I issued directions that the appellant should make an application for permission which he did in September 2023.

7. HMRC oppose that application. This decision, therefore, also deals with the appellant's application to bring his appeals out of time.

BRIEF BACKGROUND

8. HMRC have assessed the appellant to a variety of penalties surcharges and interest arising out of late payment of income tax, and the late submission of income tax returns. These extend over a series of years from 1999/2000 to 2016/2017. There appears to be no dispute that many tax liabilities were not met timeously nor that there were late returns. But, as JM says in the decision, the cornerstone of the dispute as it now stands is that the quantum of the various amounts said to have been unpaid and paid late arises because of the manner in which HMRC allocated Mr Crawford's payments and losses.

9. The penalties fall into two categories. Those which depend on the underlying tax (such as the 6 and 12 month late filing penalties and the late payment penalties) ("**tax geared penalties**"), and those, such as the £100 and daily late filing penalties which do not depend on the underlying tax and are imposed at a fixed rate ("**flat rate penalties**").

10. At the hearing the appellant accepted liability for the flat rate penalties.

11. However, the tax geared penalties are still at large. Given that the amount of tax for which the appellant is liable for the years in respect of which those penalties had been levied has not yet been finally determined (and depends on the allocation of losses, something which JM has confirmed in the decision may be reviewed as part of the appeals against the penalties) the amount of those penalties cannot be finally determined at this stage.

12. In essence Mr Thornhill submits that the appeals were not out of time. But if they were I should exercise my discretion in favour of allowing the late appeals. He also says that the appellant has complied with Direction 1(c). Mr Simpson submits the appeals were out of time and I should reject the appellant's application for permission to appeal late. He also says that the appellant has not complied with that Direction either at all or in any material sense. He also asked me to direct that the appellant may only maintain its appeal against certain penalties on limited grounds.

13. I was very much assisted by the clear submissions, both written and oral, made by both Mr Thornhill and Mr Simpson. However, I have not found it necessary to refer to each and every argument advanced all of the authorities cited in reaching my conclusions.

14. This decision reflects the order in which the two issues were argued before me. I deal with the application for permission to appeal late by the appellant, first, and then go on to deal with HMRC's application for strike out for failure to comply with the direction, thereafter.

APPLICATION FOR PERMISSION TO APPEAL LATE

The law, the rules and Martland

15. There was no dispute about the relevant legal principles which I set out (sometimes in summary) below.

The time limit for appeal

16. For tax geared penalties for late payment, for tax years 2013/2014 to 2016/2017, the relevant legislation is in paragraphs 13 and 14 of schedule 56 to the Finance Act 2009. This permits an appellant to bring an appeal against the decision of HMRC as to the amount of penalty and treats the appeal in the same way as an appeal against an assessment to the underlying tax.

17. For tax geared penalties for late filing for those tax years, the relevant legislation is in paragraphs 20 and 21 of schedule 55 to the Finance Act 2009. These reflect the same provisions as set out in relation to schedule 56, above.

18. Under section 31A of the Taxes Management Act 1970 ("**TMA**"), an appeal against the assessments must be made within 30 days on which the notice of assessment was "issued".

19. For tax geared penalties for late payment for earlier tax years, the relevant provisions are in sections 93 and 100 TMA.

20. Under section 100 TMA, an officer of the Board must determine the penalty and issue a notice of determination to the taxpayer. The penalty so determined is due and payable within 30 days of the issue of that notice of determination, and the penalty is to be treated as if it were tax charged by an assessment. The provisions of section 31A TMA therefore apply to the tax geared penalties for the earlier years.

21. Under section 49 TMA, if a taxpayer gives notice of appeal after the 30 day deadline, and HMRC do not agree that late notice may be given, then the tribunal may give permission for late notification of the appeal.

Service of documents

22. Under Section 115 TMA 1970:

> "Any notice or other document to be given, sent, served or delivered under the Taxes Acts may be served by post, and, if to be given, sent, served or delivered to or on any person by HMRC may be so served addressed to that person..... at his usual or last known place of residence, or his place of business or employment...".

23. Under Section 7 of the Interpretation Act 1978 ("**IA**"):

> "Where an Act authorises or requires any document to be served by post (whether the expression "serve" or the expression "give" or "send" or any other expression is used) then, unless the contrary intention appears, the service is to be deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post".

Rule 2 and Martland

24. I am obliged by Rule 2 of the First-tier Tribunal Rules ("**Rules**"), to give effect to the overriding objective (i.e. to deal with cases fairly and justly) when exercising any power under those rules.

25. When deciding whether to give permission to make a late appeal, 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".

26. In *HMRC v BMW Shipping Agents* [2021] UKUT 0091, the Upper Tribunal said this:

"52 We will approach the third *Martland* stage by performing, as *Martland* requires, a balancing exercise. In that balancing exercise, the need for litigation to be conducted efficiently and at proportionate cost and for directions to be complied with must be given particular weight. However, it remains a balancing exercise which invites, among other considerations, a consideration of the nature of the reasons for the breach of direction and the results that would follow if the appeal is, or is not, reinstated".

THE EVIDENCE

27. I was provided with bundles of documents and authorities. The appellant tendered a witness statement and gave oral evidence on which he was cross examined. Officer David Smith ("**Officer Smith**") tendered a witness statement and gave oral evidence on behalf of HMRC. He was briefly cross examined on his evidence. I set out this evidence below, and make further findings of fact, based on the evidence, later in this decision:

The appeals

(1) In a letter dated 10 November 2017, ("**the November Letter**") the appellant appealed to HMRC's Higher Debt Management Enforcement & Insolvency Unit ("**DMU**") against 207 items identified in a five-page schedule annexed to that letter ("**the five-page schedule**"). These items start with the first late payment surcharge for 5 April 2001 and end with the 12 month late filing penalty for the tax year ending 5 April 2014. This appeal was notified to the tribunal on 19 November 2017 and allocated appeal reference TC/2017/08323 ("**the November 2017 appeal**").

