



TC06650

Appeal number: TC/2018/651

INCOME TAX – application for permission to appeal out of time – non-attendance of appellant – appeals between 1684 and 732 days late – no explanation given – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

AMIN MOHAMMED

Appellant

- and -

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

**TRIBUNAL: JUDGE AMANDA BROWN
JANE SHILLAKER**

Sitting in public at Centre City Tower, 5 Hill Street, Birmingham on 17 July 2018

No attendance on behalf of the Appellant

Muhammed Khan, Presenting Officer of HM Revenue and Customs, for the Respondents

DECISION on PRELIMINARY ISSUE

Introduction

5 1. Amin Mohammed (“the Appellant”) seeks to bring appeals in respect of the imposition, by HM Revenue & Customs (“HMRC”), pursuant to Schedules 55 and 56, of penalties for late submission and payment of self-assessment tax returns for the tax years 2011/12 and 2012/13.

10 2. In summary the Appellant was required to render self-assessment tax returns for 2011/12 by 31 October 2013 (if paper returns were rendered) or 31 January 2014 (for online returns). For 2012/13 those dates were 31 October 2014 and 31 January 2015 respectively. Both returns were in fact rendered online on 18 September 2015. The returns were therefore rendered 960 and 595 days late.

15 3. There is a requirement, pursuant to section 31A Taxes Management Act 1970 (“TMA”) that any appeal against the imposition of an assessment to tax or penalty be made to HMRC within 30 days of the relevant notice of assessment.

4. The Appellant submitted its appeal against all the penalties on 23 October 2017.

20 5. The penalties which the Appellant seeks to appeal are as set out in the table below together with the date on which the penalties were appealed and the number of days by which those appeals were late :

Tax Year	Penalty Type	Penalty Amount	Penalty issue date	Last day to appeal	Days out of time by
2011/12	SA late filing penalty	£100.00	12/02/2013	14/03/2013	1684
2011/12	SA daily penalty	£900.00	14/08/2013	13/09/2013	1501
2011/12	SA 6 month late filing penalty	£300.00	14/08/2013	13/09/2013	1501
2011/12	SA 12 month late filing penalty	£300.00	25/02/2014	27/03/2014	1306
2011/12	SA late payment penalty	£89.00	22/09/2015	22/10/2015	732
2011/12	SA 6 month late payment penalty	£89.00	22/09/2015	22/10/2015	732
2011/12	SA 12 month late payment penalty	£89.00	22/09/2015	22/10/2015	732

2012/13	SA late filing penalty	£100.00	18/02/2014	20/03/2014	1313
2012/13	SA daily penalty	£900.00	18/08/2014	17/09/2014	1132
2012/13	SA 6 month late filing penalty	£300.00	18/08/2014	17/09/2014	1132
2012/13	SA 12 month late filing penalty	£300.00	24/02/2015	20/03/2015	942
2012/13	SA late payment penalty	£180.00	22/09/2015	22/10/2015	732
2012/13	SA 6 month late payment penalty	£180.00	22/09/2015	22/10/2015	732
2012/13	SA 12 month late payment penalty	£180.00	22/09/2015	22/10/2015	732

Hearing

6. At the hearing, there was no appearance by or on behalf of the Appellant. It was evident from the Tribunal file that a notice of hearing had been sent on 2 May 5 2018 to both the Appellant at the address shown on the Notice of Appeal and to Mohammed Dawood of Moughal & Co, the Appellant's nominated representative. The Notice of Appeal had provided no telephone or email contact details for the Appellant accordingly, the Tribunal asked the clerk to telephone the Appellant's representatives. The clerk informed the Tribunal that the Appellant had been called. 10 A message was left as no one at the Appellant's representative's office answered the phone. HMRC confirmed that they had had no correspondence with the Appellant or his representatives since the Notice of Appeal had been lodged. HMRC made an application pursuant to rule 33 Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("Tribunal Rules") that the hearing proceed in the Appellant's 15 absence.

