[2018] UKFTT 727 (TC)

TC06860

Appeal number: TC/2018/03485; TC/2018/05321

VALUE ADDED TAX – appeals against penalties imposed under personal liability notices – whether to give permission for a late appeal - yes

FIRST-TIER TRIBUNAL
TAX CHAMBER

MS HOLLIE APPS AND MR MARK STYMEST **Appellants**

- and -

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

TRIBUNAL: JUDGE TONY BEARE

Sitting in public at Taylor House, 88 Rosebery Avenue, London EC1R 4QU on 7 December 2018

Ms Hollie Apps represented both Appellants

Ms Fatouma Yusuf and Mr Andrew Dunster, Officers of HM Revenue and Customs, for the Respondents

© CROWN COPYRIGHT 2018

DECISION

1. This decision relates to an application by Ms Hollie Apps (the "First Appellant") and Mr Mark Stymest (the "Second Appellant") for permission to make late appeals against penalties imposed under personal liability notices which were issued to them on 4 November 2014 as the previous directors of a company called Green Efficiency Solutions Limited (the "Company") which has now been liquidated.

2. The Respondents have objected to the application on the grounds that the notices of appeal were given to the First-tier Tribunal on 30 May 2018, some three and half years after the personal liability notices were issued. The Respondents say that, in the circumstances, the relevant notices of appeal were given too late.

The law

3. There is no dispute between the parties as to the relevant law in this case. The penalties in question have been imposed under paragraph 19 of Schedule 24 to the Finance Act 2007 (the "FA 2007"). Pursuant to paragraphs 15 and 16 of Schedule 24 to the FA 2007, which apply to a penalty so imposed pursuant to paragraph 19(5)(d) of Schedule 24 to the FA 2007, a person may appeal against a penalty so imposed and such appeal shall be treated in the same way as an appeal against the tax concerned.

4. Section 83G(1) of the Value Added Tax Act 1994 (the "VATA") sets out the rules governing any such appeal (and any review which might precede such an appeal) and it is clear that, unless the First-tier Tribunal gives permission for a late appeal under Section 83G(6) of the VATA, the appeals in this case should have been made by the date falling 30 days after the relevant personal liability notices were issued – ie by 4 December 2014.

5. Rule 20 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (the "Tribunal Rules") provides that, if a notice of appeal 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.

6. In this case, the Appellants have made applications for permission to give late notices of appeal and have set out the reasons for their application. Those are set out below in the section in which I describe the respective arguments of the parties.

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

8. 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:

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

(b) how long was the delay?

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

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

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

9. 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 Crown 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.

10. The Upper Tribunal in *Martland* added that the reference to Rule 3.9 of the CPR shows that the case law in relation to an application for permission to make a late appeal is 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 is concerned are 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*").

11. 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:

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

(b) consider why the default occurred; and

(c) 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.

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

13. 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:

(a) establish the length of the delay;

(b) establish the reason for the delay; and

(c) 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.

14. The Upper Tribunal in *Martland* reiterated that the evaluation at the stage mentioned in paragraph 13(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".

<u>The facts</u>

15. The facts in this case are as follows:

(a) the Appellants were directors of the Company, whose registered office was the same as the home address of the Appellants. On 12 November 2013, following a VAT compliance visit to the Company, Mr Andrew Dunster, an Officer of the Respondents, wrote to the Company to ask for copies of the Company's VAT returns for VAT periods 09/10 to 06/13;

(b) on 17 December 2013, Mr Dunster wrote again to the Company as no response had been received to his letter of 12 November 2013;

(c) on 7 January 2014, the First Appellant sent an email to Mr Dunster to say that she would be delivering the information which Mr Dunster had requested to the Respondents' Maidstone office as soon as possible;

(d) on 22 January 2014, the First Appellant delivered a disc to the Respondents' Maidstone office on behalf of the Company but, on inspection by Mr Dunster, the disc was found not to contain all of the information requested in his letter of 12 November 2013;

(e) accordingly, on 19 February 2014, Mr Dunster wrote to the Company again, this time enclosing an information notice under paragraph 1 of Schedule 36 to the Finance Act 2008 requiring the information which had been requested in his letter of 12 November 2013 to be provided;

