Neutral Citation: [2022] UKFTT 00454 (TC)

Case Number: TC08659

FIRST-TIER TRIBUNAL
TAX CHAMBER

By remote video hearing

Appeal reference: TC/2021/02472

INCOME TAX – application to postpone tax – whether "reasonable grounds" for believing there is an overcharge to tax – no – application refused

Heard on: 29 November 2022
Judgment date: 05 December 2022

Before

TRIBUNAL JUDGE ANNE SCOTT

Between

PHILIP GUTMANOVICH RAVICHER

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Sitting in Chambers in Edinburgh

DECISION

INTRODUCTION

1. This hearing was listed as a video hearing to consider the appellant's application for postponement of the payment of tax under section 55(3) Taxes Management Act 1970 ("TMA") following jeopardy amendments being issued by the respondents ("HMRC") under section 9C TMA on 19 February 2021. The tax in question amounted to £241,388 for the year ended 5 April 2017.

2. HMRC opposed that application on the basis that, in November 2018, the appellant had disclosed £500,000 of taxable remittances in relation to that tax year. HMRC disputed the narrative provided by the appellant.

3. I had a Hearing Bundle extending to 386 pages, an Authorities Bundle extending to 57 pages and a Skeleton Argument for HMRC.

Preliminary issue

4. On 25 November 2022, the appellant's former representative wrote to the Tribunal stating that:

> "… he no longer wishes to have any personal representations made at the Hearing … It is therefore kindly requested that the matter is dealt with by paper …".

5. On Monday 28 November 2022, HMRC responded confirming that they consented to the matter being decided on the papers provided that the Tribunal considered that the matter could be decided on the papers in terms of Rule 29(1) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (as amended) ("the Rules").

6. On my instructions, the Tribunal confirmed that the matter would therefore be decided on the papers.

The facts

7. On 9 August 2018, HMRC opened an investigation under Code of Practice 8 ("COP8") and on the same day the appellant was notified that an enquiry into his tax returns for the 2016/17 tax year had been opened under section 9A TMA. In the covering letter for the enquiry, HMRC notified the appellant of the "Requirement to Correct" ("RTC rule") provisions within Schedule 18 Finance (No. 2) Act 2017 ("the 2017 Act") and pointed out that:

> "This new legal requirement creates an obligation for anyone who has undeclared UK tax liabilities that involve offshore matters or transfers to disclose the relevant information about this non-compliance to HMRC by 30 September 2018 or face higher penalties".

8. In the letter opening the enquiry, HMRC stated that the 2017 Act had introduced "…this requirement…for anyone with off-shore tax non-compliance committed before 6 April 2017 to correct this by 30 September 2018".

9. In fact, the appellant had until 30 September 2018 to confirm his intention to make a disclosure under the RTC rule and until 29 November 2018 to submit the online disclosure but the RTC rule only applied to tax non-compliance committed before 6 April 2017.

10. HMRC indicated that their areas of concern included the appellant's business interests, residency status and his means.

11. On 22 August 2018, the appellant engaged WLH Taxation Limited ("WLH") to manage his affairs. Correspondence and discussions ensued between WLH and HMRC in the course of which HMRC had explained the process for making disclosure under the RTC rule. In or

about late October 2018, HMRC issued an Information Notice in terms of Schedule 36 Finance Act 2008.

12. WLH submitted a draft Outline Disclosure to HMRC including an estimate of £500,000 for taxable remittances. HMRC emailed WLH on 27 November 2018 confirming that it was the appellant's choice as to whether, and on what terms, any disclosure was made and pointed out what they perceived as deficiencies in the draft.

13. On 29 November 2019, an Outline Disclosure in respect of the RTC was lodged. That confirmed:-

(a) That the appellant was UK tax resident and non-UK domiciled.

(b) That the Outline Disclosure was being submitted to the best of his "current knowledge and belief".

(c) That the disclosure covered the tax year ending 5 April 2017 stating that "this period will be extended to prior years, if necessary".

