[2018] UKFTT 395 (TC)

TC06597

Appeal number: TC/2017/08098

APPLICATION TO GIVE NOTICE OF LATE APPEAL- Notice given 3 years and 8 months late - Martland criteria considered - application allowed

FIRST-TIER TRIBUNAL
TAX CHAMBER

THE PERSONAL REPRESENTATIVE OF MARK COLLINS **Appellant**

- and -

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

TRIBUNAL: JUDGE NIGEL POPPLEWELL
MR SIMON BIRD

Sitting in public at Cardiff on 4 June 2018

The appellant in person

Mrs Carol Cunliffe officer of HMRC for the respondents

DECISION

Background

1. This is an application to give a late notice of appeal against assessments issued to the appellant under section 29 of the Taxes Management Act 1970 ("**TMA 1970**") on 10 December 2013 (the "**assessments**"). The amount of the assessments is approximately £326,000.

2. The relevant date for notifying an appeal against the assessments was (in the absence of any request for a review) 30 days after 10 December 2013 (i.e. 9 January 2014).

3. The appellant's appeal against the assessments was made on 15 September 2017 some 3 years and 8 months late.

4. In this Decision, we refer to the deceased Mark Collins as Mark Collins, his wife, the appellant, as Maria Collins and their eldest son, Laurie, as Laurie Collins.

The Legislation

5. The statutory provision which permit us to consider an application for giving a late notice of appeal is section 49 of the Taxes Management Act 1970 ("**TMA 1970**") this reads as follows:

> "**49 Late notice of appeal**
>
> 49(1) This section applies in a case where-
>
> (a) notice of appeal may be given to HMRC, but
>
> (b) no notice is given before the relevant time.
>
> 49(2) Notice may be given after the relevant time limit if-
>
> (a) HMRC agree, or
>
> (b) where HMRC do not agree, the tribunal gives permission.
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> 49(3) …
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> 49(4) …
>
> 49(5) …
>
> 49(6) …
>
> 49(7) …

49(8) In this section "**relevant time limit**", in relation to notice of appeal, means the time before which the notice is to be given (but for this section)."

Case law

6. The principles which we should consider when dealing with an application such as this have been something of a moveable feast over the last few years. But the Upper Tribunal in the case of *Martland* (*William Martland v HMRC* [2018] UKUT 178) has very recently undertaken a detailed review of the relevant authorities and has given extremely helpful guidance on the principles which we should adopt. The relevant extract from *Martland* is set out below.

"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*:

(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.

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. By approaching matters in this way, it can readily be seen that, to the extent they are relevant in the circumstances of the particular case, all the factors raised in *Aberdeen* and *Data Select* will be covered, without the need to refer back explicitly to those cases and attempt to structure the FTT's deliberations artificially by reference to those factors. 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 *Hysaj*, 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 (see [18] above). 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.

47. Shortage of funds (and consequent inability to instruct a professional adviser) should not, of itself, generally carry any weight in the FTT's consideration of the reasonableness of the applicant's explanation of the delay: see the comments of Moore-Bick LJ in *Hysaj* referred to at [15(2)] above. Nor should the fact that the applicant is self-represented – Moore-Bick LJ went on to say (at [44]) that "being a litigant in person with no previous experience of legal proceedings is not a good reason for failing to comply with the rules"; HMRC's appealable decisions generally include a statement of the relevant appeal rights in reasonably plain English and it is not a complicated process to notify an appeal to the FTT, even for a litigant in person."

Evidence and findings of fact

7. The appellant gave oral evidence. We found her to be an honest and reliable witness. Much of the investigation into his father's affairs had been undertaken by

Laurie Collins who was unable to appear but who had submitted a note which is in the documents bundle giving his version of the history of the matter. We also had the benefit of a bundle of relevant documents.

8. From this evidence we find the following facts:

(1) Mark Collins owned and managed an extensive portfolio of buy to let properties. We are not certain how many (we doubt that anyone knows accurately) but at present there are over 50 owned by the estate.

(2) An enquiry under Code of Practice No. 9 had been opened by HMRC officer Michael Judson ("**Officer Judson**") into Mark Collins' affairs in March 2013. Mark Collins had indicated that he was prepared to cooperate with HMRC's COP9 investigation.

(3) Mark Collins who had been receiving chemotherapy in 2017 was admitted in early August onto an ITU unit in hospital and died suddenly and unexpectedly on 3 August 2013. He left no Will.

