[2021] UKFTT 0444 (TC)

TC 08328

VAT – Personal Liability Notice following MTIC assessment – application for permission to make a late appeal – delay of almost 5 years – no good reason for most of that period – no realistic chance of succeeding in the appeal – application refused

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2020/01537

BETWEEN

RICHARD STUART GEORGE **Appellant**

-and-

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS **Respondents**

TRIBUNAL: JUDGE ANNE REDSTON
DR CAROLINE SMALL

The hearing took place on 18 October 2021 at the Tribunal Centre, Taylor House, Rosebery Avenue, London

The Appellant in person

Mr James Puzey of Counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

Introduction and summary

1. On 23 April 2015, HM Revenue & Customs ("HMRC") issued Mr George with a Personal Liability Notice ("PLN") for £4,890,631 under Finance Act 2007, Schedule 24 ("Sch 24"), para 19. On 11 February 2020, HMRC issued him with a Notice of Bankruptcy. On 11 April 2020, Mr George filed a Notice of Appeal at the Tribunal; he subsequently filed grounds of appeal, which stated that he was appealing the Notice of Bankruptcy and the PLN.

2. The Tribunal has no jurisdiction to hear an appeal against the Notice of Bankruptcy, but does have jurisdiction to hear an appeal against the PLN. However, Mr George had filed his Notice of Appeal almost five years after the statutory time limit, and was therefore unable to bring his appeal unless he first received permission to make that appeal late.

3. The Tribunal considered the facts of his case in the light of *Martland v HMRC* [2018] UKUT 0178 (TCC) ("*Martland*"). We found the delay was serious and significant and there were no good reasons for three years and nine months of the five year period. The merits of Mr George's substantive case were extremely weak. Although the consequence of refusing him permission to bring his appeal was likely to be that Mr George would be made bankrupt, we nevertheless decided that the overall balance of the factors was weighted against giving him permission to bring his appeal to the Tribunal. His application was therefore refused.

The *Millennium* decision and the PLN

4. Mr George was the sole shareholder and the only active director of Millennium Trading Ltd ("MET"). HMRC decided that MET was involved in Missing Trader Intra-Community ("MTIC") fraud, and on 14 February 2014 assessed MET to VAT totalling £4,890,631 ("the VAT Assessment") on the basis that its transactions were connected to the fraudulent evasion of VAT, and that MET knew, or should have known, of that connection. MET appealed the VAT Assessment. Its appeal was determined on 24 October 2018 by Judge Thomas Scott and Mrs Gable, see *Millennium Energy Trading Ltd v HMRC* [2018] UKFTT 633(TC) ("*Millennium*").

5. That Tribunal decided MET "effectively turned a blind eye to the need for robust commercial due diligence", and "clearly should have known of the connection to fraud", see [78] and [82] of its judgment. It based those conclusions on the following findings, see [72]-[77]:

> (1) Mr George had received numerous warnings from HMRC regarding the risks of MTIC fraud, and in his own witness statement accepted he understood and was well aware of those risks.
>
> (2) Every one of the supplies to MET traced to a fraudulent tax loss. MET dealt sequentially with three suppliers in fraudulent supply chains, turning to a new supplier when its current supplier was deregistered, and ceasing to trade only when MET itself was deregistered. It was inherently unlikely in these circumstances and given its level of awareness of the risks that MET would not have considered that the most likely explanation for its involvement in the transactions was a connection to fraudulent activity.
>
> (3) The circumstances of MET's trade viewed as a whole were artificial and uncommercial. The Tribunal hearing MET's appeal rejected Mr George's submission

that its actions were "entirely explicable on the basis that MET bought and sold as a middle man on a back-to-back basis".

(4) In the three periods before 11/12, MET's turnover was £1,000 to £2,000 per quarter. In 02/13 its turnover was over £13 million, and in the following quarter over £9 million. The Tribunal hearing MET's appeal rejected Mr George's assertion that this was not unusual or suspicious, noting that MET had achieved an exponential increase in turnover in circumstances where it had no prior track record in the metals business; no network of business contacts in the sector; no capital base with which to fund the trades, and no regular workforce.

(5) MET carried out no meaningful due diligence on its suppliers or customers.

6. That Tribunal also said at [81]:

> "However, taking into account that no witnesses for MET appeared before us for cross-examination and for questioning by the Tribunal, and bearing in mind the comments of Henderson J in *Ingenious Games LLP v HMRC* [2015] STC 1659, at [15], as to the seriousness of such a finding, we find that actual knowledge was not established on the balance of probabilities."

