UNITED KINGDOM / JUDGMENT

Fireman v Revenue and Customs (INCOME TAX - appeal against a final closure notice - whether late - was a valid request for a statutory review made within the requisite time period) [2025] UKFTT 893 (TC) (02 July 2025)

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[2025] UKFTT 893 (TC) [New search] [Contents list] [Printable PDF version] [Help] Neutral Citation: [2025] UKFTT 893 (TC) Case Number: TC09594 FIRST-TIER TRIBUNAL TAX CHAMBER In public by remote video hearing Appeal reference: TC/2024/04544 INCOME TAX - appeal against a final closure notice - whether late - was a valid request for a statutory review made within the requisite time period? - consideration of Bristol & West, Archer, Donaldson and Raftopoulou - held no on the facts - application for permission to bring a late appeal - reliance on an agent - Katib, Uddin and Kotecha considered - application rejected - permission denied Heard on: 2 July 2025 Judgment date: 24 July 2025 Before TRIBUNAL JUDGE NIGEL POPPLEWELL Between DANIEL FIREMAN Appellant and THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS Respondents Representation: For the Appellant: Alex Spencer of counsel instructed by BP Partners LLP For the Respondents: Omar Riaz litigator of HM Revenue and Customs' Solicitor's Office DECISION

INTRODUCTION

1. This decision deals with issues arising from a final closure notice issued by HMRC to the appellant on 11 December 2020 (" the closure notice "). The closure notice amended the appellant's tax return for the tax year 2010/2011, by removing a capital loss of £300,000 on which share loss relief had been claimed and added further income tax due to HMRC of £146,848.82. 2. The appellant notified an appeal against the closure notice to the tribunal, on

24 July 2024. 3. It is HMRC's position that this is a very late appeal and I should deny the appellant permission to bring his appeal so very late. 4. It is the appellant's primary position that the appeal is not late, as he had requested a statutory review within an extended time period granted to him by an HMRC officer, and since HMRC have never provided him with the requisite notification, time was still running in the appellant's favour when he brought his appeal on 24 July 2024. 5. In the alternative, if no such valid review was requested, then I should grant permission as an evaluation of all the circumstances of the case weighs heavily in the appellant's favour. 6. For the reasons given later in this decision, I have concluded that the appeal was late, and that I should reject the appellant's application for permission to bring his appeal late. THE LAW 7. The law is found in the Taxes Management Act 1970 (" TMA ") the relevant provisions of which are set out in the Appendix to this decision. 8. However, in a nutshell, it is this. A taxpayer has a right of appeal against a closure notice. That appeal is to HMRC and must be given within 30 days. The appellant then has a right to ask HMRC for a review. HMRC may also notify the appellant of his right to a review. In either case, HMRC must set out their view of the matter in question. If HMRC offer a review which is not accepted within 30 days, HMRC's view of the matter is treated as being set out in a section 54 agreement from which the appellant has no opportunity to resile. An appellant has a right to notify an appeal to the tribunal but cannot do so whilst a review is in progress. Where HMRC have been asked to undertake a review, the appellant must appeal to the tribunal within 30 days of receipt of notification of the review conclusion. If HMRC have been asked to undertake a review but do not do so, then their view of the matter is treated as being upheld, but they must notify the appellant of that. The 30 day period to appeal to the tribunal does not start until that notification. If that appeal is late, the tribunal has discretion to grant permission for a late appeal. THE EVIDENCE AND THE FACTS 9. I was provided with a bundle of documents. The appellant tendered a witness statement which he adopted and on which he was not cross-examined. Mr Bernard Finerty (" Mr Finerty ") an accountant whose firm, BP Partners (" BP ") acted for the appellant in challenging the closure notice, also tendered a witness statement on which he was cross examined. From this evidence I find as follows: (1) The closure notice was issued to the appellant on 11 December 2020. (2) In a letter dated 16 December 2020, BP stated that they had received the closure notice, and that "We have no faith in the way this review has been conducted so we will not be requesting a peer review within HMRC... Instead we wish to appeal to the Lower Tier Tribunal". (3) It then identified that the grounds of appeal would include: the processing of the enquiry and the lack of a valid justification for the review; the failure of HMRC to explain the basis on which they regard the company as non-trading; the failure of HMRC [to] explain why they believe that there were transactions not at arms length, when they are commercial arrangements between unconnected parties; the failure of HMRC to deal with the matter in a timely and competent manner; the wish of HMRC to charge amounts to tax on one hand, but then to deny capital loss relief for the corresponding values related to the company's shares. (4) It then asked HMRC to "confirm that you will be applying to the Clerk to the Lower Tier Tribunal for the case to be listed and heard in due course" and for confirmation that tax demands should be stood over pending the "decision of the independent tribunal".

(5) HMRC set out their view of the matter, in their view of the matter letter dated 16 November 2022 (" the view of the matter letter "). In that letter they explained why they had reached the conclusion that the appellant was not entitled to share loss relief. They also acknowledged the appeal by BP and stated that "Although they have stated that they do not wish to opt for an Internal Independent, I am required to give you HMRC's current view of the matter..." It seems clear to me that the word "review" has been omitted from the first part of that sentence. (6) The view of the matter letter also noted that BP had appealed "against the closure notice for the year ended 5 April 2011 issued on 11 December 2021". (7) This was an error as the closure notice had been issued on 11 December 2020. (8) The view of the matter letter included an offer of an independent review. It explained that if the appellant did not want such a review, he could notify his appeal to the tribunal. (9) On 2 December 2022, BP acknowledged receipt of the view of the matter letter, noted that HMRC were accepting their appeal against the closure notice issued on 11 December 2021, and had searched their files and could find no reference to such an appeal. (10) HMRC responded on 4 January 2023 with which they enclosed the closure notice and various pieces of correspondence. (11) In a letter dated 31 January 2023, the HMRC investigator, having reviewed the records, noted that the closure notice was issued on 11 December 2020, the appeal was dated 16 December 2020, and apologised for the error in the view of the matter letter in which they stated the date of the closure notice as being 11 December 2021. That letter went on to say; "in view of my error above, I am extending the deadlines stated in my letter of 16 November 2022 for you to take the appropriate action to 2 March 2023". (12) BP responded in a letter dated 14 February 2023 (" the Valentine's Day letter "). They asked why HMRC appeared to have been confused with the date of the closure notice and the appeal and went on to say: "We are also bemused as to why you have been unable, or unwilling, to follow our requests that the case is listed before the first Tier Tribunal. We enclose for information a further copy of the appeal letter of 16 December 2020, explaining the issues we have regard to the conduct of Counter Avoidance in this matter, and our wish for an independent review of all steps taken, and failure to respond to documentation in a timely manner. We look forward to receiving your specific response with regard to this letter, together with your further advice as to when the case will be sent to the clerk to the lower Tier Tribunal for listing in due course". (13) HMRC responded in a letter dated 8 March 2023 in which they apologised, again, for getting the date of the closure notice wrong in their view of the matter letter. It went on to clarify what steps the appellant needed to take following the view of the matter letter. "... If you do not agree with our current view, it is up to you either to ask for an independent internal review, which you have already stated at the outset that you do not want, or it is up to you to apply to the tribunal. It is not for HMRC to do this. As such, I will not be sending the case to Clerk [sic] to the Lower Tier Tribunal for listing". (14) A copy of this letter was sent to the appellant. (15) On 20 November 2023, BP wrote to HMRC "To confirm, our client wishes to proceed with an internal peer review. we believe that this option is the first step of the process we need to undertake. if this is no longer available, can you please explain why. If the peer review process cannot be enacted, then we will apply for a hearing of the case before the first Tier Tribunal...". (16) In their

