



Neutral Citation: [2025] UKFTT 211 (TC)

Case Number: TC09432

**TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2023/08968

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

**Heard on:** 20 November 2024

**Judgment date:** 14<sup>th</sup> February 2025

**Before**

**TRIBUNAL JUDGE GREG SINFIELD  
TRIBUNAL MEMBER SUSAN STOTT**

**Between**

**BRETT VON BUDDENBROCK**

**Appellant**

**and**

**THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS**

**Respondents**

**Representation:**

For the Appellant: The Appellant in person

For the Respondents: Jazz Blount, litigator of HM Revenue and Customs’ Solicitor’s Office

## DECISION

### INTRODUCTION

1. This decision concerns an application by the Appellant, Mr von Buddenbrock, for permission to give late notice of his appeal against an assessment for additional tax of £14,223 due for the year ended 5 April 2013. The assessment was issued by the Respondents ('HMRC') on 12 July 2016. Section 31A of the Taxes Management Act 1970 ('TMA 1970') provides that notice of an appeal must be given in writing within 30 days after the date of the assessment to the HMRC officer who issued the assessment. The time for giving notice of an appeal expired on 11 August 2016. No appeal was notified until 10 March 2020. HMRC did not agree to the late notice of appeal and, on 14 July 2023, Mr von Buddenbrock applied to the First-tier Tribunal ('FTT') under section 49(2)(b) TMA 1970 for permission to give notice of the appeal to HMRC after the time limit. HMRC opposed the application.

2. With the consent of the parties, the hearing was held by video using Teams. The video hearing was attended by Mr Buddenbrock. Mr Jazz Blount, a member of HMRC's Solicitor's Office and Legal Services, appeared for HMRC. Mr James Shea, HMRC officer and the decision maker, was also present. Mr Max Simpson of HMRC and FTT Judges Cristie and Wilson attended as observers.

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

### RELEVANT LEGISLATION

4. Section 49 TMA 1970 provides that notice may be given after the relevant time limit if either HMRC agree, or the Tribunal gives permission. As HMRC do not agree to notice being given late, Mr von Buddenbrock must seek permission to give notice of appeal after the relevant time from the Tribunal under section 49(2)(b) TMA 1970.

5. Rule 20(4) of the FTT Rules provides:

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

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

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

### EVIDENCE

6. As to documentation, we were provided with a hearing bundle of 197 pages which contained evidence and authorities. Neither party filed any witness statement or skeleton argument. HMRC's submissions were contained in their Notice of Objection of 12 pages which was included in the hearing bundle. Mr von Buddenbrock made his submissions in his notice of appeal and orally at the hearing.

7. There was no dispute between the parties as to the material background facts which are derived from the correspondence and other documents in the hearing bundle. On the basis of the evidence presented to us, we find the facts to be as described below.

### BACKGROUND FACTS

8. In May 2012, Mr von Buddenbrock, who was resident in South Africa, made a transfer of funds from his UK pension fund to an overseas pension scheme called Danica. Mr von

Buddenbrock believed that Danica was a qualified recognised overseas pension scheme (QROPS). Transfers to QROPS are not subject to any charge to tax. Unfortunately for Mr von Buddenbrock, Danica was not a QROPS at the time of the transfer as it had been removed from the QROPS list in June 2011. Consequently, the transfer attracted an unauthorised payment charge under section 208 Finance Act 2004 and a further 15% unauthorised payment surcharge under Section 209.

9. On 12 July 2016, HMRC issued a notice of assessment to Mr von Buddenbrock for the year ended 5 April 2013 in the sum of £13,251 to recover the unauthorised payment charge and surcharge. It was a discovery assessment under section 29 TMA 1970. The final section of the letter was as follows:

“What to do if you disagree

If you disagree with this assessment, you can appeal. To do this, you need to write to us within 30 days of the date on this assessment, telling us why you think our decision was wrong. We will then contact you to try to settle the matter. If we cannot come to an agreement, we will write to you and tell you why. You can then either:

- have the matter reviewed by an HMRC officer who has not previously been involved in the case
- ask an independent tribunal to decide the matter

If you choose a review, you can still go to the tribunal if you are not satisfied with the outcome.

