



Neutral Citation: [2025] UKFTT 00204 (TC)

Case Number: TC09427

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2023/16395

INCOME TAX – Late appeal application – Martland considered – application dismissed

Heard on: 16 December 2024

Judgment date: 13 February 2025

Before

TRIBUNAL JUDGE ABIGAIL MCGREGOR

Between

MR JORDAN LYDEN

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Dave Parker, of Parkers Accountancy

For the Respondents: Miss Anika Aziz, litigator of HM Revenue and Customs’ Solicitor’s Office

DECISION

1. With the consent of the parties, the form of the hearing was V (video) using the Tribunal video hearing system. A face-to-face hearing was not held because a remote hearing was appropriate. The documents to which I was referred are a hearing bundle of 832 pages.
2. 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.
3. This decision concerns an application to be allowed to make a late appeal against closure notices determining an increase in income tax in relation to two tax years.

LAW

4. Under section 28A of the Taxes Management Act 1970 (TMA 1970), HMRC can issue a final closure notice at the end of an enquiry into a person's self-assessment tax return.
5. Under section 31 of TMA 1970, a taxpayer may bring an appeal against any conclusion stated or amendment made by a closure notice issued under section 28A.
6. Section 31A of TMA 1970 specifies that appeals must be made in writing within 30 days after the specified date to the relevant HMRC officer.
7. Under section 49G of TMA 1970, the taxpayer may notify an appeal to this Tribunal within the "post-review period" where HMRC has given notice of the conclusions of a review under section 49E. The post-review period is set out in section 49G(5) as "the period of 30 days beginning with the date of the document in which HMRC give notice of the conclusions of the review in accordance with section 49E(6)".
8. Under section 49G(3), the taxpayer may notify the appeal to the tribunal after the end of the post-review period only if the tribunal gives permission.
9. Rule 20 of the FTT Rules provides:
 - (1) A person making or notifying an appeal to the Tribunal under any enactment must start proceedings by sending or delivering a notice of appeal to the Tribunal.
 - ...
 - (4) If the notice of appeal is provided after the end of any period specified in an enactment referred to in paragraph (1) but the enactment provides that an appeal may be made or notified after that period with the permission of the Tribunal
 - (a) the notice of appeal must include a request for such permission and the reason why the notice of appeal was not provided in time; and
 - (b) unless the Tribunal gives such permission, the Tribunal must not admit the appeal.

10. In summary therefore, I have a discretion to allow an application for a late appeal against a closure notice.

11. In exercising that discretion, I must follow the principles and guidelines set out by the higher Courts and Tribunals, summarised by the Upper Tribunal in *Martland v HMRC* [2018] UKUT 178 (TCC). I set out the section from paragraph 44 in full:

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. By approaching matters in this way, it can readily be seen that, to the extent they are relevant in the circumstances of the particular case, all the factors raised in *Aberdeen* and *Data Select* will be covered, without the need to refer back explicitly to those cases and attempt to structure the FTT's deliberations artificially by reference to those factors. The FTT's role is to exercise judicial discretion taking account of all relevant factors, not to follow a checklist.

46. In doing so, the FTT can have regard to any obvious strength or weakness of the applicant's case; this goes to the question of prejudice – there is obviously much greater prejudice for an applicant to lose the opportunity of putting forward a really strong case than a very weak one. It is important however that this should not descend into a detailed analysis of the underlying merits of the appeal. In *Hysaj*, Moore-Bick LJ said this at [46]:

“If applications for extensions of time are allowed to develop into disputes about the merits of the substantive appeal, they will occupy a great deal of time and lead to the parties' incurring substantial costs. In most cases the merits of the appeal will have little to do with whether it is appropriate to grant an extension of time. Only in those cases where the court can see without much investigation that the grounds of appeal are either very strong or very weak will the merits have a significant part to play when it comes to balancing the various factors that have to be considered at stage three of the process. In most cases the court should decline to embark on an investigation of the merits and firmly discourage argument directed to them.”

