



[2019] UKFTT 0368 (TC)

TC07196

PROCEDURE – Income tax – application for permission to give late notice of appeals to HMRC – permission unnecessary as HMRC had already accepted late notice – whether permission required for late notice of appeal to Tribunal – permission not required as no statutory time limit if no review offered by HMRC – appeal against penalties should proceed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2018/07753

BETWEEN

SHRAVAN SOOD

Appellant

-and-

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

Respondents

**TRIBUNAL: JUDGE JEANETTE ZAMAN
CAROLINE DE ALBUQUERQUE**

Sitting in public at Taylor House, 88 Rosebery Avenue, London EC1R 4QU on 5 June 2019

The Appellant appeared in person

Mrs Bisi Sanu, litigator of HM Revenue and Customs' Solicitor's Office, for the Respondents

DECISION

INTRODUCTION

1. Mr Sood applied to the Tribunal for permission to make late appeals to HMRC against amendments to his self-assessment tax returns and penalty determinations issued in respect of each of the tax years 2008-2009 to 2013-2014. Mr Sood explained at the hearing that this was the step he had been told by his HMRC case worker was required in order to appeal these matters.

2. HMRC objected to the application on the basis that Mr Sood has failed to prosecute his appeal with reasonable diligence in that the appeal was over two years' late.

RELEVANT FACTS

3. We had a bundle of papers prepared by HMRC and Mr Sood gave evidence as to the events in question. We make the following findings of fact. Further findings are set out in the Discussion.

4. On 8 February 2013 HMRC wrote to Mr Sood explaining that they were checking information contained in his tax returns. The two letters of the same date accompanying this letter were more specific and sought information in relation to offshore bank and building society accounts for the tax years 2008-2009 and 2009-2010, and rental income and expenses claimed for the tax year 2011-2012.

5. On 6 May 2014 HMRC wrote to Mr Sood stating that they were extending the scope of their enquiries to include his self-assessment for the tax year 2012-2013.

6. On 27 January 2015 HMRC issued assessments to Mr Sood for the tax years 2008-2009 and 2010-2011. Mrs Archer sent a copy of these to Mr Sood by email stating "Please ensure that you appeal against the assessments before 26 February 2015 to keep matters open."

7. Mr Sood did not appeal within that 30 day period, and Mrs Archer again reminded him by email on 4 March 2015 of the need to make an appeal. She added "If you wish to submit a late appeal please do so by 11 March 2015. If you are in any doubt about how to submit an appeal please contact me and I will explain the procedure."

8. Mrs Archer retired and Mr Parmenter took over the case. He emailed Mr Sood on 31 March 2015 to introduce himself.

9. On 4 November 2015, Mr Parmenter wrote to Mr Sood with details of his findings and set out proposals to resolve matters on a "without prejudice" basis. This letter was sent by post, and there is no indication that a copy was sent by email. Mr Sood denies having received this letter at that time. This cover letter is included within the bundle prepared by HMRC, but not the proposals which accompanied it – Mrs Sanu explained that this was on the basis that the settlement offer had been made on a "without prejudice" basis.

10. Mr Parmenter retired from HMRC and Mr Brown took over as Mr Sood's case worker. On 15 December 2015 Mr Brown wrote to Mr Sood introducing himself and stating that he intended to raise assessments based on his predecessor's proposals (ie those set out in the settlement offer) as well as penalty determinations.

