



Neutral Citation: [2024] UKFTT 00591 (TC)

Case Number: TC09230

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

By remote video

Appeal reference: TC/2023/09040

LATE APPEAL TO HMRC – whether reasonable excuse conditions of section 49 Taxes Management Act 1970 met – no appeal dismissed

Heard on: 28 June 2024
Judgment date: 5 July 2024

Before

TRIBUNAL JUDGE AMANDA BROWN

Between

AARON TRELIVING

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS
Respondents

Representation:

For the Appellant: Mr Treliving

For the Respondents: Ms Sawdah, litigator of HM Revenue and Customs’ Solicitor’s Office

DECISION

INTRODUCTION

1. With the consent of the parties, the form of the hearing was a video hearing using the Tribunal's video platform. A face-to-face hearing was not held because it was more expedient to use the video platform.
2. The documents to which I was referred were contained in a hearing bundle of 96 pages.
3. 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 to observe the proceedings. As such, the hearing was held in public.
4. I gave an extempore judgment in this matter refusing the application. The Appellant requested a full written judgment.

PROCEDURAL BACKGROUND

5. This application concerns a late appeal against assessments to income tax and associated penalties issued by HM Revenue & Customs (**HMRC**) to Mr Aaron Treliving (**Appellant**) for tax years 2014/15 – 2019/20. The assessments were raised in consequence of the Appellant's failure to notify and then declare income tax as required under the higher income child benefit charge (**HICBC**). All the assessments to income tax were issued and notified to the Appellant on 7 April 2021. The penalties were notified on 11 April 2021.
6. The Appellant notified HMRC that he wished to appeal the tax assessments and penalties by an undated letter received by HMRC on 28 January 2022. By reference to the legislative provisions referred to below the appeal so made was 9 months and 21 days late as regards the tax assessments and 9 months and 17 days late as regards the penalties.
7. HMRC refused to accept the out of time appeal. Unfortunately, HMRC did not notify the Appellant that the appeal had not been accepted until 21 June 2023.
8. The Appellant made his application to the Tribunal that the late appeal be accepted on 20 July 2023. That application was made in time i.e. within 39 days of HMRC's refusal letter.

RELEVANT LAW

9. To be entitled to bring an appeal before this Tribunal in respect of HICBC assessments and the associated failure to notify penalties a taxpayer must first notify an appeal to HMRC. Section 31A Taxes Management Act 1970 (**TMA**) requires that the appeal to HMRC must be made within 30 days of the date on which the notice of assessment is issued. Section 49 TMA provides that an appeal may be given late to HMRC provided that the Appellant can show: 1) that a request for the appeal to be accepted late has been made; 2) HMRC are satisfied that the Appellant had a reasonable excuse for not giving the notice of appeal on time; and 3) HMRC are satisfied that the notice of appeal was given without unreasonable delay after a reasonable excuse ceased.
10. Where HMRC refuse to accept a late appeal, the Tribunal may nevertheless give permission for the appeal to be made late.
11. When considering whether to grant permission for a late appeal to HMRC I must determine whether the facts establish that the Appellant had a reasonable excuse for not making the appeal on time and, if such excuse ceased, whether the appeal was then made without unreasonable delay i.e. I must apply the same test as was required of HMRC but I do so my considering the evidence afresh, I am not reviewing the reasonableness of HMRC's decision.

12. The Upper Tribunal has provided definitive guidance on how I am to approach whether there is a reasonable excuse and/or whether the Appellant acted without undue delay after any established reasonable excuse ended. In the case of *Christine Perrin v HMRC* [2018] UKUT 156 (TCC) the Upper Tribunal stated:

“81. When considering a “reasonable excuse” defence, therefore, in our view the FTT can usefully approach matters in the following way:

(1) First, establish what facts the taxpayer asserts give rise to a reasonable excuse (this may include the belief, acts or omissions of the taxpayer or any other person, the taxpayer’s own experience or relevant attributes, the situation of the taxpayer at any relevant time and any other relevant external facts).

(2) Second, decide which of those facts are proven.

(3) Third, decide whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In doing so, it should take into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times. It might assist the FTT, in this context, to ask itself the question “was what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?”

(4) Fourth, having decided when any reasonable excuse ceased, decide whether the taxpayer remedied the failure without unreasonable delay after that time (unless, exceptionally, the failure was remedied before the reasonable excuse ceased). In doing so, the FTT should again decide the matter objectively, but taking into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times.

82. One situation that can sometimes cause difficulties is when the taxpayer’s asserted reasonable excuse is purely that he/she did not know of the particular requirement that has been shown to have been breached. It is a much-cited aphorism that “ignorance of the law is no excuse”, and on occasion this has been given as a reason why the defence of reasonable excuse cannot be available in such circumstances. We see no basis for this argument. Some requirements of the law are well-known, simple and straightforward but others are much less so. It will be a matter of judgment for the FTT in each case whether it was objectively reasonable for the particular taxpayer, in the circumstances of the case, to have been ignorant of the requirement in question, and for how long. ...”