letter of 20 December 2023, HMRC noted that the appellant wished to proceed with an internal peer review but explained that the deadline for that review "has long passed" and they would not be undertaking a review. They explained that the deadline was originally 17 December 2022 as set out in the view of the matter letter but that was subsequently extended to 2 March 2023 following HMRC's letter of 31 January 2023. They went on to note that following the passing of the deadline, the appeal was settled under section 54 (1) TMA. (17) That letter went on to say that the appellant could contact the First-tier Tribunal "but I must assume that they wouldn't be willing to hear an appeal this late without a very good reasonable excuse". (18) On 16 January 2024, BP wrote to HMRC stating that the appellant wished to repudiate and/or resile from the agreement and wish to appeal to the tribunal. (19) HMRC responded to BP on 8 February 2024. It explained that the appeal was deemed to be settled because neither BP nor the appellant had notified the appeal to the tribunal. It went on to say that HMRC could not list the appeal for the tribunal, the onus being on the appellant and BP to do so. It noted that "this stage you would need to make a late application to the Tribunal Service". They provided a link to an appropriate website. They also included a fact sheet which set out the appeal process. (20) HMRC copied that letter to the appellant. (21) In a letter to HMRC dated 6 March 2024, BP noted that there have been differences of opinion between the parties as to the effect of earlier exchanges of correspondence, expressed the view that the Valentine's Day letter clearly referred to their wish for an independent review and that if HMRC were not prepared to accept this position, they would appeal to the tribunal. (22) BP followed up this letter with a further letter dated 21 March 2024 in which they asked HMRC "to confirm that the case is indeed going before the First Year [sic] Tribunal". (23) In response, HMRC wrote to BP on 30 April 2024 in which they expressed the view that the Valentine's Day letter "clearly did not contain a request for an Independent Review but incorrectly stated that you had included a request for an Independent Review in your letter dated 16 December 2020. The deadline to request an Independent Review has expired". (24) It rehearsed the history of the correspondence and went on to explain that the time for seeking an independent review had expired, that HMRC could not reconsider their position, and that any appeal to the FTT will be late and they would have to consider the reasons for that lateness. (25) HMRC sent a further letter to BP on 8 May 2024 responding to points made by BP in letters sent to HMRC in March 2024. Once again, they rehearsed the history of the correspondence, explained that the time for seeking independent review had long passed, and that if an appeal was made to the FTT, the tribunal would need to consider reasons for that appeal being late. (26) That letter was copied to the appellant. (27) BP responded on 23 May 2024. They stated, inter alia, "However, on the basis that you are not objecting to our approach to the first Tier Tribunal for an independent review of this case, we will proceed with the application and matters can then be considered further". (28) BP notified the appeal to the tribunal by a letter dated 22 July 2024 which was noted as received by the tribunal on 24 July 2024. (29) Mr Finerty gave the following evidence. (30) He has considerable experience in tax matters. He was aware of statutory deadlines but was awaiting responses from HMRC regarding the nature of the dispute and the use of reliefs. He accepted there was some confusion on his part regarding appealing to

the tribunal. It was not for HMRC to do so on the appellant's behalf, but for the appellant to do so. (31) He accepted that the date of the closure notice, which was expressed to be 11 December 2021 in the view of the matter letter, referred to the closure notice of 11 December 2020, given that that was the only closure notice against which an appeal had been made, and the reference to Pylorus. (32) He accepted that the wording of the Valentine's Day letter was ambiguous but reflected an intention to request an independent review. In his view the wording of the letter was a request for such a review. (33) He had overlooked HMRC's letter of 8 March 2023 which arrived in his office when he was on holiday. The appellant, who had also received a copy of this letter, had called him to notify him that he had received the letter and they had agreed that Mr Finerty would respond to it on his return. When he returned the letter had been filed away due to a clerical error and so was not acted upon. (34) HMRC appeared to accept that the settlement letter which was sent to BP on 20 December 2023, should have been sent to BP when the period for requesting an independent review or notifying an appeal elapsed. This meant that it was not until 20 December 2023 that BP were aware that HMRC had considered the matter to be settled. DISCUSSION 10. The appellant's primary position, as submitted by Mr Spencer, is that the appellant accepted an offer of a statutory review within the statutory, or extended time period, and HMRC have never notified the appellant of the conclusion of their review. This means that the review is treated as having concluded that HMRC's view of the matter in question is upheld with the consequence that HMRC must notify that conclusion to the appellant. They did not do so. And so the appeal cannot be out of time as the 30 day period for notifying an appeal to the tribunal only starts once HMRC have notified the appellant of that conclusion. 11. In the alternative, Mr Spencer submits that if this is a "Martland" case (as defined below), I should exercise my discretion to permit the appellant to bring a late appeal. 12. I shall therefore deal with Mr Spencer's primary position first and then consider the Martland alternative thereafter. Submissions - not late 13. In summary Mr Spencer submitted as follows: (1) A taxpayer can accept HMRC's offer of a review under section 49C TMA even if they have failed to take an opportunity to ask for a review under section 49B TMA. (2) The proper construction of the Valentine's Day letter (the test being how the reasonably objective reader would construe it) is that it is a request for an independent review. This request was made in response to an offer of a review made by HMRC. (3) Although that offer was made in the view of the matter letter, which is dated 16 November 2022, that offer was not effective until the error regarding the date of the closure notice was corrected by HMRC which was not until 31 January 2023 (Daarasp v HMRC

