



[2019] UKFTT 0669 (TC)

TC07444

**INCOME TAX - individual tax return - penalties for late filing - late appeal
- application for permission to appeal out of time - application refused - appeal
dismissed**

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2019/02136

BETWEEN

MATTHEW JONES

Appellant

-and-

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

Respondents

**TRIBUNAL: JUDGE DR KAMEEL KHAN
CHRISTOPHER JENKINS,
MEMBER**

Sitting in public at Bristol Civil and Family Justice Centre on 10 September 2019

The Appellant appeared in person

Laurie Outten, Presenting Officer of HMRC, for the Respondents

DECISION

Background

1. This appeal is against late filing fixed penalties (as shown below) for the years 2010-2011;2011-2012;2012-2013 and 2013-2014 totalling £4,777.04.
2. The appellant did not appeal against the penalties until 22 January 2019 and to the tribunal on 3 April 2019, which was between three years and nine months and six years and ten months after the due date on which the appeals should have been made.
3. The appellant acknowledges that his appeal is out of time but in any event makes an application for permission that his appeal may be made out of time.
4. See payment penalties below:

Penalty details for 2010-11, 2011-12 and 2013-14

Penalty Type	Year	Amount	Date Notice Issued	Appeal deadline (30 days)	Appeal to HMRC (DB/8)	Days After Deadline
Late Filing Penalty	2010/11	£100.00	14 February 2012	15 March 2012		6 years, 10 months and 8 days
Daily Penalty		£900.00	07 August 2012	06 September 2012		6 years, 4 months and 17 days
6 month late filing penalty		£300.00	07 August 2012	06 September 2012		6 years, 4 months and 17 days
12 month late filing Penalty		£300.00	19 February 2013	21 March 2013	22 January 2019	5 years, 10 months and 2 days
30 days late Payment penalty		£91.00	19 February 2013	21 March 2013		5 years, 10 months and 2 days
6 month late Payment penalty		£43.00	19 February 2013	21 March 2013		5 years, 10 months and 2 days
12 month late Payment penalty		£43.00	19 February 2013	21 March 2013		5 years, 10 months and 2 days
					Total:	£1,777.00
Late Filing Penalty		£100.00	12 February 2013	14 March 2013		5 years, 10 months and 8 days
Daily Penalty	2011/12	£900.00	14 August 2013	13 September 2013	22 January 2019	5 years, 4 months and 9 days
6 month late filing penalty		£300.00	14 August 2013	13 September 2013		5 years, 4 months and 9 days
					Total:	£1,300.00
Late Filing Penalty		£100.00	18 February 2014	20 March 2014		4 years, 10 months and 2 days
Daily Penalty		£900.00	18 August 2014	17 September 2014		4 years, 4 months and 5 days
6 month late filing penalty	2012/13	£300.00	18 August 2014	17 September 2014	22 January 2019	4 years, 4 months and 5 days
12 month late filing Penalty		£300.00	24 February 2015	26 March 2015		3 years, 9 months and 27 days
					Total:	£1,600.00
Late Filing	2013/14	100.00	18 February 2015	20 March 2015	22 January 2019	3 years, 10 months and 2 days
					Total:	£100.00
					Grand Total:	£4,777.00

For the reasons given below I refuse that application and dismiss the appeal.

Findings of fact

I was provided with a bundle of documents from which I find the following facts:

5. The appellant was registered in the self-assessment system as self-employed and selling motorhomes since 2008. All returns filed since that date have been late.
6. It seems from the SA Notes that the appellant had an agent dealing with his affairs at that time. Certainly, on 25 February 2008, HMRC received a 64-8 Form appointing an agent with a reference number.
7. On 7 October 2013 HMRC prepared a Bankruptcy Petition for the sum of £31,945. consisting of £28,589.57 of self-assessment charges and £3,356.22 of VAT charges.
8. The appellant made payments of £8000 (31 October), £10,000 (22 January 2014), \$5000 (14 March 2014), £536.94 (3 April 2014) totalling £27,759.99.
9. A self-assessment debt of £3,020.91 remained as at 1 September 2016.
10. The appellant wrote to HMRC on 22 January 2019 to say that he knew there was a historic bill of £2,136.44 but that he was now unemployed and on Universal Credit and unable to pay.
11. On the 15 March HMRC wrote to the appellant advising that the appeal was late and pointing out that penalty notices were sent out with each of the penalties which gave 30 days to appeal.
12. It explained that a late appeal was only possible if there was a reasonable excuse

Relevant Legislation

13. The statutory provision which permits me to consider an application for giving a late notice of appeal is section 49 of the *Taxes Management Act 1970* (“*TMA 1970*”) this reads as follows:

“49 Late notice of appeal

49(1) This section applies in a case where-
notice of appeal may be given to HMRC, but
no notice is given before the relevant time.