(2) Attached to the notice of appeal were 16 tax calculations for 2001 through to 2016. These had been sent to the appellant by HMRC on 20 October 2017.

(3) In the November Letter, the appellant records that his solicitor had previously faxed to DMU about this matter on 13 October 2017 and it took the DMU seven days to respond. This response comprised 59 pages of tax computations and 31 pages of correspondence.

(4) The five-page schedule referred to above had been lodged at court by DMU for the appellant's proposed sequestration on 9 October 2017.

(5) The November Letter also records that the appellant had written to DMU on 9 September 2017 asking for details of the 210 line entries set out in the five-page schedule.

(6) The letter also records that the appellant had not seen the tax computations compiled by HMRC until they were sent by the DMU with the letter of 20 October 2017.

(7) A letter dated 23 November 2017 from DMU to the appellant, which was written in connection with the appellant's appeal against outstanding surcharges and penalties, records that the appellant was sent, with that letter, a letter previously sent to him on 30 October 2013 in response to an appeal for the surcharges 2003/2004-2006/2007. It also records that the conclusion of the Appeals and Review Unit was that the decision to charge the surcharges was correct and he was also advised that he had a 30 day appeal window which had, by 23 November 2017, expired. It indicated that DMU would ask the Appeals and Review Unit to treat the November Letter as an appeal against the penalties and surcharges for later years and that they had excluded surcharges on penalties for the years 2007/2008 onwards from recovery action. The appellant did not deny that he received this letter.

(8) In a letter dated 7 November 2018 from the appellant to DMU, the appellant records that it is written by reference to his self-assessment statement of account dated 31 October 2018 which he had reviewed. He said that he had not been told about the large number of penalties set out in the account "in the normal manner". Attached to the letter is a schedule setting out those penalties ("**the two-page schedule**"). That identifies penalties for the years 2013/2014 to 2016/2017. Against four of those entries is a comment, in parenthesis, indicating that the assessment relating to the penalty had been received by the appellant. There were no such entries against the remaining 29 or so penalties.

(9) This appeal was notified to the tribunal on 25 February 2019 and given the appeal number TC/2019/01139 ("**the November 2028 appeal**"). That notification included the same 16 tax calculations which had been included in the appellant's notification of his appeal of November 2017.

(10) In a letter dated 22 January 2019 from HMRC to the appellant, headed "Appeal against the penalties and surcharges for 1998-99 to 2015-16", HMRC expressed the view that the deadline had passed for appealing against the penalties and explained the circumstances in which HMRC might be prepared to accept a late appeal.

(11) In a letter dated 1 March 2019 from the appellant to HMRC, the appellant formally requested HMRC's consent for his late appeal in TC/2017/08323.

(12) In a letter dated 4 March 2019 from the appellant to HMRC, the appellant formally requested HMRC's consent for his late appeal in TC/2019/01139.

(13) In response to those letters, in a letter dated 20 March 2019, from Officer Smith to the appellant, the officer states "in your letters of 1 March 2019 and 4 March 2019 you have made late appeals, as I believe all of the penalties and surcharges are subject to the tribunal case there is no need for the late appeals at this point". (It is common ground that the comma between the words "appeals" and "as" should be read as if it was a full stop).

(14) On 28 September 2023, the appellant made an application for appeals 2017/08323 and 2019/011392 to have been made timeously, failing which he sought for permission to be allowed to appeal late.

The penalty/surcharge assessments/determinations and notification

(15) The appellant accepts that the address on HMRC's records, and to which HMRC allege that the penalty notifications were sent, was, throughout the periods in question, his correct address.

(16) For the periods 2010/2011-2016/2017, HMRC have provided copies of the electronic records, which were printed off in February 2020, recording the amounts, and dates, of the late filing and late payment penalties. The first of these is dated 14 February 2012 and the last 19 February 2019. The veracity and accuracy of the information in these records was not seriously challenged by the appellant.

(17) HMRC have also provided a copy of the appellant's self-assessment statement dated 23 October 2014. This comprises 12 pages of information setting out the tax, interest, and surcharges/penalties, together with dates, which, according to HMRC, reflects the position regarding those items as at that date. They have provided a similar statement dated 8 March 2017, running to 13 pages, which contains much of the same information as the earlier statement, updated to the later date. They have also provided a self-assessment statement dated 14 June 2018, again containing the same information but updated. What they haven't provided is a copy of the appellant's self-assessment statement dated 31 October 2018 which was the statement of account against which he appealed on 7 November 2018. However, the appellant has not seriously challenged HMRC's assertion that the self-assessment statements they have provided, accurately reflect the issue of penalty notices and the amounts set it out in them.

(18) A letter dated 16 May 2014 from DMU to the appellant ("**the May 2014 letter**") records that it was provided as a full response to a letter from the appellant of 10 April 2014. It comprises a comprehensive review and a summary of findings. It recorded the position regarding interest, and the treatment of loss relief. It also deals with surcharges. Under the heading "Surcharge appeals 2002/03, 2003/04, 2004/05, 2005/06 and 2006/07" HMRC state "I understood you had lodged an appeal with HM Courts & Tribunals Service on 29 November 2013 in respect of the outcome of the independent review as notified in my colleagues letter of 30 October 2013. I have since been advised by the Tribunals Service that there is no record of your appeal. If this is incorrect and you have been allocated a reference number for the appeal, I should be obliged if you would notify me of the same as a matter of urgency. Otherwise the surcharges presently stood over for these years will shortly be released for recovery".

(19) This letter also had appended to it separate schedules for the tax years 2001/2002-2013/2014 which set out payment on account, surcharges/penalties, and interest for each of those years ("**the surcharge schedules**").

(20) The appellant accepted in his oral evidence that he had received this letter in 2014.

(21) The 160 line schedule annexed to HMRC's statement of case which details payments penalties surcharges and interest paid and payable by the appellant ("**160 line schedule**") suggests that the appellant made appeals against some penalties on 7 and 14 April 2014.

