



TC07921

Appeal number: TC/2020/00158

INCOME TAX – penalties for late-filing of tax returns – appeal notified to Tribunal over two years late – Martland considered – no good reason for late notification of appeal to Tribunal – obvious weakness of appellant’s case - permission for late appeal refused – appeal struck out

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

CHRISTINE CAMPBELL

Appellant

- and -

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

TRIBUNAL: JUDGE ZACHARY CITRON

The Tribunal determined the appeal 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 8 January 2020 (with enclosures), HMRC’s Statement of Case dated 5 February 2020, and a “court bundle” of 109 pages prepared by HMRC.

DECISION

1. Ms Campbell sought to appeal against penalties charged under Schedule 55 Finance Act 2009 (“Schedule 55”) for late-filing of tax returns for three tax years. HMRC did not present a case in respect of some of the penalties originally charged, leaving £2,310 in penalties still in contention.

SUMMARY OF PENALTIES CHARGED AND FACTS REGARDING THE MAKING OF THE APPEAL

2. The penalties charged can be summarised as follows:

(1) 2013-14 tax year:

(a) a £100 late filing penalty under paragraph 3 Schedule 55 imposed on 23 February 2016;

(b) a £300 “six month” penalty under paragraph 5 Schedule 55 imposed on 30 August 2016 ; and

(c) a £300 “twelve month” penalty under sub-paragraph 6(5) Schedule 55 imposed on 21 February 2017.

HMRC did not present a case in relation to “daily” penalties totalling £900 under paragraph 4 Schedule 55 imposed on 30 August 2016; I take this to be agreement in writing that this penalty is withdrawn.

(2) 2014-15 tax year

(a) a £100 late filing penalty under paragraph 3 Schedule 55 imposed on 1 March 2016;

(b) a £300 “six month” penalty under paragraph 5 Schedule 55 imposed on 30 August 2016 ; and

(c) a £300 “twelve month” penalty under sub-paragraph 6(5) Schedule 55 imposed on 28 February 2017.

HMRC did not present a case in relation to “daily” penalties totalling £900 under paragraph 4 of Schedule 55 imposed on 30 August 2016; I take this to be agreement in writing that this penalty is withdrawn.

(3) 2015-16 tax year

(a) a £100 late filing penalty under paragraph 3 Schedule 55 imposed on 7 February 2017; and

(b) “daily” penalties totalling £810 under paragraph 4 Schedule 55 imposed on 25 July 2017.

3. Ms Campbell notified an appeal to HMRC in respect of these penalties (the “penalties in question”) by letter dated 20 July 2017 (received by HMRC on 31 July 2017). 20 July 2017 was also the date on which Ms Campbell filed tax returns for the 2013-14, 2014-15, and 2015-16 tax years (the “tax years in question”).

4. By letters dated 21 August 2017, HMRC stated their view that there was no reasonable excuse for the late filing of the tax returns for the tax years in question and presented Ms Campbell with the options of (i) providing further information to HMRC, (ii) asking HMRC for a review of her case, or (iii) continuing her appeal by asking the Tribunal to decide the matter. The letters made clear that she needed to take one of these actions by 20 September 2017.

5. Nearly two years later, in a letter to HMRC dated 10 July 2019 (received by HMRC on 23 July 2019), Ms Campbell stated that she wished to appeal the penalties in question.

6. In a letter dated 9 September 2019, HMRC told Ms Campbell that her appeal to HMRC was out of time and HMRC would accept it only if there was a reasonable excuse for its lateness. The letter said that if Ms Campbell did not agree that her appeal was too late, she could ask the Tribunal to consider her appeal.

7. In another letter to HMRC dated 10 July 2019 (the same date as Ms Campbell's previous letter; but this letter was only received by HMRC on 22 November 2019), Ms Campbell asked HMRC to review her appeal in respect of the tax years in question.

8. In a letter dated 12 December 2019, HMRC repeated that they would not accept Ms Campbell's late appeal; but said that if she did not agree that she made her appeal too late, she could ask the Tribunal to consider her appeal; they said she would need to write to the Tribunal by 11 January 2020.

9. Ms Campbell notified her appeal to the Tribunal on 8 January 2020.

10. The address (including postcode) shown for Ms Campbell in all the correspondence summarised at [2-9] above – both on letters to her from HMRC, and the letterhead on her letters to HMRC – was a single address in Stoke on Trent (which was also the address and postcode on the notice of appeal). I find this to have been the correct address and postcode for Ms Campbell at all times relevant to this appeal.

CONSIDERATION OF WHETHER TO GIVE PERMISSION FOR LATE APPEAL TO THE TRIBUNAL

Notifying appeal to HMRC

11. Ms Campbell's appeal to HMRC (made by her letter dated 20 July 2017) was made outside the statutory deadline for notifying appeals to HMRC (under s31A Taxes Management Act ("TMA") 1970) as respects all the penalties except the "daily" penalty in respect of the 2015-16 tax year. In their statement of case HMRC state that they did not refuse the late appeals to HMRC (and do not suggest that the Tribunal should refuse to deal with the appeal because it was made late to HMRC). I therefore consider that HMRC have given consent (under s49(2)(a) TMA 1970) for the out of time appeals to HMRC in Ms Campbell's letter of 20 July 2017.