7. MET did not appeal the Tribunal's judgment. Meanwhile, on 23 April 2015, HMRC had issued MET with a penalty equal to the VAT Assessment on the basis of its deliberate and concealed behaviour, and that penalty was not appealed. At the same time, HMRC issued Mr George with the PLN which he is now seeking permission to appeal to the Tribunal.

The evidence

8. HMRC provided the Tribunal with five bundles of documents, containing:

(1) correspondence between the parties, and between the parties and the Tribunal;

(2) Officer Kinman's witness statement, and related exhibits;

(3) Officer Bycroft's witness statement, and related exhibits; and

(4) Mr George's witness statement, and related exhibits.

Officer Kinman's and Officer Bycroft's evidence

9. Officer Kinman was responsible for this case until she retired in July 2021. On 5 March 2021, anticipating her retirement, HMRC applied to the Tribunal for Officer Bycroft to adopt Officer Kinman evidence, and also to supplement it by adding the following:

(1) the director's disqualification undertaking given by Mr George on 28 October 2019, together with associated correspondence; and

(2) the sentencing remarks of Judge Warner, who presided over Mr George's criminal trial for money laundering at St Albans Crown Court on 30 July 2018.

10. On 20 May 2021, Mr George objected to HMRC's application. On 18 June 2021, Judge Brooks directed that it "be determined at the commencement of the face to face hearing by the Judge hearing the appeal". However, in the course of this hearing Mr George withdrew his objection to Judge Warner's sentencing remarks, and we admitted those documents into evidence.

11. Had Mr George obtained permission to bring his appeal, the Tribunal would have gone on to determine whether to give permission for Officer Bycroft to give evidence, and whether to admit the director's disqualification undertaking. However, it was not necessary to do so in order to decide whether to give him permission to make a late appeal, because HMRC's case did not rely on the disqualification order, and Mr Puzey did not seek to call Officer Bycroft to give evidence.

Mr George's evidence

12. Mr George provided a witness statement and also gave oral evidence. We found him to be reliable in relation to simple matters of chronology, but unreliable in relation to his knowledge of the MTIC. For example:

(1) During the hearing he stated that HMRC had "made regular references to something described as 'MTIC' [but] it has never been explained to me exactly what that means". That is plainly not the case: *Millennium* at [73] lists the numerous HMRC communications which explained MTIC to Mr George, and the meetings at which HMRC officers explained the risks. In the witness statement provided for that appeal, Mr George accepted he understood and was well aware of those risks.

(2) He also said he "had no idea that the trading was suspect", despite the numerous and significant red flags summarised at §5, and despite HMRC having placed MET in its "continuous monitoring" programme because of their concerns. Before us, Mr George instead sought to rely on that programme as evidence that MET was "co-operating" with HMRC, and so should have a reduction in the penalty.

Findings of fact

13. Mr George was MET's sole shareholder and only active director. His two sons became secretary and director in 2005, and resigned on 1 November 2013. They took no active part in MET's business activities. Mr George worked with an associate, Mr Charles Jogi.

14. At the time Mr George filed his Notice of Appeal at the Tribunal, he was 74 years old, and had turned 75 by the time of this hearing.

15. The VAT Assessment of £4,890,631 related to input tax claims for periods 02/13, 05/13 and that ending 24 July 2013. In the same year, 2013, Mr George's son-in-law was diagnosed with a terminal illness and he passed away in August 2014.

16. On 19 March 2014, HMRC advised Mr George that they intended to charge MET with a penalty equal to the VAT Assessment, and set out the basis for that penalty in a penalty explanation schedule. This stated that the behaviour was "prompted" and also said:

> "We consider that the behaviour was 'deliberate and concealed'. This is explained below.
>
> Strong evidence that the trader knew they were involved in fraud and did everything possible to obscure that fact. Deals subject to the input tax denial appear non commercial/contrived. There is nothing to suggest any party to the deals was reacting to a genuine market opportunity. Indeed currently there is little evidence that the deals even took place. Millennium Energy's director had no trade experience or funding and had minimal staff. Explosion in turnover from £1,800 in q/e 11/12 to over £13m in q/e 02/13. Several wholesalers in chains with no value added. Deals are back to back with goods

> shipped from supplier to customer or customer's customer. Alternative Banking Platform used for payments/receipts that effectively hides financial transactions. No financial risk – customers pay first to enable trader to pay its supplier. No insurance or inspection evidenced. Millennium Energy was trading in scrap for over two months without a licence from the Council."

