Neutral Citation: [2023] UKFTT 00400 (TC)

Case Number: TC08807

FIRST-TIER TRIBUNAL
TAX CHAMBER

Taylor House

Appeal reference: TC//2019/02368

PROCEDURE – application for late notice of appeal in the case of a number of income tax-related assessments and penalty determinations and two VAT-related penalty determinations – after taking into account, in each case, the extent of the delay in giving notice of appeal, the reasons for the delay and the other factors relevant to the exercise of the First-tier Tribunal's discretion in this regard in accordance with applicable prior case law, it would not be appropriate for consent to the late notice to be given – accordingly, application dismissed

Heard on: 19 April 2023
Judgment date: 25 April 2023

Before

TRIBUNAL JUDGE TONY BEARE

Between

MR BENJAMIN TOLLA

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

The Appellant represented himself

For the Respondents: Ms Laura Woodsmith, litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. This decision relates to an application made by the Appellant for permission to make a late appeal against a number of assessments and penalty determinations as listed in the appendix to this decision (the "Appendix"). The assessments and penalty determinations amount, in aggregate, to £362,497.51.

2. In addition to the assessments and penalty determinations listed in the Appendix, the Respondents have issued – and subsequently withdrawn - a number of other assessments and penalty determinations, including:

(1) penalties under Schedule 24 of the Finance Act 2007 in respect of VAT inaccuracies amounting to £70,450.00;

(2) penalties under Section 93 of the Taxes Management Act 1970 (the "TMA") amounting to £14,173.00;

(3) surcharges under Section 59C of the TMA amounting to £7,202.22; and

(4) a late filing penalty in respect of the tax year ending 5 April 2011 amounting to £796.00.

3. As those assessments and penalty determinations have now been withdrawn, they are not relevant to this decision. However, they help to provide some context to the consideration of the application.

THE FACTS

4. Almost all of the facts which are relevant to the application are a matter of written record, given that they are either set out in exchanges of written communications between the parties or set out in notes of meetings and telephone conversations between the parties written by Officers of the Respondents and not disputed by the Appellant. Those facts may be summarised as follows:

(1) the Appellant was the director and sole owner of a company called Chainfocus Limited, trading as Curtis Sloane Estate Agents ("Chainfocus");

(2) in October 2011, the Respondents commenced an investigation into the tax affairs of Chainfocus and the Appellant under Code of Practice 9 ("COP 9");

(3) in January 2012, at the time when the COP9 investigation was continuing, the Respondents removed some computers from Chainfocus's premises;

(4) on 12 March 2013, the Officer of the Respondents who was leading the COP9 investigation, Officer Zahid Mukhtar, sent a letter to the Appellant to say that, as the Appellant had still not provided him with the information and documentation previously requested in the course of the COP9 investigation, he intended to close the COP9 investigation on the basis of the information currently held by the Respondents. Officer Mukhtar concluded his letter by saying that, unless the Appellant provided the outstanding information and documentation within thirty days of the letter, he would be issuing assessments and penalty determinations to the Appellant on the basis of the information currently held by the Respondents;

(5) on 3 June 2013, the Appellant and Officer Mukhtar spoke on the telephone to discuss the COP9 investigation. An altercation arose in the course of that telephone call. It appears from the exchanges of emails between the two men which occurred

immediately afterwards that the Appellant informed Officer Mukhtar that he intended to record their conversation, whereupon the Officer declined to continue the telephone call;

(6) following that truncated call, the Appellant sent an email to Officer Mukhtar to say that he was not prepared to discuss his tax affairs with the Respondents unless the Respondents agreed to allow him to record the conversation and that he did not understand why the Officer was unwilling for their discussions to be recorded when the Officer had been willing to accept that before;

(7) on 4 June 2013, Officer Mukhtar replied by email to the Appellant, saying that he had never agreed to the recording of his discussions with the Appellant. He added that he was more than happy to meet the Appellant to discuss matters arising out of the COP9 investigation but he was not prepared to have those discussions recorded because he could not be certain of receiving an unedited copy of the recording. Officer Mukhtar concluded by saying that he intended to proceed with the COP9 investigation and would be writing to the Appellant shortly in relation to the penalties that he intended to impose;

(8) on 16 July 2013, Officer Mukhtar sent a letter to the Appellant which, inter alia:

(a) summarised the Respondents' position in relation to the Appellant's tax liabilities;

(b) specified the assessments which the Respondents intended to raise;

(c) described the penalties which the Respondents intended to impose;

(d) requested the Appellant to provide the Respondents with the information and documentation which he had previously requested; and

(e) said that, if that information and documentation was not provided by 16 August 2013, he would issue the assessments and penalty determinations described in the letter;

(9) on 30 August 2013, Officer Mukhtar sent a letter to the Appellant enclosing:

(a) income tax assessments under Section 29 of the TMA in respect of tax years from and including the tax year ending 5 April 2005 to and including the tax year ending 5 April 2012;

(b) penalty determinations under Section 93 of the TMA in respect of tax years from and including the tax year ending 5 April 2005 to and including the tax year ending 5 April 2010; and

(c) penalty determinations under Section 7(8) of the TMA in respect of the tax years ending 5 April 2005 and 5 April 2006

and noting that a penalty determination in respect the tax year ending 5 April 2011 had been raised and would be issued centrally under separate cover and that a penalty determination in respect the tax year ending 5 April 2012 would be issued in due course;

(10) on the same day, Officer John Hanton of the Respondents sent a letter to the Appellant notifying him that, as a result of the dishonest failure by Chainfocus to submit VAT returns and account for VAT output tax on its sales in VAT periods from and including the VAT period 11/04 to and including the VAT period 02/09 , the Respondents were going to impose a civil evasion penalty on the company and were going to recover that penalty from the Appellant himself under Sections 61 and 76(1) of the Value Added Tax Act 1994 (the "VATA");

(11) on 24 September 2013, the Appellant replied by email to Officer Mukhtar's email of 4 June 2013 to say that he had previously told the Officer that his discussions with the Officer were being recorded and offering to provide the Officer with transcripts of all conversations which he had had with the Officer and other representatives of the Respondents since 2004;

(12) in a separate email on that date, he noted that he had requested Officer Mukhtar to remove himself from the COP9 investigation because the Officer was "seriously compromised" but the Officer had not done so. The Appellant said that he awaited the Officer's assessments;

(13) on 3 October 2013, Officer Mukhtar sent an email to the Appellant to reiterate that he had never agreed to the recording of his discussions with the Appellant and that the reason for that refusal had been as set out in the Officer's email of 4 June 2013. The email from Officer Mukhtar went on as follows:

"I believe the matter of recorded conversations is a [sic] not the most important issue at this stage. I think that the most pressing issue is for you to deal with my last letter of 30 August 2013. I would recommend that your time would be better served by considering this letter and assessments/penalty notices that were issued at the same time. In particular I draw your attention to your right to appeal and seek a review of the decisions I have made. If you do not take the opportunity to consider your rights the assessments and penalty notices will become final and conclusive";

(14) on 17 October 2013, the Appellant called Officer Hanton to discuss the VAT-related assessments which had been issued by reference to the affairs of Chainfocus. As Officer Hanton was out of the office, the call was answered by Officer Mukhtar, who informed the Appellant that he was in charge of the case and that Officer Hanton had issued the assessments on his instructions. Officer Mukhtar invited the Appellant to raise any queries in relation to the assessments with him but the Appellant declined to do so on the ground that Officer Mukhtar was compromised and rang off;

(15) on 30 October 2013, Officer Mukhtar sent a letter to the Appellant in which he referred to various attempts which had been made by his colleagues to get hold of the Appellant on 17 and 18 October 2013 and said that he was writing to give the Appellant an understanding of what he needed to do if he disagreed with the decisions which the Officer had made as set out in his letter of 16 July 2013. Officer Mukhtar then provided information about how to progress an appeal against any of the decisions and concluded by saying that:

> (a) although the period for appealing against the assessments had now lapsed, he would, as an act of good faith, allow the Appellant thirty days from the date of the letter to submit appeals; and
>
> (b) if he did not hear from the Appellant within that thirty-day period, he would assume that the Appellant agreed with the decisions;

(16) on 1 November 2013, Officer Mukhtar sent a letter to the Appellant enclosing a published Respondents' "Factsheet", which described what a taxpayer needed to do if he or she disagreed with a decision made by the Respondents. Officer Mukhtar pointed out that the process described in the "Factsheet" applied to both the Appellant as an individual and the Appellant in his capacity as director of Chainfocus. Officer Mukhtar also enclosed with his letter two copies of a notice of appeal and guidance notes on how to complete a notice of appeal;

(17) on 22 November 2013, the Appellant - using the email address of a Ms Consuela McKenzie of Chainfocus - sent an email to Officer Mukhtar and two of his colleagues to inform them that "we are about to publish all our audio and video communications with you on our youtube channel…If you have any objections to this, please send us your concerns before 5pm on sunday [sic] (November 24, 2013)";

(18) on 17 March 2014, the Appellant called Officer Hanton to say that he wished to appeal against the various assessments which had been made to date. When Officer Hanton informed him that, if he wanted to do that, he needed to write in and appeal, the Appellant said that, as he had previously told Officer Mukhtar, he had already appealed. Officer Hanton explained that:

> (a) in order to make an appeal, it was necessary to write to the Respondents to that effect; and
>
> (b) the details in relation to how to make an appeal had already been sent to the Appellant.