11. On 2 February 2016 HMRC issued assessments as follows:

Tax Year	Assessment Date	Legislation	Description	Amount (£)
2008-2009	02/02/2016	Section 54 TMA 1970	Further assessment	9,457.42
2009-2010	02/02/2016	Section 29 TMA 1970	Assessment	4,555.30

2010-2011	02/02/2016	Section 29 TMA 1970	Discovery Assessment	1,903.60
2011-2012	02/02/2016	Section 28A(1) and 28A(2) TMA 1970	Closure Notice	5,021.65
2012-2013	02/02/2016	Section 28A(1) and 28A(2) TMA 1970	Closure Notice	24,338.70
2013-2014	02/02/2016	Section 29 TMA 1970	Discovery Assessment	30,549.47
Total				75,826.14

12. On 1 March 2016 HMRC issued the following penalty determinations for inaccuracy in tax returns:

Tax Year	Assessment Date	Legislation	Amount (£)
2008-2009	01/03/2016	Schedule 24 Finance Act 2007	3,972.11
2009-2010	01/03/2016	Schedule 24 Finance Act 2007	1,913.22
2010-2011	01/03/2016	Schedule 24 Finance Act 2007	799.51
2011-2012	01/03/2016	Schedule 24 Finance Act 2007	2,109.09
2012-2013	01/03/2016	Schedule 24 Finance Act 2007	10,222.25
2013-2014	01/03/2016	Schedule 24 Finance Act 2007	12,830.77
Total			31,846.95

13. At this time, and since before the enquiries were opened in 2013, Mr Sood was making regular, sometimes lengthy, trips to India, although he did not provide any detailed evidence of his travel schedule. Any correspondence sent to him at his home in the UK by post was not forwarded to him, and simply awaited his return. Mr Sood does not deny having received either the assessments or the penalty determinations described at [11] and [12] above.

14. Mrs Archer and Mr Parmenter would sometimes communicate with Mr Sood by email, and phone conversations did occur between Mr Sood and Mrs Archer whilst she was the case worker. Mr Sood explained that he had a strong preference for communications to be made by email, but Mr Brown had refused to do so, insisting upon sending correspondence by post. This was not challenged by HMRC, and the papers do not include any evidence of Mr Brown having communicated with Mr Sood by email.

15. On 29 April 2016 Mr Sood filled in the form headed "Penalty calculation summary Agreement form" which had accompanied the penalty determinations. He had ticked the box stating "I do not agree all the details in the Penalty calculation summary for the following reasons" and then included a lengthy manuscript account of his understanding of the position and recounts the delays by HMRC in resolving matters and states that he is "extremely perplexed and disappointed to have received no further clarifications, but I have instead received numerous demands for tax underpayment (totalling £31,847) which is comprised entirely of "inaccuracy penalties". Yet at no stage have I been notified of any aspect of my tax returns which was inaccurately reported..."

16. Mr Brown wrote to Mr Sood on 26 September 2016, stating that he was enclosing the letter of 4 November 2015 and its accompanying schedules. That letter referred to the assessments and penalty determinations which had been issued, noting that no formal written appeals have been lodged by Mr Sood and stating that if he wished to lodge late appeals he should let Mr Brown have these without delay with his reasons for the late appeals. That letter goes on to state that an appeal needs to be made against each assessment and penalty determination.

SUBMISSIONS

17. Mr Sood gave Notice of appeal to the Tribunal on 29 November 2018 in which he stated that he is applying to be allowed to make a late appeal to HMRC. His reason for the late appeal is based on the length of the investigation, which culminated in a settlement offer being sent to him by post in November 2015 which he denies having received.

18. At the hearing Mr Sood gave evidence that he makes frequent lengthy trips abroad to visit his elderly mother, and had asked HMRC to communicate with him by email. Mr Parmenter, who sent the November 2015 letter, had usually communicated with him by email and Mr Sood did not know why this particular letter was only sent by post. Mr Parmenter retired from HMRC shortly after this time, and Mr Sood then experienced difficulties with the replacement case worker dealing with his matter (Mr Brown) which resulted in Mr Sood making a complaint about his conduct. Mr Sood explained that it was only when Mr Cotton took over as case worker that it was explained to him how to make a late appeal and that was what he had now done.

19. Mr Sood's grounds of appeal (as set out in the Notice of appeal to the Tribunal) focus on his not having had an opportunity to accept the settlement offer which was sent to him in November 2015 (of around £77,000) and that he had been required to pay in excess of £112,000 to HMRC.

