



**TC06204**

**Appeal number:  
TC/2017/00794**

*INCOME TAX – notice of appeal to the Tribunal given four months late –  
whether permission for the appeal to proceed should be given – no.*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Appellant**

**KHALID MAHMOOD**

**- and -**

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

**TRIBUNAL: JUDGE TONY BEARE**

**Sitting in public at Taylor House, 88 Rosebery Avenue, London EC1R 4QU on  
30 October 2017**

**Mr F. Afzaal of Direct Accountancy Solutions Limited, for the Appellant  
Mr S. Goulding, Officer of HM Revenue & Customs, for the Respondents**

## DECISION

### Introduction

1. This decision arises out of an appeal made by the Appellant against a decision by HMRC, on 19 December 2014, to issue assessments and penalties for the tax years of assessment ending 5 April 2007, 5 April 2008, 5 April 2009, 5 April 2010 and 5 April 2011. This decision relates only to the preliminary question of whether permission to notify the Tribunal of that appeal outside the specified statutory time limit should be granted.

### Facts

2. The origins of this matter are to be found in a letter of 7 July 2015 from HMRC to the Appellant in which HMRC set out its views in relation to the appeal. After offering the Appellant the right to ask for a review or to notify his appeal to the Tribunal, the letter went on to say that:

“If I do not hear from you and you do not notify your appeal to the tribunal, your appeal will be treated as settled by agreement under section 54(1) of the Taxes Management Act on the basis of my view of the matter as set out above, and the tax chargeable based on my view will be due and payable.”

3. HMRC did hear from the Appellant following that letter and, between 7 July 2015 and 4 August 2016, there were further exchanges of correspondence between HMRC and the Appellant’s advisor Mr Afzaal. This culminated in a letter from HMRC to Mr Afzaal dated 4 August 2016, in which HMRC concluded by saying that, if the Appellant wished to continue with his appeal, he should notify the Tribunal to that effect within 30 days of the date of that letter. HMRC then referred Mr Afzaal to the website setting out the procedure to be adopted in notifying an appeal to the Tribunal and containing the prescribed form.

4. In the event, the Tribunal did receive a notice of appeal from the Appellant in the prescribed form but, although that notice bore a date of 4 September 2016, it was not received by the Tribunal until 6 January 2017, 4 months after the expiry of the 30 day period mentioned in HMRC’s letter of 4 August 2016.

### The relevant legislation

5. In terms of the position under the relevant legislation, the position is as follows.

6. In its letter of 7 July 2015, HMRC notified the Appellant of an offer to review the matter in question. There is no evidence from the papers which have been provided to me that the Appellant ever accepted that offer or that a review ever took place.

7. Under Section 49C Taxes Management Act 1970 (“TMA 1970”), if an appellant does not notify HMRC that it accepts HMRC’s offer to review a matter within the “acceptance period” of 30 days beginning with the date of the document by which HMRC notify the appellant of that offer, the matter in question is to be treated as if it

were settled by agreement under Section 54 TMA 1970 and the appellant is unable to repudiate or resile from that agreement. This does not apply if the appellant has notified his appeal to the Tribunal under Section 49H TMA 1970 (see sub-section 49C(6) TMA 1970). Under Section 49H TMA 1970, in circumstances where HMRC has offered to review the matter in question and the appellant has not accepted the offer, the appellant is required to notify his appeal to the Tribunal within the “acceptance period” – which is the period of 30 days beginning with the date of the document by which HMRC notified the appellant of the offer to review the matter in question – but, if the “acceptance period” has ended, the relevant appellant may notify his appeal to the Tribunal only with the Tribunal’s permission (see sub-section 49H(3) TMA 1970).

8. This is echoed in Rule 20 of the Tribunal Procedure (First-Tier Tribunal) (Tax Chamber) Rules 2009 (the “Tribunal Rules”), which stipulates that, where an enactment provides that a notice of appeal may be given after the end of the stipulated time limit with the permission of the Tribunal, the notice of appeal must include a request for such permission and the reason why the notice of appeal was not provided in time and, unless the Tribunal gives such permission, the Tribunal must not admit the appeal.

#### Discussion

9. In this case, the “acceptance period” following the offer by HMRC to review the matter in question ended on 6 August 2015, 30 days after HMRC notified the Appellant of that offer. The Tribunal did not receive notice of the Appellant’s appeal until 6 January 2017. That was 17 months after the expiry of the “acceptance period” and more than 4 months after the expiry of the 30 day time limit set out in HMRC’s letter of 4 August 2016.