Officer Hanton provided the Appellant with his email address but said that the appeal should be sent by post as well. The Appellant said that he would send the posted version by recorded delivery. Officer Hanton and the Appellant then discussed the question of recordings. Officer Hanton explained to the Appellant that, although calls to the Respondents' advice lines were routinely recorded for training purposes, no recordings were made of calls taking place in the course of COP9 investigations. Finally, the Appellant said that, because the Respondents had removed his computers during the course of the COP9 investigation, he had been having to acquire the necessary paperwork in relation to past periods from Chainfocus's suppliers. He also said that he had been in hospital for some time over the past 24 months and had not worked over that period;

(19) on 19 March 2014, the Appellant called Officer Hanton to say that he had sent an appeal to Officer Hanton. Officer Hanton said that he had not received any appeal and, in the course of the conversation, it transpired that the Appellant had used the wrong email address for Officer Hanton. The Appellant said that he would re-send the appeal using the correct address. The Appellant said that he disagreed with the figures which the Respondents had used in making the assessments but reiterated that he did not have any of the paperwork as much of it was on the computers which the Respondents had removed in the course of their COP9 investigation;

(20) on 10 April 2014, Officer Mukhtar sent a letter to the Appellant in which he said, inter alia, that:

> (a) it was incorrect for the Appellant to allege that he was unaware of any resolution to the Respondents' COP9 investigation;
>
> (b) the Appellant had been informed that the closure of the COP 9 investigation, and the consequent issue of assessments and penalty determinations, was imminent in the Respondents' letter of 16 March 2013;
>
> (c) on 30 August 2013, as he had not heard from the Appellant, he had concluded the COP9 investigation, sent to the Appellant the various assessments and penalty determinations resulting from that conclusion and informed the Appellant that that was the case;
>
> (d) he had subsequently written to the Appellant on 30 October 2013 to advise him of his right to appeal or to request a review and to allow the Appellant a further

thirty days from the date of the letter in which to do so and the Appellant had not responded;

(e) the process for disputing the VAT-related penalty determinations was different from the process for disputing the income tax-related penalty determinations;

(f) in relation to the former, if the Appellant did not agree with a penalty determination, he could, within thirty days of the penalty determination, either appeal to the First-tier Tribunal or ask the Respondents to review the penalty determination, noting that, if he asked for a review, he could still appeal to the First-tier Tribunal after the review was concluded; and

(g) in relation to the latter, if the Appellant did not agree with a penalty determination, he could, within thirty days of the penalty determination, appeal to the Respondents.

Officer Mukhtar concluded the letter by providing links to further information about disputing assessments and penalty determinations and providing a telephone number for the Appellant to call in that regard;

(21) on the same day, Officer Hanton sent a letter to the Appellant notifying him that, as a result of the dishonest failure by Chainfocus to submit VAT returns and account for VAT output tax on its sales in the VAT periods 11/09, 02/10, 05/10, 08/10, 11/10, 11/11, 05/12, 08/12 and 11/12, the Respondents were going to impose a civil evasion penalty on the company and were going to recover that penalty from the Appellant himself under Sections 61 and 76(1) of the VATA;

(22) on 15 September 2014, the Appellant sent an email to Officer Mukhtar in response to the Officer's email of 3 October 2013. In that email, the Appellant once again insisted that all conversations between the parties needed to be fully and fairly recorded and reminded the Officer that, as a result of the Respondents' removal of his and the company's computers, he was unable to provide the Respondents with the information which they were requesting;

(23) on the same day, Officer Mukhtar emailed the Appellant to acknowledge receipt of the Appellant's email and said that he would respond by letter with a clarification on the Appellant's case;

(24) on the same day, the Appellant, in turn, emailed Officer Mukhtar to request that that response be provided both by way of email and by way of hard copy;

(25) on 16 September 2014, Officer Mukhtar wrote to the Appellant in response to the Appellant's initial email of the previous day, saying that the purpose of his letter was to clarify the current status of the Appellant's case. In his letter, Officer Mukhtar pointed out, inter alia, that:

(a) each of the assessments and penalty notices issued on 30 August 2013 contained a section setting out the Appellant's right to appeal if he disagreed with the relevant assessment or notice; and

(b) in his letter of 30 October 2013, Officer Mukhtar had expressly informed the Appellant of the actions which needed to be taken if the Appellant wished to appeal against any of the decisions which Officer Mukhtar had made.

Officer Mukhtar concluded by saying that, as the Appellant had not appealed against any of the decisions or responded to his letter of 30 October 2013, the COP9 investigation

was now concluded and the assessments and penalties were now final. (Unfortunately in this context, the relevant sentence in Officer Mukhtar's letter omitted the crucial word "not" but the meaning of the sentence was clear from the rest of the letter). Finally, Officer Mukhtar reminded the Appellant that the tax issues relating to Chainfocus, including the transfer of Chainfocus's VAT penalties to the Appellant, had been dealt with in his letter to the Appellant of 10 April 2014;

(26) on the same day, Officer Mukhtar sent an email to the Appellant attaching each of:

(a) his letter to the Appellant of that date; and

(b) his letters to the Appellant of 12 March 2013 and 30 October 2013 in relation to the Appellant's income tax affairs;

(27) on the same day, the Appellant sent an email to Officer Mukhtar denying that he had received any notification from the Officer that the COP9 investigation had ended or that he had received the letter of 10 April 2014 and alleging that he had appealed against the assessments made on him;

(28) on the same day, Officer Mukhtar sent an email to the Appellant explaining that, in his letter of 12 March 2013, he had told the Appellant that he intended to close the COP9 investigation by issuing the Appellant with various assessments and that, once those assessments had been issued (which had occurred on 30 August 2013) and the Appellant had failed to appeal against them, the COP9 investigation was completed. Officer Mukhtar also attached to his email the two letters to the Appellant of 10 April 2014 in relation to the VAT liabilities assessed on the Appellant by reference to Chainfocus;

(29) on 5 April 2016, the Respondents were granted a final charge over some of the Appellant's residential property to secure the debts owed by the Appellant in respect of the assessments and penalty determinations that had been issued;

(30) on 9 June 2016, the Respondents began proceedings to obtain a further charging order over some additional land at the property but, as a result of objections received from solicitors acting for another alleged creditor of the Appellant, the Respondents declined to pursue that further charging order and also eventually agreed to vacate the existing charge over the property on 12 October 2016;

(31) on 4 October 2017, Officer Jeanette Roberts of the Respondents sent a letter to the Appellant in which she said that:

(a) the Appellant's tax records indicated that an enquiry had been opened into his tax affairs up to 5 April 2012 and that that enquiry had concluded in October 2013 when assessments had been raised to collect the additional tax due;

(b) since April 2012, the Appellant had not completed any tax returns or notified the Respondents that he had any liability to tax; and

(c) Officer Roberts was currently reviewing the Appellant's tax affairs from 6 April 2012 to 5 April 2016 and she wished to arrange a meeting with the Appellant to discuss the Appellant's occupation and income over that period;

(32) on 14 December 2017, the Appellant met with Officer Roberts to discuss his desire to appeal against the assessments and penalty determinations. Officer Roberts's notes of the meeting record that:

(a) the Appellant said that he had not known that the Respondents' COP9 investigation had concluded;

(b) the Appellant said that he wished to appeal;

(c) Officer Roberts explained the time limit for the appeal process and the basis on which the Respondents would be prepared to accept a late appeal;

(d) Officer Roberts suggested that the Appellant send his late appeal to her and she would pass it on to the relevant team that had issued the assessments and penalty determinations. She was unable to deal with the late appeal herself and she thought that it was unlikely that the relevant team at the Respondents would accept the late appeal;

(e) Officer Roberts explained that, if the Respondents did not accept the late appeal, the Appellant would need to ask the First-tier Tribunal to accept the late appeal and she provided the Appellant with information on how to make such an application as part of making his appeal to the First-tier Tribunal; and

(f) the Appellant explained that the preceding three years had been "really horrible" and that he had "slept on the streets" and not worked at all. He also said that things would not have got to the present stage if Officer Mukhtar had agreed to the recording of their meetings;

(33) on 18 May 2018, Officer Jake Hillier of the Respondents called the Appellant to remind the Appellant of the need to make his appeal to the Respondents without delay and to provide the Appellant with his contact details for that purpose;

(34) on 3 July 2018, the Appellant emailed Officer Hillier to ask:

(a) whether the COP9 investigation in relation to him and Chainfocus had ended and, if it had, when it had ended and what the conclusion of the COP9 investigation had been;

(b) what the Respondents' policy regarding the recording of telephone conversations and face-to-face interviews between Officers of the Respondents and taxpayers was; and

(c) what the Respondents' policy regarding the treatment of electronic or paper financial records in relation to a taxpayer facing a fraud investigation was.