[2021] UKUT 87 at [25] (" Daarasp ")). That was the effective view of the matter as it was the first time HMRC stated completely their view of the matter in question. (4) Alternatively, in their letter of 31 January 2023, HMRC extended the deadline for the appellant to accept the offer until 2 March 2023. (5) In either case, therefore, the offer was accepted on 14 February 2023 and was therefore in time. (6) HMRC v Raftopoulou

[2018] EWCA Civ 818 (" Raftopoulou ") deals with the second limb of section 118 (2) TMA. It does not shed light on what is required to be done in the context of an offer of review by HMRC which is a different provision from the repayment claim made in that case. There is no bright line test that the first limb applies only to something which is required to be done. (7) HMRC officers are empowered to extend time notwithstanding that the First-tier Tribunal held to the contrary in Indigo Media Partnership v HMRC

[2015] UKFTT 424 (" Indigo "). In Mr Spencer's view this was incorrect, and in any event, section 118 (2) TMA was not argued or considered in that case. 14. In summary Mr Riaz submitted as follows: (1) The Valentine's Day letter cannot be construed as the acceptance of an offer by HMRC for a statutory review. Its wording is ambiguous, and it refers to the letter of 16 December 2022 in which BP say they do not want a peer review. (2) There are no legislative provisions which allow an HMRC officer to extend the time limit set out in the relevant TMA legislation. This is supported by Indigo. (3) Raftopoulou deals with both the first and second limbs of section 118 (2) TMA. A unilateral request for a review, or the acceptance of an offer of a review made by HMRC, are not "required to be done" within the meaning of that section. Where an offer of review is made by HMRC, a taxpayer has a choice whether or not to accept it. If the taxpayer decides not to, then it can either appeal to the tribunal, or can choose not to. (4) It would have been apparent to the reasonably objective reader that the reference in the view of the matter letter to the date of the closure notice was a typographical error. BP and the appellant were fully aware that the issue identified by the closure notice concerned the loss of tax relief relating to shares in Pylorus. They had only made one appeal, and that was against the closure notice. They knew there was only one closure notice and that was the one issued on 11 December 2020. It also refers to the independent review which was something dealt with in the appellant's appeal letter of 16 December 2020. (5) Given that the Valentine's Day letter did not accept HMRC's offer of a review, even if I was to accept that the deadline was extended until 2 March 2023 by virtue of HMRC's letter of 31 January 2023, no formal request for a review was made until, at the earliest, 20 November 2023. So still outside the extended deadline. My view - not late 15. In order to succeed in showing that the appeal was not late in the first place, Mr Spencer has made three points. The first is that the 30 day period did not start to run until HMRC had properly set out their view of the matter, which was not until 31 January 2023. Alternatively, HMRC had extended that 30 day period, and the Valentine's Day letter was submitted within that extended period. He submits that HMRC have the power to extend the period, and, given that a request for a review is something which is required to be done by the taxpayer, section 118 (2) TMA sanctions the request in the Valentine's Day letter. 16. Finally, and this must be demonstrated in respect of both of the foregoing, the Valentine's Day letter is a valid request for an independent review following an offer made by HMRC pursuant to section 49 TMA. 17. I shall start by considering this last point. I do not believe Mr Spencer is suggesting that the Valentine's Day letter comprises a request for a review under section 49B. Indeed, this is something which BP specifically disavowed "... We will not be requesting a peer review within HMRC..." In their letter to HMRC of 16

December 2020 (i.e. " the appeal letter "). 18. Instead, he submits that the text of the letter clearly demonstrates acceptance of the offer made by HMRC to conduct a review as set out in their view of the matter letter, by dint of the wording: "We are also bemused as to why you have been unable, or unwilling, to follow our requests that the case is listed before the first Tier Tribunal. We enclose for information a further copy of the appeal letter of 16 December 2020, explaining the issues we have regard to the conduct of Counter Avoidance in this matter, and our wish for an independent review of all steps taken, and failure to respond to documentation in a timely manner. We look forward to receiving your specific response with regard to this letter, together with your further advice as to when the case will be sent to the clerk to the lower Tier Tribunal for listing in due course". 19. Both parties urged me to consider the text of this letter from the view of the reasonably objective reader. 20. Broadly speaking I agree with this. The cases of Bristol & West v HMRC

[2016] STC 1491 (" Bristol & West ") and R (on the application of Archer) v HMRC

[2018] STC 38 (" Archer ") provide the relevant authority. 21. In Bristol & West at [26], the Court of Appeal, when considering whether a closure notice was valid stated that "in our view the answer to the question identified in para [25] above depends upon the correct interpretation of the October Notice, as it would be understood by a reasonable person in the position of its intended recipient, namely B&W, having B&W's knowledge of any relevant context...." (I describe this as the " objective reader" test). 22. The Valentine's Day letter, therefore, must be read against the background of the closure notice, the appeal letter, and the correspondence between the parties including the view of the matter letter. 23. The closure notice was dated 11 December 2020 and the appeal by BP was made some five days later, in the appeal letter. 24. But it was not until nearly 2 years later, on 16 November 2022, that HMRC sent the view of the matter letter. It is not surprising, therefore, that BP did not have the dates of the closure notice or their appeal at their fingertips. 25. But it is equally clear to me that the objective reader could not have read the view of the matter letter as being anything other than a view of the matter letter relating to the closure notice and subsequent appeal, even though it referred to the date of the closure notice being 11 December 2021. It would have been clear to the objective reader that that was simply a typo. As Mr Riaz submitted, there was only one closure notice and only one appeal. The view of the matter clearly sets out issues set out in the closure notice and so can only be construed as referring to that. 26. There is no valid form for a view of the matter letter and, (and I deal with this in a bit more detail below) it seems to me abundantly clear, and I find that it would seem equally clear to the objective reader, that it was HMRC's view of the matter relating to the closure notice and the subsequent appeal. 27. In that view of the matter letter, HMRC set out that the appellant has two options. He could ask for a review or he could "appeal to an independent tribunal". 28. The objective reader would know that in the appeal letter, BP had, as mentioned above, indicated that they would not be requesting a peer review within HMRC. The reader would also be aware that the letter says: "instead we wish to appeal to the Lower Tier Tribunal". 29. This is then