(d) It was explained that the appellant had never previously sought tax or accountancy advice and he had been unaware of any tax implications arising from his offshore assets/income whilst resident in the UK. It was HMRC's enquiry which had prompted him to seek advice.

(e) He had purchased gold from abroad in approximately 2008 whilst he was non-UK tax resident and he had sold that gold for approximately £112,000 in June 2016 giving rise to a potential Capital Gains Tax liability of approximately £4,000.

(f) WLH would be exploring matters further but monies arising from property development activities in Russia had been held in offshore nominee entities belonging to the appellant.

(g) It was stated that:-

> "There have also been taxable remittances amounting up to £500,000 (sic), which would result in an income tax liability of approximately £200,000. An accurate income tax liability figure will be provided to HMRC once documentation has been fully considered and the amounts have been ascertained."

(h) Bank statements had been used to help make the disclosure.

14. On 4 March 2019, WLH wrote to HMRC providing an interim response to the Information Notice. They furnished further information about the appellant's tax position for 2016/17 and disclosed that the appellant was a director in four UK companies and two non-UK companies. One UK company "the UK close company" traded, two were dormant and one received no income. The non-UK companies were described as Feyla Investments Limited ("Feyla"), in Cyprus and Marvel World Trade Limited ("Marvel") in the United Arab Emirates ("UAE"). Those two companies were stated to be the appellant's <u>only</u> overseas business interests and he had a beneficial interest in both. Neither company had ever traded but simply held funds on his behalf on a nominee basis.

15. The appellant held an investment portfolio with a Luxemburg institution and he had not received any loans from overseas in the 2016/17 tax year.

16. He had resided in Israel immediately prior to residing in the UK and until 5 April 2017 he had not sold any overseas properties whilst he had been a UK resident.

17. He owned a property in Epsom, a property in Russia in which his parents resided rent free and a property in Cyprus which he states was beneficially owned by his ex-wife who was resident in Cyprus. He had no other interests in any other properties.

18. The proceeds from the sale of the gold had been invested in a Barclays Jersey investment portfolio account of which he was the sole beneficial owner.

19. A schedule of bank account details was furnished and it was confirmed that he had American Express and Barclaycard credit cards.

20. On 25 March 2019, WLH again wrote to HMRC. They enclosed a number of documents and provided further information, namely:-

(a) Two Seychelles companies had been established by the appellant both of which had bank accounts. Both companies held funds for the appellant on a nominee basis.

(b) Some Bank of Cyprus statements for one of the companies, Worsaku Limited, for the period 22 December 2009 to 4 May 2010, had been found and they showed deposits of US $2.7 million in that period. That was derived from a Russian land development venture which had commenced in 2005.

(c) The appellant only became a UK resident in July 2010. Most of the appellant's time in the UK had been as a "stay-at-home father".

(d) In December 2011, the appellant provided a loan of $2.5million through Russian intermediaries to a company called Spektr Limited Liability Company ("Spektr"). Copies of the translation of the loan documentation, which was dated 26 December 2011, were provided. The key provisions were that the appellant would receive an annual interest rate of 12% with the loan to be repaid within three years. Any amendments would only be valid if made in writing and signed by both parties. Any repayment of the loan must be notified 15 business days before repayment.

(e) In March 2012, because of currency control regulations, it had been agreed between the parties that the interest and loan repayments would be paid to Feyla rather than the appellant. That was not committed to writing. An agency agreement dated 1 March 2012 between the appellant and Feyla Investments Limited, which was described as a British Virgin Islands ("BVI") company, was produced. It provided that Feyla would receive payments of principal and interest from Spektr. Spektr was not a party.

(f) In late 2012, concerned about Spektr's financial position, the appellant entered into negotiations with Spektr and it was agreed that the $2.5million would be repaid over a longer period of time and there would be no interest payments. There are no records supporting that as the negotiations were apparently conducted by telephone.