(22) In the May 2023 Documents (defined below), the appellant says that an appeal against one of these penalties was made in September 2013

(23) In a letter dated 11 March 2019, the appellant made a formal appeal to HMRC against a late payment penalty for the tax year 2016/2017 in an amount of £1,210. In that letter he records that he received notification of the penalty on 9 March 2019.

The DAS payment

(24) Sometime during the tax year 2011/2012, the appellant made payments amounting to £98,000 to HMRC under a debt arrangement scheme ("**the DAS payment**").

The oral evidence

(25) Officer Smith gave evidence concerning the operational interaction between the assessment of the penalties and their notification with effect from October 2011. Self-assessment statements are generated by computer in response to financial triggers. The same computer scans tax returns to identify taxpayers who have paid late and then generates a late payment penalty based on the taxpayer's self-assessment record. This process is carried out by an external agent. That external agent then batches up these penalties and sends them to the external print supplier for notification to the taxpayer. Notifications are sent over a three-week period, so there won't be more than three weeks between the penalty assessment itself and its subsequent notification to the taxpayer.

(26) Officer Smith accepted that HMRC would not know whether a penalty notice had not been delivered unless it was returned to HMRC, marked undelivered.

(27) The appellant said the following: he had received the five-page schedule before 9 September 2017, but it contained no details, and his letter to DMU on 9 September 2017 was seeking those details; he initially said that he had received no notifications of any of the penalties save the four which were identified as having been received in the two-page schedule; but later admitted that there were four further penalties which he thinks should have been included in it; two of these have been appealed (the penalty for 2011/2012 was subsumed within the November 2017 appeal, and the first of the £1,210 penalties for 2016/2017 was appealed by way of his letter of 11 March 2019); he did not receive the self-assessment statements of October 2014 or March 2017; he received none of the penalty or surcharge notices save as specifically admitted above; he accepts that it does look odd that he received some correspondence from HMRC but not others; however that is the position; he does not view his self-assessment statements on line as he finds them impossible to follow; if he needs permission to make a late appeal he accepts that he is "way out of time" but was under the impression that he did not need permission something which was confirmed by HMRC's letter of 20 March 2019.

DISCUSSION

Submissions

28. In summary Mr Thornhill submitted as follows:

(1) Both the November 2017 appeal and the November 2018 appeal (together "**the appeals")** are in time. In circumstances where penalties depend on the amount of underlying tax, the time for making the appeal runs from the date on which HMRC have fixed the amount of the underlying tax and have effectively said "we are right and you are wrong".

(2) Anything else would mean that the tribunal system will be clogged up with a large number of appeals against penalties which could not be pursued until the underlying tax had been resolved. It is only once that underlying tax has been resolved to the standard set out above, that time to bring an appeal against the penalty based on the underlying tax, starts to run.

(3) In this case, notwithstanding considerable efforts made by the appellant to understand the basis on which the tax assessments have been made (based mainly on the use of losses and the attribution of payments) it was not until the tax computations were received by the appellant on 20 October 2017 that he had sufficient information on which to base an appeal. The November 2017 appeal was made within 30 days of receipt of that information.

(4) The November 2018 appeal was made within 30 days of receipt of the appellant's self-assessment statement of 31 October 2018.

(5) This principle appears to be accepted by HMRC by dint of paragraph 47 of Mr Simpson's skeleton argument; "The Appellant's response to [directions] was limited to an assertion that as these are tax-geared penalties their amount should be changed by reference to the amount of income tax and NICs…… That proposition is not in question".

(6) If penalties are tax geared, and the amount of the underlying tax is not known, it is axiomatic that permission to bring a late appeal should be given provided the appeal is made within 30 days of the date on which the underlying tax is established. Otherwise, a taxpayer might be overpaying penalties if the underlying tax is less than the amount on which the original penalty assessment is based.

(7) In this case if I were not to allow a late appeal, it might mean that once the underlying tax for which Mr Crawford is liable is established, he would be liable for penalties calculated on an amount greater than that which is finally determined.

(8) Apart from the notices of penalties which the appellant admits receiving, he did not receive any notice of penalties or statements of his self-assessment account.

(9) If the appeals are late then HMRC will not be prejudiced by giving consent to a late appeal. The balance of prejudice favours giving consent since there will be an injustice to the appellant if the penalties are not quantified in the correct amount.

(10) HMRC's letter of 20 March 2019 reflects their agreement, either expressly or by conduct, that to the extent necessary, the appellant may bring his appeal out of time.

29. In summary Mr Simpson submitted as follows:

(1) I should accept Officer Smith's largely unchallenged evidence and find that the penalties were notified to the appellant on the dates recorded in HMRC's records.

(2) On the other hand, I should treat the appellant's evidence with suspicion. He was not a reliable witness. He did not answer questions in a straightforward manner and at times was evasive. He sought to make points rather than give evidence and used his time in the witness box to criticise HMRC. It is clear from the November Letter that he had received the five-page schedule before 9 September 2017, something which he denied in oral evidence. I should therefore reject his oral evidence and prefer the documentary evidence.

(3) The appeals are out of time. They were not made within 30 days of the date of issue of the penalties.

(4) The suggestion that they were made within 30 days from the date on which the amount of underlying tax had become sufficiently certain is not relevant to flat rate penalties.

(5) The two-page schedule reflects an admission by the appellant that he had received four of the penalty notices identified in it, yet no appeals have been made against those, not even against the flat rate penalties contained in that schedule.

(6) It is highly unlikely that the appellant had not received the notices of appeal in relation to the penalties listed in that two-page schedule, given that throughout the period covered by that schedule (February 2015 to October 2018) the appellant was answering correspondence received from HMRC. The appellant's blanket denial of receipt has not discharged the presumption in the IA of ordinary course receipt.

(7) Mr Thornhill is misinterpreting paragraph 47 of his skeleton argument. It is not an admission that an appeal right against the penalty does start until the underlying tax has been determined.

