



TC06131

Appeal number: TC/2017/02279

PROCEDURE- application for permission to make late appeal against penalties and surcharges for late income tax filings- application refused

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

DIDIER VOINCHET

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE THOMAS SCOTT

**Sitting in public at Taylor House, Rosebery Avenue, London on 19 September
2017**

The Appellant in person

Mrs Savita Mistry, Presenting Officer, for the Respondents

DECISION

1. This was an application by the Appellant for permission from the Tribunal to
5 appeal out of time against penalties and surcharges for the late filing of income tax returns.

Background

2. Mr Voinchet was a financial trader who first registered for self-assessment in
1997. He worked in the UK until 2001 when he returned to live in France. He
10 returned to the UK in 2004. He registered for self-assessment again in January 2010,
describing his trade as “Financial Markets”. He continues to live and work in the UK.

Subject of appeal

3. The appeals which Mr Voinchet seeks to make out of time do not relate to the
income tax due for any of the periods in question. Rather, they relate to the penalties
15 and surcharges imposed by HMRC for the late filing of returns and/or late payment of
tax for the periods described below.

4. The penalties and surcharges are as follows:

- (a) 1998-99- surcharges of £292.68 for late payment of tax
- (b) 1999-00- £100 late filing penalty and £237.62 surcharges for late
20 payment of tax
- (c) 2010-11- late filing penalty, daily penalty, 6 month late filing
penalty and 12 month late filing penalty, totalling £1,600
- (d) 2011-12- £100 late filing penalty
- (e) 2012-13- £100 late filing penalty
- 25 (f) 2013-14- late filing penalty, daily penalty and 6 month penalty,
totalling £1,300

Grounds of appeal

5. On 20 February 2017 Mr Voinchet wrote to HMRC indicating his intention to
seek permission from the Tribunal to make appeals out of time against the penalties
30 and surcharges set out above.

6. Mr Voinchet’s Notice of Appeal was filed on 9 March 2017. Under “ Grounds
of Appeal” it is stated as follows:

“There are two issues:

- (1) Tax supposed to be due back 1999/2000 and interest charges for
35 late payment.

5 I left the country in 2001. I did not know I had to de-register as a self-employed. I never received any reminder, any claim regarding these old taxes. I was not aware therefore something may be due. I came back to the UK in 2004. I lived supporting myself and did not generate any income. My status was EEA citizen self-sufficient. HMRC claimed these taxes and interests recently (2013).

10 (2) I was self-sufficient until January 2014 when I started working again. I have paid all the taxes due, but HMRC used these payments to cover old taxes never claimed since 2001 and penalties for late tax returns that were not due given I was self-sufficient.”

Statutory Interest

7. As regards statutory interest charged to Mr Voinchet, HMRC had informed him that this accrued automatically under the statute, although the amount could be reviewed internally by HMRC if Mr Voinchet considered that it had been wrongly
15 calculated.

8. At the hearing, it appeared that Mr Voinchet had not appreciated that he could not appeal against the statutory interest he had been charged. I explained to him that, once the relevant tax owing is settled, the interest arises automatically at a specified rate under the relevant statutory provisions, and an appeal cannot be made to the
20 Tribunal against it. In *HMRC v Neil and Megan Gretton* [2012] UKUT 261 (TCC) the Upper Tribunal confirmed that the First-tier Tribunal has no discretion to determine that interest should not be payable. I explained this to Mr Voinchet, and the hearing proceeded on the basis that it related solely to a late appeal against penalties and surcharges.

Discussion and further findings of fact

9. In deciding whether or not to allow a late appeal, my decision is a balancing exercise. I am guided in that exercise by the overriding objective of the Tribunal Rules to deal with cases “fairly and justly” including “avoiding delay”. I have considered the questions set out by Morgan J in *Data Select v HMRC* [2012] UKUT
30 187 (TC) at [34] and the various stages set out by the Court of Appeal in *Denton v T H White Ltd* [2014] EWCA Civ 906 at [24]. I have done so taking due account of the decision of the Supreme Court in *BPP Holdings v HMRC* [2017] UKSC 55.