(g) It was conceded that the appellant had considered exercising his option under the loan to take ownership of land, apparently valued in excess of the loan amount, but decided not to do so. No explanation was, or has been, offered.

(h) It was alleged that "significant repayments were made in 2016/17 (further details later)".

(i) In 2015, because of the financial crisis in Cyprus where Feyla's bank accounts were held, Marvel was incorporated in the UAE and Dubai bank accounts were opened. The intention was that Marvel would replace Feyla as the recipient of any monies from Spektr. The appellant signed an agency agreement dated 23 November 2015 with Marvel.

(j) Some bank statements for the year ended 5 April 2017, including bank statements for Alfa Bank, Hellenic Bank and Emirates NBD Bank accounts, were provided. It was

explained that numerous deposits from various third party entities were repayments of the loan made to Spektr. It was argued that the appellant was not connected with any of those companies.

(k) It was confirmed that the £111,977 deposited on 15 June 2016 in the Barclays Savings account related to the proceeds of the sale of the gold.

(l) It was confirmed that deposits from Marvel and Feyla into Fibank, Bulgaria contained descriptions on the bank statements such as "salary", "consultancy fees", or "director's loan" but that was "simply for categorising purposes as was required by the banks". It was argued that the deposits did not relate to salaries etc but were transfers from Marvel and Feyla, the source of which was ultimately from the Russian land development proceeds. The address mentioned on the statements was not for a property owned by the appellant but rather by a friend.

(m) In relation to Mashreq bank, the amounts with the description "currency UK" related to funds transferred from one currency account to a different currency account using a third party service.

(n) In respect of accounts held by Feyla with Bank of Cyprus the letter stated that the deposits described as "construction" and "Statanet" were funds from a business partner who had also loaned funds to Spektr. He had requested that his loan repayments be transferred to the appellant's overseas bank accounts. That would allow the funds to be used by the appellant and the business partner in the UK close company.

(o) It was argued that the appellant's lifestyle had been funded by drawing down the proceeds relating to Russian land development.

The conclusion in the letter was that the appellant had been funding his lifestyle using capital accumulated during the period he was non-UK resident.

21. On 25 June 2019, the appellant provided HMRC with signed mandates for two banks for banking records relating to Feyla and Marvel. HMRC also proceeded with formal requests, under treaty, to both the Cypriot and UAE authorities, for information and documents relating to accounts controlled by the appellant in those countries.

22. On 25 February 2020, HMRC wrote to WLH commenting on their review of 25 of 28 bank accounts and intimating that they had identified potential remittances of some £1.2million for the tax year 2016/17. They sought further clarification on numerous issues. HMRC pointed out that the appellant had become UK resident in the tax year 2009/10 for the purposes of the remittance basis charge and according to his self-assessment tax returns, that had been since 4 February 2010.

23. HMRC stated that in order to protect time limits for earlier years, protective assessments for the tax year 2013/14 had been issued based on the assessment of the information HMRC held and the Outline Disclosure. HMRC also indicated that they intended to open enquiries into the tax years 2017/18 and 2018/19.

24. On 24 June 2020, WHL responded stating if the appellant's 2010/11 tax return had said that he was UK resident from February 2010, then that had been an error because that was when he had bought a property in the UK. It was argued that he had only become UK resident in July 2010. It was confirmed that there were no 2016/17 company accounts for Feyla and Marvel. They did comment on the many queries about entries in the bank statements but stated that they had provided HMRC with the relevant information in their letter of 25 March 2019.

25. HMRC received the responses from the UAE authorities on 19 November and 3 December 2020.

26. On 18 December 2020, HMRC wrote to the appellant, with a copy to WLH, confirming what they considered to be the findings thus far of the COP8 enquiry. The conclusion was that there had been an understatement of the appellant's tax liability. In summary, the evidence indicated that:-

(a) The appellant had been receiving income arising from trading activities carried on by offshore entities, namely, Feyla and Marvel. The evidence indicated that the remittances to the UK for the year ended 5 April 2017 amounted to £507,873 which represented 29% of the income paid into the bank accounts which was £1,709,000.