Hysaj was in fact three cases, all concerned with compliance with time limits laid down by rules of the court in the context of existing proceedings. It was therefore different in an important respect from the present appeal, which concerns an application for permission to notify an appeal out of time – permission which, if granted, founds the very jurisdiction of the FTT to consider the appeal (see [18] above). It is clear that if an applicant's appeal is hopeless in any event, then it would not be in the interests of justice for permission to be granted so that the FTT's time is then wasted on an appeal

which is doomed to fail. However, that is rarely the case. More often, the appeal will have some merit. Where that is the case, it is important that the FTT at least considers in outline the arguments which the applicant wishes to put forward and the respondents' reply to them. This is not so that it can carry out a detailed evaluation of the case, but so that it can form a general impression of its strength or weakness to weigh in the balance. To that limited extent, an applicant should be afforded the opportunity to persuade the FTT that the merits of the appeal are on the face of it overwhelmingly in his/her favour and the respondents the corresponding opportunity to point out the weakness of the applicant's case. In considering this point, the FTT should be very wary of taking into account evidence which is in dispute and should not do so unless there are exceptional circumstances.

47. Shortage of funds (and consequent inability to instruct a professional adviser) should not, of itself, generally carry any weight in the FTT's consideration of the reasonableness of the applicant's explanation of the delay: see the comments of Moore- Bick LJ in *Hysaj* referred to at [15(2)] above. Nor should the fact that the applicant is self-represented – Moore-Bick LJ went on to say (at [44]) that “being a litigant in person with no previous experience of legal proceedings is not a good reason for failing to comply with the rules”; HMRC's appealable decisions generally include a statement of the relevant appeal rights in reasonably plain English and it is not a complicated process to notify an appeal to the FTT, even for a litigant in person.

FACTS

12. The following key background facts are found from the document bundle.
13. On 26 January 2023, HMRC issued closure notices for the tax years 2018/19 and 2019/20 to Mr Lyden.
14. On 24 February 2023 (albeit in a letter dated on its face 24 January 2023), Parkers Accountancy appealed to HMRC on behalf of Mr Lyden against the closure notices.
15. On 13 March 2023, HMRC issued a View of the Matter letter to the Appellant concluding that the closure notices were correct.
16. Following a request for a review, HMRC issued their review conclusion letter on 23 May 2023.
17. Mr Lyden appealed to this Tribunal on a form dated 25 October 2023, marked as received by the Tribunal on 7 November 2023.

PARTIES ARGUMENTS

18. Mr Parker submitted the following in support of the application:
 - (1) The Appellant accepts that the appeal was late;
 - (2) The lateness was caused by a combination of factors:
 - (a) Mr Lyden had been injured playing football, with an injury that turned out to bring an end to his career as a professional football player;
 - (b) Mr Lyden had travelled to Australia to spend the UK summer with his family, as was habitual during the off-season for him, but had left earlier than usual due to the injury;
 - (c) Mr Lyden had not been in a good head space to deal with matters such as his tax affairs due to dealing with the potential impact of his injury;

(d) Mr Parker had contracted COVID, which, when coupled with other health issues, had meant he had been unable to work during the whole of September 2023; and

(e) There was no-one else in Parkers Accountancy that could deal with a tribunal appeal.

(3) Mr Parker conceded that he could have made greater efforts to contact Mr Lyden over the course of the summer but had not done so because Parkers Accountancy had been very busy with other work during this time so there had been a great deal of pressure.

(4) Taxpayers seem to be held to short timescales like 30 days but HMRC can get away with not responding for months on end, which isn't fair.

19. HMRC submits that:

(1) The length of the delay was significant, being from 22 June 2023 to 25 October 2023 i.e. over 4 months.

(2) The reasons provided by the Appellant are insufficient to justify the delay in 4 months, which is serious and significant:

(a) The Appellant was represented by an experienced agent who should have dealt with their affairs promptly;

(b) The review conclusion letter contained a clear explanation of when an appeal could be made;

(c) The appellant and his agent have been late in their responses throughout the enquiry and this lateness is no different to the previous delays;

(d) The Appellant delegated responsibility to an agent to conduct his affairs in the UK whilst he was overseas. However, the lack of contact with the agent throughout the summer is not an acceptable excuse. Australia is not a jurisdiction that the Appellant could suggest they had difficulties accessing telephone lines, emails or other modern methods of communication;

(e) Since Mr Lyden signed for another football team in September 2023, this implies that it had been possible for Mr Lyden to communicate with his sports agent during that time and he had turned his mind to this signing, but not to his tax affairs.