If you appeal, you can ask for payment of all or part of the tax in dispute to be postponed until the matter is resolved. If you want to apply for postponement, please tell us the amount of tax that you think you are being overcharged and the reasons why you think you should not have to pay this. We will continue to charge interest on any tax that we postpone. Once the dispute is settled, the interest will be payable if the tax is found to be due.

You can find more information about your appeal and review rights in factsheet HMRC1, ‘HM Revenue and Customs decisions – what to do if you disagree’. You can get this factsheet from our website. Go to [www.gov.uk](http://www.gov.uk) and search for ‘HMRC1’ or phone our orderline on 0300 200 3610.”

10. Mr von Buddenbrock did not write to HMRC within 30 days of the letter of 12 July, ie by 11 August.

11. On 30 August, Mr von Buddenbrock emailed HMRC asking how to make an appeal. HMRC do not have a copy of this email but inferred its existence and contents from HMRC’s reply on 1 September.

12. On 1 September, David Hunt, officer of HMRC, emailed Mr von Buddenbrock to thank him for his email of 30 August and confirm that collection of the tax owed had been postponed for a further 30 days to allow time for an appeal. Mr Hunt also said:

“If you believe the assessment is incorrect please set out why you believe this to be the case. If you have any documentation with regards to the transfer it would be useful if you could also forward copies of this.”

13. Mr von Buddenbrock replied to Mr Hunt by email on 10 October as follows:

“Sorry for the late reply to your email - I have been getting various emails with regard to this case from different organisations/Advisors from the (Pension Ombudsman Service) & didn't realise the difference between the ‘Pension Advisory Service’ & the ‘Pension Ombudsman Service.’

I have also been in contact with a Mr Jaspal Rehal (Pension Advisory Service) so please confirm who is my advisor on this case moving forward?

Please find attached the documentation as requested below.

Please also find attached the email from Jaspal recommending I write to the Pension Holder - Nationwide & the suggested course of action. Please advise if I must continue with his recommendation (letter to Nationwide)?

Please advise if I can assist with anything else?"

14. On 11 January 2017, Mr Hunt emailed Mr von Buddenbrock as follows:

"I previously postponed collection of the assessment raised in relation to your transfer to Danica to give you the opportunity to make your appeal. I have still to receive your formal appeal. If you still wish to proceed with an appeal please provide this within the next thirty days. I am unable to leave the assessment informally stood over indefinitely, therefore I will have to release the charge for collection in the absence of your formal appeal."

15. On 9 February, Mr von Buddenbrock emailed Mr Hunt to confirm he had submitted a complaint to Nationwide and the Pensions Ombudsman Service regarding the release of funds to a non-recognised QROPS. Mr von Buddenbrock attached a copy of his letter and asked "What other action is required from me to formally register this complaint?"

16. On 10 February, Mr Hunt replied to Mr von Buddenbrock by email as follows:

"I am afraid I cannot advise with regards your complaint to the Pension Ombudsman Service. If you have any queries regarding this you will need to contact them direct.

If you are still looking to continue your appeal against the assessment, what HMRC needs from you is your formal appeal against the assessment which sets out why you believe the assessment is incorrect. Should you wish to do this please provide this as soon as possible and send it to me."

17. Mr von Buddenbrock responded by email almost immediately, saying:

"Thanks for your reply – Sorry but I don't understand what I need to send you as formal complaint – was the attached form yesterday for the Pension Ombudsman Service?

How do I log a formal complaint with HMRC?"

18. Mr Hunt replied by email within the hour as follows:

"The Pension Ombudsman is completely separate to HMRC.

If you simply do not agree with the assessment that has been made you need to make an appeal against the assessment as advised previously. You need to put this in writing and you need to set out why you believe the assessment is incorrect. We will then consider this and respond. If you do not agree with any decision we make you can then ask for an independent review of your case or take the case to tribunal. We would advise you of your options, should it be appropriate when we respond to your appeal.

If in addition to appealing the charge you also wish to make a complaint about anything HMRC has done you can include this in your letter.

If you wish you can attach your appeal/letter to an appeal and send it to me."

