



**TC05142**

**Appeal number: TC/2015/04585**

*Income Tax – late appeal – penalties for late submission of self-assessment  
Returns – permission to appeal refused*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MRS VICTORIA THOMPSON**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE KENNETH MURE, QC  
MEMBER: MR ALBAN HOLDEN**

**Sitting in public at the Magistrates' Court, Carlisle on 19 April 2016**

**Appellant: Mr Stuart Armstrong FCCA**

**Ms Clare Robertson, Officer of HMRC, Presenting Officer, for the Respondents**

## DECISION

### Introduction

1. This appeal relates to the imposition of penalties for the late submission of self-assessment Returns for 2005/06, 2007/08, 2008/09, 2009/10, 2010/11 and 2011/12. The preliminary matter which arises for our determination is whether the Notice of Appeal should be allowed late. It is dated 30 July 2015 and produced at tab 1, p10-15. HMRC were not notified of the intention to appeal until 18 March 2014 (tab 1, p1-2). The applicable time-limit of 30 days had long since expired. Reference may be made to the Schedule at tab 3, page 1. A *reasonable excuse* was claimed, viz the appellant's suffering from Crohn's disease from 2006. It may be noted that the delays here are substantial, varying from 216 to 2558 days.

### The Law

2. In the course of the hearing reference was made to the Taxes Management Act 1970, Sections 31A, 49 and 118. We were also referred to relevant case-law:-

*Ogedegbe v HMRC* [2009] UKFTT 364 (TC);

*Mandagie v HMRC* [2013] UKFTT 672 (TC);

*Data Select Limited v HMRC* [2012] UKUT 187 (TCC).

3. The Tribunal noted also the decision in *O'Flaherty v HMRC* [2013] UKUT 01619 (TCC).

### The evidence

4. The appellant suffers from Crohn's disease and has done so over an extended period since 2006. She was unable to appear in person because of her condition. Her accountant, Mr Armstrong, who represented her, gave his account of his involvement with, and knowledge of, her taxable activities. Mrs Thompson had set up a hairdresser's business in about 2003. He had not acted initially as her accountant but in 2005 had prepared her accounts. From 2007/08 to 2012 he had not been asked to produce accounts on a regular basis. Thereafter, when matters with HMRC became critical, he was instructed to bring up-to-date all outstanding tax matters for her.

5. Mr Armstrong produced medical reports and records relating to the appellant. These confirmed essentially that she is a long-term sufferer from Crohn's disease. Apart from brief periods of hospitalisation she seems to have been treated as an out-patient. The business, which has required two or three hairdressers, has continued with support from the appellant's husband and family. A schedule of turnover and profits over the relevant years was produced at the hearing. That shows that turnover was reduced from a date coinciding with Mrs Thompson's condition and inability to work activity as a hairdresser. However, the business seems to have continued successfully notwithstanding, producing a small profit.

6. The foregoing narrative did not appear to be controversial. Mr Armstrong was not cross-examined or challenged on his factual account. In the whole circumstances we infer that although the appellant could not work actively and regularly as a hairdresser, the business, albeit with some family support, continued to be run reasonably successfully. Mr Armstrong was instructed in about 2005 and later. His direct involvement tended to be with Mr Thompson.

7. We have to conclude that, in the absence of evidence from the appellant herself or more particular medical evidence, Mrs Thompson was not rendered incapable over any extended period from 2006 to 2012 from supervising and monitoring her business affairs including matters of tax liability and reporting.

### Submissions

8. On behalf of HMRC Ms Robertson referred us firstly to Section 31A TMA. Notice of Appeal must be given within 30 days. She noted the provisions of Section 49 anent a late Notice of Appeal. She referred us to Section 118 on the interpretation of *reasonable excuse*, to which HMRC has to have regard. She appreciated that while HMRC's decision depended on whether there was a *reasonable excuse*, the Tribunal had a broader discretion. All material factors, she submitted, should be considered such as reasons for delay, any explanations forthcoming, the length of the delay, and the prejudice to each party depending on the decision. The reason for the time-limit was important. On any view a finality was in the public interest. (All this, we think, reflects the *dicta* of Morgan J in *Data Select*.) Ms Robertson noted the observations of Sir Stephen Oliver in *Ogedegbe* at especially para 7. A late appeal, he suggested, should be allowed only exceptionally. The merits of the appeal should be considered too. In the present case the delays in submitting Returns varied from 216 to 2558 days. These were not marginal delays in Ms Robertson's view.

