[2017] UKFTT 0396 (TC)

TC05860

Appeal number: TC/2016/01473
TC/2016/02200
TC/2016/02521

PROCEDURE – penalty for failure to take corrective action in response to a follower notice – whether HMRC should be barred from further participation on grounds that their case has no reasonable prospect of success – no – application refused

FIRST-TIER TRIBUNAL
TAX CHAMBER

DAVID BENTON **Appellants**
STEVEN JACKSON
PAUL HUDSON

- and -

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

TRIBUNAL: JUDGE JONATHAN RICHARDS

Sitting in public at The Royal Courts of Justice, Strand, London on 24 April 2017

Ximena Montes Manzano, instructed by New Dawn Tax Partnership, for the Appellants

Aparna Nathan, instructed by the General Counsel and Solicitor to HM Revenue & Customs, for the Respondents

DECISION

1. HMRC have issued the three appellants (and indeed other taxpayers who participated in the "Working Wheels Scheme" described below) with penalties for what HMRC consider is a failure to take corrective action following the issue of a follower notice. A number of those taxpayers have applied to the Tribunal for a direction under Rule 8(3)(c) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (the "Tribunal Rules") barring HMRC from further participation in their appeals on the grounds that there was no reasonable prospect of HMRC's case succeeding. The Tribunal decided to hear the applications of the three appellants and has stayed similar applications by other taxpayers.

2. The essence of the appellants' argument is that the averred follower notices contain a gross and fundamental error with the result that they are not actually follower notices within the meaning of the applicable legislation. In those circumstances, they argue that HMRC cannot have a reasonable prospect of succeeding with an argument that a penalty should be payable for failing to take action in response to those notices.

Facts

3. There was little, if any, dispute on factual matters. I therefore heard no witness evidence and both parties made their submissions by reference to an agreed bundle of documents. The parties were agreed that the facts relevant to Mr Benton's application were in all material respects identical to those of Mr Jackson and Mr Hudson. I will therefore, set out my findings and reasoning only in relation to Mr Benton's application as the parties were agreed that the three applications would stand or fall together. The facts set out [4] to [12] were either agreed or determined by me.

4. Mr Benton entered into arrangements described by HMRC as the "Working Wheels Scheme". Those arrangements were said to generate an income tax loss that he could set off against other taxable income. HMRC did not agree that the arrangements had that result and opened an enquiry into his relevant self-assessment returns.

5. On 20 February 2014, the First-tier Tax Tribunal ("FTT") released its decision in *Flanagan and others v HMRC* [2014] UKFTT 175 (TC). *Flanagan* was an appeal by three other participants in the Working Wheels Scheme. The FTT decided *Flanagan* in HMRC's favour. The FTT refused permission to appeal against that decision and on 17 September 2014, the Upper Tribunal finally refused permission to appeal.

6. On 25 February 2015, HMRC issued Mr Benton with a document (the "Notice") that they considered to be a follower notice under s204 of the Finance Act 2014 ("FA 2014").

The Notice referred to the *Flanagan* decision, saying as follows:

> On 20 February 2014, the First-tier Tribunal ("FTT") released its decision in [*Flanagan*]. That case concerned the same tax arrangements which you have used for the year shown above… The ruling was that the arrangements used in that case do not achieve the intended tax result. The FTT's decision has not been appealed and is therefore final.

More generally, the Notice set out HMRC's view that *Flanagan* was a final judicial ruling relevant to the appellants' participation in the Working Wheels Scheme and gave reasons for that view. Specifically, the Notice stated:

> The FTT's decision in *Flanagan* is a final ruling within the meaning of section 205(4) of the Finance Act 2014 since no appeal has been made against the ruling.

7. The Notice included a section explaining the "necessary corrective action" that they required the appellants to take in response to the Notice and contained the following section:

> **What to do if you disagree with this follower notice**
>
> You cannot appeal to us against this notice, or to a tribunal or court. However, under Section 207 of the Finance Act 2014, you can make representations to us objecting to the notice if you believe that one or more of the following applies:
>
> - One or more of conditions A, B and D shown in this notice have not been met.
> - The judicial ruling shown in this notice is not relevant to your particular arrangements
> - This notice was given after the later of:
>   - 16 July 2016 and
>   - 12 months from the date the return was made.