picked up at the end of the letter where BP ask HMRC to "confirm that they will be applying to the Clerk to the Lower Tier Tribunal for the case to be listed, and heard in due course. Please also confirm that all demands to tax associated with these disputed assessments will be stood over pending the decision of the independent tribunal". 30. This is the context against which the Valentine's Day letter must be considered. 31. That letter refers back to the appeal letter of 16 December 2020. It expresses pleasure that HMRC have found it and asks why HMRC have chosen to ignore the narrative set out in it. 32. It then goes on to say: "We are also bemused as to why you have been unable, or unwilling, to follow our requests that the case is listed before the first Tier Tribunal. We enclose for information a further copy of the appeal letter of 16 December 2020, explaining the issues we have regard to the conduct of Counter Avoidance in this matter, and our wish for an independent review of all steps taken, and failure to respond to documentation in a timely manner. We look forward to receiving your specific response with regard to this letter, together with your further advice as to when the case will be sent to the clerk to the lower Tier Tribunal for listing in due course". 33. The appeal letter reflects a misunderstanding of the way in which the appeal process works. It asked HMRC to apply to the tribunal for the case to be listed. It also said that the appellant did not want a review. It asked that everything is held over until the independent tribunal has come to a decision. It also sets out the grounds of appeal which include failings by HMRC. A copy of the appeal letter was enclosed with the Valentine's Day letter. 34. To my mind therefore, and this is what I think the objective reader would take from the Valentine's Day letter, is that where BP referred to "our wish for an independent review of all steps taken and failure to respond to documentation a timely manner" it is referring to the appeal to the independent tribunal mentioned in the view of the matter letter and the appeal letter. Although the word "review" is used in the Valentine's Day letter, I do not think that is being used in the technical sense required by section 49 C TMA, but in the looser sense that it would be the procedure undertaken by the tribunal. 35. BP had stated they did not want a peer review (where this is used in the technical sense). Instead, they wanted the failings by HMRC considered (reviewing in a nontechnical sense) by the independent tribunal notwithstanding that a consideration of these failings might fall outside the jurisdiction of the tribunal. That simply demonstrates a misunderstanding on the part of BP. It seems to me that they wanted the tribunal to review HMRC's behaviour, and it was that process to which they were referring in the Valentine's Day letter. 36. The text of the Valentine's Day letter, read in context, is neither a request for a review pursuant to section 49B TMA, nor the acceptance of an offer of a review set out in the view of the matter letter pursuant to section 49C TMA. 37. I find as fact, therefore, that even given the extended time limit pleaded by Mr Spencer, the appellant did not make a timely request for a statutory review. 38. In light of the foregoing, this disposes of the first issue in favour of HMRC. But because these points were raised by Mr Spencer, I consider (albeit briefly) his submissions regarding the validity of the view of the matter letter and HMRC's extension of time. 39. As regards the first, there is no statutory form for a view of the matter letter. It must simply set out HMRC's "view of the matter in question". 40. Mr Spencer submits that the view of

the matter letter was defective in that it did not set out the view of the matter in question due to the incorrect date. And was only valid once that date was corrected on 31 January 2023. I disagree. Adopting the objective reader test, it is abundantly clear what HMRC's view of the matter in question was. That matter in question was the closure notice and the issues raised in it. The incorrect date does not affect its validity. The objective reader would not have been misled by that error. 41. I am fortified in this conclusion by Archer , and its analysis of the Court of Appeal decision in HMRC v Donaldson

[2016] STC 2511 (" Donaldson "). These decisions demonstrate that the correct approach when considering a document (in this case the view of the matter letter) albeit in the context of section 114 TMA, is not to consider whether there is some a priori categorisation of defects which are fundamental or gross, but one must instead concentrate on the nature and effect of the defect in the particular circumstances of the case (see [35]). One must consider the impact on the recipient. It is clear that the test of whether the recipient was misled under section 114 TMA must be considered from the perspective of the objective reader equipped with the knowledge that, in that case, Mr Archer and KPMG had, including knowledge of what had led to the enquiry and what HMRC's conclusions were. 42. Although not argued by Mr Riaz, it seems to me that if there was any defect in the view of the matter letter, it would be cured by section 114 TMA. BP could not have been misled by the view of the matter letter as regards the matter in question. 43. The second point made by Mr Spencer was that the acceptance of the offer was within the extended time period offered to the appellant in HMRC's letter of 31 January 2023. Mr Riaz submitted that the officer had no statutory authority to do that, something which is endorsed by Indigo. 44. HMRC clearly have care and management powers. These were not considered in detail by either party at the hearing, specifically on whether those powers would entitle the HMRC officer to extend time. 45. It is clear however from Raftopoulou (see [55]) that HMRC consider that the first part of section 118 (2) TMA is to "deal with cases where HMRC have extended time pursuant to their collection and management powers, for example by allowing payment by instalments, with the result the penalties cannot be imposed if the act in question is performed within the extended period". 46. Notwithstanding Indigo, I can see an argument that if HMRC extend a review period pursuant to their care and management powers that brings the situation within the potential ambit of section 118 (2) TMA. 47. I can also see that there may be a distinction between an extension during the 30 day period within which the appellant may take up the offer of a review, and a retrospective extension following expiry of the 30 day period (as was the case in this appeal). And whilst care and management might allow an extension in the former circumstances, it may not do so in the latter. 48. But if section 118 (2) TMA is to save the appellant, as submitted by Mr Spencer, accepting the offer of the review must be something "required to be done", and I do not think it is. 49. I agree with Mr Riaz that once a review was offered, the appellant had three choices. He could accept it; he could notify his appeal to the tribunal; he could do nothing. 50. It is true that each of these alternatives had consequences. Clearly if he did nothing, the appeal would determine and his liability

