



Neutral Citation: [2025] UKFTT 00210 (TC)

Case Number: TC09431

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2024/01623
TC/2024/01624
TC/2024/01625
TC/2024/01859
TC/2024/01860
TC/2024/01864
TC/2024/01866

LATE APPEAL – Martland and Katib considered - length of delay serious and significant – whether good reason for delay – no - whether late appeal appropriate in all the circumstances - no – application refused – appeal not admitted

Heard on: 15 November 2024
Judgment date: 14 February 2025

Before

TRIBUNAL JUDGE GREG SINFIELD

Between

**(1) P.B.S WHOLESALE LIMITED
(2) ELWIRA BACZMAGA
(3) PAWEL BACZMAGA**

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Adam White, counsel, instructed by Brabners LLP, solicitors

For the Respondents: Liam Ellis, litigator of HM Revenue and Customs’ Solicitor’s Office

DECISION

INTRODUCTION

1. This decision concerns applications by the Appellants for permission to make late appeals against penalties, personal liability notices, and officers' liability notices relating to unpaid excise duty issued by the Respondents ('HMRC') in 2022 and 2023. In each case, the time limit for making an appeal was 30 days from the date of the appealable decision. The details of the seven late appeals are as follows:

Tribunal reference	Appellant	Decision under appeal (amount)	Date of decision	Date of Notice of Appeal	Days late
TC/2024/01625	P.B.S Wholesale Limited	AWRS penalty notice (£500)	7 June 2022	28 February 2024	601
TC/2024/01624	P.B.S Wholesale Limited	Penalty Sch 41 Finance Act 2008 (£61,704.16)	30 June 2022	28 February 2024	578
TC/2024/01623	P.B.S Wholesale Limited	Penalty Sch 41 Finance Act 2008 (£319,976.61)	19 April 2023	28 February 2024	285
TC/2024/01864	Pawel Baczmaga	Officer's Liability Notice (£159,988.30)	20 April 2023	11 March 2024	296
TC/2024/01865	Elwira Baczmaga	Officer's Liability Notice (£159,988.30)	20 April 2023	11 March 2024	296
TC/2024/01859	Pawel Baczmaga	Personal Liability Notice (£48,534.50)	31 May 2023	11 March 2024	255
TC/2024/01860	Elwira Baczmaga	Personal Liability Notice (£48,534.50)	31 May 2023	11 March 2024	255

2. In addition, the Appellants have made five other related appeals namely: TC/2022/11904, TC/2022/12104, TC/2023/00557, TC/2023/07772, and TC/2023/08659. The first of those appeals is stayed. The remaining four ('the Ongoing Appeals') were all lodged in time (save for one which was a couple of days late but was admitted without objection) and are proceeding. These appeals relate to assessments for excise duty and VAT, a penalty in relation to illicit sales of alcohol and a decision to revoke the Appellants' authorisation under the Alcohol Wholesaler Registration Scheme ('AWRS'). The penalties and liability notices in the table in paragraph 1 all relate to the same facts as gave rise to the Ongoing Appeals.

3. In summary, the Appellants say that it was their intention to appeal against all of the decisions and that they instructed solicitors Kenneth M Barrow & Co ('KMB') to advise and

represent them in relation to the appeals. The instructions given to KMB were to appeal all the decisions, and it was not until November 2023 that the Appellants became aware this had not been done. At that point, they say they acted promptly in instructing new representatives (ie their current solicitors, Brabners LLP ('Brabners')) and steps were taken to ascertain what had and had not been done. The late appeals were submitted on 28 February and 11 March 2024 once Brabners were in a position to do so.

4. With the consent of the parties, the hearing was held by video using Teams. The video hearing was attended by Mr Pawel Baczmaga, Mrs Elwira Baczmaga, their counsel, Mr Adam White. Ms Natalia Aguilar and Mr Simon Ellis from Brabners, the Appellants' solicitors also attended the hearing. Mr Liam Ellis, a member of HMRC's Solicitor's Office and Legal Services, appeared for HMRC. Ms Philippa Catlin, the HMRC officer and the decision maker, was also present. Thomas Holt, Katy Brown and Victoria Hanrahan of HMRC attended as observers.

