



**TC07922**

**Appeal number: TC/2020/00887**

*INCOME TAX – penalty for late filing of tax return – appeal notified 107 days late to the Tribunal – Martland considered - no good reason for late appeal - appellant’s excuse for late-filing was oversight by accountants – no evidence of reasonable care by taxpayer to ensure return filed on time – weakness of appellant’s case – permission to make late appeal refused – appeal struck out*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**FRANCES CODD**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE ZACHARY CITRON**

The Tribunal determined the appeal 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 24 January 2020 (with enclosures) and HMRC’s Statement of Case acknowledged by the Tribunal on 18 May 2020. The Tribunal also had before it the document bundle pdf of 28 pages prepared by HMRC, which included correspondence.

## DECISION

1. Ms Codd sought to appeal against penalties totalling £400 imposed under Schedule 55 Finance Act 2009 (“Schedule 55”) for failure to submit her tax return for the 2017-18 tax year on time.

2. Ms Codd’s grounds for appealing were that there was a reasonable excuse for the late-filing of the tax return: Ms Codd’s accountants mistakenly thought the tax return in question had been filed prior to the deadline – the late filing was an “honest oversight” on their part.

### **SUMMARY OF PENALTIES AND THE APPEAL AGAINST THEM**

3. The penalties charged can be summarised as follows:

(1) a £100 late filing penalty under paragraph 3 Schedule 55 imposed on 26 March 2019

(2) “daily” penalties totalling £300 under paragraph 4 Schedule 55 imposed on 4 June 2019

4. On 31 May 2019, Ms Codd’s agent (her accountants, Crawford’s) notified HMRC of an appeal against the £100 penalty.

5. HMRC wrote to Ms Codd on 12 August 2019 in respect of her appeal against all the penalties charged, asserting that there was no reasonable excuse for the late-filing, and offering a statutory review. On 28 August 2019, Ms Codd accepted that offer.

6. On 2 October 2019, HMRC sent a review conclusion letter to Ms Codd which upheld their prior decision. The letter stated that an appeal to the Tribunal must be made by 2 November 2019.

7. Ms Codd’s agent wrote to HMRC on 27 December 2019 requesting a further review. HMRC responded on 8 January 2020 saying that only one statutory review could be carried out; that Ms Codd could appeal to the Tribunal – although the deadline for doing so (2 November 2019) had passed, Ms Codd could ask for permission for a late appeal.

8. Ms Codd’s notice of appeal to the Tribunal, dated 24 January 2020, was received by the Tribunal on 18 February 2020. It included a request for permission to bring a late appeal.

## **CONSIDERATION OF WHETHER TO GIVE PERMISSION FOR LATE APPEAL**

### **Notifying appeal to HMRC**

9. Ms Codd's appeal to HMRC (made by her letter dated 31 May 2019) was made outside the statutory deadline for notifying appeals to HMRC (under s31A Taxes Management Act ("TMA") 1970) as respects the £100 penalty. The evidence before the Tribunal does not include a copy of Ms Codd's appeal in writing notified to HMRC in respect of the £300 penalties; however, HMRC's letter of 12 August 2019 acknowledged appeals against all the penalties concerned. Moreover, in their statement of case HMRC do not suggest that the Tribunal should refuse to deal with the appeal because it was made late to HMRC. I therefore consider that HMRC have given consent (under s49(2)(a) TMA 1970) for the out of time appeals to HMRC.

### **Notifying appeal to the Tribunal**

10. As HMRC conducted a statutory review, but Ms Codd did not notify an appeal to the Tribunal within 30 days of the review conclusion letter (i.e. by 2 November 2019), the Tribunal's permission is required for Ms Codd to notify her appeal to the Tribunal (this is the effect of s49G(3) TMA 1970).

### **Reasons given in notice of appeal for late notification of appeal to the Tribunal**

11. The notice of appeal stated that Ms Codd was unsure if her appeal to the Tribunal was late or not. It said the following as to why the appeal to the Tribunal might be late: the response to HMRC's letter of 2 October 2019 was only sent on 27 December 2019 "due to unforeseen reasons which prevented an earlier response". It also said that HMRC's letter of 8 January 2020 upheld their earlier response as no new information had been provided in the letter of 27 December 2019 from Ms Codd's agent.

### **Case law regarding granting permission for late appeals to the Tribunal**

12. In *Martland v HMRC* [2018] UKUT 178 (TCC) at [26] the Upper Tribunal endorsed the words of Lord Drummond Young in *Advocate General for Scotland v General Commissioners for Aberdeen City* [2006] STC 1218 at [22]:

"The central feature of [provisions which allow a person to make a late appeal] is that they are exceptional in nature; the normal case is covered by the time limit, and particular reasons must be shown for disregarding that limit. The limit must be regarded as the judgment of the legislature as to the appropriate time within which proceedings must be brought in the normal case, and particular reasons must be shown if a claimant or appellant is to raise proceedings, or institute an appeal, beyond the period chosen by Parliament."

