



**TC07805**

*INCOME TAX – Penalty for late filing of tax returns – Schedule 55 Finance Act 2009 –  
Penalty for late payment of tax – Schedule 56 Finance Act 2009 – Did taxpayer have a  
reasonable excuse – Application for permission to make a late appeal*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Appeal number: TC/2020/00872**

**BETWEEN**

**SARAH-JANE BRADISH**

**Appellant**

**-and-**

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

**Respondents**

**TRIBUNAL: JUDGE ROBIN VOS**

The Tribunal determined the appeal on 6 August 2020 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 27 February 2020 (with enclosures), HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 2 June 2020, the Appellant's Reply dated 11 June 2020 (with enclosures) and a bundle of documents/correspondence produced by the Respondents.

## DECISION

### INTRODUCTION

1. This is a case where the Appellant, Ms Bradish has been charged penalties totalling £4,950 for the late filing of tax returns and the late payment of tax.
2. The late filing penalties relate to the tax years ended 5 April 2015, 5 April 2016 and 5 April 2017. The late payment penalties relate to the tax year ended 5 April 2016.
3. All of these defaults are connected with Ms Bradish's liability to the higher income child benefit charge which was introduced in 2013. It is this which prompted HMRC to require Ms Bradish to start filing self-assessment tax returns.
4. Ms Bradish appealed against all of the penalties she has been charged on the basis that she has a reasonable excuse for the failures. However, her appeal to HMRC was made outside the statutory time limit. She has therefore applied to the Tribunal for permission to make a late notification of her appeals. If the Tribunal gives permission, HMRC is content for the Tribunal to determine the underlying appeal against the penalties themselves rather than leaving it to HMRC to consider those appeals and for Ms Bradish then to have to make a further appeal to the Tribunal if HMRC were to reject the appeals.

### BACKGROUND FACTS

5. HMRC issued Ms Bradish a notice requiring her to file a tax return for the tax year ended 5 April 2015 on 20 August 2015. Notices requiring Ms Bradish to file tax returns for the tax year ended 5 April 2016 and 5 April 2017 were sent to her on 6 April 2016 and 6 April 2017 respectively.
6. The deadline for filing the tax return for the tax year ended 5 April 2015 was 27 November 2015. The time limit is normally three months after the date of the notice to file if this expires after 31 October following the end of the tax year (see s 8(1E) Taxes Management Act 1970) but HMRC's practice is to allow an extra seven days for postage. As the returns were submitted in paper form, the deadline for the following two years was 31 October after the end of the tax year (see s 8(1D)(a) Taxes Management Act 1970).
7. On 3 December 2015, Ms Bradish contacted HMRC. During that call she was told that she needed to complete a tax return for the year ended 5 April 2015.
8. On 17 February 2016, HMRC issued an initial late filing penalty of £100 in respect of the tax return for the year ended 5 April 2015.
9. Further penalties for the late filing of the tax return for the year ended 5 April 2015 totalling £1,200 were issued on 12 August 2016.
10. A final penalty of £300 in respect of the late filing of the tax return for the year ended 5 April 2015 was issued on 21 February 2017.
11. The first late filing penalty for the year ended 5 April 2016 was issued on 28 February 2017.
12. Ms Bradish called HMRC again on 4 August 2017 and was told that the letters she kept receiving related to penalties issued by HMRC and that she needed to submit her tax returns for the tax years ended 5 April 2015 and 5 April 2016. In order to assist her, HMRC sent her paper tax returns to complete for these tax years and also for the tax year ended 5 April 2017.
13. Further penalties for the late filing of the tax return for the year ended 5 April 2016 totalling £1,200 were issued on 11 August 2017.

14. On 13 February 2018, the first late filing penalty of £100 for the tax year ended 5 April 2017 was issued. This was followed shortly afterwards on 20 February 2018 by the final late filing penalty of £300 for the tax year ended 5 April 2016.
15. HMRC issued further late filing penalties in respect of the tax year ended 5 April 2017 on 31 July 2018, 10 August 2018 and 19 February 2019.
16. Between March 2016 and March 2018, HMRC sent Ms Bradish self-assessment statements showing the late filing penalties which had been issued approximately every six months.
17. On 13 November 2018, Ms Bradish telephoned HMRC once again and was advised of the need for her to submit her tax returns.
18. Ms Bradish submitted paper tax returns for all three years on 11 February 2019.
19. On 1 March 2019, HMRC received an appeal from Ms Bradish against a penalty which had previously been charged in respect of her failure to notify HMRC of her liability to tax in respect of the higher income child benefit charge. This appeal did not relate to the late filing and late payment penalties which are the subject of this appeal.
20. Once the tax returns had been processed by HMRC, they issued late payment penalties in respect of the tax year ended 5 April 2016 totalling £150. These penalties were issued on 12 March 2019. Presumably the reason there are no late payment penalties for the other two tax years is that Ms Bradish had no tax liability (over and above what had been collected through PAYE) in respect of those tax years.
21. On 2 October 2019 Ms Bradish wrote to HMRC appealing against all of the late filing and late payment penalties. HMRC rejected the appeals on 28 January 2020 as the appeals had been made out of time. As a result, Ms Bradish lodged her appeal/application with the Tribunal on 27 February 2020.