In that email, the Appellant said that he was "trying to send you a late appeal as promised";

(35) on 4 July 2018, Officer Hillier wrote to the Appellant to say, inter alia, as follows:

(a) in the absence of receiving any appeals against the assessments and penalty determinations, the COP9 investigation was considered to be closed and the amounts in question had become final;

(b) he was not clear what information the Appellant was seeking but, as a general matter, the Respondents would not record a telephone conversation between an investigator and a taxpayer but would instead simply make a note of the telephone call;

(c) he was enclosing a copy of the Respondents' policy on the recording of meetings between an investigator and a taxpayer in a civil investigation;

(d) as the Appellant had said that he was trying to send Officer Hillier a late appeal, he was taking this to be confirmation by the Appellant that no appeal had yet been sent to the Respondents. As the Appellant had been told on numerous occasions both by other Officers and by Officer Hillier himself in a telephone

conversation on 18 May 2018, any appeal against an assessment or penalty determination needed to be made within thirty days and, if it wasn't, an explanation for the failure to meet the statutory time limit needed to be provided;

(e) he wished to remind the Appellant that an appeal needed to be made to the Respondents without delay and the Respondents were obliged to accept a late notice of appeal only where they were satisfied that there was a reasonable excuse for the delay and the request to the Respondents to accept the late notice of appeal was made without unreasonable delay after the reasonable excuse ended; and

(f) he looked forward to receiving the Appellant's notices of appeal;

(36) on 6 December 2018, the Appellant wrote to Officer Roberts to say that he wished to appeal and setting out his grounds of appeal. The letter was dated 18 October 2018 but the Appellant explained that there had been a delay in sending the letter because he was "waiting for the interview promised by the HMRC, which never took place". The Appellant explained that the reason for his late appeal was that he had been waiting to be interviewed in person in the course of the Respondents' COP9 investigation and that it had not been until his meeting with Officer Roberts in late 2017 that he had been informed that it was too late for an interview and that the case had been decided. He added that he had also been extremely ill, being "plagued by suicidal tendencies and extreme anxiety", and that he had been struggling to produce accurate figures, due to the seizure of his office records by the Respondents, and had been "extremely loathe to create an appeal using facts and figures which might be inaccurate and therefore prejudice the HMRC's ultimate decision against me even further";

(37) on 10 December 2018, the Appellant sent to Officers Roberts and Hillier a document which was stated to be an addendum to his appeal. In that document, the Appellant set out (inter alia) the reasons why the appeal had been made late. He said that "the primary cause was a lack of mental health and clarity" as a result of the investigation, the loss of his business and the loss of his father, mother and partner in quick succession. These had led to suicidal thoughts. He went on to say that "[another]primary cause for the lateness of the appeal was the lack of clarity regarding the progress of the investigation and the nature of the appeal process provided by the HMRC". He said that his correspondence had not been returned and that his records had been seized by the Respondents;

(38) on 8 January 2019, Officer Hillier wrote to the Appellant, acknowledging the Appellant's appeal and refusing the application to make a late appeal. Officer Hillier explained that the Appellant had the right to apply to the First-tier Tribunal to accept the late appeal and the criteria which the First-tier Tribunal would apply when considering the Appellant's application to that effect. He concluded that, on the basis of those criteria, the First-tier Tribunal should not admit the late appeal. Officer Hillier went on to deal with a number of other issues which had arisen in the course of the dispute such as:

(a) the Respondents' refusal to allow the recording of telephone calls and meetings;

(b) the Appellant's complaint about sending communications by post instead of email;

(c) the conduct of the COP9 investigation; and

(d) the removal of the charge over the Appellant's residential property,

and concluded that none of those matters had had any impact on the Appellant's ability to make an appeal;

(39) on 22 January 2019, the Appellant wrote to Officer Hillier in response to Officer Hillier's letter of 8 January 2019. In that letter, in addition to reiterating the reasons previously given for his late appeal, the Appellant said that:

(a) a further reason for his late appeal was that he had been struggling to maintain ownership of his residential property during the period in question because of the charge which the Respondents had wrongfully levied on the property (on 4 March 2016) to secure payment of the outstanding taxes and that this had left him "unable to concentrate on the formation and submission of an appeal of any kind";

(b) as regards the absence of records caused by the loss of the computers, he had submitted a late appeal as requested by the Respondents "despite the lack of documentation available to me which would have allowed me to draft a full and complete appeal"; and

(c) he had received a letter from Officer CP McIntyre of the Respondents requiring him to complete tax returns in respect of tax years from and including the tax year ending 5 April 2005 to and including the tax year ending 5 April 2012 and, due to the seizure of his and Chainfocus's records by the Respondents, he had been able to complete (and return to the Respondents in September 2016) tax returns only in relation to the tax years ending 5 April 2005, 5 April 2006 and 5 April 2007;

(40) on 31 January 2019, Officer Hillier emailed the Appellant to acknowledge receipt of the Appellant's letter of 22 January 2019 and to ask for a copy of the letter from Officer McIntyre, given the absence of any record of that letter in the Respondents' files. Officer Hillier added that the computers which had been seized were likely to have been sold to pay the debt in respect of which the seizure was based and that he was unable to provide the Appellant with the information on the computers at that time;

(41) on 1 February 2019, the Appellant emailed Officer Hillier a copy of the letter from Officer McIntyre;

(42) on 4 February 2019, Officer Hillier emailed the Appellant to acknowledge receipt of the copy of Officer McIntyre's letter and to say that, as the Officer had retired, he had been unable to contact the Officer. However, he said that there was no note in the Respondents' records indicating that any tax returns had been received following Officer McIntyre's letter, that Officer McIntyre's letter did not specify what tax returns it had enclosed and that Officer Mukhtar had made his assessments in respect of the tax years ending 5 April 2005 to 5 April 2012 nearly three years prior to Officer McIntyre's letter;

(43) on 12 April 2019, the Appellant submitted his notice of appeal to the First-tier Tribunal and the First-tier Tribunal acknowledged receipt. (Although the notice of appeal to the First-tier Tribunal is dated 6 February 2019, no documentary evidence to the effect that it was lodged with the First-tier Tribunal on that date has been provided);

(44) on 17 April 2019, the Appellant emailed Officer Hillier attaching a copy of the First-tier Tribunal's acknowledgement of his appeal;

(45) on the same day, Officer Hillier emailed the Appellant to acknowledge receipt of the Appellant's email and to ask the Appellant to provide evidence that the notice of appeal had been sent to (and acknowledged by) the First-tier Tribunal on 6 February 2019, as alleged by the Appellant; and

(46) on 23 April 2019, the Appellant emailed Officer Hillier to say that Officer Hillier should contact the First-tier Tribunal directly for the information which Officer Hillier had requested. He had been told by the First-tier Tribunal to re-submit his application after it had failed to action his application and he had done so on 12 April 2019.

5. As I observed at the start of paragraph 4 above, the above facts are not in dispute and I accordingly find them to be facts for the purposes of this decision.

6. However, that is not to say that there is no dispute between the parties in relation to any of the facts. There are essentially two areas of dispute on the facts, both of which are somewhat tangential to the matter at hand.

7. The first area of dispute concerns the reasons why the Respondents removed computers from Chainfocus's premises in January 2012.

8. The Appellant maintains that the computers were removed in the course of, and as part of, the COP9 investigation which was ongoing at that time (see paragraph 4(2) above).

