



Neutral Citation: [2025] UKFTT 00244 (TC)

Case Number: TC09437

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2024/03251

Late Appeal – Marland Considered – Permission Refused

Heard on: 14 January 2025

Judgment date: 21 February 2025

Before

**TRIBUNAL JUDGE SUSAN TURNER
MEMBER SUSAN STOTT**

Between

BENJAMIN HAMMANT

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Benjamin Hammant in person

For the Respondents: Nicola Shardlow, litigator of HM Revenue and Customs’ Solicitor’s Office

DECISION

INTRODUCTION

1. This is an application by Mr Hammant for permission to appeal out of time against late filing penalties imposed under paragraphs 4 and 5, sch 55 Finance Act 2009 (FA 09) for the late filing of a self-assessment tax return for tax year 2021/22 in a total amount of £1,200. The late filing penalties are made up of: a daily late filing penalty of £900; and a 6-month late filing penalty of £300.
2. An initial late filing penalty of £100 imposed under para 3, sch 55 FA 09 for the late filing of the tax return was accepted by Mr Hammant.
3. The form of the hearing was V (video) and all parties attended remotely via Microsoft Teams. We referred a document bundle of 86 pages; a bundle of legislation and authorities of 247 pages; and a statement of reasons prepared by the Respondents.
4. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

BACKGROUND

5. Mr Hammant signed up for paperless contact on 22 January 2016 and opted to continue with paperless notices on 31 October 2021.
6. A notice to file for the year ending 5 April 2022 was issued to Mr Hammant's online personal tax account on 6 April 2022 and a corresponding email alert was sent to his verified email address.
7. The daily late filing penalty and the 6-month late filing penalty were notified to Mr Hammant's personal tax account on 15 August 2023. Reminders and statements were also issued to Mr Hammant's personal tax account and corresponding email alerts were sent to Mr Hammant's verified email address.
8. Mr Hammant's self-assessment tax return was submitted on 31 December 2023, 334 days late, and he submitted an appeal to HMRC on 4 January 2024.
9. The timeframe allowed for appeal is 30 days. Mr Hammant's appeal was 112 days late. HMRC have objected to Mr Hammant's application for permission to commence a late appeal against the penalties.

THE LAW

10. The Tribunal may give permission for a late appeal where HMRC has objected. In considering Mr Hammant's application, we follow the three-stage approach set forth in *Denton and Ors v TH White Limited and Ors* [2014] EWCA Civ 906 as confirmed by the Upper Tribunal in *Martland v HM Revenue & Customs* [2018] UKUT 0178 (TCC).

SUBMISSIONS

11. Mr Hammant told the Tribunal that he took his tax obligations seriously. He had accessed his personal tax account in November 2022 and believed he had filed his tax return. A mistake meant that it was not submitted correctly. The tax return showed that there was no tax due for the 2021/22 tax year.
12. Mr Hammant accepted that HMRC's notice to file, penalty notices, reminders and statements had been issued to his personal tax account. He also accepted that email alerts had been sent to his verified email address. Despite this, he did not see the communications in his

personal tax account until December 2023. He filed his tax return as soon as he became aware that it was outstanding.

13. Upon seeing the communications in his personal tax account in December 2023, Mr Hammant also became aware that he had been charged late filing penalties. He realised that there had been an error in submitting the 2021/22 tax return in November 2022 and accepted the initial £100 fine as set out at [2] above. He appealed the daily late filing penalty and 6-month late filing penalty to HMRC.

14. Mr Hammant submitted that HMRC's own website says that a physical letter would be sent for anything important and that this should include notices of penalties. He told the Tribunal that, if he had received a physical letter from HMRC notifying him of the penalties, he would have rectified the missing tax return immediately and avoided further penalties. Mr Hammant noted further that the email alerts from HMRC advising him that there were messages to view did not provide a link to the messages in his personal tax account. As he had believed he had submitted his tax return successfully, he did not log in to his personal tax account to view the messages and did not know about the penalty notices.

15. For HMRC, Ms Shardlow objected to the late appeal, submitting that:

- (1) the delay in appealing to the Tribunal was 112 days and that this is serious and significant;
- (2) there is no good reason why the default occurred; and
- (3) evaluating all of the circumstances, the application should be refused, as there is a need to enforce compliance with statutory time limits and for litigation to be conducted efficiently and at a proportionate cost, and, to the extent the merits of Mr Hammant's appeal should be considered, his case is weak.

DISCUSSION AND DECISION

16. The first stage of *Martland* requires us to identify the breach and assess its seriousness. There is no dispute that there was a delay of 112 days in bringing the appeal. This delay was serious and significant.

17. The second stage of *Martland* requires us to consider why the default occurred. We heard that the lateness arose because Mr Hammant was unaware that any penalties had been imposed until he looked at his online account in December 2023, more than three months after the last date to appeal.

18. The third stage of *Martland* requires the Tribunal to evaluate all of the circumstances of the case. This is a balancing act taking into account the merits of the reasons for the breach and the prejudice to both parties of any decision in addition to the seriousness and significance of the breach. Any obvious strengths or weaknesses associated with Mr Hammant's appeal are relevant considerations but, as directed by *Martland*, there should not be a detailed analysis of the underlying merits of his case.

19. We first considered the merits of the reasons for the breach. We accept that Mr Hammant had not been aware of the penalties accruing in respect of the failure to file the 2021/22 self-assessment tax return. However, Mr Hammant had agreed to receive paperless communications. A notice to file and the penalty notices and other statements and messages had been delivered to his personal tax account and corresponding alerts had been sent to Mr Hammant's verified email address. If he had accessed his personal tax account in response to the alerts, he would have known that his tax return had not been submitted successfully and he would have been notified about the penalties.

20. As directed by *Martland*, we did not undertake a detailed analysis of the underlying merits of Mr Hammant’s appeal, however there were obvious weaknesses associated with the appeal. In particular, there is no dispute that the self-assessment tax return for tax year 2021/22 was not filed on time. Mr Hammant accepts that he made a mistake and the initial penalty of £100 for that error. Mr Hammant agreed to receive paperless communications and the penalties were notified by HMRC to his personal tax account. Mr Hammant did not know that that his tax return had not been filed successfully and that penalties were accruing because he had not looked at his personal tax account.

21. Finally, we considered the prejudice to the parties of our decision. We acknowledge that refusing this application means that Mr Hammant will not be able to proceed with his appeal against the late filing penalties. On the other hand, HMRC have the right to expect finality and it is in the public interest that statutory time limits be respected.

22. Taking into account all relevant factors as required by *Martland* and exercising our discretion in accordance with the Tribunal’s overriding objective to deal with cases fairly and justly, we have decided that Mr Hammant’s application for permission to commence a late appeal should be refused.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

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 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.

Release date: 21st FEBRUARY 2025