



TC06790

Appeal number: TC/2016/03533

INCOME TAX –application for permission to appeal late against a closure notice – application granted

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

TASKIN IZZET

Appellant

- 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
26 October 2018**

Mr Graeme Davis of Graeme Bruce & Partners for the Appellant

Mr John Corbett, Officer of HM Revenue and Customs, for the Respondents

DECISION

Background

- 5 1. This decision relates to the tax affairs of the Appellant in respect of the tax years of assessment ending 5 April 2008, 5 April 2009, 5 April 2010, 5 April 2011, 5 April 2012 and 5 April 2013.
2. Over the period in question, the Appellant derived income from a film partnership in which he had invested and from rental properties which he owned. He
10 also incurred interest expenses.

The facts

3. The salient facts are summarised in a letter from Ms Sue O'Connor, an Officer of the Respondents, to Mr Davis (incorrectly called Mr Bruce in the letter) of 15 June 2016 to which reference is made in the notice of appeal which the Appellant gave to
15 the Tribunal on 30 June 2016. In short:
- (a) the Appellant was sent discovery assessments in respect of the tax years of assessment ending 5 April 2008, 5 April 2009, 5 April 2010, 5 April 2011 and 5 April 2012 on 7 November 2013 and made no appeal against any of those assessments;
 - 20 (b) the Appellant was then sent a closure notice in respect of the tax year of assessment ending 5 April 2013 on 12 January 2015;
 - (c) on 11 February 2015, Mr Davis, on behalf of the Appellant, requested further time to provide certain additional information and documents;
 - 25 (d) the Respondents acceded to this request but, when nothing further had been provided on behalf of the Appellant for several months, the Respondents closed their enquiry on 9 June 2015. This meant that the Appellant had until 8 July 2015 to appeal against the closure notice in respect of the tax year of assessment ending 5 April 2013;
 - 30 (e) no such appeal was made but, on 7 December 2015, approximately six months after the closure notice, Mr Davis contacted the Respondents to say that he would shortly be submitting some additional information and documents in respect of each of the tax years of assessment referred to in paragraph 1 above;
 - 35 (f) Mr Davis sent this to the Respondents on 4 January 2016, under cover of his letter dated 8 December 2015. In that letter, Mr Davis, on behalf of the Appellant, made a claim for relief against income tax for the interest incurred by the Appellant in each of the tax years of assessment referred to in paragraph 1 above;

(g) on 25 April 2016, Mr Davis sent the Respondents a further letter dated 30 March 2016 in which he explained that the Appellant wished to appeal against both the discovery assessments referred to in paragraph 3(a) above and the closure notice referred to in paragraph 3(b) above; and

5 (h) in her letter of 15 June 2016, Ms O' Connor objected to all of the appeals on the grounds that they were late and, in his notice of appeal to the Tribunal, the Appellant appealed against that decision, saying that he had a reasonable excuse for the late appeals as a result of a combination of depression on his part and difficulties in his obtaining the relevant
10 information from third parties.

Discussion

4. It is fair to say that the Appellant's tax affairs in relation to the period are in some disarray. This is chiefly as a result of his own failure to provide the Respondents with the requisite information on a timely basis – a failure which Mr
15 Davis explained was for the reasons set out in paragraph 3(h) above – but matters have not been helped by the fact that the Appellant's tax affairs in relation to the period have been dealt with by six different offices of the Respondents.

5. In the circumstances, it is not entirely surprising that, when the parties appeared at the hearing, they had somewhat different understandings of the precise nature of
20 their dispute.

6. Mr Corbett, on behalf of the Respondents, explained that he believed that the hearing related solely to whether or not the claims for interest relief in respect of each of the tax years of assessment referred to in paragraph 1 above had been made within the requisite time limits, whilst Mr Davis, on behalf of the Appellant, said that he
25 believed that the hearing related to whether or not permission should be given for a late appeal against the closure notice in respect of the tax year of assessment ending 5 April 2013. (Mr Davis explained that the Appellant no longer wished to pursue his appeals against the discovery assessments referred to in paragraph 3(a) above).

7. Following a discussion at the hearing, it became clear that there was in fact no
30 disagreement between the parties in relation to the claims for interest relief.

8. Mr Corbett accepted that the claims in question satisfied the requirements set out in Sections 383 et seq. Income Tax Act 2007 (the "ITA") and had been made in proper form. His only objection was that, following the Court of Appeal decision in *Revenue and Customs Commissioners v Raftopoulou* [2018] BTC 17 ("*Raftopoulou*"),
35 it was now clear that the claims in respect of the tax years of assessment ending 5 April 2008, 5 April 2009, 5 April 2010 and 5 April 2011 were out of time because they had been made on 8 December 2015, more than four years after the relevant tax years of assessment.

9. Mr Davis accepted that that was the case. He agreed that the effect of the
40 decision in *Raftopoulou* was that the four year time limit set out in Section 43(1) Taxes Management Act 1970 (the "TMA") for making a claim for interest relief

under Section 383 ITA is a hard and fast limit and is not potentially subject to being extended by reason of the relevant taxpayer's having a reasonable excuse. This is because the Court of Appeal, in overturning the decision of the Upper Tribunal on this issue, held that the reasonable excuse language in Section 118(2) TMA was not apt to
5 apply to acts which the relevant taxpayer was entitled to do voluntarily - that is to say, acts which the relevant taxpayer was permitted to do within a specified time limit. Instead, it was confined in its application to acts which the relevant taxpayer was required to do - that is to say, acts which the relevant taxpayer was obliged to do within a specified time limit.

10 10. It follows that both parties were agreed that the only valid claims for interest relief were those made by Mr Davis on behalf of the Appellant in respect of the tax years of assessment ending 5 April 2012 and 5 April 2013.

15 11. As mentioned in paragraph 6 above, Mr Davis also said that the Appellant did not wish to continue with any appeal against the discovery assessments in respect of the tax years of assessment ending 5 April 2008, 5 April 2009, 5 April 2010, 5 April 2011 and 5 April 2012. His sole concern was that the Appellant should be permitted to continue with his appeal against the closure notice in respect of the tax year of assessment ending 5 April 2013 notwithstanding the late notice of that appeal.

20 12. In her letter dated 15 June 2016, Ms O' Connor, on behalf of the Respondents, had objected to that late appeal. However, at the hearing, Mr Corbett withdrew that objection. Mr Corbett conceded that the appeal was not all that late and that the reasons given by Mr Davis for the tardiness of the appeal – namely, the depression of the Appellant and the difficulties involved in the Appellant's getting the requisite information from third parties – were reasonable.

25 13. That concession means that Section 49(2)(a) TMA applies in the present case and therefore that the appeal against the closure notice in respect of the tax year of assessment ending 5 April 2013 may proceed despite being late.

30 14. I would add that I agree with the reasoning of Mr Corbett. Accordingly, even if he had not been minded to consent to the late appeal against the closure notice, I would have given permission for that late appeal under Section 49(2)(b) TMA.

35 15. At the hearing, both parties indicated that they expected to reach agreement on the correct figures for the tax year of assessment ending 5 April 2013 – in which case, the appeal will be determined by agreement. But, should that not be the case for some reason, the Appellant is permitted to continue with his appeal against the closure notice notwithstanding the late notice of his appeal.

40 16. 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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TONY BEARE
TRIBUNAL JUDGE

RELEASE DATE: 31 October 2018

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