10. The purpose of the time limit in this case is to provide a fixed period of time-usually 30 days from delivery of the relevant penalty or surcharge notice by HMRC-
35 in which the taxpayer must decide and give notice that he wishes to appeal against the penalties or surcharges. Particularly following *BPP*, the purpose of the time limit must be weighed carefully, not only as between the parties but also in the wider context of the efficient running of the tribunal system.

11. From my review of the correspondence and documents with which I was
40 provided, I find that the various penalty and surcharge notices sent to Mr Voinchet between 2000 and 2016 all informed him that he needed to appeal within 30 days. At various stages, most recently in February 2017, HMRC refused his requests for late

appeals. The length of the delays in this case varies between approximately 18 months and 18 years. In my judgment such delay is, in the terminology of the Court of Appeal in *Denton*, both significant and serious.

5 12. In terms of the reasons for the delay, I have considered the grounds advanced by Mr Voinchet in the correspondence and in his Grounds of Appeal as well as the statements and replies to my questions which he gave during the hearing.

13. I observe that Mr Voinchet had many grievances, only some of which were relevant to the reasons for his delay in seeking to appeal. His statements during the hearing covered topics ranging from Brexit to the NHS and the tax system in France.

10 14. I have sought to draw out and evaluate those issues which might arguably be germane to the reasons for delay and/or any reasonable excuse for late payment or filing. In carrying out that exercise, on the basis of the papers before me and the evidence of the parties, I have made various finding of fact, which I refer to below where relevant.

15 15. In relation to the penalties and surcharges for 1989-90 and 1999-00, for periods before Mr Voinchet left the UK in 2001, Mr Voinchet argued that he had not received any notification from HMRC of these charges. Nor was he aware that he needed to de-register as self-employed. My review of the correspondence indicates that in fact he did receive several notices of these charges from HMRC. Indeed he and his
20 accountant had been attempting to negotiate a “time to pay” arrangement with HMRC when he left the UK without discharging his debt. Various communications from HMRC subsequent to his departure from the UK were sent to the UK address which HMRC had on their records, but Mr Voinchet did not notify HMRC of any forwarding address, in France or elsewhere.

25 16. Following his return to the UK, Mr Voinchet said that he was not aware that he needed to file any returns given that he had no taxable income and was initially making losses. However, even if that were the case, the notices from HMRC of late filing penalties should have corrected any misapprehension, and he gave no good reason for not appealing those notices within time.

30 17. Mr Voinchet stated that he had been in some financial difficulty until he found work again in 2014. By his own admission, however, he had continued throughout the periods in this appeal to meet his financial liabilities other than to HMRC, in effect making a choice to afford a lower priority to his tax-related liabilities.

35 18. Mr Voinchet indicated that he had suffered from ill-health and stress for a period from 2008. He provided no evidence to support this. In so far as this might have affected Mr Voinchet for a time, it did not in my judgment provide any good reason or reasonable excuse for his failures to file returns over a prolonged period of many years or to delay in appealing to the Tribunal.

40 19. Finally, certain of Mr Voinchet’s complaints were in substance complaints about unfairness or HMRC conduct. I have decided previously that this Tribunal has

no general supervisory jurisdiction over those issues: *Eden Consulting (Richmond) Ltd v HMRC* [2016] UKFTT 656 (TC).

20. In terms of the consequences for the parties of an extension of time to appeal or a refusal to extend time, an extension would permit Mr Voinchet to appeal the penalties and surcharges. HMRC would then have to defend an appeal going back to 1998-99.

21. While it is not appropriate in an application for permission to make a late appeal to conduct a “mini-trial” of the merits of the appeal, I should record that in my judgment the merits in this case would not be fairly assessed as “very strong”.

22. In conclusion, the time limit has an important purpose, and the starting point is compliance with that time limit. The length of the delay was both serious and significant. The reasons for the delay fell well short of being a good reason or reasonable excuse. Weighing up all the factors and considering the overriding objective, this is not a case where a late appeal should be permitted.

Decision

23. Permission to appeal is refused.

24. 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.

**THOMAS SCOTT
TRIBUNAL JUDGE**

RELEASE DATE: 26 September 2017