5. As to documentation, we were provided with a hearing bundle of 167 pages, an authorities bundle of 168 pages and Mr White's skeleton argument on behalf of the Appellants of 8 pages. HMRC's submissions were contained in their Notice of Objection of 16 pages which was included in the hearing bundle. The hearing bundle included a seven page witness statement of Mr Pawel Baczmaga. There were no other witness statements.

6. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

RELEVANT LEGISLATION

7. Section 16 of the Finance Act 1994 specifies that the time limit for making an appeal is 30 days from the decision/review. Section 16(1)(F) provides that an appeal may be made after the 30 day period if the First-tier Tribunal ('FTT') gives permission to do so.

8. Rule 20(4) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ('the FTT Rules') provides:

“(4) If the notice of appeal is provided after the end of any period specified in an enactment referred to in paragraph (1) but the enactment provides that an appeal may be made or notified after that period with the permission of the Tribunal-

(a) the notice of appeal must include a request for such permission and the reason why the notice of appeal was not provided in time; and

(b) unless the Tribunal gives such permission, the Tribunal must not admit the appeal.”

BACKGROUND FACTS

9. As stated above, I was provided with a hearing bundle which contained documents and a witness statement dated 21 October 2024 from Mr Baczmaga. At the hearing, Mr White did not call Mr Baczmaga to give evidence and so Mr Ellis did not have any opportunity to ask him questions.

10. In brief, the background to the Ongoing Appeals, taken from HMRC's statement of case in those appeals, is as follows:

(1) P.B.S Wholesale Limited ('PBS') was incorporated in 2017. Mr Pawel Baczmaga was at all material times the director of PBS. Mrs Elwira Baczmaga was the day-to-day manager of the business.

(2) PBS's business is the wholesale of alcoholic beverages, predominantly eastern European beers imported from the EU. It is registered for VAT.

(3) HMRC received intelligence that PBS was holding and selling alcohol from an 'off record' site ('the Farm') which was not PBS's authorised place of business for the purposes of the AWRS.

(4) On 24 September 2021, HMRC carried out simultaneous visits at PBS's authorised place of business and the Farm. The owner of the Farm told HMRC that it had been rented by Mrs Baczmaga for 2 years and she always paid the rent of £850 per month in cash. The owner later provided invoices for the Farm made out to Mrs Baczmaga. Inside the Farm, HMRC found and seized 97,709.9 litres of eastern European beer, 12 litres of cider, a forklift truck and approximately 5000 counterfeit alcohol excise duty stamps. HMRC also discovered a PBS flyer and price list advertising their authorised place of business, stock lists, a number of historical order slips and order forms, a day pass invoice, an "Out of Date Beer" sign.

(5) At approximately the same time at PBS's authorised place of business, HMRC discovered stock lists and out of date beer signs to those found at the Farm which were later found to be almost identical to those at the Farm. Mrs Baczmaga told HMRC that PBS had no other storage units. When she was told by HMRC that alcohol had been discovered at the Farm, Mrs Baczmaga stated that they had no knowledge of the Farm but, later, said that a person identified only as 'Fred' was the tenant of the Farm and provided a mobile number for him. The number went straight to voicemail. HMRC have never uncovered any further information about 'Fred' or the mobile number.

(6) Following a review of the evidence, HMRC concluded that the goods found at the Farm belonged to PBS.

11. On the basis of the documents and Mr Baczmaga's witness statement, I find the material facts relating to the late appeals are:

(1) Following the seizure of the alcohol and other items on 24 September 2021, the Appellants contacted KMB at some point in October.

(2) On or around 8 November, KMB wrote to HMRC to say that the alcohol seized did not belong to the Appellants and asking HMRC to remove the Appellants' details from the seizure.

(3) HMRC issued PBS and KMB with a decision revoking PBS's AWRS approval and assessments to duty, VAT and penalties as follows:

- (a) 14 January 2022 - an excise duty assessment for £110,186;
- (b) 13 April 2022 - decision revoking PBS's AWRS approval.
- (c) 7 June 2022 - AWRS regulatory penalty of £500;
- (d) 30 June 2022 – excise duty penalty of £61,704.16;
- (e) 22 September 2022 - excise duty assessment for £653,013.49;
- (f) 22 September 2022 - VAT assessment for £198,105;
- (g) 19 April 2023 - excise duty penalty of £319,976.61; and
- (h) 24 May 2023 - VAT deliberate inaccuracy penalty of £97,071.45.