(8) There is no point of legal principle, as asserted by Mr Thornhill, that the time for bringing an appeal against a penalty does not start until the underlying tax has been finally determined.

(9) HMRC have not accepted, either by conduct, or in their letter of 20 March 2019, that they have consented to the appellant bringing a late appeal.

My view

30. The first thing I have to decide is whether the appeals are late. If not, then there is no need to consider the exercise of any judicial discretion.

31. Mr Thornhill submits that, as a matter of legal principle, time for appealing against a tax geared penalty does not arise until the underlying assessment has been established to a certain standard. He does not say it needs to be finally determined (which would be a foot shooting exercise since in this case that amount has not been finally determined and would thus mean that the appeals are premature). He says that the point at which that standard is reached is when HMRC have said that they will not accept any further representations in relation to the amount of the underlying tax and are effectively saying "we are right and you are wrong".

32. He then submits that they are in time. This is because the November 2017 appeal was brought within 30 days of the date on which the appellant was supplied with sufficient information to evidence the fact that HMRC were not going to accept any further representations on the amount of underlying tax. This fixed that tax to the standard needed to enable the appellant to understand its computational basis and to bring an appeal against the penalties. The November 2018 appeal was brought within 30 days of the date on which the appellant was aware of the penalties set out in his 31 October 2018 self-assessment statement.

33. This is an ingenious and superficially attractive argument, but I'm afraid I do not accept it. It flies in the face of the legislation. And Mr Thornhill has provided no statutory or case law authority for it.

34. The legislation relating to the penalties, and the date from which an appeal against notification of penalty runs, is clearly set out in section 31A TMA (which applies to penalties in the same way that it applies to an assessment) and is the date on which the notice of assessment is issued.

35. There is no statutory basis for suggesting that the appeal rights against penalty assessments which have been issued are somehow suspended until the underlying tax has been

established to an appropriate degree of certainty. Whilst that is something which I can take into account when considering giving permission for a late appeal (see below) it is not something which displaces the clear statutory provision. The appeals against the penalties should be made within 30 days of the date on which the penalty assessments/determinations were made.

36. In the case of this appellant, I accept the evidence of HMRC, provided both by the oral evidence of Officer Smith, and the documentary records (including the penalty records and the appellant self-assessment statements), that the penalties were issued on the dates recorded in those documents. Indeed, this was not seriously challenged by Mr Thornhill.

37. Mr Thornhill suggests that there is some case law recorded in the decision which assists with his submission. I disagree. The case law to which he refers concerns the right for a director, impugned under a personal liability notice, to challenge the tax visited on the company. And this was taken into account by JM in coming to the decision and concluding that the appellant in this case can challenge the penalties on the basis that the underlying tax is incorrect due to the use of the losses and the attribution of payments made by the appellant. It is not authority for the proposition that he makes regarding the time from which an appeal against the penalty notice runs.

38. I therefore find as a fact that the appeals have been made late, and that, save to the extent that HMRC have consented to those late appeals, the appeals can only be brought late if I allow it.

39. I disagree with Mr Thornhill that the letter of 20 March 2019 evidences that HMRC have so consented to the appellant bringing the appeals out of time. It simply says that there was no need for the appellant to say, in his letters of 1 March 2019 and 4 March 2019 that his appeals were late. All it is saying is that at that stage the appeals had been made and notified to the tribunal and was therefore subject to the tribunal's jurisdiction. It does not comprise an agreement by HMRC that the appellant could bring the appeals out of time.

40. I further find as a fact that HMRC have not agreed that the appellant may bring a late appeal.

41. So, I now need to consider whether I should exercise my judicial discretion and give permission to the appellant to bring the appeals out of time.

42. As said above, I need to consider the three *Martland* tests. I need to consider the length of the delay, the reasons for it, then undertake a final evaluation.

The length of the delay

43. I have found that the penalty assessments/determinations were made on or around the dates set out in HMRC's documentary evidence. So, penalty and surcharge assessments, against which the appellant appealed in November 2017 and November 2018, were issued over a period ranging from 2004 until 13 March 2018. The delay, therefore, between the assessments and the appeals is, in most cases, very substantial (both serious and significant). Admittedly there are a very few where the delays are less so (for example a six month late payment penalty issued on 29 August 2017 was appealed on 10 November 2017). But in all cases the delays are not very short. And so, I must go on to consider the reasons for them.

Reasons for the default

44. The appellant seems to submit that there are two reasons for the delay. They appear to me to be logically inconsistent. The first, which the appellant has maintained throughout but emphasised at the hearing, was that he did not receive the notifications of many of the penalty assessments/surcharge determinations. And so could not appeal because he did not know about them. He did, however, appeal against those which he did know about.

45. The second reason was that he could not appeal unless and until he understood the basis on which HMRC computed the underlying tax. And that was not apparent until he received the documents from HMRC on 20 October 2017.

46. The appellant's argument is not that, had he received the penalty notifications, he could not have appealed that because he did not understand the basis on which they were computed. It was that he did not appeal because he did not understand the basis of computation until 20 October 2017.

47. This logically presupposes that he had received the penalty notifications and made a conscious decision not to appeal as he couldn't understand the underlying tax.

48. But in oral evidence he said that he had not received the vast majority of the penalty notices and self-assessment statements which HMRC assert had been properly notified to him.

49. So, I ask myself, how could he have made a conscious decision not to appeal against those notices if he never received them?

50. I confess to a certain scepticism regarding the submission that the appellant genuinely thought that he could not appeal against the penalties (and in particular against the tax geared penalties) unless and until he properly understood the underlying tax liability on which they were based.

51. In the November 2017 Letter, at paragraph 2.1, the appellant states (having analysed the information provided by HMRC on 20 October 2017) that "There are 17 surcharges scheduled as line entries in A to E attached. They cover the years 2000-01 to 2009-10, a period of some 10 years. <u>They were appealed</u> and no correspondence has been provided thereon so far as I am aware, no details have been provided…. "(Emphasis added).

