



TC06715

Appeal number: TC/2017/08939

INCOME TAX – application for permission to make late appeals - refused

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

HAMID YAZDI

Appellant

- and -

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

**TRIBUNAL: JUDGE VICTORIA NICHOLL
JOHN ROBINSON**

Sitting in public at Taylor House, London on 9 August 2018

Mr Majd and Mr Jonathan Hawkes, both accountants, for the Appellant

Ms Lynn Long, presenting officer for HMRC's Solicitor's Office and Legal Services, for the Respondents

DECISION

5 1. This is an application by the Appellant (“Mr Yazdi”) for permission to appeal out of time against the decisions of the Respondents (“HMRC”) to issue the determination, assessments and penalties referred to in paragraph 2. HMRC have opposed the application to make the late appeals.

2. The decisions the subject of this application are as follows:

Date issued	Period	Decision	Amount
18.11.16	2001-02	Section 29 TMA 1970	£8,891.80
18.11.16	2002-03	Section 29 TMA 1970	£9,303.40
18.11.16	2003-04	Section 29 TMA 1970	£9,865.60
18.11.16	2004-05	Section 29 TMA 1970	£10,040.80
18.11.16	2005-06	Section 29 TMA 1970	£10,416.10
18.11.16	2006-07	Section 29 TMA 1970	£11,916.88
18.11.16	2007-08	Section 29 TMA 1970	£18,008.24
18.11.16	2008-09	Section 29 TMA 1970	£25,563.60
18.11.16	2009-10	Section 29 TMA 1970	£27,071.60
18.11.16	2010-11	Section 29 TMA 1970	£29,390.20
18.11.16	2011-12	Section 29 TMA 1970	£31,422.80
18.11.16	2012-13	Section 29 TMA 1970	£43,153.71
18.11.16 01.02.17	2013-14	Amended return Closure notice	£49,659.68
18.11.16	2014-15	Section 29 TMA 1970	£54,212.86
01.02.17	2001-2006 and 2007-08	Penalty determination	£46,568.00
01.02.17	2006-07	Penalty determination	£8,342.00

The letter of appeal also lists penalties issued on 21 February 2017 and surcharges issued on 28 February 2017 but the decisions were not included in the Tribunal's bundle.

Facts found

5 3. We considered the evidence in the Tribunal's bundle, a chronology schedule produced on behalf of Mr Yazdi and the oral evidence provided by Mr Yazdi and his adult son Arash at the hearing. A Persian Farsi speaking interpreter was present throughout the hearing to translate for Mr Yazdi. From this evidence we made the following findings of fact:

10 3.1 Mr Yazdi has two adult sons, Arash and Afshin. Afshin has lived in the property at 3 The Woodlands with his father since he was born. More recently he spends time away but visits his father every fortnight or so. Arash lives in another property owned by Mr Yazdi, at 96 Cat hill, and Mr Yazdi sometimes stays at the property at 96 Cat Hill because it is larger than 3 The Woodlands. Mr Yazdi is visited by one or other
15 son at least every three weeks.

3.2 Mr Yazdi owns a number of rental properties. Mr Ghaffary manages the lettings and maintenance of the properties on behalf of Mr Yazdi. HMRC have produced schedules analysing payments into Mr Yazdi's bank accounts, including payments in respect of rent.

20 3.3 HMRC wrote to Mr Yazdi on 28 August 2015 to open an enquiry into his tax return for 2013-14. HMRC issued a letter asking Mr Yazdi to provide information on 30 September 2015.

3.4 Mr Yazdi's sons arranged a meeting with Franklin & Co to advise him in relation to the enquiry and HMRC received notification (a form 64-8) of their appointment in
25 October 2015. Mr Yazdi's sons chose this firm because it was close to their father's home, but they needed to be present to translate any communication for their father given his limited English. A principal of Franklin & Co called HMRC to apologise for the delay in responding and explained that this was due to problems making contact with or obtaining information from her client. On 6 January 2016 Franklin & Co
30 notified HMRC that they had ceased to act for Mr Yazdi.

3.5 On 2 February 2016 HMRC issued an information notice to Mr Yazdi at his home address requiring him to produce the outstanding documents. A further letter to Mr Yazdi was posted to premises that he owns at 8 Atlas Business Centre.

3.6 On 2 March 2016 Mr Yazdi's son Arash called HMRC to advise them that his
35 father was in hospital following a heart attack. He told HMRC that he would see if Franklin & Co would be willing to act again. On 20 April 2016 Arash called HMRC to say that his father was still in hospital. HMRC told him that they would wait until a new accountant was appointed before taking further action as long as the accountant appointed made contact by 6 May.

5 3.7 HMRC made two chasing calls to Mr Yazdi's son Arash as they had not heard from Mr Yazdi or an accountant by 6 May. On 18 May Arash told HMRC that he would seek an accountant. On 19 May Arash told HMRC that an accountant was being appointed and that arrangements were in hand for the accountant to visit his father the following day.

