



**TC08029**

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Appeal number: TC/2019/03964**

**BETWEEN**

**MR IMRAN IQBAL**

**Appellant**

**-and-**

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

**Respondents**

**TRIBUNAL: JUDGE KELVAN SWINNERTON**

**The hearing took place on 8 February 2021. I heard from Mr Monk and Mr Thomas for the Appellant and from Mr Hunter from HM Revenue & Customs' Solicitor's Office for the Respondents.**

**With the consent of the parties, the hearing took place on the Tribunal video platform. A face-to-face hearing was not held because of difficulties caused by the Coronavirus pandemic. Mr Iqbal gave evidence at the hearing. An observer from HMRC also attended the hearing.**

**It was directed that the hearing should be in private on the basis that it was not in the public interest during the pandemic to hold a face-to-face hearing open to the public and that it was in the public interest for the hearing to go ahead remotely which by necessity must be in private.**

## DECISION

1. The Tribunal decided that the application of the Appellant for permission to make a late appeal is ALLOWED.

### Summary findings of fact and reasons for the Decision

2. The application of the Appellant is for permission to be granted by the Tribunal to allow his late appeal to HMRC.
3. The late appeal relates to an amendment made under Section 28A of the Taxes Management Act 1970 (“TMA”) in respect of the Appellant’s self-assessment tax return for 2011/12. That amendment was in the sum of £38,687.80 and was issued on 16 March 2015.
4. In addition, the late appeal relates to a penalty notice issued on 17 March 2015 under Schedule 24 of the Finance Act 2007 (“FA”) in the sum of £25,050.35.
5. The deadline for an appeal to be submitted by the Appellant was 15 April 2015 in respect of the amended tax return and 16 April 2015 in respect of the penalty notice.
6. An appeal was submitted to HMRC on 28 April 2018.
7. An appeal was made to the First-tier Tribunal (Tax Chamber) on 28 May 2019 which was formally opposed by HMRC on 15 August 2019.
8. Where HMRC do not agree to notice of an appeal being made to them after expiry of the time limit of 30 days, the tribunal has a discretion to give permission to admit the appeal late under s.49(2)(b) of the Taxes Management Act 1970 (“TMA”) although that provision does not contain a test for deciding the issue. However, the Upper Tribunal case of *William Martland v HMRC [2018] UKUT 0178 (TCC)* considered the approach to be taken in the exercise of this statutory discretion. In short, that involves a three-stage approach of establishing whether or not the length of the delay is serious and/or significant, establishing the reason(s) for the delay and evaluating all the circumstances of the case using a balancing exercise to assess the merit(s) of the reasons given for the delay and the prejudice which would be caused to both parties by granting or refusing permission.
9. By way of brief background, the Appellant traded as Kashmir Halal Meat (“KHM”). The Appellant gave evidence that he bought meat and then sold this meat to retailers at a profit. He had family members who worked in the meat trade. The Appellant stated that he started trading meat in July 2011 and did so for about 10 months. Previously, he had worked in the grocery business.
10. HMRC opened an enquiry on 31 July 2013 and sought information and documents from the Appellant. This request was copied to the agent of the Appellant. A couple of weeks later, HMRC was called by the agent of the Appellant, Artifin Accountants. It was explained to HMRC that the Appellant was out of the country, that Artifin Accountants had been instructed in March 2013 and that it was suggested that HMRC contact the Appellant directly with respect to the enquiry.
11. In August 2013, HMRC made several attempts to contact the Appellant without success and, on 13 September 2013, HMRC issued a notice under Schedule 36 of the Finance Act 2008 (an information notice) to the Appellant and copied this to his agent. A penalty notice was issued on 17 October 2013 because no response had been received

to the information notice. A further penalty notice was issued on 11 December 2013 for the continuing failure to comply with the information notice.

