Neutral Citation: [2025] UKUT 00309 (TCC)

Case Number: UT/2024/000022

UPPER TRIBUNAL
(Tax and Chancery Chamber)

Rolls Building, London

PROCEDURE – application for permission to make a late appeal in relation to Personal Liability Notice – stage three of approach suggested in Martland v HMRC - whether FTT erred in failing to take account of various relevant factors and to properly identify relevant principles regarding attribution of adviser's failure to those of litigant - no – whether FTT erred in according particular weight to the importance of time limits – yes – decision set aside and remade - appeal dismissed

Heard on: 29 April 2025
Written submissions: 13 and 19 August 2025
Judgment date: 17 September 2025

Before

JUDGE SWAMI RAGHAVAN
JUDGE NICHOLAS PAINES KC

Between

TAJINDER PAWAR

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: David Bedenham KC and Christopher McNall, Counsel, instructed by SP Legal Solutions

For the Respondents: Jenny Goldring, Counsel, instructed by the General Counsel and Solicitor to His Majesty's Revenue and Customs

DECISION

INTRODUCTION

1. This is an appeal against a decision of the First-tier Tribunal (Tax Chamber) ("FTT") in *Tajinder Singh Pawar v HMRC* [2023] UKFTT 81 (TC) ("FTT Decision"). The FTT Decision concerned the Appellant's application for permission to bring a late appeal against an HMRC review decision of 19 November 2018 that had upheld a Penalty Liability Notice made by HMRC on 5 October 2017 under paragraph 19(1) of Schedule 24 Finance Act 2007 ("PLN").

2. The PLN made Mr Pawar personally liable for 100% of a penalty totalling £874,238, which HMRC had imposed on First Stop Wholesale Limited ("the Company"), a company of which Mr Pawar was a director and shareholder, in respect of errors in the Company's VAT returns.

3. Mr Pawar sought to appeal the PLN on 22 February 2022, which it was common ground was 3 years and 2 months after the 30 day statutory deadline for appealing against HMRC's review decision. The FTT, having considered whether to exercise its discretion to permit the appeal to proceed out of time using the three stage approach suggested by the Upper Tribunal in *Martland v HMRC* [2018] UKUT 178 (TCC), dismissed Mr Pawar's late appeal application.

4. With the permission of the Upper Tribunal, Mr Pawar now appeals on the grounds that the FTT erred in law by failing to take into account relevant factors, or by misapplying the relevant legal principles in exercising its discretion to refuse permission for the late appeal to be brought.

5. In their submissions to us the parties referred to the then forthcoming decision of the Upper Tribunal in *Medpro Healthcare Ltd and Kalvinder Ruprai v HMRC* [2025] UKUT 00255 (TCC) *("Medpro UT")*, which was released on 30 July 2025. We invited the parties to make submissions on the effect of that decision on the present appeal and in the light of the decision and those submissions we have decided that we should set aside and remake the FTT's decision in the case before us. Our decision is to refuse permission for a late appeal.

BACKGROUND AND FTT DECISION

6. There is no challenge to the basic factual background which the FTT derived from the documentary evidence before it, which included correspondence between the parties, notices and assessments, and notes of meetings. In this section we set out those of the facts necessary to help understand the Appellant's grounds before us. Unless otherwise stated the paragraph numbering refers to that in the FTT Decision.

7. The FTT found that on 24 September 2014, HMRC assessed the Company to VAT in the sum of £2,642,141 in respect of various VAT accounting periods between 1 June 2010 and 28 February 2014. On 9 January 2015, HMRC issued a penalty assessment to the Company in the sum of £1,256,490.91 which the Company appealed against to the FTT. On 3 February 2015, HMRC issued Mr Pawar with a PLN in the sum of £1,256,490.91, representing 100% of the penalty ([8] to [11]).

8. HMRC also issued an inaccuracy penalty in relation to the Company's corporation tax return which the Company appealed to the FTT against. A PLN was also issued in respect of the corporation tax penalty, although the FTT noted the material before it in relation to corporation tax position being "sketchy in the extreme" ([11], [16] and [78]).

9. The FTT found that much of the VAT assessment, the penalty imposed on the Company, and therefore the PLN, arose from the disallowance of input tax claimed by the Company on invoices addressed not to it, but to Mr Pawar's sole proprietorship ("the Wine Lodge"), which

was VAT registered. The corporation tax liabilities were based on essentially the same VAT investigation by HMRC ([12]). The Appellant had arranged for the Company to make payments on invoices addressed to "The Wine Lodge" in order to benefit from supplier discounts available under his sole proprietor account. He claimed that the goods were actually sold by the Company (which accounted for output tax on the sale) and that he had only acted as agent or nominee in purchasing them ([12]).

10. As explained by the FTT (at [12]):

> "…The Appellant claimed that the goods were actually sold by [the Company] (which accounted for output tax on the sale) and he had only acted as agent or nominee in purchasing them, which was why [the Company] (and not he) had claimed the input tax on their purchase."

11. HMRC accepted that Mr Pawar could reclaim the input VAT under his own registration, provided he issued sales invoices to the Company ([15]).

12. The FTT explained (at [13]) that the Appellant's then accountants had referred in correspondence to a proposal that Mr Pawar would:

> "claim the invoices as mentioned on [Mr Pawar's] personal VAT reference and raise a notional sales invoice to [the Company] for each quarter to the value of £1 in order to meet the requirement that goods purchased for reclaiming VAT must also have a corresponding sale."

13. HMRC responded on 12 March 2015 confirming (as set out at [15]) that:

> "due to the large number of invoices involved, we will exceptionally agree to your proposal to raise a notional sales invoice for each period to [the Company] in order to achieve a tax neutral position. In order for us to deal with your client's claim you may submit a voluntary disclosure i.e. notification to us in writing of the adjustments you have made in relation to the input tax and copies of the corresponding notional sales invoices. Please note that as there is no tax loss, the interest charged on the original assessment that was issued to [the Company] will be inhibited."

14. The FTT also recorded (at [17]) that it had been pointed out "at an early stage" that the proposal needed to be implemented within a statutory four year time limit. (This ran from the relevant VAT periods and there is no dispute that by the time the FTT heard the late appeal application the time for this "corrective action" had long expired).

15. As will be seen, the Appellant's grounds before us highlight HMRC's agreement to the corrective action (the proposal that input tax credit would be claimed in Mr Pawar's VAT with a notional invoice from Mr Pawar to the Company for the supply of goods for consideration of £1) "in order to achieve a tax neutral position". The Appellant also emphasises that HMRC had noted there to be "no tax loss" (though, as we explain below, the corrective action was never taken).