17. The penalty range for deliberate and concealed behaviour, where disclosure is prompted, is set by statute at between 50% and 100% of the Potential Lost Revenue ("PLR"). HMRC next considered mitigation under the following headings:

> **"Telling**: The trader has not accepted or admitted fraudulent trading and there is evidence of collusion with trading partners.
>
> **Helping**: Partial paperwork has been supplied but evidence suggests this was manufactured to conceal the fraud.
>
> **Giving**: Trader supplied bank statements to support payment for supplies but these related to an Alternative Banking Platform and there is no evidence that suppliers received payments for goods from the Trader. This merely served to ensure that the fraud remained hidden."

18. As a result of those conclusions, HMRC decided that the penalty should not be mitigated below the maximum of 100%, and that the full £4,890,631 would therefore be charged.

19. On 23 April 2015, HMRC issued MET with a penalty equal to the VAT Assessment, and a PLN making Mr George personally liable for that sum. The PLN stated:

> "You are liable to pay 100% because as the sole Director you had knowledge of MTIC Fraud and you personally benefited from the fraud."

20. HMRC also offered to review the decision, adding that if Mr George did not want a review "you can appeal to the Tribunal but you must make sure they receive your appeal by 23 May 2015".

21. On 19 May 2015, Mr George wrote to HMRC, saying:

> "I have received a personal liability notice dated 23 April 2015.
>
> The notice relates to penalty assessment number 710752756/CFS 890082.
>
> I disagree with the decision for the following reasons:
>
> The assessment has been charged to Millennium Energy Trading Ltd for a deliberate inaccuracy. There is currently an appeal pending against this assessment, reference number TC/2013/08083 and TC/2014/01503. The appeal is yet to be listed for a hearing.
>
> A copy of this letter will go to the Tribunals Service."

22. Mr George wrote a further letter to HMRC on 18 June 2015, referring to his letter of 19 May 2015 and attaching a copy. He also said he had tried to contact telephone HMRC on eight occasions without success, and added:

> "My letter (copy enclosed) explains why I disagree with your decision to penalise me personally in a matter which the Company I am a Director of has an appeal pending."

23. On 21 August 2015, HMRC replied, saying that "recovery of the penalty charge is postponed pending the outcome of your appeal".

24. In February 2016, Mr George played a part in enabling a property fraud, along with his son Adam George and Mr Jogi. In the judge's later summing up, Mr George was described as "the principal offender". The property in question belonged to a Mr Cundy; it was fraudulently sold over Mr Cundy's head and without his knowledge to a Mr Yasi for £250,000. The money was laundered through bank accounts belonging to Mr George, Mr Adam George, and Mr Jogi. The judge found that each of them "at the least suspected that these funds were criminal funds" and said there "must have been on the part of each of you a very high degree of suspicion" as to the criminality with which they had become involved.

25. At some point after 2014, Mr George's wife was diagnosed with cancer and she passed away on 14 May 2017. This naturally caused Mr George significant distress. In July 2017, he was diagnosed with cancer. On 16 August 2017, he called Ms Emma Moore of HMRC's Solicitor's Office, to say he was considering withdrawing MET's appeal. Ms Moore replied on 23 August 2017. Under the heading "HMRC's position", she said:

> "If the appeal is withdrawn then HMRC's original decisions will stand, with the consequence that HMRC will be able to enforce the decisions against the company.
>
> I have been advised that on 23 April 2015 a penalty was imposed on the company in the amount of £4,890,631. You were issued a personal liability notice on the same date advising that you were personally liable to pay 100% of this amount. HMRC has not enforced the company penalty and personal liability notice pending the outcome of the company's present appeal against the denial of input VAT.
>
> The company has not appealed the decision to issue a penalty against it and you have not appealed the personal liability notice. It is important for you to be aware that if you withdraw your appeal then HMRC will be able to pursue the company and/or you in your personal capacity for payment of the £4,890,631 penalty. Unless you or the company are in a position to pay this amount, HMRC's Debt Management Unit is likely to take enforcement action against you personally. This may, for example, include bankruptcy action against you."

26. On 24 October 2017, Mr George called HMRC again and spoke to Officer Kinman. He said he had been diagnosed with cancer; that he was in a "constant state of bereavement'; that it would be "impossible" to prepare for MET's appeal, and that his inclination was to withdraw that appeal. Officer Kinman expressed her sympathies and condolences, and advised him to obtain independent legal advice. In the same month, Mr George was charged in relation to the money laundering offences.

27. Mr George did not withdraw MET's appeal, and the hearing began on 14 May 2018, There had been a previous listing, but Mr George had successfully applied for it to be postponed. When the hearing was relisted, Mr George applied again for it to be postponed on the basis of his cancer diagnosis and also because it was to begin on the anniversary of his wife's death.