Notifying appeal to the Tribunal

12. Because

(1) HMRC notified Ms Campbell of an offer to review the penalties in question (their letters dated 21 August 2017),

(2) Ms Campbell did not accept that offer, and

(3) Ms Campbell notified her appeal to the Tribunal more than 30 days after HMRC's offer letters,

the Tribunal's permission is required for Ms Campbell to notify her appeal to the Tribunal (this is the effect of s49H(3) TMA 1970). I am satisfied on the balance of probabilities that HMRC's letters of 21 August 2017 were properly addressed, pre-paid and posted and so, by operation of s115 TMA 1970 read with s7 Interpretation Act 1978, due notification of HMRC's offers to review was given to Ms Campbell. The question of whether Ms Campbell *actually received* these letters is a different one and is discussed below.

Reasons given in notice of appeal for late notification of appeal to the Tribunal

13. In her notice of appeal Ms Campbell stated that she was not sure if the appeal to the Tribunal was in time, and then gave reasons for the late appeal – which I summarise as follows:

(1) It only came to light when she filed her tax return for the 2017-18 tax year (due to be filed electronically by 31 January 2019), that Ms Campbell had penalties for the tax years in question. It came to light because HMRC were setting off her tax payments for the later year against the penalties for the tax years in question. Ms Campbell said she had not heard from HMRC in the four intervening years regarding a failure to file tax returns for the tax years in question.

(2) Ms Campbell had tried to appeal numerous times by letter and by phoning HMRC; it was only in 2019, when she phoned HMRC asking why she had not received a tax repayment (for the 2017-18 tax year), that she was given the option to appeal the penalties for the tax years in question.

(3) Ms Campbell said that she would not have ignored the penalties if HMRC had contacted her – but she did not hear from HMRC for four years. She thought she only had to fill in her housing benefit forms, as all government offices were linked. Once HMRC explained to her that this was not the case, she understood that she had been mistaken not to have filed the tax returns on time (even though in her view she should not have been sent them).

(4) She had sent in appeal letters in relation to the penalties for the tax years in question stating that she was not making money (as a dog breeder), was receiving housing benefits and working tax and child tax credits, and was under the earning rate to be taxed, and so should not have been sent the self assessment tax returns for those tax years.

Case law regarding granting permission for late appeals to the Tribunal

14. In *Martland v HMRC* [2018] UKUT 178 (TCC) at [26] the Upper Tribunal endorsed the words of Lord Drummond Young in *Advocate General for Scotland v General Commissioners for Aberdeen City* [2006] STC 1218 at [22]:

“The central feature of [provisions which allow a person to make a late appeal] is that they are exceptional in nature; the normal case is covered by the time limit, and particular reasons must be shown for disregarding that limit. The limit must be regarded as the judgment of the legislature as to the appropriate time within which proceedings must be brought in the normal case, and particular reasons must be shown if a claimant or appellant is to raise proceedings, or institute an appeal, beyond the period chosen by Parliament.”

15. The Upper Tribunal went on (at [44-45]) to give this guidance to this Tribunal (the FTT):

“44. 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.

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.”

16. The need for statutory time limits to be respected was described by the Upper Tribunal as “a matter of particular importance to the exercise of [the Tribunal’s] discretion” in *HMRC v Katib* [2019] UKUT 189 (TCC) at [17].

Discussion

Length of the delay

17. Ms Campbell’s appeal was notified to the Tribunal on 8 January 2020, whereas the deadline under s49H TMA 1970 was 30 days after the letters of 21 August 2017

i.e. 20 September 2017. This means the appeal to the Tribunal was notified over 2¼ years late. This is a serious and significant delay.

Reasons why the default occurred

18. Ms Campbell's notice of appeal says that it was only in 2019, when she telephoned HMRC with respect to her tax return for the 2017-18 tax year, that it came to her attention that the tax penalties in question remained outstanding. It speaks of "four years" in which she had "heard nothing" from HMRC about these tax penalties.

19. (Ms Campbell gave other arguments and explanations in her notice of appeal, but these related to why in her opinion she should not have been required to file tax returns for the tax years in question (rather than why she was late in notifying her appeal against the penalties in question to the Tribunal).)

20. Ms Campbell had written to HMRC in July 2017 to appeal against the penalties in question, so she clearly knew about their existence at least since then. Although she does not say so in so many words, what I take her to be saying as to the reason for her late notice of appeal to the Tribunal is that she did not know she had to notify her appeals to the Tribunal by 20 September 2017 (30 days after HMRC's letters to her of 21 August 2017, offering her a review of their decision).

21. I accept, on the balance of probabilities, that Ms Campbell did not know (i.e. was subjectively unaware) that she had to notify her appeals to the Tribunal by 20 September 2019. But given that HMRC's letters of 21 August 2017 had made this deadline clear, I have to consider *why* Ms Campbell was unaware that she had to notify the Tribunal by 20 September 2017. I see two possibilities: either

- (1) Ms Campbell received HMRC's 21 August 2017 letters in the post but did not pay them sufficient attention; or
- (2) Ms Campbell never received those letters in the post.

