



[2022] UKFTT 00051 (TC)

TC 08403

Appeal number: TC/2019/01761

ANTI-MONEY LAUNDERING REGULATIONS – application to make late appeal to Tribunal – Martland applied – delay over six months - whether good reason for Appellant’s delay – no – whether permission given to make late appeal – no

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

DELTA TAX AGENTS LIMITED

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE JANE BAILEY

The Tribunal determined the appeal on 7 February 2022 without a hearing under the provisions of Rule 29 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 on the basis that a paper hearing would be in the interests of justice and that both parties had consented to this treatment.

DECISION

Introduction

1. The proceedings before me consist of an application by the Delta Tax Agents Limited (the “Appellant”) to make a late appeal against a decision by HMRC to issue a penalty of £16,891 for non-compliance with the Money Laundering Regulations 2007 (the “2007 Regulations”) and Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the “2017 Regulations”). The penalty imposed was made up of £10,979.15 imposed under the 2007 Regulations, and £5,911.85 imposed under the 2017 Regulations.

The time limits for the Appellant to make an appeal to the Tribunal

2. The rules concerning appeals to HMRC and the Tribunal, reviews by HMRC, and the relevant time limits, are set out in the 2017 Regulations.

3. When HMRC offer a review of their decision, Regulation 95 provides that HMRC must undertake a review if their offer is accepted within 30 days of the date of the review offer. In this case, the penalties in dispute were imposed by a notice dated 20 June 2018. The penalty notice offered a review and explained that an appeal could be made directly to the Tribunal either as an alternative or subsequent to a review. As a review was offered on 20 June 2018, if the Appellant had accepted the offer by 16 July 2018, HMRC would have been obliged to undertake a review.

4. The Appellant’s request for a review was made by letter dated 9 January 2019. Regulation 97 provides that a review may be conducted out of time if HMRC are satisfied that the taxpayer had a reasonable excuse for not accepting the offer of a review within 30 days, and that the taxpayer then accepted the offer without unreasonable delay thereafter. However, if HMRC are not satisfied that there is a reasonable excuse for the delay, then HMRC may refuse to conduct a review. Here, HMRC asked the Appellant for its reasons for its delay in seeking a review but, as the relevant officer was not satisfied with the Appellant’s explanation, HMRC refused to conduct a review. This final refusal was notified by letter dated 25 February 2019.

5. An appeal may be made to the Tribunal, either instead of seeking a review or after a review has been undertaken. The time limit for appealing to the Tribunal is set out in Regulation 100 and provides that an appeal must be made within 30 days of the date of the decision appealed against. However, where a review has been sought, an appeal cannot be made to the Tribunal unless HMRC have notified the relevant taxpayer whether an appeal will be undertaken. Regulation 100(3)(c) provides that where HMRC have notified the taxpayer that a review will not be undertaken (i.e., where HMRC are not satisfied there was a reasonable excuse for a taxpayer’s delay in accepting a review offer), then an appeal to the Tribunal may be made only if the Tribunal gives permission.

6. Here, the Appellant’s appeal was received by the Tribunal on 21 March 2019. This is more than 30 days from 20 June 2018 (the date of the penalty notice), and also

HMRC have refused to conduct a review. Therefore, the Appellant requires the permission of the Tribunal for its appeal to proceed.

Should the Appellant be given permission to make a late appeal?

7. The Tribunal has the power to grant a person an extension of time to make an appeal, but must decide, in each case, whether it would be appropriate to do so given the particular circumstances of the case.

8. When a party is late in undertaking any action, the onus of proof is upon that party to explain the reasons for their delay and to make the case for being given relief from their failure to comply with the relevant time limit. Therefore, the onus is on the Appellant to make its case for being granted permission to make a late appeal. The standard of proof is the balance of probabilities.

The test for granting permission to make a late appeal

9. In *Martland v HMRC* [2018] UKUT 178 (TCC), concerning a late appeal against an excise duty assessment, the Upper Tribunal set out what the First-tier Tribunal should consider when deciding whether an extension of time should be granted where an appeal is made late. The Upper Tribunal stated:

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.