28. On 4 May 2018, Judge Mosedale refused the postponement (see [4] of *Millennium*), and Mr George did not attend. The Tribunal hearing MET's appeal considered whether it was in the interests of justice to proceed in his absence, and decided that it was. However, they directed that Mr George be provided with transcripts after the end of each day, and invited him to make submissions on those daily transcripts and to file further submissions at the end of the hearing. Mr George did so, see [10], [55] and [66] of the judgment.

29. In July 2018, Mr George was tried for the money laundering offences, and convicted. On 30 July 2018 he was sentenced to two years imprisonment. On 24 October 2018, the Tribunal issued its decision in *Millennium*, refusing MET's appeal. In March 2019, Mr George was released from prison. He lived (and at the time of this application hearing, continued to live) in a two bedroom flat with one of his sons; it is subject to a mortgage.

30. On 25 October 2019, Mr George was contacted by HMRC's Debt Management department in relation to enforcing the PLN. He replied on 11 November 2019, saying he had never received the PLN and had "never been accused of personally gaining or attempting to gain anything from the inaccuracy". Pausing there, it is clear from our findings at §21-22 that Mr George not only received the PLN but had twice written to HMRC expressing his disagreement; it is also clear that the PLN was imposed on the basis that he was the sole director who "personally benefited from the fraud".

31. On 11 February 2020, HMRC sent a letter to Mr George headed "Warning of bankruptcy", and advising that HMRC would commence proceedings unless he paid in full by 20 February 2020. On 17 April 2020, Mr George filed a Notice of Appeal at the Tribunal. Under "grounds of appeal" he said:

> "I have been penalised by HMRC for the debts of a limited company, (Millennium Energy Trading Limited) – I am not responsible for the debts of this company".

32. He added that his appeal was "twofold": he was "not responsible for the sum demanded" and making him bankrupt would achieve nothing. He attached HMRC's letter dated 11 February 2020. The Tribunal wrote to Mr George, asking him to clarify his grounds of appeal. Mr George responded, stating:

> "This is an appeal against an HMRC decision to assign a company penalty to me personally. It includes an appeal against a further HMRC decision to apply for a bankruptcy order against me for failure to pay a VAT Schedule 24 Penalty imposed on a Limited Company."

The Tribunal's jurisdiction

33. As is clear from the above extract from Mr George's grounds of appeal, he was seeking to appeal both the bankruptcy order and the PLN. However, the Tribunal only has the jurisdiction (broadly speaking, that means "the power") to hear appeals against those HMRC decisions which have been specified in legislation. The relevant law allows us to hear an appeal against a PLN, but not an appeal against a bankruptcy notice.

34. Rule 8(2) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the Tribunal Rules") provides that the Tribunal must strike out the whole or a part of the proceedings if it " does not have jurisdiction in relation to the proceedings or that part of them".

We thus struck out the part of the proceedings relating to Mr George's appeal against the bankruptcy order.

The legislation about the PLN appeal

35. The relevant legislation is contained within FA 2007, Sch 24 and Value Added Taxes Act 1994 ("VATA").

Schedule 24

36. FA 2007, s 97 is headed "penalties for errors" and begins:

> "(1) Schedule 24 contains provisions imposing penalties on taxpayers who
>
> (a) make errors in certain documents sent to HMRC…"

37. Paragraph 1 of that Schedule reads:

> "(1) A penalty is payable by a person (P) where
>
> (a) P gives HMRC a document of a kind listed in the Table below, and
>
> (b) Conditions 1 and 2 are satisfied.
>
> (2) Condition 1 is that the document contains an inaccuracy which amounts to, or leads to
>
> (a) an understatement of a liability to tax
>
> (b) …or
>
> (c) a false or inflated claim to repayment of tax.
>
> (3) Condition 2 is that the inaccuracy was careless (within the meaning of paragraph 3) or deliberate on P's part."

38. A VAT return is one of the documents listed in the Table below that paragraph.

39. Paragraph 3 is headed "degrees of culpability" and provides:

> "(1) For the purposes of a penalty under paragraph 1, an inaccuracy in a document given by P to HMRC is
>
> (a) 'careless' if the inaccuracy is due to failure by P to take reasonable care,
>
> (b) 'deliberate but not concealed' if the inaccuracy is deliberate on P's part but P does not make arrangements to conceal it, and
>
> (c) 'deliberate and concealed' if the inaccuracy is deliberate on P's part and P makes arrangements to conceal it (for example, by submitting false evidence in support of an inaccurate figure)."

40. Paragraph 4 provides that penalties for deliberate and concealed behaviour which are in "category 1" namely those with no offshore element, are to be charged at 100% of the PLR Para 5 defines the PLR as "the additional amount due or payable in respect of tax as a result of correcting the inaccuracy or assessment".

