



Neutral Citation: [2024] UKFTT 994 (TC)

Case Number: TC09342

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Hybrid hearing

Appeal reference: TC/2023/09664

Procedure – Application to admit a late appeal – Martland v HMRC applied – Application dismissed

Heard on: 24 September 2024
Judgment date: 31 October 2024

Before

**TRIBUNAL JUDGE BROOKS
TRIBUNAL MEMBER FAROOQ**

Between

PAUL NEEDHAM

Appellant

and

**THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS
Respondents**

Representation:

For the Appellant: In Person

For the Respondents: Vicki Wood litigator of HM Revenue and Customs’ Solicitor’s Office

DECISION

INTRODUCTION

1. With the consent of the parties this was a hybrid hearing. Judge Brooks and Ms Wood, the litigator of HM Revenue and Customs' Solicitor's Office, attended remotely via the Cloud Video Platform. Mr Needham and Tribunal Member Farooq were in-person at the Tribunal hearing centre at Centre City Tower, Birmingham.

2. The purpose of the hearing was not to consider Mr Needham's appeal, but to determine whether it should be admitted out of time, ie should he be permitted to pursue his appeal.

BACKGROUND

3. HM Revenue and Customs ("HMRC") established a self-assessment account for Mr Needham on 7 April 2011. HMRC also issued him, at the address they then held for him, with self-assessment tax returns for 2005-06 to 2009-10 (inclusive) notifying him that he was required to submit these returns to HMRC. These returns had been issued because HMRC believed that Mr Needham was receiving income from property which had not been declared.

4. Mr Needham says that as he did not receive the blank self-assessment returns with the notices to file them he was unable to do submit them to HMRC.

5. However, as these returns were not filed, HMRC issued Notices of Determination. These were not paid. Therefore, on 11 November 2011, HMRC issued the late payment surcharges, under schedule 56 to the Finance Act 2009, for 2006-07 to 2009-10 (inclusive) as set out in the table at Appendix I, below. Mr Needham says that these were not received either.

6. Sometime around 6 April 2012, HMRC issued Mr Needham with a notice to file a self-assessment tax return for 2011-12. The filing date for this return was 31 October 2012 if the return was filed on paper or 31 January 2013 if filed online. On 19 October 2012, a paper 2011-12 return was filed by Mr Needham. However, because that return had not been filed on time, late filing, six month, daily and 12 month penalties were issued by HMRC, under schedule 55 to the Finance Act 2009 (as set out in Appendix I, below), to Mr Needham.

7. On 3 August 2023 Mr Needham appealed to the Tribunal against the surcharges and late filing penalties. He also appealed against the determinations and interest. At the time of his appeal the total sum in dispute was stated to be £11,745.08.

LAW

8. We have set out the statutory provisions (insofar as these are applicable) to which we subsequently refer in Appendix II below.

9. Under paragraph 21 of schedule 55 to the Finance Act 2009 (regarding late filing penalties) and paragraph 14 of schedule 56 to that Act (in relation to late payment penalties) an appeal against such penalties is to be treated "in the same way as an appeal against an assessment of the tax concerned". In this case the tax concerned is income tax.

10. The right to appeal against HMRC decisions is contained in s 31 of the Taxes Management Act 1970 ("TMA"). As this contains a right of appeal against assessments to income tax, it follows that there is also a right of appeal against the late filing and late payment penalties. Section 31A TMA provides that a notice of appeal must be in writing and made to HMRC within 30 days of the relevant date. The "relevant date" is the date on which the penalties etc were issued.

11. However, notice of an appeal may be given after the expiry of the 30 day time limit, under s 49 TMA, if HMRC agree or the tribunal gives permission.

12. In the present case as HMRC do not agree to the admission of the appeal out of time, it is for the tribunal to consider whether Mr Needham should be permitted to bring his appeal.

13. In the case of *Martland v HMRC* [2018] UKUT 178 (TCC), the Upper Tribunal considered, at [44] – [47] of the decision, the legal principles to be applied by the First-tier Tribunal (“FTT”) when exercising its judicial discretion as to whether to admit a late appeal.

14. In summary:

(1) the FTT must remember that the starting point is that permission should not be granted unless it is satisfied on balance that it should be.

(2) when considering that question, the FTT can usefully follow the three-stage process set out in *Denton*:

(i) 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’), it ‘is unlikely to need to spend much time on the second and third stages’;

(ii) Establish the reason (or reasons) why the default occurred; and

(iii) Evaluate ‘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 or refusing permission.

(3) the 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.

(4) In carrying out the balancing exercise the FTT can have regard to any obvious strength or weakness of the applicant’s case; this goes to the question of prejudice.