19. Unfortunately, nothing further happened for more than a year. On 4 July 2018, Mr von Buddenbrock replied to Mr Hunt's email of 10 February 2017 simply saying "Many thanks & kind regards".

20. On 31 January 2020 the South African Revenue Service sent a letter to Mr von Buddenbrock saying that they had received a request for assistance, dated 27 January, from HMRC for the collection of outstanding taxes in the sum of £15,638. It is not known what reply, if any, Mr von Buddenbrock made to the South African Revenue Service.

21. On 10 March, Mr von Buddenbrock's then accountant in South Africa, M & Y Accounting Services, sent a letter to HMRC. It is not clear to whom in HMRC the letter was sent or how (there is no postal or email address) and HMRC have no record of receiving the letter. However, HMRC accept that the letter was a notice in writing of an appeal and that 10 March 2020 is the date on which Mr von Buddenbrock gave notice.

22. In the letter, M & Y Accounting Services objected to the assessment on Mr von Buddenbrock's behalf. The grounds for the objection were as follows:

“Danica was still an exiting [sic] QROPS member during the time the client signed on forms, he was provided evidence that Danica was a recognized pension scheme, and transaction occurred prior to 29/06/2011, when Danica was removed from the QROPS list. Therefore, taxpayer acted on due diligence at time of contract and was not aware of any unauthorized transactions. Tax liability should be claimed from Danica through Nationwide and Windsor Pensions.”

23. Unfortunately for Mr von Buddenbrock, the grounds of objection were based on a fundamental misconception which should have been clear from M & Y Accounting Services' own letter. The letter stated that Danica was removed from the QROPS list on 29 June 2011. It also stated that the forms for the transfer were signed on 20 April 2012 and the actual transfer of funds took place on 5 May 2012. It is clear, therefore, that the statements in the grounds that Danica was still a QROPS at the time of Mr von Buddenbrock signed the forms and the transfer took place before 29 June 2011 were both factually incorrect.

24. On 30 July 2020, the South African Revenue Service wrote to HMRC debt management to advise them that Mr von Buddenbrock objected to the assessment and attached the letter dated 10 March 2020 from M & Y Accounting Services.

25. There was then a gap in activity on the file until 16 July 2021 when the debt management team emailed Mr Hunt regarding correspondence between themselves and the South African tax authority. Mr Hunt requested a copy of the correspondence and confirmed there was no ongoing appeal.

26. A further pause in activity occurred until November 2022 when the late appeal was passed to James Shea, officer of HMRC. On 11 November 2022, Mr Shea sent a letter to Mr von Buddenbrock in South Africa to say that the deadline for submitting an appeal had passed, and that HMRC could only consider an appeal if there were satisfactory reasons for the delay.

27. Some six months later, on 31 May 2023, Mr von Buddenbrock's then accounting and tax adviser, Worldwide Tax Solutions, in South Africa, wrote to HMRC on his behalf to object to the assessment. The letter set out the facts of the matter in the same way as the letter of 10 March 2020 from M & Y Accounting Services. The letter concluded with a paragraph summarising the grounds of objection which was almost word for word the same as that in M & Y Accounting Services' letter quoted at [22] above and based on the same misconception.

28. On 8 June, Worldwide Tax Solutions emailed Mr Shea saying that they would like to submit an appeal on behalf of Mr von Buddenbrock. The email set out the reason why the appeal was late and summarised the grounds of appeal as follows:

“The reason for the late appeal submission is that taxpayer was living in SA during this time, unfortunately our postal services doesn't work in SA

therefore Mr Von Buddenbrock didn't receive any communication from you and was unaware of the current matter on hand. Once he received notice explaining same, he contacted [M & Y Accounting Services] to assist him, and now [M & Y Accounting Services] has asked us to take over the case from [them].

We only receive related correspondence from taxpayer and the South African Revenue Services this week, and immediately investigated case to submit our appeal accordingly. As you can see from our findings that we have sufficient proof to and believe that Danica was still an existing QROPS member during the time the client signed on forms, he was provided evidence that Danica was a recognized pension scheme, and transaction occurred prior to 29/06/2011, when Danica was removed from the QROPS list. Therefore, the taxpayer acted on due diligence at time of contract and was not aware of any unauthorized transactions.”

