



TC07874

INCOME TAX – penalties for late filing – application for permission to appeal out of time – application refused

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2020/01870

BETWEEN

UZMA ZUFFAR

Appellant

-and-

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

Respondents

TRIBUNAL: JUDGE ANNE FAIRPO

The Tribunal determined the appeal on 30 September 2020 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 22 May 2020 (with enclosures), HMRC's Statement of Case (with enclosures dated 29 July 2020, the document bundle of 99 pages compiled by HMRC and a reply from the appellant's accountants received by the tribunal on 17 August 2020).

DECISION

Introduction

1. The appellant appealed against late filing penalties issued under various paragraphs of s55 Finance Act 2003 for the tax years ended 5 April 2014 and 2015, as follows:

- (1) Year ended 5 April 2014
 - (a) £100 initial late filing penalty issued under para 3 on 18 February 2015;
 - (b) £900 daily late filing penalty issued under para 4 on 14 August 2015;
 - (c) £300 six month late filing penalty issued under para 5 on 14 August 2015
 - (d) £300 twelve month late filing penalty issued under para 6 on 23 February 2016
- (2) Year ended 5 April 2015
 - (a) £100 initial late filing penalty issued under para 3 on 17 February 2016;
 - (b) £900 daily late filing penalty issued under para 4 on 12 August 2016;
 - (c) £300 six month late filing penalty issued under para 5 on 12 August 2016

2. Although the appellant stated in her notice of appeal that her appeal was made in time, it is clear from the information set out below that the appeal has not been made in time. The appellant has therefore been treated as also making an application for permission to make an appeal out of time.

Background and facts

3. In a letter dated 29 September 2015, the appellant wrote to HMRC regarding a penalty for late submission of her tax return. She advised HMRC that she had not lived in the UK nor worked in the UK for four years and asked that HMRC stop sending reminders for outstanding penalties.

4. On 25 February 2016 HMRC received a letter from the appellant stating that she had been in regular contact with HMRC to tell them that she lived abroad and had been living abroad for four years and did not work in the UK. She would notify HMRC when she returned to the UK.

5. HMRC replied to this letter on 10 March 2016 to advise the appellant that she was required to complete self-assessment tax returns because she had been receiving rental income from a property in the UK.

6. On 13 September 2018 the appellant's accountants wrote to HMRC appealing the penalties for the late filing of returns for the tax years ended 5 April 2014 and 2015 and stating that the returns had now been filed.

7. On 16 October 2018 HMRC wrote to the appellant and rejected the appeals as no reasonable excuse had been provided. The letter advised that the appellant could request a review of this decision, or appeal to the Tribunal, within 30 days of the date of the letter.

8. On 19 November 2019 the appellant's accountants wrote to HMRC again asking to appeal the late filing penalties for the tax years ended 5 April 2014 and 2015. They asked for the penalties to be waived on the basis that penalties for earlier years had been waived.

9. On 4 February 2020 HMRC wrote to the appellant and refused to accept the appeals as they had been submitted late and because no reasonable excuse had been provided.

10. On 19 April 2020, the appellant wrote to HMRC asking for the penalty for the tax year ended 5 April 2014 to be waived on the grounds set out in her notice of appeal. HMRC wrote, refusing to accept the late appeal, on 30 April 2020.
11. The appellant appealed to the tribunal on 22 May 2020.
12. The appellant's grounds of appeal are that:
 - (1) she had moved to Qatar in December 2011 and had provided HMRC with a forwarding address. She was not aware that she needed to complete tax returns as she had not been advised to do so before she left. Before moving she had been employed and tax had been deducted at source and she had not needed to complete self-assessment tax returns.
 - (2) She had not received any correspondence from HMRC whilst she was abroad. Her parents had also moved abroad and also did not receive anything from HMRC, so nothing was passed on to her. The appellant had only started to receive correspondence once her parents returned to the UK. Her accountants stated that she had lost contact with HMRC due to confusion over her change of address.
 - (3) Between 2012 and 2014 there was no tax due. HMRC had waived penalties for earlier years and so the appellant requested that penalties be waived for these years as there was a rental income loss in both years.
13. HMRC submitted as follows:
 - (1) On 12 August 2012 a form NRL1 was received from the appellant, an application to receive UK rental income without deduction of tax under the non-resident landlord scheme and providing the appellant's address in Qatar. The NRL1 form states that rental income is not exempt from tax and that HMRC may require self-assessment returns to be completed.
 - (2) The appellant's addresses on record were as follows:
 - (a) From 23 August 2012 to 19 June 2018: Doha College, Qatar – different PO Boxes were provided from time to time
 - (b) From 19 June 2018: the address given by the appellant in her notice of appeal
 - (3) For the tax year ended 5 April 2014, a paper return was issued to the appellant at her address in Doha, Qatar, on 6 April 2014. For the tax year ended 5 April 2015, a paper return was issued to the appellant at the address held by HMRC on 6 April 2015.
 - (4) The due dates for filing the returns electronically were 31 January 2015 and 31 January 2016 respectively. The returns were both filed electronically on 31 January 2017.
 - (5) The penalty notices were issued to the address in Doha, Qatar held by HMRC. Although copies of the penalty notices are not held on individual records by HMRC, HMRC records show that the penalty notices were issued on or around the dates stated above.
 - (6) Statements of account were sent to the appellant on 10 March 2015, 18 June 2015, 8 September 2015, 7 December 2015, 8 March 2016, 12 September 2020 and 11 March 2020. In each case, the statement of account was sent to the address held by HMRC for the appellant at the relevant time. The statements of account showed the penalties charged.

