



[2022] UKFTT 00031 (TC)

TC 08383/V

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2020/03950

*INCOME TAX – surcharges and interest – application for permission to appeal late – refused
– appeal dismissed*

BETWEEN

ALAN PIPER

Appellant

-and-

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

Respondents

TRIBUNAL: JUDGE ANNE FAIRPO

The hearing took place on 2 August 2021. The application was heard via the Tribunal video hearing platform as a result of restrictions arising from the pandemic. The documents to which I was referred included a hearing bundle and copy self-assessments statements provide by HMRC after the hearing, together with a reply from the appellant.

The Appellant appeared in person

Ms Rodgers, litigator of HM Revenue and Customs' Solicitor's Office, for the Respondents

DECISION

Introduction

1. The Appellant ('Mr Piper') appealed an amount of £7,044.15, which he described as being amounts which had lain dormant on his record with the Respondent ('HMRC'). He attached to his notice of appeal a printout of his "Current position" on his HMRC personal tax dashboard, dated 20 October 2020, which stated that the total amount due for payment was £7,244.15. This was made up of amounts for the tax years ended 5 April 2000 (£1,492.51); 5 April 2001 (£4,808.05); 5 April 2002 (£743.29); 5 April 2020 (£200.00)

2. Mr Piper stated that HMRC had recently started adding late fees and interest. He considered that the matters were now outside any time limits within which HMRC could claim payment or investigate his tax affairs, and he requested that the Tribunal require that the amount be removed from his records. He acknowledged that the amounts outstanding included penalties and surcharges. He stated that he had disputed the issues over twenty years ago.

3. HMRC objected to Mr Piper's appeal on the basis that it was out of time. They had reviewed his records and submitted that the only appealable matters within the amount appealed were:

(1) a first surcharge charged under s59C Taxes Management Act ('TMA') 1970 on 26 March 2004 in respect of the 1999/2000 tax year, for £95.73

(2) a second surcharge charged under s59C TMA 1970 on 16 July 2004 in respect of the 1999/2000 tax year, for £95.73

(3) a first surcharge charged under s59C TMA 1970 on 22 March 2002 in respect of the 2000/2001 tax year, for £287.51

(4) a second surcharge charged under s59C TMA 1970 on 23 August 2002 in respect of the 2000/2001 tax year, for £287.51

4. In the hearing, Mr Piper agreed that he did not dispute any tax liabilities owed to HMRC. He initially considered that he was appealing against the surcharges and interest charged by HMRC.

5. Mr Piper's tax return for the 1999/2000 tax year was received by HMRC on 9 August 2000. An additional tax liability for that year was calculated by HMRC as £4,148.51. Mr Piper subsequently submitted an amendment to that return on 3 December 2003, with additional liability calculated by HMRC as £1,914.65. As this was not paid on time, the first and second surcharges for that tax year (amounting to 5% of the additional liability) were raised as set out above. The outstanding liability was cleared on 31 January 2007. HMRC contended that the surcharges remain outstanding.

6. Mr Piper's tax return for 2000/2001 was received on 22 June 2001. His tax liability was calculated as £5,750.34. As this was not paid on time, the first and second surcharges for that tax year were issued as set out above. The tax liability was cleared on 2 November 2020. HMRC contended that the surcharge liability remains outstanding.

7. On 30 January 2002, a time to pay arrangement was set up by Mr Piper to pay £500 of the liability per month until his family home was sold. The arrangement was not kept to, and was therefore cancelled. On 12 April 2005, Mr Piper met with HMRC and offered to pay £5 per month towards the outstanding amounts. This offer was rejected.

8. On 1 July 2005, HMRC were awarded a County Court judgement against Mr Piper for £10,453.51 including the outstanding tax liabilities, surcharges and costs. Some payments were received but the debt was not cleared in full.

9. In 2011, Mr Piper attempted to have this judgement set aside at another County Court hearing. His application was dismissed.

10. On 21 October 2020, Mr Piper appealed to this Tribunal. His notice of appeal states that his appeal is made in time, but then sets out information in box 16 which asks for reasons why the appeal might be late.

11. On 12 January 2021, HMRC objected to the application for permission to bring the appeal out of time.

Was the appeal made in time?

12. In his notice of appeal, Mr Piper does not state that the appeal was made late. The information in box 16 as to reasons why the appeal might be late states (in summary) that the matter had been dormant “until recently”.

13. In the hearing, Mr Piper stated that at the beginning he had been in substantive communication with HMRC and had followed all of the processes requested, including defending the county court proceedings and later seeking to have the county court judgement against him dismissed. He considered that, as he was following these processes and in communication with HMRC, he had no opportunity to appeal earlier.

14. HMRC submitted that the time limit for submitting an appeal against the surcharges was set at thirty days by s59 TMA 1970. Mr Piper had not disputed receiving the appeal notices and had. Any appeal should have been brought in 2002 (in respect of the 2000/2001 tax year) or 2004 (in respect of the 1999/2000).

15. HMRC records indicated that Mr Piper had submitted an appeal against the surcharges to HMRC on 29 September 2004. The appeal was rejected in April 2005, and HMRC submitted that the rejection letter would have advised Mr Piper that he needed to appeal to the Tribunal within thirty days.

16. HMRC contended that this appeal was, therefore, between sixteen and eighteen years late.

17. Considering the legislation, it is clear that this appeal has been brought late: Mr Piper’s belief that his communication with HMRC meant that he had no opportunity to appeal to the Tribunal earlier does not change the statutory deadline of thirty days from the date of issue of the surcharge for bringing an appeal. This deadline applies whether or not the taxpayer communicates with HMRC over the tax liabilities to which the surcharge relates.

