Neutral Citation: [2022] UKFTT 00289 (TC)

Case Number: TC08571

FIRST-TIER TRIBUNAL
TAX CHAMBER

By remote video hearing

Appeal reference: TC/2021/01510

High income child benefit charge – Permission to make a late appeal - section 49 Taxes Management Act 1970 – strength of underlying case - Martland applied – permission granted

Heard on: 1 July 2022
Judgment date: 19 August 2022

Before

TRIBUNAL JUDGE MALCOLM FROST
REBECCA NEWNS

Between

ERNESTINA MARFO

Appellant

and

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Ms Marfo represented herself

For the Respondents: Anika Aziz, litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. This is an application for permission to notify an appeal to HMRC outside the prescribed 30-day time limit. For the reasons set out below, the application succeeds and permission is granted.

2. With the consent of the parties, the form of the hearing was V (video). 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.

3. We were referred to a bundle of documents consisting of 231 pages, and we heard evidence from Ms Marfo.

FACTUAL BACKGROUND

4. The substantive issue between the parties relates to the High-Income Child Benefit Charge ("HICBC") introduced by s 8 and Schedule 1 Finance Act 2012. Under those provisions, if a taxpayer or their partner had an adjusted net income that exceeded £50,000 for a tax year, they would potentially be liable for a tax charge that effectively claws back child benefit received in that year. The tax charge claws back the benefit in full if the level of income is at least £60,000 or on a sliding scale if it is between £50,000 and £60,000.

5. During the tax years ending 5 April 2017 and 2018 Ms Marfo claimed and received child benefit.

6. On or about 12 October 2019 HMRC sent a letter to Ms Marfo drawing her attention to the possibility that she might be liable to the HICBC.

7. Ms Marfo telephoned HMRC on 11 November 2019 in order to seek more information. After speaking to an advisor, she understood that she was liable to the HICBC in the years ending 5 April 2017 through to 2019.

8. HMRC proceeded to issue assessments dated 9 December 2019 for amounts in respect of HICBC for tax years ending 5 April 2017 and 2018 (the "Disputed Assessments"). An amount of £1,788 was assessed in respect of each year. The Disputed Assessments were stated to have been made under s 29 of the Taxes Management Act 1970 ("TMA").

9. Each of the Disputed Assessments contained a section entitled "What to do if you disagree", the material part of which reads "If you disagree with this notice of assessment, you can appeal. To do this, you need to write to us within 30 days of the date of this assessment, telling us why you think our decision was wrong".

10. The Disputed Assessments were also accompanied by factsheets relating to penalties, which refer to appeal rights and to a 30-day deadline for an appeal.

11. Ms Marfo agreed a payment plan for the HICBC liability, confirmed by letter from HMRC dated 7 February 2020. The payment plan was in relation to an outstanding debt of £4,998.90. This figure appears to consist of the amounts assessed by the Disputed Assessments, along with interest and other amounts not the subject of the present application.

12. HMRC's records show that on 27 February 2020 Ms Marfo spoke to an HMRC advisor on the telephone in relation to late payment penalties in connection with the payment plan. She was advised that she could bring an appeal once the payment plan was complete. This advice was confirmed by a letter from HMRC dated 28 February 2020.

13. HMRC's records further show that on 5 November 2020 Ms Marfo spoke with an HMRC advisor on the telephone in connections with penalties relating to the payment plan and disputed interest. The appeal process was explained to her.

14. On 23 November 2020, Ms Marfo appealed to HMRC by completing and submitting a paper form entitled "Self Assessment: Appeal against penalties for late filing and late payment". In spite of the title of the form, it was clear that Ms Marfo's appeal was not limited to penalties and related to the substantive liability. The appeal form was accompanied by a letter dated 22 November 2020 setting out Ms Marfo's reasons for appeal.

