



Neutral Citation: [2026] UKFTT 01377 (TC)

Case Number: TC 10032

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

[Location/By remote video hearing]

Appeal reference: TC/2025/03530

CUSTOMS DUTY – PROCEDURE - whether late appeal application can be decided whilst hardship application is still pending - scope of appeal – application to amend notice of appeal allowed – permission to make late appeal granted

Heard on: 17 September 2026
Judgment date: 01 October 2026

Before

**TRIBUNAL JUDGE MATTHEW DONMALL
ANN CHRISTIAN**

Between

ANIMAL COMFORT LTD

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS
Respondents

Representation:

For the Appellant: Joshua Stevens of counsel

For the Respondents: Dilpreet Dhanoa of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION

1. The Appellant is a small company that makes cattle cubicles. The present appeal concerns a single import entry of steel pipes (**‘the Goods’**) that was accepted by HMRC on 24 March 2022. In January 2025, HMRC opened a compliance check into the Appellant’s import entries. HMRC concluded that the Goods had been classified to the wrong commodity code, and on 24 March 2025, notified the Appellant of their decision (**‘the Liability Decision’**) that £13,214.82 of import duty was due, plus import VAT, totalling £15,857.78 (**‘the Duty’**). The Appellant told HMRC that there was a quota available, and on 3 April 2025, HMRC advised that “You will need to complete the C285 form and apply for the remission of the debt”. The Appellant duly made such an application (**‘the Remission Application’**), which HMRC refused on 28 April 2025 (**‘the Remission Refusal’**), upheld on statutory review on 4 July 2025 (**‘the Review Conclusion’**). On 5 September 2025, the Appellant issued the present appeal. It recognised that the appeal was out of time, i.e. would need the Tribunal’s permission to be brought (**‘the Late Appeal Application’**). On 23 December 2025, HMRC objected to the lateness of the appeal, and also applied for a strike out on the basis of the appeal having no reasonable prospect of success (**‘the Strike Out Application’**). The present hearing was listed to address the Late Appeal Application and the Strike Out Application.

2. On 8 September 2026, HMRC made a very late application to vacate the hearing (**‘the Vacation Application’**), because HMRC had realised that the Duty had not been paid or deposited, and either it needed to be paid or any hardship application resolved before proceeding to determine either the Late Appeal Application or the Strike Out Application. On 9 September 2026, the Applicant objected to vacation, and also applied for a hardship certificate under s.16(3) of the Finance Act 1994 (**‘the Hardship Application’**). The Tribunal refused to vacate the hearing but directed that HMRC might renew the application at the hearing.

3. Additionally, there is a fundamental dispute between the parties as to what the present appeal is appealing against (**‘the Scope of the Appeal Issue’**). The Appellant’s case is that the appeal was brought against both the Liability Decision and the Remission Refusal. Conversely, HMRC contend that the appeal is limited to an appeal against the Remission Refusal alone. If we decided the Scope of the Appeal issue against the Appellant, the Appellant in the alternative applies to amend the notice of appeal so as to appeal the Liability Decision as well as the Remission Refusal (**‘the Appeal Notice Amendment Application’**).

4. Accordingly, the following issues arose for our determination:

- (1) The Vacation Application: we conclude that the Tribunal can proceed to determine the Late Appeal Application before the Hardship Application is resolved.
- (2) The Scope of the Appeal Issue: we conclude that as it stands the Notice of Appeal does not articulate an appeal against the Liability Decision.
- (3) The Appeal Notice Amendment Application: we allow the application such that the Notice of Appeal is amended to include a late appeal against the Liability Decision and a corresponding late appeal permission application.
- (4) The Late Appeal Applications: we conclude that the balance favours granting permission for the late appeals against both the Liability Decision and the Remission Refusal.

5. In the event, there was not time for HMRC to make their Strike Out Application at the hearing and HMRC did not object to the Tribunal staying that application. At the end of this decision, we briefly address the Strike Out Application and other consequential matters.

6. As a general point, for reasons of proportionality we do not set out below each and every submission of the parties in respect of the issues before us, but we reassure the parties that we have considered them in reaching our decisions.

FACTUAL BACKGROUND

7. There was no witness evidence before us. On the basis of the documentary material, we make the following factual findings by way of background.

8. On 16 March 2022, the Goods entered the UK. The Appellant's agent, George Baker Shipping Ltd (**'George Baker'**) completed the relevant form and specified commodity code 7308 9098 90.

9. On 24 March 2022 at 13.54, HMRC accepted the Goods and identified that £10,791.86 of import VAT was payable, but no customs duty.

10. On 2 May 2023, a further import of pipes (**'the 2023 Goods'**) were accepted by HMRC (**'the May 2023 Importation'**).

11. On 8 January 2025, HMRC Higher Officer Gareth Rist (**'Officer Rist'**) commenced a compliance check of the Appellant's imports and asked for relevant documents.

12. On 16 January 2025, Lucy Swain, the Appellant's office manager, sent various documents by email to Officer Rist.

13. On 27 January 2025, Officer Rist emailed to ask why two imports of galvanised pipes had been declared to different commodity codes.

14. On 28 January 2025, Ms Swain emailed to say that she did not know:

“Entries 7 & 8 – these were both indeed pipes and should have been both under code 73066990 00. Unfortunately, I can shed no light on why the entry 7 was put down on a different code the Supplies in Indian deal with the customs and George Baker deal with the customs this end, Due to the fact that I was not working for the company at that time it is difficult for me to shed any light as to the error. This should have been picked up by George Baker on entry to the uk.”

15. On 7 February 2025, Officer Rist emailed with a right to be heard letter, having identified that the Goods (and also the goods imported in the May 2023 Importation) had been declared on the wrong commodity code, as it should have been 7306 6990 00, leading to a liability to safeguarding duty and related import VAT.

16. There followed from 7 to 12 February 2025 email correspondence between Ms Swain and Officer Rist, in which, among other things, Ms Swain queried the code as the proposed code was for non-circular cross-section and questioned the liability for duty as all the items were used for agriculture, and Officer Rist referred the question to another tariff classification team in HMRC.

17. On 17 February 2025, Ms Swain emailed George Baker raising the fact that the wrong commodity codes had been used, and on 18 February 2025 she forwarded an HMRC email saying “In all honesty I do not know where to go from here!”.

18. On 24 February 2025, Ms Swain chased for an answer from HMRC, and Officer Rist responded saying he had not heard back.

19. On 14 March 2025, Officer Rist emailed with a few questions in relation to the pipes, to which Ms Swain replied the same day.

20. On 18 March 2025, Officer Rist emailed with further questions from the classification team about the pipes, to which Ms Swain replied that day. She also chased for a resolution as “we are a small company trying to keep going and have lots of orders which we are unable to full fill due to length of time taken over this matter.”