18. The issue for the Tribunal in this hearing was, therefore, to consider whether permission should be given for the appeal to be made late.

Whether to give permission for the appeal to be made late

19. The approach to be taken by the Tribunal in such applications is that set out in *Martland* ([2018] UKUT 178) and that the starting point is that permission to appeal late should not be granted unless, on balance, the Tribunal is satisfied that it should be. In *Romasave* ([2015] UKUT 254) the Upper Tribunal had held that permission to appeal out of time should only be granted exceptionally.

20. In *Martland*, the Upper Tribunal considered that the three-stage process in *Denton* ([2014] EWCA Civ 906) should be followed, so that the tribunal should consider:

- (1) The seriousness or significance of the delay;
- (2) The reason for the delay; and

(3) Evaluate all of the circumstances of the case, balancing the merits of the reasons given for the delay and the prejudice to the parties in granting or refusing permission. 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.

Seriousness and significance of the delay

21. The delay in bringing the appeal was between sixteen and eighteen years, considering the earliest and latest surcharges. The Upper Tribunal in *Romasave* stated (at [96]) that “a delay of more than three months cannot be described as anything but serious and significant”. The delay in this case cannot be regarded as anything other than very “serious and significant”.

Reasons for the delay

22. Mr Piper believed that, because he was communicating with HMRC to dispute the tax liabilities at the time that the surcharges were issued and following the county court processes, this was sufficient at the time. He was not aware that he needed to appeal the surcharges separately to the county court debt enforcement process.

Evaluate all of the circumstances of the case

23. Having considered Mr Piper’s explanation, I do not consider that he has a good reason for the delay in appealing. The county court judgement against him was issued in 2005, several months after the deadline for appealing that latest of the surcharges. That county court judgement was upheld against Mr Piper in 2011. He was therefore aware for several years, at least, that the surcharges had been raised against him. It appears that Mr Piper’s appeal to this Tribunal was prompted by information which he found in his online tax dashboard and particularly the continuing accrual of interest.

24. With regard to the prejudice to the parties, if I refuse permission to appeal then Mr Piper will be unable to challenge the surcharges further. I note that, in the hearing, it appeared that Mr Piper was no longer disputing the surcharges in any case. However, I have considered this further in order to ensure that the points in his notice of appeal are taken into account.

25. Whilst it is not appropriate to conduct an exhaustive analysis of the merits of the substantive appeal, the circumstances should be reviewed to determine if there is clearly a strong case, where there may be greater prejudice to an appellant in refusing permission to appeal.

26. There was no dispute from Mr Piper that he had paid the tax liabilities late; he had attempted to challenge the tax liabilities but had not succeeded in doing so. Mr Piper had also appealed on the basis that HMRC were now out of time to pursue these amounts. However, there was no dispute in the hearing that the surcharges had been raised in time: these were not newly imposed surcharges. There is no limitation period on recovery by HMRC of the resulting liability.

27. Mr Piper also appealed the interest accruing on the debt, arguing that HMRC had agreed as part of the county court judgement that no further amounts would accrue.

28. It is well-established that this Tribunal is a creature of statute and has only those powers which have been conferred upon it. Interest is a statutory charge and there are no rights of appeal against interest charged on late payments. This Tribunal has no power to amend or waive any interest charges. It is also well-established that this Tribunal has no general supervisory function which would enable it to consider an appeal brought on the basis that HMRC had agreed not to collect interest. As such, this element of Mr Piper’s appeal could not succeed even if permission were to be granted for the appeal to be brought late.

29. The surcharges were therefore appropriately raised and I do not consider that there is any overwhelming prospect of success in any challenge by Mr Piper in respect of the surcharges (and, as noted, Mr Piper appeared to accept in the hearing that he was no longer appealing the surcharges). There is no prospect of success in Mr Piper’s appeal against the interest charged and accruing.

30. Considering the prejudice to HMRC if permission were to be given for the appeal to be brought, there is a principle that litigation should be finalised as expeditiously as is reasonably possible, as noted in *Martland*. HMRC are entitled to expect that an appellant will appeal within the statutory time limits and so, if no appeal is made, that the matter has become final. If permission were granted, HMRC would be required to reopen a case and expend time, at least, on a matter that they had been entitled to consider final for many years.

31. However, although I note that there is no limitation period within which HMRC must pursue a debt which has been notified to a taxpayer, in evaluating all of the circumstances I have taken into account the fact that there was an unexplained interval of many years in HMRC’s pursuing this amount, despite the county court judgement issued in 2005.

32. HMRC suggested that Mr Piper would have received regular statements which set out the amounts still owing, but the documents provided to the Tribunal are endorsed with the phrase “statement inhibited”. HMRC indicated that this might have been because this was marked as an enforcement case. As such, there is some question as to whether Mr Piper had in fact had regular statements setting out the liabilities after the County Court proceedings in 2005.

33. However, this does not outweigh the other factors discussed above and it is clearly not the case that Mr Piper was not aware of the liability, particularly as he challenged the County Court judgement in 2011.

34. Considering the approach set out in *Martland*, this is a very serious and significant delay. I do not consider that there is a good reason for the delay and, balancing all the circumstances, I do not consider that the prejudice to Mr Piper in refusing permission to make a late appeal outweighs the other circumstances in the case and as such I should not depart from the starting point set out in *Martland* that permission to appeal late should not be granted.

Conclusion

35. Mr Piper’s application for permission to bring an appeal out of time is refused.

Right to apply for permission to appeal

36. 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.

**ANNE FAIRPO
TRIBUNAL JUDGE**

Release date: 26 JANUARY 2022