20. At the hearing, Mr Sood explained that he accepted that he had made mistakes in his self-assessment returns for the tax years in question due to a failure to understand the new rules around non-domiciled individuals who were resident in the UK, and that he did not seek permission to appeal against the assessments which had been issued in February 2016. The Tribunal noted that HMRC had stated in their Objection Notice (considered further below) that the assessments which were issued in February 2016 were based on the numbers proposed in the settlement offer and, whilst the Tribunal only had a copy of the cover letter for the November 2015 letter and not the detailed schedules which apparently accompanied it, we did note that Mr Sood's reference to "approximately £77,000" was similar to the total assessments of £75,825.14, which supported the statements made by HMRC. Mr Sood agreed this seemed to be the case, and confirmed that, whilst his Notice of appeal was not clear in this respect, his application for permission to bring a late appeal was confined to bringing an appeal against the penalties. The remainder of the hearing proceeded on this basis.

21. HMRC had given Notice of Objection to the Appellant's Late Appeal. That Objection Notice (understandably) proceeded on the basis that Mr Sood was seeking to appeal against both the assessments and the penalty determinations. HMRC contended that Mr Sood's appeal against the penalties was more than 1004 days late and that HMRC considered he did not have a reasonable excuse. HMRC asked that permission to admit the appeal be refused, and referred to *Romasave (Property Services) Ltd v HMRC* [2015] UKUT 254 (TCC) and the guidance given by the Upper Tribunal in *William Martland v HMRC* [2018] UKUT 0178 (TCC) as to how this Tribunal should consider applications for permission to appeal out of time.

RELEVANT LEGISLATION

22. Section 31A Taxes Management Act 1970 (“TMA 1970”) requires that notice of an appeal is given in writing to the relevant officer of the Board within 30 days of the date on which the notice of amendment was given.

23. Sections 49 to 49I TMA 1970 then apply where a notice of appeal is given late. The relevant sections are:

“49 Late notice of appeal

- (1) This section applies in a case where—
 - (a) notice of appeal may be given to HMRC, but
 - (b) no notice is given before the relevant time limit.
- (2) Notice may be given after the relevant time limit if—
 - (a) HMRC agree, or
 - (b) where HMRC do not agree, the tribunal gives permission.
- (3) If the following conditions are met, HMRC shall agree to notice being given after the relevant time limit.
- (4) Condition A is that the appellant has made a request in writing to HMRC to agree to the notice being given.
- (5) Condition B is that HMRC are satisfied that there was reasonable excuse for not giving the notice before the relevant time limit.
- (6) Condition C is that HMRC are satisfied that request under subsection (4) was made without unreasonable delay after the reasonable excuse ceased.
- (7) If a request of the kind referred to in subsection (4) is made, HMRC must notify the appellant whether or not HMRC agree to the appellant giving notice of appeal after the relevant time limit.
- (8) In this section “relevant time limit”, in relation to notice of appeal, means the time before which the notice is to be given (but for this section).

49A Appeal: HMRC review or determination by tribunal

- (1) This section applies if notice of appeal has been given to HMRC.
- (2) In such a case—
 - (a) the appellant may notify HMRC that the appellant requires HMRC to review the matter in question (see section 49B),
 - (b) HMRC may notify the appellant of an offer to review the matter in question (see section 49C), or
 - (c) the appellant may notify the appeal to the tribunal (see section 49D).
- (3) See sections 49G and 49H for provision about notifying appeals to the tribunal after a review has been required by the appellant or offered by HMRC.
- (4) This section does not prevent the matter in question from being dealt with in accordance with section 54 (settling appeals by agreement).

49B Appellant requires review by HMRC

- (1) Subsections (2) and (3) apply if the appellant notifies HMRC that the appellant requires HMRC to review the matter in question.