would be as submitted by HMRC under the closure notice. But that does not mean that he was required to do something. He might have made the decision not to appeal or take up the offer of review for sound commercial or domestic reasons. 51. To my mind the situation in which the appellant found himself is similar to the situation in which a taxpayer finds himself if he has an opportunity to, for example, make a repayment claim, or make a claim for losses. Once he has chosen to make that claim, then there are provisions with which he has to comply. But he is not required to make the claim in the first place. To my mind he is in an identical position to the taxpayer in Raftopoulou. 52. In Raftopoulou the Court of Appeal said: "64. Even without attending too closely to the context, I take a different view to the UT as to the natural and ordinary meaning of the critical words. As it seems to me, they ordinarily cover mandatory acts, rather than the conditions attached to the voluntary exercise of rights. To be valid, a repayment claim must be made within four years of the end of the relevant tax year, but there is no requirement imposed on a taxpayer to make a repayment claim within four years or at all. I would not disagree with the UT that it is no stretch of language to say that if a taxpayer chooses to make a claim, it "is required to be done" within a certain time limit, but that is not to say that the ordinary meaning of anything required to be done" extends to the performance of a condition for a valid claim". 53. The appellant cannot therefore come within the ambit of section 118 (2) TMA, the provision which, it was argued on his behalf, allowed him to accept the offer of the review within the extended time period offered by HMRC. 54. I therefore conclude that his appeal was settled on the terms of the view of the matter letter. The appellant's right to appeal arises under section 49H TMA. He had 30 days starting on the date of the view of the matter letter to notify his appeal to the tribunal. He did not do so until July 2024. This, therefore, is a Martland case. Late appeal Martland 55. Both parties couched their submissions by reference to the decision in Martland v HMRC

[2018] UKUT 178 (TCC) , (" Martland ") in which the Upper Tribunal considered an appellant's appeal against the FTT's decision to refuse his application to bring a late appeal against an assessment of excise duty and a penalty. The Upper Tribunal said: "44. When the FTT is considering applications for permission to appeal out of time, therefore, it must be remembered that the starting point is that permission should not be granted unless the FTT is satisfied on balance that it should be. In considering that question, we consider the FTT can usefully follow the three-stage process set out in Denton:

(1) Establish the length of the delay. If it was very short (which would, in the absence of unusual circumstances, equate to the breach being "neither serious nor significant"), then the FTT "is unlikely to need to spend much time on the second and third stages" - though this should not be taken to mean that applications can be granted for very short delays without even moving on to a consideration of those stages.

(2) The reason (or reasons) why the default occurred should be established.

(3) The FTT can then move onto its evaluation of "all the circumstances of the case". This will involve a balancing exercise which will essentially assess the merits of the reason(s) given for the delay and the prejudice which would be caused to both parties by granting or refusing permission.

45. That balancing exercise should take into account the particular importance of the need for litigation to be conducted efficiently and at proportionate cost, and for statutory time limits to be respected. By approaching matters in this way, it can readily be seen that, to the extent they are relevant in the circumstances of the particular case, all the factors raised in Aberdeen and Data Select will be covered, without the need to refer back explicitly to those cases and attempt to structure the FTT's deliberations artificially by reference to those factors. The FTT's role is to exercise judicial discretion taking account of all relevant factors, not to follow a checklist.

46. In doing so, the FTT can have regard to any obvious strength or weakness of the applicant's case; this goes to the question of prejudice - there is obviously much greater prejudice for an applicant to lose the opportunity of putting forward a really strong case than a very weak one. It is important however that this should not descend into a detailed analysis of the underlying merits of the appeal...

47. Shortage of funds (and consequent inability to instruct a professional adviser) should not, of itself, generally carry any weight in the FTT's consideration of the reasonableness of the applicant's explanation of the delay: see the comments of Moore- Bick LJ in Hysaj referred to at [15(2)] above. Nor should the fact that the applicant is self-represented - Moore-Bick LJ went on to say (at [44]) that "being a litigant in person with no previous experience of legal proceedings is not a good reason for failing to comply with the rules"; HMRC's appealable decisions generally include a statement of the relevant appeal rights in reasonably plain English and it is not a complicated process to notify an appeal to the FTT, even for a litigant in person". 56. In addition, the Upper Tribunal in HMRC v Katib

[2019] UKUT 189 (TCC) (" Katib "), which concerned an appeal by HMRC against a decision of the tribunal to give permission for the taxpayer to make late appeals, emphasised the importance of adhering to statutory time limits at [17]: "We have, however, concluded that the FTT did make an error of law in failing to acknowledge or give proper force to the position that, as a matter of principle, the need for statutory time limits to be respected was a matter of particular importance to the exercise of its discretion. We accept Mr Magee's point that the FTT referred to both BPP Holdings and McCarthy & Stone in the Decision. Paragraph 27 (1) of the decision (cited above) shows that the FTT seemed to have the point in mind. However, instead of acknowledging the position, the tribunal went on to distinguish the BPP Holdings case on its facts. Differences in fact do not negate the principle, and it is not possible to detect that the tribunal thereafter gave proper weight to it in parts of the decision which followed".

Submissions

57. In summary Mr Spencer submitted as follows: (1) He accepted that the delay in notifying the appeal to the tribunal is serious and significant. (2) However, there are good reasons for this. Firstly, HMRC had extended the deadline for allowing the appellant to request a review or notify the tribunal of his appeal, on two occasions. (3) HMRC's extension to the deadlines originally set out in the view of the matter letter, to 2 March 2023, is of significant weight. This was relied upon by Mr Finerty. This is evidenced by the letter sent by BP to HMRC on 16 January 2024. (4) Mr Finerty thought that he had made a valid request for a statutory review in the Valentine's Day letter. (5) Secondly, the appellant reasonably relied on BP. He was under the mistaken impression that Mr Finerty had responded to HMRC's letter of 8 March 2023. HMRC v Kotecha