8. It was common ground that the reference to "16 July 2016" in the section set out at [7] was incorrect as a matter of law. The true effect of s204(6) of FA 2014 (when read together with s205(4) and s205(5) of FA 2014) was that HMRC was entitled to issue a follower notice within 12 months of the date that the Upper Tribunal finally refused permission to appeal against the decision in *Flanagan*. Therefore, HMRC had until 16 September 2015 to issue a follower notice. Accordingly, Mr Benton would be entitled, under s207(1)(c) of FA 2014 to make representations against the Notice if he considered that the Notice was issued after 16 September 2015 and the Notice misstated the effect of s207(1)(c) of FA 2014.

9. Even though the Notice misstated the effect of s207(1)(c) of FA 2014, it was common ground that Mr Benton could not <u>actually</u> have made representations to the effect that the Notice was issued after 16 September 2015 (the correct date) since HMRC issued the Notice on 25 February 2015, well before the applicable deadline.

10. Mr Benton made representations objecting to the Notice on various grounds. He did not object to the Notice on the grounds that it had been issued later than 16 July

2016 (or indeed later than 16 September 2015) no doubt because, as noted at [9], any such representations would have been doomed to fail.

11. HMRC rejected Mr Benton's application by letter dated 22 October 2015. That meant that Mr Benton had to take the "necessary corrective action" within 30 days. He did not do so. Therefore, HMRC issued Mr Benton with a penalty notice (the "Penalty"). HMRC's position is that the Penalty was validly imposed under s208 of FA 2014.

12. Mr Benton has appealed to HMRC against the Penalty and has notified his appeal to the Tribunal. Perhaps surprisingly, given the application that Mr Benton has made and his reasons for it, his grounds of appeal do not seek to argue that the Penalties were not due because HMRC had failed to issue a valid follower notice.

Relevant statutory provisions

13. Section 204 of FA 2014 sets out when a follower notice can be issued as follows:

> **204 Circumstances in which a follower notice may be given**
>
> (1) HMRC may give a notice (a "follower notice") to a person ("P") if Conditions A to D are met[1].
>
> …
>
> (6) A follower notice may not be given after the end of the period of 12 months beginning with the later of—
>
> (a) the day on which the judicial ruling mentioned in Condition C is made[2], and
>
> (b) the day the return or claim to which subsection (2)(a) refers was received by HMRC or (as the case may be) the day the tax appeal to which subsection (2)(b) refers was made.

14. Section 206 of FA 2014 specifies certain matters that must be dealt with in a follower notice as follows:

> **206 Content of a follower notice**
>
> A follower notice must—
>
> (a) identify the judicial ruling in respect of which Condition C in section 204 is met,
>
> (b) explain why HMRC considers that the ruling meets the requirements of section 205(3), and
>
> (c) explain the effects of sections 207 to 210

[1] The appellants are not seeking to argue in these proceedings that Conditions A to D are not met and therefore the full text of these conditions is not reproduced.

[2] As noted above, the "judicial ruling" that was relevant was the Tribunal's decision in *Flanagan* which was treated as made on 17 September 2015

15. Mr Benton accepts that the Notice explained the effect of sections 208 to 210 of FA 2014 and therefore those sections are not reproduced. However, he argues that the Notice did not adequately explain the effect of s207 of FA 2014 which provides, so far as relevant, as follows:

> **207 Representations about a follower notice**
>
> (1) Where a follower notice is given under section 204, P has 90 days beginning with the day that notice is given to send written representations to HMRC objecting to the notice on the grounds that—
>
> (a) Condition A, B or D in section 204 was not met,
>
> (b) the judicial ruling specified in the notice is not one which is relevant to the chosen arrangements, or
>
> (c) the notice was not given within the period specified in subsection (6) of that section.

16. Section 208 imposes a penalty for a failure to take certain steps in response to the receipt of a follower notice as follows:

> **208 Penalty if corrective action not taken in response to follower notice**
>
> (1) This section applies where a follower notice is given to P (and not withdrawn).
>
> (2) P is liable to pay a penalty if the necessary corrective action is not taken in respect of the denied advantage (if any) before the specified time….[3]

17. There is a right of appeal to the Tribunal against a penalty. Section 214 of FA 2014 provides as follows:

> **214 Appeal against a section 208 penalty**
>
> (1) P may appeal against a decision of HMRC that a penalty is payable by P under section 208.
>
> (2) P may appeal against a decision of HMRC as to the amount of a penalty payable by P under section 208.
>
> (3) The grounds on which an appeal under subsection (1) may be made include in particular—
>
> (a) that Condition A, B or D in section 204 was not met in relation to the follower notice,
>
> (b) that the judicial ruling specified in the notice is not one which is relevant to the chosen arrangements,
>
> (c) that the notice was not given within the period specified in subsection (6) of that section, or

[3] It was common ground that the appellants had failed to take the "necessary corrective action" as defined and so provisions dealing with this concept are not reproduced

(d) that it was reasonable in all the circumstances for P not to have taken the necessary corrective action (see section 208(4)) in respect of the denied advantage.