9. The Respondents allege that the reason for the removal had nothing whatsoever to do with the COP9 investigation. They say that:

(1) in late 2010, the Respondents formed the view that Chainfocus had failed to file its VAT returns for 20 consecutive quarters between the VAT period 11/05 and the VAT period 11/10 and accordingly issued VAT and corporation tax assessments to Chainfocus; and

(2) the computers were removed by bailiffs acting for the Respondents in connection with the enforcement of the debts owing by reason of the failure by Chainfocus to discharge those assessments.

The Respondents add that, in any event, on 7 October 2011, before the computers were removed, the Appellant was warned that that was about to happen and could easily have taken steps to copy the information which was on the computers before the removal took place.

10. The second area of dispute concerns whether or not the Respondents removed any of the paper records of Chainfocus or the Appellant at any time.

11. The Appellant maintains that some of those paper records are missing and blames the Respondents for that.

12. The Respondents say that:

(1) they are not responsible for any missing paper records;

(2) no paper records were removed as part of the computer seizure; and

(3) all paper records which were taken away by the Respondents during the course of the COP9 investigation were returned to the Appellant in August 2011.

13. In relation to each of these disputes, I have found it very difficult to decide whose version of the facts to accept in the absence of concrete evidence from either party. I am inclined to believe the Respondents' version of event simply because there is no logical reason why they would have seized computers without warning in connection with an ongoing COP9 investigation or removed papers and refused to return them. Thus, of the two versions of events, it seems to me to be more likely that the computers were seized in the course of enforcing prior debts owed to the Respondents, that that seizure was preceded by a warning to the Appellant that the computers were about to be seized and that no papers were removed and not returned by the Respondents. However, for reasons which will become clear in the course of this decision, I do not think that I need to reach a conclusion in relation to them and, for the

purposes of deciding the application, I am prepared to accept that the Appellant's version of the events which occurred in both cases is the correct one.

14. In any event, the key points, which are not in dispute, are that:

(1) the Respondents removed some of Chainfocus's computers in January 2012 and the Appellant no longer had access to those computers after that removal; and

(2) some of the Appellant's paper records are missing.

THE LEGISLATION

Introduction

15. The assessments and penalty determinations to which the application relates can conveniently be divided into two categories – those relating to income tax and those relating to VAT.

16. All of the assessments and all but two of the penalty determinations fall within the former category. They have been made under:

(1) Section 29 of the TMA;

(2) Section 7(8) of the TMA;

(3) Section 93 of the TMA;

(4) Schedule 55 of the Finance Act 2009 (the "FA 2009"); and

(5) Schedule 56 of the FA 2009.

17. The two penalty determinations falling within the latter category have been made under Sections 61 and 76(1) of the VATA.

18. So far as the application is concerned, there is a distinction to be drawn between the dispute procedure which is relevant to the assessments and penalty determinations relating to income tax and the dispute procedure which is relevant to the two penalty determinations in relation to VAT.

The income tax-related assessments and penalty determinations

19. Starting first with the income tax-related assessments and penalty determinations, the dispute procedure in question is the one set out in Sections 31, 31A and 49 of the TMA.

20. Those provisions are applicable to the assessments under Section 29 of the TMA because the relevant assessments are assessments other than self-assessments and therefore fall within the ambit of Section 31(1)(d) of the TMA.

21. The apparatus in those provisions also applies, by way of cross-reference, to all of the other income tax-related assessments and penalty determinations:

(1) in the case of Section 7(8) and Section 93 of the TMA, by Section 100B of the TMA;

(2) in the case of Schedule 55 of the FA 2009, by paragraphs 20 and 21 of that schedule; and

(3) in the case of Schedule 56 of the FA 2009, by paragraphs 13 and 14 of that schedule.

22. Where Sections 31, 31A and 49 of the TMA are engaged, notice of appeal is required to be given in writing to the Respondents within thirty days of the relevant assessment or penalty determination. If written notice of appeal is not given within that period, then it may be given after that period if:

(1) the Respondents consent to the late notice; or

(2) where the Respondents do not consent to the late notice, the First-tier Tribunal gives permission to that effect.

23. The Respondents are bound to consent to the late notice where:

(1) the taxpayer makes a written request to the Respondents to consent to the late notice;

(2) the Respondents are satisfied that there was a reasonable excuse for not giving the notice of appeal within the time limit; and

(3) the Respondents are satisfied that the written request referred to in paragraph 23(1) above was made without reasonable delay after the reasonable excuse referred to in paragraph 23(2) above ended.

24. Otherwise, the Respondents have a discretion as to whether or not to consent to the late notice.

25. If the Respondents do not consent to the late notice, then the First-tier Tribunal have discretion as to whether or not to give permission to that effect.

26. In this case, the Respondents have both refused to consent to the late notice and oppose the Appellant's application to the First-tier Tribunal for permission to give the late notice.

The VAT-related penalty determinations

27. So far as the VAT-related penalty determinations are concerned, the procedure is slightly different. In that case, the dispute procedure is set out in Sections 83(1) and following of the VATA.

28. Where those provisions are engaged, the taxpayer has thirty days after receiving the penalty determination in which either to ask the Respondents to review the determination (see Sections 83A and 83C of the VATA) or to appeal to the First-tier Tribunal against the relevant penalty determination (see Section 83G of the VATA).

29. If the taxpayer does not ask for a review and fails to appeal to the First-tier Tribunal within the thirty-day time limit, then an appeal to the First-tier Tribunal outside the time limit requires the consent of the First-tier Tribunal (see Section 83G(6) of the VATA). Rule 20 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (the "Tribunal Rules") provides that, if a notice of appeal to the First-tier Tribunal is given after any time limit which is set out in the relevant enactment but the enactment makes provision for late notice of an appeal to be given with the permission of the First-tier Tribunal, then the notice of appeal must include a request for such permission and the reason why the notice of appeal was not provided on time and, unless the First-tier Tribunal gives that permission, the First-tier Tribunal must not admit the appeal.

THE RELEVANT CASE LAW

30. There are a number of decisions of the higher courts which set out the principles to be applied by the First-tier Tribunal in determining an application for permission to submit a late appeal. The Upper Tribunal decision in *Martland v The Commissioners for Her Majesty's Revenue and Customs* [2018] UKUT 178 (TCC) ("*Martland*") is one of them.

31. In their decision in that case, the Upper Tribunal referred to several earlier decisions – most notably, the judgment of Lord Drummond in *Advocate General for Scotland v General Commissioners for Aberdeen City* [2006] STC 1218 and the judgment of Morgan J in *Data Select Limited v The Commissioners for Her Majesty's Revenue and Customs* [2012] STC 2195

– and concluded that those cases required the following questions to be addressed in each such case:

(1) what is the purpose of the time limit?

(2) how long was the delay?

(3) is there a good explanation for the delay?

(4) what will be the consequences for the parties of an extension of time? and

(5) what will be the consequences for the parties of a refusal to extend time?

32. The Upper Tribunal in *Martland* made it clear that, in answering these questions, one needs to consider the overriding objective of the Tribunal Rules, as set out in Rule 2 of those rules - to the effect that the First-tier Tribunal should deal with cases fairly and justly - and the matters listed in Rule 3.9 of the Civil Procedure Rules (the "CPR") – that is to say, all of the relevant circumstances, including the need for litigation to be conducted efficiently and at proportionate cost and the need to enforce compliance with rules.

33. The Upper Tribunal in *Martland* added that the reference to Rule 3.9 of the CPR showed that the case law in relation to an application for permission to make a late appeal was really just part of the wider stream of case law on relief from sanctions and extensions of time in connection with the procedural rules of the courts and tribunals. In *Martland*, it was noted that the key cases in that stream of authority so far as an application for permission to make a late appeal was concerned were the Court of Appeal decision in *Denton v TH White Limited* [2014] EWCA Civ 906, [2014] 1 WLR 3926 ("*Denton*") and the Supreme Court decision in *BPP Holdings Limited v The Commissioners for Her Majesty's Revenue and Customs* [2017] UKSC 55, [2017] 1 WLR 2945 ("*BPP*").

34. In *Denton*, the Court of Appeal was considering the application of the CPR to cases in which relief from sanctions for failures to comply with various rules of court was being sought. It said that, in any such case, the judge should address the application for relief from sanctions in three stages as follows:

(1) identify and assess the seriousness and significance of the failure which has engaged Rule 3.9 of the CPR;

(2) consider why the default occurred; and

(3) evaluate all the circumstances of the case, so as to enable the court to deal justly with the application and, for this purpose, giving particular weight to the need for litigation to be conducted efficiently and at proportionate cost and the need to enforce compliance with rules.

