[2020] UKFTT 0029 (TC)

TC07535

STAMP DUTY LAND TAX – Follower Notice - 50% penalty for failure to take corrective action - Whether corrective action taken? - No - Whether reasonable in all the circumstances not to have taken corrective action? - Yes - Appeal allowed

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2019/01043

BETWEEN

COMTEK NETWORK SYSTEMS (UK) LIMITED **Appellant**

-and-

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS **Respondents**

TRIBUNAL: JUDGE CHRISTOPHER MCNALL

Sitting in public at Liverpool Civil and Family Court, 3rd Floor, 35 Vernon Street, Liverpool L2 2BX on Tuesday 3 December 2019

Mr Askar Sheibani and Mrs Christine Sheibani, directors, for the Appellant

Mr Barry Sellars, a Presenting Officer, of HMRC Solicitor's Office and Legal Services, for the Respondent Commissioners

DECISION

INTRODUCTION

1. This Appeal is brought by way of a Notice of Appeal dated 19 February 2019.

2. The Appellant limited company seeks to challenge a penalty of £11,000 imposed on it on 14 June 2018 (and upheld at departmental review on 2 November 2018) as a penalty for not taking corrective action in response to a follower notice.

THE GROUNDS OF APPEAL

3. In summary, the Appellant's Grounds of Appeal are as follows:

   (1) All the information requested by HMRC was sent on 25 October 2012;

   (2) HMRC should have followed up a phone call made on 13 December 2012;

   (3) The Company was in constant phone communication with HMRC;

   (4) A payment plan was arrived at in January 2018, and once the payment plan had been confirmed HMRC said that would be an end of the matter. The payment plan was confirmed by HMRC in a letter on 23 January 2018, and was to include any penalty;

   (5) Despite that, HMRC still wrote on 19 February 2018 saying that the SDLT was still outstanding;

   (6) A penalty at the maximum permissible rate of 50% is too high because it fails to take into account the Appellant's communication with HMRC.

4. In summary, HMRC's response is as follows:

   (1) SDLT was due and payable;

   (2) Corrective action was not taken in response to the follower notice by the specified time. Payment is not corrective action;

   (3) The burden is on the Appellant to show that it was reasonable in all the circumstances not to take corrective action, 'if applicable'.

THE FACTS

5. On the basis of the evidence and documents which I have read and heard, I find the following facts.

6. Mr and Mrs Sheibani bought Llwyn Owen Farm ('the Property') on 31 August 2011. However, they did not purchase it in their own names. The purchase was in the name of 'Sheibani Llwyn' and was for the declared sum of £555,000 (on the Stamp Duty Land Tax return) (but £550,000, on the Land Register).

7. 'Sheibani Llwyn' was a private unlimited company, which had been incorporated on 4 August 2011.

8. On 31 August 2011 (that is, immediately following the purchase) Sheibani Llwyn transferred the Property, for free, to Askar Sheibani and Comtek Network Systems (UK) Limited (i.e., the present Appellant; 'Comtek') it being declared to the Land Registry by Sheibani Llwyn as transferor and Mr Sheibani and Comtek as transferees that the transfer was 'a distribution in satisfaction of a return of capital for no chargeable consideration'.

9. Unlike 'Sheibani Llwyn', Comtek was a long-established company, based in Flintshire, directed by Mr and Mrs Sheibani, which was engaged in genuine economic activity (namely, the repair of electronic equipment).

10. Had Mr and Mrs Sheibani, or Comtek, bought the Property in their own names, ad valorem Stamp Duty Land Tax at the rate of 4% (£22,000) would, as a matter of course, have been due.

11. No Stamp Duty Land Tax was paid.

12. What is described in outline above was a 'sub-sale distribution in specie' scheme, designed to avoid Stamp Duty Land Tax. Mr and Mrs Sheibani had bought the scheme from a firm (registered with the Chartered Institute of Taxation as a firm of Chartered Tax Advisers) known as 'BH Tax Limited', who had been introduced to them by their conveyancing solicitors. Mr and Mrs Sheibani told me that they had paid BH £11,000 to buy the scheme, and had been told that, if the scheme subsequently was found not to work, they were insured, and would not lose out. Unfortunately, they were subsequently informed (perhaps inaccurately) that BH was in liquidation, and that there was no way to recover the £11,000 which they had paid.