- (2) HMRC must, within the relevant period, notify the appellant of HMRC's view of the matter in question.
- (3) HMRC must review the matter in question in accordance with section 49E.
- (4) The appellant may not notify HMRC that the appellant requires HMRC to review the matter in question and HMRC shall not be required to conduct a review if—
 - (a) the appellant has already given a notification under this section in relation to the matter in question,
 - (b) HMRC have given a notification under section 49C in relation to the matter in question, or
 - (c) the appellant has notified the appeal to the tribunal under section 49D.
- (5) In this section “relevant period” means—
 - (a) the period of 30 days beginning with the day on which HMRC receive the notification from the appellant, or
 - (b) such longer period as is reasonable.

49C HMRC offer review

- (1) Subsections (2) to (6) apply if HMRC notify the appellant of an offer to review the matter in question.
- (2) When HMRC notify the appellant of the offer, HMRC must also notify the appellant of HMRC's view of the matter in question.
- (3) If, within the acceptance period, the appellant notifies HMRC of acceptance of the offer, HMRC must review the matter in question in accordance with section 49E.
- (4) If the appellant does not give HMRC such a notification within the acceptance period, HMRC's view of the matter in question is to be treated as if it were contained in an agreement in writing under section 54(1) for the settlement of the matter.
- (5) The appellant may not give notice under section 54(2) (desire to repudiate or resile from agreement) in a case where subsection (4) applies.
- (6) Subsection (4) does not apply to the matter in question if, or to the extent that, the appellant notifies the appeal to the tribunal under section 49H.
- (7) HMRC may not notify the appellant of an offer to review the matter in question (and, accordingly, HMRC shall not be required to conduct a review) if—
 - (a) HMRC have already given a notification under this section in relation to the matter in question,
 - (b) the appellant has given a notification under section 49B in relation to the matter in question, or
 - (c) the appellant has notified the appeal to the tribunal under section 49D.
- (8) In this section “acceptance period” means the period of 30 days beginning with the date of the document by which HMRC notify the appellant of the offer to review the matter in question.

49D Notifying appeal to the tribunal

- (1) This section applies if notice of appeal has been given to HMRC.
- (2) The appellant may notify the appeal to the tribunal.
- (3) If the appellant notifies the appeal to the tribunal, the tribunal is to decide the matter in question.
- (4) Subsections (2) and (3) do not apply in a case where—
 - (a) HMRC have given a notification of their view of the matter in question under section 49B, or
 - (b) HMRC have given a notification under section 49C in relation to the matter in question.
- (5) In a case falling within subsection (4)(a) or (b), the appellant may notify the appeal to the tribunal, but only if permitted to do so by section 49G or 49H...

49I Interpretation of sections 49A to 49H

- (1) In sections 49A to 49H—
 - (a) “matter in question” means the matter to which an appeal relates;
 - (b) a reference to a notification is a reference to a notification in writing.
- (2) In sections 49A to 49H, a reference to the appellant includes a person acting on behalf of the appellant except in relation to—
 - (a) notification of HMRC's view under section 49B(2);
 - (b) notification by HMRC of an offer of review (and of their view of the matter) under section 49C;
 - (c) notification of the conclusions of a review under section 49E(6); and
 - (d) notification of the conclusions of a review under section 49E(9).
- (3) But if a notification falling within any of the paragraphs of subsection (2) is given to the appellant, a copy of the notification may also be given to a person acting on behalf of the appellant.

DISCUSSION

24. Whilst HMRC sought to treat Mr Sood’s appeal to HMRC as being more than two years’ late (treating, for this purpose, the Notice of appeal given to the Tribunal as the appeal to HMRC), and objected on this basis, their Objection Notice includes the following in the description of the facts:

“20. On 29 April 2016, the Appellant sent an appeal to HMRC regarding the penalties that had been issued to him, covering the years 2008/09 to 2013/14.