35. The Supreme Court in *BPP* implicitly endorsed the approach in *Denton*.

36. The Upper Tribunal in *Martland* concluded that, when the First-tier Tribunal is considering an application for permission to appeal out of time, it needs to remember that permission should not be granted unless the First-tier Tribunal is satisfied on balance that it should be. The Upper Tribunal went on to say that, in considering that question, the First-tier Tribunal "can usefully follow the three-stage process set out in Denton", which is to say:

(1) establish the length of the delay;

(2) establish the reason for the delay; and

(3) evaluate all the circumstances of the case, which includes weighing up the length of the delay, the reasons for the delay, the extent of the detriment to the applicant in not

giving permission and the extent of the detriment to the party other than the applicant of giving permission.

37. The Upper Tribunal in *Martland* reiterated that the evaluation at the stage mentioned in paragraph 36(c) above "should take into account the particular importance of the need for litigation to be conducted efficiently and at a proportionate cost, and for the statutory time limits to be respected".

38. The Upper Tribunal in *Martland* made two final points in relation to the exercise by the First-tier Tribunal of its discretion in deciding whether or not to permit a late appeal.

39. First, the Upper Tribunal in *Martland* held that the First-tier Tribunal can have regard to any obvious strength or weakness in the applicant's case because that is highly relevant in weighing up the potential prejudice to the parties of the relevant decision. In other words, where the First-tier Tribunal refuses an application for permission to appeal, there is much greater prejudice to an applicant with a strong case than there is to an applicant with a weak case. The Upper Tribunal cautioned against such a process's descending into a detailed analysis of the underlying merits of the appeal but it did say that, if an applicant's case was hopeless, then it would not be in the interests of justice for permission to be granted because that would lead the time of the First-tier Tribunal to be wasted. However, in most circumstances, an appeal will have some merit and so, without conducting a detailed evaluation of the merits, the First-tier Tribunal should at least form a general impression of the merits of the appeal and allow the parties an opportunity to address that question in outline.

40. (The merits of the appeal will rarely play a significant part in the evaluation at the third stage in the *Denton* process. In *R (on the application of Hysaj) v Secretary of State for the Home Department* [2014] EWCA Civ 1633 ("*Hysaj*"), Moore-Bick LJ noted that:

"In most cases the merits of the appeal will have little to do with whether it is appropriate to grant an extension of time. Only in those cases where the court can see without much investigation that the grounds of appeal are either very strong or very weak will the merits have a significant part to play when it comes to balancing the various factors that have to be considered at stage three of the process.")

41. Secondly, the Upper Tribunal in *Martland* said that the shortage of funds and the consequent inability of the applicant to appoint a professional adviser should not, of itself, carry any weight in considering the reasonableness of the applicant's explanation of the delay. Nor should the fact that the applicant is self-represented. This is because the appealable decisions of the Respondents generally include a clear statement of the relevant appeal rights and it is not a complicated process to notify an appeal to Respondents or the First-tier Tribunal, as the case may be, even for a litigant in person.

42. Finally in this context, mention should be made of the statement in paragraph [96] of the Upper Tribunal decision in *Romasave (Property Services) Limited v The Commissioners for Her Majesty's Revenue and Customs* [2015] UKUT 0254 (TCC) ("*Romasave")* to the effect that a delay of more than three months "cannot be described as anything but serious and significant".

DISCUSSION

43. I now turn to address the Appellant's application in the light of:

(1) the case law described in paragraphs 30 to 42 above;

(2) the relevant facts; and

(3) the Appellant's submissions.

Stage 1 – the extent of the delay

44. The first stage in the three-stage process set out in *Denton* is to establish the length of the delay.

45. It can be seen that, in relation to each assessment or penalty determination in this case, if the Appellant was not to have to rely on the discretion of the Respondents or the First-tier Tribunal to allow his appeal against the relevant assessment or penalty determination to proceed, he was required:

(1) in all cases apart from the two VAT-related penalty determinations, to give written notice of his appeal to the Respondents within thirty days of receiving the relevant assessment or penalty determination; and

(2) in the case of the two VAT-related penalty determinations, to appeal to the First-tier Tribunal within thirty days of receiving the relevant penalty determination.

46. The Appellant did neither of those things.

47. In the case of the income-tax related assessments and penalty determinations, he did not give written notice of appeal to the Respondents until 6 December 2018. That is almost four years after the expiry of the thirty-day time limit in respect of the most recent assessment or penalty determination set out in the Appendix – the twelve month late filing penalty issued on 20 November 2014. The period of delay in relation to the assessments and penalty determinations which were made prior to 20 November 2014 is, of course, longer than that.

48. In the case of the two VAT-related penalty determinations, he did not appeal to the First-tier Tribunal until 12 April 2019. Even if one were to treat the Appellant as having submitted his appeal to the First-tier Tribunal on 6 February 2019, as the Appellant alleges but in respect of which he has failed to adduce any evidence, that is a considerable period of time after the expiry of the thirty-day time limit for making each relevant appeal. It is almost five and a half years after the expiry of the thirty-day time limit in respect of the VAT-related penalty determination of 30 August 2013 and almost five years after the expiry of the thirty-day time limit in respect of the VAT-related penalty determination of 10 April 2014.

49. On any analysis, the delay in the case of each relevant assessment and penalty determination in this case was considerable. When one considers that the Upper Tribunal in *Romasave* thought that a delay of more than three months "cannot be described as anything but serious and significant", the scale of the delay in this case becomes apparent.

Stage 2 – the reasons for the delay

50. As for the second stage in the three-stage process – that of establishing the reasons for the delay – the Appellant has given four reasons for his failure to notify his appeals to the Respondents or the First-tier Tribunal within the thirty-day period set out in the legislation.

51. The first two reasons – which he described in his "addendum to appeal" as the "primary causes" for his delay - are:

(1) the fact that he was suffering from a lack of mental health and clarity; and

(2) the lack of clarity as regards the progress of the Respondents' COP9 investigation and the nature of the appeal process.

52. In relation to the first of these reasons, the Appellant submitted at the hearing that, as a result of the Respondents' COP9 investigation and the loss of his business and his father, mother and partner in quick succession, he had suffered from acute anxiety and suicidal thoughts. At one stage, he had been forced to move out of his home and forced to live in one of his commercial properties.

53. In relation to the second of these reasons, the Appellant said at the hearing that the Respondents had not made it clear to him that their COP9 investigation had ended. Even as late as October 2017, by which time his mental health had improved, he still believed the COP9

investigation to be continuing. He said that he was waiting in vain to be summoned for an interview with Officer Mukhtar which he believed still to be required and that he had been surprised to receive Officer Roberts's letter of 4 October 2017 informing him that the COP9 investigation had been completed in October 2013.

54. In connection with this second reason, the Appellant had various complaints about the manner in which the Respondents had conducted the COP9 investigation. He said that:

(1) the Respondents had refused to allow him to record his discussions or meetings with them;

(2) the Respondents had not taken up his offer for the Respondents to interview his accountant and his lawyer; and

(3) the Respondents had often communicated with him by post instead of email, contrary to the request which he had made of them.

55. The third reason which the Appellant gave for the delay was that the Respondents had removed Chainforce's computers in January 2012 and therefore he did not have access to the information on those computers which he needed to conduct any appeal. As the Appellant put it at the hearing, he did not see how he could make an appeal because, as soon as he was asked to explain the grounds for his appeal, he would have been unable to do so through lack of information.

56. The final reason for the delay given by the Appellant was that, "during the appeal and late appeal period", he had been struggling to maintain ownership of his residential property after the Respondents wrongfully placed a charging order on the property and then subsequently wrongfully removed that charge. The Appellant maintained that, as a result of his concern over maintaining ownership of his residential property, he had been "unable to concentrate on the formation and submission of an appeal of any kind" (see the Appellant's letter of 22 January 2019 to Officer Hillier).

Stage 3 - evaluation

Introduction

57. Turning then to the critical third stage in the three-stage process, I now need to evaluate all the circumstances of the case, which includes weighing up:

(1) the length of the delay;

(2) the reasons for the delay;

(3) the extent of the detriment to the Appellant in my not giving permission; and

(4) the extent of the detriment to the Respondents in my giving permission.

58. In so doing, I need to take into account the particular importance of the need for litigation to be conducted efficiently and at a proportionate cost and for the statutory time limits to be respected.

