

[2020] UKFTT 213 (TC)



TC07699

Appeal number: TC/2019/08886

FIRST-TIER TRIBUNAL
TAX CHAMBER

Income Tax – application for permission to appeal out of time – appeal against late filing penalties under Schedule 55 Finance Act 2009 – returns for year 2016-1017 – leave to appeal not allowed.

Mr A Owen

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE DR K KHAN

The Tribunal determined this appeal on 6 April 2020 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier tribunal) (Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 28 June 2019 with enclosures and HMRC Statement of Case submitted on 14 January 2020.

MATTER UNDER APPEAL

The matter before the Tribunal is an appeal against late filing penalties charged under Schedule 55, Finance Act (FA) 2009 in respect of the late filing of a Self-Assessment Individual Tax Return.

The late filing penalties charged in the amount of £1600.00 are as follows:

Tax Year ending	Date penalty Created/issued	Description	Amount (£)
2016-2017	31/07/2018	Individual late filing penalty	£100
	9/8/2018	Daily penalty	£900
	9/08/2018	6 months late Filing penalty	£300
	19/02/2019	12 months late filing penalty	£300
	17/9/2019	Total	£1.600

Introduction

1. This appeal includes an application by the Appellant to appeal out of time to the Tribunal.
2. HMRC object to the late appeal. This is the matter we will first decide.
3. Mr A Owen is appealing against penalties issued under Schedule 55 FA 2009 for the late submission of his self assessment return for the 2016-2017 tax year. If we conclude that the application should be allowed, it would be necessary to consider if the Appellant has a reasonable excuse for the late filing of his returns. For the reason given below, we refuse the application to appeal out of time.

Penalty and Data

TAX YEAR	PENALTY NOTICE DATE	LAST DATE TO APPEAL	DATE APPEAL RECEIVED	DAYS LATE
2016-17	13/02/2018	15/03/2018	28/06/2019	470
2016-17	31/07/2018	30/08/2018	28/06/2019	303
2016-17	10/08/2018	09/09/2018	28/06/2019	293
2016-17	19/02/2019	17/03/2019	28/06/2019	104

Facts

4. The notice to file for the year ending 5 April 2017 was issued to Mr A Owen on or around 6 April 2017.
5. The address the notice to file was issued to is 57 Shearwater House M19 1AY, which is the correct address.

6. The record for Mr Owen shows the date of issue of the SA 316 06/04/2017.
7. The filing date was 31 October 2017 for a non-electronic return or 31 January 2018 for an electronic return.
8. Mr Owen's non-electronic return for the year 2016-2017 was received on 2 July 2019 and was processed on 15 October 2019.
9. The return was submitted 608 days late.
10. In accordance with Paragraph 3 of Schedule 55 FA 2009, as Mr Owen did not submit a return by the filing date of 31 January 2018 he was liable to a penalty of £100. HMRC issued a notice of penalty assessment on or around 13 February 2018 in the amount of £100. The notice (SA 326D) was issued to the Appellant and serves as a warning of the daily penalties so satisfies the requirement of Sch 55.
11. Pursuant to Paragraph 4 of Schedule 55 FA2009, as the return had still not been received 3 months after the penalty date, Mr Owen was liable to daily penalties of £10 per day up to a period of 90 days. HMRC issued a notice of daily penalty assessment on or around 31 July 2018 in the amount of £900, calculated at £10 per day for 90 days.
12. Pursuant to paragraph 5 of Schedule 55 FA 2009, as the return had still not been received 6 months after the penalty date, Mr Owen was liable to a penalty of £300. HMRC issued a notice of penalty assessment on or around 10 August 2018.
13. Pursuant to Paragraph 6 of Schedule 55 FA 2009, as the return had still not been received 12 months after the penalty date, Mr Owen was liable to a penalty of £300. HMRC issued a notice of penalty assessment on or around 19 February 2019.

The Law

14. Under paragraph 21 of Schedule 55, an appeal is to be treated as an appeal against an assessment to the tax concerned.
15. Section 31 Taxes Management Act (TMA) 1970 gives the right of appeal against tax assessments and Section 31A says the appeal must be within 30 days of the specified date, being the date, the notice was given.
16. Mr Owen has indicated that he thinks his appeal is in time.
17. The relevant considerations to be addressed when considering whether to admit a late appeal have been set out in the following terms by the Upper Tribunal in *Data Select v HMRC*

2012 UKUT 187 (TCC), at paragraph 34 which states: “applications for extensions of time...are commonplace and the approach to be adopted is well established. As a general rule...the tribunal asks itself... (1) What is the purpose of the time limit? (2) How long was the delay? (3) Is there a good explanation of the delay? (4) What will be the consequences for the parties of an extension...? (5) What will be the consequences for the parties of a refusal to extend...? The Tribunal then makes its decision in the light of the answers to those questions.”

18. In the case of *William Martland* [2018] UKUT 0178, the Upper Tribunal gave further considerations to the approach to be adopted in out of time applications at paragraph 44 which states: "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*”:

19. Mr Owens's appeal was received by HMRC attached to his tax return for 2018-19 on 2 July 2019 which means it was at best 104 days late in view of the 12-month Late Filing Penalty issued on 19 February 2019 and at worst 470 days late in view of the Late Filing Penalty issued on 13 February 2018. This delay is considerably longer than the three months referred to in *Romasave (Property Services) Ltd v HMRC* 2015 UKUT 0254 (TCC) as serious and significant.

20. In *BPP Holdings Ltd v HMRC* (2016) the Court of Appeal held that compliance ought to be expected unless there was good reason to the contrary.

21. Mr Owen has not given any reason for the late appeal other than to say he was out of the country.

22. HMRC contend that the return was late, no reason was given why the returns were filed late and all notices and information were given to the Appellant to indicate the appeal would not be admitted.

23. The purpose of the legislation, imposing a time limit, is to give finality. This is identified by Judge Redston in *Norman Archer vs HMRC* 2014 UKFTT 423 (TC). Parliament has set a 30-day time limit within which taxpayers can appeal discovery assessments or amendments to their self-assessment. Its purpose is to give finality, so that HMRC - the other party in the possible litigation - will know within that time limit whether or not they need to prepare for an appeal against their decisions. The time limit is a rule to ensure litigation "is conducted efficiently and at proportionate cost.”

Conclusion

24. The length of delay was substantial.

25. Looking at the evidence in the round, we do not consider the Appellant has presented an urgent and convincing argument to explain the reason for the delay.

26. All appropriate notices and assessment were correctly and properly filed by HMRC.
27. The Appellant's case is weak and unlikely to succeed.
28. The matter should be brought to an end and should not cause prejudice to HMRC which would be done if the appeal is allowed. There will be financial implications for the Appellant but these are levied by law.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

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.

**TRIBUNAL JUDGE:
DR KAMEEL KHAN**

RELEASE DATE: 6 MAY 2020