13. On 16 May 2012, HMRC wrote to Sheibani Llwyn's conveyancing solicitors indicating that it had issued a notice under Schedule 10 Paragraph 12 of the *Finance Act 2003* of HMRC's intention to enquire into the land transaction return for the Property. That letter was passed on to BH who wrote to HMRC on 25 October 2012 attaching certain documents, being described as the contract, the completion statement, transfers, documents regarding the incorporation of Sheibani Llwyn, and 'copy minutes and resolutions regarding the distribution in specie'.

14. On 12 December 2012, HMRC, having considered those documents, wrote to Comtek in relation to the SDLT, drawing a comparison with the SDLT scheme which this Tribunal in *Vardy Properties & Vardy Properties (Teeside) Ltd v HMRC* [2012] UKFTT 564 (TC) had decided did not work.

15. SDLT of £22,000 was requested, as well as interest. That letter offered a settlement opportunity, which was not taken up at the time.

16. On 8 July 2015, HMRC wrote again, making a Revenue Determination under Schedule 10 Paragraph 25 of the Finance Act 2003 (although the amount determined was £22,200 and not £22,000). Further interest had also accrued. Although it is a fair point, taken by the Appellants, that nothing had apparently been heard from HMRC between December 2012 and July 2015, I am satisfied that no relevant time limits had passed.

17. On 7 August 2015, one Bethan Langford (an employee and the 'Financial Controller' of Comtek) wrote a short letter to HMRC that the transaction was not notifiable, and that the demand to be paid on the transaction was 'not justified'. No further detail was given.

18. Further time passed. In the meanwhile, the Tribunal heard and decided *Crest Nicholson (Wainscott) and others v HMRC* [2017] UKFTT 0136 (TC) which was a similar scheme to that used to purchase the Property. That decision was released on 1 February 2017, giving HMRC a year in which to issue a Follower Notice: FA 2003 section 204(6)(a). HMRC treated that as the final judicial ruling relevant to the chosen arrangements: see *Finance Act 2003* sections 204(4) and 205(3). I am satisfied that no relevant time limits had passed.

19. On 8 September 2017, HMRC wrote to Comtek that it intended to send the Company two things: (i) a follower notice and (ii) an accelerated payment notice. The follower notice was sent on 29 September 2017, enclosed with a covering letter. It invited corrective action by 3 January 2018 (i.e., 90 days). I am satisfied that letter was received by the Company. There was no response. The APN was apparently also sent, but it is not in the bundle before me.

20. I am satisfied that HMRC phoned the Company on 13 October 2017 and spoke to Bethan Langford.

21. On 21 November 2017, HMRC wrote a chasing letter, again saying that corrective action needed to be taken by 3 January 2018, and that, if it was not taken, the Company would be liable to pay a penalty. There was no response.

22. On 13 December 2017, HMRC phoned the Company, but no-one was available to speak. There was no follow-up call.

23. On 15 January 2018, HMRC wrote to the Company stating that it was liable to a penalty of 50% because the deadline had passed and the Company had not taken the necessary corrective action.

24. On 17 January 2018, HMRC wrote that it had tried to contact the Company to seek payment of £22,000.

25. At some point between 17 January 2018 and 23 January 2018, there was a discussion between Bethan Langford at the Company and somebody at HMRC, at which a payment plan was arrived at. Bethan Langford's letter of 11 July 2018 says that she "was clearly informed that this was the end of the matter and the case would be closed".

26. There is no evidence from HMRC about that phone call save for a letter dated 23 January 2018, written pursuant to that discussion, by a Mr L Nash, a Debt Management Officer of HMRC's Debt Management Accelerated Payment Team. In the circumstances, that is an important letter.

27. It is prominently headed:

> **Accelerated Payment/Penalty/Surcharge/Follower Notice**

28. That is to say, HMRC refers in the heading to everything which until then had ostensibly been in issue between the Company and HMRC in relation to its purchase of the Property.

29. That letter goes on to say (reproducing the original text as closely as I can):

> "Total amount you owe £22000
>
> This letter confirms our arrangement for you to pay the total amount above of [blank in the original] for the Accelerated Payment/Penalty/Surcharge ****delete charges not included in the arrangement****
>
> I have agreed to this on the understanding that you have told us about all your HM Revenue and Customs debts."

30. Payments, each of £11,000, were to be made by 15 February 2018 and 15 March 2018. Each of those payments was made on time.