41. Paragraph 16 provides that an appeal against a penalty charged under that Schedule:

> "shall be treated in the same way as an appeal against an assessment to the tax concerned (including by the application of any provision about bringing the

appeal by notice to HMRC, about HMRC review of the decision or about determination of the appeal by the First-tier Tribunal or Upper Tribunal)."

42. Paragraph 19(1) provides:

> "Where a penalty under paragraph 1 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."

43. Paragraph 19(5)(e) provides that paragraph 16 applies as if HMRC had decided that a penalty of the amount of the specified portion is payable by the officer of the company.

Legislation in VATA about the bringing of appeals to the Tribunal

44. As noted above, Sch 24, para 19 provides that para 16 applies to PLNs, and para 16 says that appeals "shall be treated in the same way as an appeal against an assessment to the tax concerned". The relevant provisions for VAT assessments and appeals are in VATA.

45. VATA s 83 allows a person to appeal various VAT decisions, and s 83A provides that:

> "(1) HMRC must offer a person (P) a review of a decision that has been notified to P if an appeal lies under section 83 in respect of the decision.
>
> (2) The offer of the review must be made by notice given to P at the same time as the decision is notified to P."

46. In this case, HMRC offered Mr George a review when they issued the PLN, see §20. Had Mr George requested a review, HMRC would have been required to carry it out as required by VATA s 83C.

47. VATA s 83G reads (emphasis added):

> "(1) An appeal under section 83 is to be made to the tribunal before
>
> (a) the end of the period of 30 days beginning with
>
> (i) in a case where P is the appellant, the date of the document notifying the decision to which the appeal relates…
>
> (2) But that is subject to subsections (3) to (5)
>
> ….
>
> (6) An appeal may be made after the end of the period specified in subsection (1)…if the tribunal gives permission to do so."

48. Although the 30 day limit in subsection (1) is subject to the exceptions in subsections (3) to (5), none of those apply to Mr George. In his case, the 30 days thus expired on 23 May 2015, 30 days after the date on the PLN, as HMRC had advised him in the Notice charging the penalty.

The case law

49. In *Martland*, the UT gave guidance to this Tribunal when it is deciding whether to give permission to make a late appeal. We have followed that guidance in making this decision.

The guidance

50. At [38] of their judgment, the UT set out Rule 3.9 of the Civil Procedure Rules ("CPR"), which reads:

> "(1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order, the court will consider all the circumstances of the case, so as to enable it to deal justly with the application, including the need –
>
> (a) for litigation to be conducted efficiently and at proportionate cost; and
>
> (b) to enforce compliance with rules, practice directions and orders."

51. The UT considered the authorities, in particular *Denton v TH White* [2014] EWCA Civ 906 ("*Denton*") and *BPP v HMRC* [2017] UKSC 55 ("*BPP*"), and then said at [43]:

> "The clear message emerging from the cases – particularised in *Denton* and similar cases and implicitly endorsed in *BPP* – is that in exercising judicial discretions generally, particular importance is to be given to the need for 'litigation to be conducted efficiently and at proportionate cost', and 'to enforce compliance with rules, practice directions and orders'. We see no reason why the principles embodied in this message should not apply to applications to admit late appeals just as much as to applications for relief from sanctions, though of course this does not detract from the general injunction which continues to appear in CPR rule 3.9 to 'consider all the circumstances of the case'."

52. At [44] the UT set out the following three stage approach:

(1) establish the length of the delay and whether it is serious and/or significant;

(2) establish the reason(s) why the delay occurred; and

(3) evaluate all the circumstances of the case, using a balancing exercise to 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, and in doing so 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".

53. The UT also said at [46]:

> "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…It is clear that if an applicant's appeal is hopeless in any event, then it would not be in the interests of justice for permission to be granted so that the FTT's time is then wasted on an appeal which is doomed to fail. However, that is rarely the case. More often, the appeal will have some merit. Where that is the case, it is important that the FTT at least considers in outline the arguments which the applicant wishes to put forward and the respondents' reply to them. This is not so that it can carry out a detailed evaluation of the case, but so that it can form a general impression of its strength or weakness to weigh in the balance. To that limited extent, an applicant should be afforded the opportunity to persuade the FTT that the merits of the appeal are on the face of it

> overwhelmingly in his/her favour and the respondents the corresponding opportunity to point out the weakness of the applicant's case. In considering this point, the FTT should be very wary of taking into account evidence which is in dispute and should not do so unless there are exceptional circumstances."