(b) HMRC had obtained information from Dubai and had established that Marvel held three bank accounts with Emirates NBD in different currencies and those were opened on 10 May 2016 and closed on 1 November 2018. HMRC had the bank statements for 2016 and 2017. Mashreq had provided bank statements for the period April 2016 to November 2020. The appellant had submitted an application to Mashreq on 18 April 2016 to open three different currency accounts for Marvel and on 11 August 2016 a further bank account was opened.

(c) As far as the Spektr loan was concerned, HMRC sought further information. HMRC pointed out that the agency agreement that had been provided, purporting to transfer the appellant's right to receive repayments from Spektr, was made with Feyla Investments Limited registered in the BVI. However, the bank accounts, which HMRC had obtained from Cyprus from Hellenic Bank, stated that the name of the company is "Feyla Investments Corp" which is the same as the name that was provided to Mashreq on the bank application.

(d) Marvel was only incorporated in Dubai on 14 April 2016 but the agency agreement which had been provided in respect of Marvel was allegedly signed on 23 November 2015.

(e) In regard to the evidence of the source of deposits, HMRC argued that they did not accept that the source of the sums paid into the bank accounts in 2016/17 was the repayment of the Spektr loan because:-

(i) The loan to Spektr in December 2011 was $2.5million and the deposits into the bank account in 2016/17 amounted to $2.4million.

(ii) Marvel and Feyla's bank accounts, as also those of the UK close company, also indicated activities in property development in Russia.

(iii) The evidence pointed to both Feyla and Marvel being income generating companies. Indeed, in the application submitted to Mashreq it was stated that Marvel was a trading company, the nature of the business was "construction material trade (real estate investments)" and that it would be receiving payments from European clients and paying funds to suppliers in Turkey. A list of key customers and suppliers had been provided.

(iv) The application to Mashreq had listed one of Marvel's key customers as being a company called Lerkon Trading. Payments of $86,370 and $110,216 had been deposited in Feyla's Hellenic bank account on 7 April 2016 and 12 April 2016 respectively and both dates were before Marvel was incorporated on 14 April 2016. The trade appeared to have been carried out by Feyla, either prior to, or in tandem with, Marvel.

(v) There was significant evidence that Marvel had been providing services to the UK close company.

(vi) The appellant had told Mashreq that he was self-employed in the IT industry, whereas he had told HMRC that he did not work.

(vii) The appellant had set up four companies in the UK since he moved to the UK, with one being dissolved in 2014. In respect of two of the companies, the appellant had claimed to be an IT specialist. His tax return for 2010/11 had declared income of £45,000 from self-employment described as IT services and that was supported by online promotional material indicating that he was heavily involved in IT.

(viii) The UK company that WLH had described in the letter of 4 March 2019 as having "received no income" had paid Marvel $78,000 on an invoice on 11 November 2015 and deposited $26,480 with Mashreq on 27 December 2017, again referencing an invoice.

(ix) A number of other issues were raised and it was pointed out that assessments totalling approximately £1.6million would be raised and possibly penalties.

27. Correspondence again ensued and on 19 February 2021, HMRC wrote to the appellant, copied to WLH, stating that they were amending the tax return for the year ended 5 April 2017, pursuant to section 9(C) TMA with tax of £619,388.40 being due. The increased tax was due to an amendment to include £1,340,000 of taxable remittances. The letter also amended the 2017/18 and 2018/19 tax returns but the additional tax in respect of those two years has been postponed. The letter confirmed that enquiries were still ongoing, requested further information and indicated that HMRC would be applying to the Tribunal to approve a further Information Notice.

28. On 19 March 2021, the appellant appealed the jeopardy amendments and requested postponement of the tax.

29. On 31 March 2021, WLH emailed HMRC making a claim to the remittance basis in relation to 2016/17.

30. On 14 May 2021, HMRC wrote to WLH reiterating the position stated in their letter of 19 February 2021. In particular the letter stated that:-

(a) The agency agreement with Feyla was allegedly signed almost 2 years before Feyla was incorporated and the agency agreement with Marvel was allegedly signed almost 6 months before Marvel was incorporated.