10. Following that guidance, I will consider the extent of the delay and whether there are reasons for all or part of that delay. I will then consider and weigh all the circumstances of the case to decide whether this appeal should be admitted out of time. In order to consider these matters, it is necessary to begin by setting out the factual background to this dispute.

Background facts

11. On the basis of the documents in the bundle and on the Tribunal file, I find as follows:

12. The Appellant was incorporated in 2014. It changed its name to its current name in February 2015. At all relevant times, the Appellant provided accountancy services, predominantly preparing and submitting tax returns. The Appellant is required to be supervised by HMRC for Anti Money Laundering Supervision.

13. On 10 November 2015, HMRC wrote to the Appellant with a table setting out what HMRC had identified as failures of the Appellant to comply with the 2007 Regulations. HMRC required the Appellant to make specified changes to comply with the 2007 Regulations. The Appellant was warned that there was a possibility of a penalty if the required changes were not made. The changes included requiring the Appellant to take primary and secondary identification for all clients, to put procedures in place to monitor the continued validity of that identification, to set up risk based record keeping procedures, and to set up risk assessment procedures to prevent money laundering and terrorist financing.

14. Since about May 2016, the Appellant has had two directors: Mr Deacon and his wife, Mrs Deacon. In 2018, the Appellant also had two additional members of staff: an administrator, and also a compliance officer who joined the Appellant two weeks before HMRC's January 2018 inspection visit.

15. By letter dated 29 November 2017, HMRC informed the Appellant that HMRC would be visiting on 25 January 2018 to check the Appellant's anti-money laundering compliance. On the following day HMRC requested a copy of the Appellant's written risk assessment policies and procedures. On 5 December 2017, the Appellant provided its Anti Money Laundering policy document, and its Client Engagement policy and procedures document.

16. The visit took place as arranged on 25 January 2018. That visit was at the home address of Mr and Mrs Deacon. Since about May 2016, when a previous director had left the business, the Appellant had traded from Mr and Mrs Deacon's home address, with some work also conducted at the Appellant's employees' homes.

17. At the inspection visit, HMRC were represented by two officers, including Officer Powell. The Appellant was represented by Mr Deacon. As Mr Deacon is stated to have agreed these notes, I accept that HMRC's notes of this meeting provides an accurate record of the inspection visit.

18. During this visit, Mr Deacon accepted that the Appellant did not have a formal risk assessment in writing for new clients, and that the Appellant's policy and procedure documents had not been updated to take account of the 2017 Regulations. Mr Deacon suggested that customer due diligence had not always been able to be carried out in the preceding year due to staffing issues, and he accepted that there were a number of clients for whom no copy identity verification documents had been taken. Mr Deacon provided a spreadsheet showing that 297 clients (out of 405) had

incomplete customer due diligence. Those clients were highlighted in yellow. When a sample was checked, 14 out of 15 of the yellow highlighted client files had no identity documentation or evidence of customer due diligence; the 15th file client had one verification document. Mr Deacon explained that the member of staff who had begun work two weeks earlier had been recruited to improve customer due diligence, and he set out the more comprehensive measures that the Appellant intended to undertake in the future.

19. On 24 April 2018, Mr Powell wrote to the Appellant setting out HMRCs conclusions from the visits, and the breaches of the 2007 Regulations and the 2017 Regulations that HMRC had identified. Mr Powell set out three breaches of the 2007 Regulations and four breaches of the 2017 Regulations, and explained that he intended to impose a penalty of £20,000 for these breaches. Mr Powell invited the Appellant to provide any more information it wished to have taken into account within 30 days. Mr Powell also explained that details of penalties imposed for breaches of the 2017 Regulations would be published on HMRC's website. The appendices to this 24 April 2018 letter included an explanation of how the penalty had been calculated.