10. In addition, the notice of appeal did not request permission to notify the Tribunal of the appeal outside the relevant time limit and did not include reasons for the late notification, as is required by Rule 20 of the Tribunal Rules.

11. So the issue I need to decide is whether, notwithstanding the late notice and the failure on the part of the Appellant to request permission for the late notification of his appeal to the Tribunal or to give reasons for the late notification, I should give permission for the appeal to proceed.

12. HMRC raised no specific objection to the absence of a request for permission to notify the Tribunal late or to the absence of reasons for the late notification and I am prepared to waive those requirements in this case, pursuant to my powers under Rules 5 and 7 of the Tribunal Rules. However, I must still consider whether it is appropriate to give permission for the appeal to proceed notwithstanding the late notification to the Tribunal.

13. In that regard, although very little of the correspondence which passed between the parties between 7 July 2015 and 4 August 2016 has been provided to me, it is clear that discussions were ongoing between the parties over that period and therefore

it would be inappropriate for me, in considering whether or not to give permission for the late notification of the Appellant's appeal, to take into account the time which passed between the expiry of the "acceptance period" on 6 August 2015 and the date of HMRC's letter of 4 August 2016. So, in considering whether or not to give permission for the notification of the Appellant's appeal to the Tribunal after the "acceptance period", I have taken into account only the period between 4 August 2016, when HMRC notified the Appellant that it would make no further adjustments to the assessments and that the Appellant had 30 days in which to notify his appeal to the Tribunal, and 6 January 2017, when the Tribunal received the Appellant's notice of appeal.

14. As mentioned above, although the Tribunal did not receive notice of the Appellant's appeal until 6 January 2017, the appeal was dated 4 September 2016. Had the appeal been notified to the Tribunal on 4 September 2016, it would have been only a day outside the 30 day period given to the Appellant in HMRC's letter of 4 August 2016. However, if, notwithstanding the date set out on the notice of appeal, the notice of appeal was not given until 6 January 2017, that would have been more than 4 months outside that 30 day period.

15. The Appellant's position, as outlined to me at the hearing, is as follows:

- (a) Mr Afzaal, on behalf of Appellant, sent the notification of the Appellant's appeal to the Tribunal in the required form at or around 4 September 2016 by post, together with a covering letter informing the Tribunal that the Appellant wished to make an appeal;
- (b) when Mr Afzaal had heard nothing from the Tribunal for 3 months, he sent a further covering letter, re-enclosing the relevant notice of appeal, to the Tribunal by post at or around 4 January 2017;
- (c) at around the same time, Mr Afzaal completed an online notice of appeal on behalf of the Appellant; and
- (d) waiting for 3 months before making further enquiry of the Tribunal was not inappropriate given the delays which had occurred during the course of the conduct of the Appellant's appeal with HMRC. For example, Mr Afzaal drew my attention to the fact that HMRC's letter of 4 August 2016 referred to a delay of over 3 months on the part of HMRC in responding to his letter of 11 May 2016.

16. In response to that, HMRC's position is as follows:-

- (a) if the Tribunal had received a notice of appeal in the prescribed form by post at or around 4 September 2016, it would have acknowledged that receipt. Moreover, if the Tribunal had received a letter purporting to notify it of an appeal but other than in the prescribed form, it would have returned the letter to the sender with a request to submit the notification in the prescribed form. The fact that it neither of these things in the present

case strongly suggests that it did not receive notice of the appeal (in the prescribed form or any other form) at or around that date;

(b) moreover, the Appellant or his advisor should have contacted the Tribunal before the expiry of a further 3 months following 4 September 2016;

5 (c) the fact that the appeal has been given a 2017 reference number (as opposed to 2016 reference number) supports the view that nothing was received by the Tribunal until 6 January 2017; and

(d) it is clear from a number of decisions, including *Norman Archer v The Commissioners for Her Majesty's Revenue and Customs* [2014] UKFTT 423 (TC), at paragraph 85 and following, *Romasave (Property Services) Limited v The Commissioners for Her Majesty's Revenue and Customs* [2015] UKUT 0254 (TCC) ("*Romasave*"), at paragraph 96 and following, and *Data Select Limited v The Commissioners for Her Majesty's Revenue and Customs* [2012] UKUT 187 (TCC) ("*Data Select*"), at paragraph 34 and following, that time limits are to be taken seriously and, per the Upper Tribunal in the *Romasave* case, "in the context of an appeal right which must be exercised within 30 days from the date of the document notifying the decision, a delay of more than 3 months cannot be described as anything but serious and significant."