(4) He had had never given any of his family any details of his business. He had run it on his own. The family had no idea what it comprised, nor from where they could obtain information about it.

(5) The buy to let properties were run by managing agents, some of whom were not prepared to give information to Maria Collins about her husband's business affairs.

(6) Laurie Collins, as eldest son, took on the role of sorting out his father's affairs. He found this difficult to do. He could not, initially, access his father's computer. He did not know details of the relevant bank accounts, he had no idea of the extent (or nature) of the properties and the business.

(7) In September 2013, Laurie Collins told Officer Judson of Mark Collins' death. Officer Judson explained the investigation that he had been undertaking into Mark Collins' affairs and said he would provide Laurie Collins with whatever information he could to help Laurie Collins with his responsibilities. He wrote to Laurie Collins on 13 September 2013 setting out this information and the amount of tax that HMRC contended was due.

(8) On 10 December 2013 HMRC issued assessments to the personal representatives for the years 2007/08 and 2010/11. These were in the amounts of £285,842.20 and £40,168.05 respectively i.e. a total of about £326,000.

(9) In the autumn of 2013, the family was sent letters from solicitors acting for a former family friend, Mr Martin Cox who had commenced litigation against the estate in connection with a loan that Mr Cox claimed that he had given Mark Collins in 2010 of £25,000. The claim however was for £223,000. The family were very concerned that if this succeeded, and albeit at that time they didn't know the full extent of the value of the estate, the estate was likely to

be bankrupt. Laurie Collins did much of the work in connection with this matter (the "**Cox Litigation**") himself to keep costs down. The case was heard in December 2014. The estate was successful.

(10) During 2014 there had been correspondence between HMRC, and HMRC's debt management and banking department in connection with the appeals and the tax debt evidenced by the assessments. HMRC in those letters had told Laurie Collins (who at that stage HMRC believed to be personal representative of Mark Collins) that an appeal should be made and that also HMRC would consider a late appeal.

(11) In February 2015 the appellant authorised Mike Jones Solicitors to act on her behalf in respect of the tax affairs of her husband.

(12) The family had also instructed a separate firm of solicitors in connection with obtaining probate which was granted to the appellant on 31 July 2015. The net value of the estate was noted as £714,480. The gross value of the estate was identified as £6,368,450.

(13) During 2015 and 2016 there was correspondence between HMRC, the appellant, Laurie Collins and solicitors acting for the appellant. Most significantly, on 3 February 2016, HMRC wrote to Mike Jones Limited, acting at that stage for the appellant in connection with HMRC appeals sending Mike Jones Limited copies of all correspondence, assessments and notes of telephone calls and also advising the correct address to send any late appeal.

(14) Following further correspondence in 2016, in October 2016 HMRC advised Laurie Collins that they intended to seek a County Court Judgement against the estate and County Court papers were received by HMRC on 30 November 2016. The matter was set down for a hearing on 7 March 2017 (the "**Debt Management Litigation**") which was subsequently adjourned.

(15) On 27 February 2017 Laurie Collins rang HMRC and indicated that he did not agree with the assessments and was concerned about the costs of the Debt Management Litigation. HMRC urged Mr Collins to appeal against the assessments.

(16) Hugh James, Solicitors ("**Hugh James**"), were appointed in respect of the Debt Management Litigation on 1 June 2017 and on 11 September 2017 at a hearing in the County Court in Cardiff the presiding judge asked why no appeal against the assessments had been made. He ordered the case to be listed for a final hearing.

(17) By a letter dated 15 September 2017 Hugh James on behalf of the estate made a late appeal to HMRC against the assessments. Such appeal was rejected by HMRC, such rejection being given to Hugh James in a letter dated 11 October 2017.

(18) An application (this application) was then made by Laurie Collins to the Tribunal on 6 November 2017, the application being to make a late appeal against the assessments.

(19) On 15 November 2017 the Debt Management Litigation was resolved in favour of HMRC who were also awarded costs.

(20) Notably that Judgment given by His Honour Judge Keyser QC on the 15 November 2017 contains the following elements:

(a) The Judgment is for £444,475.65 inclusive of interest.

(b) Interest accrues on that sum at the daily of £27.14 from the date of Judgment until payment.

(c) The costs awarded to the claimant, payable by the estate are £14,306.20.

(d) Enforcement of the Judgment is stayed pending the outcome of this application and, if granted, any substantive appeal against the assessments.