BURDEN OF PROOF

13. In this application it is for the Appellant to demonstrate on the balance of probabilities that he had a reasonable excuse for bringing a late appeal and thereby meeting the *Perrin* test set out above.

EVIDENCE

14. Included within the bundle was all the relevant correspondence in particular:

(1) A child benefit record showing claims to child benefit for one child born in June 2011.

(2) Letters from HMRC dated 11 November and 10 December 2019 inviting the Appellant to consider whether he may be liable to the HICBC. These letters were addressed to the Appellant at 33 Harry Stoke Road.

(3) A letter dated 21 February 2021, also addressed to 33 Harry Stokes Road, indicating the amount that HMRC considered was due in income tax in consequence of the HICBC and stating an intention to issue assessments. The letter was accompanied by an information sheet regarding the potential for issue of penalties and other information regarding compliance checks. The information sheet states:

“What to do if you disagree

If there is nothing that you do not agree with, you should tell us.

If we make a decision that you can appeal against we’ll write to you to explain the decision and tell you what to do if you disagree. You’ll have 3 options. Within 30 days you can:

- Send us new information and ask us to take it into account
- Have your case reviewed by an HMRC officer who has not been involved in the matter
- Arrange for your appeal to be heard by an independent tribunal ...”

(4) Notification of HMRC’s decision to assess for tax and penalties dated 25 March 2021 (addressed to 33 Harry Stokes Road). The assessments then follow on 7 April and 11 April 2021. Each assessment letter (one for each year’s tax assessment and a single consolidated letter for the penalties also addressed to 33 Harry Stokes Road states:

“What to do if you disagree

If you disagree with this notice of assessment, you can appeal. To do this, you need to write to us within 30 days of the date of this assessment, telling us why you think our decision was wrong. “

(5) Telephone attendance note dated 15 December 2021 which records contact having been made by the Appellant on that date. The note records that the Appellant had stated that he was not aware of the HICBC “and received letters and now receiving the payment demands from external debt collector”.

(6) The Appellant’s letter of appeal received by HMRC on 28 January 2022. In that letter reference is made to the telephone call to HMRC on 15 December 2021. The salient parts of the letter read:

“My partner ... and I were not notified of the change in the system at all. Although we became aware of the change in eligibility rules, we were under the assumption that any children born prior to the changes continued to be entitled. Hence, not claiming for our second child ... born in 2013.

No letter, record or any correspondence was received from HMRC to essentially request that higher earners will not be liable for this benefit over £60k ... This is particularly disconcerting as it took 7 years for us to receive any correspondence (to February 2021) ...

We therefore ask you to cease recovery through the 2 debt recovery agencies LCS and ADVANTIS who have persistently chased this debt by phone and text message ...

... can you also please stop sending us demands for each separate year in the post.”

15. The Appellant also gave evidence to the Tribunal and was cross examined by Ms Sawdah. He was not required to give sworn testimony.

16. I explained to him the approach I was required to adopt in determining whether he had a reasonable excuse and asked him to explain why the appeal had been made late. So far as relevant, my handwritten note of his response reads:

“I can’t remember receiving the 30 day letter.

My wife was heavily pregnant. Tough pregnancy.

Not at the forefront of our minds we had our life to deal with.

Baby was born on 10 August 2021.

Wife was 38 and the pregnancy was high risk ... bleeding a lot

Type 2 diabetes.

First aware of the assessments was in January 2022 when wrote the letter.

Inundated with self-assessment letters, felt like spam.

...

[JABKC - when first contacted by the bailiffs]

Would have been over 2021, calling text messages 12 months of pressure.

Receiving letters for 9 months.

Had birth of daughter

New-born baby other priorities, constant calling.”

17. In response to cross examination the Appellant accepted/commented that:

- (1) Each letter in the bundle had been sent to the correct address.
- (2) He had not received and/or read the letters sent by HMRC.
- (3) Claimed that had the letters been received he would have acted on them.
- (4) He was not aware of postal issues and was receiving some post though could not comment on what he had not received because he had not received it.
- (5) There were lots of letters received from the debt collection companies.
- (6) He did not respond because of extenuating circumstances.
- (7) He is a chartered surveyor but a director in the business. He continued to work whilst his wife was pregnant but took paternity leave and lighter duties after the baby was born as it was their third child and as she had had her third C section, she was not mobile and needed assistance at home. He was therefore on light work duties.