[2025] UKFTT 330 (" Kotecha ") is authority for the proposition that reliance on an adviser is a reasonable excuse where the reliance is itself reasonable particularly in circumstances where there is nothing to suggest to the taxpayer that matters are not proceeding in an orderly fashion. (6) The appellant had reminded Mr Finerty to respond to HMRC's letter of 3 March 2023. He therefore thought that things were proceeding in an orderly manner. (7) Mr Finerty was under the misapprehension as to the appellant's rights in respect of the settlement under section 54 TMA which misapprehension was caused by HMRC. In the letters explaining that HMRC had treated the matter as settled under that section, they did not say that the appeal had been "deemed to be settled". This is important as an appellant has no right to resile from this deemed section 54 agreement. (8) The merits of the parties respective positions did not militate strongly one way or the other. (9) HMRC will not be prejudiced by this late appeal as it has been made clear throughout that the appellant intended to notify his appeal to the tribunal and indeed were inviting him to do so in May 2024. (10) Any delays by the appellant should be seen in the context of the enquiry into the appellant's tax return which took over eight years to complete. And it then took a further two years for HMRC to issue the view of the matter letter. 58. In summary Mr Riaz submitted as follows: (1) The appellant's delay is at worst 586 days and best 62 days. These are both serious and significant. (2) There are no good reasons for this. The onus is on the appellant to invoke his appeal rights and not on HMRC; there were multiple trigger points which should have put the appellant on notice that he needed to notify a late appeal to the tribunal, yet he failed to do so in response to these; HMRC had never said they would not oppose the appellant's application for permission to bring a late appeal; the Valentine's Day letter was not an acceptance of statutory review, something which was clear from HMRC's letter of 8 March 2023 which was received by both the appellant and BP; reliance on an agent cannot be a reasonable excuse. (3) The letter of 8 March 2023 does not extend any deadlines; it simply seeks clarification of what the appellant intends to do. (4) The appellant did not contact BP save in respect of the 8 March 2023 letter. It would have been reasonable for him to have made further checks on BP to ensure that they were on top of his appeal. This is especially the case given that the appellant is a solicitor. (5) HMRC would be prejudiced if I were to grant permission as this would divert HMRC's resources

away from cases in which appellants have appealed in time. (6) The merits of the appellant's underlying case are weak. My view 59. I will apply the three stage approach set out in Martland . I remind myself that I am exercising judicial discretion, and in that regard I am subject to the overriding objective in Rule 2 of the FTT Rules, namely, to deal with the case fairly and justly. 60. Both parties agree that the delay in notifying the appellant's appeal to the tribunal is serious and significant. 61. The reasons for this, as asserted by the appellant, are set out above. 62. Having established these, I now turn to the third stage of the Martland

analysis

, namely, to undertake an evaluation of all the circumstances of the case. This requires me to conduct a balancing exercise, assessing the merits of those reasons, with the prejudice which would be caused to both parties by granting or refusing permission. And in undertaking this balancing exercise, I must 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. 63. Stripped to its essentials, the appellant's case is that he relied (justifiably) on BP who (again justifiably) thought that they had asked for statutory review and were confused and misled by HMRC's correspondence. 64. Mr Spencer cites Kotecha as authority for the proposition that reliance on adviser can be a reasonable excuse where that reliance is reasonable. With respect to him, that is a misreading of that decision. It also flies in the face of the Upper Tribunal decision in Katib. 65. In Katib the UT said : "

54. It is precisely because of the importance of complying with statutory time limits 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... 55 Given the importance of adhering to statutory time limits, we see no reason why a litigant who says that a representative failed to file an appeal on time should necessarily be in a different position from a litigant who says that a representative failed to advise adequately of the time limits within which an appeal should be brought... Rather, we consider that the correct approach in this case is to start with the general rule that the failure of Mr Bridger to advise Mr Katib of the deadlines for making appeals, or to submit timely appeals on Mr Katib's behalf, is unlikely to amount to a "good reason" for missing those deadlines when considering the second stage of the evaluation required by Martland . However, when considering the third stage of the evaluation required by Martland , we should recognise that exceptions to the general rule are possible and that, if Mr Katib was misled by his advisers, that is a relevant consideration". 66. In the Upper Tribunal's decision in Uddin (

[2023] UK UT99), the Upper Tribunal stated that "Put another way, a client will always rely on their advisers, but their advisers' failings are still laid at their door. Why the adviser failed and how they lead their client to continue to rely on them is not relevant to the Martland analysis, unless the client can show that they did whatever any reasonable taxpayer in that situation would have done (which would generally be to make sufficient efforts to keep

tabs on the adviser and make sure that matters were on track)". 67. It was in respect of a submission by HMRC (similar to the submission made by HMRC in this case) that the appellant should have kept better tabs on his adviser, that the tribunal in Kotecha said: "51 But it is equally clear that an appellant's "obligation" to keep tabs on their adviser, once they have devolved responsibility for conducting appeal to that adviser, is qualified by a reasonableness test. One puts oneself in the position of the taxpayer, with that taxpayer's qualities, and considers whether failing to monitor the ongoing activities of the adviser was reasonable in respect of the taxpayer's personal qualities and the circumstances in which he found himself". 68. The general rule, as set out in Katib , is that failings by an adviser are treated as failings by the taxpayer. 69. And so, the fact that the appellant put the conduct of his appeal in the hands of BP, who then failed to ensure that the time limits were met, is not a good reason, and carries little weight at this final evaluation stage. 70. The general rule, as set out in Uddin , is that "... Why the adviser failed and how they lead their client to continue to rely on them is not relevant to the Martland analysis...". 71. This suggests that there is no need for me to consider the submissions made by Mr Spencer regarding the reasons why BP failed to make a timely notification of the appeal. 72. However, I have briefly considered them. 73. I have found as a fact that the Valentine's Day letter was not a request for a statutory review. I accept that HMRC had extended the deadline within which BP could accept that offer (even if they had power to do so) but that simply meant that the appellant responded within that extended time limit. It does not affect the fact that the contents of that letter was not a request for a review. 74. It seems to me that Mr Finerty was not wholly familiar with the appeals process. This is evidenced by the fact that he asked HMRC to notify the appellant's appeal to the tribunal, and the ambiguity in the Valentine's Day letter. There is also a reference to a "peer review" rather than a "statutory review" which is what I would have expected an adviser to have referred to. It is clear that compliance with the relevant legislative provisions is crucial to the bringing of an effective appeal. I would have expected an adviser to have made it wholly clear in correspondence what that adviser was seeking. It is simple enough to set out in a letter that the request is for a statutory review and perhaps go on to provide the legislative reference. 75. Furthermore, there were, as suggested by Mr Riaz, and as set out in [9] above a number of trigger points which demonstrate (clearly) that HMRC did not consider BP to have made an effective request for review, and that they had the option to notify the appeal to the tribunal; but in these circumstances the tribunal was likely to want to understand the reasons for the delay as they needed to give permission for the late notification. 76. It is submitted that BP were confused, and even misled, by HMRC. I do not accept that as a good reason for failing to notify a timely appeal. It is for the adviser to understand the procedural law not to rely on HMRC's interpretation of it. Nor do I accept that failure to distinguish between a deemed section 54 TMA agreement (from which there is no right to resile) and a formal section 54 TMA agreement, in HMRC correspondence, justifies failings by BP. 77. But in any event, HMRC have made their position regarding the review abundantly clear in correspondence, and what BP needed to do in response. 78. It is accepted that both the appellant and BP received HMRC's letter of