7. The Tribunal determined that as the notice of hearing had been properly sent by post section 7 Interpretation Act 1978 provided that notice had effectively been given. Applying the overriding objective under rule 2 Tribunal Rules the Tribunal considered that dealing with the matter justly and fairly and in particular to avoid 20 delay the out of time application should be heard in the Appellant's absence.

Legislation

8. As indicated above section 31A TMA provides that a taxpayer must bring an appeal by notifying HMRC of that appeal within 30 days from the date of the assessment against which the appeal is brought.

9. Section 49 TMA provides that either HMRC or the Tribunal may accept an out of time appeal. HMRC are required to allow the out of time appeal where there is a reasonable excuse for the taxpayer not having made the appeal in time and that the appeal is then brought without undue delay after the reasonable excuse has expired.

5 Approach to out of time appeals

10. The approach to be adopted by the Tribunal when considering whether to exercise that discretion have been laid out by the Upper Tribunal and is, as such, binding on this Tribunal.

10 11. In the case of *Data Select Ltd v HMRC [2012] UKUT 187* Morgan J reinforced the 5 tiered approach adopted by other courts to the question of out of time applications:

(1) What is the purpose of the time limit? – in this case the 30 day time limit for making an appeal

(2) How long was the delay?

15 (3) Is there a good explanation for the delay?

(4) What will be the consequences for the parties of an extension of time?

(5) What will be the consequences for the parties of a refusal to extend time?

12. More recently in the case of *William Martland [2018] UKUT 0178* the Upper Tribunal gave further consideration to the approach to be adopted by the Tribunal in out of time applications. That Tribunal has indicated that the more formulaic checklist approach adopted by Morgan J in *Data Select* should be viewed as the means for undertaking an assessment of all the circumstances. The Tribunal states:

25 “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 [Denton and others v TH White Limited and others [2014] EWCA Civ 906]*:

30 (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.

35 (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 for refusing permission.

5 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. 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*
10 [*Advocate General for Scotland v General Commissioners of Aberdeen City* [2006] STC 1218] 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 follow a checklist.

15 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 appellant to lose the opportunity of putting forward a really strong case than a very weak one.”

The Appellant's grounds for an out of time appeal

20 13. The Appellant's grounds can only be ascertained from his Notice of Appeal which, as regards the reasons for the out of time appeal, state:

“I applied to the Tribunal within specified time.

The Tribunal sent us [sic] email on 13 February 2018 stating that we should apply to the Tribunal to hear the late filing penalties only and the overpayment relief claim is outside the Tribunal's jurisdiction.

25 We therefore apply to the Tribunal to hear our appeal and waive the late filing penalties and surcharges”

14. As is apparent the Appellant believed his appeals were in time. Thus further explanation is required.

30 15. By a notice of appeal dated 11 December 2017 the Appellant sought to appeal HMRC's refusal to accept a late overpayment relief claim. That appeal stated:

“HMRC officer Mr T Manning who was dealing with my rental income tax enquiry. I sent all the paperwork together with overpayment relief claim for 2011-12 and 2012-13 and a separate correspondence claim for 2013-14 & 2014-15 post to him on 11/03/2016.

35 Mr T Manning only logged overpayment relief claim for 2013-14 & 2014-15 but did not process the overpayment relief claim for 2011-12 & 2012-13 for some reason unknown.

Now HMRC after conducting the tax enquiry are adamant that I did not apply for the relief on time and they cannot entertain that.

5 As far as I am concerned I provided all the information and correspondence to Mr T Manning on time and it was his job to action it or forward it to relevant department.

I should be able to claim the overpayment relief as I have complied with the conditions and I have done nothing outside the bounds and therefore should not be penalized for an HMRC officer's oversight or negligence.

10 I would therefore request Tribunal to kindly consider the documents and allow the overpayment relief.

I have been paying taxes all my life and now that I am retired, I feel HMRC treatment is not fair. They issued incorrect PAYE coding notice for many years and deducting taxes which were not even due.