(21) In a somewhat strange document which purports to be a witness statement given by Laurie Collins in connection with the Debt Management Litigation and to which is appended a Statement of Truth signed by Laurie Collins and dated 1 November 2017, Laurie Collins explains the results of some of his investigations into his father's business affairs, and their relevance to the assessments. In this document he makes certain observations regarding those assessments. Mrs Cunliffe is aware of that document (which was on the court file but not in the bundle of documents presented to the Tribunal for the hearing). Her position was that she had not considered it in any detail although she was aware of its existence, since in her view this was something that was more properly the provenance of any appeal rather than this application.

Appellants submissions

9. The appellant both in person and via Laurie Collins (in correspondence) makes the following submissions in support of the application.

(1) Mark Collins business affairs (basically running a portfolio of more than 50 buy to let properties as a sole trader) were complex and he had not shared them with the rest of his family. Accordingly, on and following his untimely death which traumatised the family, it took considerable time to obtain information about the properties and about Mark Collins' financial affairs which needed detailed analysis in order to make an appeal against the assessments.

(2) Nothing could be done vis a vis an appeal against those assessments until probate had been granted which was not until 31 July 2015 when Maria Collins was confirmed as executrix.

(3) Following Mark Collins' death the Cox Litigation took priority, since if Cox had succeeded with his (in the family's view) over inflated claim it would have bankrupted the estate.

(4) The estate lacked funds to instruct lawyers or accountants to investigate Mark Collins' affairs and make the appeal. This lack of funds also prejudiced the Debt Management Proceedings and is the reason why Maria Collins appears in person in this appeal.

(5) Laurie Collins has now gathered sufficient data to show that the assessments (or some part of them) are incorrect.

Respondents submissions

10. Mrs Cunliffe, very sensibly, structured her submissions around the principles set out in the case of *Data Select*. She made the following points:

(1) The delay, being about 3 years and 8 months, is both serious and significant. The 30 day time limit for notifying an appeal is to ensure finality and litigation and should be respected.

(2) Whilst she and HMRC are sympathetic to the plight of the Collins family following Mark Collins' untimely death, the explanations submitted for the delay are not good ones.

(3) She accepts that there might have been difficulty in obtaining relevant financial information about Mark Collins' business affairs, but HMRC have persistently told Laurie Collins, the appellant and their representatives of their rights and, more importantly, their need to appeal.

(4) A protective appeal could have been made on the basis that further information would have been supplied as and when Laurie Collins had undertaken more in depth investigations into his father's affairs. Indeed to all intents and purposes this is what the appellant has now done.

(5) The information held by HMRC had been supplied to Mike Jones in February 2016 and the appellant could have appealed on the basis of that information. But it was a further 17 months before she did.

(6) Even if there was a good explanation for the initial delay in appealing, caused by the Cox Litigation and the lack of probate, those explanations ceased once the Cox Litigation was resolved (December 2014) and probate was granted to the appellant (on 31 July 2015). There is no good or reasonable explanation why an appeal could not have been lodged soon after 31 July 2015.

(7) The cost of preparing a letter of appeal is very modest.

(8) The appellant and Laurie Collins have at various times, since Mark Collins' death been professionally represented by solicitors in relation to

obtaining probate and the Debt Management Litigation. It is inconceivable that these representatives did not tell the appellant and/or Laurie Collins of the need to make an appeal.

(9) If the application is granted, HMRC will have to divert resources to deal with it. HMRC are entitled to consider the matter to be closed, since no timely notice of appeal has been given.

(10) If the application is allowed it will send out a message to taxpayers that it is acceptable to ignore deadlines regardless of the merits of the excuse.

Discussion

11. We start our discussion of the issues by saying that we find this a very finely balanced case, notwithstanding the very considerable delay (3 years and 8 months) in giving notice of appeal. Our reasons for this will become apparent hereafter.

12. We have used the *Martland* criteria as the framework against which we have tested the facts that we have found and we are conscious of the admonition that our role is to exercise judicial discretion taking account of all relevant factors, and not to follow a check list.

13. We have found that the format of Mrs Cunliffe's submissions, based on the *Data Select* criteria helpful. However, we will deal with those submissions in the context of the *Martland* framework.