31. On 19 February 2018, Mrs A M Green, an Officer of HMRC's Counter Avoidance, wrote to the Company referring to letters dated 30 June 2017 and 28 January 2018, neither of which are before me. But that letter stated - wrongly - that the SDLT remained outstanding, and invited a response by 19 March 2018. The SDLT was not outstanding on 19 February 2018 because HMRC had earlier, on 23 January 2018, written to confirm an agreement to pay, and, by 19 February 2018, £11,000 had already been paid.

32. Against the above background, nothing was then heard from HMRC until on 1 May 2018, an unnamed member of HMRC's Bootle Team 4 of HMRC's Counter-Avoidance AP Teams wrote to the Company about the penalty for failure to take the necessary corrective action by 3 January 2018. Reference was made to the letter of 15 January 2018, but none of the other correspondence was referred to, nor the agreement to pay, nor the letter of 23 January 2018.

33. I have already mentioned Bethan Langford's letter of 11 July 2018 written in response to HMRC's intimated desire in May 2018 to impose a penalty for having failed to take corrective action by 3 January 2018. She clearly advances, on behalf of the Company, the contention that the matter had been settled.

34. HMRC's response to the letter of 11 July 2018 comes from an unnamed individual in Bootle Team 4, and is dated 30 July 2018. It refers to 'correspondence', but does not set out what correspondence had in fact been considered. The furthest it goes in relation to the agreement to pay is as follows:

> "As you had not paid the Accelerated Payment Notice by the due date of 3 January 2018, our Debt Management department contacted you to discuss the outstanding amount, and you agreed a payment plan with them. If they confirmed that it was 'the end of the matter', that will have been in respect of the Accelerated Payment Notice." (emphasis added by me).

35. In my view, that response is unsatisfactory. It does not actually deny the position advanced by the Company, but simply seeks to add a gloss. It is not apparent whether any inquiry had been made by the writer as to what was actually said, by whom, to whom, when, and where. It is not apparent whether HMRC had kept any record of the call made in January 2018. Although records of other calls have been placed before me, no record of that important call has been placed before me. That means that the best evidence about what had been agreed was (i) HMRC's letter of 23 January 2018 and (ii) Bethan Langford's letter of 11 July 2018.

36. A review was requested. The result of that was communicated on 2 November 2018. Unfortunately, that review does not engage substantively with what the Company said was its belief that the entire matter - APN and Follower Notice and penalties - had already been settled. HMRC instead says that "Once you paid the Accelerated Payment any confirmation that it was 'the end of the matter' will have been in respect of the APN. As explained in various correspondence, the follower notice is separate to the APN and required a separate action to comply with it'.

37. The review is also unsatisfactory insofar as it compounds HMRC's earlier failure to engage substantively with what was being said. It again fails to engage with what was said to have been an agreement to pay. The alleged agreement to pay did not follow payment of the accelerated payment, but antedated it. Nor does HMRC make any reference to its own letter of 23 January 2018. It is not clear to me what HMRC is saying there. For example, it is not clear whether it is being said that the Company must have understood in mid-January 2018 that it was not settling the issue of any penalty (as then, not imposed) in relation to a failure to take corrective action because it had earlier been sent letters saying that a penalty would be imposed. If that is what is being said, it makes no sense. There are other interpretations (but, given the want of clarity, they can only be interpretations) which equally fail to make sense.

38. It is most significant in the context of this appeal that HMRC does not actually advance any factual case in relation to the alleged agreement to pay. HMRC's Statement of Case limits itself to the succinct submission that the burden is on the Appellant to show that it was reasonable in the circumstances not to take corrective action (which is true), 'if applicable'. That is not taken up or expanded upon anywhere in HMRC's otherwise lengthy and detailed Statement of Case, which moves seamlessly from discussing whether corrective action was taken to whether any reduction should be applied for the quality of co-operation.

39. For the sake of completeness, I should add that Mr Sellars, who appeared before me, was not the draftsman of the Statement of Case. His Skeleton Argument does seek to remedy the deficiency, in a heading 'Was it reasonable for the Appellant not to take corrective action', but

he focuses on whether letters were or were not received; as opposed to the substance of those letters and what facts lay behind them.

40. At the hearing, and in response to a question from me, Mr Sellars did accept (which, it seems to me, he was bound to) that the letter of 23 January 2018 could have been better expressed. But he did not concede that the letter had any bearing on the issue of reasonable excuse, which is therefore an issue which I must now consider and decide.