29. The statement that the reason for the late appeal was caused by the poor postal service in South Africa is not credible. As can be seen from the facts stated above, all communications between HMRC and Mr von Buddenbrock between 2016 and 2018 were by email. Further, the final paragraph repeats the factual errors in the earlier letters that the transfer of funds occurred before 29 June 2011 (it occurred in May 2012) and that Danica was still a QROPS at the time of the transfer (it ceased to be listed as a QROPS in June 2011).

30. On 13 June, Mr Shea emailed Worldwide Tax Solutions to say that HMRC were unable to accept the late appeal.

31. Worldwide Tax Solutions emailed Mr Shea on 28 June as follows:

“Please note that we don't agree that the appeal was submitted late

The initial query was submitted in 2017

The South African Revenue Services submitted the official appeal again in 2020

And now we have resubmitted the appeal in 2023

Brett had to perform due diligence to gather all required information from the related parties prior to submission

And had to seek professional assistance in gathering this information and compiling a response from a research on findings

Also take into consideration that in South Africa, the postal services does not work and has been dysfunctional for the past 20 years

Brett only receives postage between 12 to 24 months later

This has caused huge delays in us responding on time

Taking the above into consideration, I feel Brett does have enough grounds for his appeal to be considered on the basis of the findings surrounding the appeal thereto.”

32. The response from Worldwide Tax Solutions does not address why Mr von Buddenbrock did not appeal in 2017 and the repeated reliance on the poor performance of the South African postal service ignores the fact that all relevant correspondence was by email. We also cannot understand the reference to the South African Revenue Service having submitted the official appeal again in 2020. There was no appeal in South Africa. The South African Revenue Service was simply assisting HMRC to collect outstanding tax and interest.

33. On 6 July, Mr Shea replied to Worldwide Tax Solutions to repeat that HMRC did not accept the ground for the late appeal. He pointed out that Mr Hunt had advised Mr von Buddenbrock by email in January 2017 that he had to make an appeal within 30 days and in another email in February 2017 that he could make it by email so the state of the South African postal services should not have been any hindrance.

34. Worldwide Tax Solutions responded on 10 July as follows:

“Please confirm if you received taxpayer’s official complaint in 2017 (done online - copy attached)

This was his last reply to you, understanding that this was an ‘Official Appeal’ & then he never heard back from you - that’s why the long period of no correspondence from 2017 - 2020 as he never received any acknowledgment of his complaint / appeal.”

35. It appears from the email of 10 July, that Worldwide Tax Solutions were not aware of Mr Hunt’s email of 10 February 2017 (see [18] above) Mr von Buddenbrock’s email 4 July 2018 in response (see [19] above).

36. On 12 July, Mr Shea emailed Worldwide Tax Solutions. He pointed out that, in his email of 10 February 2017, Mr Hunt told Mr von Buddenbrock that the Pension Ombudsman Service is completely separate to HMRC and that an appeal had to be made to HMRC. On the same day, Worldwide Tax Solutions replied as follows:

“I have discussed this with Mr von Buddenbrock and he asked if there’s any other route for him to take to appeal to this matter as he doesn’t believe he is liable for the taxes due.

When Mr von Buddenbrock was requesting Mr David Hunt’s assistance, he thought it was part of the appeal process.

He was under the impression that lodging a formal complaint was the same as Lodging an Appeal.”

37. Mr Shea replied on 13 July, setting out how Mr von Buddenbrock could apply to the FTT for permission to give notice of an appeal late.

38. On 14 July, Worldwide Tax Solutions filed a notice of appeal with the FTT on behalf of Mr von Buddenbrock. In the notice of appeal, he said:

-When I was dealing with Mr. David Hunt in 2017, his reply emails never answered my questions directly.

- I was clearly asking for help as I didn't know what was required to submit a ‘Formal Appeal’ as I truly believed that by lodging a ‘Formal Complaint’ I understood this to be the same as an ‘Appeal’

- The other point I would like to make is this ‘all this correspondence (emails in writing) that I was making with Mr. David Hunt - clearly indicates that I was not accepting the assessment made by HMRC’ Is this not an Appeal in its own right?