…

(8) On an appeal under subsection (1), the tribunal may affirm or cancel HMRC's decision.

(9) On an appeal under subsection (2), the tribunal may—

(a) affirm HMRC's decision, or

(b) substitute for HMRC's decision another decision that HMRC had power to make.

(10) The cancellation under subsection (8) of HMRC's decision on the ground specified in subsection (3)(d) does not affect the validity of the follower notice, or of any accelerated payment notice or partner payment notice under Chapter 3 related to the follower notice.

18. Section 214(3) provides that possible grounds of appeal against a penalty "include in particular" the matters set out in s214(3)(a) to (d). Section 214 does not therefore necessarily set out an exhaustive list of grounds of appeal against a penalty.

19. Section 114 of the Taxes Management Act 1970 deals with defects in notices and documents submitted by HMRC as follows:

114 Want of form or errors not to invalidate assessments, etc

(1) An assessment or determination, warrant or other proceeding which purports to be made in pursuance of any provision of the Taxes Acts shall not be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of the Taxes Acts, and if the person or property charged or intended to be charged or affected thereby is designated therein according to common intent and understanding.

20. Rule 8 of the Tribunal Rules deals with the striking out of a party's case and provides, so far as relevant, as follows:

(3) The Tribunal may strike out the whole or a part of the proceedings if--

…

(c) the Tribunal considers there is no reasonable prospect of the appellant's case, or part of it, succeeding.

…

(7) This rule applies to a respondent as it applies to an appellant except that--

(a) a reference to the striking out of the proceedings must be read as a reference to the barring of the respondent from taking further part in the proceedings…

The parties' respective arguments

21. Ms Manzano argued that the Notice failed to state correctly the time limit within which HMRC could give a valid follower notice (since it stated that a follower notice could be issued at any time on or before 16 July 2016, when the true deadline was 16 September 2015). Since a failure to adhere to this time limit was one of the grounds on which a taxpayer could make representations (under s207(1)(c) of FA 2014), the Notice failed to explain the correct effect of Mr Benton's right to make representations. Moreover, the Notice also failed to set out an exact date on which the decision in *Flanagan* became a final ruling. That meant that Mr Benton could not know when the time limit for issue of a follower notice began to run and that was a further reason why the effect of s207 was not explained. For those reasons, in Ms Manzano's submission, the Notice was not a follower notice.

22. Ms Manzano argued that the defects referred to at [21] could not be cured by s114 of TMA 1970 as the defects were fundamental and gross and, given the penal consequences of a follower notice, Parliament must have intended that all statutory requirements would be obeyed to the letter. Moreover, in Ms Manzano's submission it did not matter that Mr Benton's notice was unquestionably issued before the correct deadline (16 September 2015) and so there was no hope of Mr Benton making representations to the contrary. She argued that the question of whether HMRC had issued a valid follower notice had to be determined objectively (and relied on *HMRC v Bristol and West plc* [2016] STC 1491 in this regard).

23. Therefore, Ms Manzano argued that, since the Notice did not fulfil the requirements of s206 of FA 2014, it was not a follower notice as defined. Since HMRC had failed to issue a follower notice to Mr Benton, there was no reasonable prospect of HMRC succeeding with an argument that penalties should be due for failure to take corrective action as, without a follower notice, there could be no penalty. Accordingly, HMRC's case had no reasonable prospect of success and they should be barred under Rule 8 of the Tribunal Rules from taking any further part in proceedings.