Discussion

41. Since this is a penalty case, HMRC bears the burden of demonstrating (albeit only to the civil standard, namely the balance of probabilities) that the penalty is due and payable. If the penalty is shown to be due and payable, then the burden is on the Appellant (to the same standard) to show that it was reasonable in all the circumstances not to have taken corrective action.

42. Mr and Mrs Sheibani were buying an expensive property to live in, and adopted (on advice) what they knew to be a scheme designed to eliminate the need to pay the Stamp Duty Land Tax which would otherwise have been due and payable.

43. They said that they had not understood all the scheme documents which were before me in evidence (for example, the documents creating 'Sheibani Llwyn'). The impression which I gained - both from their written submissions and their oral evidence - is that they did not understand the things which they were signing. Although they are directors of a successful business, my impression is that they were not financially sophisticated individuals. In relation to the matters under appeal, there was throughout a pervasive inability by the Company to separate the relevant from the irrelevant.

44. Payment of the denied advantage is not corrective action. That was the conclusion arrived at by the Tribunal (Judge Mosedale) in *Joseph Hutchinson v HMRC* [2018] UKFTT 290 (TC), especially at Paragraphs [67]-[72], and I respectfully agree.

45. I am satisfied that Comtek did not take corrective action within the proper meaning and effect of section 208(4)-(6) of the *Finance Act 2014.* More particularly, I am satisfied that Comtek never completed and return the back of the form CADAcc38 (sent to it under cover of a long letter dated 29 September 2017) by 3 January 2018. Completion of that form would in part have constituted corrective action. The failure to complete that form is what lies at the bottom of the penalty.

46. The reasons given for this failure were not convincing. I was told that the matter had been left in the hands of the financial controller Bethan Langford, and that she had not drawn it to the attention of Mr and Mrs Sheibani, as (it was said) she should have done. I do not believe that explanation. I do not believe that Ms Langford had authority to make any independent decisions (that is to say, without consulting Mr and Mrs Sheibani) about what was to be done in terms of responding to the Follower Notice or to correspondence. Although the correspondence and notices were directed to the Company, they did not relate to its business premises, but to Mr and Mrs Sheibani's (the Company's owners') own home. I find that Mr and Mrs Sheibani knew throughout of correspondence which was coming in, and were giving directions as to how it was to be dealt with.

47. However, that does mean that the extent and nature of Mr and Mrs Sheibani's understanding of the situation they were in can be gauged from Bethan Langford's letters.

48. Ms Langford was not a tax expert. She was not the Company's tax adviser, or its accountant. Her role as outlined to me was principally clerical, being dealing with the payroll and monthly management accounts, overseeing the work of a small team, and reporting directly

to Mr and Mrs Sheibani. There were vague suggestions that Ms Langford had been suffering from some personal difficulties which had affected her work performance. But, if those are relied upon as a reason for non-compliance, I reject them. There is simply no evidence to support them.

49. I believe and so find that Ms Langford would only have acted on instructions from her employers and managers, being Mr and Mrs Sheibani. I believe and so find that by far the likeliest explanation for the non-completion of the form by 3 January 2018 is that Mr and Mrs Sheibani decided to ignore it (or, if not to ignore it, decided that it should not be filled in). That also happens to be entirely consistent with their position that the tax was not due.

50. But that position changed in mid January 2018, doubtless prompted by the letter dated 15 January 2018. That spurred the Company into action. Mrs Sheibani told me that she did not remember that letter at the time, although she accepted that it would eventually have been brought to her attention, although she thought 'much later'. I do not accept that evidence. The letter was marked for the attention of the Company Secretary and 'Private and Confidential'. I do not believe that Ms Langford (or, for that matter, anyone else in the Company) opening that letter would not have immediately shown it to Mr and Mrs Sheibani. It was an official letter, from HMRC, coming on the back of other letters, talking about tax avoidance and penalties. I do not believe that it would have been filed away unmentioned and unactioned.

51. An argument is made that HMRC should have followed up its call in December 2018 (when no-one had been available to speak). I find that argument more challenging. Despite the Company's earlier stance, it is at least possible that, had there been a conversation in mid December 2018, then either (i) the Company would have made representations (thereby potentially extending the deadline) or (ii) the Company would have decided (as it did shortly thereafter, and in response to the very next communication which it had from HMRC) to grasp the nettle.

