



Neutral Citation: [2025] UKFTT 00299 (TC)

Case Number: TC09449

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2023/00431

*Discovery assessment – late appeal – Martland considered – application refused*

**Heard on:** 16 December 2024

**Judgment date:** 6 March 2025

**Before**

**TRIBUNAL JUDGE ABIGAIL MCGREGOR  
DR CAROLINE SMALL**

**Between**

**MRS SHARON JACQUES (AS EXECUTOR OF THE ESTATE OF TERENCE  
JACQUES)**

**Appellant**

**and**

**THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS**

**Respondents**

**Representation:**

For the Appellant: Mrs Sharon Jacques, as executor of the estate of Terence Jacques

For the Respondents: Jacob Young, litigator of HM Revenue and Customs’ Solicitor’s Office

## DECISION

### INTRODUCTION

1. With the consent of the parties, the form of the hearing was V (video) via Teams. A face to face hearing was not held because a remote hearing was appropriate.
2. The documents to which we were referred are a bundle of 396 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 in order to observe the proceedings. As such, the hearing was held in public.
4. This decision concerns an application to make a late appeal to the Tribunal. We have decided that the application should be refused for the reasons explained in this decision.

### PRELIMINARY ISSUE

5. The appeal underlying this application was lodged by Mr Terence Jacques on 30 January 2023.
6. We were told at the hearing that Mr Jacques had, unfortunately, died in October 2024.
7. Mrs Jacques proceeded to present the case and confirmed that the estate wished to continue to challenge the discovery assessment and proceed with the application.
8. Appropriate evidence of Mrs Jacques' standing to continue the application was provided after the hearing.

### LAW

9. Under section 29 of the Taxes Management Act 1970 (TMA 1970), HMRC can issue a discovery assessment to amend a person's self-assessment tax return.
10. Under section 31 of TMA 1970, a taxpayer may bring an appeal against any assessment that is not a self-assessment.
11. 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.
12. Section 49C of TMA 1970 applies if HMRC offer the taxpayer a review. If a review is offered but the taxpayer does not take it up within the "acceptance period", the matter is deemed to be settled under section 54 of TMA, unless the taxpayer appeals to the Tribunal. The acceptance period is the period of 30 days after the document notifying the offer of a review.
13. Under section 49H, the taxpayer may, if it decides not to pursue a review, notify its appeal to the Tribunal within the acceptance period, or with the permission of the tribunal, later.
14. 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.

15. In summary therefore, we have a discretion to allow an application for a late appeal against a discovery assessment.

16. In exercising that discretion, we 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). We 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.

#### **BACKGROUND FACTS**

17. The following background facts are found from the bundle and evidence presented and are not disputed. Where there are disputed facts, they are discussed in more detail in the discussion below.
18. On 17 July 2017, HMRC raised a discovery assessment which revised Mr Jacques self-assessment tax return for the tax year 2010/11.
19. On 23 August 2017, Mr Jacques appealed against that decision to HMRC.
20. Further exchanges of information and discussions between Mr Jacques and HMRC took place over the coming years.
21. In February 2020, Mr Jacques was sent to prison. HMRC were aware of this fact at the time.
22. On 13 March 2020, HMRC issued a view of the matter letter to Mr Jacques, which confirmed the original assessment. That letter set out Mr Jacques' right to request a review by an independent officer and/or to appeal to the tribunal, both within 30 days of the letter. The

letter also explained that, if no such action was taken, the matter would be deemed to be settled under section 54 of TMA 1970.

23. This letter was sent to Mr Jacques' home address and was also copied to the agents, a firm of accountants, who had been dealing with the correspondence leading up to it.

24. On 22 May 2020, HMRC issued a letter to Mr Jacques, at his home address, explaining that they had not heard from him and therefore the matter was deemed to be settled under section 54 of TMA 1970. It also advised that the amount due under the assessment would be released for recovery action.

25. On 27 May 2020, Mrs Jacques replied to HMRC's letter, highlighting that she had sent a letter on 27 March 2020 which had not been reflected in HMRC's letter. She attached a copy of the March letter to the May letter. This letter requested that HMRC correspond with Mr Jacques solicitors and attached documentation to challenge the substance of the discovery assessment.

26. On 3 July 2020, HMRC issued a letter in response, confirming that they had not received the earlier correspondence. It also offered a further period of 30 days to decide whether to request a review or lodge an appeal. The letter also explained that HMRC could not communicate with the requested solicitors without written authority from Mr Jacques for them to do so.

27. Mr Jacques was released from prison in August 2022.

28. In late 2022, an HMRC enforcement officer visited the Jacques home to seek recovery of the tax debt.

29. Mr Jacques sent a letter to the enforcement task force on 26 November 2022 explaining that he intended to take the tax assessment to tribunal.

30. An appeal was lodged with this Tribunal on 30 January 2023. The notice of appeal acknowledged that the appeal was late.

#### **PARTIES ARGUMENTS**

##### ***HMRC***

31. HMRC submits that the delay was from 2 August 2020 until 30 January 2023, a period of 29 months or 2 years and 5 months, and this was a serious and significant delay.