15. The appeal appears to range slightly wider than the Disputed Assessments. The letter seeks to dispute late payment penalty charges and the HICBC "for the period of 2016 up to the point notified by HMRC (Nov 2019)". This would accordingly include tax years falling after the years covered by the Disputed Assessments. As HMRC's refusal to accept a late appeal relates solely to the Disputed Assessments, (and, pursuant to s 49(2)(b) TMA, the Tribunal can only be asked to give permission where HMRC do not agree) we consider that any matters not relating to those assessments fall outside the scope of the present application and remain with HMRC.

16. By a letter dated 27 April 2021, HMRC refused to accept an appeal in relation to the Disputed Assessments. This was on the grounds that the deadline to submit an appeal was 8 January 2020, and that therefore the "letter of 20 November 2020" (presumably intended to refer to 22 November 2020) was too late to be accepted.

17. On 03 May 2021, the Appellant submitted an appeal to the Tribunal.

PROCEDURAL BACKGROUND

18. The case had previously been stayed behind the case of *Jason Wilkes* [2021] UKUT 0150 (TCC) ("*Wilkes*") pursuant to a direction of the Tribunal dated 26 May 2021. The stay was lifted following an application by HMRC dated 15 October 2021.

19. At the time of the hearing, the *Wilkes* decision had been granted permission to appeal to the Court of Appeal.

20. The content of the application to lift the stay is rather surprising in the light of HMRC's arguments before this Tribunal in the present application. We have set out more details in relation to the application to lift the stay later in this decision. We would hope that HMRC would reflect upon the question of whether it is appropriate to make similar applications in other cases.

RELEVANT LAW

21. The time limit for making an appeal to HMRC is set out in s 31A TMA, which provides:

> *31A Appeals: notice of appeal*
>
> *(1) Notice of an appeal under section 31 of this Act must be given*
>
> *(a) in writing,*
>
> *(b) within 30 days after the specified date,*
>
> *(c) to the relevant officer of the Board*

22. The 'specified date' in this case is the date on which the notice of assessment was issued.

23. The Tribunal's power to grant permission to notify a late appeal is provided for by s 49 TMA:

> *49 Late notice of appeal*

(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 limit.

(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.

(3) If the following conditions are met, HMRC shall agree to notice being given after the relevant time limit.

(4) Condition A is that the appellant has made a request in writing to HMRC to agree to the notice being given.

(5) Condition B is that HMRC are satisfied that there was reasonable excuse for not giving the notice before the relevant time limit.

(6) Condition C is that HMRC are satisfied that request under subsection (4) was made without unreasonable delay after the reasonable excuse ceased.

24. We note that, once HMRC has indicated that it does not agree to notice being given after the relevant time limit, there is no prescribed time limit for a taxpayer to apply to the Tribunal to grant permission under 49(2)(b) TMA.

25. The Upper Tribunal provided helpful guidance on how the Tribunal should exercise its discretion under s 49(2)(b) TMA in *Martland v HMRC* [2018] UKUT 0178 (TCC). The tribunal stated:

> "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."

MS MARFO'S CASE

26. Ms Marfo set out her arguments in relation to her late appeal (i) in her appeal application to the Tribunal, (ii) in her appeal application to HMRC and (iii) before us in person. We would summarise her position as follows:

(1) She had her two children long before the HICBC came into force and had no reason to be aware of it. HMRC could have taken steps to inform her at the time the HICBC came into force. The way HMRC had approached the changes was wrong and unfair.

(2) In HMRC's letter of 12 October 2019 suggesting she may be liable to HICBC, no mention was made of appeal rights.

(3) She had followed the advice of the advisor she spoke to following that letter and established that she was liable. The focus of the advice she was given was on arranging for payment with no reference to appeal rights.

(4) She was not aware of her appeal rights.

(5) It was only upon later reflection that she considered that it was unjust for her to be required to pay the HICBC and looked into her appeal rights. If she had known about her appeal rights earlier, she would have appealed earlier.

(6) In relation to the relevance of *Wilkes*, Ms Marfo suggested that the fact that the case had been stayed behind Wilkes showed that it was relevant.

(7) She had experienced difficulties and challenges to her mental health during the COVID-19 pandemic. Ms Marfo explained that the period had been difficult, particularly as her husband had been furloughed during the pandemic. She explained that it had been stressful receiving constant letters to pay and threats of penalties.