59. I am also guided by the Upper Tribunal in *Martland* not to give any weight to the fact that the Appellant was short of funds and unrepresented because the relevant assessments and penalty determinations included clear statements as to what the Appellant was required to do if he disagreed with them and it is not a complicated process to notify the Respondents or the First-tier Tribunal of an appeal, even for a litigant in person.

60. Finally, without embarking on a detailed analysis of the underlying merits of the appeals, I am required to take into account any obvious strengths or weaknesses in the Appellant's case in relation to the appeals.

61. After weighing up all of the factors described above, I am unable to accede to the Appellant's application in this case.

The delay

62. The delay in this case has been egregious. Not only has there been a serious and substantial delay but the advice set out in the relevant assessments and penalty determinations as to what to do if the Appellant disagreed was followed by repeated injunctions from the Respondents to make the relevant appeals.

63. In all, leaving aside the instructions which were contained within the relevant assessments and penalty determinations, I have counted six occasions on which the Appellant was advised by Officers of the Respondents that he needed to submit an appeal if he disagreed with the relevant assessments and penalty determinations. Those are as follows:

(1) on 3 October 2013, when Officer Mukhtar advised the Appellant in an email that the most pressing issue for the Appellant at that time was to consider whether he wanted to appeal because the assessments and penalty determinations would become final if he did not (see paragraph 4(13) above);

(2) on 30 October 2013, when Officer Mukhtar explained in a letter how the Appellant should go about making an appeal and offered an additional thirty-day grace period in which he would accept a late appeal (see paragraph 4(15) above);

(3) on 1 November 2013, when Officer Mukhtar sent a letter to the Appellant enclosing the "Factsheet", two copies of the notice of appeal and the guidance notes in relation to the notices (see paragraph 4(16) above);

(4) on 17 March 2014, when the Appellant spoke to Officer Hanton on the telephone and the Officer explained how to make an appeal (see paragraph 4(18) above);

(5) on 19 March 2014, when the Appellant spoke to Officer Hanton on the telephone once again and was again advised to send in a notice of appeal (see paragraph 4(19) above); and

(6) on 10 April 2014, when Officer Mukhtar sent a letter to the Appellant to explain that the COP9 investigation had ended and set out the process for making the necessary appeals (see paragraph 4(20) above).

64. Even that is not quite the full picture because, after the relevant assessments and penalty determinations had become final, the Appellant was repeatedly reminded of that fact and told that, if he wanted to challenge the assessments and penalty determinations, he would need to get permission to make a late appeal. For example:

(1) on 16 September 2014, Officer Mukhtar sent both a letter and an email to the Appellant explaining that, because no appeals had been made within the relevant time limits, the relevant assessments and penalty determinations had become final (see paragraphs 4(25) and 4(26) above);

(2) on 14 December 2017, Officer Roberts explained to the Appellant at a meeting how to go about making a late appeal (see paragraph 4(32) above);

(3) on 18 May 2018, Officer Hillier telephoned the Appellant to remind him of the need to make a late appeal (see paragraph 4(33) above); and

(4) on 4 July 2016, Officer Hillier sent a letter to the Appellant to say that the Respondents had not received an appeal and advising the Appellant of the need to do that without delay (see paragraph 4(35) above).

65. It was open to the Appellant on each of those occasions to lodge an appeal containing an application to make a late appeal. However, the Appellant did not submit his appeals to the Respondents until 6 December 2018 and did not submit his appeals to the First-tier Tribunal until 17 April 2019 (see paragraphs 4(36) and 4(43) above).

66. In my view, the extent of the delay, particularly when taken into account with the repeated injunctions on the part of the Respondents' Officers to the Appellant in the interim that he needed to make any appeal without delay, makes it very difficult for the Appellant to succeed in his application. I consider that the Respondents are entitled to say, as they have, that:

(1) there is a limit to the resources which they can devote to one taxpayer;

(2) due to personnel changes and office moves, the relevant individual Officers who would be required to give evidence at the substantive hearing may by now not be available or may by now have forgotten crucial facts; and

(3) due to the way in which their information systems work, crucial evidence may by now have ceased to be available because it has dropped off the system.

It follows that my acceding to the application would clearly involve potentially serious detriment to the Respondents.

67. The above factors point very strongly toward dismissing the application.

The reasons

68. There are, of course, some mitigating factors which I have also taken into account in the exercise of my discretion, including the considerable detriment to the Appellant in his not being able to pursue his appeals. I am sympathetic to the plight of the Appellant. However, in my view, the factors pointing in the direction of my allowing the application are considerably outweighed by the points made in paragraphs 62 to 66 above.

69. Reflecting on the four reasons which the Appellant has given for making the late appeals:

(1) I sympathise with the Appellant's mental health issues. However, I should observe that the Appellant has not produced, either to the Respondents or to me, any evidence of hospital treatment or other medical records in relation to his mental health. At the hearing, he said that he had been on anti-depressants for some time but he was a little vague on how long this had been the case. For instance, initially, he said that it had been for the past five years but, when I pointed out that the thirty-day period in relation to each assessment and penalty determination had expired well before the start of that five-year period, he said that it had been for the past seven years. Even that longer period does not cover the period in which the relevant assessments and penalty determinations were issued and became final because of the absence of any notice of appeal;

(2) I am much less sympathetic to the Appellant's claim that the Respondents did not make it clear to him that their COP9 investigation had ended prior to October 2017. On the contrary, the Respondents were at all times completely transparent as to where things stood in relation to the COP9 investigation and repeatedly made it clear to the Appellant that their investigation had ended, well before October 2017. For example:

(a) on 12 March 2013, Officer Mukhtar wrote to the Appellant to say that, as the Appellant had still not provided Officer Mukhtar with the information and documentation previously requested in the course of the COP9 investigation, Officer Mukhtar intended to close the COP9 investigation on the basis of the information currently held by the Respondents (see paragraph 4(4) above);

(b) on 16 July 2013, Officer Mukhtar wrote to the Appellant to say that, if the Appellant did not furnish him with the information and documentation previously requested in the course of the investigation by 16 August 2013, he would issue various assessments and penalty determinations (see paragraph 4(8) above);

(c) on 30 August 2013, in accordance with the warnings which he had previously given in his letters of 12 March 2013 and 16 July 2013, Officer Mukhtar sent a letter to the Appellant enclosing various assessments and penalty determinations and referring to other penalty determinations which would be issued separately (see paragraph 4(9) above);

(d) on 30 October 2013, Officer Mukhtar wrote to the Appellant to confirm that he had issued various assessments and penalty determinations on the basis of the COP9 investigation and explained what the Appellant should do if he disagreed with any of those assessments or penalty determinations (see paragraph 4(15) above);

(e) on 17 March 2014, Officer Hanton explained to the Appellant on the telephone that he needed to appeal against the assessments and penalty determinations that had been issued to him and the Appellant said that he would do so (see paragraph 4(18) above);

(f) on 19 March 2014, Officer Hanton again explained to the Appellant on the telephone that he needed to appeal against the assessments and penalty determinations that had been issued to him and the Appellant again said that he would do so (see paragraph 4(19) above);

(g) on 10 April 2014, Officer Mukhtar sent a letter to the Appellant saying, inter alia, that the COP9 investigation had been concluded on 30 August 2013 (see paragraph 4(20) above);

(h) on 16 September 2014, Officer Mukhtar wrote to the Appellant to clarify the current status of the Appellant's case. This letter contained a summary of the events to date, including the fact that the COP9 investigation had been concluded and that the assessments and penalty determinations had been issued as described above. It ended with a paragraph saying that, as the Appellant had failed to appeal against the assessments or penalty determinations or respond to Officer Mukhtar's letter of 30 October 2013, Officer Mukhtar's "investigation into your personal affairs concluded" and he "no longer [had] responsibility for your case" (see paragraph 4(25) above); and

(i) on the same day, Officer Mukhtar sent an email to the Appellant to say that his COP9 investigation had concluded (see paragraph 4(28) above).

All in all, I have counted nine occasions prior to October 2017 when the Appellant was informed that the COP9 investigation had been concluded. Given that fact, I do not see how the Appellant could reasonably have concluded that the COP9 investigation was still ongoing by the time that he was told once again, in October 2017, that that was the case.

I should add that, even after October 2017, when, by his own admission, the Appellant accepts that he knew that the COP9 investigation had been concluded, the Appellant still persisted in questioning whether that was the case. In his email of 3 July 2018 to Officer Hillier, he asked the Officer if the COP9 investigation had been concluded (see paragraph 4(34) above). Then, in late 2018, he sought to use his apparent belief that the COP investigation was still ongoing to justify his failure to submit his notice of appeal dated

18 October 2018 until 6 December 2018 (a delay which alone exceeded thirty days) (see the reference in paragraph 4(36) above to his waiting for an interview).