(4) In addition, HMRC issued the following liability notices to Mr and Mrs Baczmaga and KMB:

- (a) 20 April 2023 - Officer's Liability Notices in the sum of £159,988.30; and
- (b) 31 May 2023 - Personal Liability Notices in the sum of £48,534.50.

(5) In his witness statement, Mr Baczmaga says that there was little communication from KMB and the Appellants would often have to call KMB to check what was happening with their matters. He also says that, when KMB did correspond, there were often delays in receiving updates and copies of correspondence and documents. Even if I were to accept that there were some delays in communications from KMB, I am unable to make any finding that such delays caused the appeals to be made late as Mr Baczmaga has not provided any evidence about specific delays.

(6) I was provided with copies of emails from HMRC to KMB on 6 April and 25 April 2023. In the first email, HMRC said that they were aware of appeals to the FTT in relation to the initial excise duty assessment, the AWRS revocation decision and the best judgement excise duty assessment. HMRC said that they had not been notified by the FTT of any appeal against the excise duty penalty and were not aware of an appeal against the VAT assessment. In the email of 25 April, which was copied to PBS, HMRC told KMB that they had not had any confirmation that the excise duty penalty issued on 19 April had been appealed to the FTT. HMRC also explained that their letter of 20 April was a notification to PBS that HMRC had also issued Officer's Liability Notices.

(7) In a letter dated 20 November, HMRC told KMB that had only been notified by the FTT of four appeals made by PBS, namely appeals against

- (a) the excise duty assessment of 14 January 2022 for £110,186;
- (b) the excise duty assessment of 22 September 2022 for £653,013.49;
- (c) the VAT assessment of 22 September 2022 for £198,105; and
- (d) the VAT deliberate inaccuracy penalty of 24 May 2023 of £97,071.45.

HMRC said that it was not clear whether other appeals had been made and not yet notified by the FTT or simply not made at all.

(8) The Appellants told their tax adviser that they were concerned about the service provided by KMB and he said he would speak to them. Mr Baczmaga does not say when this conversation with their tax adviser took place. However, in or around November 2023, the tax adviser informed the Appellants that KMB had contacted him because HMRC had told them that they had applied to the FTT for an Unless Order requiring the Appellants to serve a List of Documents within 14 days or their appeals would be struck out. The Appellants understood that the Unless Order had been issued because KMB had not served a List of Documents on the Appellants' behalf as required by Directions issued by the FTT. Their tax adviser also told the Appellants that HMRC had emailed KMB to say that it appeared that there were decisions that had not been appealed which may be a reference to the letter dated 20 November from HMRC which is described in the previous paragraph.

(9) On 27 November 2023, having lost confidence in KMB, the Appellants instructed Brabners to represent them. On 29 November, Brabners applied to the FTT for the appeals to be stayed until 24 January 2024 to allow them to obtain a complete set of papers from KMB, review them and take instructions.

(10) HMRC agreed to the stay in an email on 4 December and also provided Brabners with a copy of their letter to KMB dated 20 November which set out the matters where,

as far as HMRC knew, the Appellants had not appealed. The FTT subsequently granted the stay.

(11) On 22 January 2024, Brabners wrote to HMRC to say that the papers obtained from KMB did not appear to be complete and asking if HMRC could provide the missing correspondence. The next day, HMRC responded saying that if PBS were to contact HMRC's Debt Management department, they would be able to provide a breakdown of all sums due.

(12) On 24 January, Brabners served the Appellants' List of Documents on HMRC. Brabners told HMRC that they were still checking the documents that they had received from KMB and that it may be necessary to serve an updated list of Documents in due course.

(13) On 25 January, Mr Baczmaga emailed HMRC Officer Catlin as follows:

"I am sure you know that I have changed solicitor to Brabners. There seems to be some confusion about what assessments and penalties my previous solicitors KMB appealed (they were told to appeal all). Brabners have written to HMRC's sols asking for details of which assessments and penalties have and haven't been appealed but they [sic] couldn't help. Could either you or 'DMB' please provide a list of penalties and assessments where no appeal has been received? Please include the tax type, the amount, the date notified, the reference number and if it is a penalty or assessment."

(14) On 26 January, a litigator from HMRC's Solicitor's Office and Legal Services emailed Brabners and stated that the Appellants had not appealed a number of decisions relating to penalty notices and assessments which were included in the Appellants' List of Documents.