14. Furthermore, as the Upper Tribunal recognises, there are overlaps between the three areas identified in *Martland.* So, for example, the significance of the delay in this case overlaps with whether the appellant has a good reason for the delay. But provided all bases are covered then the Upper Tribunal are basically saying that it doesn't really matter within which "head" these matters are dealt.

Length of delay

15. The first point to make is that the appeal is clearly very late (3 years 8 months). It is serious.

16. However, the significance of the delay depends, to some extent, on whether the delay is tested from the date of the assessments or whether, if we think that the appellant has a reasonable explanation for not appealing until either the Cox Litigation had been resolved and/or probate was granted (in July 2015) whether the delay was serious and significant since then.

17. Even so it is serious. Even if we find, as we do (see later) that the appellant did have a reasonable explanation for not appealing until probate was granted, there is still a delay of some 26 months between that date and the date on which the actual appeal was notified.

18. HMRC make the cogent point that making an appeal can be done quickly and cheaply. We agree. They also make the point that it is perfectly possible to make a protective appeal and follow it up once further information had been unearthed about Mark Collins' business affairs. Indeed, as is evidenced, by the appeal letter of 15 September 2017 from Hugh James, this is what has now happened. In that letter, Hugh James say

> "The purpose of this letter is to now give notice on behalf of the Estate of an appeal against the Assessment.
>
> We are still in the process of gathering together all the underlying information relating to the Assessment – a good deal of which involves collation of documents from Land Registry. We will be hopefully in a position to set out the Estate's full grounds of appeal shortly once the remaining information has been collated".

19. So why could that not have been done back in 2014 or once probate once granted in, say, August 2015?

20. Our view is that if that had been done then, then the matter would have been stood over (probably by agreement - HMRC have been sympathetic throughout to the plight of the Collins' family on which we have more to say below) pending that further investigation.

21. As things have turned out, Laurie Collins' data gathering which has resulted in this Witness Statement, would still have had to be undertaken but would have done so at an earlier date.

22. Indeed Mrs Cunliffe tells us that she is aware of further information that Laurie Collins wishes to give to her, but which she has told him to hold off sending pending the outcome of this application.

23. So if the matter had been appealed in 2015 and stood over, there would still have been a further delay in gathering the information necessary either to resolve this matter by negotiation or to have it heard in Tribunal.

24. We have no doubt that if this data gathering exercise had been undertaken within the ambit of an ongoing appeal, the court would have exercised its oversight to monitor ongoing stand overs, to ensure, insofar as possible, that the data gathering was undertaken within time limits that the court might have imposed. That has not been the case hitherto.

25. But it is certainly the case that an appeal in or shortly after probate was granted in July 2015 would not have come on for substantive hearing until considerably later. On the basis that the information gathering might have taken 4 - 5 months, there would then have been discussions about it, and if the appeal was then to be heard, we doubt that it would have been heard much before 2017.

26. We are conscious of the point made by Mrs Cunliffe that the purpose of the 30 day time limit is to provide finality of the issue to which the appeal relates. However, although the delay in making the appeal of 3 years and 8 months is serious we consider that its significance is lessened by dint of the fact that finality here would probably not have been possible until, in our view, last year.

27. We refer above to the attitude that HMRC have taken towards the Collins family. In his written submissions, Laurie Collins suggests that his initial dealings with Officer Judson were not helpful. This is not borne out by the evidence that we have seen. Indeed to the contrary. It seems to us that HMRC have behaved in an exemplary fashion towards the Collins family. Not only did Officer Judson in his initial contact with Laurie Collins offer support and information over and above that which might have been expected of an HMRC officer, it is clear from the correspondence that throughout, HMRC have consistently, as submitted by Mrs Cunliffe, given the Collins family the opportunity to appeal, and to do so out of time. They have persistently reminded the Collins family of this, and it was not until shortly after the comments were made in the court proceedings on 11 September 2017 by the judge as to why no assessment had been made, that the Collins family got its act together and, via Hugh James, appealed some 4 days later.

Reasons for the default

28. We have also considered the reasons given by the appellant for her failure to appeal on time. The fact that they were acting in person and lack of funds carries little weight. The follows from *Martland,* but is also common sense. As we mention above, the time and cost involved in sending a letter containing a protective appeal is minimal. Laurie Collins is a qualified accountant. He would be more than able to have ascertained the process and to have sent off the appropriate letter in pretty short order.