16. Mr Pawar instructed new accountants, Grant Thornton, to act for him personally. The Company went into liquidation shortly afterwards but discussions between Grant Thornton and HMRC continued as to the proposed "corrective action" ([19] and [20]). In June 2016 Grant Thornton prepared 33 pages of schedules, summaries and diagrams covering VAT periods from 08/10 to 08/12 only. A meeting took place between HMRC and Grant Thornton in that month (at [20]).

17. Grant Thornton concluded that £516,087.06 of input VAT was "proper" to the Appellant's personal VAT registration (HMRC had assessed £667,966 in respect of those periods), though the FTT noted that Grant Thornton's analysis did not cover periods after 08/12

(at [22]). It was not clearly explained to the FTT why Grant Thornton's work did not cover subsequent periods. The tribunal noted that for the two subsequent periods 11/12 and 02/13 HMRC had raised assessments totalling £676,859 and penalties totalling £470,604.33 which amounted to more than half of the total penalties subsequently comprised in the PLN which the Appellant seeks permission to appeal ([22]).

18. The FTT recorded, in relation to the meeting in June 2016 that "it appeared that discussions were constructive but "credible evidence" was required to back up the information that had been presented" ([20]). It was not clear to the FTT what happened after that meeting; so far as the Appellant was concerned the next event was on 5 October 2017, when HMRC issued a revised PLN to him, reducing the penalty amount to £874,238 (at [24]–[30]).

19. The FTT noted that the revised PLN included a section outlining the options of review or appeal ([30]). Discussion of the PLN took place in correspondence between Mr Pawar and HMRC in October and November 2017 (at [31]-[34]).

20. Mr Pawar subsequently instructed a new adviser, Mr Christopher Mann of Tiberius Solutions Ltd, and discussions with HMRC continued through 2018, including a face-to-face meeting on 15 March 2018 at which it was agreed that the Appellant and Mr Mann would go away to discuss the quantum of the assessment and revert to HMRC ([36]). Between April and June 2018 Mr Mann raised issues concerning the lawfulness of the penalty, which he said was a more pressing issue, and added that the exercise of reviewing the assessment had not been started ([38-40]) The FTT found that by August 2018 the parties had "taken up entrenched positions" ([42]). However, HMRC agreed to carry out a statutory review of the decision to impose the PLN ([43]).

21. A review conclusion letter upholding the PLN was issued to the Appellant on 19 November 2018; it upheld HMRC's earlier decision in full and concluded with a section referring to the possibility of an appeal to the tribunal and the 30-day deadline for doing so (at [44]–[45]). (This is the decision in respect of which the FTT refused permission for a late appeal; the subject of the appeal before us.) The letter also indicated in an earlier section that responsibility for the matter had reverted to the previous HMRC officer (a passage which Mr Mann later seized on when writing to HMRC on 1 May 2019).

22. The FTT then summarised the events from 19 November 2018 (when the PLN was notified to Mr Pawar) through to 22 February 2022 (when the appeal was eventually notified by him to the FTT ([46]–[51]).

23. The only evidence before the FTT of communication between Mr Mann and HMRC in this period consisted of an email dated 1 May 2019 in which Mr Mann wrote to officer Joanne Jones of HMRC stating:

> "further to the 19 November 2019 letter which stated that the responsibility for this matter had reverted back to you. Our client is still waiting to hear from you regarding the next steps available for resolving this matter."

24. On 30 May 2019, the Company's liquidators confirmed the Company's withdrawal of the Company's appeals, following which it appears the PLN was released for collection. The FTT noted that Mr Pawar replied to HMRC letters of 12 December 2019 and 12 March 2020 warning of possible bankruptcy proceedings and referred to a phone call made by him to HMRC on 17 April 2020 which it accepted "at least show[ed] some further engagement by the Appellant" at that time. In May 2021 a different HMRC officer invited the Appellant to contact her to discuss the matter, but there was no evidence before the FTT of any response from the Appellant ([49]).

25. The next piece of evidence before the FTT was of the issue of a statutory demand dated 24 January 2022 addressed to the Appellant for the recovery of over £1.1 million in respect of various tax liabilities (which the FTT presumed included the £874,238 from the October 2017 PLN) ([50]). There followed "a flurry of activity" including the submission of the late appeal to the FTT on 22 February 2022 ([51]).

26. The oral hearing in relation to Mr Pawar's late PLN appeal application took place before the FTT on 6 January 2023.

The FTT's reasoning

27. It was agreed before the FTT that s83G(6) Value Added Tax Act 1994 gave the FTT the discretion to give permission for the appeal to be made outside the 30 day time limit, and that in exercising that discretion the FTT should apply the three-stage test set out in *Martland v HMRC* [2018] UKUT 178 (TCC). That required the FTT, in summary, to 1) establish the length of the delay and whether it was serious and significant, 2) establish the reasons for the default, and 3) evaluate all the circumstances of the case, which involved balancing the merits of the reason given for the delay, and any prejudice in granting or refusing the application, taking 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.

28. In relation to Stage 1, the FTT found the delay was approximately 38 months ([65]).

29. In relation to Stage 2, the FTT recorded the Appellant's argument that he had relied on his advisers, particularly Mr Mann, and had not been advised of the need to appeal the review conclusion. He believed an agreement in principle had been reached in March 2015 and only needed implementation ([54]).

30. The FTT recorded (at [61]) HMRC's response, citing the Upper Tribunal's comment in *HMRC v Katib* [2019] 0189 UKUT (TCC) at [54] of that decision that:

> "…failures by a litigant's adviser should generally be treated as failures by a litigant."

31. The FTT accepted that the Appellant had not been specifically advised by Mr Mann of the need to notify the appeal to the FTT, stating (at [67]):

> "No doubt, if he had been advised of the crucial need for this, an appeal would have been duly notified."

32. The FTT also accepted that the Appellant believed a settlement had been agreed in principle. However, it rejected the argument that the need to appeal was unclear or that HMRC was at fault. The tribunal found that while HMRC may have contributed to a "muddle," this ceased to be relevant once the review conclusion letter was issued in November 2018, which "brought clarity to HMRC's position." ([68]).

33. The FTT went on to conclude in that paragraph that the main reason for the delay was the Appellant's:

> "…wilful disregard (in the hope that the matter would simply "go away" if it were ignored), inattention, or an assumption that it would all be sorted out satisfactorily without further involvement on his part."

34. In relation to Stage 3, the FTT set out its evaluation all the circumstances in the section of its decision at [69] through to [79].