(f) when the relevant information was not provided, the Respondents issued VAT assessments to the Company on 9 May 2014 and Mr Dunster wrote to the Company on 19 June 2014 to explain the basis upon which the assessments had been made and to say that he was considering the imposition of penalties;

(g) in the absence of any response by the Company to his letters of 19 June 2014, Mr Dunster wrote to each Appellant on 7 August 2014, setting out his view in relation to penalties and informing each Appellant that, as the relevant Appellant was a director of the Company and the monies in question had been used to fund the relevant Appellant's personal lifestyle, the penalties which he was considering in relation to the Company might be imposed on the Appellants;

(h) on 30 October 2014, the Respondents sent a notice of penalty assessment to the Company;

(i) on 4 November 2014, the Respondents issued to the Appellants the personal liability notices imposing the penalties which are the subject of the present appeals. Each personal liability notice was in the amount of £13,944.74 and informed the relevant Appellant that she/he was personally liable under paragraph 19(1) of Schedule 24 to the FA 2007 to pay the penalty unless the Company discharged the penalty. Each personal liability notice was accompanied by a copy of the penalty notice of 30 October 2014 which had been sent to the Company, informed the relevant Appellant that she/he had a right to request a review or appeal to the First-tier Tribunal in respect of the relevant penalty by 4 December 2014 and, in two schedules attached to the personal liability notice, set out a detailed explanation of how the relevant penalty had been calculated;

(j) on the same day, the Respondents sent a letter to the Company to explain that they had sent the personal liability notices to the Appellant;

(k) on 12 August 2015, the Respondents' debt management team called the First Appellant to inform her of the penalties. The First Appellant said that she was unaware of the penalties and asked the Respondents to send her the relevant correspondence;

(l) on 13 August 2015, the Respondents' debt management team sent a chasing letter to each Appellant in respect of the penalties;

(m) on 4 September 2015, the First Appellant wrote to Mr Dunster to ask him to send her information on how the penalties had been calculated;

(n) the Respondents' debt management team sent a chasing letter to each Appellant in respect of the penalties on 27 October 2015;

(o) in the absence of any response to her letter to Mr Dunster of 4 September 2015, on 13 November 2015, the First Appellant called the Respondents' debt management team to say that she had been unable to obtain a response from Mr Dunster to that letter. The First Appellant sent a copy of that letter to the Respondents' debt management team following the call. The Respondents' debt management team's file note of that call

records that the First Appellant said on the call that "[s]he wants to know how penalty calculated & may ask for a late review";

(p) on 3 December 2015, the First Appellant again called the Respondents' debt management team. The Respondents' debt management team's file note of that call records that the First Appellant said that she had been trying to speak to Mr Dunster "as she wants to appeal";

(q) on 8 December 2015, the First Appellant again called the Respondents' debt management team to say that she had tried to speak to Mr Dunster on numerous occasions but he was not returning her calls. The Respondents' debt management team's file note of that call notes that the member of the debt management team said that she had also asked Mr Dunster to call the First Appellant. It goes on to say:

"She says she wants to appeal. I gave her the address to write to and also asked that she email me. Advised that I will hold action until Friday (11th) to await this appeal";

(r) on 11 December 2015, the First Appellant wrote to the Respondents' local compliance team in charge of small and medium size enterprises. The first paragraph of this letter said as follows:

"After speaking with one of your colleagues, Lara Bestow, in the Debt Management Department I was advised to write to you to appeal the outstanding penalty held against myself and Mr M Stymest relating to Green Efficiency Solutions Ltd."