12. On 29 May 2014, the agent of the Appellant telephoned HMRC and stated that they could not provide any figures to HMRC and that the Appellant remained out of the country.
13. On 15 June 2014, the Appellant communicated with HMRC by email and stated that his accountant would give HMRC everything that was required. There were a number of e-mails exchanged between the Appellant and HMRC from June to September 2014 including an email on 28 August 2014 from HMRC to the Appellant in which HMRC explained that they had spoken to the agent of the Appellant and that the agent had confirmed to HMRC that they no longer acted for the Appellant.
14. There were then some additional communications from HMRC to the Appellant and a closure notice was issued on 16 March 2015 with a penalty notice issued the following day.
15. In the present case, the length of the delay is not in dispute between the parties. It was not submitted on behalf of the Appellant that the length of the delay was anything other than serious and significant. I find that the length of the delay was serious and significant. The delay is 1109 days with respect to the amended tax return and 1110 days in relation to the penalty notice.
16. In relation to the delay, one of the reasons put forward on behalf of the Appellant is that he was out of the UK for the period from April 2013 until November 2015. In that respect, the e-mail of the Appellant to HMRC dated 17 June 2014 refers to the Appellant having to travel to Pakistan in connection with a property dispute. The Appellant gave evidence at the hearing that he had been in Pakistan for about one year, then worked in Dubai for a period of about 7 months and thereafter returned to Pakistan before coming back to the UK. Whilst I appreciate that being out of the country for such a length of time may well have made it more difficult for the Appellant to attend to his tax affairs, I do not see any reason why the Appellant nonetheless could not have dealt with his tax affairs whilst out of the country.
17. Another reason put forward on behalf of the Appellant for the delay relates to the amended tax return for the Appellant submitted by the Appellant's agent on 10 March 2016 which was rejected by HMRC in their letter of 24 April 2016. It is submitted that confusion was created by HMRC in that letter by stating that they were unable to accept the amended return but enclosing a self-employment page for completion and stating that HMRC could proceed with the return once the completed page was received. I find it difficult to accept that any possible confusion created by the letter of HMRC dated 24 April 2016 constitutes a reasonable excuse primarily because a number of years had already passed since the enquiry had been opened and the Appellant had been afforded ample opportunity, with the assistance of his accountant, to attend to the matter much earlier and since the closure notice had been issued.
18. In order to deal justly with the application for permission to appeal, I am required to evaluate all the circumstances of the case, to weigh the merits of the reasons for the delay and the prejudice that would arise to both parties by granting or refusing permission to appeal and to do so by way of a balancing exercise. In that respect, I may have regard to any obvious strengths or weaknesses in the Appellant's case but I should not descend into a detailed analysis of the underlying merits of the appeal. That final point about not descending into a detailed analysis of the underlying merits of the appeal was made clear to the parties at the hearing.

19. In this respect, one issue caused me some concern at the hearing. It related to the basis upon which the cost of sales figure had been adjusted to arrive at the amount of tax in the amendment of HMRC to the tax return of the Appellant for 2011/12. The percentage of income used to calculate the cost of sales had been reduced from 92.7% to 53%. That led to a lower cost of sales figure and a higher profit and hence higher tax figure.
20. The letter of HMRC dated 21 November 2014 referred to 53% being used in the previous year which concerned me as the Appellant stated that his meat trading business had only started in the tax year 2011/12 and that there had not been a previous year in which he had traded meat. Mr Hunter asked for a short break to obtain some additional information on this point and helpfully was able to explain that the HMRC records detailed a single trading operation for the Appellant from 15 June 2010 until 5 April 2013 and that, in the previous tax year, that of 2010/11, the cost of sales had been 53%. Mr Thomas then stated that he had been advised by the Appellant during the break that his business in 2010/11 related to carrier bags and not to trading meat.
21. After the conclusion of the hearing but on the day of the hearing, a communication was sent by HMRC to me and the Appellant which stated that the HMRC records showed the description of the Appellant's trade on the 2010/11 return as 'Supplying Bags'. That coincided with what the Appellant had stated at the hearing and confirmed my concern that the percentage applied to income to arrive at the cost of sales for the meat business of the Appellant for the 2011/12 year had been taken from a different type of business for the previous year.
22. In his submissions, Mr Thomas stated that there would be undoubted prejudice to the Appellant if the application of the Appellant for permission to appeal was refused because he would face bankruptcy given the amount claimed by HMRC.
23. Mr Hunter relied upon the points made in the skeleton argument as to prejudice that would be suffered by HMRC were the late appeal application to be allowed.
24. Having had regard to all the circumstances of this case, I have decided that on balance it would be just to allow the Appellant to make a late appeal. I do not accept the reasons put forward by the Appellant, on their own, constitute a reasonable excuse for the delay in making an appeal. That said, I do have some concern as to the amount of income tax and penalties due from the Appellant given the issue as to how those figures have been arrived out such that, when evaluating all the circumstances, the Appellant should be allowed to make an appeal.
25. This document contains a summary of the findings of fact and reasons for the decision. A party wishing to appeal against this decision must apply within 28 days of the date of release of this decision to the Tribunal for full written findings and reasons. When these have been prepared, the Tribunal will send them to the parties and may publish them on its website and either party will have 56 days in which to appeal. 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.

**KELVAN SWINNERTON  
TRIBUNAL JUDGE**

**RELEASE DATE: 11 FEBRUARY 2021**