(7) Reminder letters in respect of penalties were sent on 2 June 2015, 30 June 2015 and 5 July 2016.

(8) Requests for payment were sent by HMRC's Debt Management and Banking department on 1 February 2016, 23 February 2016, 13 June 2016, 15 July 2016, 16 August 2016, 28 June 2018, 13 July 2018, 14 October 2019, 13 December 2019 and 3 March 2020.

(9) No post was returned to HMRC and so the returns and penalty notices were effectively served in accordance with the provisions of s115 Taxes Management Act (TMA) 1970 and s7 Interpretation Act 1978.

Discussion

14. The appellant states that she did not receive any correspondence from HMRC whilst abroad, and that she did not receive any correspondence via her parents as they were also abroad.

15. However, it is clear from the evidence provided that the appellant had received correspondence from HMRC whilst she was overseas as she wrote to HMRC in 2015 and 2016 asking them to stop contacting her. Her letter of 29 September 2015 states that she had received a late filing penalty. Her letter received by HMRC on 25 February 2016 states that she had been in regular contact with HMRC to tell them that she lived abroad.

16. I do not accept, therefore, that the appellant had not received any correspondence from HMRC and I conclude that the appellant was aware that HMRC required her to complete tax returns and that penalties were accruing.

17. I conclude therefore that, on the balance of probabilities, the penalty notices were correctly issued and that the appellant received some or all of them. She was, in any case, aware by September 2015 that late filing penalties had been issued.

18. The normal time limit for appealing against an assessment (including a penalty assessment) is 30 days from the date of the assessment (s31A TMA 1970), but the Tribunal may give permission for the appeal to be heard out of time under s49 TMA 1970.

19. The approach to be taken by this tribunal in considering late appeals was set out in *William Martland v The Commissioners for HMRC* [2018] UKUT 178 (TCC) (*'Martland'*). The Upper Tribunal noted that (§29):

“...the presumption should be that the statutory time limit applies unless an applicant can satisfy the FTT that permission for a late appeal should be granted, but there is no requirement that the circumstances must be exceptional before the FTT can grant such permission.”

20. The Upper Tribunal also confirmed the three-stage test set out in *Denton and others v TH White Limited and others* [2014] EWCA Civ 906 (§29):

“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*:

(1) 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.

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

(3) 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."

Length of delay

21. The delays between the deadlines for appealing the penalties and the appeal to HMRC are between two years and three and a half years, as the appellant's accountant originally appealed the penalties on 13 September 2018.

22. The Upper Tribunal concluded in *Romasave (Property Services) Ltd v Revenue & Customs Commissioners* [2015] UKUT 254 (TCC) that (§96):

"In the context of an appeal right which must be exercised within 30 days from the date of the document notifying the decision, a delay of more than three months cannot be described as anything but serious and significant."

23. The length of the delays in this case are clearly serious and significant.

Reason for the delay

24. No reasons were given for the delay in appealing to HMRC in September 2018. No reason for the delay was given when the accountants again attempted to appeal the penalties to HMRC in November 2019.

25. In her grounds of appeal, the appellant does not give any specific reason for the delay in appealing but states that she had not received any correspondence from HMRC whilst she was aboard. As set out above, I do not accept this.

All of the circumstances

26. *Martland* advises that a balancing exercise is needed to consider all of the circumstances of the case and states (§45 and §46):

"45. 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. ...The FTT's role is to exercise judicial discretion taking account of all relevant factors, not to follow a checklist.

46. In doing so, the FTT can have regard to any obvious strength or weakness of the applicant's case; this goes to the question of prejudice - there is obviously much greater prejudice for an applicant to lose the opportunity of putting forward a really strong case than a very weak one. It is important however that this should not descend into a detailed analysis of the underlying merits of the appeal."

27. HMRC submitted that they were entitled to rely on the time limits set out in the legislation for the purpose of allocating resource in administering the tax system and should not normally be required to defend appeals after an excessive gap between the expiration of the time limit and the appeal. They noted that the Upper Tribunal in *Martland* had confirmed that (§34):

"the purpose of the time limit is to bring finality, and that is a matter of public interest, both from the point of view of the taxpayer in question and that of the wider body of taxpayers."

28. HMRC also submitted that it would be unfair on other taxpayers who had complied with the time limits to give permission for this late appeal.

29. If the application is granted, I consider that HMRC would be prejudiced as they are entitled to expect finality after this length of time, and it would set a bad precedent for other taxpayers. Although HMRC indicated that it would consume resources to defend an appeal after this length of time, I note that HMRC had prepared a full Statement of Case on the substantive merits of the appeal, which reduces the weight of that prejudice to them.

30. If the application is not granted, the appellant will be prejudiced in that she will be unable to challenge the late payment penalties and will incur the cost of paying them.

31. The appellant's substantive grounds of appeal are that she did not receive any correspondence from HMRC whilst she was abroad, and that no tax was due because she had rental income losses.

32. As already noted, I do not accept that the appellant did not receive correspondence from HMRC. She may have mistakenly believed that no return was due because she made a loss, but I do not consider that the appellant's substantive grounds of appeal indicate that she has a strong case such that she would be significantly prejudiced if the application is not granted.

33. Considering all of the circumstances and noting that no good reasons have been given for the substantial delay in bringing this appeal, I do not consider that it is appropriate to give permission to make a late appeal.

Decision

34. The application is therefore refused.

Right to apply for permission to appeal

35. 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 FAIRPO
TRIBUNAL JUDGE**

Release date: 10 OCTOBER 2020