49(2)

Notice may be given after the relevant time limit if-

HMRC agree, or

where HMRC do not agree, the tribunal gives permission.

49(8) In this section “relevant time limit”, in relation to notice of appeal, means the time before which the notice is to be given (but for this section).”

Discussion

14. The Upper Tribunal in the case of *Martland (William Martland v HMRC [2018] UKUT 178* gave useful guidance on the principles to consider when looking at appeals out of time. The relevant passage from the decision in *Martland* is set out below.

“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:

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.

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

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.

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.”

15. We are required to give a strict application of the rules but consider exceptional circumstances. The court must consider the strengths and weaknesses of the case and look to see if there is a good reason for the appellant to be given more time to present their case so there is no prejudice. We are not required to examine the case in detail.

16. I am satisfied on the facts that an officer of the Board issued a notice to file to the appellant under section 8 TMA 1970 and the penalty notices given to the appellant satisfy the requirements of paragraphs 4 and 18 of *schedule 55 Finance Act 2009*.

17. I have considered the appellant’s contention that he did not have the funds to pay and

that his accountant was to blame for the delay. Lack of funds does not give rise to an excuse nor does reliance on a third party.

18. The law specifies two situations that are not reasonable excuse:

- (a) An insufficiency of funds, unless attributable to events outside the appellant's control, and
- (b) Reliance on another person to do anything, unless the person took reasonable care to avoid the failure.

I now consider the application of the *Martland* criteria to this justification.

Length of the delay

19. The delay was between six years and ten months and three years and nine months years. This is both serious and significant. There is a principle that litigation should be finalised as expeditiously as is reasonably possible.

20. HMRC are entitled to expect that an appellant would appeal within the statutory time limits. They must have certainty around litigation and have limited resources to deal with litigation which is beyond the time limit set by law.

In this case HMRC have had to engage with the matter several years after the time it should have been settled.

Reasons for the delay

21. The appellant has not provided clear evidence to show his accountant was late in making returns and in any event if a taxpayer is aware that his accountant is not doing a good job, he should take steps to ascertain the problem and correct it. This did not happen.

The returns were late for all years. He was aware of his obligations to file and would have received written notices and reminders to do so. In the context of reasonable excuse, reliance on the failure of another can be a reasonable excuse but only if a taxpayer takes reasonable care to avoid that failure. There is no evidence of such in this case.

The balancing exercise

22. In considering the merits of the case, one can say there is little chance of success. Money issues and reliance on a third party in the absence of exceptional circumstances cannot give rise to a reasonable excuse.

23. If there is no reasonable excuse the appeal comes to an end and there is no prospect of the appellant presenting a substantive case.

24. Given the strength of the HMRC case and the weakness of the appellant's case there is little or no prejudice to the appellant. The HMRC would not have to defend a case where the arguments are weak and unlikely to succeed.

25. It is difficult when a person hits hard times and faces bankruptcy proceedings. However, these are not matters for this court and the decision has to be that there is no permission to appeal out of time.

26. If I reject the application for permission to make a late appeal, the appellant loses his right to argue the substantive issues. But, as I said above, HMRC can rightly expect they would not

have to deal with these matters some six years after the time when the appellant should have raised them.

27. It is my view, given the strength of HMRC's case and the obvious weakness of the appellant's case, the substantial delay in appealing and the poor reasons for the delay, there will be little prejudice to the appellant in denying him permission to appeal late. The HMRC would be more prejudiced if permission is given to appeal late and outside the statutory limit.

Decision

28. In light of the foregoing I have decided not to give permission to the appellant to appeal out of time.

I dismiss this appeal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

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.

JUDGE DR KAMEEL KHAN

TRIBUNAL JUDGE

RELEASE DATE: 5 NOVEMBER 2019