- After all the email correspondence with Mr. David Hunt - there was never a follow up / any feedback or explanation to my last question, quote ‘How do I log a formal complaint (appeal) with HMRC?’

- All my complaints that I submitted previously to Mr. David Hunt, expressed why I believed that the assessment was incorrect & this is why I thought I had Appealed in writing.

- The lack of a final reminder or follow up (from HMRC or Mr. David Hunt) lead me to believe that my objection / complaint was the Appeal, which was being considered & now all that was left was to hear back from HMRC, not knowing how long this process would take.
- The next time I had any feedback was in 2020 (February) when SARS notified me that there was an outstanding issue with HMRC & that SARS could collect/ act on behalf of HMRC collect any outstanding tax (penalties).
- My tax consultant (Shirley McAlister from M & Y Accounting) made another Appeal on my behalf through SARS. (10/March/2020)
- Following on from this Shirley then referred me to Worldwide Tax who made a direct Appeal with HMRC (2023)
- This unresolved ongoing situation from 2017 has caused me extreme stress & anxiety for more than 6 years now. I cannot take this any longer. Many times, I have felt severely depressed & have not known who I can turn to for help. This depression has also been an underlying factor which contributed towards my wife separating from me which eventually ended in divorce. I've even considered more life threatening measures as I cannot cope with this potentially financially crippling situation.

## DISCUSSION

39. The only issue is whether Mr Buddenbrock should be permitted to give notice of his appeal against the assessment issued in July 2016 in March 2020, some three and a half years after the time limit for doing so had passed.

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

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

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

41. In deciding whether to give permission for the Appellant to make late appeals, we apply the three-stage approach in *Martland*. The first stage is to consider the length of the delay in giving notice of appeal and whether the delay was serious and significant. In this case, as stated above, HMRC accept that the first letter from M & Y Accounting Services was a late appeal to HMRC and that the relevant date of the late appeal for the purposes of this application is 10 March 2020. As the time for giving notice of an appeal expired on 11 August 2016, it



follows that the notice was 4 years, 5 months and 1 day (or 1,615 days) late. However, we do not consider that is the correct way to view the delay in this case.

42. We accept that Mr von Buddenbrock did not understand, at least initially, how to appeal. Further, Mr Hunt was sympathetic to that and more than once extended the time to appeal. In summary, detailed information on how to appeal was set out in HMRC's assessment letter dated 12 July 2016 to Mr von Buddenbrock. Notwithstanding the information in the letter, Mr von Buddenbrock asked HMRC how to make an appeal in an email on 30 August 2016. Mr Hunt replied by email the next day, 1 September, telling Mr Buddenbrock to set out why he believed the assessment was incorrect and to forward any documentation relating to the transfer. Mr Hunt granted Mr von Buddenbrock a further 30 days to give him time to appeal, ie until 1 October. Mr von Buddenbrock did not respond to Mr Hunt until 10 October. In his email of that date, Mr von Buddenbrock referred to his dealings with the Pension Advisory Service and the Pension Ombudsman Service and attached some documents but he did not say that he believed the assessment was incorrect. In his email of 11 January 2017, Mr Hunt said that he had not received Mr von Buddenbrock's formal appeal and gave him a further 30 days, ie until 10 February, to provide it. Mr von Buddenbrock clearly understood that was the revised time limit for appealing as there was an exchange of emails between him and Mr Hunt on 9 and 10 February but no appeal. After Mr Hunt's email on 10 February, there was no further communication from Mr von Buddenbrock until 4 July 2018 when he replied to Mr Hunt's email of 10 February 2017 simply saying "Many thanks & kind regards".

43. We consider that 10 February 2017 was the date by which Mr von Buddenbrock had to give notice of his appeal against the assessment dated 12 July 2016. Accordingly, the relevant delay was between 10 February 2017 and 10 March 2020 which was a delay of three years and one month (or 1,124 days). On any view, that was a serious and significant delay in the context of a 30 day period in which to appeal.