20. By letter dated 21 May 2018, Mr Deacon responded to Mr Powell's letter. Mr Deacon stated:

It is not questionable that as a company Delta Tax Agents Ltd were behind in the documentation for their compliance with its MLR 2007 and MLR 2017 policies due to circumstances already documented. It is as a small company with few staff through the majority of the period since its previous review in 2016 making great attempts to rectify the situation and making continuous improvements in this area. This includes at a significant cost and associated risk recruitment of further members of staff. This action had commenced some time prior to our meeting of 25 January 2018 which clearly shows the commitment to this area.

To suggest that risk assessments have not taken place with client relationships is erroneous as great measures are and always have been in place. Perhaps the only weakness in this area by the company has been the lack of documentary evidence to demonstrate this. Staff training is carried out on a weekly basis and always covers client risk assessments and due diligence.

I intend to seek legal and professional advice in this matter and will inform you as soon as that advice has been received.

21. Mr Powell replied on 30 May 2018, noting that no documents or other evidence had been provided to support the comments made by Mr Deacon. Mr Powell invited Mr Deacon to send any documents that he wished to have taken into account.

22. On 30 May 2018, Mr Deacon emailed Mr Powell. Mr Deacon wrote:

We have now reviewed and updated our client list and are pleased to attach a copy. This shows the period from when our current clients commenced a business relationship with Delta Tax Agents Limited.

The company has shown commitment to working with HMRC and implementing policies and procedures to prevent money laundering by its clients. It has also committed to additional resources to allow further and continuous improvement in this area. Extensive staff training has and continues to be carried out.

It is considered that the work carried out by Delta Tax Agents Ltd is extremely low risk. All clients are fully authorised prior to work being carried out and come solely from recommendations by long standing current clients. The company does not engage with high risk businesses involved with large cash transactions. All clients must without exception have a unique tax reference number provided by HMRC, confirmed national insurance number, date of birth verified by HMRC and authorisation code to allow the company to carry out work using HMRC Government Gateway services which can only be obtained from HMRC to their home address.

The proposed penalty of £20,000 is excessive and may have a detrimental effect on the company having the financial resources to continue to invest and make further improvement in this area.

23. Mr Deacon emailed Mr Powell again on 13 June 2018. Mr Deacon wrote:

Firstly having had professional advice I have been informed that the figures quoted to you by myself for Delta Tax Agents Ltd for Gross Profit are incorrect and overstated. The definition of Gross Profit should be a calculation of Sales turnover less Direct Costs or Cost of Sales I am awaiting further clarification of this and a recalculation as clearly this impacts on the figures used to calculate the proposed penalty.

Secondly the compliance work carried out along with policies and procedures prepared by the company which we are in the process of being updated in house can be carried out by a specialist company which may help. We are in the process of engaging a specialist company to fulfil this role and waiting to engage an organisation with a good reputation in this area namely SWAT with on-going support. It is hoped that the further investment in this area the company wishes to invest will not be made impossible due to the high level of penalty you have proposed.

24. Officer Powell replied to Mr Deacon on 14 June 2018. Mr Deacon welcomed the new figure for Gross Profit, and invited the calculations and details of the direct costs taken into account. The Appellant provided these to HMRC on 19 June 2018.

25. On 20 June 2018, HMRC wrote to the Appellant to notify it that a penalty of £16,981 had been imposed. The identified breaches that HMRC considered justified the imposition of a penalty were:

- Failure to demonstrate that appropriate due diligence had been carried out (Regulation 7(3) of the 2007 Regulations)
- Failure to identify and assess the risks of money laundering and terrorist financing, and a failure to keep an up to date record of the steps taken in this regard (Regulation 18(1) and (4) of the 2017 Regulations)
- Failure to regularly review and update the policies and procedures it had in place (Regulation 19(1)(b) of the 2017 Regulations)
- Failure to apply customer due diligence and verify the identity of clients (Regulation 27(1)(a) of the 2017 Regulations)
- Failure to demonstrate that appropriate customer due diligence had been carried out (Regulation 28(16) of the 2017 Regulations)

26. In the notice, Officer Powell set out the comments made in Mr Deacon's emails of 8 and 13 June and explained why he did not agree with all but one of the points made in those emails. Officer Powell noted that no evidence had been produced to demonstrate that appropriate measures were in place at the time of the visit, and that subsequent improvements made or proposed by the Appellant did not negate the breaches identified at the date of the inspection visit. Officer Powell accepted the Appellant's Gross Profit calculation and capped the penalty at 10% of that figure.