In short, I am afraid that I do not accept the Appellant's belief that the COP9 investigation was ongoing as a valid reason for the delays which have occurred in this case;

(3) as for the Appellant's complaints about the manner in which the COP9 investigation was conducted, those were threefold.

Two of them – the fact that the Respondents' Officers declined to have meetings and telephone calls recorded and the fact that the Respondents did not take up the Appellant's offer for his accountant and solicitor to be interviewed – have no relevance to the reasonableness or otherwise of the Appellant's delay in submitting his notices of appeal. If the Appellant has any complaints to that effect, he should take them up under the Respondents' formal complaints procedure. They are not a matter for this tribunal.

The Appellant's third complaint about the conduct of the COP9 investigation – namely that the Respondents often communicated with him by post instead of email, contrary to the request made of them by him – is potentially of more relevance to the question which I am addressing, given that, had the Appellant alleged that he did not receive any of the assessments, penalty determinations or other communications which I have described in this decision, then that could conceivably have had a bearing on the reasonableness or otherwise of the delay in submitting his notice of appeal . However, in relation to that complaint, the Appellant candidly acknowledged at the hearing that he had received the assessments, penalty determinations and other communications described above. I therefore do not see how that complaint moves the dial in terms of the overall evaluation which I am required to make in relation to the application;

(4) turning then to the lack of information which was available to the Appellant because of the seizure of Chainforce's computers, whilst I understand the difficulties faced by the Appellant, it was always open to him to notify the Respondents or the First-tier Tribunal that he wished to appeal and then to deal with the shortage of information which he required in order to conduct the appeal in the course of the appeal process. By failing to notify his appeals, the Appellant effectively precluded himself from appealing. He seems to have recognised this belatedly because he eventually went ahead and notified his appeals even though he still evidently considered that he did not have all the information that he needed in order to prosecute the appeals. In his letter of 22 January 2019 to Officer Hillier, which was sent after he had notified the Respondents of his late appeals, he accepted that he still did not have "sufficient documentation available to me which would have enabled me to draft a full and complete appeal" and yet he explained that he had gone ahead and submitted his notices of appeal. He could have done just the same thing at a much earlier stage; and

(5) finally, I appreciate that disputing a charge over one's home gives rise to considerable financial strain and anxiety and I sympathise with the Appellant about that. However, that must be weighed up against the fact that that charge was placed on the property only because the Appellant did not follow the appeal procedure so that the relevant assessments and penalty determinations became final. Moreover, as noted by the Upper Tribunal in *Martland*, notifying an appeal is not a complicated process. It is perfectly possible to do so even when focussing on other more pressing and serious matters.

The Appellant's additional points

70. Whilst the comments which I have made in paragraph 69 above deal comprehensively with the reasons given by the Appellant for the late submission of his notices of appeal, there are three other matters which the Appellant has raised in connection with the application that I have also taken into account in my evaluation.

71. The first additional point raised by the Appellant is that he feels unfairly victimised by the Respondents. It is clear from the tenor of his written communications over the course of the present dispute and his submissions at the hearing of the application that he is highly aggrieved with the conduct of the Respondents both in relation to the COP9 investigation and more generally. As he sees it, the Respondents have, over the course of some twenty-five years, conducted a concerted campaign against him that has involved the making of spurious and unfounded assessments and penalty determinations to both the Appellant and Chainfocus and, in so doing, have had a detrimental impact on his business affairs and his mental health.

72. The second additional point raised by the Appellant is that, in his view, it ought by now to be very clear to the Respondents that a number of the assessments and penalty determinations to which the application relates are incorrect. For example, at the hearing, he cited the fact that he had used the rent which he had received from Chainfocus to discharge his mortgage obligations as supporting his view that the assessments he had received were incorrect to the extent that they did not take into account expenditure available to set off against that rental income. He also seems to have interpreted the Respondents' repeated exhortations to him to submit his appeals as evidence that the Respondents themselves accepted that their assessments and penalty determinations were incorrect. In the Appellant's view, the Respondents are seeking to hide behind the technicality of his having made a late appeal to avoid confronting the manifest errors in the relevant assessments and penalty determinations.

73. The third additional point raised by the Appellant is his submission that he had asked for, and received, blank tax returns from Officer CP McIntyre in respect of the tax years ending 5 April 2005, 5 April 2006, 5 April 2007, 5 April 2009, 5 April 2010 and 5 April 2011 and had submitted completed tax returns in respect of the tax years ending 5 April 2005, 5 April 2006 and 5 April 2007 to the Respondents in September 2016. (He said that he had been unable to submit completed tax returns in respect of the other tax years because he had insufficient information to do so as a result of the Respondents' seizure of his computers.) The Appellant seems to believe that this action somehow exonerates him from the failure to submit his notices of appeal in time.

74. I will deal with each of the above points in turn.

75. In relation to the Appellant's first point, I wish to make it very clear, in particular given the further comments which I am about to make, that, in reviewing the conduct of this dispute, I have detected absolutely no vendetta or personal animus against the Appellant on the part of the Respondents. On the contrary, I believe that the Respondents have conducted themselves throughout the dispute with great patience and forbearance and have done all in their power to encourage the Appellant to signify his disagreement with the relevant assessments and penalty determinations in the appropriate manner. I therefore do not think that the specific criticism which the Appellant has made of the Respondents is at all well-founded.

76. Having said that, I think it is fair to say that, in my view, the Respondents have made a few errors in the course of the dispute and cannot be said to be beyond reproach.

77. Their most significant error in my view is that they did not always make it clear to the Appellant in their communications following Officer Mukhtar's letter of 10 April 2014 (see paragraph 4(20) above) that the disputed penalty determinations which were the subject of their

communications included two VAT-related penalty determinations which involved a slightly different dispute procedure from the dispute procedure applicable to the income tax-related assessments and penalty determinations (as I have mentioned in paragraphs 15 to 29 above). In other words, they did not make it as clear as they could have done in those communications that, when it came to each of the two VAT-related penalty determinations, the appropriate course of action for the Appellant to take was to notify his appeal against the relevant penalty determination directly to the First-tier Tribunal and not to the Respondents themselves, as was the case with the income tax-related assessments and penalty determinations. I suspect that the reason why the two VAT-related penalty determinations were overlooked in those communications was that the primary focus of the relevant Officers was on the income tax-related assessments and penalty determinations which formed the vast bulk of the amounts in dispute.

78. Whilst that is unfortunate, I consider that it ultimately makes no difference to the outcome of the application. This is for three reasons as follows:

(1) first, and primarily, having seen the two VAT-related penalty determinations, I am satisfied that each such penalty determination made it clear to the Appellant that, if he did not agree with the relevant penalty determination, he had thirty days in which to ask the Respondents to review the decision or to appeal to the First-tier Tribunal. That was clearly set out in the section of each penalty determination headed "What to do if you disagree". The difference in procedure which was applicable to the two VAT-related penalty determinations was also expressly drawn to the Appellant's attention in Officer Mukhtar's letter of 10 April 2014. I am therefore satisfied that the Appellant was told at least twice that he needed to submit any appeal against the VAT-related penalty determinations to the First-tier Tribunal and not to the Respondents;

(2) secondly, despite the fact that the Respondents' Officers in their communications after Officer Mukhtar's letter of 10 April 2014 did not draw the Appellant's attention to the relevant distinction, they did make repeated and concerted efforts in those communications to encourage the Appellant to provide them with written notice of his appeal against each assessment or penalty determination with which he did not agree, including the VAT-related penalty determinations. I have no doubt that, had the Respondents received any such written notice of appeal from the Appellant in respect of a VAT-related penalty determination, the difference in procedure would have been immediately apparent to the Respondents and they would, at that stage, have directed the Appellant to appeal to the First-tier Tribunal; and

(3) finally, for the reasons which I have set out in paragraphs 63, 64 and 69(2), I believe that it is quite clear from the way in which the Appellant has approached this dispute that, had those later communications drawn the Appellant's attention to the fact that the VAT-related penalty determinations were subject to a different procedure for expressing disagreement from the procedure applicable to the income tax-related assessments and penalty determinations, it would not have led the Appellant to appeal to the First-tier Tribunal in relation to the VAT-related penalty determinations any earlier than he actually did.