52. This appears to be borne out by the 160 line schedule in which they identify (broadly speaking) three groups of appeals. There are the appeals of November 2017 and November 2018, which are the subject matter of this decision. But that appendix also identifies appeals which were notified to HMRC on 7 and14 April 2014, to which I was not referred during the hearing ("**the April 2014 appeals**").

53. Contrary to what the appellant now submits regarding the inability to appeal tax geared penalties unless he understood the underlying liability, there are a number of tax geared penalties (for example at lines 90 and 94) which are tax geared, and yet against which the appellant has apparently appealed in the April 2014 appeals.

54. More of this later.

55. But as regards notification, Mr Simpson urges me to reject the appellant's evidence, and to find that the appellant has not rebutted the presumption of notification set out in the IA.

56. This is finally balanced. On the one hand I have the appellant's persistent assertions in correspondence and his oral testimony that he did not receive many of the notices notwithstanding that they may have been properly issued by HMRC.

57. The appellant says that had he received any appeal notices, he would have appealed them. And I accept that this is borne out by the November 2018 appeal (where the appellant accepts that he received his 31 October 2018 self-assessment statement of account) and by his timely appeal against the late payment penalty for 2016/2017 for £1,210, on 11 March 2019. It also seems to borne out by the April 2014 appeals (even if those appeals were not notified timeously to the tribunal).

58. But on the other hand, in the two-page schedule, the appellant cheerfully admits that he received assessments in February 2016, July 2016 and March 2018, yet no appeals were made against those assessments (notwithstanding that some were flat rate penalties, something which militates against his justification for not appealing until the underlying tax was resolved).

59. And, as Mr Simpson submits, during the three-and-a-half-year period covered by the two-page schedule, the appellant was receiving, and replying to, correspondence with HMRC and it is inherently unlikely that he received this correspondence yet did not receive the notifications of the penalties.

60. I would also observe that, according to the 160 line schedule, for the tax year 2011/2012, HMRC issued penalties on 14 August 2013. For the six month late filing penalty, the appellant appealed in April 2014. However, he only appealed against the daily penalty of £900 in November 2017. I think it is inconceivable that the appellant failed to appeal against the daily penalty in April 2014 as he did not receive it. I think it is far more likely that he received it in August 2013 along with the six month penalty but simply overlooked appealing against it. This militates against the appellant's submission that had he received an appealable assessment, he would have appealed against it.

61. But this depends on the veracity of the information in that schedule. I am not convinced it is wholly accurate. For example, HMRC's primary records for the penalty assessments raised for the tax year 2011/12 suggest that the 12 month late filing penalty for that year was issued on 25 February 2014. Yet in the "date created", of the 160 line table, the date of 3 March 2014 appears. And the appellant suggests that an appeal against one of the penalties was made in September 2013. It is a can of worms.

62. Mr Simpson has submitted that the appellant is an unreliable witness for the reasons set out above. And that the likelihood is that he did receive the penalty /surcharge notices and yet failed to appeal against the a timely basis.

63. As I say, this is finally balanced, but I am prepared to accept the appellant's evidence that save to the extent that he admits to receiving them in the two-page schedule, and as reflected in the April 2014 appeals, he did not receive the notifications of the penalties/surcharges at or around the time that they were issued by HMRC.

64. I think it is inherently unlikely, notwithstanding the complexity of the appellant's tax affairs, that a practising chartered accountant and a tax specialist, having received a notice which required an appeal, would have failed to do so. The April 2014 appeals demonstrate that those appeals might have been made late, but they were still made. And the appeals set out at [57] above demonstrates that when he clearly received notification, he made an appeal.

65. I therefore find as a fact that whilst HMRC issued the notifications for the penalties/surcharges on or around the dates set out in their records, save as otherwise admitted by the appellant in respect of the two-page schedule, these were not properly served on the appellant, who has rebutted the presumption set out in the IA.

Final evaluation

66. I now turn to the third stage of the *Martland* test. This requires me to undertake an evaluation of all the circumstances of the case which involves a balancing exercise assessing the merits of the reasons and the balance of prejudice.

67. That balancing exercise must take account of the particular importance of the need for litigation to be conducted efficiently and at proportionate cost, and for statutory time limits to be respected.

68. I can also have regard to any obvious strength or weakness of the appellant's case.

69. The importance of adhering to statutory time limits was endorsed by the Upper Tribunal in *HMRC v Katib* [2019] UKUT 0189 ("***Katib***") in which it was held that the FTT had made an error of law by failing to acknowledge that as a matter of principle the need for statutory time limits to be respected was a matter of particular importance.

70. The appeals were very late. There are two reasons given for this. Firstly, that the appellant did not receive many of the notices. Secondly, that he could not appeal against those penalties unless and until he properly understood the basis on which the underlying tax on which those penalties had been computed, had been made clear to him. And that was not until he received the documents with HMRC's letter of 20 October 2017.

71. As regards the first of these, I have accepted the appellant's submission.

72. As regards the second, I have rejected Mr Thornhill's submission that, as a matter of legal principle, the time for appealing against the penalty notices was suspended until such time as the basis of computation had been made clear.

73. But if the reason why the appellant's delay for appealing against the penalties was indeed that he genuinely believed that he could not do so unless and until the computation of the underlying tax had been determined to a considerable degree of certainty, then that is something I can take into account at this final evaluation stage.

74. It is clear from the November 2017 letter that the first time the appellant had seen the computations sent to him on 20 October 2017 was on 20 October 2017. And, as a matter of fact, he then appealed against the matters set out in the five-page schedule.

75. But the November 2017 letter does not say that he had not appealed against the penalty assessments earlier because he did not understand the basis on which the underlying tax had been computed. It was that he had no details of the penalty calculations and was not aware that they had been formally issued to him.

76. Whilst this submission was made on his behalf by Mr Thornhill, I cannot see any direct statement in his witness statement that this was the reason for not appealing until November 2017. Whilst I wholly accept that the appellant did not understand the basis on which his underlying tax had been computed, and only understood that in October 2017, there is nothing

in his witness statement which says that was the reason why he did not appeal against the penalties until then.