35. It did so having earlier recorded the Appellant's submissions that HMRC had recognised the PLN was excessive, that the amount would likely force him into bankruptcy, and that since the corporation tax PLN was still in time to be appealed and arose from the same facts, there was no prejudice to HMRC in addressing the VAT PLN appeal (at [55]).

36. Given the focus of the Appellant's challenge to the FTT Decision on the FTT's analysis at Stage 3, and it is a matter of dispute exactly what the FTT's reasoning covered, it is helpful to see this part of the FTT Decision in full. Under the heading "Stage 3 – overall evaluation" the FTT explained:

> "69. I turn now to my overall evaluation of the circumstances of the case, balancing the merits of the reasons for the delay with the overall prejudice caused to the parties by granting or refusing permission. In doing so, I take into account the particular importance of the need for litigation to be conducted efficiently and at proportionate cost, and for statutory time limits to be respected.
>
> 70. I do not find any of the reasons for the delay set out above to have any significant merit, for the following reasons.
>
> 71. Having been issued personally with a review conclusion letter which clearly stated HMRC's position after the lengthy history and which specifically advised the Appellant of the need to appeal to the Tribunal within 30 days if he disagreed, there would need to be a good reason why it was appropriate for the Appellant effectively to ignore this deadline.
>
> 72. There was no evidence before us as to any interaction between the Appellant and his then adviser in relation to HMRC's review conclusion letter. It is not known whether he even spoke to his adviser about it. The review conclusion letter contained a clear statement of the Appellant's appeal rights if he disagreed with the conclusion. I do not consider that the Appellant can fairly claim that his adviser's failure to tell him he should appeal can be relied on as giving him a good reason for not doing so, even without regard to the Upper Tribunal's statements in *Katib* set out at [61] above.
>
> 73. I reject any suggestion that wilful disregard or inattention good [*sic*] be regarded as good reasons for delay on the Appellant's part.
>
> 74. That leaves the question of whether an assumption on the part of the Appellant that matters would all be sorted out satisfactorily without his further involvement can be regarded as constituting a good reason for the delay on his part in notifying his appeal.
>
> 75. This reason must be considered against the background of what steps the Appellant actually took in response to the review conclusion letter of November 2018. On the evidence before me, there was precisely no action taken by him or on his behalf until 1 May 2019, at which point there was one very short email from his adviser which sought to put the ball back in HMRC's court in terms of progressing matters, when in fact it was squarely in the Appellant's court (having been there since at least December 2015, as confirmed by HMRC as recently as June 2018). Nor did the Appellant or his adviser follow up that email when no substantive reply was received (whether or not, as HMRC denied, the email ever reached officer Jones).
>
> 76. Obviously an evaluation of the overall circumstances of the case requires consideration of the prejudice potentially suffered by both parties as a result of the granting or denying of permission.
>
> 77. Mr McNall argued that the prejudice to the Appellant if permission were denied would be extreme. He would likely be made bankrupt, and he would

> lose the chance to dispute a penalty liability of nearly £875,000 when there were strong indications in the history of the matter that this would be significantly more than the amount that might be justified after proper investigation. He would also lose the opportunity to argue that the "reduced" PLN was technically invalid.
>
> 78. So far as HMRC are concerned, the prejudice if permission were granted for a late appeal would be that they would have to devote resources to re-examining matters that they had long considered closed, in a situation where the Appellant had not availed himself for a period of several years of the opportunities that had been offered to him to make good his claims as to the massively exaggerated size of the penalties. It is said that HMRC will be required to examine effectively the same matters in any event in connection with a corporation tax penalty PLN which is also outstanding against the Appellant, in relation to which it is said he can still notify an "in time" appeal to the Tribunal. Whether or not that is the case, the material before me in relation to the corporation tax position was sketchy in the extreme, and in the circumstances I do not feel this factor can carry significant weight in my overall evaluation.
>
> 79. It is clear that the prejudice to the Appellant if permission is refused will potentially be very great. But this is common to all such cases. Given (a) that permission should not be granted unless the Appellant discharges the burden of satisfying the Tribunal that it should be, (b) the particular importance of the need for statutory time limits to be respected, and (c) what I consider to be the lack of any good reason for the delay, the balancing exercise I am required to carry out clearly militates against granting permission."

37. Following the oral hearing of the late appeal in relation to the VAT PLN, Mr Pawar's appeal against the corporation tax PLN was filed on 17 February 2023. On 4 June 2024, HMRC gave notice to the First-tier Tribunal that they were withdrawing from the corporation tax PLN appeal (in other words that they were no longer resisting the appeal).

GROUNDS OF APPEAL

38. The Appellant was granted permission by the Upper Tribunal (Judge Cannan) to advance three specified grounds. These are that the FTT failed to take account of various factors which individually or together would have weighed heavily in favour of granting the application, namely:

(1) That HMRC had fairly identified in 2015 that the way in which the relevant supplies had been treated by the Company and Mr Pawar meant that there was no tax loss to HMRC. There had been an agreement in 2015 that if Mr Pawar took corrective action then the VAT assessment supporting the VAT PLN would be reduced to nil, or at least significantly reduced. Further, HMRC had accepted the existence of this agreement in 2018 at [24] of their statement of case in the Company's appeal against the underlying VAT assessments, before that appeal was withdrawn by the liquidator.

(2) That the PLN of £874,238 was likely to force Mr Pawar into bankruptcy.

(3) The failings of Mr Pawar's adviser. In particular the FTT failed to recognise there were exceptions to the general rule in *Katib* (that a failure by an adviser was attributed to the client).

39. In relation to Ground 1 Judge Cannan mentioned that Mr Pawar also sought to rely on the fact that HMRC had withdrawn from resisting an appeal relating to the corporation tax PLN, which was based in effect on the same inaccuracy. He observed that this was "a new fact which was not available to the FTT" as it had post-dated the FTT's decision. Judge Cannan

considered it arguable that it was a relevant factor but made it clear that the issue of whether Mr Pawar should be granted permission to rely on new evidence was a matter for this tribunal.

40. We bear in mind that we can only interfere with the FTT's decision if we find that it involved an error of law. Before moving on to address the suggested errors of law, we note that Mr Bedenham KC, who appeared alongside Mr McNall for the Appellant, helpfully clarified that the Appellant's case was put in terms of the FTT failing to take account of relevant factors as opposed to a challenge to the particular weight put on them by the FTT when balancing the factors. (As explained by the Upper Tribunal in *WM Morrison Supermarkets PLC v HMRC* [2023] UKUT 20 (TCC) at [45], a challenge to the evaluation or balancing of the factors would only amount to an error of law if perverse and that is not a challenge the Appellant brings, or has permission to bring).