The letter went on to explain that, due to the Company's being put into receivership, all mail in relation to the Company had been redirected to the Official Receiver. That explained why no action had been taken by the Appellants until this point. She asked for an opportunity to have the position explained to her so that she could put her case and resolve the matter. A copy of this letter was emailed to the Respondents' debt management team on the same day;

(s) on 5 January 2016, the First Appellant emailed the Respondents' debt management team asking for an update on the appeal. A file note from the Respondents' debt management team on 6 January 2016 records the receipt of that email. It goes on to say that, as no appeal had been received, the debt management team had sent an email to the First Appellant to say that enforcement action would continue;

(t) on 2 February 2016, the Second Appellant wrote to the Respondents' local compliance team in charge of small and medium size enterprises. In that letter, the Second Appellant informed the Respondents that he and the First Appellant had been unaware of the penalty notices of 4 November 2014 until January 2016. This was because a petition to wind up the Company had been presented on 4 October 2013 and the Company had been wound up on 31 March 2014 and dissolved on 14 November

2015. As such, the penalties in question had been issued after the commencement and conclusion of the Company's liquidation;

(u) on 23 February 2016, the Respondents' debt management team wrote to each Appellant to warn them of an impending bankruptcy action if steps were not taken to pay the relevant penalty or call them;

(v) the Respondents did not reply to the Second Appellant's letter of 2 February 2016 until 18 April 2016. In his letter of that date, after apologising for the delay in his response, Mr Dunster explained that the Appellants had been present at the VAT compliance visit to the Company on 23 October 2013 and that there had been communication between him and the First Appellant following that visit. Mr Dunster said that, in the light of the volume of correspondence that had been sent to the Company since the visit, it was unlikely that the Appellants would not have received those communications, including the personal liability notices of 4 November 2014. Finally, Mr Dunster said that the date of the petition to wind up the Company was 31 March 2014;

(w) in response to Mr Dunster's letter of 18 April 2016, the First Appellant wrote to Mr Dunster on 25 April 2016. In her letter, the First Appellant explained that the Company had been put into liquidation on 31 March 2014 and that "all correspondence was passed over to the HMRC appointed Official Receivers which is why no correspondence dated after this point was received". The First Appellant asked Mr Dunster to send her various information and documents in relation to the VAT periods in question and said that she was taking legal advice and would revert to Mr Dunster as soon as she had received that information and those documents had had a chance to discuss them with her legal adviser;

(x) on 23 June 2016, Mr Dunster wrote to the First Appellant. In his letter, after apologising for the delay in his response, Mr Dunster noted that, as the previous communications had all been addressed to the Appellants personally at their home address, he considered it unlikely that the relevant communications had not been received. He also said that he was unable to provide the Appellants with certain documents which the Appellants had requested because the First Appellant had previously collected the documents in question from the Respondents' office. However, he enclosed a copy of the Respondents' previous communications of 19 June 2014 and 7 August 2014 and told the First Appellant that she would need to liaise with the Respondents' debt recovery unit if she wanted the debt collection action to be held off;

(y) on 7 November 2016, the First Appellant wrote to Mr Dunster to confirm that she and the Second Appellant had not previously seen the letters from the Respondents which had been enclosed in Mr Dunster's letter of 23 June 2016 and explained why the penalties were not appropriate. She concluded:

"I ask that you re-consider the penalties under the circumstances surrounding them. If the information had been received everything in our power would have been applied to making

sure you had all data and or explanations you required. These acts were not deliberate and please accept my sincere apologies that it has taken up so much of your time";

(z) there was no further communication between the parties between 7 November 2016 and 27 February 2018. Then, on 27 February 2018, the First Appellant wrote to the Respondents' debt management team explaining the background to the dispute and referring to numerous calls which had been made by the Appellant to the Respondents' debt management team and other departments. It also enclosed a further copy of the First Appellant's letter of 7 November 2016 to Mr Dunster and asked for the prior correspondence to be reviewed with a view to resolving the matter;

(aa) on 28 February 2018, the First Appellant wrote to the Respondents' VAT written enquiries team to inform them of the dispute and asking for a response;

(bb) on the same day, the First Appellant sent an email to the Respondents' debt management team again attaching the prior correspondence in relation to the matter;

(cc) on 5 March 2018, a member of the Respondents' debt management team replied to the email of 28 February 2018, saying that she had forwarded the email internally to the officer who would be dealing with it and that that officer would contact the First Appellant directly;