52. It seems to me that the only ground of appeal which really merits detailed exploration is the one in relation to the alleged agreement to pay and whether this is a relevant circumstance.

53. There was such an agreement. The best evidence of it is HMRC's letter of 23 January 2018 and Bethan Langford's letter of 11 July 2018. It was said, consistently, that the Company believed that the payment of £22,000 in February and March 2018 was going to settle everything.

54. In my view, put shortly, that view was objectively intelligible. HMRC's 23 January 2018 is certainly capable of being read as settling not only the APN but also the Follower Notice. Both are referred to in the heading. As a matter of ordinary letter writing, the heading performs a purpose, being to give a one line summary of what the letter is about. On the basis of the heading, the reader would think that the letter was dealing with both the APN and the FN. It does not end there, because the letter goes on to confirm an arrangement in relation to the 'Accelerated Payment/Penalty/Surcharge' ****delete charges not included in the arrangement****. In my view, the use of the word 'Penalty' here gave rise to an objectively reasonable impression that the penalty which HMRC had already, at that point, said it was going to charge was captured by the arrangement to pay. I have already expressed my views as to the want of adequacy in HMRC's engagement with this point in the context of this appeal.

55. I acknowledge that the discussion in mid January 2018 took place after the date on which corrective action was to have been taken: 3 January 2018. But I do not consider that I can properly ignore what happened after 3 January 2018. It is not without significance that, following the missed call on 13 December 2017, that the Company, in response to the very next communication from HMRC, got in touch and made the arrangement to pay. I have to ask whether, in the circumstances, the failure to take corrective action was reasonable. That

involves a retrospective assessment of why things were done/not done at certain times. In turn, that involves the proper drawing of inferences.

56. I derive guidance as to the approach to be adopted from the careful and comprehensive discussion by the Tribunal (Judge Rupert Jones) in *Onillon v HMRC* [2018] UKFTT 33 (TC). There, the Tribunal found that, on the facts, it was reasonable in all the circumstances for the taxpayer not to have taken corrective action. That was also a case involving consideration of correspondence, and what could be taken from it.

57. Judge Jones considered that there was room for ambiguity in the covering letter to the follower notice. He remarked that 'reasonable' must be construed objectively, and not subjectively, which means that the taxpayer must have done what a prudent and reasonable hypothetical person would have done in the situation in light of all the facts and the legislative context: see Para [175]. I respectfully agree. He goes on to say that the exercise is 'fact specific' (see Para [180]). Again, I agree. This Tribunal is primarily a fact-finding jurisdiction, and we have the benefit of hearing the taxpayers give evidence.

58. Judge Jones pointed to a number of individual factors which, in *Onillon*, supported the conclusion that the Appellant's failure to take corrective action was reasonable. He was careful not to identify whether any one of them was, or would have been, in and of itself sufficient: see Para [183]. I agree with that approach, since it is appropriately attuned to the fact-specific nature of the exercise.

59. He referred to the covering letter dated 17 December 2014, and regarded that as open to ambiguity as to the type of response required: see Para [186] and found that the letter 'left open an interpretation, contrary to the clear terms of the Follower Notice, that one might not take the necessary corrective action but choose to settle one's tax affairs by ringing HMRC and being told what to do next'': Para [187]. He remarked that where there were 'potentially contradictory instructions', it was incumbent on HMRC 'to make sure that its paperwork and demands it issues to taxpayers are accurate and valued if they wish to rely on failure to comply': Para [191]. I agree.

60. Put shortly, it seems to me that if a taxpayer's failure to do what a particular document says should be done is capable, in and of itself, of generating a financial penalty, then that document - read objectively - should be sufficiently clear and unambiguous as to leave no real doubt in the mind of the reasonable recipient as to what the document says should be done.

61. It seems to me that the same approach can be adopted in relation to HMRC's letter of 23 January 2018. I do not criticise HMRC's use of a template in this case, but the template has not been adopted appropriately, so that it gave rise, in my mind, to obvious ambiguity and confusion.

62. *Onillon* (which appears to have been the first case decided on the point of whether a failure to take corrective action was reasonable) does not stand alone in this regard. In *Hutchinson* [2018] UKFTT 290 (TC), Judge Mosedale confirmed that the issue of whether a follower notice is in proper form must also be a valid ground of appeal: see Para [45] (albeit that Judge Mosedale rejected the submission that the notice in that case invalid: see Para [59]).