22. As to which of these two possibilities is the more probable, my thinking is as follows:

- (1) It is unusual for letters to fail to be delivered in the post, but it certainly can happen as a one-off unfortunate event.
- (2) However, in Ms Campbell's notice of appeal, it is not just HMRC's letters of 21 August 2017 that she says did not reach her: she says that she received no correspondence regarding the penalties in question for a four year period prior to her making contact with HMRC about her 2017-18 tax return (in 2019). This evidence of Ms Campbell conflicts with that of HMRC's electronic records, which indicate that written penalty assessments were sent to Ms Campbell, at the correct address and with the correct postcode (see [10] above), on seven different dates between February 2016 and July 2017. Ms Campbell's overall evidence is also inconsistent on this point, as, in her first letter to HMRC dated 10 July 2019, she said that she received a statement of account from HMRC

prior to July 2017 (which, she says, prompted her to file her tax returns for the tax years in question, in July 2017).

(3) Ms Campbell's lack of awareness of the contents of HMRC's 21 August 2017 letters is not, therefore, a one-off, but part of a larger pattern in which there is evidence of correctly addressed letters from HMRC to Ms Campbell which Ms Campbell says she did not receive.

(4) Having regard to the inconsistency in Ms Campbell's account as well as to the (generally reliable) nature of HMRC's electronic record-keeping, I find on the balance of probabilities that HMRC did send the seven written penalty assessments by post.

(5) It is theoretically possible that all seven of these penalty assessments – as well as the 21 August 2017 letters which I am considering here in particular – got “lost in the post” and so were never delivered. This is, however, very improbable. I therefore find, on the balance of probabilities, that Ms Campbell's lack of awareness of the deadline for notifying the Tribunal of her appeal was attributable not to a one-off failure of the post but to a general pattern of her, unfortunately, not paying due attention to incoming post from HMRC.

23. I acknowledge there is confusion in this case because when, in 2019, Ms Campbell wrote to HMRC purporting to appeal to HMRC against the penalties in question (I say “purporting” because she had already done so, by her letter dated 20 July 2017), HMRC did not seem to realise that she had already notified an appeal to them two years earlier; and so HMRC treated it as a new (late) appeal to HMRC (to which they declined to give permission). This led to HMRC telling Ms Campbell (mistakenly) that she needed to notify her appeal to the Tribunal by a certain date – which she then did. However, the confusion here on both parties' part – Ms Campbell's, by re-making an appeal to HMRC which had already been made; and HMRC's, by failing to spot the error – does not shed light on the matter I have to consider here, namely why Ms Campbell failed to notify her appeal by 20 September 2017, as required by the statute.

Evaluation of all the circumstances

24. The “prejudice” to Ms Campbell of the Tribunal refusing permission for her late appeal is that she loses the opportunity to appeal contested penalties in the sum of £2,310. In considering “prejudice”, the Tribunal can have regard to any obvious strength or weakness of the applicant's case (but without descending into a detailed analysis of the underlying merits of the appeal). Here, Ms Campbell's case is that there was a reasonable excuse for her late-filing tax returns for the tax years in question because, in her view, she should not have been required to complete those tax return given her level of income (which was known to the Government as she claimed housing benefit, child benefit and certain tax credits). In addition, there was a disturbing incident involving her son in 2012 which resulted in Ms Campbell needing to provide care for him related to his PTSD. In my view there are obvious weaknesses in this case: a reasonably conscientious taxpayer in Ms Campbell's circumstances (which is the standard which the Tribunal must apply in deciding if an excuse is reasonable) would not have ignored the legal requirement to file a tax return if so

notified by HMRC; and the incident involving Ms Campbell's son, whilst very unfortunate, (i) took place more than two years before the electronic filing date for the first of the tax years in question and (ii) was not so extreme in its long-term consequences as to prevent a reasonably conscientious taxpayer in Ms Campbell's circumstances from preparing tax returns for the tax years in question in a timely manner.

25. Thus, although £2,310 is a significant sum for most people, and I assume for Ms Campbell, the prejudice to her of the Tribunal refusing permission for a late appeal is materially reduced due to the obvious weakness of her case.

26. Moreover, looking at all the circumstances, that prejudice is in my view counterweighed by

(1) the serious and significant period of the delay in notifying the appeal to the Tribunal, and

(2) the absence of a good reason for the delay in notifying the Tribunal (failing to pay due attention to correspondence from HMRC is not in my view a good reason).

27. This is not therefore a case where departure from the general principle, much emphasised by the higher courts and tribunals, that statutory deadlines are to be respected, can be justified.

CONCLUSION

28. Permission is accordingly refused for this appeal to be notified to the Tribunal late; the appeal against the penalties in contention is struck out.

Application for permission to appeal this decision

29. 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.

ZACHARY CITRON

TRIBUNAL JUDGE

RELEASE DATE: 23 NOVEMBER 2020