10 3.8 On 8 June 2016 HMRC issued penalties in relation to the failure to provide the information required by the information notices. On 26 July 2016 HMRC wrote to Mr Yazdi to advise him that a tax assessment would be issued for 2013-14 unless he provided the information required within 30 days. On 20 September 2016 HMRC wrote to Mr Yazdi stating that, in the absence of a response to their letter of 26 July 2016, they would now issue tax assessments for 2013-14 and also for the previous years from 2001-02. On 31 October 2016 HMRC wrote to Mr Yazdi stating that they were seeking a valuation of his rental income from HMRC's Valuation Office Agency.

15 3.9 On 18 November 2016 HMRC notified Mr Yazdi at 3 The Woodlands that it had raised assessments for 2001 to date, other than 2013-14 in respect of which they had amended the return. HMRC issued a closure notice in respect of 2013-14 on 1 February 2017. On 1 February 2016 HMRC also issued the penalty determinations set out in paragraph 2 above.

20 3.10 HMRC's debt management team attempted to make contact with Mr Yazdi on a number of occasions between January and March 2017 without success. They noted that the taxpayer was elusive. On 27 April 2017 HMRC served a statutory demand on Mr Yazdi. On 9 August 2017 HMRC sent a Bankruptcy Petition to Mr Yazdi at his home address. Mr Yazdi sent a photo of the petition to his son Afshin as soon as he received it.

25 3.11 On 26 September 2017 Mr Yazdi gave authority for his son Afshin to deal with HMRC in relation to both his tax matters and the debt claim.

30 3.12 On 14 October 2017 Mr Yazdi signed a form 64-8 authority for Majd & Co to correspond with HMRC on his behalf. The principal of Majd & Co speaks Farsi and so was able to advise and take instructions from Mr Yazdi. Majd & Co applied to HMRC to make a late appeal but this was refused on 31 October 2017. Majd & Co submitted the application to the Tribunal to make a late appeal on 4 December 2017.

Submissions

35 4. Mr Yazdi claimed in his letter of appeal that there had been a family estrangement in relation to the marriage of his son Afshin and that this meant that he did not have assistance from his sons for a period of time. The form states that the family resumed contact after Mr Yazdi suffered heart problems in early 2016.

40 5. It was submitted at the hearing that Mr Yazdi believed that his sons were dealing with his tax issues and that the first time that he realised that the tax issues were not being dealt with was when he received the statutory demand in April 2017 and the bankruptcy petition in August 2017. Mr Hawkes submits that if HMRC had

called on Mr Yazdi the matter would not have escalated as it did. For example, HMRC did not contact Mr Yazdi or his sons between May 2016 and the issue of the assessments. Mr Hawkes submits that once Afshin was appointed in September 2017 he took steps to notify the appeal with one month.

5 6. Mr Yazdi claims that the assessments are excessive and that he just wants to pay the right amount of tax. Mr Yazdi is in the process of selling properties in order to fund the payment of the tax due.

7. HMRC submit that the assessments under appeal for the income tax years 2001-02 – 2014-15 inclusive were properly issued to Mr Yazdi and that they advised that
10 any appeal should be made to HMRC within 30 days of the date of the assessments. Mr Yazdi did not provide a reasonable excuse for the late appeals to HMRC and the late appeals should not be admitted.

Relevant law

8. Section 49(2) Taxes Management Act 1970 (“section 49 TMA”) provides that
15 notice of an appeal may be given after the relevant time limit if HMRC agree or, where HMRC do not agree, the tribunal gives permission.

9. The Tribunal must seek to give effect to the overriding objective when it exercises any power under the Tribunal Rules. The overriding objective is set out in rule 2 of the Tribunal Rules (“rule 2”) as follows:

20 “(1) The overriding objective of these [Tribunal Rules] is to enable the Tribunal to deal with cases fairly and justly.
(2) Dealing with a case fairly and justly includes—
(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of
25 the parties;
(b) avoiding unnecessary formality and seeking flexibility in the proceedings;
(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
(d) using any special expertise of the Tribunal effectively; and
30 (e) avoiding delay, so far as compatible with proper consideration of the issues.”

10. HMRC referred the Tribunal to the decision of Morgan J in the Upper Tribunal in *Data Select Ltd v HMRC* [2012] UKUT 187 (TCC) (“*Data Select*”). This sets out
35 the five questions that the Tribunal should ask itself when asked to extend a time limit. These are as follows:

1. What is the purpose of the time limit?
2. How long was the delay?
3. Is there a good explanation for the delay?
4. What will be the consequences for the parties of an extension of time?
- 40 5. What will be the consequences for the parties of a refusal to extend time?

11. HMRC also referred the Tribunal to the decision in *William Martland v HMRC* [2018] UKUT 0178 (TC) in which the Upper Tribunal advised this Tribunal that the starting point when considering an application for permission to appeal out of time is that permission should not be granted unless the Tribunal is satisfied on balance that it should be. The factors raised in *Data Select* can be considered in the light of all the circumstances of the case, reflecting the decision in *Denton v TH White Ltd* (and related appeals) (“*Denton*”) [2014] EWCA Civ 906.

12. We noted the guidance provided in *R (oao Dinjan Hysaj) v SSHD* [2014] EWCA Civ 1633 (“*Hysaj*”) by Moore-Bick LJ that “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” on applications for extensions of time to appeal. He also commented that in most cases “the court should decline to embark on an investigation of the merits and firmly discourage argument directed to them.”