HMRC'S CASE

27. HMRC's case can be summarised as follows:

(1) The burden of proof is on Ms Marfo to demonstrate why the Tribunal should exercise its discretion and permit a late appeal.

(2) The delay in bringing an appeal amounts to 320 days (10.5 months). This must be considered serious and significant.

(3) In relation to the explanation for the delay, HMRC submit that

(a) Ms Marfo's assertion that she was not aware of her appeal rights is not a good explanation and does not provide a reasonable excuse.

(b) In particular, on each of the letters of assessment an explanation of Ms Marfo's appeal rights was provided. Ms Marfo had not suggested that she had not received these explanations and indeed must have done in order to know how to set up a payment plan. Ms Marfo was also made aware of her appeal rights in telephone contact with HMRC, and could have made herself aware of her rights through internet searches.

(c) A reasonable taxpayer would have read the decision notices provided, sought further advice if required, and submitted an appeal on time. Ms Marfo's failure to make herself fully aware of the time-limits cannot provide her with a reasonable excuse for this failure and to find otherwise would be to benefit a taxpayer who failed to comply with the law in favour of those who do.

(d) HMRC suggest that Ms Marfo's statement in her letter of 22 November 2020 that she decided to make the appeal "having reflected back" shows that her initial decision was not to make an appeal, but she has since changed her mind.

(4) In relation to the wider circumstances of the case, HMRC submit that:

(a) HMRC will be unfairly prejudiced by the lateness of the appeal. Granting permission would mean that HMRC would need to divert resources to deal with

the appeal and that both the public purse and other taxpayers would be prejudiced by the diversion of resources.

(b) To allow the application would deny HMRC finality in the decision-making process.

(c) Priority should be given to the need for litigation to be conducted efficiently and at proportionate cost and the need for deadlines to be respected.

(5) HMRC also submitted that the Tribunal is not currently in a position to consider that either Ms Marfo or HMRC has a particularly strong or weak case. This is because the subject matter of the substantive appeal is the validity of s29 TMA 1970 assessments to HICBC liability, a matter currently being considered by the Court of Appeal.

(6) When asked to clarify the point, HMRC referred the Tribunal to s 97 Finance Act 2022 and submitted that the result of the application of that section was that *Wilkes* could not be relevant as a matter of law.

(7) In any event, HMRC contended that potential merits of the substantive appeal are not sufficient to displace the seriousness of the failure to comply with the time-limits and are therefore of little relevance.

(8) Granting permission would not be in accordance with the overriding objective to deal with cases fairly and justly, set out in Rule 2(1) of the tribunal procedure rules

DISCUSSION AND DISPOSAL

28. HMRC submitted, and we agree, that the three-stage test set out in *Martland* should be followed in the present case as a means of guiding our exercise of discretion. We do so as follows.

Length of the delay

29. Ms Marfo made her appeal to HMRC some 320 days late. This is against the background of a 30-day statutory time limit. We have no hesitation in agreeing with HMRC that this is both serious and significant.

Reason for the delay

30. Ms Marfo suggests that the reason for the delay was that she was not aware of her appeal rights, and that HMRC had not taken proper steps to make her aware of such rights.

31. We accept that she may not have put her mind to the question of bringing an appeal until she had reflected upon the injustice she felt she had suffered, and carried out some research into her appeal rights.

32. However, we agree with HMRC that this does not provide a satisfactory reason for the delay. The Disputed Assessments contain a clear explanation of appeal rights, along with the statutory time limit within which to bring an appeal. We do not consider that it would be reasonable for Ms Marfo to expect HMRC to do more to bring Ms Marfo's appeal rights to her attention.

33. Furthermore, whilst the Tribunal is sympathetic to the difficulties faced by Ms Marfo as a result of the COVID-19 pandemic, we do not consider that those difficulties were such as to seriously impede her from bringing an appeal within the statutory time limit.

34. HMRC drew our attention to the view expressed by Judge Hellier in *Gilbert v HMRC* [2018] UKFTT 437 (TC) at [40] that circumstances that would be unlikely to found a reasonable excuse would include "a simple assumption that there would be no change or a decision to do nothing unless asked to do something by HMRC."