FINDINGS OF FACT

18. From the above evidence I make the following findings of fact:

- (1) The Appellant was aware of the HICBC and did not make a claim for his second child born in 2013. However, he continued to claim in respect of the first child born in 2011.
- (2) All correspondence was sent to the Appellant at his correct address.
- (3) On balance it is more likely than not that the Appellant received some, if not all, of the six assessment letters. I make this finding on the following evidence:

- (a) the telephone attendance note confirms that the Appellant had received letters and payment demands;
 - (b) by reference to the letter received by HMRC on 28 January 2022 the Appellant accepts that he received the intention to assess letter of 12 February 2021 which was accompanied by the guidance information which sets out that any appealable decision carries a right of appeal which must be brought within 30 days;
 - (c) whilst the Appellant's oral evidence was inconsistent, he accepted that correspondence had been received but that he had not read it because life got in the way;
 - (d) there were six assessment letters in total and the Appellant, in his letter received on 28 January 2022 complains that multiple letters were sent.
- (4) Accordingly, I find that the Appellant was aware of the need to bring an appeal within 30 days of the date of the assessment letters.
- (5) Even were it the case, and I do not find that it was, that the Appellant did not receive the assessment letters themselves, the Appellant was aware that they had been issued because two debt collection agencies were regularly communicating with him by post and by text message. Despite this communication spanning an accepted period of 9 months the Appellant's first contact with HMRC was on 15 December 2021. On that call he was informed of the need to appeal to HMRC and yet did not then bring an appeal for a further 44 days.
- (6) On the basis that the Appellant did receive the letters the only reasons proffered by the Appellant for having failed to appeal in time were that his wife was pregnant with a difficult pregnancy and/or life got in the way.
- (7) Whilst I note that neither of these reasons were raised prior to the morning of the hearing I considered them both.
- (8) I indicated that I would have been prepared to accept the Appellant's evidence that Mrs Treiving was 38 years old in April 2021 and was pregnant with their third child having had 2 previous C sections and potentially, despite a lack of medical evidence, that the pregnancy was difficult. However, his own evidence was that the baby was safely and healthily delivered in August 2021.
- (9) The Appellant was able to work throughout the pregnancy and post birth though did increase his parental and maternal caring duties after the safe and healthy delivery of their third child in August 2021.
- (10) Thus whilst the pregnancy may have represented an excuse for not having appealed within 30 days it provided no substantive explanation after 10 August 2021; after that date, the only explanation is that "life got in the way".

DISCUSSION

19. Applying the above findings of fact and considering the test in *Perrin*

Stage 1 – the excuse proffered

20. The Appellant offered 3 potential excuses:

- (1) not having received the correspondence which told him he had 30 days in which to appeal and hence a lack of awareness of the need to do so;
- (2) a difficult pregnancy;

(3) life got in the way.

Stage 2 – are the excuses made out on the evidence

21. As set out above I find the Appellant was or should have been aware of the 30 day appeal requirement as he received correspondence which informed him of it.

22. Whilst the pregnancy might have provided an excuse for the period from April to August 2021 the reason for not bringing an appeal after that date was that life got in the way.

23. On the basis that the Appellant did not bring an appeal in time I accept that life got in the way.

Stage 3 – is the excuse one which is objectively reasonable

24. In applying this stage I must consider the experience and attributes of the Appellant himself and the situation in which he found himself.

25. The Appellant is an educated man who practiced as a chartered surveyor and was a director of the business in which he worked. In April 2021 he already had two children both born by C section. He was aware of the HICBC and did not make a claim in respect of his second child who was born post 2013. He accepts that he received correspondence in February 2021 regarding the risk of a HICBC charge. At the time the assessments were received his wife was pregnant and the pregnancy was high risk, but the baby was born safely.

26. To be an objectively reasonable excuse the excuse offered must be one might be expected to cause anyone in the same position, with similar attributes as the Appellant, as justifying a failure to bring an appeal (or otherwise give due and proper attention to their tax affairs).

27. As indicated, I might have been prepared to consider the pregnancy issues as offering a reasonable excuse had it been relevant to the overall determination of this application but to do so would have wanted more information on the risks associated and the impact on the Appellant's ability to give due regard to his tax affairs.

28. For the period from 10 August 2021 the only excuse offered is that life got in the way. The Appellant cited that he was looking after his wife and the other two children (who were by this date 10 and 8 years old). It is not, in my view, objectively reasonable to ignore or fail to give proper attention to one's tax obligations because life gets in the way. Many fathers have caring responsibilities alongside work and neither offer an objectively reasonable excuse.

Stage 4 – if a reasonable excuse exists was the failure remedied within a reasonable time after the reasonable excuse ceased.

29. Even were I to have accepted the pregnancy as a reasonable excuse the child was born safely and healthily in August 2021. The appeal was not made until 28 January 2022 i.e. 5 months later.

30. The bringing of an appeal is a statutory obligation. The Appellant accepts that he received a letter which was accompanied by guidance informing of the 30-day obligation to appeal he cannot therefore claim ignorance of the requirement to bring the appeal in time. Had he acted promptly after the birth of the child I might (on further evidence) have considered granting the application but in all the circumstances of this case there is no basis for doing so.

31. Accordingly, and in any event, had there been a reasonable excuse the Appellant failed to bring his appeal without unreasonable delay after the reasonable excuse ceased and it therefore offers him no defence for the failure.

DISPOSITION

32. The application is dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

33. 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.

**AMANDA BROWN KC
TRIBUNAL JUDGE**

Release date: 05th JULY 2024