21. On 24 March 2025, Officer Rist sent by email the Liability Decision. The Liability Decision classified the Goods and the 2023 Goods to a different commodity code to that proposed in the right to be heard letter of 7 February 2025, being 7306 3072 80. It stated £13,214.82 of import duty was due, plus import VAT, totalling £15,857.78 in respect of the Goods. There was also import duty and associated VAT due in respect of the 2023 Goods. The Liability Decision stated:

What to do if you disagree

I’m now offering you a review of my decision.

You can (either):

- accept my offer of a review
- appeal to an independent tribunal

If you want to do either of these, you must do so within 30 days of the date of this letter.

If you appeal to a tribunal, you can’t accept my offer of a review.

Most disputes can be resolved by a review, without the need to appeal to a tribunal. You may find that a review is quicker and costs you less than appealing to a tribunal.

22. On 25 March 2025, Ms Swain emailed George Baker asking advice on how to proceed. George Baker wrote back as follows:

It’s difficult to judge the current situation without seeing correspondence between yourselves and HMRC. From reading the HMRC letters and your previous emails, it seems you have only queried the commodity code classification. Do you agree with the classification as it stands (7306307280), if not I suggest you push back on take the steps to appeal as set out in the decision letter.

If you do accept commodity code 7306307280 and or feel that all steps have been exhausted to fight this then I suggest you take the steps as advised in my previous email from 18/02/2025, which is attached. Please note the original “correct” classification from HMRC was 7306699000 but has subsequently been updated to 7306307280 on the most recent correspondence, as such I have redrafted the below to take this into account:

Dear Gareth,

Thank you for your email dated 24/03/2025 and the attached information provided.

With regards entries 23GB4TGZX3Y20YVARI and 071-103326W-16/03/2022 we accepted that the goods were incorrectly declared under commodity code 7308909890, we are looking into how this happened and will ensure that in future this doesn’t happen again. We accept that the correct classification is 7306307280, however as the goods were of India origin, it is appropriate to use quota number 058912, which

reduces safeguarding duty to 0.00%. Based on this, no additional safeguarding duty or additional VAT should be calculated. As such I please ask that you review your schedule to take this into account.

Kinds Regards

Lucy

If HMRC accept this argument, then on the two entries no additional safeguarding duty or VAT is payable and it should be removed from the schedule. It is possible that they may reject the use of Quota at this point and ask that the amount is still paid, in which case, after payment to HMRC we can lodge an amendment to reclaim the duty based on quota being applicable, please note this would then be in the hands of HMRC to approve and we cannot guarantee this would be successful.

23. Later on 25 March 2025, Ms Swain sent Officer Rist the email as drafted by George Baker.

24. On 27 March 2025, Officer Rist responded “I have emailed the relevant department in order to establish if there is Quota left, how you would / if you can claim this 3 years post entry and to clarify the procedure.”

25. On 31 March 2025, the HMRC C18 Team sent the Appellant a C18 Post Clearance Demand Note for the Duty in respect of the Goods.

26. On 1 April 2025, Officer Rist emailed stating:

I’ve made some enquires.

You will need to pay the demand notices issued to you and then make an application for retrospective quota by completing the C285 form.

The application will then be reviewed by the appropriate team.

27. Also on 1 April 2025, Ms Swain emailed George Baker: “Sorry to put this your way but we do not have that sum of money, what can we do please.”

28. On 3 April 2025, Ms Swain emailed Officer Rist accepting the commodity code which HMRC had notified in the Liability Decision, but stating that quota number 058912 reduced the duty to 0% and was available at the time as per a screenshot of the quota as it stood at the time of entry in March 2022. She stated further:

We have received your demand notice, but unfortunately our company would not be able to sustain itself if the proposed payment to yourselves was implemented as at present we are running at a loss due to the downturn in the agricultural market.

Due to the quota being available for both entries at the time of clearance we please ask that you take into consideration that safeguarding duty would not be applicable, and you do not proceed with the demand notice due to the financial hardship this would place upon our company for the reasons advised above.

I do hope that the above explains everything in full and to the best of my knowledge this mitigates us from making any payments at this time regarding this matter.

I await your confirmation of the situation.

29. Later on 3 April 2025, Officer Rist responded as follows:

Totally understand the situation and predicament.

I would be unable to cancel a demand notice based on a customers financial situation and the possibility of a retrospective Quota application being successful.

I've looked into options for you. You will need to complete the C285 form and apply for remission of the debt. (See under heading late claims in the link below).

Therefore, you do not need to wait until you have paid to make an application. If HMRC debt management contact you, chasing the debt you can explain your financial situation to them and that you are waiting on a C285 decision.

Once a Quota decision is made you can present this to Debt Management who will be in a position to cancel the C18 if a successful application was made.

30. Ms Swain straight away forwarded Officer Rist's response to George Baker. She asked if George Baker could do the remissions application please "as I would be punching in the dark as to how everything works and what to do".

31. On 4 April 2025, Ms Swain emailed Officer Rist thanking him for his response, and asking if the Appellant would be getting a demand for the 2023 Importation also. She added "Stressing madly this end!". Officer Rist responded stating "I've attached the 2nd demand letter. This was posted Monday so should arrive shortly. Hopefully the turnaround time for the form C285 application will be quick so things will be resolved soon".

32. On 8 April 2025, George Baker made the Remission Application seeking remission or repayment of the Duty. A similar C285 application was also submitted in respect of the 2023 Importation.

33. On 22 April 2025, HMRC issued the Remission Refusal stating that the quota for the Jan-Mar 2022 quarter closed on 4 May 2022 and so was not available by the time the claim to the quota by way of the Remission Application was registered (the Refusal). The Remission Refusal offered a review or stated an appeal could be made to the Tribunal.

34. On 21 May 2025, Ms Swain asked for a review of the Remission Refusal.

35. On 22 May 2025, HMRC responded to the remission application in respect of the 2023 Importation, stating that 100% of the quota had been allocated, although it went on with a paragraph about exhausted quotas. The letter said that if the Appellant had already received a C18 demand that did not take this allocation of retrospective quota into account, the Appellant would receive further information "shortly".

36. On 5 June 2025, HMRC explained that the claim to the quota for the 2023 Importation received a 100% quota application and that "the Exhausted Quota paragraph is not applicable to this claim".

37. On 4 July 2025, HMRC upheld the Remission Refusal on statutory review. The review officer stated:

Just to note that you have requested a review of the remission refusal letter, and not the decision to issue a C18. The focus of this review is therefore solely on the remission decision. The decision to issue a C18 carried its own review and appeal rights.