35. This submission, as with many of HMRC's submissions, was put in the context of whether or not Ms Marfo had a reasonable excuse for the delay. For example, HMRC drew the Tribunal's attention to *Perrin v Revenue and Customs Commissioners* [2018] UKUT 156 which provides guidance on the test to be applied in reasonable excuse cases.

36. The question of reasonable excuse forms a part of the test to be applied by HMRC under s 49(5) TMA when considering whether they are obliged to accept a late appeal. However, the Tribunal's discretion is rather wider. As such we consider HMRC's submissions on reasonable excuse to be of limited assistance to the present application.

All the circumstances of the case

37. At this stage of the *Martland* test, the Tribunal is required to carry out a balancing exercise, assessing the merits of the reasons given for the delay, the prejudice which would be caused to both parties by granting or refusing permission, as well as any other relevant circumstances.

38. The delay lasted over ten months. We have discussed above the reasons for the delay and our views on their merits. Put simply, we consider that Ms Marfo may well have not put her mind to the possibility of an appeal but that she had ample information and opportunity to do so.

39. We 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. HMRC drew our attention to *Norman Archer v HMRC* [2014] UKFTT 423, in which Judge Redston stated (at [85]):

> "Parliament has set a 30-day time limit within which taxpayers can appeal discovery assessments or amendments to their self-assessment. Its purpose is to give finality, so that HMRC- the other party in possible litigation – will know within that time limit whether or not they need to prepare for an appeal against their decisions."

40. We also note the comments of Morgan J in *Data Select Ltd v Revenue and Customs Commissioners* [2012] UKUT 187 (at [37]) as to the desirability of,

> "…not re-opening matters after a lengthy interval where one or both parties were entitled to assume that matters had been finally fixed and settled."

41. We further note that, following *Katib v HMRC* [2019] UKUT 189 (TCC) that, as a matter of principle, the need for statutory time limits to be respected is a matter of particular importance to the exercise of our discretion

42. We have noted the various matters put forward by Ms Aziz, on behalf of HMRC and summarised above. In particular that our allowing the application would result in HMRC needing to divert resources to deal with the matter. As Ms Aziz noted, other taxpayers would be prejudiced by that diversion of resources and the costs borne by public purse. Ms Aziz submitted that HMRC should be entitled to rely on the time limits provided for in legislation.

43. There is however one further point which we consider has considerable weight in the balancing exercise we are to carry out – the strength of the underlying case.

44. We were referred by HMRC to paragraph [46] of *Martland*, which states:

> "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."

45. Accordingly, in most cases the strength of the underlying case will not have a significant impact on the balancing exercise. However, in this case we consider that the merits are sufficiently clear to have an impact.

46. In order to examine this point, it is first necessary to discuss the case of *Wilkes* and HMRC's application to lift the previous stay.

Wilkes

47. In the case of *Wilkes*, the Upper Tribunal decided that HMRC may not assess the HICBC by means of a discovery assessment issued under s29 TMA 1970 as such an assessment would not be in respect of "income which ought to have been assessed".

48. In the case of Ms Marfo, the two Disputed Assessments were both issued under s 29. On the face of it therefore, following *Wilkes*, HMRC was not entitled to issue the assessments and Ms Marfo's appeal would inevitably succeed.

49. At the time of the hearing, HMRC had been granted permission to appeal the Upper Tribunal decision in *Wilkes* to the Court of Appeal.

50. In their written submissions, HMRC suggested that the fact of there being permission to appeal meant that "the Tribunal is not currently in a position to consider that either the Applicant or the Respondent has a particularly strong or weak case". We disagree.

51. Had the substantive matter been before the Tribunal we would have been bound by the Upper Tribunal decision in *Wilkes.* In the course of the hearing Ms Aziz conceded that in those circumstances this would mean that HMRC's case would inevitably fail and Ms Marfo's appeal would have succeeded. We consider that we are no less bound by the decision on the present application.