(b) The bank records obtained by HMRC (Emirates NBD and Hellenic Bank) and those provided by the appellant (Mashreq and Bank of Cyprus) evidence the transactions being trading income.

(c) HMRC held documentation, obtained under the treaty with the UAE, where the appellant had confirmed that the bank accounts were being used to receive trading income.

(d) The income earned by the "various incorporations", which the appellant has stated are nominee companies, amounted to $2.4million (£1.7million) for 2016/17. The narrative of loan repayments, which was not accepted by HMRC based on the evidence held, did not serve to explain how the appellant had funded remittances in the tax years either side of 2016/17.

(e) Having conducted further reviews of the records provided by the appellant, plus those obtained under treaty, HMRC believed that in respect of the appellant's own accounts there had been total remittances in 2016/17 of £200,000 and in relation to accounts held by nominee companies, the total remittances were £1,395,000 of which

£440,000 were personal remittances. In total, therefore there had been remittances of £1,595,000 of which £640,000 had been personal. WLH were invited to present analyses as to the quantum of those amounts.

(f) The claim to be taxed on the remittance basis was invalid and the appellant would therefore be taxed on the "arising" basis. Accordingly, HMRC would seek to tax the appellant on the £1.7 million of income received for 2016/17.

(g) The tax in relation to 2017/18 and 2018/19 would be postponed since those assessments had been raised on the basis of the presumption of continuity but there would be no postponement of the £241,388 because in November 2018 the appellant had disclosed £500,000 of taxable remittances and the narrative relating to the loans was not sufficiently evidenced.

31. On 10 June 2021, the appellant appealed the refusal to postpone tax. On 12 August 2021, WLH lodged further representations asking questions of HMRC and complaining about HMRC. They argued that the jeopardy assessments were invalid.

32. Information held by HMRC includes the following:-

(a) When requested to identify the type of transactions for which the bank accounts would be used by Mashreq bank, the appellant stated that inward remittances were "PAYMENTS FROM CLIENTS" and outward fund transfers were "PAYMENTS TO SUPPLIERS".

(b) Mashreq bank had identified in relation to Marvel in the "Know Your Customer" ("KYC") documentation that the nature of the business was that "Client will trade in construction material (sic) that they are required in office (sic) and personal building. He will deal in tiles and ceramic products and such things he imports and exports and his business will take place outside the geographical boundary of UAE".

(c) Key customers were identified in the KYC.

(d) Lastly, in relation to the KYC, the source of funds was described "customer owning the company called Feyla Investmenrs (sic) corp since February 2014 and he is also working as self-employed It profession (sic) currently and also director for the Apply to stay ltd co. Prior to the (sic) this customer was working in various companies."

(e) HMRC had ascertained that a previous company owned by the appellant called Alliance Technology Ltd ("Alliance") which was incorporated in March 2010 had previously been called Apply to Stay Limited. It was dissolved on 18 March 2014 shortly after Feyla was incorporated in the BVI.

(f) The BVI Register of Companies shows that Feyla was incorporated on 6 February 2014 and as at 16 August 2019 had been struck off the Register.

(g) After the assessment for 2016/17 was issued further analysis of the bank statements provided by the appellant and those secured via treaty agreements, indicate that there were total remittances in 2016/17 of £1,594,895.29 of which £642,895.29 were personal (hence paragraph 30(e) above).

(h) HMRC were aware that the appellant had listed his home, which had no mortgage, for sale and they were concerned that he might seek to dispose of assets.