(dd) on the same day, the First Appellant wrote to the Respondents' enforcement and insolvency service, asking for the statutory demands which had been sent to the Appellants to be set aside while the case was being investigated. The First Appellant followed up that letter with an email on 6 March 2018, to request the deferral of the statutory demands;

(ee) on 10 April 2018, Mr Dunster wrote to the First Appellant, again expressing incredulity at the assertion that the personal liability notices would have been redirected from the Appellant's home address, given that they were addressed to the Appellants in person and not to the Company. Mr Dunster said that, as the 30 day timeframe for requesting a review had now passed, the Appellants' only recourse in respect of the penalties was to lodge late appeals with the First-tier Tribunal;

(ff) on 17 April 2018, the First Appellant wrote to the Respondents' debt management team to confirm the dispute and appeal against the personal liability notices. That letter refers to a letter from Mr Dunster of 13 April 2018 (which was not in the documents bundle, but this reference may be an erroneous reference to Mr Dunster's letter of 10 April 2018) and said that Mr Dunster's letter "does not address anything in my letters or even acknowledge previous requests which is clearly written throughout the correspondence trail. I ask again that all correspondence be reviewed in order to correct the disputed figures";

(gg) on 9 May 2018, the Respondents wrote to the First Appellant to say that, whilst they had not completed a review of the original decision, they

had considered whether there were reasonable grounds to accept a late request for review and had concluded that, as the Appellants had had numerous opportunities to provide the information and documents which the Respondents had requested before they issued the personal liability notices and were aware of the VAT enquiry into the Company, a review was not appropriate and the Appellants' only recourse was to make a late appeal to the First-tier Tribunal;

(hh) on 10 May 2018, the First Appellant wrote to the Respondents' VAT written enquiries team to ask for a response to her letter of 17 April 2018 as a matter of urgency; and

(ii) on 30 May 2018, the Appellants notified the First-tier Tribunal of their appeals against the personal liability notices and applied for permission to make late appeals.

The arguments of the parties

The Respondents' position

16. The Respondents have presented this as a very simple case. They start from the position of refusing to believe the claim by the Appellants that the Appellants did not receive the letters of 7 August 2014 - which warned the Appellants that they faced personal liability for the penalty which was due by the Company - or the personal liability notices of 4 November 2014 themselves. As such, the Respondents present this as a case where the delay in the Appellants' making their appeals is some three and a half years – ie the period from 4 November 2014 to 30 May 2018.

17. The Respondents point out that the above communications were sent to the Appellants, by name, at their home address and not to the Company at that address. Accordingly, there was no reason why those letters would have been caught up in the redirection instruction arising in connection with the liquidation of the Company.

18. The Respondents add that, although they have no proof that the personal liability notices which were sent to the Appellants on 4 November 2014 would have been sent in a separate envelope from the notice to the Company of the same date, informing the Company that personal liability notices had been sent to its directors, they would have expected that to be the case, given that the addressee of each personal liability notice was the individual Appellant herself/himself and not the Company.

19. In any event, the Respondents point out that there was no letter to the Company on or around 7 August 2014, when the letters which each Appellant alleges that she/he did not receive were sent to each Appellant.

20. In addition, the Respondents say that, even if the Appellants' claim that they did not receive the letters of 7 August 2014 and the personal liability notices of 4 November 2014 when those communications were first sent are to be believed, the Appellants have been in receipt of all relevant information since 23 June 2016 at the latest because the Appellants have acknowledged that they received a copy of the

personal liability notices in January 2016 and that they received a copy of the letters of 7 August 2014 (and certain other material) under cover of the Respondents' letter of 23 June 2016. Moreover, the Respondents say that their file note of 13 August 2015 says that the debt management team sent a copy of the personal liability notices to the First Appellant at that time.

The Appellants' position

21. The Appellants say that the above is not an accurate description of the events which have taken place in relation to this dispute.

22. In the first place, they say that, because various letters addressed to them personally in relation to the Company had been inadvertently swept up in the redirection which had been placed on the correspondence in relation to the Company, they did not receive any correspondence in relation to the Company after 3 March 2014 - including the personal liability notices of 4 November 2014 and the letters of 7 August 2014 - at the time when those communications were sent.