9. A *reasonable excuse* is not exhaustively defined but, Ms Robertson suggested, it denotes something beyond the taxpayer's control, preventing compliance. There was no suggestion that Mrs Thompson had been unable to work or, rather, that she was so debilitated as to be unable to submit the Returns. She noted Mr Armstrong's involvement as a professional adviser in 2005. Moreover the prospects for success in any appeal seemed low: the circumstances in respect of each Year would have to be considered individually. None of HMRC's correspondence had been returned as undelivered. The taxpayer would have been well aware of her continuing default, Ms Robertson submitted.

10. In reply Mr Armstrong explained that while he had acted earlier in 2005, he had only relatively recently been asked to bring the appellant's tax affairs up-to-date. His client's ill-health represented exceptional circumstances in his submission. In addition to the physical disability caused by Crohn's disease, it had almost certainly affected the appellant's state of mind. Founding on HMRC's publication (produced at tab 3, p31) Mr Armstrong submitted that a serious illness, such as in his client's case, represented a *reasonable excuse*. There was, perhaps, a degree of naivety on his

client's part. She became self-employed only in 2003 and was overtaken by illness shortly thereafter. This state of affairs continued to date.

11. With assistance from the appellant's husband Mr Armstrong had brought her tax affairs up-to-date. The penalties were substantial in relation to the sums due. The level of penalties was disproportionate, he argued. Mr Armstrong produced a letter from HMRC's Debt Management Section dated 17 December 2014 which cancelled penalties in respect of PAYE defaults. HMRC's stance in relation to the Self-Assessment Returns was inconsistent. (We invited Ms Robertson to comment. However, she had not been aware of this and the letter had not been exhibited earlier to enable her to make enquiries. In these circumstances, not unreasonably, she could not respond.)

12. Mrs Thompson was repaying her liability on a monthly basis, Mr Armstrong continued. The level of profit was low, near to the tax margin. For 2007/08 and 2008/09 Mr Armstrong had been unable to submit Returns on-line. HMRC had advised that it was too late. However, when he asked for "paper" Returns, these were refused. Yet, according to Mr Armstrong, HMRC were still seeking these Returns.

13. For all of these reasons Mr Armstrong argued that the appeal should be allowed late.

### **Conclusions**

14. The issue for this Tribunal to determine is whether the appeals against penalties should be allowed late. This depends crucially on our assessment of Mrs Thompson's state of health as affecting her capacity to manage or give direction for the management of her tax affairs. We accept that she suffers long-term from Crohn's disease. She has on occasions been hospitalised, but her treatment seems to have been substantially as an out-patient. The business has continued over an extended period and has made a modest profit. While Mrs Thompson has been supported by her family and particularly her husband, she continues to be the owner and principal of the business. The medical evidence produced does not support the view that Mrs Thompson has been so unwell over any extended periods that she cannot attend to crucial matters relating to her business. Given the support which she has, we do not consider that her circumstances were such that she could not have submitted or instructed timeously her appeal. For these reasons too we doubt whether there is any real prospect of success in resisting the penalties imposed.

15. As we understand, this Tribunal has a broader discretion than HMRC in allowing late appeals. In particular we are not restricted as to whether a *reasonable excuse* arises: the whole circumstances can be reviewed. In addition to the guidance of Morgan J in *Data Select* (as noted *supra*, para 8) we have had regard also to Judge Berner's views in *O'Flaherty*. All material factors have to be considered and whether injustice would be caused if permission were refused.

16. The delays in the present case are substantial. We do not consider that they have been explained away, even in individual instances. While we are sympathetic to

Mrs Thompson, given her condition, her business continued to be managed and run reasonably successfully. In such circumstances we consider that the Returns too could have been lodged timeously. Accordingly we refuse permission to appeal out of time.

5 17. 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  
10 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.

15 **KENNETH MURE, QC**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 3 JUNE 2016**