



TC06930

Appeal number: TC/2017/06088

INCOME TAX – penalty for failure to make payments on time – application to bring a late appeal – dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

AHMED MOHAMMED HIRSI

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE ANNE FAIRPO
MR NOEL BARRETT**

Sitting in public at Manchester on 7 January 2019

The Appellant did not attend and was not represented

Mr C Butler, Officer of HMRC, for the Respondents

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DECISION

1. The appellant (Mr Hirsi) did not attend. His appeal refers to an accountant as his representative; no representative attended the hearing either.
2. It was clear from the file that the appellant had been notified of the objection by HMRC to the late appeal and had not objected to the listing on 7 January 2019 of a hearing in respect of that objection.
3. The respondents (HMRC) argued that the hearing should take place in the absence of the appellant on the basis that it was obvious that the appellant had been notified of the hearing and had made no objection to its proceeding, having been warned of the consequences of not appearing.
4. We had due regard to the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (“the Rules”). We decided that it was in the interests of justice to proceed with the hearing in the absence of the appellant in accordance with Rule 33 of the Rules since there was no explanation as to the non-appearance by or for the appellant. The appellant’s attention is drawn to Rule 38 of the Rules in the event that there was good cause for the non-attendance at this hearing.

Background

5. This is an appeal against assessments of tax and penalties for late payment of tax for the tax years 2007/8, 2008/9, 2009/10, 2010/11, 2011/12, and 2012/13. The appeal was dated 27 July 2017 and referred to a statement of liabilities dated 24 January 2017.
6. The appeal was returned to Mr Hirsi on 9 August 2017 for clarification as to the grounds of appeal; the appeal was eventually acknowledged by the Tribunal on 8 August 2018 as having been received on 27 July 2017.

Appellant’s case

7. Mr Hirsi stated in his appeal that the appeal was late because he was “seeking the right accountant to take [his] appeal. It took a few months to find one”.
8. His grounds of appeal against the assessments and penalties, to HMRC in March 2017 and to this Tribunal, can be summarised as follows:
 - (1) He had no fixed address for a number of years as he had been separating from his wife and children;
 - (2) He had depression over the years;
 - (3) His tax returns had been filed and he did not have any tax liabilities;

- (4) It would be unfair on him to impose such a large fine.
9. In his original appeals in March 2016 to HMRC in relation to the 2011/12 and 2012/13 tax years, Mr Hirsi had given different grounds for appeal:
- (1) His accountant had not registered him with HMRC or submitted his returns;
 - (2) It subsequently turned out that the accountant's office did not exist and the accountant had disappeared;
 - (3) Mr Hirsi had moved from the Netherlands and he did not know how the UK tax system worked.
10. In correspondence with HMRC in August 2016, Mr Hirsi stated that he had domestic problems from June 2008 and was very distressed by those problems. His income was lower than average.

HMRC's case

11. HMRC submitted, in summary:
- (1) The assessments and penalty decisions were issued to Mr Hirsi on 5 January 2015. Under s3(1) Taxes Management Act 1970, he should have brought his appeal within 30 days of these decisions.
 - (2) HMRC's records show that the first mention of an appeal in correspondence from Mr Hirsi was on 8 March 2016.
 - (3) The decisions were, therefore, appealed at least a year after the decision date and so the appeal was substantially out of time.
 - (4) HMRC submitted that, following the principles set down in case law, the delay was significant and no good reason had been provided for the delay.

Relevant law

12. Rule 20 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (the "Tribunal Rules") provides that, if a notice of appeal is given after any time limit which is set out in the relevant enactment but the enactment makes provision for late notice of an appeal to be given with the permission of the First-tier Tribunal, then the notice of appeal must include a request for such permission and the reason why the notice of appeal was not provided on time and, unless the First-tier Tribunal gives that permission, the First-tier Tribunal must not admit the appeal.
13. The approach which should be taken by the First-tier Tribunal in deciding whether or not to grant permission for a late appeal was set out by the Upper Tribunal in the case of *Martland* [2018] UKUT 178 (TCC), at [44] to [46] as below:

"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.”Discussion

Discussion

14. Considering the three-stage test set out in *Denton* and confirmed in *Martland*:

Length of the delay

15. The length of the delay is at least more than one year; this is clearly a serious and significant delay.

Reason for the delay

16. Mr Hirsi states in his appeal that the delay arose because he was seeking “the right accountant” to take on his appeal and that this took “a few months”. We do not consider that this is a good reason for the delay. Firstly, an appeal may be brought by a taxpayer personally – there is no obligation to be professionally represented and information is clearly set out in appealable decisions to explain how to appeal.

Secondly, there are a substantial number of accountants and other tax advisers in the UK and we do not consider it requires several months to find a suitable adviser if a taxpayer preferred to be professionally represented.

All the circumstances

17. As already noted, the delay is substantial, and we do not consider that there is a good reason given for the delay.

18. Considering the potential detriment, if we were to refuse Mr Hirsi's application to make a late appeal, the detriment to him is clear as he will be required to pay the tax liabilities and penalties and will not be able to challenge those amounts. However, Mr Hirsi's grounds of appeal in relation to the substantive matter do not clearly show that he has a strong case.

19. The potential detriment to HMRC, if we were to allow the application, is that they will lose the finality which they were perfectly to believe existed once the time limit for making an appeal against the assessments and penalties had expired.

Conclusion

20. Taking into account all the factors which we are required to consider, we find that this is not an appropriate case in which permission to make a late appeal should be given.

21. We consider that, on balance, the length of the delay in making the appeal, the fact that no good reason has been given for the delay, and the detriment which HMRC would suffer if we were to give permission and thereby enable Mr Hirsi to dispute assessments which HMRC fairly considered to be beyond dispute outweigh the detriment to Mr Hirsi.

22. We therefore do not give our permission for Mr Hirsi to make the late appeal and the appeal is therefore dismissed.

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.

**ANNE FAIRPO
TRIBUNAL JUDGE**

RELEASE DATE: 10 JANUARY 2019