13. We were also referred to the passage in *Romasave (Property Services) Limited v HMRC* [2015] UKUT 0254 (TCC) (“*Romasave*”) in the Upper Tribunal (at paragraph 96) that “[i]n the context of an appeal right which must be exercised within 30 days from the date of the document notifying the decision, a delay of more than three months cannot be described as anything but serious and significant.”

Discussion

14. Mr Yazdi’s application to make late appeals was considered in the light of our findings and the relevant law outlined above, considering the questions set out in *Data Select* as relevant to this case and then all the circumstances of the case.

Purpose of time limit

15. The purpose of the time limit to make an appeal is to allow HMRC to close their files and deal with other cases. This is in the public interest.

Length of the delay

16. The delay in this case is at least eight months and in most cases eleven months after the issue of the notices. It is therefore “serious and significant” as described in *Romasave*. Mr Hawkes submits that the delay is much shorter when considered by reference to action taken by Afshin within a month following his appointment in September 2017. We do not accept this because action was required to be taken as early as January 2016 following the resignation the firm that he had engaged to deal with his father’s tax affairs and the information notices.

Explanation for the delay

17. Mr Yazdi has made inconsistent claims about the reasons why his appeal is late. In his letter of appeal he said that this was due to an estrangement with his sons as he had not attended a wedding and that this continued until he suffered his heart

5 problems. However, in evidence Mr Yazdi and his son explained that the marriage was in May 2016 whereas the heart problems occurred in the earlier part of the year. Regardless of this inconsistency, it was admitted in the appeal letter dated 4 December 2017 that as a result of Mr Yazdi's heart attack contact between the father and sons was resumed and "as a result it became apparent that Mr Yazdi had significant tax arrears". We also found from the evidence at the hearing that Afshin lives with his father and even though he is away at times, one or other son visits their father at least every three weeks. We concluded that Mr Yazdi was in contact with his sons throughout the relevant period and that they were aware that there were significant tax issues to be addressed. Mr Yazdi engages with his sons regularly and advisers should have been appointed to deal with his tax problems if he was unable to do so because of his limited English and poor health. HMRC were told that this was in hand in May 2016 and it was for the taxpayer or his new adviser to contact HMRC.

15 18. Mr Yazdi has claimed that he believed that his sons were dealing with his tax issues. It was Mr Yazdi's personal responsibility to deal with his tax matters and, even if he delegated this to his sons, it was his duty as a responsible taxpayer to check that the necessary information had been provided and that any action required had been taken. Mr Hawkes also claimed on behalf of Mr Yazdi that HMRC should have done more to contact him and that there was long gap between their calls with Arash in 20 May 2016 and the issue of the assessments in November 2016. We do not accept this explanation for the delay for two reasons. First, it was incumbent on Mr Yazdi, whether or not through Arash, to respond to HMRC. HMRC was told that an accountant was being appointed but this did not take place until October of the following year. Secondly, HMRC did make significant efforts to engage with Mr 25 Yazdi. They called his son twice in May 2016 and wrote to him in June, July, September and October 2016. We also noted that HMRC's debt enforcement team made significant efforts to contact Mr Yazdi before the statutory demand was served.

30 19. In terms of the merits of the underlying appeal, Mr Hawkes submits that the assessments are excessive but concedes that Mr Yazdi does not have records to support his claims about the rentals. He was not able to reconcile Mr Yazdi's bank statements with the estimates prepared based on the valuations from HMRC. It is also claimed that rent paid to Mr Yazdi for a number of years did not represent his income exclusively as others had an interest in the property. In the context of the guidance provided in *Hysaj* (paragraph 12 above) and the evidence provided we considered 35 these submissions and concluded that the merits of this appeal are not very strong.

Consequences of an extension of time / refusal to extend time

40 20. In the decision in *Data Select* referred to above, Judge Morgan referred to the "desirability of not re-opening matters after a lengthy interval where one or both parties were entitled to assume that matters had been finally fixed and settled". In this case HMRC had sought to recover the tax debt, and after failing to make contact with Mr Yazdi despite their efforts, they served a statutory demand and bankruptcy petition. If we allow Mr Yazdi to make a late appeal this matter would no longer be final for HMRC and they would have to engage in litigation. The consequence of not allowing the late appeal is that Mr Yazdi will not have the opportunity to appeal, but

we have found that this is not a case in which the strength of the grounds of appeal has “a significant part to play when it comes to balancing the various factors”.

21. The Tribunal has discretion to allow late appeals to be made. In the exercise of this discretion we have weighed all the circumstances of the case referred to above, including the length of the delay, the lack of merit in the reasons given for the delay, and the consequence of allowing or not allowing the late appeals to be made. We concluded that it would not be fair and just to allow the late appeals in all the circumstances of this case.

Decision

22. For the reasons set out above we refuse permission to appeal out of time.

23. 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.

**VICTORIA NICHOLL
TRIBUNAL JUDGE**

RELEASE DATE: 11 SEPTEMBER 2018