24. Ms Nathan put HMRC's case in two ways. Firstly, she argued that the Tribunal has no jurisdiction to consider questions of the "validity" of a follower notice. Even if the Tribunal did have jurisdiction, she argued that the Notice complied with the requirement imposed by s206 of FA 2014 to "explain the effect" of s207 (since it notified Mr Benton that he had a right to make representations). Although she accepted that the reference to 16 July 2016 in the Notice was incorrect as a matter of law, she did not accept that this meant the Notice failed to satisfy the requirements of s206. Even if the requirements of s206 were not met, any defect could be cured by s114 of TMA 1970.

Discussion

Approach to the appellants' application

25. Ms Manzano initially made her submissions on the basis that, if she could show (on a balance of probabilities) that the defects in the Notice meant that HMRC had not

issued a follower notice, the appellants' application was entitled to succeed as, without a follower notice being issued, HMRC had no reasonable prospect of succeeding in their case that a penalty was due.

26. It seemed to me that this way of putting the application was akin to inviting the Tribunal to determine, as a preliminary issue, whether the HMRC had issued a follower notice. Yet the appellants had not applied for the determination of a preliminary issue; they had applied under Rule 8 of the Tribunal Rules for HMRC to be barred from continued participation in proceedings. That was not just a matter of procedural semantics. On Ms Manzano's approach, to succeed she would only need to show (i) that on a balance of probabilities that the Notice was not a follower notice and (ii) that there was no reasonable prospect of HMRC collecting a penalty under s208 of FA 2014 if no follower notice had been issued. Yet, in order for HMRC to be barred from participating in proceedings, it seemed to me she would have to show much more, namely that HMRC's argument that a follower notice had been issued had no reasonable prospect of success. In short, Ms Manzano's initial approach appeared to dilute the requirement to show that HMRC's case had no reasonable prospect of success.

27. I invited Ms Nathan and Ms Manzano to discuss between themselves whether they were asking the Tribunal to determine, as a preliminary issue, whether a follower notice had been issued or whether the application to be considered was for HMRC to be barred under Rule 8. Both agreed that the application should be determined under Rule 8. I think that was the right approach. Ms Nathan's skeleton argument clearly proceeded on the basis that HMRC only had to show that their case (that a follower notice had been issued) had a reasonable prospect of success in order to defeat the appellants' application. It would be unfair, at short notice, to require HMRC to show anything stronger.

28. In those circumstances, I consider I must determine whether there is a reasonable prospect of HMRC's case succeeding and, if there is, I should not bar HMRC under Rule 8(7). There is authority (in, for example, *Three Rivers DC v Bank of England (No 3)* [2003] 2 A.C. 1 as to the approach to be applied when considering strike out applications in the courts. In *HMRC v Fairford Group plc* [2014] UKUT 329, the Upper Tribunal concluded that a similar approach should be adopted in the Tribunal in the following passage:

> In our judgment an application to strike out in the FTT under r 8(3)(c) should be considered in a similar way to an application under CPR 3.4 in civil proceedings (whilst recognising that there is no equivalent jurisdiction in the FTT Rules to summary judgment under Pt 24). The tribunal must consider whether there is a realistic, as opposed to a fanciful (in the sense of it being entirely without substance), prospect of succeeding on the issue at a full hearing, see *Swain v Hillman* [2001] 1 All ER 91 and *Three Rivers* [2000] 3 All ER 1 at [95], [2003] 2 AC 1 per Lord Hope of Craighead. A 'realistic' prospect of success is one that carries some degree of conviction and not one that is merely arguable, see *ED & F Man Liquid Products Ltd v Patel* [2003] EWCA Civ 472, [2003] 24 LS Gaz R 37. The tribunal must avoid conducting a

> 'mini-trial'. As Lord Hope observed in *Three Rivers*, the strike-out procedure is to deal with cases that are not fit for a full hearing at all.

29. As will be noted from paragraph [24], HMRC's case involves two alternative propositions: first that the Tribunal has no jurisdiction even to consider "validity" of a follower notice and, alternatively, that the Notice was indeed a "valid" follower notice. In her closing submissions, Ms Manzano invited me, if I was not minded to bar HMRC completely under Rule 8(7), I should nevertheless at the least bar them from pursuing the "jurisdiction" argument.

30. It is not clear to me, however, that I have power to bar HMRC partially. Rule 8(3) of the Tribunal Rules refers to striking out a part of proceedings, or of an appellant's case. However, Rule 8(7) makes it clear that, when Rule 8(3) is applied to a respondent such as HMRC:

> a reference to the striking out of the proceedings must be read as a reference to the barring of the respondent from taking further part in the proceedings.