(5) It is important however that this should not descend into a detailed analysis of the underlying merits of the appeal (see *Hysaj, R (in the application of) v Secretary of State for the Home Department* [2014] EWCA Civ 1633 (*‘Hysaj’*))

(6) It is clear that if an applicant’s appeal is hopeless in any event, then it would not be in the interests of justice for permission to be granted so that the FTT’s time is then wasted on an appeal which is doomed to fail.

(7) Where an appeal will has some merit, it is important that the FTT at least considers in outline the arguments which the applicant wishes to put forward and the respondents’ reply to them. In considering this point, the FTT should be very wary of taking into account evidence which is in dispute and should not do so unless there are exceptional circumstances.

(8) Shortage of funds (and consequent inability to instruct a professional adviser) should not, of itself, generally carry any weight in the FTT’s consideration of the reasonableness of the applicant’s explanation of the delay:

(9) Neither should The fact that the applicant is self-represented – Moore-Bick LJ went on to say (at [44] in *Hysaj*) that:

“... being a litigant in person with no previous experience of legal proceedings is not a good reason for failing to comply with the rules”

DISCUSSION AND CONCLUSION

15. Turning to the *Martland* stages in this case, the first is the length of the delay which in this case has clearly been long. The latest of the penalties was issued in September 2013 and Mr Needham’s appeal to the Tribunal was on 3 August 2023, almost ten years later.

16. The second of the *Martland* stages is to consider the reason for the delay.

17. Mr Needham accepts that the appeal was late but says that there is a good reason for this. He explained that until 2010 he did not receive any correspondence from HMRC and that thereafter they failed to engage with him or explain why he had been issued with tax returns when he had not been self-employed but an employee. It was not until comparatively recently that he discovered that the issue that concerned HMRC did not relate to self-employment but to income from property. During the hearing Mr Needham described how he and his accountant had frequently contacted HMRC by telephone but had not got to the bottom of why tax was being sought from him. When asked when he had made the telephone calls to HMRC Mr Needham said it was up to either 2016 or 2017.

18. We also note, as Ms Wood pointed out, that Mr Needham did not provide any reason for the late filing of his 2011-12 self-assessment tax return.

19. The third of the *Martland* stages is to undertake a balancing exercise to evaluate all the circumstances of the case. In doing so the starting point, as the Upper Tribunal stated in *Martland*, is that permission should not be granted unless we are satisfied on balance that it should be.

20. Having carefully considered all of the circumstances of the case, which includes everything Mr Needham told the Tribunal (even if we have not specifically referred to it in this decision) and taken into account the submissions of Ms Wood, we have come to the conclusion that, on balance, Mr Needham should not be granted permission to proceed with his appeal.

21. Not only was there a significant delay, at the very least over ten years, in the appeal being brought but Mr Needham and/or his accountant had been in contact with HMRC since 2010. Indeed when asked Mr Needham said that he had been making telephone calls to HMRC until 2016 or 2017. However, this does not, in our view, satisfactorily explain why he did not appeal sooner.

22. Although we have some sympathy for Mr Needham, who does not appear to have been given the assistance he sought from HMRC to help him understand why they required payments from him, we consider that it was more likely than not that he was aware of the right to appeal to the Tribunal against a decision of HMRC for sometime before 3 August 2023. Although we were not referred to any correspondence, we are aware HMRC include a reference to the right to appeal to the Tribunal as a matter of course when issuing an appealable decision or penalty.

23. While we accept that Mr Needham will be prejudiced by not being permitted to bring his appeal out of time, the extent of such prejudice suffered will be limited. This is because, even if we had come to a different conclusion, Mr Needham would not have been able to appeal against the interest imposed or determinations issued by HMRC.

24. As explained during the hearing, there is no right of appeal against interest or HMRC’s determinations. Neither is included in relation to the right of appeal under s 31 TMA and there is no other statutory provision which permits an appeal to be made against these either.

25. The effect of this is that the Tribunal can only hear and determine appeals where there is a right of appeal contained in a statutory provision. Because the Tribunal does not have any jurisdiction to hear and determine an appeal in any case where there is not a statutory right of appeal, it has no choice but must, under Rule 8(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, strike out that appeal or part of appeal for which it does not have jurisdiction.

26. Therefore, for the reasons above we dismiss Mr Needham’s application and refuse permission for his out of time appeal to proceed.

27. Although the hearing took place on 24 September 2024, as Mr Needham explained that he would not be in a position to consider this decision until early November, we have delayed its release to allow him sufficient time to consider the decision and decide whether to take any further action as a result.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

28. 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.