13. The Upper Tribunal went on (at [44-45]) to give this guidance to this Tribunal (the FTT):

“44. 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*:

(1) 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”), then the FTT “is unlikely to need to spend much time on the second and third stages” – though this should not be taken to mean that applications can be granted for very short delays without even moving on to a consideration of those stages.

(2) The reason (or reasons) why the default occurred should be established.

(3) The FTT can then move onto its evaluation of “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.

45. That 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...The FTT's role is to exercise judicial discretion taking account of all relevant factors, not to follow a checklist.”

14. The need for statutory time limits to be respected was described by the Upper Tribunal as “a matter of particular importance to the exercise of [the Tribunal’s] discretion” in *HMRC v Katib* [2019] UKUT 189 (TCC) at [17].

### **Appellant’s submissions on permission for late appeal**

15. In a letter dated 12 August 2020, the appellant’s representative (Crawford’s) asked for compassion from the Tribunal on this matter. The letter said that both they and the appellant were law-abiding citizens and needed to see the support of the UK courts on matters such as these when such minor aberrations occur unintentionally in their business transactions; that they would like to continue to serve their nation in their work and profession conscious of a compassionate system of appeal; and that a favourable response from the Tribunal would encourage the continued trust in the systems of appeals as well as keep them in business.

### **Discussion**

16. The Tribunal has discretion whether to give permission for a late appeal but, as the case law summarised above shows, that discretion must be exercised in keeping with principles established by the higher courts and tribunals. The Tribunal cannot therefore dispense ‘compassion’ as such – it must exercise its discretion in keeping with legal principles. I set out to do that in what follows, keeping to the three-stage process set out in *Martland*.

### ***Length of the delay***

17. The notice of appeal to the Tribunal was received by the Tribunal on 18 February 2020, whereas the deadline under s49G TMA 1970 was 2 November 2019.

This means the appeal was notified to the Tribunal 107 days late. This is a significant delay: it is more than three times the period designated by Parliament in statute for this task (30 days from the date of HMRC's review conclusion letter).

***Reasons why the default occurred***

18. The notice of appeal refers to unforeseen (but unspecified) reasons for Ms Codd's agent not responding to the HMRC review conclusion letter of 2 October 2019 until 27 December 2019. The 27 December 2019 letter to HMRC was not in any case a notification of the appeal to the Tribunal (even though HMRC's letter of 2 October 2019 had set out that an appeal must be made to the Tribunal by 2 November 2019, with the correct address details for the Tribunal).

19. No explanation has been given for the appellant's delay between receipt of HMRC's letter dated 8 January 2020 and 24 January 2020, when the notice of appeal was signed; nor for the delay between that date and 18 February 2020, when the notice of appeal was received by the Tribunal. Time taken for delivery of post will account for some part, but by no means most, of those delays.

***Evaluation of all the circumstances***

20. No good reason has been provided for the 107-day delay in notifying the appeal to the Tribunal.

21. The "prejudice" to Ms Codd of refusing permission for a late appeal to the Tribunal is that she loses the opportunity to appeal penalties in the sum of £400. In considering "prejudice", the Tribunal can have regard to any obvious strength or weakness of the applicant's case (but without descending into a detailed analysis of the underlying merits of the appeal). Here, Ms Codd's case is that there was a reasonable excuse for her late-filing: "honest oversight" on the part of her accountants - they thought the return had been filed, when in reality it had not. There is in my view an obvious weakness to this case, as the law sets down that where a party relies on another person to do something (here - Ms Codd relied on her accountants to file the tax return on time), that is not a reasonable excuse unless the party took reasonable care to avoid the failure (paragraph 23 Schedule 55) - and no evidence has been provided of Ms Codd taking such care by, for example, keeping track of whether the return had been filed and checking with her accountants on this point at or around the time when filing was due.

22. Thus, the prejudice to Ms Codd of the Tribunal refusing permission for a late appeal is materially reduced due to the obvious weakness of her case.

23. Moreover, looking at all the circumstances, that prejudice is in my view counterweighed by

- (1) the significant period of the delay in notifying the appeal to the Tribunal, and
- (2) the absence of a good reason for the delay in notifying the Tribunal.

24. This is not therefore a case where departure from the general principle, much emphasised by the higher courts and tribunals, that statutory deadlines are to be respected, can be justified.

25. Permission is accordingly refused for this appeal to be notified to the Tribunal late; the appeal is struck out.

**Application for permission to appeal**

26. 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.

**ZACHARY CITRON**

**TRIBUNAL JUDGE**

**RELEASE DATE: 04 NOVEMBER 2020**