(15) On 29 January, Officer Catlin emailed Mr Baczmaga, copying in Brabners, setting out a list of assessments and penalties that HMRC had issued to PBS and showing which had been appealed to the FTT and which had not, as far as HMRC knew, been appealed.

(16) On 7 February, Brabners emailed HMRC to say that the List of Documents needed to be updated and they would do so within seven days, which they did.

(17) On 15 February, HMRC emailed Brabners to acknowledge service of the updated List of Documents. In the email, HMRC referred to their earlier email of 26 January and noted that the updated List of Documents still contained a number of decisions that had not been appealed to the FTT and required notices of appeal (accompanied by applications to allow late appeals) before they could be included in the proceedings. HMRC asked Brabners to confirm whether the Appellants intended to appeal those matters.

(18) On 28 February, Brabners responded to HMRC's email of 15 February. They said that they had been trying to understand the position with regard to the decisions that were not appealed on behalf of PBS. Brabners explained that this had proved somewhat difficult given the transfer of instructions but did not elaborate. They said that they had been instructed to submit late appeals in respect of those decisions and would do so later that day and enclosed copies of their grounds of appeal.

(19) On the same day, PBS lodged three appeals against the AWRs penalty notice and the two excise duty penalties. PBS appealed against the AWRs penalty on the sole ground that it had never owned or controlled the Farm and had no knowledge or control over the goods found there and thus never carried out a controlled activity at the Farm. The grounds of appeal in relation to the excise duty penalties were the same, namely that:

- (a) PBS had never owned or controlled the Farm and had no knowledge or control over the goods found there and thus was not liable to pay any duty in respect of them or the penalty; and
 - (b) the duty assessment and thus the penalty based on it had not been validly calculated.
- (20) On 29 February, HMRC acknowledged receipt of the grounds of appeal in PBS's appeal and asked Brabners to forward the notices of appeal also. HMRC asked Brabners whether the other appeals should be stayed until the latest appeal had been processed and the FTT had determined whether the late appeals should be admitted.
- (21) On 1 March, Brabners responded to HMRC to say that they would take instructions about the stay of the current appeals.
- (22) On 6 March, Brabners emailed HMRC to say they had no objections to the existing appeals being stayed as proposed.
- (23) On 11 March 2024, Mr and Mrs Baczmaga lodged appeals against the Officer's Liability Notices in the sum of £159,988.30 and Personal Liability Notices in the sum of £48,534.50. The grounds of appeal in relation to the liability notices were the same, namely that:
- (a) they had never owned or controlled the Farm and had no knowledge or control over the goods found there and thus neither they nor PBS had ever engaged in any 'deliberate behaviour' giving rise to a penalty; and
 - (b) in relation to the Officer's Liability Notices only, the related excise duty assessments had not been made to best judgement.

DISCUSSION

12. The only issue is whether the Appellants should be permitted to notify appeals in February and March 2024, between 8205 and 601 days after the 30 day time limit for appealing had expired.

13. The Upper Tribunal ('UT') has given guidance on the correct test to be applied when considering an application for permission to make a late appeal in *Martland v HMRC* [2018] UKUT 178 (TCC) ('*Martland*') at [23] – [47], the essence of which is summarised at [44]:

“44. When the FTT is considering applications for permission to appeal out of time, therefore, it must be remembered that the starting point is that permission should not be granted unless the FTT is satisfied on balance that it should be. In considering that question, we consider the FTT can usefully follow the three-stage process set out in [*Denton v TH White Ltd* [2014] EWCA Civ 906, [2014] 1 WLR 3926]:

- (1) Establish the length of the delay. If it was very short (which would, in the absence of unusual circumstances, equate to the breach being “neither serious nor significant”), then the FTT “is unlikely to need to spend much time on the second and third stages” – though this should not be taken to mean that applications can be granted for very short delays without even moving on to a consideration of those stages.
- (2) The reason (or reasons) why the default occurred should be established.
- (3) The FTT can then move onto its evaluation of “all the circumstances of the case”. This will involve a balancing exercise which will essentially assess the merits of the reason(s) given for the delay and the prejudice which would be caused to both parties by granting or refusing permission.”