15 I have provided the information requested and HMRC agreed that my wife was in receipt of rental income rather than myself and I should not have been assessed on rental income for those tax years.”

16. Attached to that Notice of Appeal was the letter of 27 November 2017 by reference to which HMRC refused the Appellant's out of time appeal in relation to the penalties.

20 17. By letter dated 13 February 2018 the Tribunal office notified the Appellant that the Tribunal had no general regulatory oversight of HMRC and were unable to deal with complaints regarding conduct by HMRC officers. The Tribunal office noted that the letter attached to the Notice of Appeal of 11 December 2017 concerned penalties and advised that the Tribunal did have jurisdiction to consider such an appeal and
25 invited the Appellant to resubmit such an appeal if that was the proper focus of his concern.

18. That letter prompted the present appeal. It is however, clear that whilst the Appellant did lodge the current appeal within 30 days of the Tribunal office's letter the appeal is not one which is made in time. An application to the Tribunal pursuant
30 to section 49 is required because the original appeal to HMRC was not made in time and HMRC did not extend time pursuant to their power under section 49.

HMRC's submissions

19. HMRC applied the 5 tier approach advocated by Morgan J (HMRC did not reference the *Martland* judgment).

35 (1) In terms of the purpose of the time limit for appeal HMRC referred to the judgment of the Upper Tribunal in *Romasave (Property Services) Ltd v HMRC [2016] STC 1* to substantiate that the purpose of the time limit is to ensure compliance and certainty in litigation.

(2) HMRC referenced the length of the delay by reference to the number of days identified in the table above. They contended that the delay was both significant and substantial.

5 (3) The Appellant has provided no explanation for the delay in bringing and appeal. The Appellant's previous notice of appeal asserted that vis-a-vis the overpayment relief claim that the Appellant contended that information had been provided to HMRC but not processed. However, HMRC's contact log with the Appellant did not show that any such material had been provided. In
10 HMRC's submission it was, in any event, irrelevant as to the question of appealing the assessments to penalties for late filing and payment.

(4) The consequences of allowing or disallowing the application for the appeal to be made out of time were, asserted HMRC, obvious: failure to grant would deprive the Appellant of the opportunity to challenge the penalties but as there was no substantive case advanced for failure to render the self-assessment returns HMRC contended no real prejudice could be asserted. On the other
15 hand, to allow the out of time appeal would result in additional administrative costs and, given data protection rules requiring destruction of information may prevent HMRC adequately defending the penalties

Decision

20 20. The Tribunal has considered all of the material before it. The Tribunal questioned HMRC as to what information there was concerning the Appellant's interaction with Mr T Manning as the dates provided were so specific. However, HMRC's records showed no receipt of information or communication between
25 HMRC and the Appellant or his representative. It also appeared that even were information to have been provided it concerned the overpayment relief and was, unquestionably provided out of time thereby providing no real explanation for late filing and payment. By reference to the grounds of appeal in relation to the first appeal such information as was provided was in time for the years 2013/14 and 2014/15 but not 2011/12 and 2012/13. There would appear to be a consistent pattern
30 of behaviour whereby the Appellant does not meet time limits or otherwise deal timeously with his tax obligations.

21. Specifically the Appellant has provided no explanation for the delay in submitted his appeals against the penalties. It is therefore impossible for the Tribunal to determine he had a reasonable excuse for non-compliance or to apply the three
35 stage approach required following the *Martland* judgment. The Tribunal must assess whether in all the circumstances the Appellant was inhibited in the submission of his appeals. Neither HMRC nor the Tribunal were provided with any explanation.

Decision

40 22. For these reasons the Tribunal refused the application to accept an out of time appeal.

23. Having been heard in the Appellant's absence pursuant to rule 33 of Tribunal Rules, rule 38 provides that the Appellant has a period of 28 days in which to apply to set aside the decision.

5 24. This document contains full findings of fact and reasons for the preliminary decision. Any party dissatisfied with this preliminary 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.
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Amanda Brown
TRIBUNAL JUDGE

RELEASE DATE: 9 August 2018