41. As we have indicated at [5] above we have decided to set aside and remake the FTT's decision in consequence of the Upper Tribunal's subsequent decision in *Medpro UT*. We consider that we should deal with the original grounds of appeal before turning to the new ground based on *Medpro UT.*

GROUND 1 FAILURE TO CONSIDER MERITS AND CORRECTIVE ACTION

42. Under this ground, it is argued that the FTT erred by failing to take into account two key matters: (1) that there had (as HMRC had accepted) been no loss of tax and, moreover, "corrective action" could have been taken to regularise the VAT position by re-routing the VAT supplies so as to accord with the VAT returns; and (2) the strength of Mr Pawar's appeal, particularly in view of the availability and effect of such corrective action. Mr Bedenham accepted that there was some overlap between the two limbs of this ground; his submission was that in the light of the first limb any inaccuracy in the returns could not be characterised as "deliberate" so as to justify a PLN.

43. His written and oral submissions emphasised that the FTT had erred in failing even to consider the merits of Mr Pawar's appeal as part of the stage three balancing exercise. The appeal had obvious strength in that the burden would be on HMRC to prove that the inaccuracy in the Company's VAT return was "deliberate". That was front and centre of the question of the merits of Mr Pawar's claim. The relevant legislative provision (paragraph 19(1) of schedule 24 to the Finance Act 2007) applies "Where a penalty under paragraph 1 [*the inaccuracy penalty*] is payable by a company for a deliberate inaccuracy which was attributable to an officer of the company …". The legislation makes it clear that the officer's liability only arises where the relevant inaccuracy is a deliberate inaccuracy attributable to the officer.

44. Mr Bedenham complains that the FTT did not even refer to these provisions, as might have been expected given their central importance to any assessment of the merits of the dispute. That the Appellant's case was strong was revealed by the inconsistency in HMRC's position between their acceptance that there had been no loss of tax and that corrective action could be taken, while on the other, maintaining that the inaccuracies were deliberate on Mr Pawar's part. He also argued that the logical inference from HMRC having withdrawn from the corporation tax penalty was that HMRC could not meet the burden of proof on the balance of probabilities, and that the same reasoning should apply to the VAT penalty. HMRC submit the FTT did consider the merits appropriately and without error. It also did consider specifically the Appellant's arguments regarding the corrective action. It rejected those arguments as a good reason for the delay (at [70] and [74] to [75] of the FTT Decision). The corrective action was dependent on the provision of further information and that information was not provided. HMRC submit that by rejecting the "corrective action" argument as a good reason for the delay the FTT was plainly also rejecting the point that the possibility of corrective action meant the

Appellant's case had strength. No deal on corrective active could have been reached when the information the deal was dependent on had not been provided.

Discussion on Ground 1

45. As regards the relevant legal principles, there is no dispute that the obvious strength of the underlying appeal in respect of which the application to bring a late appeal is something which can properly be taken into account at Stage 3 of *Martland* (as is clear from [44] et seq of that decision which in turn cited *R (oao) Hysaj v SSHD* [2014] EWCA Civ 1633, which the FTT referred to at [52])).

46. It is worth recalling the further guidance the Upper Tribunal in *Martland* gave at [46] of that decision (also referred to by the FTT at [52]) that in taking account of all relevant factors: "the FTT can have regard to any obvious strength or weakness of the applicant's case…" noting that "..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".

47. The Upper Tribunal cautioned that "It is important however that this should not descend into a detailed analysis of the underlying merits of the appeal". The UT quoted from Moore-Bick LJ's judgment in *Hysaj* which explained that it was:

> "…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".

48. The FTT was thus not required to conduct a detailed merits assessment but to consider whether the merits were obviously strong or obviously weak.

49. It is true the FTT did not explicitly say it had evaluated the merits of the case. Nevertheless, from the wider context of the decision, the FTT's self-direction by reference to the extracts from *Martland* quoting *Hysaj*, and its summary of the parties' arguments, we are satisfied the FTT had the issue of merits in mind. It had recorded Mr McNall's submission at [77] regarding the prejudice of losing the chance to dispute a significant penalty liability and similarly recorded HMRC's submission at [78] (consistent with the Tribunal's earlier view at [42]) to the effect the merits were weak insofar as the Appellant had not taken advantage of the various opportunities that HMRC had given to make good his claims about the amounts HMRC sought to charge in penalties.

50. Therefore, to the extent that there was any error, it was the error of failing to state that the FTT was considering the merits rather than a failure to actually consider those.

51. In seeking to persuade us that the merits were obviously strong, Mr Bedenham focussed on the need for HMRC to show that the inaccuracy was "deliberate" and the supposed inconsistency between that and HMRC's stance on tax loss and corrective action. The first point we note is that there was nothing to suggest to us that this point was raised before the FTT. It is not referred to in the application for permission (which refers to HMRC's agreement as to corrective action and the absence of a tax loss, but does not advance an argument that the inaccuracy was not deliberate) nor in Mr McNall's skeleton argument or in the FTT's summary of the arguments; and Ms Goldring, who appeared for HMRC before the FTT, told us that the point was not raised there. Given that the Appellant accepted responsibility for the relevant VAT returns, and accepted that they were inaccurate, if he disputed that the inaccuracy was deliberate he might have been expected to say so. Without the point having been expressly

raised, it could only be an error of law for the FTT to fail to deal with it if it leapt from the evidence as an obviously significant point.

52. The only evidence before the FTT as to the Appellant's state of mind in relation to the Company's VAT returns was contained in a witness statement made by the Appellant in February 2022 in connection with an application to set aside a statutory demand that had been served on him in relation to the PLN.

53. In that witness statement the Appellant explains that he had a retail business in his own name which had accounts with suppliers on favourable terms and that he placed orders with them on behalf of the Company but in his own name and using his own VAT number. The Company then paid the suppliers directly, benefiting from the favourable terms. He goes on to say that he believed the Company's tax affairs were in good order and that the VAT assessments and penalty came as a complete surprise to him, and refers to it "subsequently transpiring" that the procedure he had followed was incorrect.

54. As regards the meaning of the term "deliberate inaccuracy", Mr Bedenham referred us to the decision of the Supreme Court in *HMRC v Tooth* [2021] UKSC 17, in which the Court concluded (at [47]) that "for there to be a deliberate inaccuracy in a document … there will have to be demonstrated an intention to mislead the Revenue on the part of the taxpayer as to the truth of the relevant statement". The relevant question is therefore whether Mr Pawar intended to mislead HMRC by claiming input tax on invoices that were in his own name but which he was treating as the Company's input tax. His witness statement is at best unspecific on this.