14. In deciding whether to give permission for the Appellants to make late appeals, I apply the three-stage approach in *Martland*. The first stage is to consider the length of the delay in notifying the appeals. In this case, as stated above, the delays were between 255 and 601 days. Mr White, on behalf of the Appellants, quite properly conceded that these delays were serious and significant.

15. As it is accepted that there were serious and significant delays in notifying the appeals, I move straight to the second stage which is consideration of the reason or reasons for the failure to comply with the time limit.

16. In the Grounds of Appeal attached to each Notice of Appeal and in Mr Baczmaga's witness statement, the reason given for the appeals not being made on time is that that KMB had not carried out the Appellants' instructions to appeal all the matters. I make no finding about what instructions were given to KMB by the Appellants or whether KMB did or did not carry out such instructions as were given because I do not have any evidence on those matters. I do have documentary evidence that, in April and November 2023, HMRC told KMB that they had not been notified of appeals to the FTT in relation to certain penalties and assessments. The correspondence in April should have prompted KMB to check that all appealable decisions had actually been appealed but that did not happen. The correspondence in November was communicated to the Appellants by their tax adviser and led to the Appellants instructing Brabners in place of KMB.

17. In November, the Appellants' tax adviser told the Appellants that HMRC had emailed KMB to say that it appeared that there were decisions that had not been appealed. On 27 November, the Appellants instructed Brabners. Even if I accept that the Appellants had no reason to believe that KMB had not appealed all appealable matters until late November 2023, that does not explain the further delay between then and 28 February and 11 March 2024 when the appeals were lodged. As the Appellants and their tax adviser were by then aware that some of the disputed decisions had not been appealed to the FTT, I assume that Brabners were told of this important fact and instructed to lodge the appeals as a matter of urgency. Certainly, Brabners were aware of the issue on 4 December when HMRC emailed a copy of their letter of 20 November to them.

18. Mr White submitted that, once they became aware the appeals had not been lodged in November, the Appellants acted promptly in instructing Brabners and steps were taken to ascertain what had and had not been done and submit the appeals. I cannot accept this submission shows that the Appellants have a good reason or explanation for the delay in making the appeals. This is for two reasons.

19. First, as recognised by Mr White, I am bound by the UT's decision in *HMRC v Katib* [2019] UKUT 189 ('*Katib*'). At [49], the UT stated (emphasis in original):

"We accept HMRC's general point that, in most cases, when the FTT is considering an application for permission to make a late appeal, failings by a litigant's advisers should be regarded as failings of the litigant ... Therefore, in most cases, a litigant seeking permission to make a late appeal on the grounds that previous advisers were deficient will face an uphill task and should expect to provide a full account of exchanges and communications with those advisers. It will often be impossible to give the requisite full account without waiving privilege." [49]

20. The UT stated in [54] that "when considering applications for permission to make a late appeal, failures by a litigant's adviser should generally be treated as failures by the litigant". In *Katib*, the UT had to consider the extent to which reliance on an adviser was a justifiable reason for failing to make an appeal in time. In that case, the adviser did not provide competent

advice to Mr Katib, misled him as to what steps were being taken to appeal and failed to appeal on Mr Katib's behalf. On the facts of the case, the UT concluded that failings by the appellant's agent could not be relied upon by the appellant at any stage in the *Martland* analysis. The UT observed at [56] that:

"... the correct approach in this case is to start with the general rule that the failure of [the adviser] to advise Mr Katib of the deadlines for making appeals, or to submit timely appeals on Mr Katib's behalf, is unlikely to amount to a 'good reason' for missing those deadlines when considering the second stage of the evaluation required by *Martland*. However, when considering the third stage of the evaluation required by *Martland*, we should recognise that exceptions to the general rule are possible and that, if Mr Katib was misled by his advisers, that is a relevant consideration."

21. In [58] and [59], the UT said:

"... the core of Mr Katib's complaint is that [the adviser] was incompetent, did not give proper advice, failed to appeal on time and told Mr Katib that matters were in hand when they were not. In other words, he did not do his job. That core complaint is, unfortunately, not as uncommon as it should be. It may be that the nature of the incompetence is rather more striking, if not spectacular, than one normally sees, but that makes no difference in these circumstances. It cannot be the case that a greater degree of adviser incompetence improves one's chances of an appeal, either by enabling the client to distance himself from the activity or otherwise."