#### **LATE APPEAL**

22. Any appeal to HMRC against the penalty assessments must be made within 30 days of the date of the assessment (s 31A Taxes Management Act 1970). Both HMRC and the Tribunal have discretion to extend the relevant time limit (s 49(2) Taxes Management Act 1970).
23. As HMRC have explained in their Statement of Case, the approach which the Tribunal should take in deciding whether to give permission to make a late appeal is set out in the decision of the Upper Tribunal in *Martland v HMRC* [2018] UKUT 0178 (TCC) at [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’), 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 on to 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.”
24. The Upper Tribunal also makes the point at [45] that the 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.”
25. The Upper Tribunal however cautions at [45] that:  
“The FTT’s role is to exercise judicial discretion taking account of all relevant factors, not to follow a checklist.”
26. As far as the underlying merits of any appeal are concerned, the Upper Tribunal observed at [46] that:  
“The FTT can have regard to any 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.”
27. As it happens, in this case, a consideration as to whether or not permission to make a late appeal should be granted covers much of the same ground as the Tribunal would need to consider in order to determine whether Ms Bradish has a reasonable excuse for her failure to submit the tax returns on time. It therefore makes particular sense in this case to consider the merits of the underlying appeal in deciding whether to grant permission to appeal.
28. Looking first at the length of the delay, HMRC submit that this is both serious and significant. The appeal against the oldest penalty is over 3½ years late. The appeal against the latest penalty is over six months late.
29. In this context, HMRC refer to the comment of the Upper Tribunal in *Romasave (Property Services) Limited v HMRC* [2015] UKUT 0254 (TCC) at [96] that:  
“In 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.”
30. Moving on to the reasons for the delay, Ms Bradish has put forward a number of factors which she would like the Tribunal to consider:
- (1) She is a single mother looking after her 11 year old son.
  - (2) During the relevant period she had various medical conditions requiring treatment.
  - (3) Ms Bradish also had caring responsibilities for her elderly grandparents who were both unwell.
  - (4) She had previously always paid tax under PAYE and had not been required to submit a self-assessment tax return. She found it difficult to understand the reasons for and the process of submitting self-assessment tax returns, particularly given the facts

mentioned above. Every time she tried to discuss the matter with HMRC, she was told something different.

31. As far as other factors are concerned, HMRC submit that it is important for time limits to be respected, noting the observation of the Upper Tribunal in *Martland* at [34] that:

“The purpose of the time limit is to bring finality, and that is a matter of public interest, both from the point of view of the taxpayer in question and that of the wider body of taxpayers.”

32. HMRC go on to say that allowing late appeals impacts on the allocation of HMRC’s resources and, in turn, therefore impacts on the wider administration of the tax system. They also suggest that late appeals are normally more resource intensive to defend and can create issues in obtaining evidence to show that penalties were correctly charged and so impose a greater burden on HMRC.

33. HMRC accept that, if the Tribunal refuses to give permission to make a late appeal, Ms Bradish will be prevented from challenging the penalties. However, they submit that this prejudice should not outweigh the other factors.

34. Turning to the points put forward by Ms Bradish, HMRC express the view that these do not constitute a reasonable excuse for the failures and that this should be taken into account in determining whether permission to make a late appeal should be granted.

35. I should first of all make it clear that the test for granting permission to make a late appeal and the question as to whether Ms Bradish has a reasonable excuse for the underlying failures which have led to the penalties against which she appeals are two different questions.

36. In relation to the question as to whether permission should be granted for Ms Bradish to make a late appeal, the Tribunal must weigh up all of the relevant circumstances. Any consideration as to whether or not Ms Bradish has a reasonable excuse for the underlying failures is more limited in the sense that the Tribunal is considering only the objective question as to whether Ms Bradish acted in the way in which a reasonable taxpayer, intending to comply with their obligations would have acted in all the circumstances.

37. However, as part of the balancing exercise, in deciding whether to grant permission to make a late appeal, it is relevant to consider the reasons for the delay. In this case, the reasons for the delay in making the appeal are essentially the same reasons as Ms Bradish puts forward as being a reasonable excuse for her failure to submit her tax returns on time and to pay her tax on time.

38. Although I can understand that Ms Bradish was no doubt under pressure as a result of her medical conditions, her need to hold down her job and the caring responsibilities she had for her child and her grandparents, these do not, in my view, constitute good reasons for failing to appeal against the penalties within the statutory time limit.

39. From February 2016 onwards, Ms Bradish received regular communications from HMRC telling her that penalties have been charged. HMRC have produced pro forma copies of the penalty notices which make it clear that a taxpayer has a right of appeal against the penalty and that the right of appeal must be exercised within 30 days. Between February 2016 and March 2019, Ms Bradish received a total of 15 separate penalty notices and yet she took no action to appeal against any of these penalties until October 2019.

40. In addition, Mr Bradish did appeal against a completely separate penalty on 1 March 2019. She must have known when she made this appeal that she was not appealing against any of the other penalties. However, even if she did think that, in March 2019, she was appealing

against all of the penalties, it still does not explain the reason for the delay in appealing against those penalties.