The first stage: the length of the delay and whether serious and/or significant

54. Mr George was required to appeal to the Tribunal by 23 May 2015. We first consider whether he did so.

The letter of 19 May 2015

55. As we have found at §21, on 19 May 2015 Mr George wrote to HMRC saying that he disagreed with the decision to impose a penalty on MET and a PLN on himself, and adding that "a copy of this letter will go to the Tribunal Service".

56. As that letter referred only to the reference numbers for MET's appeals, it will have been included on the Tribunal's file for that case, which is no longer in existence. As a result, that copy letter was not provided to us for this hearing.

57. Mr George did not seek to argue that this copy letter was a notice of appeal to the Tribunal against the PLN, but we nevertheless considered whether that was the position. Rule 20 of the Tribunal Rules provides that the following requirements apply when making an appeal:

> "(1) A person making or notifying an appeal to the Tribunal under any enactment must start proceedings by sending or delivering a notice of appeal to the Tribunal.
>
> (2) The notice of appeal must include—
>
> (a) the name and address of the appellant;
>
> (b) the name and address of the appellant's representative (if any);
>
> (c) an address where documents for the appellant may be sent or delivered;
>
> (d) details of the decision appealed against;
>
> (e) the result the appellant is seeking; and
>
> (f) the grounds for making the appeal.
>
> (3) The appellant must provide with the notice of appeal a copy of any written record of any decision appealed against, and any statement of reasons for that decision, that the appellant has or can reasonably obtain."

58. We find that Mr George did not make a valid appeal by copying the letter of 19 May 2015 to the Tribunal, because:

(1) the letter does not say that it is an appeal to the Tribunal against the PLN;

(2) Mr George had already made an appeal against the VAT Assessment, so knew what the process involved;

(3) it is reasonable to infer from the inclusion of the MET appeal references in the letter that its purpose was to inform the Tribunal of the PLN in the context of those existing appeals, and not to make a new appeal;

(4) the letter does not contain any of the requirements set out in Rule 20, other than Mr George's name and address, and is therefore not a valid notice of appeal;

(5) the Tribunal did not read the letter as (even) an invalid appeal, because they did not write back to Mr George, explaining the requirements of Rule 20: for example, they did not ask him to provide the PLN and his grounds of appeal;

(6) HMRC plainly did not read this letter as being an appeal against the PLN, because on 23 August 2017, Ms Moore wrote to Mr George reminding him he had not appealed;

(7) Mr George's second letter of 19 May 2017 did not say he had appealed to the Tribunal; and

(8) Mr George himself has never sought to argue that he had made an earlier appeal before the Notice was filed with the Tribunal on 17 April 2020.

The appeal made on 17 April 2020

59. Mr George thus made his appeal to the Tribunal on 17 April 2020, so was 4 years and 11 months late.

60. In *Romasave v HMRC* [2015] UKUT 254 (TCC), the UT said at [96] that:

> "In the context of an appeal right which must be exercised within 30 days from the date of the document notifying the decision, a delay of more than three months cannot be described as anything but serious and significant."

61. The delay in this case was almost twenty times longer than the three months referred to in *Romasave*. It was clearly serious and significant.

The second stage: reasons for the delay

62. That long period can be divided into several shorter periods, as set out below.

From 23 May 2015 to 14 May 2018

63. This period runs from the appeal deadline of 23 May 2015 to the beginning of the *Millennium* hearing. During this time, Mr George's wife was suffering from a terminal illness and passed away on 14 May 2017, and Mr George had been diagnosed with cancer. However, the following factors are also relevant:

(1) The PLN clearly and explicitly sets out the 30 day time limit.

(2) Mr George knew how to make an appeal to the Tribunal, because MET had already made two appeals in relation to the VAT Assessment, under references TC/2013/08083 and TC/2014/01503.

(3) Although HMRC had informed Mr George on 21 August 2015 that they would not enforce the PLN until after the conclusion of MET's appeal against the VAT Assessment, Mr George did not submit that he thought this meant that the period for appealing the decision was extended.

(4) On 23 July 2017, Ms Moore wrote to Mr George, reminding him that he had "not appealed the personal liability notice".

(5) Mr George had the time and capability to participate in a property fraud during February 2016.

(6) He was able to provide witness statements for both his criminal trial and the MET appeal.

64. We recognise that Mrs George's illness and Mr George's subsequent bereavement significantly affected him, as did his own cancer diagnosis; this is clear from his call to Officer Kinman on 24 October 2017. Although it is not possible to disentangle all the factors set out above, we accept that he had good reason for around six months of the delay.