These words are not obviously compatible with a "partial bar" and do not seem to envisage a situation where a respondent is permitted to take part in some aspects of proceedings but not others.[4] Since I heard no argument on this point I will, despite my doubts, proceed on the basis that I have power to bar HMRC partially from these proceedings.

HMRC's arguments relating to the contents of the Notice

31. I am satisfied that HMRC have a reasonable prospect of establishing (if the Tribunal has jurisdiction) that the Notice was a follower notice for the purposes of the FA 2014 provisions. I will give brief reasons firstly because of Lord Hope's warning in *Three Rivers* that strike-out applications should not involve a "mini-trial" (and indeed are intended to weed out cases that are not fit for trial at all) and secondly because I would not wish to pre-judge the outcome on this issue which will now need to be determined at a full hearing.

32. Put shortly, s206(c) of FA 2014 requires that a follower notice "explains the effect of" s207 of FA 2014. HMRC have a reasonable prospect of establishing that the effect of a statutory provision can be explained if the overall effect of the provision is explained even if, in some particulars, the explanation is incorrect. The Notice made it quite clear that Mr Benton had the right to make representations against the Notice and outlined the basis on which he could make those representations. Moreover, Mr Benton actually made representations in response to the Notice. In those circumstances, HMRC have a reasonable prospect of establishing, even if as Ms Manzano submits the test is objective, that a reasonable reader of the Notice was provided with an adequate explanation of the effect of s207.

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[4] Rule 7(2)(d) of the Tribunal Rules does envisage a "partial bar", but applies only in cases of breach of Tribunal rules or directions and there is no suggestion that HMRC have breached such rules or directions in this appeal.

33. Mr Benton could never have succeeded with any representations to the effect that the Notice was issued late for the simple reason that the Notice was issued well before the statutory deadline. HMRC have a reasonable prospect of establishing that the requirement is to explain the "effect" of s207 to the particular taxpayer receiving a follower notice and that this requirement is satisfied even if that taxpayer is not informed of a purely theoretical ground for making representations which could not possibly exist on that taxpayer's facts.

34. Ms Manzano criticises the Notice for failing to mention the specific date on which the decision in *Flanagan* became final. HMRC argue that this failing cannot prevent the Notice being a follower notice because there is no statutory requirement to specify this date. I consider that argument to have a reasonable prospect of success for the simple reason that FA 2014 does not require the date of the judicial authority to be specified. It then becomes a question of statutory interpretation as to whether (as Ms Manzano submits) Parliament must have intended a follower notice to contain this information as, without it, a taxpayer would not know the deadline for service of a follower notice and so could not fully understand the right to make representations. However, HMRC have at very least a reasonable prospect of succeeding with an argument to the effect that, had Parliament wanted follower notices to specify the date on which a judicial authority becomes final, they would have said so expressly.

HMRC's arguments as to jurisdiction

35. I confess to feeling that Ms Nathan and Ms Manzano may have been at cross-purposes on this issue.

36. I understood Ms Manzano to be arguing simply that the defects in the Notice meant that it did not answer to the statutory description of a follower notice. Since a penalty under s208 of FA 2014 is chargeable only if a follower notice was given to Mr Benton (as opposed to some other kind of document), she argued that the statutory pre-condition for the imposition of a penalty under s208 of FA 2014 is not met. She clarified, in response to questions I asked, that the appellants are not seeking any declaration from the Tribunal (having effect outside the context of the penalty appeal) to the effect that the Notice was "invalid" as a follower notice. The appellants are not seeking to argue that HMRC should, as a matter of public law, not have issued follower notices. Their simple argument is that, since no "follower notice" has been issued, there can be no penalty under s208 of FA 2014.

37. Ms Nathan submitted that the Tribunal has no jurisdiction to deal with challenges to the "validity" of a follower notice and referred me in this context to *HMRC v Hok* [2012] UKUT 363, *HMRC v Noor* [2013] UKUT 363, *Birkett v HMRC* [2017] UKUT 0089 and *PML Accounting Ltd v HMRC* [2017] EWHC 733.

38. Of course, this is the appellants' application to bar HMRC from proceedings. It is not HMRC's application to strike out the appellants' case, or part thereof, on the grounds that the Tribunal does not have jurisdiction. I do not, therefore, need to determine in this application whether the Tribunal actually has jurisdiction to consider Ms Manzano's argument set out at [36]. However, if I considered that HMRC had no

reasonable prospect of establishing that the Tribunal had no jurisdiction, Ms Manzano submitted that I should bar HMRC from making the jurisdiction argument.