38. There were two points at issue that HMRC addressed in the review. One was whether or not the C18 can be remitted as exceptional circumstances under Regulation 52 of The Customs (Import Duty) (EU Exit) Regulations (CIDEER). The second was whether the tariff quota was available for the Goods. The review officer concluded against the Appellant on both points:

There have been no exceptional circumstances put forward to consider remission under Regulation 52 of CIDEER 2018 as requested in the C285 form. The Tariff Quota was also exhausted for the period of the import, so the claim was unable to be processed.

39. The Remission Refusal explained that if the Appellant disagreed, it could appeal to the Tribunal within 30 days, and that if the Appellant chose to appeal, the Appellant would “need to attach a copy of this letter with the appeal”.

40. On 22 July 2025, Ms Swain was introduced to a Michael Watson of PWC by email by a Shane Higgon at the Ascona Group, who noted “Lucy, I have had a brief conversation with Michael who will now review the position, but this will need to be done as a matter of urgency as time maybe against you in respect of available actions.”

41. On 23 July 2025, Mr Watson of PWC asked Ms Swain to send through all the correspondence on the matter.

42. On 31 July 2025, Mr Higgon emailed Mr Watson asking if he had received all the information he needed and whether he had managed to review the situation.

43. On 31 July 2025 Mr Watson replied saying that he had been off towards the end of last week and asking for any additional documents. He later emailed saying he was having difficulty with the attachments.

44. On 4 August 2025 there was a further exchange between Ms Swain and Mr Watson, Mr Watson stating that he would see if he could extract the attachments using the older version of outlook and that he would be back in touch soon.

45. On 5 August 2025, Mr Watson emailed to state that he was looking to get back with “a fuller response tomorrow”.

46. On 8 August 2025, Ms Swain chased Mr Watson, who replied apologising for the delay getting back to her, said he had discussed it with a colleague in the legal team, and asking if there had been two C285s submitted as he could not remember, and asking if she had time for a call early the following week.

47. On Monday 11 August 2025, Ms Swain responded, saying “call any time”.

48. On 14 August 2025, Mr Watson apologised for the delay, and asked if she had 10 minutes for a call, as he had been able to discuss late appeals etc and wanted to bring her up to speed. Ms Swain responded saying any time was good.

49. On 22 August 2025, Mr Watson emailed Ms Swain as follows:

Thank you for our call earlier. Very sorry about the poor quality signal!

As we discussed, an out of time appeal against the C18 is possible, although you’ll need a reasonable excuse for the appeal being out of time. Given that you were directed down the C285 route by HMRC rather than appealing the C18 initially, this may be the avenue to take (along with any other relevant factors). There is some guidance here that may help - <https://www.gov.uk/tax-appeals>

However, the first step is to call the number on the HMRC letter RE the amount outstanding – you should explain the situation (i.e. hardship, that you are looking to submit an out of time appeal and the reasons why).

The link to the form for an out of time appeal may be found here -

<https://www.gov.uk/tax-tribunal/appeal-to-tribunal>

The form does need to be sent to the tribunal for consideration, The form itself doesn't look too onerous, although the questions within do ask whether the amount of duty has been paid, and copies of the HMRC decision letter.

Please do let us know if you need any assistance with the form and we can look at scoping out some assistance.

50. On 4 September 2025, Ms Swain emailed Mr Watson asking him to give her a call "asap" as she needed some information for the form before she submitted it; he replied asking if 1pm-3pm would be a good time to call, to which she responded, "fantastic".

51. On 5 September 2025, Ms Swain completed a notice of appeal to the Tribunal online. We will refer to the consequent print out as "**the Notice of Appeal**". To each of the following questions asked, she answered as follows (albeit that some of the responses were by way of selecting fixed options rather than entering free text herself):

- (1) Did you ask for a review of the original decision? "Yes"
- (2) What response did you receive? "I have a review conclusion letter"
- (3) What is your dispute about? "safe guarding duty"
- (4) Is the appeal in time? "No"
- (5) Reason for late appeal

We had an investigation into our safe guarding tax payments and the investigating office said that our HS Code was incorrect and that there was duty to pay when the new code was applied. He then advised us to complete a C285 as at the time of entry to the UK there was quota available. Unknown to ourselves this application was out of time and it was rejected on those grounds.

Bearing in mind the investigation took from Jan 8th 2025 to Friday 4th April 2025 so by the time we asked for the C285 to be processed we were out of time.

Had we known the time was up for quota to be applied at that time in April we would have appealed the C18 and not gone down the route sent by the inspector of putting in a C285 claim.

We were unaware that the code was incorrect at the time of use, but bearing in mind on the new code at time of entry to the UK quota was available we feel the decision to be unfair.

Unfortunately we are now in a financial position that we are unable to pay.

(Ms Swain also here uploaded an invoice note from George Baker for £22,057.85 in for "Duty Advance to HMC on your behalf")

- (6) Grounds for appeal

We had an investigation into our safe guarding tax payments and the investigating office said that our HS Code was incorrect and that there was duty to pay when the new code was applied. He then advised us to complete a C285 as at the time of entry to the UK there was quota available. Unknown to ourselves this application was out of time and it was rejected on those grounds. Bearing in mind the investigation took from Jan 8th 2025 to Friday 4th April 2025 so by the time we asked for the C285 to be processed we were out of time.

Had we of known the time was up for quota to be applied for at that time in April we would of appealed the C18 and not gone down the route sent by the inspector of putting in a C285 claim. We were unaware that the code was incorrect at the time of use, but bearing in mind on the new code at time of entry to the UK quota was available we feel the decision to be unfair.

Unfortunately we are now in a financial position that we are unable to pay.

We also had a credit note issued for the duty at the time as quota was available but was refused admission on the appeal.

(Ms Swain also uploaded a screenshot relating to the duty advance)

(7) Desired outcome

We would like this to be looked at more favourably as we did not intentionally mislead or maliciously use an incorrect code and that at time of entry even on the new code quota was available. Also considering the length of time that this has taken for the investigation, waiting for the coding department to reply and then final being sent down a dead end route. we think it would be prudent to let this in under the quota.

(8) The letter uploaded was the Review Conclusion letter of 4 July 2025.

52. On 23 October 2025, the Tribunal sent HMRC a letter assigning the appeal to the standard category, and stating that any objection to the Late Appeal Application should be made by formal notice and with reasons.

53. On 23 December 2025, HMRC objected to the Late Appeal Application and also made the Strike Out Application on the basis that the appeal had no reasonable prospect of success. Both the objection and the Strike Out Application proceeded on the basis that the appeal was against the Remission Refusal upheld on review on 4 July 2025 alone.