77. It is clear from the May 2014 letter that he had been sent the surcharge schedules. And he had made the April 2014 appeals. And those appeals included appeals against tax geared penalties. As mentioned above, this strongly militates against the submission which is now made, that he could not appeal unless and until he understood the basis on which the tax geared penalty had been computed.

78. The same is true of the tax geared penalties which he accepted as having received in the two-page schedule. And finally, as noted above, failing to understand the basis on which the underlying tax was computed is irrelevant to flat rate penalties. And so, militates against this as being a genuine reason for failing to bring earlier appeals.

79. I am not, therefore, prepared to attribute much weight, at this final evaluation stage to the submission that the appellant was not unable to bring his appeal until he understood the underlying tax computations.

80. I accept that HMRC will not be significantly prejudiced if I were to allow the application. They are clearly geared up to deal with this appeal.

81. I also accept that, as Mr Thornhill submits, if I refuse the application, there is a possibility that the appellant will be liable to tax geared penalties based on an overstated liability to tax as a result of the use of carry back losses, and the incorrect attribution of payments to tax liabilities and penalties.

82. But I am conscious of the particular importance that I must give to the principle that statutory time limits should be respected. And that failure to do so is an error of law.

83. As regards any obvious strength or weakness of the appellant's case, I have nothing to go on. I have not therefore given any weight to these in weighing up the balance of prejudice.

84. Mr Thornhill submits that if I reject the application, there will be a financial detriment to the appellant. I accept that this is a possibility. But, as was said in *Katib* (where the financial consequences of Mr Katib not being able to appeal were very serious because his means were limited such that he would lose his home), suffering financial hardship as a result of losing an appeal for procedural reasons is a common feature which could be propounded by large numbers of appellants. And in that case did not weigh heavily enough in the appellant's favour to overcome the length of the delays and that there were no good reasons for them.

85. However, taking all of these things into account, I have come to the conclusion that the appellant's application for permission to bring his appeals out of time, should be allowed.

86. I have placed little weight on the appellant's submission that the reason he has brought his appeals late was because he could not do so until he understood the underlying tax on which the tax geared penalties were based. And the appellant has accepted that he is liable to the flat rate penalties.

87. But I have accepted that the appellant was not notified, on a timely basis, of the issue of the penalty notifications/surcharge determinations, which, in the majority of cases, only came to his attention on 20 October 2017. And he then made an appeal within 30 days. This is the

significant factor in my evaluation and weighs heavily in the appellant's favour. If he was unaware of the penalties, he could not have appealed against them.

88. I appreciate that particular attention must be paid to compliance with statutory time limits. But equally, this final evaluation stage means that I can take everything into account, and must consider the position in light of the overriding objective of dealing with cases fairly and justly.

89. The underlying issues in these appeals concerning the attribution of losses and the attribution of payments are complicated both as a matter of law and practice. To deal with the penalty appeals fairly and justly, these will need to be considered in detail. It seems clear to me that even though HMRC have now provided a raft of information, some of this (as asserted in the May 2023 documents) appears to be internally inconsistent. And it is also important that the attribution of the DAS Payment is clarified. Subject to what I say below regarding ADR, it is in the interests of justice that these issues are subject to judicial scrutiny.

90. I am also somewhat less optimistic than JM where he says in the decision "this dispute is very fragmentary and…. has perhaps ended up looking far more complicated than it may actually end up being". It looks pretty complicated from where I am standing, and, as is also mentioned in the decision, a number of key issues require resolution before figures can be agreed. It is only right that the appellant should be able to argue those key issues in the context of these appeals.

91. The balance of prejudice, therefore, weighs in favour of allowing the appellant's application for permission to bring the appeals out of time. And I so allow it.

APPLICATION TO STRIKE OUT THE APPEALS

92. The decision, which was released on 7 October 2021, directed the parties to liaise and seek to agree directions for the further management of the appeals.

93. The parties agreed directions to propose to the tribunal as evidenced by email of 4 November 2021, and these directions were endorsed by the tribunal on 25 January 2022.

94. Direction 1 provided:

> "That Mr Crawford set out, in a table, not later than twelve weeks of the commencement of the directions:
>
> a) all the requests he made for
>
> i) loss relief to be given in a particular way and
>
> ii) payments to be allocated in a particular way, in each case stating the document in which the request was made, the date it was sent to HMRC, and its number in the Joint Bundle of documents provided for the CMH, which failing MrCrawford is to provide HMRC with a copy of the document;
>
> b) how Mr Crawford understands that the request was dealt with, and
>
> c) what difference Mr Crawford considers that made to the amount of any penalty under appeal".

95. Direction 2 directed the appellant to provide witness statements.

96. The appellant provided two witness statements on 13 May 2022. In one of those statements the appellant gave his view that it was not possible to comply with Direction 1(c).

97. It was HMRC's view that the Directions had not been complied with and told the appellant in July 2022 that unless he so complied, they would apply for the appeal to be struck out. A further witness statement was submitted, but it was HMRC's view that Direction 1(c) had not been complied with. They therefore applied to have the appellant's appeals struck out.

98. By a decision dated 11 April 2023, released on 2 May 2023, the tribunal concluded that the appellant had not complied with Direction 1(c) directed that:

> "…unless Direction 1 (c) is complied with, within 30 days of the release of this decision, then Mr Crawford's appeals, insofar as advanced against all penalties (because penalties are the subject matter of Direction 1 (c)), will stand as struck out".

99. The appellant's response to this was set out in an attachment to an email sent on behalf of Mr Thornhill to HMRC on 30 May 2023 ("**the May 2023 Documents**"). It comprises a three-page submission compiled by Mr Thornhill explaining certain documents and several appendices. Appendix 1 which comprises the 160 line schedule; Appendix 4 is a table for each tax year which sets out the tax, incorrect interest, incorrect penalties and reference to the subsequent schedules ("**Appendix 4**"); Appendix 5 comprises those schedules of calculations for the tax years 2000/2001 to 2016/2017, with the omission of any schedule for 2003/2004 and 2015/2016.