23. They submit that that they did not receive the personal liability notices of 4 November 2014 or the letters of 7 August 2014 until the dates when those were re-sent to them – ie in January 2016 (in the case of the personal liability notices) and under cover of the Respondents' letter of 23 June 2016 (in the case of the letters of 7 August 2014).

24. In that regard, they say that they were not aware of the existence of the penalties at all until the phone call from the Respondents' debt management team on 12 August 2015 and that what the Respondents' debt management team sent to them on 13 August 2015 was not the personal liability notices of 4 November 2014 themselves but simply a copy of the demand for payment, which set out the amounts claimed by the Respondents without either explaining how the amounts claimed had been calculated or setting out a date for making an appeal against the amounts claimed.

25. The Appellants admit that they obtained a copy of the personal liability notices themselves in January 2016 but they say that what they received in January 2016 was just the first two pages of each personal liability notice – which set out the amount of the relevant penalty and the date for submitting an appeal – and not the schedules which explained how the relevant penalty had been calculated. The latter had not been received by the Appellants until a week before the present hearing, when they received the documents bundle for the hearing.

26. The Appellants add that, since the first two pages of the personal liability notices, which the Appellants received in January 2016, did not explain how the penalties had been calculated, the Appellants had, since that time, been seeking the explanation which was in the schedules to each personal liability notice and the information which was on page D30 in the documents bundle.

27. They say that, even though the Respondents sent the Appellants certain material as enclosures to their letter of 23 June 2016, that material was just the pages shown at pages D27 to D29 in the documents bundle, and those were not material to the

penalties. The crucial page D30 in the documents bundle, which clarified how the Respondents had calculated the penalties, had not been included as enclosures to the letter of 23 June 2016 and, again, as was the case with the schedules to each personal liability statement, the Appellants had not seen that page until they received the documents bundle just before the hearing.

28. The Appellants point out that, upon becoming aware in January 2016 of the one-month deadline for making an appeal or asking for a review, they had reacted immediately to the issue and written their letter to the Respondents of 2 February 2016. In any event, they say that the Respondents were well aware from the First Appellant's telephone conversations with the Respondents' debt management team on 13 November and 3 December 2015 (as recorded in that team's file notes) and the letter from the First Appellant to the Respondents' local compliance team in charge of small and medium size enterprises of 11 December 2015 that the Appellants wished to find out more about, and to appeal against, the penalties in question. The Appellants say that the above explains why, on the contrary, it is the Respondents who have been dilatory in providing them with the information which they needed in order to understand how the penalties in question had been calculated. The First Appellant submitted at the hearing that, in addition to the letters that she had written which were in the documents bundle for the hearing, she estimated that she must have made about 18 telephone calls to the Respondents over the past three years in order to sort things out.

29. It was the Respondents who had been dilatory in failing to return her calls in August and September 2015 or respond to her letter of 4 September 2015 or to respond to her letter of 2 February 2016 until 18 April 2016. The First Appellant conceded that there had been a delay of some four months between the Respondents' letter of 23 June 2016 and the First Appellant's letter of 7 November 2016 but, as far as the Appellants were concerned, the Respondents were well aware over that period that the Appellants wished to appeal against the quantum of the penalties and this was simply a delay in the progress of an ongoing discussion, in much the same way as the Respondents' delay when they replied to the First Appellant's letter of 2 February 2016 only on 18 April 2016 and the Respondents' delay when they did not reply to the First Appellant's letter of 7 November 2016 until the First Appellant took active steps to chase things up in February 2018.

30. In summary, the First Appellant explained that, ever since the Appellants had become aware of the penalties, in August 2015, they had made it clear to the Respondents that they wished to understand the basis on which the penalties had been calculated and to challenge the quantum of the penalties.