65. However, taking into account all the other factors, in particular his ability to participate in the fraud; instruct solicitors for his criminal trial, and provide witness statements for both that appeal and the MET appeal, there is in our judgment no good reason for his failure to appeal the PLN for the greater part of this period.

From 14 May 2018 to July 2018

66. This period ran from the beginning of the *Millennium* hearing to Mr George's criminal trial. We find that there was no good reason for this period of delay, because:

(1) Mr George was able to make written submissions after the MET hearing on the complex matters there set out; and

(2) although he was also preparing for his criminal trial, in our judgment that does not constitute a good reason for failing to comply with the statutory deadline for making a timely appeal against a PLN.

From 30 July 2018 to March 2019

67. Mr George was in prison during this eight month period, and we accept that this provided him with a good reason for failing to deal with his PLN appeal.

March 2019 to April 2020

68. During this period, Mr George was out of prison. He received several letters from HMRC's Debt Management team, but only filed his Notice of Appeal with the Tribunal after he had received warning that he would be made bankrupt. We find that there is no good reason for this period of delay.

The overall position

69. For the above reasons, we find that there was a good reason for a total of one year and two months, and no good reason for the remaining three years and nine months.

The third step: all the circumstances

70. The third step in the *Martland* approach is to consider all the circumstances, and then to carry out a balancing exercise. We have considered the factors set out below.

The need for time limits to be respected

71. Significant weight must be placed as a matter of principle on the need for statutory time limits to be respected. This was described as "a matter of particular importance" in *Martland*. The delay in this case was both serious and significant, and there was no good reason for three years and nine months of that delay.

The merits of the appeal

72. In accordance with the guidance in *Martland,* we considered whether the merits of Mr George's appeal were "overwhelmingly" in his favour. Mr George put forward a number of reasons why he would succeed were he to be given permission to appeal the PLN. These are underlined below, followed by our analysis.

(1) He never received the PLN. We have already found as a fact that this was not the case, and Mr George accepted this.

(2) He did not file "incorrect" VAT returns, because the returns included both the inputs and outputs relating to the transactions entered into. However, in *Axel Kittel v Belgium; Belgium v Recolta Recycling SPRL* (C-349/104 and C-440/04) [2009] STC 1537, the ECJ held that a taxable person who knew or should have known that, in purchasing goods, he was taking part in a transaction connected with the fraudulent evasion of VAT, loses the right to deduct input tax on those goods. In other words, a VAT return in which a person has entered actual sales and purchases which the person knew or should have known were connected with fraud, are "incorrect" because there was no entitlement to the input tax deductions claimed.

(3) There were the following factual inaccuracies in the Tribunal's decision::

(a) The Tribunal had held that he had "no prior track record in the metals business" whereas he had carried out "more than one" previous trade. This is a minor detail and would not assist Mr George in his appeal against the PLN

(b) HMRC's notes of a meeting were incorrect. This was considered by the Tribunal in *Millennium,* which held that his "allegations were misconceived and did not affect the accuracy of those notes as to relevant factual matters", see [67] of the judgment.

(c) That Tribunal did not accept that there was nothing wrong with back-to-back trading**.** His submissions on this point were fully considered and rejected, see [75].

(d) It was not illegal to use an alternative banking platform. The Tribunal decided not to take the alternative banking platform into account, see [79].

(4) HMRC had unfairly "victimised" MET when other companies were involved in the alleged frauds; he had asked the HMRC Officers if they had established which companies were involved, and where the money had gone, but they had not answered him. In the context of Mr George's application to make a late appeal against the PLN, these questions are not relevant. It is clear from *Millennium* that Mr George "did not contest the existence of a fraudulent tax loss or connection to such a loss in relation to MET's purchases", and even if HMRC provided further background information, it would not change that position..

(5) He did not "collude in" the MTIC and "had no idea that the trading was suspect". In *Millennium* the Tribunal found that MET "effectively turned a blind eye to the need for robust commercial due diligence". In Mr Puzey's submission, were permission to be given for this appeal to proceed, the tribunal hearing that appeal would find that Mr George had similarly turned a blind eye to all the factors set out at [78] and [82] of *Millennium,* including in particular those set out at §5. In reliance on *Clynes v HMRC* [2016] UKFTT 369 (TC), a decision of Judge Morgan, Mr Puzey submitted that a person who "consciously or intentionally chose not to find out the correct position, in particular, where the circumstances are such that the person knew that he should do so" had acted

deliberately. We agree. Although not cited to us, in *Chohan v HMRC* [2021] UKFTT 096 (TC) Judge Aleksander set out the following extract from *Manifest Shipping v Uni-Polaris Shipping* [2001] UKHL 1 at [112], in which Lord Scott said the following about blind-eye knowledge:

> "It is, I think, common ground - and if it is not, it should be - that an imputation of blind-eye knowledge requires an amalgam of suspicion that certain facts may exist and a decision to refrain from taking any step to confirm their existence. Lord Blackburn in *Jones v. Gordon* (1877) 2 App Cas 616, 629 distinguished a person who was 'honestly blundering and careless' from a person who 'refrained from asking questions, not because he was an honest blunderer or a stupid man, but because he thought in his own secret mind - I suspect there is something wrong, and if I ask questions and make farther inquiry, it will no longer be my suspecting it, but my knowing it, and then I shall not be able to recover'. Lord Blackburn added 'I think that is dishonesty'."