41. As HMRC point out, it is clear that Ms Bradish was able to continue to work throughout the relevant period. In those circumstances, it would be reasonable to expect Ms Bradish to be able to find the time to appeal against the penalties which were being charged much sooner than she did.

42. HMRC records show that Ms Bradish called HMRC on 13 November 2018 and was advised not only to submit her tax returns but was also advised of the appeal process. This presumably refers to the process for appealing against penalties. It is recorded that the call was specifically in relation to the higher income child benefit charge and so the advice in relation to the appeal process may have been only in relation to the failure to notify penalty against which Ms Bradish appealed on 1 March 2019. However, even if this related to appealing against all of the penalties and even if Ms Bradish thought that her appeal on 1 March 2019 covered all of the penalties, there is no explanation as to why it took from 13 November 2018 to 1 March 2019 to lodge any appeal, a delay of over three months.

43. Ms Bradish says that she contacted HMRC numerous times and that she was given different information, including that she could appeal at any time. Technically, it is of course right as HMRC have discretion to accept a late notice of appeal. However, given that Ms Bradish was receiving regular penalty assessments which clearly stated that there was a 30 day time limit for appealing, this does not, in my view, provide a good reason for not making any appeal until 2 October 2019.

44. Looking at the other factors, I do not accept that, in this particular case, there is any significant prejudice to HMRC if permission to make a late appeal is granted given that they have already produced all of the evidence and submissions which are required in relation to the underlying appeal.

45. On the other hand, as HMRC point out, there would potentially be prejudice to Ms Bradish if she is not allowed to pursue her appeal as she will have to pay the penalties without the opportunity of challenging them.

46. In this context it is relevant to look at the relative strength or weakness of Ms Bradish's appeal. In my view, she has no realistic prospect of persuading a tribunal that she has a reasonable excuse for her failure to submit her tax returns on time and to pay her tax on time.

47. The reasons for this are essentially the same as the reasons why her failure to submit timely appeals against the penalties is difficult to justify.

48. The points put forward as a reasonable excuse are those mentioned in paragraph 30 above. However, whilst these may have put pressure on Ms Bradish and limited the time which she had available to attend to her tax affairs, it is clear that none of the reasons she has put forward actually prevented her from submitting her tax returns on time or alternatively from arranging for someone else to do so on her behalf.

49. Whilst Ms Bradish may not have understood why she was required to submit a tax return or why she might have been liable for the higher income child benefit charge, there cannot have been any doubt in her mind that she had been required by HMRC to submit tax returns as she had received notices requiring her to do so and had been told on a number of occasions in her calls with HMRC that she needed to do so.

50. The reasons she has put forward justifying this failure over a prolonged period of time cannot, on any basis, constitute a reasonable excuse for that failure. It may be that some of the reasons put forward might justify a short delay in submitting tax returns at particular times,

such as when she was undergoing medical procedures or things were particularly difficult with her grandparents. However, they cannot excuse the ongoing failure to submit the tax returns bearing in mind that, as mentioned by HMRC, any reasonable excuse must continue throughout the whole of the period of default.

51. Turning to the penalties for the late payment of tax, it is quite clear that the only reason for the late payment of tax is that, as Ms Bradish had not submitted her tax return for the year ended 5 April 2016 until February 2019, she did not know at the relevant time that there was any tax due. On the basis that the reasons put forward by Ms Bradish do not constitute a reasonable excuse for the failure to submit the tax return on time, they also cannot constitute a reasonable excuse for the failure to pay the tax on time as that failure is directly linked to the failure to submit the tax return.

52. As the Upper Tribunal observed in *Martland* at [44], the starting point is that permission should not be granted unless the FTT is satisfied on balance that it should be. The Upper Tribunal in *Romasave* went further saying at [96] that permission to appeal out of time “should only be granted exceptionally, meaning that it should be the exception rather than the rule and not granted routinely”.

53. Weighing up all the factors in this case, my conclusion is that permission to make a late appeal should not be granted. without repeating all of the points I have discussed above, the main reasons for this are as follows:

- (1) the delay in this case is extremely long;
- (2) although Ms Bradish has put forward reasons for the delay, for the reasons I have explained they are not in my view persuasive in the sense of justifying the significant delay that has taken place;
- (3) although there is no real prejudice to HMRC if permission to appeal is granted, there is, in reality, also little prejudice to Ms Bradish given the weakness of her case on the underlying merits of the appeal.

54. The reality is that Ms Bradish should have taken action much sooner to appeal against the penalties just as she should have filed her tax returns much sooner than she did. The penalties have arisen because she failed to give these matters the priority which they deserved and, in those circumstances, she cannot really complain that the penalties have been charged.

## **CONCLUSION**

55. Permission for Ms Bradish to notify her appeals against all of the penalties in question is refused. There is therefore no valid appeal. This brings the proceedings to an end.

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

56. 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.

**ROBIN VOS**

**TRIBUNAL JUDGE**

**RELEASE DATE: 11 AUGUST 2020**