44. We move straight to the second stage which is consideration of the reason or reasons for the failure to comply with the time limit. In his notice of appeal, Mr von Buddenbrock said that the appeal was late because, in summary:

- (1) he did not know what was required to submit a formal appeal;
- (2) he believed he had submitted a written appeal to HMRC when he lodged a formal complaint with the Pensions Ombudsman Service;
- (3) the lack of a final reminder or follow up from HMRC led him to believe that his 'objection/complaint' was the appeal, and he was under the impression he was waiting back to hear from HMRC; and
- (4) the postal system in South Africa can cause delays of 12-24 months.

45. At the hearing, Mr von Buddenbrock additionally said that, in South Africa, emails from Government Departments were backed by hard copies sent by post. He did not receive anything in the post from HMRC. He said that he raised things and then it just went quiet and he did not know what to do. Mr von Buddenbrock said that he thought he had made an appeal. He acknowledged that Mr Hunt said that he should write to him but Mr von Buddenbrock said he thought his appeal should go to someone else.

46. We do not accept that Mr von Buddenbrock's explanation for his failure to appeal until 10 March 2020. In our view, the guidance on how to appeal was clearly set out in the assessment letter which also gave details of where further guidance on appealing could be obtained online. Although we have accepted that Mr von Buddenbrock did not understand how to appeal when he first received the assessment, we cannot accept that he did not understand what he was required to do after receiving Mr Hunt's emails between September 2016 and

February 2017. The emails were clear. In particular, the last email on 10 February 2017 left no room for doubt when it said:

“If you simply do not agree with the assessment that has been made you need to make an appeal against the assessment as advised previously. You need to put this in writing and you need to set out why you believe the assessment is in correct. We will then consider this and respond. ...

If you wish you can attach your appeal/letter to an appeal and send it to me.”

47. If Mr von Buddenbrock had still not understood what he was required to do then why did he not ask for further clarification? Yet his only response was his email of 4 July 2018 simply saying “Many thanks & kind regards”. That does not suggest that Mr von Buddenbrock had any questions about how to notify his appeal or believed he had already appealed and was expecting a response from HMRC. In conclusion, we consider that Mr von Buddenbrock did not have any good reason for not notifying his appeal on 10 February 2017 or shortly thereafter.

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

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

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

‘If applications for extensions of time are allowed to develop into disputes about the merits of the substantive appeal, they will occupy a great deal of time and lead to the parties’ incurring substantial costs. In most cases the merits of the appeal will have little to do with whether it is appropriate to grant an extension of time. Only in those cases where the court can see without much investigation that the grounds of appeal are either very strong or very weak will the merits have a significant part to play when it comes to balancing the various factors that have to be considered at stage three of the process. In most cases the court should decline to embark on an investigation of the merits and firmly discourage argument directed to them.’

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

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

49. In considering the prejudice to the parties, 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. This is a case where the delay was at the extreme end of serious and significant. Mr von Buddenbrock has not given a good reason for those delays.

50. Of course, Mr von Buddenbrock will be prejudiced, if we refuse to grant permission to notify the appeals late, in the sense that he will have lost his opportunity to contest the appeal but that assumes that he has a good case. As the UT cautioned in *Martland* at [46], we should be very wary of taking into account evidence which is in dispute, however, that does not appear to be the case here. The case against Mr von Buddenbrock is simply that, in 2102, he transferred funds to Danica at a time when it was not a QROPS. The only ground for challenging that case put forward by Mr von Buddenbrock's representatives was that Mr von Buddenbrock signed the forms and the transfer took place before 29 June 2011 when Danica was still a QROPS. In fact, the documents supplied by Mr von Buddenbrock show that not to be the case. It seems to us that Mr von Buddenbrock's case is weak at best and certainly cannot be described as overwhelmingly strong. In the circumstances, we are unable to give any weight to the merits of Mr von Buddenbrock's appeal.

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

52. In all the circumstances, we consider that it is not appropriate to give permission for Mr von Buddenbrock to notify his appeal late in this case.

#### **DECISION**

53. For the reasons set out above, the Appellant's application for permission to notify the appeal late is refused and, accordingly, the appeal is not admitted.

#### **RIGHT TO APPLY FOR PERMISSION TO APPEAL**

54. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

**Release date: 14<sup>th</sup> FEBRUARY 2025**