54. On 28 January 2026, Ms Swain submitted the following response on behalf of the Appellant (**‘the January 2026 Response’**).

(1) As regards the lateness of the appeal:

Whilst acknowledging the appeal is outside of the usual time frames, we do not feel that just over one month ought to be classed as significantly late. The business has a reasonable excuse as outlined below.

With regards to the appeal being significantly out of time, the conclusion letter was received on 4th July 2025. But the process of initial investigation took from January 8th until 4th April 2025.

The business was advised by HMRC to then apply for a retrospective C285, which we then did. this was then rejected on 20.5.2025.

Enclosed is an email from HMRC advising to proceed with retrospective C285 appeal.

We were told that we could appeal, which we did the conclusion of which we received on 4th July 2025.

July is the busiest month of the year for us and as there is only one person running the whole of all the Managerial and office duties which is myself then it was done asap.

There are also some exceptional circumstances.

We are a very small company and at the time we had one Director (76). Who had a breakdown earlier in the year 2025 due to an employee issue which involved police & solicitors. One office person working in the office running the company and all others in the manufacturing side.

The business was ultimately misdirected by HMRC in terms of the process to follow, which in part explains the lateness of the appeal.

...

(2) As regards prospects of success:

We had a legitimate expectation that the route suggested by the respondents (submit the C285) was the correct route to go down. In reality, the tariff quota had long closed and therefore the route proposed by the respondents was not viable. Given the elapse of time (over three years), the respondents ought to have known that there was no realistic prospect of the duties being remitted and consequently misled us.

Had the respondent not directed us down this route, we would have appealed the C18, which we now understand would've been the correct thing to do. The time limit for challenging the C18 expired due to being incorrectly guided by the respondent (HMRC). We therefore seek to challenge the assessment by the respondent.

We believe that the C18 is also out of time. The respondent has 3 years in which to notify a customs debt (S.24(4)(1) TCTA 2018); the C18 is dated 31 March 2025 concerns with an entry dated 24 March 2022, upon which £13,214.82 in safeguarding customs duty was assessed.

Therefore, we feel it should be withdrawn or at least amended to exclude the out of time duties.

55. On 31 March 2026, HMRC sent a letter accepting the remission application in respect of the 2023 Importation, such that the duty had been reduced to £0.00 as a result of the allocation of the retrospective quota.

56. On 8 September 2026, HMRC made the Vacation Application, having realised the Duty had not been paid and there had been no application for hardship.

57. On 9 September 2026, the Applicant applied for a hardship certificate under s.16(3) of the Finance Act 1994 ('the Hardship Application').

58. Later on 9 September 2026, the Tribunal refused to vacate the hearing but indicated that HMRC could renew the Vacation Application at that hearing.

59. As at the date of the hearing, HMRC had neither accepted nor refused the Appellant's hardship application.

THE VACATION APPLICATION

60. HMRC submit that the Tribunal is unable to proceed to determine the Late Appeal Application where the Duty has not been paid and where a hardship application has not been resolved in the Appellant's favour. This contention is advanced on the basis of s.16(3) of the Finance Act 1994 and rule 22(4) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ('the Tribunal Rules').

61. Section 16(3) provides "An appeal which relates to a relevant decision ... or which relates to a decision on a review of any such relevant decision, **shall not be entertained** if the amount of relevant duty which HMRC have determined to be payable in relation to that decision has

not been paid or deposited with them” unless HMRC issue a certificate on the application of the appellant on the grounds of hardship, or the Tribunal grant it (emphasis added).

62. Rule 22(1) states that rule 22 applies where an enactment provides that an appeal “may not proceed” if the liability is outstanding unless HMRC or the Tribunal consent, and rule 22(4) provides: “If the appellant requires the consent of HMRC or the Tribunal before the appeal may proceed, the Tribunal must stay the proceedings until any applications to HMRC or the Tribunal in that respect have been determined.”

63. HMRC therefore argue that the mandatory language of rule 22(4) requires a stay until the hardship application has been determined before the appeal may proceed, and that hearing a late appeal application is not therefore possible, because it would involve the appeal “proceeding” (in the language of rule 22) or “being entertained” in the language of s.16(3).

64. The same contention was recently advanced before the Tribunal in *Storm Environmental Ltd v HMRC* [2026] UKFTT 01036 (TC), where Judge Vos rejected it at [12-15] as follows:

12. We do not, however, accept this submission. Rule 20 of the Tribunal Rules sets out the provisions which apply to “starting appeal proceedings”. Rule 20(4) of the Tribunal Rules deals with the situation where a notice of appeal is provided to the Tribunal after the relevant statutory time limit for making an appeal. Rule 20(4)(b) provides that the Tribunal must not admit the appeal unless it gives permission for the appeal to be notified to the Tribunal outside the time limit.

13. In our view, the effect of this is that, until the late appeal application has been determined, the appeal cannot be admitted by the Tribunal and there are therefore no proceedings which can be stayed pending determination of the hardship application in accordance with Rule 22(4). The result of this is that the Tribunal should determine the late appeal application. Only if the appeal is admitted should the proceedings then be stayed pending the payment of the tax or the determination of a hardship application.

14. Logically, this makes sense; there would be no point in determining a hardship application in circumstances where the Tribunal in any event refuses to admit the late appeal.

15. We appreciate that s 16(3) FA 1994 provides that an appeal “shall not be entertained” if the tax has not been paid and hardship has not been granted. However, this presupposes that an otherwise valid appeal has been made. In the case of a late appeal, s 16(1F) FA 1994 provides that “an appeal may be made after the end of the period specified in subsection (1) ... if the appeal Tribunal gives permission to do so.” This makes it clear that no valid appeal is made unless and until the Tribunal gives permission. This supports the conclusion that a late appeal application can (and, indeed, should) be determined before any hardship application.

65. Although the factual situation in *Storm Environmental* was somewhat different (the appellant there had offered to pay the tax on the morning of the hearing, but had not yet done so), Ms Dhanoa rightly accepted that this was not material to the reasoning of the Tribunal at [12-15] above, which addressed the same question as arises before us. As recently reiterated in *Aramark Ltd v HMRC* [2026] UKUT 00348 (TCC) in respect of the Upper Tribunal at [38], as a matter of judicial comity we should not depart from an earlier decision of the Tribunal unless we are “convinced” or “satisfied” that that earlier decision was wrong.

66. Ms Dhanoa contended that *Storm Environmental* was wrong on this point, because he was wrong to consider that the admission of the appeal was necessarily prior to it being “entertained” or “proceeding”. She relied on rule 20(1), which states: “A person making or

notifying an appeal to the Tribunal under any enactment must start proceedings by sending or delivering a notice of appeal to the Tribunal.”, as establishing that proceedings are started by the notice of appeal, and that being the case, that is what must be stayed pending hardship. She also said that otherwise, HMRC might be exposed to costs of contesting late appeal applications without the protection of having had the tax paid, absent a hardship application being allowed.