52. The existence of outstanding permission to appeal the Upper Tribunal's decision may be a reason to consider staying this matter behind *Wilkes*, which is a point we shall return to. However, if we are to decide the application now, we consider that we are obliged to do so on the basis of the law as it stands at present. Accordingly, if the matter is not subject to a further stay, we must take into account the Upper Tribunal decision in *Wilkes* and its effect on Ms Marfo's prospects.

Staying the case

53. As we have noted above, the potential for the Court of Appeal to overturn the Upper Tribunal decision in *Wilkes* would potentially provide a basis for staying the present application pending the outcome of the Court of Appeal proceedings.

54. Neither of the parties made an application to stay the matter, but we have considered whether it would be appropriate for the Tribunal to stay the matter of its own motion.

55. We have decided that this would not be appropriate for the reasons set out below.

56. We firstly note that the Tribunal had in fact previously stayed this matter. By a direction dated 26 May 2021 the matter was stood over "until 60 days after the case of Jason Wilkes is finally determined".

57. HMRC subsequently sought to lift the stay, by way of an application dated 15 October 2021.

58. HMRC's application was primarily on the basis that the case of *Wilkes* was not relevant. We have set out below a number of extracts from the relevant application

> "This appeal does **not** relate to a s29 assessment, and therefore, regardless of the outcome of Wilkes, the HICBC liability applies" (emphasis original)
>
> "The Respondents submit that, as there is no requirement for the Tribunal to consider an assessment made under Section 29 TMA 1970, there is consequently no need to stay the present appeal behind the appeal of Wilkes"
>
> "The matters which the Appellant seeks to appeal will not be affected by the outcome of any decision in HMRC v Jason Wilkes.
>
> The Respondents submit that, as there is no requirement for the Tribunal to consider the validity of section 29 TMA 1970 assessments, there is consequently no need to stay the present appeal behind the appeal of HMRC v Jason Wilkes."

59. HMRC's application made the point forcefully and repeatedly that *Wilkes* was not relevant. This is surprising given the overwhelming impact that the outcome of *Wilkes* would have on the merits of Ms Marfo's case, and the consequent implications for the *Martland* balancing exercise to be conducted.

60. We would suggest that HMRC consider carefully whether to make similar applications in other cases.

61. Furthermore, HMRC's clear assertion that the appeal does not relate to a s. 29 assessment appears to be out of step with the facts. It may be that HMRC intended to assert that an application for permission to appeal out of time does not in of itself oblige the tribunal to carry out a detailed investigation of the s 29 assessment. If that is the case, HMRC should have said so.

62. HMRC's application was granted by the Tribunal and the stay was lifted. It is against this backdrop that we consider whether to reimpose a stay.

63. In considering this point, we take into account the overriding objective set out in rule 2 of the First-tier Tribunal (Tax Chamber) Rules 2009 (the "rules"). In particular rule 2(2)(e) which stipulates the necessity to avoid delay, so far as proceeding with an appeal allows proper consideration of the issues. In our view, as we have heard both parties in relation to the present application, it is desirable for the Tribunal to progress the case if possible.

64. We have also considered the potential prejudice to the parties if a stay was imposed. The reimposition of a stay would mean that Ms Marfo would have wasted her time and effort in attending the hearing and would suffer further delay in having her case resolved.

65. In relation to HMRC, the prejudice that would result from not imposing a stay (and allowing Ms Marfo's application) is that HMRC are compelled to consider Ms Marfo's appeal. This does not appear to be a source of significant prejudice (particularly if the Upper Tribunal decision in *Wilkes* stands, such that HMRC's case would always be doomed to fail). In any event, by applying to lift the stay HMRC are in some sense the authors of their own misfortune.

66. Accordingly, we do not consider it appropriate to stay the matter.

Section 97 Finance Act 2022

67. In response to the Tribunal questioning Ms Aziz as to HMRC's position as to how we should approach the exercise of balancing the apparent merits of the case with the delay and reasons for it, Ms Aziz drew the Tribunal's attention to s 97 Finance Act 2022 ("FA 2022").