27. Officer Powell continued:

If you disagree with this notice or the amount of the penalty you have to pay you have 30 days from the date of this penalty notice to

- ask for a review of the penalty, or
- if you do not want a review, appeal directly to an independent tribunal

HMRC reviews are carried out by an independent team. You will be notified of the outcome of the review within 45 days unless another time is agreed. If you are not satisfied with the conclusion of the review you still have a right of appeal to a tribunal administered by the Tribunal Service within 30 days of the notification of the outcome of the review.

28. Officer Powell then explained that a request for a review should be made in writing to him, and provided information about how to appeal to the Tribunal.

29. There was no further correspondence between the parties until 9 January 2019. On that date, the Appellant wrote to Officer Powell to seek a review. This letter was sent by Mr Deacon, who wrote:

With reference to previous correspondence received from yourself regarding the above I am writing to request a review by a third party.

Having had discussions with various Professional Advisors including your own Officer during a compliance visit, all advised me of their concern at the amount of Penalty being charged.

HMRC published information on their Government Gateway Website Shows that a penalty of £5991.85 has been applied based on a breach of MLR 2017.

The level of penalty is inconsistent with the alleged breaches for the following reasons:

1. All existing clients have been formerly risk assessed. This includes meetings in person and full reviews carried out.
2. The size of the penalty is not consistent with the size of the Company.
3. All other Company compliance work has been carried out successfully and is up to date.
4. The level of risk of Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 is very low. The type of work carried out by Clients is of a sub-contracting nature within the construction industry. All clients are introduced by existing clients and known personally. Before any work is carried out by ourselves a formal registration with HMRC is required where the Clients UTR Number, National Insurance Number, Date of Birth and Residential address are verified.
5. All Clients have attended meetings with the Company prior to any work being carried out and have shown photographic identification. As the meetings have taken place with myself at my home office with none of my other staff in attendance due to their own work commitments, I have been as a result of my disability unable to take a scan or photocopy of the document.
6. Delta Tax Agents previously had an office however this was closed in 2016 and at present does not have a similar facility and my staff now work remotely from their own homes but unfortunately cannot accommodate meetings with Clients personally, unless they visit the Clients.

I would appreciate your reply at your earliest convenience.

30. On 21 January 2019, Officer Powell wrote to the Appellant in response. Officer Powell quoted the conclusion of the 20 June 2018 penalty notice that explained the 30 day deadline for seeking a review or to make an appeal, and then noted that the Appellant's request for a review had been received 203 days after the date of the penalty notice. Officer Powell continued:

HMRC may consider late reviews if the following criteria are met:

- There was a reasonable excuse for not replying within the time limit, and
- The customer asked for a review without unreasonable delay after the excuse ceased.

In your letter of 9 January 2019, you have not provided a reasonable excuse for not replying within the 30 day time limit and I must therefore refuse your request for a review of this matter.

If you do have a reasonable excuse for not replying within the 30 days time limit and if you have asked for this review without unreasonable delay after this excuse has ceased, please provide this information to me in writing. If this information is provided I will consider the reasons given and advise you on whether a late review will be carried out.

Irrespective of my consideration of this matter here, you can ask the Tribunal to accept a late notice of appeal against the original penalty notice.

31. Officer Powell then repeated the details of how the Appellant could appeal and where it could find further information about appeals.

32. On 6 February 2019, Mr Deacon wrote back to HMRC on behalf of the Appellant. Mr Deacon wrote:

I am further requesting a review of this matter as after the initial period elapsed further information came to light. This information suggested that we have grounds for appeal as stated in our previous letter. It is considered that this is a reasonable excuse for not making the request within the 45 day period.