55. The fact that an inaccuracy could be corrected does not preclude it being deliberate. The fact that the inaccuracy could be cured by re-routing the invoicing would not alter the fact that the returns were inaccurate at the time they were made nor exclude the possibility that the Appellant knew this and that the inaccuracy was deliberate.

56. Moreover, as Ms Goldring pointed out, HMRC made clear they did not accept the evidence in the Appellant's witness statement. Following receipt of the Appellant's skeleton argument on 3 January 2023, HMRC had, on 4 January 2023, e-mailed the FTT (copying the Appellant) stating that they did not accept the evidence.

57. None of the above accordingly points to Mr Pawar having a case that was obviously strong. Much would depend on what the FTT hearing any substantive appeal would make of his evidence. It is difficult however to see how the FTT could have got any further in its analysis than it did, even with detailed investigation, and if it were to do so it would be going against the established case-law guidance not to do precisely that.

58. There was also, in our view, no error arising in relation to a failure to consider the relevance of HMRC having previously agreed to corrective action.

59. As discussed above (see [14]) there was no question of the corrective action being directly relevant as it was out of time. While the FTT did not consider corrective action in relation to the merits, it cannot be criticised for failing to do so, as the point was not advanced in that context. The corrective action was put forward to support the Appellant having a good reason for the delay and the FTT clearly addressed that (at [54] and [68]).

60. As for HMRC's withdrawal of their defence of the corporation tax penalty appeal, Mr Bedenham fairly and correctly accepted that this could not be relevant to whether the FTT had erred in its decision, as the withdrawal occurred after the FTT's decision. Mr Bedenham clarified the point was raised in advancing the Appellant's case in the event the FTT's decision fell to be remade and we accordingly deal with it in that context.

61. Moreover to the extent any argument was made that the merits were strong because there was "no tax loss" because input tax could have been claimed then that is undermined not only by the fact the four-year time limit that applied for such corrective action to be taken (which the FTT noted at [17]) had expired but also by the findings that Grant Thornton had identified that there were other reasons underlying the disputed amount in respect of which despite Grant Thornton's disclosure of further detail had not been backed up by "credible evidence" from HMRC's point of view. Other sums not within scope of the corrective action were therefore clearly in dispute too and there was nothing to suggest the FTT would have been able to determine, without descending into to the detail, which way that dispute should be resolved.

62. In summary it cannot be said the merits were obviously strong. There was accordingly nothing to suggest that the FTT erred by failing to consider that the merits were obviously strong and we reject the ground of appeal (Any error in the FTT omitting to state that it had considered the merits, would be plainly immaterial to the outcome and would not be a reason by itself to justify setting aside the FTT Decision).

GROUND 2

FAILURE TO CONSIDER THREAT OF BANKRUPTCY

63. The Appellant contends that the FTT failed to consider the argument that the PLN would force him into bankruptcy when conducting the evaluation of all the circumstances at Stage 3. Although the FTT referred at paragraph [79] to the prejudice being "very great" this cannot have been a reference to the likelihood of bankruptcy, given that the FTT went on to state that that this was "common to all such cases". The threat of bankruptcy is plainly not common to all cases. The Appellant argues that this factor, alone or in combination with others, would have tipped the balance in favour of granting permission for a late appeal.

64. We can deal with this briefly. We agree with Ms Goldring's submission that the FTT did take this matter into account. The only sensible way to read the FTT's acceptance that the prejudice Mr Pawar would suffer would be "very great" is by reference to Mr Pawar's argument that he would likely be made bankrupt if permission was not granted. We cannot imagine that, having mentioned the likelihood of bankruptcy in paragraph [77] of the Decision, the FTT did not have it in mind when it wrote paragraph [79].

65. We thus disagree the wording that follows ("this is common to all cases") indicates the FTT failed to consider the argument regarding the prejudice caused by being made bankrupt. That does leave the issue of what the FTT intended by those words. We agree the wording was inapposite. However all we suspect the FTT was seeking to convey was the wider context to late appeal applications in relation to tax in the FTT and that it was commonplace in late appeals in the tax tribunal that the prejudice of losing the opportunity to litigate over a large amount of tax would result in prejudice and/or that it was not uncommon for such loss of opportunity to litigate such sums to give rise to a threat of bankruptcy.

66. It is also worth noting in passing the observation the Upper Tribunal (Judge Cannan) made when granting permission to appeal, that the FTT's reasoning might have been derived from [60] of *HMRC v Katib* [2019] UKUT 0189 (TCC). In that passage the UT in *Katib* used the terminology of "common feature" when explaining why it did not regard the threat of a person losing their home:

> "…as weighty as the FTT said it was. The core point is that (on the evidence available to the FTT) Mr Katib would suffer hardship if he (in effect) lost the appeal for procedural reasons. However, that again is a common feature which could be propounded by large numbers of appellants, and in the circumstances we do not give it sufficient weight to overcome the difficulties posed by the

> fact that the delays were very significant, and there was no good reason for them."

67. We therefore reject this ground of appeal.

GROUND 3

MISAPPLICATION OF RULE IN *KATIB* REGARDING LITIGANT BEING HELD RESPONSIBLE FOR ADVISER'S FAILINGS

68. Mr McNall, who made submissions on behalf of the Appellant on this ground, argued that the FTT erred at Stage 3 by failing to direct itself correctly in relation to the principles set out in *Katib* regarding whether a litigant should be fixed with the failings of their adviser.

69. While it is acknowledged the FTT referred to [54] of *Katib* (when setting out HMRC's submissions) to the effect that "when considering applications for permission to make a late appeal, failures by a litigant's adviser should generally be treated as failures by the litigant", it was argued that the FTT dealt with the issue in a "pastiche" way and did not acknowledge that exceptions to the general rule were possible (such as being misled by advisers - whether that be by commission or omission). The ultimate question was whether it is fair and just to impose on a litigant the failings of their adviser.

70. Mr McNall thus argued the FTT had made errors of principle, leading to the omission to consider a material factor. On the facts here it was unfair to visit the adviser's failings on Mr Pawar. Regarding such failings, Mr McNall highlighted how, for instance, Mr Mann had wrongly expected the next step to come from HMRC. That was based on a statement towards the end of the review decision letter that responsibility for the matter had reverted back to a named HMRC office but had completely overlooked the concluding paragraph of the letter which made clear that if HMRC's conclusion was not agreed then an appeal could be made to the tribunal. The letter had also specified the 30 day deadline and the consequence that the tribunal might otherwise reject the appeal. Mr Mann had thus misunderstood the import of needing to notify the appeal within the relevant deadline. That was an extremely serious failing for someone instructed to represent a taxpayer. Unlike in *Katib*, Mr McNall submitted there were no "warning signs" regarding Mr Mann's competence and Mr Mann was said to have behaved as one would expect a representative to behave. Mr Mann's engagement (with HMRC as opposed to the FTT) was consistent with Mr Pawar's understanding that a "way forward" had been agreed in principle. Mr McNall also drew attention to the FTT's acceptance that if Mr Pawar had been advised of the appeal deadline no doubt an appeal would have been notified.