67. For his part, Mr Stevens contended that *Storm Environmental* was correct essentially for the reasons there given. Section 16(3) specifies that “an appeal” shall not be entertained, and so is premised on there being “an appeal”. While rule 20 explains how proceedings are to be started by sending a notice of appeal, where an enactment provides that an appeal may only be made or notified after a given period with the Tribunal’s permission, the Tribunal must not admit it without giving permission. Section 16(1F) of the Finance Act 1994 is such an enactment: “An appeal may be made after the end of the period specified in subsection (1), (1A), (1B), (1C)(b), (1D)(b) or (1E) if the appeal tribunal gives permission to do so.” In short, an appeal that is not “made” cannot “be entertained” and cannot “proceed”, hence Judge Vos was correct to find that an outstanding hardship application does not preclude the determination of a late appeal application.

68. Both parties also referred us to the decision of Judge Sinfield in *SNM Pipelines Ltd v HMRC* [2022] UKFTT 231 (TC). That case concerned a different point, namely whether the appellant had made a valid appeal even if there had not been a hardship application made at the time. Judge Sinfield decided that the absence of a hardship application did not invalidate the appeal. In reaching that conclusion, he drew a distinction between starting proceedings and entertaining or proceeding with an appeal [36]. This distinction is consistent in our judgment with the logic of *Storm Environment*: proceedings are *started* by sending or delivering a notice of appeal to the Tribunal, if such notification is late then the appeal is then only *made* or *admitted* when the Tribunal gives permission, and if that is the case, there is then a properly made appeal that can only *proceed* or *be entertained* if the tax is paid / deposited or hardship is granted.

69. In short, Ms Dhanoa did not convince or satisfy us that *Storm Environment* was wrongly decided. For the reasons that Judge Vos gave, and as a matter of judicial comity, we conclude that the Tribunal may proceed to determine the Late Appeal Application even if a hardship application is outstanding, and so we dismiss the Vacation Application to that extent.

70. The other limb of the Vacation Application was that the Strike Out Application also could not be determined until hardship was resolved. In the event that is not a question that we need to decide, because there was not time for HMRC to make their Strike Out Application at the hearing and HMRC did not object to the Tribunal staying that application. However, we did hear argument upon it and so would in brief terms observe that there seems to us to be a good argument that the Tribunal would have had the power to hear HMRC’s Strike Out Application even if hardship was outstanding. That is for two main reasons. First, hearing a strike out application of HMRC arguably does not involve “entertaining” or “proceeding with” the appeal itself, and so would not breach s.16(3); rather, it involves entertaining HMRC’s application to end the appeal, which is a different thing. Second, we consider that the Tribunal clearly has a power to strike out an appeal under rule 8(1), for example if the Appellant had failed to comply with an unless order in advance of a hardship application hearing. HMRC did not suggest otherwise, and Judge Sinfield noted the same at [38] of *SNM Pipelines*. That being so we do not see a good reason why if a strike out under rule 8(1) were possible notwithstanding hardship being at large, the same would not be true of an application for strike out under 8(2) or 8(3).

THE SCOPE OF THE APPEAL ISSUE

The contentions of the parties

71. The Appellant contended that the Notice of Appeal incorporated an appeal against both the Liability Decision and the Remission Refusal. The arguments set out by Mr Stevens included as follows:

- (1) A single notice of appeal form may be used to appeal against multiple decisions.
- (2) The Tribunal should not approach a notice of appeal “in a narrow and formalistic way”, particularly with unrepresented litigants and those unfamiliar with Tribunal procedures. Rather the same approach should be taken as the Upper Tribunal held in respect of considering grounds of appeal in *FS Commercial v HMRC* [2025] UKUT 13 (TCC) at [69] (which was not subject to onward consideration in the Court of Appeal in *FS Commercial* [2026] EWCA Civ 29):

The FTT is under a duty to deal with cases fairly and justly by virtue of the overriding objective in Rule 2(1). The duty includes by virtue of Rule 2(2): (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties; (b) avoiding unnecessary formality and seeking flexibility in the proceedings; (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings. This may mean that in appropriate cases, particularly with unrepresented litigants or those unfamiliar with the procedures, the FTT may demonstrate flexibility in interpreting or refining grounds of appeal provided by appellants or taxpayers. This does not detract from the general principle that appellants should provide grounds of appeal of sufficient clarity to enable both the respondents (typically, HMRC) and the Tribunal to understand their case.

- (3) The Appellant was not represented and Ms Swain throughout the period showed herself to be unfamiliar with the procedures both in terms of engaging with HMRC and in undertaking an appeal. So for example her emails to George Baker (e.g. 18 February 2025 ““In all honesty I do not know where to go from here!”; 1 April 2025 “what can we do please”, 3 April 2026 “I would be punching in the dark as to how everything works and what to do”). That difficulty was also apparent in her response to the Tribunal’s email of 14 January 2026 attaching letters that the Appellant should provide representations to HMRC’s strike out application (“I am failing to understand due to the lack of information on both documents a. What they mean and b. What I need to do [.] If someone could please explain I would be very grateful.”). Mr Stevens submitted that Ms Swain was doing her best as the only office employee of a small company with six employees that makes cattle cubicles. Accordingly, this was a case where the FTT should demonstrated flexibility in interpreting the Notices of Appeal.
- (4) The lack of clarity in the Notice of Appeal also evidences Ms Swain’s difficulty in understanding the procedure and articulating her case. So for example, the section under Reason for late appeal is largely repeated as in the section under Grounds for appeal.
- (5) The Notice of Appeal itself contains parts that only make sense if the Appellant was trying to challenge the Liability Decision. First, the reasons for the late appeal relate are not limited to what was happening after 4 July 2025, when the time to appeal the Remission Refusal started. Rather, it explained that the Appellant would have appealed the C18 at the time but were advised by HMRC to apply via the C285 for remission and that was the reason for the delay. Second, Mr Stevens invites us to read “Had we of known the time was up for quota to be applied at that time in April we would of appealed the C18 and not gone down the route sent by the inspector of putting in a C285 claim.”

as showing that this was what the Appellant wanted to appeal. Third, the desired outcome referred to the remission application as “a dead end route”, i.e. it is the starting position, the Liability Decision, that is being challenged.