33. There was no further detail from Mr Deacon about what information had come to light after the 30 day deadline had passed, or when that information had come to the Appellant's attention.

34. On 25 February 2019, Officer Powell replied to the Appellant, quoting HMRC's guidance on what constituted a reasonable excuse, and declining to accept the Appellant's late request for a review. Officer Powell again explained that the Appellant could ask the Tribunal to accept a late appeal against the penalty notice, and again provided details on how this could be achieved.

35. On 21 March 2019, the Appellant filed an appeal with the Tribunal. The appeal was stated to be against both penalties, and copy of the penalty notice of 20 June 2018 was provided. As its grounds of appeal, the Appellant provided a copy of the letter of 9 January 2019 to HMRC written by Mr Deacon.

36. The Tribunal processed the Appellant's appeal and notified HMRC in the usual way. HMRC objected to the lateness of the appeal, but also filed a Statement of Case setting out their position with regard to the substantive appeal, should permission to appeal out of time be granted.

37. The Tribunal proceedings progressed slowly. On 28 October 2019, the Tribunal received a document from Mr Deacon entitled “Statement of Case”. Although correspondence from the parties was otherwise conducted via email, this document was received through the post. It is unclear whether a copy was ever provided to HMRC so that they could comment. In this document Mr Deacon wrote:

I, David Deacon of Delta Tax Agents Ltd have appealed against a decision not to allow our rights to appeal against the penalty raised for anti-money laundering alleged breaches.

The basis for HMRC refusing to consider a request for a third-party review is purely that they claim it was not raised within 30 days of the penalty notice. The request for a review was made as new evidence and circumstances had come to light.

At the time of the original penalty being raised I was extremely ill relating to my chronic disability and this effected my ability to deal with this matter within 30 days.

I was also unaware of my rights to request a review as this was not made aware to me and therefore, I considered that there was nothing I could do about it.

It is highly likely that I will need to be hospitalised in the near future and with this in mind I am seeking to receive professional support in this matter and if this is not possible due to cost implications, I have been advised to contact the citizens advice bureau.

38. I consider Mr Deacon’s other points below, but it is appropriate that I make findings here about the state of Mr Deacon’s health in the second half of 2018.

39. I accept that Mr Deacon was unwell by the end of October 2019. In November 2019, Mr Deacon notified the Tribunal that he was due to undergo a treatment programme during December 2019 and January 2020, and I accept that occurred. I also accept that Mr Deacon became more ill during 2020 and 2021. In July 2021 the Tribunal was notified that Mr Deacon was bedridden, and Mr Deacon agreed that the Appellant’s appeal could be dealt with on the papers. However, serious illness from October 2019 onwards does not mean that Mr Deacon was too ill during in the second half of 2018 to attend to the Appellant’s affairs.

40. In considering the extent of Mr Deacon’s illness in the period June 2018 to January 2019, I bear in mind that:

- Mr Deacon was sufficiently well to correspond with HMRC up to the date of the penalty notice, and there was no mention in this correspondence that he might need more time to respond due to his ill health;
- Mr Deacon mentioned his disability in his 9 January 2019 letter as a reason why he had not photocopied or scanned documents prior to HMRC’s

January 2018 visit, but he did not mention his illness as a reason for the Appellant's delay in requesting a review of the penalty imposed;

- Mr Deacon did not mention his illness in his 6 February 2019 letter, despite that letter being his opportunity to explain to HMRC why the Appellant had not requested a review between June 2018 and January 2019.
- Mr Deacon did not mention his illness as a reason for the delay when the Appellant filed its appeal to the Tribunal on 21 March 2019.

41. If Mr Deacon had been too unwell to deal with the Appellant's affairs during June 2018 to January 2019 (and if Mrs Deacon, the Appellant's other director was not able to step in) there is no obvious reason why Mr Deacon could not have explained that in February 2019 when he was specifically asked to explain the Appellant's delay in seeking a review.