71. To the extent the rule was justified by an assumption that the litigant had a remedy in damages, Mr McNall's submissions were that a negligence claim against Mr Mann would be of little value (Mr Mann, he suggested, was a "man of straw") and would also be irrelevant to the prejudice suffered.

Discussion

72. As recorded by the FTT, both parties' submissions referenced the principles discussed in *Katib* regarding attribution of the adviser's failures, either explicitly by reference to *Katib* or implicitly. As mentioned, the FTT noted HMRC's submission in relation to *Katib* (at [61]). It had previously also recorded (at [58]) the Appellant's acceptance that reliance on external advice could not provide a "knockout point" but that the courts could and did take into account the prejudice to a claimant who might be reduced to a claim against their former advisers.

73. However, when it came to the FTT's reasoning it is notable that the FTT, as Ms Goldring's submissions highlighted, specifically stated it was <u>not</u> relying on *Katib* for any general proposition that litigants are always liable for their advisers' failings. This is clear from

the express statement at paragraph [72] of the FTT's decision. As Ms Goldring also noted, the FTT also did not place any reliance on any assumption that Mr Pawar could sue his adviser. The FTT's reasoning was not that Mr Mann's failings were to be attributed to Mr Pawar but in essence that Mr Pawar was responsible for his own failings. He had been issued personally with a review conclusion which had specifically advised him of the need to appeal to the FTT within 30 days if he disagreed.

74. The FTT also noted the lack of evidence as to any interaction between Mr Pawar and his then adviser and that it was not known whether he even spoke to his adviser about it. (The FTT had noted at [72] "There was no evidence before us as to any interaction between the Appellant and his then adviser in relation to HMRC's review conclusion letter. It is not known whether, he even spoke to his adviser about it.") That was despite the Upper Tribunal's guidance in *Katib* (at [49]) advising that in most cases where reliance was placed on an adviser being deficient the appellant "…should expect to provide a full account of exchanges and communications with those advisers".) We also note that Mr Pawar had received a copy of the 1 May 2019 email that Mr Mann had sent HMRC but had not then followed up on that. At some point thereafter, it might reasonably be expected that Mr Pawar ought to have followed up to check the status of the matter. It was not reasonable to leave the issue unresolved for over three years.

75. The FTT's lack of reliance on the general rule in *Katib* is a sufficient answer to the points raised that the FTT misapplied the principle in *Katib* (by failing to have regard to the exceptions) or that it should be read as not applying in situations where the litigant did not have recourse in a negligence claim against the adviser.

76. Mr McNall's submission in response was that the FTT could not "sidestep" *Katib* by placing responsibility on Mr Pawar. The purpose of appointing a representative was to be able to rely on them. The FTT either erred in not treating itself as bound by *Katib*, or, if it did apply it, the reasoning in paragraph [72] did not follow. Mr Pawar, it was said, was "entitled to repose confidence" in his representative. That was what representatives were for. This seems to us to be extending the proposition that there are exceptions to the principle in *Katib* into a proposition that engaging an adviser discharges a litigant from any responsibility. Ms Goldring pointed out that the Appellant had not set out any authority to make good the proposition that a litigant is always entitled to rely on their representative in this way.

77. In fairness we note that in one of the authorities Mr McNall referred us to (*Corbin's* case at [22] (*Corbin v Penfold Metallising Co Ltd* [2000] 4 WLUK 152 referred to in *Tyers* v *Aegis Defence Service (BVI*) *Ltd and others* [2023] EWHC 896 (KB) it was described how the litigant did what a person in his position might be expected to do "which is to go to [their] solicitors, who are apparently efficient and responsible in this areas of work, and left them to get on with it". But in our view that cannot be read as a general proposition that applies across the board irrespective of the particular factual circumstances so as to preclude a tribunal finding that a litigant retained some responsibility even when a representative was instructed. We therefore agree there is no authority for a general proposition that a representative could be relied on in all circumstances. Here the FTT highlighted that the notification letter was sent personally to Mr Pawar. It also highlighted the lack of evidence on his communications, if any, with his adviser.

78. There was thus no error of law regarding the misapplication of *Katib* since the FTT did not rely on the general proposition in *Katib.* Nor was there any error in the FTT placing an independent responsibility on Mr Pawar.

79. That is sufficient to dispose of this ground.

80. It was further contended that strict adherence to the general rule was inconsistent with the "venerable principle" that taxpayers should pay the right amount of tax. It was argued that this principle was relevant to the fairness assessment. However, the point in essence is simply another way of saying the tax amount might be different than the figure the taxpayer is fixed with by virtue of the relevant assessment if permission to make a late appeal is not granted. As Judge Cannan observed when refusing permission in relation to this being raised as a factor, the point adds nothing to the consideration of the prejudice suffered that is already part of the Stage 3 analysis (and we have held above the Appellant's other challenges to such analysis under Grounds 1 and 2 have not succeeded in showing any error of law in the FTT approach to such prejudice).

81. In conclusion we reject this ground of appeal.

82. We ought also to mention that the Appellant sought, in the skeleton argument filed on his behalf on 15 April 2025, to challenge the FTT decision on the basis that the general rule as set out in *Katib* was wrong as a matter of law. It appears this was prompted by a paragraph in the grant of permission decision of 10 September 2024 in *Medpro*, regarding whether the general rule in *Katib* was good law. Before us there was a dispute over whether permission was necessary to run this argument, and if it was, whether it should be granted. HMRC sought to respond in the time available to the challenge in their skeleton argument.

83. Given we have concluded the FTT did not rely on *Katib* we do not need to, and therefore do not, address these arguments.

MEDPRO UT

84. It will be apparent from what we have said that we would not have held that the FTT decision in this case involved an error of law on any of the grounds advanced at the hearing. But we were invited by Mr Bedenham to have regard to the forthcoming decision in *Medpro UT* because of the possibility that it would overturn the "general rule" in *Katib* that "failures by a litigant's adviser should generally be treated as failures by the litigant". On 30 July 2025 the Upper Tribunal (Marcus Smith J and Upper Tribunal Judge Cannan) issued their decision in *Medpro UT* which, like this appeal, concerned the questions of the tribunal's discretion to admit a late appeal under s83G(6) VATA 1994.