21. On 27 June 2016, Mr Brown sent the Appellant a letter in response to his appeal against the penalty notices and enclosed a copy of his predecessor, Mr Parmenter’s letter dated 4 November 2015.”

25. We considered Mr Sood’s communication of 29 April 2016, described at [15] above, which had been included in the bundle and find that this satisfies the requirements of a notice of appeal to HMRC against the penalty determinations issued on 1 March 2016. It was not, however, sent by Mr Sood within the 30 day time limit for notifying an appeal.

26. Section 49(2) TMA 1970 provides that notice may be given after the relevant time limit if HMRC agree or, where HMRC do not agree, the Tribunal gives permission. HMRC were clear at the hearing that they object to Mr Sood giving late notice. However, we considered that it was necessary to address whether HMRC had in fact already agreed to accept late notice of appeal and thus examined the correspondence which followed that communication of 29 April 2016.

27. The letter of 27 June 2016, referred to at [24] above, was not included in the bundle but HMRC were able to produce it at the hearing and we considered that it was in the interests of fairness and justice that we should accept its admittance. The letter was from Mr Brown to Mr Sood, refers to Mr Sood's "reply" of 29 April 2016 and contains a short explanation of the basis on which the penalties had been calculated. It goes on to state "Under the circumstances I look forward to hearing from you that you can agree the penalties enclosed or alternatively let me have your alternative proposals and reasons behind these." It then briefly addresses a separate matter. It does not mention that what is referred to as Mr Sood's "reply" was out of time, nor does it set out the right to request a review or right to appeal to the Tribunal.

28. We conclude that HMRC had agreed to accept late notice of appeal (as they were entitled to do pursuant to s49(2)(a) TMA 1970) at that time. Mr Sood's appeal of 29 April 2016 was less than 30 days late, and if HMRC had sought to object they should have made this point expressly in their response to Mr Sood. They did not do so. HMRC cannot now object to that late notice.

29. On the basis that we find that Mr Sood has given notice of his appeal to HMRC, the question is then what is the next step in the proceedings. At the hearing we drew the parties' attention to the fact that whilst the bundle included s49 TMA 1970 it did not include any of s49A-I TMA 1970; further, HMRC's Objection Notice had not addressed the situation where notice of appeal is found to have been given to HMRC and no review offered. We had regard to the overriding objective in Rule 2 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (the "Tribunal Rules") and the need to deal with cases fairly and justly and decided it would not be appropriate to adjourn a permissions hearing part-heard, but instead invited the parties to consider whether they wished to send written submissions to the Tribunal within 14 days of the date of the hearing. Mrs Sanu and Mr Sood indicated that they would not be sending any further submissions, with Mrs Sanu reiterating that HMRC object to late notice. We have therefore proceeded to consider the matter ourselves.

30. We conclude that the legislation does not impose any time limit on the notice of appeal being given to the Tribunal in this instance. HMRC did not offer a review, so s49C TMA 1970 is not in point. Mr Sood has not requested that HMRC conduct a review, so s49B TMA 1970 is similarly inapplicable. There is no time limit in s49D itself, which is the relevant provision here – it simply provides that if notice of appeal has been given to HMRC, a taxpayer may notify an appeal to the Tribunal and the Tribunal is to decide the matter in question - and Rule 20(4) of the Tribunal Rules simply refers to the time limit in the applicable enactment and does not of itself impose an additional time limit.

31. We therefore conclude that Mr Sood's appeal against the penalties can proceed, and there is no requirement for permission.

CONCLUSION

32. Mr Sood's appeal to the Tribunal against the penalty determinations in respect of the tax years 2008-2009 to 2013-2014 can proceed.

33. The amendments made by HMRC to Mr Sood's self-assessment returns for the tax years 2008-2009 to 2013-2014 are final.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

34. 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.

**JEANETTE ZAMAN
TRIBUNAL JUDGE**

RELEASE DATE: 11 JUNE 2019