42. I have concluded that, although I accept that Mr Deacon became too unwell from October 2019 onwards to manage the Appellant's litigation before the Tribunal, I do not accept that Mr Deacon was so ill in the period June 2018 to January 2019 that he was unable to write to HMRC to request a review.

43. Having set out those facts, I turn to the three stage process outlined in *Martland*.

The extent of the Appellant's delay in appealing to the Tribunal

44. As found above, the penalty was imposed on 20 June 2018. The Tribunal received the Appellant's appeal on 21 March 2019. That is a period of 275 days. However, as set out above, Regulation 100 prevents a taxpayer from appealing to the Tribunal while awaiting the outcome of a request for a review. Therefore, I consider it appropriate not to count the period between the Appellant's late request for a review (9 January 2019) and HMRC's final notification that no review would be undertaken (25 February 2019) as the Appellant was not able to appeal during this period. This is a period of 48 days.

45. Therefore, I calculate the period from the imposition of the penalty to the Appellant's appeal to the Tribunal to be 227 days. The time allowed in the 2017 Regulations for an appeal to be made is 30 days. Therefore, the Appellant's delay in appealing is a period of 197 days. That is about six and a half months. Any delay that is greater than three months is considered to be "serious and significant" (see *Romasave (Property Services) Limited v HMRC* [2015] UKUT 254). Looking at the first stage of the *Martland* guidance, the delay here is lengthy rather than short delay.

The reasons for the Appellant's delay in appealing to the Tribunal

46. The Appellant has provided four different reasons for its delay in appealing. Although those all appear to have been given as reasons for the delay in seeking a review from HMRC, given the overlapping periods, I treat them as being the reasons also put forward for the delay in appealing to the Tribunal. In the letter of 9 January 2019, Mr Deacon argued that he had taken professional advice. In his letter dated 6

February 2019, Mr Deacon stated that new information and evidence had come to light. In his statement received by the Tribunal on 28 October 2019, Mr Deacon argued that he had been too unwell to appeal and that he had not been notified of the Appellant's right to seek a review or to appeal. I consider each of these four reasons.

Taking advice

47. When Parliament enacted the 2017 Regulations, it considered that 30 days were sufficient for a taxpayer to consider its options following imposition of a penalty, and take advice if necessary. No explanation has been given as to why the Appellant would need six months more than other taxpayers to seek advice. It is particularly difficult to see why so much more time would be required in this case when, as Mr Deacon stated in his email of 13 June 2018 to HMRC, the Appellant had already taken advice about the proposed penalty before it was notified. I do not consider this explanation can provide the Appellant with a good excuse for any part of the delay.

New evidence coming to light

48. The Appellant has not explained what new evidence came to light, or when this came to light. The six grounds of appeal provided by Mr Deacon do not include reference to any new points, and no new documents have been disclosed. In the circumstances, I do not consider that this explanation can provide the Appellant with a good excuse for any part of the delay.

Mr Deacon's illness

49. I have found (above) that Mr Deacon's illness in the period from June 2018 to January 2019 was not so debilitating that Mr Deacon was not able to write to HMRC to seek a review. Given that Mr Deacon was able to correspond with HMRC during January and February 2019, I do not consider that Mr Deacon's illness is a sufficiently convincing explanation for the Appellant's delay in appealing to the Tribunal until 21 March 2019. In addition, as I have noted above, the Appellant had two directors. Even if (contrary to my findings above) Mr Deacon had been so seriously ill throughout the period 20 June 2018 to 21 March 2019 that he could not file an appeal on behalf of the Appellant, no explanation has been provided as to why Mrs Deacon could not have filed an appeal on behalf of the Appellant.

No notification of the right to seek a review or appeal

50. I have found that the letter of 20 June 2018 set out clearly the Appellant's right to seek a review or make an appeal. Therefore, I do not accept that Mr Deacon is correct in stating that the Appellant was not notified.