**JOHN BROOKS
TRIBUNAL JUDGE**

Release date: 31st OCTOBER 2024

**APPENDIX I
Penalty and Surcharges**

Year	Description	Date	Amount £
2006-07	1 st Late Payment Surcharge	11/11/2011	55.00
2006-07	2 nd Late Payment Surcharge	11/11/2011	55.00
2007-08	1 st Late Payment Surcharge	11/11/2011	60.00
2007-08	2 nd Late Payment Surcharge	11/11/2011	60.00
2008-09	1 st Late Payment Surcharge	11/11/2011	65.00
2008-09	2 nd Late Payment Surcharge	11/11/2011	65.00
2009-10	1 st Late Payment Surcharge	11/11/2011	70.00
2009-10	2 nd Late Payment Surcharge	11/11/2011	70.00
2011-12	Late Filing Penalty (para 3 Sch 55 FA 2009)	21/04/2013	100.00
2011-12	6-month Late Filing Penalty (para 5 Sch 55 FA 2009)	20/09/2013	300.00

2011-12	Daily Penalty (para 4 Sch 55 FA 2009)	20/09/2013	900.00
2011-12	12-month Penalty (para 6 Sch 55 FA 2009)	03/04/2013	300.00
		Total	2,100.00

Appendix II
Statutory provisions referred to in the Decision

Decision Paragraph	Statutory Provision
9	<p><u>Finance Act 2009</u></p> <p>Schedule 55</p> <p><i>Paragraph 20</i></p> <p>(1) P may appeal against a decision of HMRC that a penalty is payable by P.</p> <p>(2) P may appeal against a decision of HMRC as to the amount of a penalty payable by P.</p> <p><i>Paragraph 21</i></p> <p>(1) An appeal under paragraph 20 is to be treated in the same way as an appeal against an assessment to the tax concerned (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC review of the decision or about determination of the appeal by the First-tier Tribunal or Upper Tribunal).</p> <p>(2) Sub-paragraph (1) does not apply–</p> <p style="padding-left: 20px;">(a) so as to require P to pay a penalty before an appeal against the assessment of the penalty is determined, or</p> <p style="padding-left: 20px;">(b) in respect of any other matter expressly provided for by this Act.</p>
	<p>Schedule 56</p> <p><i>Paragraph 13</i></p> <p>(1) P may appeal against a decision of HMRC that a penalty is payable by P.</p> <p>(2) P may appeal against a decision of HMRC as to the amount of a penalty payable by P.</p> <p><i>Paragraph 14</i></p> <p>14(1) An appeal under paragraph 13 is to be treated in the same way as an appeal against an assessment to the tax concerned (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC review of the decision or about determination of the appeal by the First-tier Tribunal or Upper Tribunal).</p> <p>14(2) Sub-paragraph (1) does not apply–</p> <p style="padding-left: 20px;">(a) so as to require P to pay a penalty before an appeal against the assessment of the penalty is determined, or</p> <p style="padding-left: 20px;">(b) in respect of any other matter expressly provided for by this Act.</p>
10 and 24	<p><u>Taxes Management Act 1970</u></p> <p>31 Appeals: right of appeal</p> <p>(1) An appeal may be brought against–</p> <p style="padding-left: 20px;">(a) any amendment of a self-assessment under section 9C of this Act (amendment by Revenue during enquiry to prevent loss of tax),</p>

<p>11</p>	<p>(b) any conclusion stated or amendment made by a closure notice under section 28A or 28B of this Act (amendment by Revenue on completion of enquiry into return),</p> <p>(c) any amendment of a partnership return under section 30B(1) of this Act (amendment by Revenue where loss of tax discovered), or</p> <p>(d) any assessment to tax which is not a self-assessment.</p> <p>(2) ...</p> <p>31A Appeals: notice of appeal</p> <p>(1) Notice of an appeal under section 31 of this Act must be given—</p> <p>(a) in writing,</p> <p>(b) within 30 days after the specified date,</p> <p>(c) to the relevant officer of the Board.</p> <p>(2) ...</p> <p>49 Late notice of appeal</p> <p>(1) This section applies in a case where—</p> <p>(a) notice of appeal may be given to HMRC, but</p> <p>(b) no notice is given before the relevant time limit.</p> <p>(2) Notice may be given after the relevant time limit if—</p> <p>(a) HMRC agree, or</p> <p>(b) where HMRC do not agree, the tribunal gives permission.</p> <p>...</p> <p>(8) In this section “relevant time limit”, in relation to notice of appeal, means the time before which the notice is to be given (but for this section).</p>
<p>25</p>	<p><u>The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009</u></p> <p>8. Striking out a party’s case</p> <p>(1) ...</p> <p>(2) The Tribunal must strike out the whole or a part of the proceedings if the Tribunal—</p> <p>(a) does not have jurisdiction in relation to the proceedings or that part of them; ...</p>