The redirection

31. At the hearing, the Respondents submitted that the Appellants had never informed the Respondents that the redirection existed, although the First Appellant pointed out that this was standard practice in cases of liquidation and therefore it should not have been a surprise to the Respondents. Moreover, the First Appellant submitted that the Appellants had no reason to think that they might be personally

liable for the taxes of the Company, given that they had not received the Respondents' letters of 7 August 2014 (or, for that matter, the Respondents' letters to the Company on 19 June 2014) and so there was no pressing reason for the Appellants to inform the Respondents of the redirection or to expect correspondence in relation to the Company to be addressed to them personally.

32. Finally in relation to the question of whether or not the Appellants had received the letters of 7 August 2014 or the personal liability notices of 4 November 2014, the Respondents provided me with evidence that correspondence which was sent to another company that was registered at the Appellants' home address in the middle of 2014 had been received by the Appellants at that time and had not been redirected.

33. In response, the First Appellant pointed out that the Appellants had never alleged that the redirection had applied to all correspondence which was addressed to the Appellants' home address over that period – their allegation was only that correspondence in relation to the Company had been the subject of the redirection and that the communications which they are saying they did not receive had been caught up inadvertently in that redirection. Thus, the fact that correspondence in relation to a quite different company had been received at the Appellants' home address was neither here nor there.

Discussion

34. In considering this application for permission to make a late appeal, I need to follow the three-stage process set out in paragraph 13 above – that is to say:

(a) establish the length of the delay;

(b) establish the reason for the delay; and

(c) 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 Appellants in not giving permission and the extent of the detriment to the Respondents of giving permission.

The length of the delay

35. The Respondents are perfectly right in saying that the delay in this case between the date on which the personal liability notices were sent (4 November 2014) and the day when the Appellants gave notice to the First-tier Tribunal of their appeals (30 May 2018) is an exceptionally long one.

36. However, as directed by the decisions referred to above, it is necessary to understand the reasons for the delay and to take into account all the circumstances in relation to the delay, including the potential detriment to each party of my decision as to whether or not to give permission to make a late appeal.

The reasons for the delay

37. In terms of the reasons for the delay, a fundamental part of the dispute in this case is whether the Appellants are to be believed when they say that:

> (a) they did not receive the letters of 7 August 2014 until a copy of those letters was enclosed in the Respondents' letter of 23 June 2016;
>
> (b) they did not receive the personal liability notices of 4 November 2014 until January 2016 and, even then, received only a copy of the first two pages of each such notice and did not receive the schedules to those notices - which would have explained how the penalties set out in the notices had been calculated - until the documents bundle was sent to them just before the hearing; and
>
> (c) the material enclosed in the Respondents' letter of 23 June 2016 did not include the schedule set out on page C30 in the documents bundle and that they did not receive that schedule until the documents bundle was sent to them just before the hearing.

38. I have read the correspondence file thoroughly and I have also had the benefit of listening to the submissions of both parties on these points and it is my view that the Appellants are to be believed in relation to each of the contentions set out in paragraph 37 above.

39. I consider that the First Appellant's argument that the Appellants did not receive the letters of 7 August 2014 and the personal liability notices of 4 November 2014 at the time when those communications were sent is perfectly credible. I say this for two reasons.

40. First, looking at the conduct of the Appellants since the time when they have admitted knowing about the penalties – ie 12 August 2015 – it is highly unlikely that they would simply have sat on their hands and done absolutely nothing about the penalties between early November 2014, when the personal liability notices were sent – or indeed from 7 August 2014 when the letters warning about the imminent penalties were sent - and the phone call from the Respondents' debt management team on 12 August 2015.

41. Secondly, while it is idle to speculate on exactly why the Appellants may not have received the letters of 7 August 2014 and the personal liability notices of 4 November 2014 at the time when those communications were sent, the fact that there was a redirection in place for mail that was sent in relation to the Company over the relevant period does seem to me to be a plausible reason for that outcome.

42. As regards the personal liability notices of 4 November 2014, those were sent to the Appellants at their home address on the same day as a letter was sent to the Company at the same address informing the Company that its officers were being assessed to penalties. It must be possible that both personal liability notices and the letter to the Company were put into the same envelope by the person who was posting the mail at the Respondents or, perhaps more likely, that the person who was

operating the redirection at Royal Mail saw two envelopes from the Respondents being sent to the same address as the address to which the letter to the Company was being sent and simply assumed that the personal liability notices must also pertain to the Company. Whilst the same points cannot be made in relation to the letters of 7 August 2014, it is again possible that these were inadvertently redirected because of an error at Royal Mail or simply that they got lost in the post.