85. One of the issues was whether the FTT had been wrong to follow the *Martland* approach (which had applied the approach under CPR 3.9 to relief from sanctions) to such discretion. The UT in *Medpro UT* (UTJ Cannan dissenting) approved the three stage approach set out in paragraph [44] of *Martland* but disapproved of the first sentence of paragraph [45] of the decision, concluding that in construing s83G(6) VATA 1994 no "*ex ante* weight" should be given to the factors set out in CPR 3.9(1(a) and (b) (regarding 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 UT did not criticise the "general rule" in *Katib*, and Mr Bedenham's submissions on *Medpro UT* accept that the decision has affirmed the rule.

86. The Appellant having drawn our attention to the decision, we directed the parties be given the opportunity to make written submissions on its relevance to the appeal before us. Written submissions were accordingly received from the Appellant on 13 August 2025 and from HMRC on 19 August 2025.

87. The Appellant suggests that its appeal, with its focus on Stage 3 is wide enough to encompass the complaint that the FTT wrongly placed undue weight on the need to "comply with statutory time limits" (and if it was not wide enough now seeks permission to include such complaint).

88. The Appellant also suggests that *Medpro UT* makes clear that in each case where the general rule in *Katib* is applied it should nonetheless be explained why it is appropriate not to disapply the rule. It is submitted the FTT failed to properly consider whether the general rule in *Katib* ought to be disapplied and that that was a justiciable error of law.

89. HMRC's submissions argue the point regarding time limits is a new ground and resist permission being granted. They indicate that HMRC are considering whether to apply for permission to appeal in *Medpro UT* and argue that in any case the FTT was entitled to consider the need to respect statutory time limits as part of the balancing exercise even if it was not to give that factor particular weight, and that it might be thought, given the other reasons it mentioned, that the FTT might have reached the same decision even if had not given the point particular weight. In relation to the point made regarding the failure to consider the disapplication of *Katib* HMRC submit that this is in effect the same point that has already been made under Ground 3 that the FTT did not recognise exceptions to the general rule in *Katib.* HMRC reiterate their response that the FTT did not in fact find it necessary to rely on the general rule.

90. In our view the point the Appellant now makes regarding it being legally wrong to give the factor of the need to comply with statutory time limits *ex ante* weight is clearly a new ground of appeal. Permission to appeal was not granted in general terms in respect of the FTT's Stage 3 analysis but in relation to the detailed and specific points covered under Grounds 1 to 3 above. As to whether permission should be granted to argue it now, we consider it should. The point was not one that became reasonably apparent until the Upper Tribunal in *Medpro UT* had issued its decision. It is also a pure point of law concerning whether a generic factor (not dependent on any particular evidence) should be included in the balancing exercise.

91. As to the ground's merits, the position is that there are now two conflicting Upper Tribunal decisions on whether "compliance with time limits" is properly a factor that must be given "*ex ante* weight" in the balancing exercise at Stage 3 of *Martland*. In summary, Marcus Smith J concluded that paragraph [45] of *Martland* was clearly wrong in glossing section 83G of VATA 1994 so as to include the factors contained in the current version of CPR 3.9, which are absent from the statutory test in section 83G. Judge Cannan did not consider *Martland* to be clearly wrong in this respect, concluding that Parliament had envisaged that the Upper Tribunal would give guidance on the exercise of the discretion in section 83G, which could extend to drawing an analogy with the CPR and giving guidance on the weight to be attributed to particular factors.

92. The Appellant submits that as a matter of judicial comity we should follow the decision in *Medpro UT* unless we consider it to be clearly wrong. The difficulty for us here is the existence of two previous decisions of the Upper Tribunal, one of which holds the other to be clearly wrong.

93. We find ourselves unable to conclude that either decision is clearly wrong or, conversely, clearly right. We note that HMRC are contemplating an appeal so it is possible the conflict may be resolved at a higher level, but we cannot delay this decision on that account. In the circumstances, we consider that we should follow *Medpro UT* on the grounds that it is the more recent decision and expressly considers the correctness of the earlier decision.

94. Taking that approach, the FTT (which obviously did not have the benefit of the analysis in *Medpro UT*) erred in so far as it referred at [79] to the particular importance of the need for statutory time limits to be respected. We have sympathy with Ms Goldring's suggestion that the FTT would have reached the same decision even if it had not given particular importance to that factor, but we do not consider that we should simply dismiss the error as not material. The error was in our view material because it might have made a difference to the outcome.

95. We therefore set aside the FTT Decision. We consider, given we have before us a detailed chronology of facts as found by the FTT and the benefit of the witness statement that was before the FTT, that we should remake the decision on the Appellant's late appeal application rather than remit it to the FTT for a further hearing. In remaking the decision we shall follow the three stage approach in *Martland* save that when we perform the balancing exercise at paragraph 44 of *Martland* we shall do so without giving special weight to the "particular importance of the need for litigation to be conducted efficiently and at proportionate cost, and for statutory time limits to be respected".

96. It is agreed between the parties that the Appellant's delay amounts to nearly 3¼ years. Like the FTT, we have very little by way of evidence from the Appellant as to the reasons for the delay. His witness statement contained in the papers was given for other purposes; all that it says about his failure to appeal against the decision of 19 November 2018 is:

> "I was never informed by my advisors at Tiberius that I needed to appeal the decision within 30 days or that this was the best course of action. It appears that my advisors were of the opinion that Mrs. Jones would make first contact following the review response. In line with this Tiberius contacted Mrs. Jones by e-mail dated 1 May 2019 asking for an update and next steps. I have been unable to find any response from Mrs. Jones to this e-mail."

97. In a later paragraph he says:

> "I relied on advice from my advisors Tiberius Solutions who did not advise me of this at the time."

98. As the FTT observed, the Appellant has told us nothing about what he did upon receiving the review decision. We do not know whether he consulted Tiberius Solutions or anyone else. The review conclusion letter states that a copy was being sent to Tiberius Solutions so we infer that Mr Mann also received one. That raises a question as to what if anything Mr Mann did as a result, but the Appellant has not told us the answer. His witness statement merely speculates as to Mr Mann's state of mind on the basis of the email of 1 May 2019. All that he has stated is the negative fact that Mr Mann did not advise him to enter an appeal. Like the FTT, we are prepared to accept that this statement is true, but the Appellant has not told us whether he asked Mr Mann for any advice, or indeed told us anything about whether he had any communications with Mr Mann after the review decision reached him. As the FTT pointed out at [44] and [45], the review conclusion letter asserted that HMRC were defending the VAT assessments upon the Company in the tribunal and were satisfied that the assessments were sound, justified and defendable; it also gave the Appellant notice of his right to appeal and the deadline for doing so. In the absence of any evidence about advice from Mr Mann to the contrary, we consider that it should have been clear to the Appellant that an appeal against the PLN was the only appropriate course if he wished to avoid liability for the penalty.