We agree with Judge Aleksander that those the principles are applicable to the assessment of knowledge for the purposes of Sch 24, and that they are binding upon us.

(6) He did not "personally benefit" from the MTIC fraud, contrary to what was stated on the PLN. The *Millennium* judgment found as facts that "on every deal MET made a predictable profit, typically below 1% and in two thirds of the deals between 0.2% and 0.3%". MET participated in numerous transactions: *Millennium* also records that "in 02/13 its turnover was over £13 million, and in the following quarter over £9 million". As Mr George was MET's sole shareholder, he benefitted from those receipts.

(7) He had recently applied for permission to make a late appeal against his conviction, so that, if permission were given, the Tribunal hearing his appeal would not place any weight on the fact that he was found guilty of fraud. Mr George has already withdrawn his objection to that material being considered. Had we given permission and gone on to hear the substantive appeal, it would have been admitted. In any event, we could only proceed on the basis of the current facts, which are that Mr George has not received permission to appeal his conviction, and it has not been overturned.

(8) He should have been given some mitigation, because he co-operated with HMRC, in particular, MET had been included in HMRC's 'continuous monitoring programme and complied with all requests. The purpose of the monitoring programme was for HMRC to mitigate the risks of MTIC fraud, and being placed in the programme is not evidence of co-operation, but rather of HMRC's concerns and suspicions.

73. Having considered all the reasons Mr George has put forward as to why he would win his appeal against the PLN, we find that there is no realistic possibility of success: his case is extremely weak.

His non-attendance at the Millennium hearing

74. Mr George submitted that he was not present at the hearing of *Millennium,* and could not afford to be represented, and should therefore have an opportunity to challenge the PLN in person.

75. However, as we have set out at §28, the Tribunal hearing *Millennium* carefully considered whether it was in the interests of justice to proceed in his absence, and he made written submissions. In addition, an appeal against the PLN is not an opportunity to re-run the *Millennium* appeal: had Mr George wished to appeal that judgment, he would have had to apply to the Upper Tribunal.

Prejudice to Mr George

76. The inevitable consequence for everyone who loses a permission application is that HMRC's decision cannot be challenged in the Tribunal. In most cases, that also means that the sum demanded by HMRC becomes payable. In that sense, Mr George's position is no different from that of most other applicants.

77. However, we accept that the consequences of losing this permission application are likely to be particularly harsh in Mr George's case. He is seventy-five years old, and a pensioner, and is very likely to be made bankrupt. He told the Tribunal that if that happened, he would be homeless, as would his son who lives with him.

Prejudice to HMRC and to other Tribunal users

78. If permission were given HMRC would have to bear the cost of attending that hearing, including both Counsel's fees and the time cost of HMRC's staff. There would also be prejudice to other tribunal users, whose appeals would be delayed because of the time taken to deal with the Company's appeal.

Balancing the circumstances

79. The following factors weigh in the balance against giving permission to appeal:

(1) The delay of three years and nine months in filing his Notice of Appeal, for which no good reason has been provided. That failure to comply with the statutory time limit,is a factor to which we must give particular weight, see *Martland* at [43] and [44].

(2) There is no realistic chance of Mr George succeeding in his appeal. This is thus a case where "it would not be in the interests of justice for permission to be granted so that the FTT's time is then wasted on an appeal which is doomed to fail", see *Martland* at [46].

(3) The hearing would cause prejudice to other Tribunal users and to HMRC, who would suffer the costs of the hearing.

80. On the other side of the scales is only one factor: the hardship to Mr George if he is made bankrupt. However, given that Mr George has no realistic possibility of winning his appeal were permission to be given, a further hearing would simply delay any enforcement action and would not prevent it.

Conclusion and appeal rights

81. It is clear from the above that the balance is heavily weighted against Mr George, and we therefore refuse permission for him to bring his appeal.

82. 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.

ANNE REDSTON
TRIBUNAL JUDGE

Release date: 24 NOVEMEBER 2021