29. The main reasons given by the appellant as to why they did not appeal until September 2017 concern the lack of information that they were able to get their hands on concerning Mark Collins' affairs; the fact that the family was emotionally traumatised by Mark Collins' death; the difficulties and the delays in obtaining probate (and the costs involved in that) and the Cox Litigation.

30. We, like HMRC, are sympathetic to the plight of the Collins family and we would re-emphasise that HMRC have reflected that sympathy in their dealings with the Collins family. It seems to us that they could have got a great deal tougher a great deal earlier.

31. But it is clear from the evidence that Mark Collins was secretive about his business affairs and that it was very difficult for the family to obtain any information about his business and financial affairs for some time after Mark Collins' untimely death. We appreciate that Officer Judson bent over backwards to provide information to Laurie Collins in September 2013, but we think it is entirely reasonable for the appellant to carry out her own investigation notwithstanding HMRC's provision of information in order to test the veracity or otherwise of that information.

32. We think that the Cox Litigation was something which justifiably caused Collins family to take their eye off the tax assessment ball, and it is perfectly understandable that they gave precedence to that given the impact an adverse decision would have on the estate (rather than investigating the merits of the assessments).

33. We are slightly less sympathetic about their explanation that nothing could be done until probate had been granted. It seems pretty clear that HMRC were perfectly happy to deal with Laurie Collins when they thought he was personal representative, and had an appeal been made by him, as administrator, it could have readily been amended once his mother became executor.

34. But, even if we do believe there is a reasonable explanation as to why no appeal was made before probate was granted in July 2015, the appellant has given us very little explanation as to why it was not possible to make an appeal shortly thereafter.

35. This point has been properly and forcefully made by Mrs Cunliffe. So once we get to the end of the second of the two *Martland* tests, the appellant is forty love down. There has been delay in making the appeal which is serious and significant even if the delay is tested from the date of probate rather than the date of the assessment. And whilst there might be an explanation (perhaps a reasonable one) as to why no appeal was made until after probate had been granted, very little explanation has been given as to why it was not possible to make a protective appeal shortly thereafter.

The balancing exercise

36. Now comes the balancing exercise concerning prejudice. We need to assess the merits of the reasons given for the delay and the prejudice which will be caused to both parties by granting or refusing permission.

37. In doing this, we need to 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.

38. And in exercising our judicial discretion, taking into account all relevant factors, we can have regard to any obvious strengths or weaknesses of the appellant's case.

39. It is our view that, taking all the matters into account which we set out below, the balance of prejudice very significantly favours the appellant. We say this for the following reasons:

> (1) The Debt Management Litigation has resulted in a judgment that the estate is liable to HMRC for £444,475.65. This is nearly £120,000 more than the amount in the assessments. We are struggling to understand where the judgment debt figure comes from, given that the daily judgment rate on that amount is only £27.14. Annualised, that interest is only about £10,000. So for some reason, between December 2013 and November 2017, the amount owed to HMRC has risen from about £326,000 to about £444,000. This is an inordinately large sum. We are not sure what the size of the estate is now, but

given that when probate was granted the net value of the estate was approximately £714k the debt is massive compared with the value of the estate.

(2) Denying the appellant the right to look behind the assessment (and indeed behind the judgment debt) given what we say below about our cursory review of the merits of her claim, seems to us to be a very significant factor.

(3) Against this we must balance the prejudice to HMRC. Mrs Cunliffe makes the point that if we permit this application and the appeal goes ahead, resources will have to be diverted from elsewhere in HMRC. That might be right, but that would have been the case even if the appeal had been made on time. At some stage the substantive merits of the appellant's appeal would have had to have been analysed. If we grant this application, all that will happen is that the analysis will take place later than would have been the case had the appeal been made on a timely basis.

(4) Mrs Cunliffe makes the cogent point that time might have been saved in this exercise had the appeal been made on time since Officer Judson would have been able to analyse the appellant's case. He is unable to do so now since he has retired.

(5) We are sympathetic with this view. However, having looked at the data gathered by Laurie Collins and exhibited to his "witness statement", we do not believe that Officer Judson's specific expertise, and knowledge of the background, would speed the process up necessarily.

(6) We remind ourselves that we can only look at "obvious" strengths and weaknesses of the appellant's case. We have therefore conducted only a cursory review of the "witness statement" and the data annexed to it. But it seems to us even from that cursory review that there are a number of questions that need resolving. For example, it appears that there are differences between signatures on relevant documents which means that some of the signatures might not be those of Mark Collins; there appears to be evidence that a property was sold before it was bought; HMRC have given no credit for deductions evidenced by debt owed under development loans. These matters (and we suspect there are others and indeed will be others if we grant this application and Laurie Collins sends HMRC further information he has unearthed) do not, it seems to us, require analysis by someone with a background to the COP9 investigation.