The law

33. Insofar as material the relevant subsections of section 55 TMA read:-

"55(3) If the appellant has grounds for believing that the amendment or assessment overcharges the appellant to tax, or as a result of the conclusion stated in the closure notice the tax charged on the appellant is excessive, the appellant may –

(a) First apply by notice in writing to HMRC within 30 days of the specified date for a determination by them of the amount of tax, the payment of which should be postponed pending the determination of the appeal;

(b) Where such a determination is not agreed, refer the application for postponement to the Tribunal within 30 days from the date of the document notifying HMRC's decision on the amount to be postponed.

An application under paragraph (a) must state the amount believed to be overcharged to tax and the grounds for that belief

…

(6) The amount of tax the payment of which shall be postponed pending the determination of the appeal shall be the amount (if any) in which it appears … that there are reasonable grounds for believing that the appellant is overcharged to tax … ".

Overview of the appellant's grounds of appeal

34. The appellant relied on the HMRC guidance in relation to RTC which indicates four categories relating to amounts which might be declared together with information on penalties. The third category is "between £75,000 and £500,000".

35. The appellant argues that WLH had insufficient time to undertake the work by 29 November 2018 as a number of documents, including overseas bank statements, had to be requested from third parties. Since they wished to avoid penalties, they stated that the Outline Disclosure had included an estimate of up to £500,000 being the upper limit of the third category. They had concluded that it would be prudent to include the maximum banding as detailed in the guidance.

36. They also argued that, in their email enclosing the draft Outline Disclosure, they had told HMRC that "We (including Mr Ravicher) are currently unaware of what the level of taxable remittances (sic) … which is why an estimate of up to £500,000 has been included". When they submitted the Outline Disclosure they had stated that "I would also like to emphasise that if in due course it is demonstrable the tax liabilities are less than what is stated on the Outline Disclosure, then it is agreed that HMRC will not seek to tax that element".

37. The appellant has fully cooperated with HMRC in the provision of information but it is alleged that HMRC have reached conclusions without allowing the appellant the opportunity to respond. HMRC had not provided an analysis of the additional £1,340,000 of foreign income which they allege had been remitted and therefore the appellant had been unable to check the figures.

38. HMRC have failed to follow the guidance set out in EM1952 Jeopardy Amendments Conditions in that they have not set out their reasons as to why there would be a loss to the Crown and in regard to EM1953 Jeopardy Amendments, it is alleged that none of that applies to the appellant.

Overview of HMRC's arguments

39. The issue of the amendment pursuant to section 9C TMA is separate to the application for postponement of tax and is not under appeal to the Tribunal. Therefore the appellant's

arguments in respect of the issue of the amendment do not speak to the matter before the Tribunal.

40. The appellant's contention that no taxable remittances were made to the UK in the year ended 5 April 2017, and that therefore there is no UK tax liability, lacks credibility and the evidence indicates that substantial remittances were made to the UK.

41. The appellant's narrative that the amounts deposited into the bank accounts of Feyla and Marvel and subsequently remitted to the UK are repayments of a loan lack credibility and the evidence indicates that these amounts are trading income.

42. The Outline Disclosure was said to have been made on the basis of the bank statements held by the appellant. The appellant is therefore not overcharged by the amount of tax that HMRC has refused to postpone.

43. The appellant's grounds for believing that he is overcharged by the amendment is not reasonable.

Discussion

44. We have set out the provisions of section 55 TMA in relation to postponement of a payment of tax under the heading "The Law".

45. In *Kent v The National Crime Agency* [2016] UKFTT 228 (TC) ("Kent") Judge Richards and Mrs Bridge set out section 55 TMA and at paragraph 17 went on to state:

> "The approach to be taken on applications for postponements of tax under s55 of TMA 1970 was considered by the Court of Appeal in *Williams (HM Inspector of Taxes) v Pumahaven Ltd* 75 TC 300 and in *Parikh v Curry* 52 TC 366. From those cases we have derived the following principles:
>
> > (1) In order to succeed with their application [the appellants] do not need to prove all relevant facts or succeed in all legal arguments which will have to be proved or established at the hearing of the substantive appeal. They simply have to show 'reasonable grounds' for believing that they are overcharged by the assessments in question.
> >
> > (2) To be 'reasonable', the grounds must not be 'fanciful, imaginary or contrived' and must be 'agreeable to reason, not irrational, absurd or ridiculous'.
> >
> > (3) There must be some firm basis, in the form of evidence, for the grounds put forward."