59. [Counsel for Mr Katib] urged us to give particular weight to the FTT's finding, at [15], that Mr Katib did not have the expertise to deal with the dispute with HMRC himself, but that does not weigh greatly in the balance since most people who instruct a representative to deal with litigation do so because of their own lack of expertise in this arena. We do not consider that, given the particular importance of respecting statutory time limits, Mr Katib's complaints against [the adviser] or his own lack of experience in tax matters are sufficient to displace the general rule that Mr Katib should bear the consequences of [the adviser's] failings and, if he wishes, pursue a claim in damages against him or [the adviser's firm] for any loss he suffers as a result."

22. Following *Katib*, if the failure to appeal within the time limits were due to KMB not carrying out instructions (and I make no finding as to that), that would not constitute a good reason for the delay in appealing. That is because I would have expected the Appellants, notwithstanding that English is not their first language, to have taken steps, either themselves or through their tax adviser, to assure themselves that all the assessments, penalties and liability notices were being properly challenged. In his witness statement, Mr Baczmaga says that the sums of money that are the subject of the late appeals are, in his view, incredibly large and the Appellants do not have those amounts to pay HMRC. In that case, it is inexplicable, and to my mind not credible, that the Appellants did not monitor carefully what KMB was doing but were content to take a 'hands off' approach to the appeals. I was not shown what communications there were between the Appellants and KMB and, of course, those were almost certainly privileged as noted in *Katib*, but it would probably not have made any difference. If the Appellants did not monitor what KMB were doing then that would, in my view, be blameworthy and not a good reason for the failure to appeal in time. If the Appellants did regularly check what KMB were doing then they should have known that the appeals had not been made and done something about it. It would only be in the unlikely event that KMB actively misled the Appellants about the state of the proceedings that the Appellants might establish that they had a good reason for the delay. There is, however, no evidence to support

that in this case and, for that reason, I do not consider the possibility further when weighing up all the circumstances of the case in the third stage of the *Martland* approach.

23. Secondly, the Appellants knew that there were decisions that had not been appealed by KMB in November 2023 and Brabners were aware that the relevant decisions had not been appealed by 4 December when they received HMRC's email with a copy of the letter of 20 November. That letter set out which decisions had been appealed. Nevertheless, no further appeals were made until 28 February and the liability notices were not appealed until 11 March. I accept that Brabners wanted to confirm which matters had been appealed and which had not but not that it should have taken some three months. Even if there were some explanation for the failure to serve any appeal between 4 December and 29 January when Brabners received the letter from Officer Catlin, it took a further 30 and 41 days to lodge the appeals. There was no evidence to suggest that Brabners needed any more documentation at that stage so the further delay seems to be inexplicable and unreasonable.

24. The third stage in the *Martland* three-stage approach is to consider all the circumstances of the case, balancing the merits of the reason(s) given for the delay and the prejudice which would be caused to both parties by granting or refusing permission. The UT provided guidance on how the FTT should weigh up all the circumstances of the case in *Martland* at [45] and [46]:

“45. That balancing exercise should take into account the particular importance of the need for litigation to be conducted efficiently and at proportionate cost, and for statutory time limits to be respected. ... The FTT's role is to exercise judicial discretion taking account of all relevant factors, not to follow a checklist.

46. In doing so, the FTT can have regard to any obvious strength or weakness of the applicant's case; this goes to the question of prejudice – there is obviously much greater prejudice for an applicant to lose the opportunity of putting forward a really strong case than a very weak one. It is important however that this should not descend into a detailed analysis of the underlying merits of the appeal. In [*R (Hysaj) v Secretary of State for the Home Department* [2015] 1 WLR 2472], Moore-Bick LJ said this at [46]:

‘If applications for extensions of time are allowed to develop into disputes about the merits of the substantive appeal, they will occupy a great deal of time and lead to the parties' incurring substantial costs. 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. In most cases the court should decline to embark on an investigation of the merits and firmly discourage argument directed to them.’