(7) We have also considered the submission made by Mrs Cunliffe that HMRC are entitled to have considered this matter closed given the delay in making the appeal and it is not in some way fair on them to now "re-open" something that they have a legitimate expectation to consider closed. Again we are sympathetic with this but we ask whether, given the Debt Management Litigation, HMRC can really say that they thought the matter had been closed. There has clearly been ongoing correspondence with the appellant, Laurie Collins, those representing them, HMRC and HMRC's Debt Management Unit

over the last 2-3 years. Latterly matters focused on the Debt Management Litigation, but throughout, it is clear that HMRC have been aware of the possibility that the appellant might make a late appeal, as evidenced by the fact that as late as February 2017 HMRC were urging the appellant to make a late appeal. Admittedly it was not until the 15 September that such an appeal was made and we suspect that was a direct result of the judge in the hearing on 11 September 2017 asking why no appeal had been made. And, (neither we nor the appellant makes any criticism here) it might have been expected that having invited the appellant to make a late appeal in February 2017, it might have been accepted once made, albeit that was not until 15 September 2017.

(8) But the point is that we do not think that HMRC had thought that this case had been finally settled and that "re-opening it" will cause them prejudice.

(9) One matter which would not have been required (or might not have been required) had the appeal been made on a timely basis is the Debt Management Litigation. Had an appeal been made back in August 2015, and subsequently been resolved, it is unlikely that HMRC (unless of course that resolution had led to a tax debt which the estate subsequently failed to pay) would have needed to bring proceedings for a tax debt.

(10) So HMRC are prejudiced in that they have had to bring court proceedings which would not have been the case had a timely appeal been made. We accept the force of this point, but it is somewhat lessened by the fact that HMRC have been awarded costs of the Debt Management Litigation. We appreciate that costs do not usually cover all the time incurred but they go some considerable way towards it.

(11) So in conclusion it is our view that:

(a) The appellant has a reasonable explanation as to why no appeal was made up to the date on which probate was granted in July 2015.

(b) However, the delay between then and the date on which the appeal was ultimately notified in September 2017 was a serious delay, for which no adequate explanation has been given.

(c) It doesn't take long to draft a protective letter of appeal and send it to HMRC. It doesn't cost much to do so.

(d) The significance of that delay is ameliorated by the fact that even if a protective appeal had been made, further information would have been required which would have necessitated a delay to the usual court timetable. But notwithstanding that, the matter would have been heard well before the time that would be the case if we grant this application.

(e) Our cursory view of the additional material provided in Laurie Collins' "witness statement" suggests the appellant has grounds to challenge the assessments.

(f) The financial implications to the estate of a judgment debt of about £444,000 or so is very significant in absolute terms and in relative terms when compared to the amounts of the assessments of approximately £326,000.

(g) Granting the application will involve HMRC in doing little more work than would have been the case had the appeal been made in a timely fashion.

(h) HMRC's prejudice in bringing the Debt Management Litigation has been ameliorated by the fact that costs have been awarded to them.

(i) Officer Judson's departure from HMRC does not significantly impact on HMRC's capacity to analyse the further information provided by Laurie Collins.

40. As we said at the beginning of this part of our Decision, this is a very very finely balanced situation. We are mindful of Mrs Cunliffe's admonition that if this application is granted it will send out a message to taxpayers that it is acceptable to ignore deadlines regardless of the merits of the excuse.

41. However, as we hope will be apparent from the foregoing, we have analysed the issues in considerable detail. We have had regard to the length of the delay and to the merits of the explanation given for the late appeal. These are two important parts of the *Martland* test. But the judicial discretion which we must exercise takes into account the balance of prejudice.

42. In our view the balance of prejudice weighs very heavily in favour of the appellant and just (and only just) outweighs the seriousness and significance of the delay in making the appeal and the lack of explanation as to why the appeal was made so late.

Conclusion and decision

43. Accordingly we grant the appellant's application.

Appeal rights

44. 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.

JUDGE NIGEL POPPLEWELL
TRIBUNAL JUDGE

RELEASE DATE: 16 July 2018