(6) The intention of Ms Swain in completing the Notice of Appeal was to issue an out of time appeal against the C18 – i.e. the Liability Decision – given that this was what Mr Watson of PWC had advised on 22 August 2025 (“As we discussed, an out of time appeal against the C18 is possible, although you’ll need a reasonable excuse for the appeal being out of time. Given that you were directed down the C285 route by HMRC rather than appealing the C18 initially, this may be the avenue to take...”).

(7) The Appellant’s January 2026 Response makes it clear that the Appellant is challenging the Liability Decision as well (“We therefore seek to challenge the assessment by the respondent. We believe that the C18 is also out of time... Therefore, we feel it should be withdrawn or at least amended to exclude the out of time duties.”)

72. Ms Dhanoa for HMRC in response makes the following points in particular:

(1) While she does not disagree with the principles in *FS Commercial* against a “narrow and formalistic” reading, the UT also made clear that the grounds should have sufficient clarity for HMRC and the Tribunal to understand the Appellant’s case and must be comprehensible as a self-standing document, or by reference to HMRC’s decision, and not by reference to other submissions, representations or correspondence.

(2) She accepted that in theory, a notice of appeal could incorporate appeals against multiple decisions, but that was not the situation in this case.

(3) The Notice of Appeal only appealed against the Remission Refusal in light of multiple aspects, in particular that the only “original decision” which a review had been asked of, and given, was the Remission Refusal (“Did you ask for a review of the original decision?” “Yes” ... “I have a review conclusion letter”), and that was the decision letter uploaded.

(4) In stating “Had we of known the time was up for quota to be applied at that time in April we would of appealed the C18”, that is no more than a counter-factual assertion, and the Appellant is not thereby stating that it *is* now appealing the C18 / Liability Decision.

(5) The Tribunal cannot rely on the PWC email or the January 2026 Response as a basis for construing what the Notice of Appeal is seeking to appeal.

Discussion

73. The starting point of our analysis is that we agree with the parties that a notice of appeal can, in theory, include within it appeals against multiple decisions. Rule 20(2)-(4) makes provision of what a notice of appeal must include, including at (2)(d) the details of the decision appealed against, (2)(f) the grounds for making the appeal, (3) a copy of “any” decision appealed against, and (4) a request for permission if it is made late. But Rule 20 itself does not preclude the same notice of appeal being used by an appellant, provided these requirements are met. So the question before us is does this Notice of Appeal seek to appeal both the Liability Decision and the Remission Refusal.

74. As a second point of principle, the fact that a notice of appeal might be defective in some way does not of itself mean that the appeal is invalid. In *Figa v HMRC* [2025] UKFTT 01260 (TC), the Tribunal held that a failure to include a copy of the decision appealed against under rule 20(3) did not of itself invalidate the appeal [40]. So here, the fact that the Appellant did

not upload a copy of the Liability Decision is not of itself fatal to the Appellant's case on scope.

75. Third, there was no dispute between the parties that we must not adopt a narrow and formalistic reading of the Notice of Appeal, which was not drafted by a lawyer, but rather must construe it flexibly as appropriate in the circumstances.

76. As regards those circumstances, we find that Ms Swain did not have familiarity with the ways in which the Appellant might challenge the Debt with HMRC, nor apply for remission, nor appeal to the Tribunal. We accept that she was generally out of her depth, highly reliant on external advice, and did not articulate herself in writing with the precision that might be expected of a lawyer, for the reasons Mr Stevens identified. Accordingly, we approach the Notice of Appeal trying to understand what in substance Ms Swain was saying, rather than being bound by the specific language used.

77. Conversely, we do not consider that we can determine the Scope of the Appeal Issue in the Notice of Appeal by reference to what the Appellant might subsequently contend, in its January 2026 Response, was meant by the appeal; nor by reference to what Ms Swain's subjective intention may have been. We therefore do not accept the sixth and seventh points of Mr Stevens, as enumerated above. Rather, we consider the Notice of Appeal itself is what we should concentrate upon.

78. In the light of the above, in our view the Notice of Appeal is not entirely coherent, with features pointing both ways, as Mr Stevens sensibly accepted.

79. On the one hand, there are aspects that indicate that it is only the Remission Refusal, upheld on review, that is being appealed:

(1) The fact that the only decision letter uploaded was the Review Conclusion to the Remission Refusal is obviously significant, albeit not in itself decisive given *Figa*.

(2) The answers "yes" to "Did you ask for a review of the original decision?" and "I have a review conclusion letter". However, we are wary about putting too much reliance on these, given that they are selected from fixed options in the Tribunal's online application process. That reflects the fact that generally a notice of appeal will be in respect of a single decision. But given our view that the rules do not preclude appeals against two different decisions being notified in a single notice of appeal, so again these answers are not of themselves decisive.

(3) The absence of clearly stated reasons for why the Appellant contends the Liability Decision was wrong. That is in contrast to the January 2026 Response, which contended that the Liability Decision was invalid having been made out of time. Rather, the stated grounds include the indistinct complaint that they feel "the decision to be unfair" and that it would be "prudent" to let the import in "under the quota".

80. On the other hand, the text under reasons for late appeal, repeated in the grounds of appeal, supports the meaning for which Mr Stevens contends, in that it is directed to a length of delay going back to the point of the Liability Decision, and explaining the history of the advice to submit a C285 which transpired to be "a dead end route". Again, however, we do not think this is decisive, because it remains somewhat ambiguous, and could be read consistently with HMRC's case on the Scope of the Appeal Issue, as simply Ms Swain setting out the full background, rather than just what was strictly necessary to explain the delay from the 4 July 2024 Review Conclusion letter.

81. The overall impression that we have of the Notice of Appeal is that it is unclear as to precisely what it is appealing or why, but is challenging the whole situation, i.e. it is in general

terms seeking to appeal against having to pay the Duty. Primarily because of the uploading of the Review Conclusion letter, we accept that the Notice of Appeal appeals against the Remission Refusal. However, we conclude that, while Ms Swain might subjectively have considered that she was also appealing the Liability Decision, as it stands the Notice of Appeal does not identify the Liability Decision as being an additional decision under appeal with sufficient clarity for us to find that its scope extends that far.

THE APPEAL NOTICE AMENDMENT APPLICATION

82. We therefore turn to the Appellant’s application, made at the hearing in the alternative to its case on the Scope of the Appeal Issue, for permission to amend the Notice of Appeal so as to include within it a late appeal against the Liability Decision on the grounds that the Liability Decision was invalid having been made outside the three year time limit allowed under paragraph 4(1) of Schedule 6 of the Taxation (Cross-border Trade) Act 2018 (**‘TCTA 2018’**), with a corresponding request for permission to be made late.