39. I did not find the argument that Ms Nathan put forward on jurisdiction compelling as I did not consider that the authorities she referred were absolutely on point in circumstances were Ms Manzano's argument was simply that no follower notice was actually issued. In particular:

(1) I did not consider *Noor* to be on point as the appellants are not seeking to invoke public law arguments to the effect that no follower notice should have been issued. Rather, their point is that no follower notice was actually issued.

(2) *Hok* makes it clear that the Tribunal has no inherent jurisdiction and the scope of the Tribunal's jurisdiction can only be discerned from the statutory provisions conferring that jurisdiction. In the context of this appeal, Parliament has provided that the issue of a "follower notice" is a precondition to the charging of a penalty under s208 of FA 2014. The list of grounds of appeal set out in 214(3) of FA 2014 is not expressed to be exhaustive and does not deal with all preconditions that are necessary before a penalty can be charged. For example, a taxpayer may consider that he or she has taken "corrective action" before the specified time so that the precondition in s208(2) is not met. The Tribunal must surely have jurisdiction to consider whether a taxpayer has, or has not, taken "corrective action": indeed one would expect HMRC to have the burden of proof on this issue in Tribunal proceedings. I did not, therefore, consider that the decision in *Hok* necessarily precludes a taxpayer from arguing, in a penalty appeal, that another pre-condition set out in s208(1) (namely that a follower notice was issued) is satisfied.

(3) I did not regard *Birkett* to be of great assistance. In that case, HMRC had issued a document that answered to the statutory description of an information notice under paragraph 1 of Schedule 36 of Finance Act 2008. The taxpayer was seeking to argue, in proceedings before the Tribunal relating to a penalty for failure to comply with that notice, that there was a public law reason why HMRC should not have issued the notice. That is a different situation from the one arising in this appeal where the appellants' argument is simply that no follower notice was actually issued.

(4) *PML Accounting* came closest to supporting Ms Nathan's argument. In that case, a document was issued that answered to the statutory description of an information notice. When the taxpayer did not comply with the notice, HMRC charged a penalty and the taxpayer appealed against that penalty. It appears that the FTT concluded, in the penalty appeal, that the information referred to in the information notice related to the tax position of the taxpayer's clients, and not of the taxpayer itself. Therefore, it seems that the FTT concluded that, although HMRC had issued a document that answered to the statutory description of an information notice, they should not have done so because they wanted the information in question to check the tax position of someone other than the taxpayer. The Upper Tribunal held that the FTT had no jurisdiction, in the penalty proceedings, to decide that the information notice was "invalid": if the

taxpayer wanted to take a point to the effect that the information notice was seeking information on the "wrong" taxpayers, that point should have been made in an appeal against the penalty notice. Therefore, *PML Accounting* does contain some passages that can be read as supporting Ms Nathan's argument. However, at least arguably, *PML Accounting* involves a situation in which a notice answering to the statutory description was issued, but the taxpayer's argument was that it should not have been issued.

40. I have nevertheless decided not to bar HMRC from making their jurisdiction argument for the following reasons:

(1) I did not regard the jurisdiction argument as "fanciful". There are some passages in *PML Accounting* that appear to support it.

(2) I have reached the clear conclusion that HMRC should be able to make their other arguments for reasons set out at [31] to [34]. The follower notice legislation is relatively new and HMRC have issued large numbers of follower notices, yet the scope of the Tribunal's jurisdiction in penalty appeals is as yet not tested in any decision. The Tribunal would benefit from full submissions on matters of its jurisdiction in follower notice penalty appeals particularly if I am right that, in the hearing before me, Ms Nathan and Ms Manzano were somewhat at cross purposes.

(3) My power to bar HMRC from making part of their case is not clear. I do not want to create satellite litigation on this issue. Given the points I have made above, it is in the interests of justice, and consistent with the overriding objective, for all aspects of the appeal to be dealt with at a substantive hearing.

Conclusion and application for permission to appeal

41. My conclusion is that the appellants' application is refused.

42. 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.

JONATHAN RICHARDS
TRIBUNAL JUDGE

RELEASE DATE: 11 MAY 2017