46. I agree with that approach and have adopted it here.

47. The first point that I make is that I do not accept that the appellant has fully cooperated with HMRC in the provision of information. HMRC has had to resort to issuing a Schedule 36 Information Notice and intends to issue more. There are many unanswered questions.

48. The information furnished by the appellant is patently incorrect in a number of regards. The appellant's contention that he was a "stay-at-home father" did not reflect the publicly available profiles posted by the appellant on the internet at LinkedIn.com and Indeed.com, copies of which were in the Bundle. It is certainly entirely inconsistent with the information provided to Mashreq, see paragraph 26(e)(vi) and (vii). That has been pointed out to WLH and no explanation has been provided..

49. The information about Feyla is also misleading. As can be seen in the letter of 4 March 2019, it was suggested that Feyla was a Cyprus company whereas, of course, it subsequently transpired that it was a BVI company albeit with bank accounts in Cyprus. More

pertinently, as is noted at paragraph 26(c) above, HMRC had established that the name of the company was Feyla Investments Corp. It is indeed the latter name since the BVI Register of Company Search, which is in the Bundle, establishes that.

50. That raises the interesting question as to why the agency agreement with Feyla should refer to Feyla Investments Ltd but with the same BVI address as Feyla Investments Corp. WLH have never addressed the issue which was raised in the letter of 18 December 2020. It certainly raises doubts about the authenticity of the agency agreement.

51. The agency agreement, raises further problems. That has been pointed out by HMRC on more than one occasion and there has been no response from WLH. It has not been explained why:

(a) It was allegedly signed almost two years before Feyla was incorporated, or

(b) It was signed some years before any payment in terms of it was likely to be made.

52. On the balance of probability, given the points made in the previous paragraphs, it was produced to provide "evidence" to HMRC.

53. There is a similar problem with the agency agreement with Marvel which was allegedly signed almost six months before Marvel was incorporated.

54. As I have noted at paragraph 32(e) above, Alliance was dissolved in 2014 yet in the letter of 4 March 2019 it was described as dormant.

55. The appellant has not produced an analysis of the bank records that he has produced to HMRC. The burden of proof is upon him.

56. The appellant's primary contention is that the bank transfers are not subject to income tax because they constitute the repayment of the £1.7million loan to Spektr and therefore constitute the remittance of capital accumulated prior to the appellant's arrival in the United Kingdom. Thus, they are not taxable.

57. HMRC have repeatedly given the appellant the opportunity to provide supporting information and documents, initially on an informal basis, but then by seeking a Tribunal approved Schedule 36 Information Notice. I cannot accept that HMRC have reached conclusions without allowing the appellant the opportunity to respond. HMRC have repeatedly explained their concerns about the appellant's arguments on the alleged loan but there has been a very limited response from the appellant.

58. Although it is accepted by HMRC, and by me, that there was no requirement for the appellant to lodge the Outline Disclosure, nevertheless the fact is that it was lodged and on professional advice. What is surprising about that disclosure is that there is no mention of a loan or any repayment of a loan, nor that substantial remittances of capital had been made during 2016/17 through Feyla and Marvel.

59. The Bank of Cyprus bank records held by Feyla which were produced to HMRC by the appellant on 25 March 2019, show that they were printed on 1 October 2018. Those transactions included descriptions such as "payment for Building Materials (Ceramic Tiles)" in respect of a $298,345 inward payment on 9 May 2016 and there were "construction Fees" in respect of multiple payments in pounds sterling. Those bank records were available to the appellant at the time of the Outline Disclosure but only produced to HMRC over three months after they were requested under the Schedule 36 Information Notice.