83. We are satisfied that we have the power to allow the amendment of a notice of appeal so as to include within it an appeal against an additional decision. We have already held above that a single notice of appeal can incorporate appeals against multiple decisions. Under rule 5(3)(c) of the Tribunal Rules, The Tribunal may “permit or require a party to amend a document”, and this gives us the power to allow the Appellant to amend the Notice of Appeal in this case. Further, there is precedent for the Tribunal doing so. By way of example, Judge Sinfield in *Ashington & Ellington Social Club & Institute Ltd and others v HMRC* [2017] UKFTT 612 (TC). In that case, two of the appellants, Ashted Village Club and Darfield Road Working Men’s Club & Institute Ltd, had issued appeals against rejections of VAT repayment claims in 2006. Subsequently, HMRC had made protective assessments against which those appellants had not separately appealed, having failed to recognise that those were new appealable events that required separate appeals, but rather having the mistaken impression that the existing appeals would embrace the later protective assessments. At [31], Judge Sinfield held:

“I consider that the most appropriate and efficient way to rectify the situation is to allow Ashted and Darfield to amend their notices of appeal so that they are appeals against both the original reasons given for rejecting the claims and the protective assessments issued to give effect to those reasons.”

84. While the factual background in those cases is of course different to the present, the point of principle is clear: the Tribunal can allow a notice of appeal to be amended so as to include an appeal against a further decision.

85. At one point in her submissions, Ms Dhanoa suggested that allowing the amendment of the notice of appeal might bypass statutory requirements. We reject that contention. All that allowing the notice of appeal to be amended would do would be to add to the notice of appeal text that was not originally there, so as to make clear that the Liability Decision was appealed, on the ground that it was invalid having been made out of time, and with a request for permission to be made late. Our allowing the amendment application would not disregard the statutory time limit of 30 days for bringing an appeal, as permission to bring such a late appeal against the Liability Decision would still be necessary. Nor would it displace the requirement for the Duty to be paid (or hardship allowed) before the appeal could be entertained. In substance, it would be not significantly different to the situation were the Appellant to put in a wholly new notice of appeal seeking, late, to appeal the Liability Decision. We note that Judge Sinfield in *Ashington* went on at [31] to observe that if he had not concluded that the original notices of appeal could be amended to allow Ashted and Darfield to appeal against the protective assessments, then he would have allowed them to submit late appeals.

86. In the circumstances of the present case, we are satisfied that it would further the overriding objective of dealing with the case fairly and justly to allow the Appeal Notice Amendment Application. First, it is a flexible step that would avoid unnecessarily formality and avoid delay. Rather than require the Appellant to file a new notice of appeal challenging the Liability Decision, which would then require a further hearing to hear the corresponding late appeal application, we can simply allow an amendment to the existing notice of appeal and proceed to hear the late appeal application as regards the challenge to the Liability Decision, and we did hear the parties on that application (which we address below). Second, we do not consider HMRC are materially prejudiced by the Tribunal proceeding in that way. As we have made clear, it does not deprive HMRC of the opportunity to object to the lateness of the appeal; HMRC did object, and we heard argument on the objection from the parties at the hearing. It was also apparent to HMRC at least as of the January 2026 Response that the Appellant was arguing that the appeal incorporated a challenge to the Liability Decision. HMRC could reasonably have anticipated that the hearing of the Late Appeal Application would include permission to bring the appeal against the Liability Decision late, and Ms Dhanoa did not submit that HMRC was significantly prejudiced in its ability to respond on whether permission be given to a late appeal against the Liability Decision.

87. Accordingly, we allow the Appeal Notice Amendment Application. This means that the Notice of Appeal, as amended, challenges both the Remission Refusal and the Liability Decision and seeks permission in both cases to make a late appeal.

THE LATE APPEAL APPLICATIONS

88. At the hearing, because we had not yet decided the Scope of the Appeal Issue nor the Appeal Notice Amendment Application, we heard from both parties their respective cases on the following:

- (1) Whether the Appellant should be permitted to bring a late appeal against the Remission Refusal, the period of 30 days beginning with the date of the Review Conclusion of 4 July 2025 having ended on 2 August 2025 and the appeal having been notified late on 5 September 2025.
- (2) Whether the Appellant should be permitted to bring a late appeal against the Liability Decision, the period of 30 days beginning with the Liability Decision of 24 March 2025 having ended on 22 April 2025 and the appeal having been notified late on 5 September 2025 (assuming for these purposes that the Appellant was successful on the Scope of Appeal Issue).
- (3) Whether the Appellant should be permitted to bring a late appeal against the Liability Decision, that appeal not having been notified until the Tribunal allows the notice of appeal to be amended to include such an appeal (assuming for these purposes that the Appellant failed on the Scope of Appeal Issue but was successful on the Appeal Notice Amendment Application).

89. Having determined the Scope of the Appeal Issue and the Appeal Notice Amendment Application as we have, we need to decide the first and third of these.

Legal principles

90. There was no dispute between the parties that *Martland v HMRC* [2018] UKUT 178 (TCC) ("Martland") set out the approach that the Tribunal must adopt on an application for late permission to appeal. At [44] - [47] the Upper Tribunal noted the following:

- (1) It must be remembered that the starting point is that permission should not be granted unless the Tribunal is satisfied on balance that it should be.

(2) In considering that question, the Tribunal can usefully follow a three-stage process:

- (i) 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 Tribunal 'is unlikely to need to spend much time on the second and third stages';
- (ii) Establish the reason (or reasons) why the default occurred; and
- (iii) Evaluate '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.

(3) The 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. (This has recently been confirmed as correct by the Court of Appeal in *HMRC v Medpro Healthcare Ltd* [2026] EWCA Civ 14.)

(4) In carrying out the balancing exercise the Tribunal 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.

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

The lateness of the appeal against the Remission Refusal

91. As regards the first stage, the length of delay is just over a month. Mr Stevens referred to a passage from *Romasave Property Services Limited v HMRC* [2015] UKUT 0254 (TCC) at [96], where the Upper Tribunal observed that in the context of an appeal right which must be exercised within 30 days, a delay of more than three months cannot be described as anything but serious and significant. He submitted that the delay of just over a month was not serious and significant. Conversely, Ms Dhanoa submitted that this delay was a serious and significant delay.

92. In our judgment, the delay in the present case was significant and therefore serious: it is not a period which is so short that the FTT does not need to take much time on the second and third stages.

93. As to the second stage, the Appellant explains the delay by reference to the following. Ms Swain was the sole office employee and July was the busiest month of the year. She also lacked relevant expertise. The Appellant had decided to pursue the C285 remission application following Officer Rist's email of 3 April 2025. When that application was unsuccessful, the Appellant sought advice from PwC as to what to do but did not told by PwC of the possibility

of making a late appeal against “the C18” until 22 August 2025, following which Ms Swain submitted the Notice of Appeal on 5 September 2025.