79. The error I have described in paragraph 77 above was not the only error which the Officers of the Respondents have made in the course of the dispute. There have also been other technical missteps along the way. For example:

(1) in respect of the tax years ending 5 April 2005 and 5 April 2006, the Respondents initially issued penalty determinations both under Section 7(8) of the TMA - penalties for failing to notify the Respondents of chargeability to income tax or capital gains tax -

and under Section 93 of the TMA – penalties for failing to make a return after being required by a Respondents' notice to do so. In fact, the Respondents accept that they did not serve a notice on the Appellant requiring the Appellant to make a return in respect of those two tax years and that they are alleging instead that the Appellant did not notify them of his chargeability to income tax or capital gains tax in those tax years. They have therefore been obliged to cancel the penalties under Section 93 of the TMA in respect of those tax years;

(2) the penalty determinations under Section 93 of the TMA, whilst correctly explaining that that is what they were, also erroneously contained some stray references to provisions in the corporation tax legislation as well. Whilst those erroneous references are insufficient to invalidate the penalty determinations, given the relief for minor errors set out in Section 114 of the TMA, they are potentially confusing to a reader and ought not to have been there; and

(3) some of the statements made in the course of the correspondence with the Appellant were incorrect or misleading. For instance, in his letter of 8 January 2019 – after the Appellant notified his appeal to the First-tier Tribunal – Officer Hillier incorrectly referred to the penalty determinations made under Section 7(8) of the TMA as having been made under Section 95 of that Act.

80. Whilst the errors mentioned above are unfortunate, I do not consider that they have affected the Appellant's ability to notify his appeals to the Respondents or the First-tier Tribunal in time.

81. Turning to the Appellant's second additional point, I do not see the efforts which the Respondents have made to encourage the Appellant to make an appeal if he disagreed with an assessment or penalty determination as being in any way indicative that the Officers themselves doubted the validity of the relevant assessments or penalty determinations or the basis on which those assessments and penalty determinations were made. On the contrary, the Officers were doing no more than attempting to help the Appellant to avoid the situation which has come to pass where he has lost his right to contest the relevant assessments and penalty determinations by his failure to act. It is possible that, were the Appellant to be allowed to appeal against the relevant assessments or penalty determinations, his appeal against one or more of them might succeed. However, the Appellant has produced no concrete evidence to that effect. The Appellant's submissions in this regard fall well short of the very strong grounds of appeal to which reference was made in *Hysaj* as being something which has a significant part to play in the balancing process. Accordingly, I do not see this as a situation where the strength of an applicant's case means that there is considerable detriment to the applicant in a refusal to allow the appeal to proceed. On the contrary, I see this as a situation where the applicant's case is insufficiently strong to override the detriment to the Respondents in allowing the appeal to proceed.

82. As for the Appellant's third additional point, it is not clear to me how the Appellant's asking for, and completing and submitting, tax returns in late 2016 in relation to some of the tax years in question can have any relevance whatsoever to the outcome of the application given that the assessments and penalty determinations in relation to the relevant tax years had already become final a considerable time previous to that.

83. Finally, for completeness in relation to the income tax-related assessments and penalty determinations, I should record that I agree with the Respondents' conclusion that, even if the Appellant had a reasonable excuse for not giving notice of appeal to the Respondents within the thirty-day time limit, he did not make his application to the Respondents for acceptance of his late notice of appeal without unreasonable delay after the reasonable excuse ceased and

therefore the Respondents were correct to conclude that they were not bound to consent to the application to give late notice of appeal pursuant to Section 49(3) of the TMA.

DETERMINATION

84. For the reasons which I have given, I have concluded that the application should be dismissed and the appeals should not be allowed to proceed. I am sorry to reach this conclusion as I realise that it will inevitably give rise to great hardship for the Appellant. However, I do not think that any other outcome is feasible. It is a great pity as the present situation is one which the Appellant could so easily have avoided.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

85. 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 Rules. 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.

TONY BEARE
TRIBUNAL JUDGE

Release Date: 25th APRIL 2023

APPENDIX

Date of decision	Tax year or period	Amount	Legislation
30/08/2013	2004/05	£ 2,288.70	Discovery assessments under Section 29 of the TMA
30/08/2013	2005/06	£17,959.20	Discovery assessments under Section 29 of the TMA
30/08/2013	2006/07	£17,734.00	Discovery assessments under Section 29 of the TMA
30/08/2013	2007/08	£17,414.00	Discovery assessments under Section 29 of the TMA
30/08/2013	2008/09	£16,626.00	Discovery assessments under Section 29 of the TMA
30/08/2013	2009/10	£15,930.00	Discovery assessments under Section 29 of the TMA
30/08/2013	2010/11	£15,930.00	Discovery assessments under Section 29 of the TMA
30/08/2013	2011/12	£16,010.00	Discovery assessments under Section 29 of the TMA
30/08/2013	2004/05	£1,602.09	Penalty determinations under Section 7(8) of the TMA
30/08/2013	2005/06	£12,571.44	Penalty determinations under Section 7(8) of the TMA
30/08/2013	2006/07	£12,413.80	Penalty determinations under Section 93 of the TMA
30/08/2013	2007/08	£12,190.08	Penalty determinations under Section 93 of the TMA
30/08/2013	2008/09	£11,638.20	Penalty determinations under Section 93 of the TMA
30/08/2013	2009/10	£11,151.00	Penalty determinations under Section 93 of the TMA
15/10/2013	2010/11	£9,551.00	Penalty assessment under Schedule 55 of the FA 2009
30/08/2013	11/04 –02/09	£ 36,810.00	Penalty assessments under Section 61 of the VATA for VAT pe 11/04-02/09
10/04/2014	11/09 – 11/12	£121,601.00	Penalty assessments under Section 61 of the VATA for VAT pe with no returns: 11/09, 02/10, 05/10, 08/10, 11/10, 11/11, 0 08/12 and 11/12
04/07/2012		£300.00	Initial penalty under Schedule 36 of the Finance Act 2008 (the 2008")
29/08/2012		£1,200.00	Daily penalty under Schedule 36 of the FA 2008
25/03/2008	2006/07	£100.00	Late filing penalty under Schedule 55 of the FA 2009
09/03/2008	2006/07	£100.00	Late filing penalty under Schedule 55 of the FA 2009
24/03/2009	2007/08	£100.00	Late filing penalty under Schedule 55 of the FA 2009
08/09/2009	2007/08	£100.00	Late filing penalty under Schedule 55 of the FA 2009
18/05/2010	2008/09	£100.00	Late filing penalty under Schedule 55 of the FA 2009
03/12/2010	2008/09	£100.00	Late filing penalty under Schedule 55 of the FA 2009
22/03/2011	2009/10	£100.00	Late filing penalty under Schedule 55 of the FA 2009
06/09/2011	2009/10	£100.00	Late filing penalty under Schedule 55 of the FA 2009

03/01/2014	2006/07	£796.50	First surcharge for late payment under Schedule 56 of the FA 2009		
16/05/2014	2006/07	£796.50	Second surcharge for late payment under Schedule 56 of the FA 2009		
20/03/2012	2010/11	£100.00	Late filing penalty under Schedule 55 of the FA 2009		
13/09/2012	2010/11	£900.00	Late filing daily penalties under Schedule 55 of the FA 2009		
13/09/2012	2010/11	£300.00	6 month late filing penalty under Schedule 55 of the FA 2009		
28/03/2013	2010/11	£300.00	12 month late filing penalty under Schedule 55 of the FA 2009		
10/10/2013	2010/11	£496.00	6 month late filing penalty under Schedule 55 of the FA 2009		
10/10/2013	2010/11	£496.00	12 month late filing penalty under Schedule 55 of the FA 2009		
19/12/2013	2010/11	£796.00	30 days late payment penalty under Schedule 56 of the FA 2009		
22/05/2014	2010/11	£796.00	6 month late filing penalty under Schedule 55 of the FA 2009		
21/03/2013	2011/12	£100.00	Late filing penalty under Schedule 55 of the FA 2009		
20/09/2013	2011/12	£900.00	Late filing daily penalties under Schedule 55 of the FA 2009		
20/09/2013	2011/12	£300.00	6 month late filing penalty under Schedule 55 of the FA 2009		
10/10/2013	2011/12	£500.00	6 month late filing penalty under Schedule 55 of the FA 2009		
19/12/2013	2011/12	£800.00	30 days late payment penalty under Schedule 56 of the FA 2009		
03/04/2014	2011/12	£800.00	12 month late filing penalty under Schedule 55 of the FA 2009		
22/05/2014	2011/12	£800.00	6 month late filing penalty under Schedule 55 of the FA 2009		
20/11/2014	2011/12	£800.00	12 month late filing penalty under Schedule 55 of the FA 2009		