60. The amounts received by Feyla and Marvel are, as Officer Leese stated in his witness statement, of irregular size and do not appear to correspond to any structured repayments of a loan.

61. There has been no evidence produced by the appellant in regard to the allegedly renegotiated terms of the loan and whether, or to what extent, that extended the repayment terms. There is no evidence about the waiver of interest and nor was there anything in relation to the alleged variations to show that payment should be made to either Feyla or Marvel. There is no indication of notification of repayments.

62. As can be seen from paragraph 14 above, the appellant had told HMRC that neither Feyla nor Marvel traded and they simply held funds on his behalf on a nominee basis.

63. From the bank records in the Bundle, I can see references to payments for building materials, building equipment, construction fees, design and construction fees etc. The information derived from the KYC documentation from Mashreq makes it abundantly clear that Marvel was a trading company.

64. Another cause for concern is that the descriptions that I have recorded at paragraph 20(l) above in the Fibank statements occur elsewhere and the appellant has not produced any explanation as to what is meant by "categorising purposes". That explanation is simply not credible. On the balance of probability the payments were described in the way they were because that is what they were.

65. In summary, I find that the appellant has signally failed to provide evidence to underpin his primary argument that insofar as there were remittances they were repayments of a loan. Not only is there a lack of complete documentation for the loan, but, for the reasons given, the documentation that does exist does not appear to be credible or reliable.

66. The various descriptions of entries in the numerous bank accounts not only point to Freyla and Marvel being used for trading activities, but are also consistent with the information furnished to Mashreq. Whether the appellant was himself trading through these companies, and previously through Alliance, as Officer Leese believes, is not known but that does not matter. The fact is that it is clear that there was trading and therefore the amounts remitted to the UK are taxable.

67. As I have indicated at paragraph 32(g) above, after the jeopardy assessment was issued, further analysis identified total remittances in 2016/17 of £1,594,895.29. £642,895.29 was personal to the appellant. The balance of £952,000 went to the UK close company. The appellant is not correct in saying that there is no analysis of the remittances. The most recent relating to these is at page 285 in the Bundle.

68. Officer Leese has refused to postpone tax on a total remittance of only £500,000, being the maximum that the appellant had identified in the Outline Disclosure. He did agree to postpone tax of £378,000 recognising that there was a possibility that the appellant might have an argument about being overcharged to tax depending on whether he was treated on a remittance basis or on an arising basis.

69. The appellant has not produced any information in regard to qualifying investments in the UK close company. It has never been mentioned or claimed in the general claim to the remittance basis, which has, of course, been rejected by HMRC but is still insisted upon by the appellant.

70. Officer Leese has calculated that if the appellant were successful in his claims, the tax that would arise on the £640,000 of personal remittances would be £304,388. That is substantially more than the amount that has not been postponed in this matter.

71. Looking to the test in *Kent*, I find that Feyla and Marvel were trading companies and there were remittances of £1,594,895.29 in 2016/17. The appellant has not established that there was a loan or, even if there was one, that there were any repayments made in respect

thereof. There is no evidence that the remittances were capital in nature. The grounds advanced by the appellant are contrived. The arguments advanced have been contradictory at times and, looked at in the round, are not credible.

72. The appellant does not have any grounds to believe that he has been overcharged to tax, let alone reasonable grounds; looking at all of the evidence, in all probability he has been undercharged. There is no credible evidence, let alone on a firm basis, for the grounds put forward.

73. Lastly, for completeness I confirm in relation to the August 2021 representations that:-

(a) This Tribunal has no jurisdiction in relation to complaints about HMRC,

(b) It is for HMRC to answer the questions posed to them, if so minded, and

(c) The jeopardy amendment is not before this Tribunal but looking at the totality of the evidence before the Tribunal, it is obvious to me why HMRC were concerned about a loss of tax to the Crown.

Decision

74. For all these reasons, the application for postponement is not granted.

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. 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.

ANNE SCOTT
TRIBUNAL JUDGE

Release date: 05th DECEMBER 2022