94. Conversely, HMRC submit that there is a lack of proper explanation for the delay. Ms Dhanoa referred to the Review Conclusion which stated that any appeal was to be notified within 30 days, and the fact that professional advice being sought does not adequately explain the delay. If Ms Swain had difficulty, she could have put in a holding notice of appeal.

95. In our judgment, the reasons for the delay were essentially those given by Mr Stevens referred to above. We do not consider that the Appellant has provided an explanation that completely justifies the delay. However, we would note that *Martland* does not assert a test of the reasons needing to be “good” or sufficient to justify the delay. Rather, it requires the Tribunal to determine what those reasons were, and then to factor that in as part of the analysis at the third stage: the better the reasons, the more they will weigh in favour of permission. In the present case, we consider that the reasons for the delay are not so strong as to excuse it completely, this is not a case where a taxpayer was doing nothing in the relevant period. We consider that Ms Swain was trying to do her best in the circumstances, and we note (for example) from the correspondence with PwC referred to in the chronology above that Ms Swain was being proactive and at times chasing PwC for a response.

96. Third, as to the balancing exercise, the starting position is that permission should not be granted unless we are satisfied on balance that it should be.

97. We do not put any weight either way on the merits of the Appellant’s appeal against the Remission Refusal. While HMRC’s pleaded position on the basis of the Strike Out Application was that the appeal had no reasonable prospects of success, we were not satisfied of this for the purpose of the third stage balancing exercise. In particular, HMRC appeared to characterise the Remission Refusal as essentially being about the lack of “exceptional circumstances” to justify a reduction in duty under regulation 52 of the Customs (Import Duty) (EU Exit) Regulations 2018. However, we are far from persuaded that it was limited to a question of “exceptional circumstances”: there also appears to be a question about whether the relevant quota was available or not. As to that issue, the fact that HMRC allowed the C285 application for remission made in April 2025 in respect of the 2023 Importation raises the question of why a different conclusion was reached in respect of the Goods that are the subject of this appeal.

98. Our decision is as follows. We take into account the particular importance of the need for litigation to be conducted efficiently and at proportionate cost and for time limits to be respected and the fact that there is a significant period of delay. We consider the reasons for the delay, and the fact that the Appellant was not inactive in the period but was trying to work out what to do. It is not therefore a case where flagrant disregard for time limits is evident. Further, we consider that it is relevant that, after the Liability Decision, Ms Swain had reasonably understood that Officer Rist had advised making a remission application, which the Appellant then did. The fact of the Liability Decision followed by the Remission Refusal contributed to the complexity of the position the Appellant faced. Finally, we also consider that the Appellant would suffer significant prejudice if not allowed to challenge the Remission Refusal, greater than that suffered by HMRC if the application were allowed. As a whole, therefore, we conclude that the balance weighs in favour of granting permission.

The lateness of the appeal against the Liability Decision

99. On the first stage, the delay is very serious: from 23 April 2025 to the present date, over one year four months later.

100. On the second stage, there are essentially three relevant periods of relevant delay, in respect of which our findings are as follows:

(1) The period from the Liability Decision of 24 March 2025 to the Review Conclusion, 4 July 2025. As to this, we find that following the Liability Decision, the Appellant sought to apply for remission of the Duty rather than challenge the liability to the Duty in the first place, in light of the correspondence between Ms Swain and Officer Rist. Ms Dhanoa did not suggest otherwise (at paragraph 12 of her skeleton, she submitted that Officer Rist’s advice “is capable of explaining why, in early April 2025, the Appellant pursued a C285 application rather than immediately challenging the C18”.) The Appellant was thereafter awaiting the final outcome of that application, which came when the Review Conclusion upheld the Remission Refusal.

(2) The period from the Review Conclusion to the submission of the Notice of Appeal on 5 September 2025. We have already addressed this period in dealing with the reasons for the delay in appealing the Remission Refusal above.

(3) The period from the submission of the Notice of Appeal to the present. As to this, we find that Ms Swain throughout this period had mistakenly but reasonably considered that the Appellant had already appealed the Liability Decision by way of that Notice of Appeal, as evident for example by the January 2026 Response and the case ably advanced before us by Mr Stevens. Even if we have concluded as a matter of construction that the Notice of Appeal did not identify the Liability Decision as an appealed decision, we nevertheless accept that Ms Swain reasonably believed that it did.

101. Therefore although the length of delay is very long, at over one year and four months, the large majority of this is made up by the first and third stages in which we consider that the Appellant was acting wholly reasonably in the circumstances. In the second stage, we repeat our comments already made above.

102. Finally, we turn to the third stage, in light of our findings on stages one and two above. Again, we take into account the particular importance of the need for litigation to be conducted efficiently and at proportionate cost and for time limits to be respected. The period of delay is very long, but we note that the overall length is somewhat misleading because so much of the period is made up of time during which the Appellant reasonably understood that the Liability Decision was already under appeal.

103. We were invited by the Appellant to consider that the merits of the Appellant’s the appeal against the Liability Decision are strong. Paragraph 4(1) TCTA 2018 provides that notification of such liability must be given before the end of the period of 3 years beginning with the day on which the liability was incurred. Mr Stevens relied on the authority of *R (Zaporozhchenko) and anor v City of Westminster Magistrates Court* [2011] EWHC 34 (Admin); [2011] 1 WLR 994 for the proposition that a statutory formation of two months “starting with” a particular day included the starting day itself and so ended on the eve of the corresponding day (so in that case, two months starting with 3 September 2010 ended on 2 November 2010). He therefore argued that the same analysis pertained to “beginning with” under paragraph 4(1), such that the relevant period of three years started on 24 March 2022 and ended on 23 March 2025. As a result, the Appellant’s case is that the Liability Decision was made out of time and is invalid. For her part, Ms Dhanoa for HMRC did not articulate any substantive response to this argument. In the circumstances, while in no way determining the question, we consider that the Appellant’s case has prima facie strength and this is a factor which also weighs in favour of allowing the late appeal.

104. Taken as a whole, we therefore find that the balance favours allowing the Appellant’s application to make the late appeal against the Liability Decision.

CONCLUSIONS

105. For these reasons, we have allowed the Appellant to amend the notice of appeal so as to include within it a late appeal against the Liability Decision on the ground that it was invalid as having been made after the relevant three-year period under paragraph 4(1) TCTA 2018. We also give permission to the Appellant to make both the late appeal against the Remission Refusal and the late appeal against the Liability Decision.

106. As regards consequential directions, we consider the best way forward now is to stay the appeal (including HMRC's Strike Out Application) pending resolution of the hardship application.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

107. 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:
01 October 2026