100. It is the appellant's view that the May 2023 Documents satisfy Direction 1(c). It is HMRC's view that they do not. Accordingly, they have applied to strike out the appellant's appeals in whole, (or, as an alternative, the appeals dealing with the penalties for which there has been no compliance with Direction 1(c)) on the basis of failure to comply with the Unless Order.

DISCUSSION

Submissions

101. In summary, Mr Simpson submitted as follows:

(1) Paragraph 82 of the decision makes clear that the purpose of the direction is to establish what, arithmetically, the tax geared penalty position would be if the losses and payments had been allocated as the appellant says they should be

(2) This is reflected in Direction 1. Basically, it required the appellant to set out the requests that he had made for losses and payments to be allocated in a particular way, how in his view, those requests were dealt with, and what difference it would have made had the allocations been made as he had asked them to be (rather than as HMRC have dealt with them).

(3) This direction requires the appellant to say, for example, as regards a tax geared penalty paid at 5% of tax X, what the penalty would have been if the losses had been allocated correctly and so the tax would have been Y.

(4) His written submissions of 21 September 2023 summarises 31 of the 160 entries which the appellant had to deal with. These span a number of tax years. Some of those tax years are

simply not dealt with in the May 2023 Documents. The appellant has not said what the penalty should have been, based on his apportionments. For others of these years there has been no indication of what the penalties should be based on those apportionments. In some cases it says that recalculations will be required but does not go on to make those calculation.

(5) Direction 1(c) has not therefore been complied with and so, given wording of the Unless Order, the appellants appeals "as advanced against all penalties" must stand as struck out (not just those appeals against the 31 lines for which there has been non-compliance).

(6) The allocation of payments under the DAS is largely irrelevant since it does not affect assessment, merely tax collection.

102. In summary, at the hearing, Mr Thornhill submitted as follows:

(1) The appellant was not required to particularise each and every change to the penalties which was affected by the use of the losses. They were just required to be set out in a table. However, he has done this in respect of all years, save for those covered by the DAS payment. These are set out in the table in Appendix 4.

(2) The appellant was not sure how to deal with the years covered by the DAS payment as he has no idea how they were allocated. He could now do this on the basis of certain assumptions, but he should not be penalised for having failed to do it to date. The issue is that HMRC have not explained how these payments have been allocated.

(3) Furthermore, as regards the use of the losses, there are substantial mismatches between the appellant's self-assessment statement of account, on the one hand, and correspondence from the relevant HMRC officers, on the other.

(4) For the tax years in which the schedules do not deal with any numerical adjustment (2003/2004, and 2015/2016), that is because the appellant is not seeking any numerical adjustment to the amounts for those years set out in the 160 line schedule.

(5) He accepts that for line entries numbered 65 and 67, where he says that interest and penalties will require re-computation, it would have been better if he had set out that recalculation.

(6) The 31 line entries identified by HMRC comprises only 19.38% of the 160 entries. The appellant has provided numerical amounts for all of the years other than 2012/2013 and 2013/2014 tax years.

My view

103. I start by saying that I am pretty confused about the appellant's position as regards a number of these line entries. For example, as recorded above, Mr Thornhill's oral submission was that for the tax year 2003/2004, there was no need to deal with this in the table in Appendix 4, as the appellant was not seeking to challenge the penalties and accepted they were correctly calculated.

104. This is directly contrary, however, to his written representations of 20 May 2024, comprising a response to HMRC's submissions on the strike out, where he says that (for reasons given above) "Accordingly for 2003/04 the late payment surcharges are incorrect".

105. As regards line entries 65 and 67, referred to above, where the relevant schedule says that interest and penalties are required to be recalculated, (and Mr Thornhill accepts that it would have been better had that calculation been undertaken), the table in Appendix 4 does include a numerical value for incorrect penalties, (namely £2,928.32). This is referred to in the reference as relating to lines 76 and 67. So it seems that a recalculation was done in respect of line 67.

106. For line entries 142, 143, 144, 145 and 147, where HMRC alleged non-compliance, Mr Thornhill's oral submissions was that nothing was missing because the appellant was not seeking any changes to the amounts in the 160 line schedule. But in his written submissions he says that until the details of the £98,000 paid by the appellant to HMRC under the DAS, "it is not possible to analyse [these entries] in any detail".

107. Finally, as regards the three years (2011/2012-2013/2014) which the appellant asserts are not possible to compute since they are affected by that DAS payment, the table in Appendix 4 does include a numerical value for the incorrect penalties, (namely £6,993 in 2011/2012) . It is not clear to me from the schedules where this amount comes from.

108. I accept, however, that in the schedule relating to this tax year it is made abundantly clear that the penalties and interest might need recalculation once the allocation of the DAS payment is known.

109. However, there are two fundamental issues. The first is whether the appellant has complied with Direction 1(c). The second is, on the wording of the Unless Order, if he has failed to do so in respect of all of the line entries, whether his appeals against all of the penalties are struck out. In other words, a failure to comply in respect of a single line entry results in the striking out appeals against all line entries.

110. If there has been failure to comply with the Unless Order, then, under Rule 8(1), these appeals have already been automatically struck out.

111. Mr Thornhill has submitted that the appellant was not required to particularise each and every change to the penalties, but simply to set out his numerical position, in a table. And the appellant has done this in Appendix 4 save in respect of the years covered by the DAS payment.

112. He submits that the appellant was not sure how to deal with this and should not be penalised by being struck out for not understanding the instruction.

113. This is similar to the submissions made and considered in the paper hearing of 11 April 2023 when it is reported that at that time the appellant said that it was not possible for him to comply with Direction 1(c), something which JM said was "not an impressive or persuasive position". Nor, as JM suggested, was it the sort of analysis which has been shown by Mr Crawford to defy performance.

