



TC05012

Appeal number: TC/2015/06816

*Income Tax – late appeal – penalty for late submission of PAYE Return –
permission to appeal refused*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

CRAWFORD & SONS GAS SERVICES LIMITED Appellant

- and -

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

**TRIBUNAL: JUDGE KENNETH MURE, QC
MEMBER: PETER SHEPPARD, FCIS, FCIB, ATII**

**Sitting in public at The Eagle Building, 215 Bothwell Street, Glasgow on Monday
14 March 2016**

Appellant – David Crawford, Director

Respondents – Matthew Mason, Officer of HMRC, Presenting Officer

DECISION

Introduction

1. The appellant company seeks permission to appeal late against the imposition of a penalty of £400 in respect of the late submission of its PAYE return (or “Real Time Information”) for 2013/14. The company was represented by Mr David Crawford, its director, who is essentially the owner and sole employee of the business. At the relevant time Mr Crawford’s wife assisted in relation to the general administration of the company, while he carried out its actual work.

Evidence and Submissions

2. Although the burden of proof rested on the appellant company, Mr Mason – very helpfully – agreed to introduce this appeal. He explained that this was a late filing penalty in respect of the appellant’s PAYE return for 2013/14. This was due on 19 April 2014 but it was not submitted until about September or October 2014. On 6 October 2014 HMRC issued a Penalty Notice for £400 in respect of the delay. Notice of Appeal was due within 30 days, by 5 November 2014, but in fact was not submitted until 1 September 2015, ie *about 10 months’ late*. The late Notice of Appeal was not accepted by HMRC (see A/1 and 2).

3. Mr Mason then referred to HMRC’s correspondence record at B6. It notes the issuing of the Penalty Notice for £400. (Mr Crawford himself produced the principals of certain correspondence dated 19 August 2015 received by his company as noted in the next paragraph – included as items “X1 and 2”.) B1, Mr Mason explained, records the issuing of the original penalty notice on 6 October 2014, but, he advised, a copy of the original cannot be produced. It seems that this is a computer-generated *pro forma* document. The address to which that was sent was as set out at B3. That document, Mr Mason said, would set out the rights of appeal and the need to respond within 30 days.

4. Mr Mason referred us to Section 7 of the *Interpretation Act 1978*. The Penalty Notice of 6 October 2014, he argued, should be deemed to have been duly received. The document was not returned to HMRC. He relied also on a record of a telephone conversation with the appellant company on 8 December 2014 pursuing amongst other things the matter of the outstanding PAYE return (see B4). For these reasons, Mr Mason submitted, there was no *reasonable excuse* so far as HMRC were concerned for the lateness of the appeal. In support of this submission Mr Mason referred to *Ogedegbe* [2009] UK FTT 364 (TC) and the comments of Sir Stephen Oliver QC at para 7 and, also, to *O’Flaherty v HMRC* [2013] UKUT 01619 (TCC). He observed also that HMRC would have produced detailed information about tax records to the appellant company as a new employer. The appeal was nine months late and the appellant company’s belated response seems to have been prompted only by the debt management correspondence issued by HMRC in August 2015 (produced as “X/1 and 2”).

5. For these reasons Mr Mason urged us to disallow the late appeal.

6. In response Mr Crawford explained that he had set up the company in about March 2013. He is the sole employee and carries out all the company's work. His wife (who did not attend or give evidence) helped with the company's administration. Mr Crawford had no recollection of the Penalty Notice of 6 October 2014. He was
5 first alerted to this by the Debt Management correspondence of 19 August 2015 (X1 and 2). He had not made the telephone call on 8 December 2014 recorded at B4: it might have been made by his wife or the company's accountant.

7. Significantly Mr Crawford acknowledged that he had not filed the PAYE return. His business had been set up recently and there were other priorities. He and his wife
10 had experienced difficulties with the on-line system, and the company's accountant now dealt with filing matters. Mr Crawford indicated that his defence was that he had not received the Penalty Notice in October 2014. There had been no reminders between then and August 2015, and he was not a party to any telephone call with HMRC.

15 **Conclusion**

8. The only factual aspect in dispute is whether the Penalty Notice of 6 October 2014 was received. The foregoing narrative of the oral evidence of Mr Crawford and the correspondence and records of HMRC spoken to by Mr Mason seem otherwise to be uncontested. Mr Crawford confirmed that the company had not
20 changed its address. On balance we consider it likely that the Penalty Notice was issued and duly received. Additionally the record of the telephone conversation on 8 December 2014 (at B4) supports the inference that the appellant should have been aware of this before the end of 2014, yet there was no appeal lodged until August 2015.

25 9. In addition to the authorities cited by Mr Mason we have considered also the guidance of Morgan J in the Upper Tribunal in *Data Select Limited v HMRC* [2012] UKUT 187 (TCC).

10. We would acknowledge that we have a broader discretion than HMRC to allow the appeal late. As we understand the guidance in the authorities noted, we should not
30 grant leave routinely but, rather, exceptionally. The length of the delay, any explanation for it, and the consequences of our decision for each party are all relevant. In the present appeal we have not had the benefit of hearing from Mrs Crawford, particularly about her knowledge of any correspondence or telephone contact with HMRC. (Unfortunately she was unwell.) The burden of proof rests on the appellant
35 in the circumstances. The evidence of Mr Crawford refers to the burden of (ordinary and routine) tax administration and on-line filing. The delay was lengthy and continued after the phone call in December 2014, subsequent to the issue of the Penalty Notice.

11. Some regard, we consider, should be paid to the ultimate prospects for success.
40 As we have noted, Mr Crawford accepted that he had not filed the return. Quite simply, as he acknowledged, he had not treated it as a priority. We would question in such circumstances whether an arguable defence is likely to emerge.

12. For all of these reasons we refuse to allow the appeal late.

13. 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.

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**KENNETH MURE
TRIBUNAL JUDGE**

RELEASE DATE: 8 APRIL 2016

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