51. I conclude that the Appellant has not demonstrated a good reason for any part of its delay in filing its appeal.

Weighing the circumstances of the case

52. In weighing the circumstances of this case, I take into account what will happen if I either dismiss, or allow, the Appellant's application to make a late appeal.

53. If this application is dismissed then the Appellant will suffer prejudice because it will not be able to argue its case before the Tribunal. This loss of opportunity would be some prejudice because the penalty is £16,891, and that is a large amount of money for a small business. However, it would be prejudice that the Appellant would suffer as a result of its own delay. Looking at the reverse situation, if this application is allowed then there will be prejudice to HMRC who will have to respond to a matter they were entitled to consider closed. There will also be prejudice to other taxpayers and other tribunal users who expect the deadlines that they respect and observe to be upheld by the Tribunal.

54. In weighing up the circumstances, I should not take into account the merits of the Appellant's case unless those merits are either obviously strong or obviously weak. Therefore, I have briefly considered the merits of the Appellant's case. The Appellant's grounds for appeal (set out again for ease of reading) are that:

1. All existing clients have been formerly risk assessed. This includes meetings in person and full reviews carried out.
2. The size of the penalty is not consistent with the size of the Company.
3. All other Company compliance work has been carried out successfully and is up to date.
4. The level of risk of Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 is very low. The type of work carried out by Clients is of a sub-contracting nature within the construction industry. All clients are introduced by existing clients and known personally. Before any work is carried out by ourselves a formal registration with HMRC is required where the Clients UTR Number, National Insurance Number, Date of Birth and Residential address are verified.
5. All Clients have attended meetings with the Company prior to any work being carried out and have shown photographic identification. As the meetings have taken place with myself at my home office with none of my other staff in attendance due to their own work commitments, I have been as a result of my disability unable to take a scan or photocopy of the document.
6. Delta Tax Agents previously had an office however this was closed in 2016 and at present does not have a similar facility and my staff now work remotely from their own homes but unfortunately cannot accommodate meetings with Clients personally, unless they visit the Clients.

55. The Appellant bears the onus of a proof in a substantive appeal. I consider that some of the Appellant's grounds are obviously weak. The assertion that the Appellant has complied with other obligations (ground 3), or does not have an office (ground 6) are not relevant to the question of whether there was a breach of either the 2007

Regulations or the 2017 Regulations. Similarly, the size of the penalty (ground 2) has already been capped at 10% of the Appellant's Gross Profit, and the size of the Appellant has no other relevance to the level of penalty.

56. I consider that the Appellant would face an uphill battle to be successful on any of the three remaining grounds (grounds 1, 4 and 5) given the correspondence between the parties, the documents the Appellant provided to HMRC at the time of the inspection, HMRC's notes of the inspection visit and the Appellant's lack of any new evidence. However, I conclude that these grounds should not be characterised as being so obviously weak that they could not possibly succeed. Therefore, as there are three grounds that are not obviously weak, I will not take the merits of the Appellant's case into account when considering whether this application should be granted.

57. Drawing these factors together, I remind myself that the onus is on the Appellant to explain the reasons for its delay in making an appeal, and to make the case for being given an extension of time. I remind myself that the grant of permission should be the exception rather than the rule. The delay here is six and a half months, so the Appellant has taken seven times the time permitted by the 2017 Regulations to file its appeal. While I accept that there will be some prejudice to the Appellant if I refuse this application, I do not consider that the Appellant has adequately explained or justified any part of its six and a half month delay in filing an appeal. HMRC will be prejudiced by having to divert resources to respond to this appeal if permission is granted, and that would also result in more delay for other taxpayers and for other tribunal users who have complied with time limits.

58. I have concluded that permission to make a late appeal should be refused. As the late appeal has not been admitted, that means there is no substantive appeal for me to go on to consider. The penalty is confirmed in the figure imposed.

Conclusion

59. For the reasons set out above, this application for permission to make a late appeal is refused, and this late appeal is not admitted for consideration.

60. 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.

JANE BAILEY

TRIBUNAL JUDGE

RELEASE DATE: 11 FEBRUARY 2022