114. And so he went on to make the Unless Order.

115. My view is that, at face value the appellant has complied with Direction 1(c) to the extent that he has provided numbers for incorrect penalties (even those numbers are heavily caveated-see below). He has done this save in respect of the years 2012/2013 and 2013/2014 where the Appendix 4 simply states "Not known" and the years in which Mr Thornhill now accepts that the figures in the 160 line schedule are correct.

116. But I do not think this brings with it the automatic strike out contained in the Unless Order.

117. The three directions in Direction 1 are designed to be read both sequentially and as a whole.

118. They are designed to drive out what arithmetically, the tax geared penalty position would be if the losses and payments have been allocated in the manner required by the appellant (see [82] of the decision).

119. It has been agreed that the first two sub directions have been complied with; in other words the appellant has told HMRC of all the requests he made for losses or payments to be allocated in a particular way, and how he understands that those requests were dealt with.

120. However, before me, and as I think is accepted by HMRC, Mr Crawford simply has no idea how the DAS payment was allocated. And his case is, he cannot say what numerical difference a reallocation of this would make to the tax geared penalties because of this. I am extremely sympathetic to this.

121. In order to comply with Direction 1(c) the appellant must state what difference he considers "that" (i.e. how he understood the request to have the DAS payment was dealt with as per 1(b)) made to the tax geared penalties. In other words, it is a prerequisite for compliance with Direction 1(c) that the appellant had an understanding of how the request was dealt with.

122. I was not provided with details as to why it has been agreed that the appellant complied with Direction 1(a). But it is clear to me that the appellant has absolutely no understanding as to how the DAS payment was dealt with, even though it is accepted that he has complied with Direction 1(b). Indeed, he wants to make a direction that HMRC provide that information within certain time after release of this decision.

123. The way I read it (and admittedly I have not seen copies of the Direction 2 witness statements) is that it is accepted that the appellant's assertion that he does not know how the DAS payment was dealt with satisfies compliance with Direction 1(b).

124. But without that understanding, it is not possible for Mr Crawford to state, numerically, what difference it would have made had the DAS payment been allocated in a different way.

125. There is nothing in the Directions themselves which require the table to provide numerical information. They simply require the appellant to "set out" the difference. It was not possible for Mr Crawford to set out a figure given that he has no idea how the DAS payment was allocated. To my mind by putting the words "Not known" in the table, combined with the justification for that elsewhere in the May 2023 Documents, means that he has complied with Direction 1(c) and is not, therefore, in breach of the Unless Order.

126. It is clear from [82] of the decision, that JM recognised that the figures in the table would need to be established on the footing of certain assumptions "(for present purposes, it does not matter whether these will end up proving correct or incorrect)". In other words JM recognised that the numbers driven out by the Directions would not necessarily be correct.

127. And this is a point made by Mr Thornhill. The schedules to the May 2023 documents, and the Appendix 4 table, in his view, show examples of wrong figures being used which are not misallocations but miscalculations. Once those figures are shown to be correct, credits may

then need to be given for payments made against the liabilities which may then need to be reallocated which will have another effect on tax geared penalties. There may therefore be overpayments if amounts greater than those resulting tax geared penalties have been paid in respect of those penalties. And once again, payments will need to be reallocated.

128. So, the purpose underlying the Directions (namely that compliance would provide arithmetical certainty, or at least bring that certainty a great deal closer) could not (and it seems to me cannot) be achieved until all the moving parts (the use of losses and attribution of payments) have been finally resolved. And this has always been the case.

129. Mr Simpson makes the point that payments (in particular the DAS payment) do not affect assessment which is what this case is about, only collection. But I disagree. It seems clear to me that if a payment has been made which should have been allocated towards a tax liability which without such allocation resulted in a tax geared penalty, but with such allocation would not have generated such a penalty, then the payment is clearly relevant to the existence and amount of that penalty.

130. Accordingly, I dismiss HMRC's application to strike out the appellant's appeals on the basis that they have been automatically struck out for failure to comply with the Unless Order.

DECISION

131. The appellant's appeals under 2017/08323 and 2019/01139 were made late, but I have given the appellant permission to bring these appeals late. I have also dismissed HMRC's application that they have been automatically struck out.

OTHER MATTERS

132. In their submissions HMRC apply for a direction that the appellant's case in respect of certain penalties should be circumscribed. Subject to what I say at [136] below I am not prepared to make such a direction. I do not believe it is possible, at this stage, to start paring down the matters of tax principle which require resolution and their numerical consequences. The parties seem to be as far apart now as they were several years ago, and apart from the case management skirmishes, little of substance regarding the attribution of the underlying losses, and the attribution of the DAS payments, has been discussed and resolved.

133. This will take time and effort. But, as JM has suggested in the decision, there is no reason why this should not be done both adversarially and collaboratively. It seems to me that mediation is the sensible route to achieve this and, pursuant to Rule 3, I would urge the parties to seriously consider ADR as a route to resolving their dispute.

134. One of the stumbling blocks at present is the lack of transparency about the attribution of the DAS payment. Mr Thornhill submits that I should direct that HMRC explain how the payment has been attributed. This seems a sensible suggestion to me, and I Direct that within 28 days from the date of release of this decision, the parties shall liaise and seek to agree a direction regarding disclosure by HMRC as to how that DAS payment has been allocated by them to the appellant's tax liabilities, interest, surcharges and penalties.

135. I also think it would be helpful if the parties could compile an agreed list of the penalties which are still at large, given the appellant's acceptance that he is liable to all of the flat rate penalties which have been assessed on him. I therefore Direct that within 56 days from the date of release of this decision, the parties shall liaise and seek to agree a list of those penalties

which are still at large in these appeals. This should also take account of the Direction in the following paragraph.

136. Mr Thornhill said in his oral submissions that he does not challenge the amounts set out in the following lines in the 160 line schedule: 22, 44, 52, 70, 72, 74, 78, 142, 143, 144, 145 and 147. In light of this I Direct that the appellant may not challenge those amounts at any subsequent hearing.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

137. 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: 24th OCTOBER 2024