43. As I said at the start of the paragraph 41 above, it is idle to speculate on the exact reason for the non-receipt of these communications but mistakes do happen and post does get lost from time to time. Indeed, the Respondents claim not to have received the First Appellant's letter of 7 November 2016 in the case of these appeals until 27 February 2018, when the letter was resent to them, is a case in point.

44. That being the case, I do not find the evidence which was produced by the Respondents at the hearing, showing that the Appellants had received mail addressed to another company at their home address during the period in which they allege the redirection to have been operating to be of any weight whatsoever. The Appellants have never alleged that all of the post which was sent to them over the period in which the redirection was operating did not arrive – that is hardly likely to have been the case anyway, given that the address in question was their home address and they undoubtedly would have received a lot of personal mail at that address over the period in question. The fact that some mail which was addressed to persons other than the Company over the relevant period was not inadvertently redirected is not evidence that no mail which was addressed to persons other than the Company over the relevant period was not inadvertently redirected.

45. Moreover, I accept entirely that the Appellants did not receive the schedules to the personal liability notices or the schedule set out on page C30 in the documents bundle until the documents bundle was sent to them just before the hearing. If they had, then they would hardly have been making the strenuous efforts which they clearly have been making - as recorded in the documents bundle and in the file notes from the Respondents' debt management team which were produced at the hearing - to obtain the relevant information.

46. In the circumstances, it is my view that the Appellants have been trying to get to the bottom of why the penalties were imposed and how the penalties have been quantified since they first found out about the personal liability notices and that they should not be blamed for the delays which have occurred as result of the Respondents' failure to provide that information to them.

47. For example, the Respondents' debt management team's own file notes record that the First Appellant had been trying with conspicuous lack of success to get hold of Mr Dunster in the period immediately after she found out about the penalties on 12 August 2015. In addition, there are numerous references in the letters from the First Appellant in the documents bundle to the fact that the First Appellant was making repeated calls to the Respondents to obtain information and that those calls were having little effect.

48. There have been delays on both sides in the exchanges of correspondence. But I do not detect that the Appellants have been more to blame in this than the Respondents. Indeed, the most extensive delay in the process of the dispute occurred between 7 November 2016 and 27 February 2018. Over that period, neither party took any steps to resolve the dispute. However, the Appellants were entitled to think that, as they had written to the Respondents on 7 November 2016 reiterating their wish to appeal and asking for information about the penalties, the ball was firmly in the Respondents' court at that stage. The Respondents say that they did not receive the letter of 7 November 2016, which may relieve them from blame for that delay but does not mean that blame should then be placed at the Appellants' door.

49. Overall, the impression that I have formed from the evidence that I have seen and heard is that the Appellants have been trying to sort out their current predicament since 12 August 2015, when they first discovered that they had been assessed to the penalties. Over that period, the Appellants have repeatedly sought to obtain the relevant information and communications from the Respondents, to little effect. They have also attempted to resolve the problem through the Alternative Dispute Resolution process, although that is not available where an appeal is made late unless and until permission is given for the late appeal.

All the circumstances of the case

50. I have already dealt to some extent with this heading in my comments in relation to the reasons for the delay.

51. It will be apparent from that section of this decision that, in my view, there are perfectly cogent reasons for the delay which has occurred in this case and that the Appellants have behaved reasonably in seeking to understand the basis for their obligations and in keeping the Respondents informed of their concerns in that regard at all times since they first discovered that they had been sent the personal liability notices.

52. Turning then to the question of possible detriment to the parties of my decision, if I decide not to give permission in this case, then the detriment to the Appellants is obvious and significant. They will be required to discharge sizeable penalties with no means of defending themselves against the imposition of those penalties. Given that I have found that there are good reasons for the delay in their notifying their appeals in this case, that does not seem a very fair or just outcome.