Hysaj was in fact three cases, all concerned with compliance with time limits laid down by rules of the court in the context of existing proceedings. It was therefore different in an important respect from the present appeal, which concerns an application for permission to notify an appeal out of time – permission which, if granted, founds the very jurisdiction of the FTT to consider the appeal It is clear that if an applicant's appeal is hopeless in any event, then it would not be in the interests of justice for permission to be granted so that the FTT's time is then wasted on an appeal which is doomed to fail. However, that is rarely the case. More often, the appeal will have some merit. Where that is the case, it is important that the FTT at least considers in outline the arguments which the applicant wishes to put forward

and the respondents' reply to them. This is not so that it can carry out a detailed evaluation of the case, but so that it can form a general impression of its strength or weakness to weigh in the balance. To that limited extent, an applicant should be afforded the opportunity to persuade the FTT that the merits of the appeal are on the face of it overwhelmingly in his/her favour and the respondents the corresponding opportunity to point out the weakness of the applicant's case. In considering this point, the FTT should be very wary of taking into account evidence which is in dispute and should not do so unless there are exceptional circumstances."

25. In his witness statement, Mr Baczmaga says:

"If the late appeals were not permitted to proceed, it would have a devastating impact on the Appellants. The Company has already been significantly affected by the Respondents' decision to revoke its AWRS approval, both financially and reputationally. The sums of money that are the subject of the late appeals are, in my view, incredibly large and the Appellants simply do not have these sums of money available to pay to the Respondents.

40. I believe that the Company's business was properly run, and, in any event, the Appellants did not own or control any of the alcohol that is the subject of the Respondents' decisions. I feel that it would be very unfair if the late appeals were not allowed to proceed against this background, particularly when other appeals are already proceeding, and which arise from the same set of facts.

41. I do not believe that the Respondents would be seriously impacted by the late appeals proceeding, particularly when compared against the catastrophic effect the Appellants would suffer if the late appeals were refused."

26. At the hearing, Mr White submitted that not admitting the late appeals would cause significant prejudice to the Appellants. If these appeals are not admitted, the Appellants will not be in a position to pay the penalties and will not be in position to proceed with the other appeals. He contended that, in contrast, the risk of any prejudice to HMRC was minimal. HMRC would have to deal with the Ongoing Appeals and the facts were the same as in the late appeals. Mr White submitted that, given nature of issues in case, hearing all the appeals rather than just the Ongoing Appeals would not radically increase the work of HMRC or extend the length of time required for the hearing. Mr White observed that HMRC could not have been under any illusion that the Appellants were not challenging all the decisions from the beginning. HMRC had already allocated resources to deal with the Ongoing Appeals. It would not require greater resources to deal with the late appeals.

27. Mr Ellis accepted that the prejudice to the Appellants if the late appeals were not admitted would be greater than the prejudice caused to HMRC if the late appeals went ahead. He submitted, however, that the prejudice did not outweigh the delay in this case. Mr Ellis also submitted that, to the limited extent that the merits of the case should be considered, the Appellants' case was weak especially when considered in the light of the evidence relied on by HMRC.

28. Of course, the Appellants will be prejudiced, if I refuse to grant them permission to notify the appeals late, in the sense that they will have lost their opportunity to contest the appeals but that assumes that they have a good case. As the UT cautioned in *Martland* at [46], I should be very wary of taking into account evidence which is in dispute and I consider that it would not be appropriate to do so in this case without hearing detailed evidence from the HMRC officers concerned and giving the Appellants an opportunity to challenge it. It is not clear to me that the Appellants' case is hopeless but I am certain, on the materials made available to me, that

their case is not overwhelmingly strong. In the circumstances, I am unable to give any weight to the merits of the Appellants' appeals.

29. I accept that if I refuse to admit the late appeal, the Appellants will be liable to pay a substantial sum of money. That, however, is a consequence of the failure to notify the appeals in time and it cannot be right that a delay which is significant and for which there was no good reason should be overlooked simply because the amount at stake is very large or significant to the would-be appellant. If that were so there would be no point in having a time limit for notifying high value appeals or appeals of lower value by poorer taxpayers.

30. In considering the prejudice to the parties, I take into account the particular importance of the need for litigation to be conducted efficiently and at proportionate cost, and for statutory time limits to be respected. This is a case where the delays were at the extreme end of serious and significant. The Appellants have not given a good reason for those delays. In all the circumstances, I consider that it is not appropriate to give permission for the Appellants to make late appeals in this case.

DECISION

31. For the reasons set out above, the Appellants' application for permission to notify the appeals late is refused and, accordingly, the appeals are not admitted.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

32. 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.

Release Date: 14th FEBRUARY 2025