99. We have taken note of the FTT's findings at [47] to [49] about an attempt by the Appellant in 2019 to become involved, through solicitors, in the Company's appeal against the assessments, and about some communications between the Appellant and HMRC between 2019 and 2020, as well as an offer by HMRC to "discuss the outstanding matter', to which there is no evidence of the Appellant replying. Again, we have no more evidence than the FTT had.

100. On the evidence we are unable to differ from the FTT's conclusion that the reason for the delay is either that the Appellant ignored the review conclusion letter in the hope that the matter would go away, that he did not pay proper attention to it or that he assumed that the issue would be sorted out without his involvement. If that was the Appellant's assumption, we do not consider that it was justified given the terms of the review conclusion letter; even if it

had initially been justified, it ceased to be once the Appellant received the email from HMRC of May 2021 referred to by the FTT at [49]. This said that the writer was now the officer dealing with the Appellant's case and would like to discuss the matter with him at his earliest convenience. The writer asked the Appellant to e-mail or telephone her within the next 7 days but there is no evidence that the Appellant did anything. It seems that it was only the subsequent service upon him of the statutory demand prompted him to seek permission for a late appeal.

101. As regards Mr Mann's failure to advise the Appellant to enter an appeal, it seems to us (as it did to the FTT) that the issue is not so much whether that failure is to be "attributed to" the Appellant as whether it alone (in the absence of any information as to the wider circumstances) gave him a good reason for not appealing. We do not consider that it gave him a good reason for doing nothing, and we have no evidence that he did anything. Even if his knowledge that the review conclusion letter had been copied to Mr Mann justified him in leaving matters to Mr Mann initially, he could reasonably have been expected to contact Mr Mann within a short period to enquire about progress.

102. Turning to Stage 3 of *Martland*, we have to balance an unjustified delay of more than three years with the prejudice caused the Appellant by refusing permission as well as any prejudice caused to HMRC by granting permission. In this connection we have to consider whether we can "see without much investigation that the grounds of appeal are either very strong or very weak" (per *Martland* at [46]).

103. All of the submissions in support of the strength of the appeal relate to the input tax claimed by the Company on the basis of invoices addressed to the Appellant. Mr Bedenham told us in his closing submissions that 43% of the penalty amount related to that input tax, which is broadly consistent with the FTT's findings at [21]-[22]. We have no intimation of any grounds of appeal in relation to the remainder of the penalty. Our conclusions as to the 43% are as follows.

104. As to the "deliberateness" issue, we accept that the implication contained in paragraphs 7 to 9 of the Appellant's witness statement in the insolvency proceedings is that he was acting in good faith in claiming on behalf of the Company input tax that was in fact his own, but a detailed investigation (which we are not equipped to carry out) would be required to establish whether or not he knew that the assertion that the Company was entitled to reclaim the input tax was inaccurate.

105. As to the issues of "no loss of tax" and "corrective action", the corrective action (to which we accept that HMRC had agreed in principle) needed to be taken within four years of the VAT periods in question, the last of which was period 02/13. Without the corrective action, the argument that HMRC had suffered no loss of tax (in that the input VAT wrongly claimed by the Company was balanced by input VAT not claimed by the Appellant personally) would not amount to a defence: see paragraphs 6(5) and 11(2)(b) of Schedule 24 Finance Act 2007.

106. Even without according particular importance to the need for statutory time limits to be respected, we find that the prejudice to the Appellant of not being allowed to pursue an appeal as at the date of his application (22 February 2022) is not sufficiently great as to outweigh more than three years' unjustified delay in making the application. We take into account the risk that enforcement of the PLN may drive the Appellant into bankruptcy. We do not have any information as to the Appellant's financial situation, but the issue here is whether being allowed to pursue the appeal would ultimately enable him to avoid bankruptcy. Our view on that is that the Appellant's prospects of substantially reducing the PLN on appeal are not obviously strong.

107. The prejudice to HMRC of allowing the late appeal was accurately described by the FTT as "that they would have to devote resources to re-examining matters that they had long considered closed, in a situation where the Appellant had not availed himself for a period of

several years of the opportunities that had been offered to him to make good his claims as to the massively exaggerated size of the penalties". We would not have accorded much weight to that if we had thought that the appeal had strong chances of success, but on the facts as we assess them we find it to be a factor supporting our refusal of permission.

108. Mr Bedenham pointed out to the FTT that HMRC would have to go over much the same ground in resisting the Appellant's appeal against the corporation tax penalty. That is no longer the case since HMRC have in effect conceded the corporation tax penalty appeal. The reasons for the withdrawal are unknown to us; Mr Bedenham invoked it as a recognition by HMRC that they were in difficulties upholding their assertion of deliberate inaccuracy.

109. HMRC's stance in relation to the CT penalty appeal seems to us to have been somewhat unsatisfactory; HMRC initially sought to strike out that appeal and, when they were unsuccessful, conceded it. But we do not feel able to draw the inference that Mr Bedenham suggests. There could have been any number of reasons why HMRC did not find it worth their while defending the appeal.

110. Even if the withdrawal amounted to a concession on the issue concerning the invoices that were addressed to Mr Pawar's sole proprietorship rather than the Company, then that was not the entirety of the case and does not obviously explain the withdrawal. Moreover, to the extent the withdrawal from the corporation tax PLN could be taken to indicate that HMRC considered its case on that to be not worth fighting, that in and of itself does not necessarily indicate what the actual merits of the case were.

111. The relevance of HMRC's stance taken in the corporation tax PLN appeal to the merits of the VAT PLN is thus plainly a matter of dispute. As an issue that would not be capable of being resolved without further detailed investigation (which for the reasons already mentioned is discouraged), the mere fact of HMRC's withdrawal could not be taken to indicate the Appellant's VAT PLN appeal had obvious strength

112. Our evaluation of all the circumstances of the case leads us to conclude that permission for the late appeal to be admitted should be refused.

Conclusion

113. Grounds 1 to 3 are dismissed.

114. The further new ground of appeal based on *Medpro UT* is allowed. We accordingly set aside the FTT Decision and remake the decision. Our remade decision, that the late appeal should not be admitted) arrives at the same result however but on the basis of the reasons we have set out above.

115. The Appellant's appeal is dismissed.

JUDGE SWAMI RAGHAVAN
JUDGE NICHOLAS PAINES KC

Release date: 18 September 2025