20 17. After hearing the arguments of both parties, I do not believe that there is any disagreement between them in relation to the relevant law. Mr Goulding conceded that if, in fact, the notice of appeal in the prescribed form was sent to the Tribunal at or around 4 September 2016 but either got lost in the post on its way to the Tribunal or was lost within the Tribunal system, HMRC would not now be objecting to the  
25 notice of appeal on the ground that it is late, whilst Mr Afzaal conceded that, if, in fact, no notice of appeal in the prescribed form was submitted until 6 January 2017, it would be reasonable for me to refuse permission for the late appeal.

18. In any event, even if the parties had not made those concessions, that is my view on the correct application of the law. In line with the summary set out in the *Data Select* case, when considering whether or not to give permission for the late notice of  
30 appeal, I need to take into account the purpose of the time limit, the period of the delay, the explanation for the delay, the consequences for the parties of an extension of time and the consequences for the parties of a refusal to extend time. In doing that, I need to consider the overriding objective in Rule 2 of the Tribunal Rules (to deal  
35 with cases fairly and justly).

19. Considering those factors in the light of the dicta in the various decisions set out above, I believe that a delay of 4 months in submitting a notice of appeal in the context of a dispute which has been ongoing for over 2 years and relates to multiple  
40 tax years of assessment going back to a tax year of assessment ending almost 10 years before the notice was submitted is so material that permission ought not to be granted in those circumstances. So, to my mind, this case stands or falls on the factual

question of whether or not the notice of appeal in the prescribed form was first sent by post at or around 4 September 2016 before being re-sent at or around 4 January 2017.

20. After reflecting on the submissions of both parties, I have reached the conclusion that, on the balance of probabilities, the notice of appeal in the prescribed form was not sent at or around 4 September 2016. I have reached this conclusion for the following reasons:-

5 (a) first, Mr Afzaal was unable to present me with any evidence that the notice of appeal in the prescribed form was in fact posted on that date. I think it is reasonable to expect a document of this importance and in respect of which a time limit was running to have been sent by a method that would enable the fact that it had been sent to be evidenced – in other words, either by e-mail to the Tribunal (in which case it would have been automatically acknowledged) or using some form of recorded or registered postal delivery;

10 (b) secondly, when one looks at the letter from Mr Afzaal of 4 September 2016, it does not say that it encloses a notice of appeal in the prescribed form. The letter simply states as follows after setting out the Appellant’s name and reference number:-

15 “Reference to our above-named client, we would like to appeal against HMRC’s decision.

20 Should you require any further information, please do not hesitate to contact us.”

25 This suggests to me that, if anything was sent by post at or around 4 September 2016, it was solely this letter and not the notice of appeal in the prescribed form. The letter from HMRC of 4 August 2016 specifically directed Mr Afzaal to the prescribed form on the Tribunals Service website and provided a telephone number for him to call to obtain further information. So there was no reason for Mr Afzaal simply to write a letter in the above terms without also completing the prescribed form;

30 (c) thirdly, although Mr Afzaal is quite right in pointing out the delays which had occurred in his correspondence with HMRC prior 4 August 2016, he acknowledged at the hearing that he knew that, in relation to the Tribunal, he was dealing with a body which was completely separate and distinct from HMRC. He also knew (or should have known) that time was of the essence in relation to the notice of appeal. That being the case, it was not only incumbent upon him to obtain a record of posting the notice of appeal as mentioned above but also to follow up with the Tribunal when he had heard nothing after a few days or weeks. It was not appropriate to wait for 3 months to elapse before seeking to establish what had happened with the appeal; and

5 (d) finally, my enquiries of the Tribunal staff following the hearing have revealed that Mr Afzaal has not at any time completed a notice of appeal by e-mail on behalf of the Appellant in this case. The only notice of appeal received by the Tribunal is the one received by post on 6 January 2017. At the hearing, Mr Afzaal was most insistent that, at or around 6 January 2017, he had completed the notice of appeal by e-mail in addition to sending the original notice of appeal by post for a second time. The fact that he did not complete a notice of appeal by e-mail casts some doubt on his recollection of the events overall.

10 21. For the above reasons, I have concluded that, on the balance of probabilities, no notice of appeal in the prescribed form was sent to the Tribunal until the one which arrived by post on 6 January 2017.

15 22. As I have already indicated above, I believe that a 4 month delay following receipt of a letter requiring a notice of appeal to be given within 30 days is not acceptable. For that reason, it follows from my conclusion at paragraph 20 above that I should decline to give permission for the appeal to proceed and therefore I am constrained by Rule 20 of the Tribunal Rules not to admit the appeal.

20 23. 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 Rules. 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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**TONY BEARE  
TRIBUNAL JUDGE**

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**RELEASE DATE: 7 November 2017**