53. In contrast, whilst the Respondents will obviously suffer some detriment if I allow the appeals to proceed – in that it is conceivable that the subsequent resolution of the appeals may not produce as favourable an outcome for the Respondents as if I refuse permission for the Appellants to appeal – the Respondents cannot plausibly say that they were unaware that the Appellants wished to appeal against the penalties until 30 May 2018, when the notices of appeal were submitted to the First-tier Tribunal. On the contrary, the Respondents have been aware since, at the latest, 13 November 2015, when the First Appellant spoke to the Respondents' debt management team, that the Appellants wished to challenge the penalties. That is recorded in the file

notes of the Respondents' debt management team. There is also a clear statement in the First Appellant's letter of 11 December 2015 to the effect that the Appellants wished to appeal against the penalties. In fact, there are repeated references in the documents to the Appellants' wish to appeal against the penalties ever since they first became aware of the penalties on 12 August 2015.

54. In summary, it is clear to me from the correspondence and records of telephone conversations that I have seen, and the submissions that I have heard, that this is not a case where the Appellants have tried to avoid dealing with a difficult tax issue by burying their heads in the sand or being dilatory. On the contrary, they have shown a determination to resolve the tax issue and have been persistent in their attempts to do so as soon as possible. Moreover, the Respondents have been aware, or ought to have been aware, for some time that the Appellants wished to make these appeals. I therefore do not think that they can plausibly say that this is a case where they thought that the matter was concluded and the Appellants had accepted the penalties.

Section 7 of the Interpretation Act 1978

55. There is one final point which I should make in relation to the Appellants' claim that they did not receive the personal liability notices of 4 November 2014 when those were sent.

56. Section 7 of the Interpretation Act 1978 provides as follows:

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

57. Section 98 of the VATA provides as follows:

"Any notice, notification, requirement or demand to be served on, given to or made of any person for the purposes of this Act may be served, given or made by sending it by post in a letter addressed to that person or his VAT representative at the last or usual residence or place of business of that person or representative."

58. It follows from the above that the VATA authorised the personal liability notices of 4 November 2014 to have been served by post and that:

(a) unless the contrary intention appears, service of those notices should be deemed to have been effected as long as letters containing those notices were properly addressed, pre-paid and posted to the Appellants; and

(b) unless the contrary is proved, service of the notices should be deemed to have been effected at the time when the letters containing the notices would have been delivered in the ordinary course of post.

59. In this case, the Respondents did not raise the potential impact on the argument of the Appellants in this case – to the effect that the Appellants did not receive the personal liability notices of 4 November 2014 at the time when those notices were sent - of Section 98 of the VATA and Section 7 of the Interpretation Act 1978 in any of their notice of objection, their skeleton argument or their submissions at the hearing. I believe that they were right not to do so.

60. In the first place, the Respondents have not provided any evidence that the personal liability notices were properly pre-paid and posted to the Appellants, with the result that, even in the absence of the second point mentioned below, the deeming of service referred to in paragraph 58(a) above would not arise.

61. In the second place, it is clear from the discussion in relation to the terms of Section 7 of the Interpretation Act 1978 set out at paragraphs [33] and [34] of the Upper Tribunal decision in *Romasave (Property Services) Limited v The Commissioners for Her Majesty's Revenue and Customs* [2015] UKUT 0254 (TCC) that it is open to an intended recipient in any such case to establish that, on the balance of probabilities, service of the relevant notice has not in fact been effected, whereupon service is not deemed to have occurred. And, in this case, as I have made clear in the paragraphs above, I believe that the Appellants have established that, on the balance of probabilities, the personal liability notices of 4 November 2014 were not received by them when those notices were sent.

62. So I do not think that Section 7 of the Interpretation Act 1978 advances the case of the Respondents in these circumstances.

Conclusion

63. For the reasons set out above, I hereby give permission for the Appellants to make late appeals against the penalty notices in question pursuant to Section 83G(6) of the VATA and Rule 20 of the Tribunal Rules.

64. 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: 12 DECEMBER 2018