32. As to the reasons for the delay, HMRC submits that there had been a period of vigorous arguments from Mr Jacques and his representatives, but it dropped off after the assessment was finalised and the view of the matter letter was issued. HMRC heard nothing further following the 3 July 2020 letter.

33. In accordance with the case law, deadlines and time limits should be complied with and that Mr Jacques only sought to appeal once the enforcement action commenced.

34. HMRC would have to divert resources to defend an appeal that they, reasonably, considered to be closed. These resources would be diverted away from other taxpayers that have submitted their appeals on time.

35. HMRC accepts that there is significant prejudice to the taxpayer in not being allowed to appeal.

36. HMRC submits that the taxpayer's arguments in relation to the underlying dispute are weak.

37. Overall, HMRC argues that the late appeal should not be allowed to proceed.

### *The taxpayer*

38. Mrs Jacques submits that she is just trying to get the matter put in front of someone other than HMRC because she feels they have exhausted that option.

39. Her husband had been suffering from terminal cancer since 2013 and the treatment had meant it was difficult to keep on top of everything. On top of that, their son had had two heart operations. Dealing with all of this had taken its toll and some things had been missed.

40. They thought they had handled everything when they handed it over to the solicitors who were dealing with his criminal appeal and the first they knew that something was still outstanding was when the enforcement officer knocked on the door.

41. They had originally appointed a firm of solicitors called Hedley, but then in late 2020, when her husband had been appealing his criminal sentence, they had transferred across to the new solicitors who were also dealing with the sentencing appeal. She thought they were called something like DPP or DMP. Mr Jacques had dealt with them directly while he was in prison.

42. It is ridiculous for HMRC to argue that they had thought the appeal was settled because it was clear that the Jacques felt very strongly and always intended to appeal.

### **DISCUSSION**

43. 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 2 years and 5 months late.

44. A delay of this length in the context of an appeal deadline of 30 days is no doubt both serious and significant.

45. As the second step, we must consider what the reason for the delay is and whether it is proven.

46. Mrs Jacques main arguments here are in two themes. The first is that the impact of both Mr Jacques and their son's health was that things were missed. The second is that they thought it was being dealt with by solicitors.

47. We did not take HMRC to disagree that the health matters were true nor that they had an impact on the family. Therefore we accept the ill health of both individuals as a fact.

48. We were not presented with any evidence as to how the ill health was the reason for the delay, other than Mrs Jacques personal evidence that it took its toll on them as a family.

49. With regards to Mr and Mrs Jacques considering that they had passed on the responsibility to the solicitors, we saw evidence in Mrs Jacques letter dated 27 March 2020 that she wished HMRC to correspond with Hedley solicitors.

50. We had very limited evidence as to the second firm of solicitors, because this discussion had apparently been only with Mr Jacques.

51. Turning to the third question we 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, we 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.

52. There are several factors of prejudice to consider. Firstly the prejudice to the taxpayer in not being able to pursue the appeal. This factor weighs in support of allowing the late appeal.

53. On the other side, HMRC would be prejudiced by having to defend an appeal on a matter that they considered to be closed. We do not accept Mrs Jacques assertion that HMRC cannot reasonably have considered the matter closed given the force of their discussions up to the point of the view of the matter letter. HMRC sought a response and gave additional time for that response, but got none. HMRC could not have been expected to be on continual notice that an appeal might be forthcoming at some later date. This factor weighs against allowing the late appeal.

54. There was some very limited discussion of the merits of the underlying substantive case, but neither party convinced us that the appeal was either “doomed to fail” or was a very strong one for Mr Jacques. As a result, we do not consider this factor weighs in either direction.

55. Having decided above that there had been substantial ill-health in the Jacques family, we must consider whether, in this balancing exercise, these facts constitute a good reason for the delay.

56. We cannot accept that treatment for an illness that went on over 11 years can have constituted an ongoing good reason for a delay of over two years, constantly. This was a chronic condition and Mr Jacques had to manage it on an ongoing basis, rather than an emergency situation that could not be worked around.

57. 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. HMRC explained in their letter in May 2020 that they could not correspond with Hedley solicitors without signed authority. Therefore Mr and Mrs Jacques were aware that the solicitors were not in a position to proceed without any further input from them. We had no viable evidence of the appointment of a second set of solicitors to deal with the tax affairs, such as an engagement letter in which these solicitors who were dealing with the criminal sentencing appeal also agreed to conduct the tax appeal. A simple assertion that an undetermined firm of solicitors were dealing with the matter with no further evidence and no further interaction from Mr or Mrs Jacques over a period of years is not enough to constitute a good reason for a delay.

58. Drawing these factors together in the balancing exercise, we do not consider that there was a good reason for the serious and significant delay and, in all the circumstances, we do not consider that it is appropriate to give permission to bring a late appeal in this case.

#### **RIGHT TO APPLY FOR PERMISSION TO APPEAL**

59. 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: 06<sup>th</sup> MARCH 2025**