63. The Tribunal (Judge Anne Redston in both instances) also addressed the matter of the meaning of 'reasonable in all the circumstances' in *David Benton and others v HMRC* [2018] UKFTT 593 (TC) and *Giulio Corrado v HMRC* [2019] UKFTT 275 (TC). *Benton* was subject (with the permission of Judge Redston) to an appeal to the Upper Tribunal, but that appeal (according to the Upper Tribunal's publicly-accessible Register of Cases) was withdrawn, so there is no binding guidance on the expression.

64. Having concluded that "reasonable in all the circumstances" was not the same as "reasonable excuse", Judge Redston went on to say (at Para [175]:

> ".... the task of the FTT ... is to decide whether it was 'reasonable in all the circumstances" for a person to fail to take corrective action.
>
> This has two elements:
>
> 1. the FTT must establish, not the facts which relate to a particular excuse put forward by the Appellant, but 'all the circumstances' relevant to his failure to take corrective action. Ms Nathan called these "the building blocks for the edifice"; and
>
> 2. the FTT must then decide whether, in all those circumstances, the taxpayer's behaviour was reasonable. The approach required here is the same as when assessing reasonable excuse, namely to "take into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times."

65. Consistently with this guidance, Judge Redston adopted (as Judge Rupert Jones had done before her) an intensely fact-sensitive approach: see Paras [176] et seq of her decision. She dismissed the appeal on that footing, on the basis that the Appellants had not, on the facts, met the burden: see Para [187].

66. It is clear that something has gone badly awry here with HMRC's communication in relation to the APN and the FN. Letters coming from different parts of HMRC are inconsistent. The clearest example of that is HMRC's letter demanding payment of the SDLT even though an agreement to pay (on any view, in relation to SDLT) had already been reached, and honoured.

67. It is also clear to me, on the basis of the information and materials before me, that the Appellant was genuinely labouring under the belief that the matter had been concluded by way of the agreement to pay, including any penalty. It seems to me that belief was reasonable, and credible. That belief was already fully formed in January 2018: several months before the penalty was actually issued. Albeit not without hesitation, I consider that this is an unusual case in which, just about, the Appellants have succeeded in persuading me, on balance, and looking at all the circumstances in the round, that their non-compliance was reasonable.

THE LEVEL OF PENALTY

68. In case my conclusions in relation to the above should fall to be reconsidered, I express my views, albeit briefly, as to the level of penalty.

69. I have no jurisdiction at all in relation to the starting point of 50%. That is the position laid down by Parliament.

70. But, and as Judge Mosedale remarked in *Hutchinson* (at Para [113]):

> "I accept that 50% of the tax is a harsh penalty where the offending does not involve dishonest behaviour. The offending is to persist (without good reason) in the position that the taxpayer's tax liability is lower than a final judicial ruling in a similar case has indicated that it is. The prejudice to HMRC that it is put to the trouble and expense of defending the appeal which, because there is no good reason for the persistence, HMRC considers that it should not have been."

71. I agree with that succinct summary of the purpose of the 50% penalty.

72. However, I do have jurisdiction in relation to the deductions applied for disclosure ('telling', 'helping', 'giving'). Had I upheld the penalty, I would nonetheless have applied a modest deduction - from 50% to 40% - to the penalty. The mischief outlined by Judge Mosedale did not happen, in a fully-fledged way, here. The Appellant did adopt a stance which, in my view, was initially somewhat obstructive and uncooperative, but that did change. Mr and Mrs Sheibani did eventually act sensibly, engage with HMRC, and pay the sum in dispute, as opposed (for example) to seeking to advance an appeal against the assessment of the underlying liability - i.e., an appeal seeking to persuade the Tribunal that the arrangements which they had engaged in were materially distinguishable from those which the Tribunal had already disapproved of in *Crest*. No matter how hopeless such an appeal would have been, it is tolerably clear that such conduct is capable of attracting a penalty at the top of the range.

73. Documents were provided on 25 October 2012, and I was not told of any deficiency in what was given. I consider that a 10% reduction would have been consistent with HMRC's own guidance.

OUTCOME

74. For the reasons set out above, the Appeal is allowed and the penalty of £11,000 is set aside.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

75. 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. An application for permission to appeal 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.

Dr Christopher McNall

TRIBUNAL JUDGE

RELEASE DATE: 16 JANUARY 2020