8 March 2023. The appellant specifically spoke to Mr Finerty about it when the latter was on holiday. However, due to a failure in office procedures, it seems the letter did not come to Mr Finerty's attention. That letter explains the appellant's options. Mr Riaz submits that it was not reasonable for the appellant not to have followed up his conversation with Mr Finerty to check that the latter had responded. I have some sympathy with this. The appellant is a solicitor and although therefore perhaps not intimately acquainted with the time limits relating to tax appeals, might reasonably expect it to have checked with Mr Finerty that he had responded, especially when their initial conversation had been held whilst the latter was on holiday. He could have asked for an update on HMRC's response to Mr Finerty's response to the letter of 8 March 2023. That would have driven out the fact that there had been no such response by Mr Finerty. 79. There is no evidence that the appellant followed up HMRC's letter 8 February 2024 it clearly sets out HMRC's position regarding the lateness of the review, and the appellant's right to notify his appeal to the tribunal. Once again, I think a solicitor receiving that letter should have contacted BP and discussed the position with them. 80. BP's letter of 20 November 2023 asserts that "our client wishes to proceed with an internal peer review". I find this surprising if, as submitted, it was genuinely thought that an effective review had already been requested by the Valentine's Day letter. 81. It goes on to say that if the "peer review process cannot be enacted, then we will apply for a hearing of the case before the first Tier Tribunal...". 82. In HMRC's response of 20 December 2023, HMRC made it very clear that the deadline for the independent review "has long passed" and went on to say that the appellant could contact the tribunal who is likely to require reasons for a late appeal. 83. BP also take the view that it was not until 20 December 2023 that they understood HMRC to be saying that, as far as HMRC were concerned, the matter was settled. 84. But even then, it was not until July 2024 that notification of the appeal was made to the tribunal. 85. To the extent, therefore, that I can take into account details of an agent's failings when weighing up the balance of prejudice, I attach very little weight to these failings. 86. I attach little weight either way to the respective merits of each party's case. I am not persuaded that HMRC will be prejudiced since, as submitted by Mr Spencer, they have always been on notice that the appellant wished to notify his appeal to the tribunal. The problem for the appellant is that the agent did not do that on a timely basis. 87. Drawing these threads together. Reliance on an agent is not, generally speaking, a good reason for a default. Failings by an agent are attributable to an appellant. In this case, to the extent that I can look behind failings by the agent and consider the reasons for those failings, I find that the reasons do not weigh heavily in favour of granting permission. The agent should be expected to understand the appeals process which includes the review process. In this case the agent was put on notice of HMRC's position regarding the review, and the right to notify the appeal to the tribunal. I do not consider that these notifications were seriously affected by misunderstandings regarding the state of the review nor the status of a deemed section 54 agreement. HMRC had made it expressly clear in correspondence that they had not accepted the Valentine's Day letter as a valid review and that the appellant's time for seeking further review had long expired. 88. I appreciate that if I do not grant permission,

the appellant will lose the right to have his appeal heard by the tribunal. But as the UT said in Katib: "60 T he financial consequences of Mr Katib not being able to appeal were very serious because his means were limited such that he would lose his home. That, the FTT concluded, was too unjust to be allowed to stand. We have considered this factor anxiously for ourselves. However, again, when properly analysed, we do not think that this factor is 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". 89. Given the particular importance of the need for litigation to be conducted efficiently and at proportionate cost, and for statutory time limits to be respected, I am not persuaded that the reasons given by the appellant for the default outweigh the serious and significant delays to notify his appeal to the tribunal. 90. Accordingly, I do not grant him permission to notify a late appeal to the tribunal. DECISION 91. For the reasons given above, it is my decision that the notification of the appeal to the tribunal was late, and I do not give permission for the appellant to notify that late appeal to the tribunal. RIGHT TO APPLY FOR PERMISSION TO APPEAL 92. 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: 24 th JULY 2025 APPENDIX 31 Appeals: right of appeal

(1) An appeal may be brought against–

(a) any amendment of a self-assessment under section 9C of this Act (amendment by Revenue during enquiry to prevent loss of tax),

(b) any conclusion stated or amendment made by a closure notice under section 28A or 28B of this Act (amendment by Revenue on completion of enquiry into return),

(c) any amendment of a partnership return under section 30B(1) of this Act (amendment by Revenue where loss of tax discovered), or

(d) any assessment to tax which is not a self-assessment... 31A Appeals: notice of appeal

(1) Notice of an appeal under section 31 of this Act must be given–

(a) in writing,

(b) within 30 days after the specified date,

(c) to the relevant officer of the Board.

(2) In relation to an appeal under section 31(1)(a) or (c) of this Act–

(a) the specified date is the date on which the notice of amendment was issued, and

(b) the relevant officer of the Board is the officer by whom the notice of amendment was given.

(3) In relation to an appeal under section 31(1)(b) of this Act–

(a) the specified date is the date on which the closure notice was issued, and

(b) the relevant officer of the Board is the officer by whom the closure notice was given.