(3) To allow the late appeal would require HMRC to divert resources to defend an appeal that they were entitled to consider was closed.

(4) While HMRC note that a detailed assessment of the merits is not necessary, their view is that the substantive appeal is weak.

(5) allowing a late appeal in this instance is inconsistent with the principles of good administration of justice which require litigation to be conducted efficiently and at proportionate cost.

DISCUSSION

20. On the first question of establishing the length of the delay and considering whether this delay was serious or significant, there is no dispute here as to the fact that the appeal was late, or to the dates. The appeal was made a little over 4 months late.

21. A delay of over four months in the context of an appeal deadline of 30 days is no doubt both serious and significant.
22. On the second question, Mr Parker stated that he had been ill with COVID for the whole of September and HMRC did not challenge this evidence. Therefore this was proven for the month of September.
23. Mr Lyden's absence from the country and injury was given as a reason by Mr Parker. However, we did not see or hear any evidence of either the departure from the country, or the injury. HMRC did not challenge that this was the case and I find that he was absent from the country for the football off-season, which ran from the middle of May to the middle of August 2022.
24. Mr Parker's assertions that Mr Lyden was not in a fit mental state to attend to his tax affairs were not evidenced at all and were challenged by HMRC in the sense that they noted that he had been able to agree, through this sports agent, a new contract with a new club during the course of September. There is insufficient evidence to find that this reason was proven.
25. Turning to the third question I must make an evaluation of all the circumstances of the case, which will involve a balancing exercise between the merits of the reasons given for the delay and the prejudice that would be caused to both parties by granting or refusing permission. In conducting that balancing exercise, I must 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.
26. There are several factors of prejudice to consider. Firstly the prejudice to the Appellant in not being able to pursue his appeal. This factor weighs in support of allowing the late appeal.
27. On the other side, HMRC would be prejudiced by having to defend an appeal on a matter that they considered to be closed. This factor weighs against allowing the late appeal.
28. There was some limited discussion of the merits of the underlying substantive case. HMRC explained that the dispute in the first year related to the deductibility of expenses for travel and for agent's fees; and the dispute in the second year related to income that had not been included on the tax return but was included in a submission made by the club. Mr Parker only submitted that it wasn't for HMRC to decide whether the case was weak, rather that should be decided by the Tribunal in a substantive hearing.
29. HMRC did not convince me that the appeals were "doomed to fail" as set out in the quotation from *Martland* above, nor did Mr Parker convince me that the case was a very strong one for Mr Lyden. As a result, I do not consider this factor weighs in either direction.
30. Having decided above that Mr Lyden was absent from the country for a large proportion of the delay and that Mr Parker was incapacitated for September, I must consider whether, in this balancing exercise, these facts constitute a good reason for the delay.
31. In the case of Mr Parker's illness, I accept that this would have constituted a good reason for the delay. However, this period only started when the appeal was already over 2 months late. I also do not accept that Mr Lyden's absence in Australia is, in and of itself, a good reason for the delay. It would have been quite possible for Mr Parker to obtain instructions from Mr Lyden from Australia and complete the notice of appeal, or indeed for Mr Lyden to do so himself. Mr Parker conceded that the reason he hadn't pushed it was because of pressure of other work.

32. Finally, while appointing an agent to conduct an appeal is entirely within the choice of a taxpayer, it does not remove all responsibility for action and decision making in relation to the person's tax affairs. Mr Lyden, as a responsible taxpayer, should have ensured that his tax affairs continued to be dealt with while he was on an extended break in Australia, particularly given this was a matter of which he had been aware for some time.

33. Drawing these factors together in the balancing exercise, I do not consider that Mr Lyden has established a good reason for the serious and significant delay and, in all the circumstances, I do not consider that it is appropriate to give permission for him to bring a late appeal in this case.

34. For completeness, the question of whether taxpayers are somehow disadvantaged by having to comply with a 30 day deadline while HMRC have longer or in some cases indefinite deadlines is not something within the jurisdiction of this tribunal, since it relates to questions of inherent fairness or complaint.

DECISION

35. For the reasons set out above, Mr Lyden's application for permission to notify the appeals late 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.

Release date: 13th FEBRUARY 2025