That section provides for amendments to s 29 TMA that would nullify the effect of the *Wilkes* decision. Ms Aziz submitted that this section means that the decision in the case of *Wilkes* would have no bearing on the present application.

68. If this submission were correct, this would fundamentally alter our view of the potential merits of Ms Marfo's substantive case and remove consideration of the merits from the balancing exercise we are to carry out. However, we are satisfied that the section does not apply.

69. Section 97 FA 2022 provides that the amendments to s. 29 TMA reversing *Wilkes* only have effect in relation to the tax year 2020-21 and earlier tax years if the discovery assessment in question is a "relevant protected assessment". Ms Aziz' submission is therefore dependent on demonstrating that the Dsiputed Assessments are "relevant protected assessments".

70. Section 97(6) FA 2022 provides for circumstances in which an assessment is not a "relevant protected assessment":

> (6) In addition, a discovery assessment is not a relevant protected assessment if—
>
> (a) it is subject to an appeal notice of which was given to HMRC on or before 30 June 2021,
>
> (b) the appeal is subject to a temporary pause which occurred before 27 October 2021, and
>
> (c) it is reasonable to conclude that the temporary pausing of the appeal occurred (wholly or partly) on the basis that an issue of a kind mentioned in subsection (5)(a) is, or might be, relevant to the determination of the appeal.

71. Therefore, the Disputed Assessments will not be "relevant protected assessments" (and therefore the *Wilkes* decision will apply to them) if:

(1) Ms Marfo gave her notice of appeal to HMRC on or before 30 June 2021. The appeal is dated 23 November 2020, so this requirement is met.

(2) Ms Marfo's appeal was "subject to a temporary pause before 27 October 2021".

(3) It is reasonable to conclude that the temporary pausing occurred (wholly or partly) on the basis that an issue of a kind mentioned in subsection (5)(a) is, or might be, relevant to the determination of the appeal.

72. Section 97(8) FA 2022 provides (among other things) that an appeal is subject to a "temporary pause which occurred before 27 October 2021" if the appeal has been stayed by the tribunal before that date.

73. The issue "mentioned in subsection 5(a)" is that the assessment is invalid as a result of its not relating to the discovery of income which ought to have been assessed to income tax but which had not been so assessed (that is to say, the issue under consideration in *Wilkes*).

74. As a result, the second and third criteria mentioned above will be met (and as a result the Disputed Assessments will not be "relevant protected assessments") if the Tribunal stayed Ms Marfo's case behind Wilkes before 27 October 2021. The stay direction is dated 26 May 2021, and is expressly behind the *Wilkes* case, so these requirements are met.

75. Accordingly, the Disputed Assessments are not "relevant protected assessments" and the amendments to s 29 TMA provided for in s 97 FA 2022 do not apply to them. As a result, the *Wilkes* decision will apply and is relevant to our application of the *Martland* test.

Conclusion on the Martland test

76. We have considered all the circumstances of the case, and all the submissions put to us by both parties.

77. In our view, although we do not find Ms Marfo's reasons for delay to be particularly compelling, this must be balanced against the plain injustice that would arise if she were prevented from proceeding with an appeal which (on the basis of the law as it presently stands) would be bound to succeed.

78. We appreciate that there may be circumstances where the length of the delay and need for finality may outweigh the injustice of preventing an overwhelming case from proceeding. For example, there may be cases where a taxpayer seeks to reopen a long-forgotten matter as a result of a court decision taking place some years after the event. However, that is some distance from the facts in the present case.

79. We consider that the circumstances in this case favour allowing the late appeal.

DISPOSAL

80. Accordingly, we allow Ms Marfo's application and grant permission to notify her appeal to HMRC outside the statutory time limit. As a result, HMRC must consider and respond to her appeal. The Tribunal will play no further part in that appeal unless and until a further application is made to refer the appeal back to the Tribunal.

81. In relation to the issues raised by Ms Marfo that were not the subject of HMRC's objection and accordingly not before us, those remain with HMRC for consideration and response.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

82. 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.

MALCOLM FROST
TRIBUNAL JUDGE

Release date: 19 AUGUST 2022