(4) In relation to an appeal under section 31(1)(d) of this Act [(other than an appeal against a simple assessment)]2 -

(a) the specified date is the date on which the notice of assessment was issued, and

(b) the relevant officer of the Board is the officer by whom the notice of assessment was given. (4A) In relation to an appeal under section 31(1)(d) against a simple assessment— (a) the specified date is the date on which the person concerned is given notice under section 31AA of the final response to the query the person is required by section 31(3A) to make, and (b) the relevant officer of the Board is the officer by whom the notice of assessment was given.

(5) The notice of appeal must specify the grounds of appeal. 49B— Appellant requires review by HMRC (1) Subsections (2) and (3) apply if the appellant notifies HMRC that the appellant requires HMRC to review the matter in question. (2) HMRC must, within the relevant period, notify the appellant of HMRC's view of the matter in question.

(3) HMRC must review the matter in question in accordance with section 49E.

(4) The appellant may not notify HMRC that the appellant requires HMRC to review the matter in question and HMRC shall not be required to conduct a review if—

(a) the appellant has already given a notification under this section in relation to the matter in question,

(b) HMRC have given a notification under section 49C in relation to the matter in question, or

(c) the appellant has notified the appeal to the tribunal under section 49D.

(5) In this section "relevant period" means—

(a) the period of 30 days beginning with the day on which HMRC receive the notification from the appellant, or

(b) such longer period as is reasonable. 49C— HMRC offer review (1) Subsections (2) to (6) apply if HMRC notify the appellant of an offer to review the matter in question. (2) When HMRC notify the appellant of the offer, HMRC must also notify the appellant of HMRC's view of the matter in question. (3) If, within the acceptance period, the appellant notifies HMRC of acceptance of the offer, HMRC must review the matter in question in accordance with section 49E. (4) If the appellant does not give HMRC such a notification within the

acceptance period, HMRC's view of the matter in question is to be treated as if it were contained in an agreement in writing under section 54(1) for the settlement of the matter. (5) The appellant may not give notice under section 54(2) (desire to repudiate or resile from agreement) in a case where subsection (4) applies. (6) Subsection (4) does not apply to the matter in question if, or to the extent that, the appellant notifies the appeal to the tribunal under section 49H. (7) HMRC may not notify the appellant of an offer to review the matter in question (and, accordingly, HMRC shall not be required to conduct a review) if—

(a) HMRC have already given a notification under this section in relation to the matter in question,

(b) the appellant has given a notification under section 49B in relation to the matter in question, or

(c) the appellant has notified the appeal to the tribunal under section 49D.

(8) In this section "acceptance period" means the period of 30 days beginning with the date of the document by which HMRC notify the appellant of the offer to review the matter in question. 49D— Notifying appeal to the tribunal

(1) This section applies if notice of appeal has been given to HMRC.

(2) The appellant may notify the appeal to the tribunal.

(3) If the appellant notifies the appeal to the tribunal, the tribunal is to decide the matter in question.

(4) Subsections (2) and (3) do not apply in a case where—

(a) HMRC have given a notification of their view of the matter in question under section 49B, or (b) HMRC have given a notification under section 49C in relation to the matter in question.

(5) In a case falling within subsection (4)(a) or (b), the appellant may notify the appeal to the tribunal, but only if permitted to do so by section 49G or 49H. 49E— Nature of review etc (1) This section applies if HMRC are required by section 49B or 49C to review the matter in question.

(2) The nature and extent of the review are to be such as appear appropriate to HMRC in the circumstances.

(3) For the purpose of subsection (2), HMRC must, in particular, have regard to steps taken before the beginning of the review—

(a) by HMRC in deciding the matter in question, and

(b) by any person in seeking to resolve disagreement about the matter in question.

(4) The review must take account of any representations made by the appellant at a stage which gives HMRC a reasonable opportunity to consider them.

(5) The review may conclude that HMRC's view of the matter in question is to be—

(a) upheld,

(b) varied, or

(c) cancelled. (5A) See section 49EA concerning additional conclusions a review can reach in the case of penalties under Schedule 24 to the Finance Act 2021.

(6) HMRC must notify the appellant of the conclusions of the review and their reasoning within —

(a) the period of 45 days beginning with the relevant day, or

(b) such other period as may be agreed.

(7) In subsection (6) "relevant day" means—

(a) in a case where the appellant required the review, the day when HMRC notified the appellant of HMRC's view of the matter in question,

(b) in a case where HMRC offered the review, the day when HMRC received notification of the appellant's acceptance of the offer.

(8) Where HMRC are required to undertake a review but do not give notice of the conclusions within the time period specified in subsection (6), the review is to be treated as having concluded that HMRC's view of the matter in question (see sections 49B(2) and 49C(2)) is upheld.

(9) If subsection (8) applies, HMRC must notify the appellant of the conclusion which the review is treated as having reached. 49G— Notifying appeal to tribunal after review concluded

(1) This section applies if—

(a) HMRC have given notice of the conclusions of a review in accordance with section 49E, or

(b) the period specified in section 49E(6) has ended and HMRC have not given notice of the conclusions of the review.

(2) The appellant may notify the appeal to the tribunal within the post-review period.

(3) If the post-review period has ended, the appellant may notify the appeal to the tribunal only if the tribunal gives permission.

(4) If the appellant notifies the appeal to the tribunal, the tribunal is to determine the matter in question.

(5) In this section "post-review period" means—

(a) in a case falling within subsection (1)(a), the period of 30 days beginning with the date of the document in which HMRC give notice of the conclusions of the review in accordance with section 49E(6), or

(b) in a case falling within subsection (1)(b), the period that—

(i) begins with the day following the last day of the period specified in section 49E(6), and (ii) ends 30 days after the date of the document in which HMRC give notice of the conclusions of the review in accordance with section 49E(9). 118 (2) For the purposes of this Act, a person shall be deemed not to have failed to do anything required to be done within a limited time if he did it within such further time, if any, as the Board or the tribunal or officer concerned may have allowed; and where a person had a reasonable excuse for not doing anything required to be done he shall be deemed not to have failed to do it unless the excuse ceased and, after the excuse ceased, he shall be deemed not to have failed to do it if he did it without unreasonable delay after the excuse had ceased. BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII URL: https://www.bailii.org/uk/cases/UKFTT/TC/2025/TC09594.html

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