



[2022] UKFTT 00019 (TC)

TC 08372

LATE APPEAL – Martland considered – length of delay is serious and significant – no good reason for delay – in all the circumstances, extension of time not justified – application refused

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2019/06701

BETWEEN

MR IAN JONES

Appellant

-and-

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

Respondents

**TRIBUNAL: JUDGE NEWSTEAD TAYLOR
SONIA GABLE**

The hearing took place on 25 November 2020. With the consent of the parties, the form of the hearing was video with the parties attending through the Tribunal video platform. A face to face hearing was not held because of the ongoing Covid 19 pandemic and social distancing guidance.

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.

Mr Paul Flynn, a partner at Whitnalls, for the Appellant

Ms Tracy Gibson, litigator of HM Revenue and Customs’ Solicitor’s Office, for the Respondents

DECISION

INTRODUCTION

1. This is an application (“the Application”) by the Appellant for permission to appeal out of time against:

(1) 8 late filing penalties (“LFPs”) issued under Schedule 55 to the Finance Act 2009 (“the FA09”) for failure to make or deliver a Self-Assessment Individual Tax Return (“TR”) for each of the tax years 2015/16, 2016/17 and 2017/18, and

(2) 8 late payment penalties (“LPPs”) issued under Schedule 56 FA09 for failure to make payments by their respective due dates.

2. The Respondents oppose the Application under S.49 Taxes Management Act 1970 (“TMA 1970.”)

BACKGROUND

3. On 13 October 1996, the Appellant entered Self-Assessment (“SA”) – Heating Installations (“the Business.”)

4. In March 2016, the Appellant’s grandson was diagnosed with leukaemia.

5. In April 2016, the Appellant suffered six heart attacks. He was initially treated at Arrow Park Hospital and then transferred to Liverpool Heart & Chest Hospital.

6. On 6 April 2016, the Notice to File a TR for the 2015/16 tax year was issued. The due dates for filing were either 31 October 2016 for a paper return or 31 January 2017 for an internet return.

7. In late April or early May 2016, the Appellant underwent a heart operation. He remained in hospital for one week. Once discharged, he was required to attend St Catherine’s Hospital once a week for a period of 6 months. After 6 months, save for continuing to take medication, he received no further treatment in respect of the heart attacks.

8. Following the heart attacks, the Appellant experienced difficulties with his memory. He addressed this by writing things down so that he did not forget them. He also experienced what he described as mental health difficulties which lasted for 6 – 12 months. During this period, he was very worried about putting any strain on his heart. However, he did not consult his GP and he did not receive any treatment in respect of these difficulties.

9. In or around late June or early July 2016, the Appellant resumed his administrative role in the Business. This involved booking in the work which his son then undertook, dealing with the post and liaising with Mr Flynn. The Appellant, through his administrative role, was aware of the notices to file the TRs and the notices concerning the penalties. He gave the notices concerning the penalties to the accountant. He understood that the accountant would deal with the matter. He took no further steps in regard to the penalties.

10. The Appellant’s tax liability for the 2015/16 tax year of £5,822.86 was due to be paid on or before 31 January 2017. It remains unpaid.

11. On or around 7 February 2017, the Respondents issued to the Appellant a notice of penalty assessment in the sum of £100 in respect of the tax year 2015/16 pursuant to paragraph 3, Schedule 55 FA09.
12. On 6 April 2017, the Notice to File a TR for the 2016/17 tax year was issued. The due dates for filing were either 31 October 2017 for a paper return or 31 January 2018 for an internet return.
13. On or around 11 August 2017, the Respondents issued to the Appellant the following notices:
 - (1) A notice of daily penalties in the sum of £900, calculated at £10 per day for 90 days, in respect of the 2015/16 tax year pursuant to paragraph 4, Schedule 55 FA09.
 - (2) A notice of penalty assessment in the sum of £300 in respect of the 2015/16 tax year pursuant to paragraph 5, Schedule 55 FA09.
14. On 31 January 2018, being 365 days late, the Appellant's 2015/16 TR was filed.
15. The Appellant's tax liability for the 2016/17 tax year of £4,699.73 was due to be paid on or before 31 January 2018. It remains unpaid.
16. On or around 13 February 2018, the Respondents issued to the Appellant a notice of penalty assessment in the sum of £100 in respect of the tax year 2016/17 pursuant to paragraph 3, Schedule 55 FA09.
17. On or around 20 February 2018, the Respondents issued to the Appellant the following notices of penalty assessment:
 - (1) A 30-day LPP in the sum of £291 in accordance with paragraph 3(2), Schedule 56 FA09.
 - (2) A 6-month LPP in the sum of £291 in accordance with paragraph 3(3), Schedule 56 FA09.
 - (3) A 12-month LPP in the sum of £291 in accordance with paragraph 3(4), Schedule 56 FA09.
18. On 6 April 2018, the Notice to File a Self-Assessment Tax Return for the 2017/18 tax year was issued. The due dates for filing were either 31 October 2018 for a paper return or 31 January 2019 for an online return.
19. On or around 31 July 2018, the Respondents issued to the Appellant a notice of daily penalties in the sum of £900, calculated at £10 per day for 90 days, in respect of the 2016/17 tax year pursuant to paragraph 4, Schedule 55 FA09.
20. On or around 10 August 2018, the Respondents issued to the Appellant a notice of penalty assessment in the sum of £300 in respect of the 2016/17 tax year pursuant to paragraph 5, Schedule 55 FA09.
21. On 30 January 2019, being 364 days late, the Appellant's 2016/17 TR was filed.
22. The Appellant's tax liability for the 2017/18 tax year of £6,963.14 was due to be paid on or before 31 January 2019. It remains unpaid.
23. On 19 February 2019, the Respondents issued to the Appellant the following notices of penalty assessment:

- (1) A 30-day LPP in the sum of £234 in accordance with paragraph 3(2), Schedule 56 FA09.
 - (2) A 6-month LPP in the sum of £234 in accordance with paragraph 3(3), Schedule 56 FA09.
 - (3) A 12-month LPP in the sum of £234 in accordance with paragraph 3(4), Schedule 56 FA09.
24. On or around 26 March 2019, the Respondents issued to the Appellant a notice of penalty assessment in the sum of £100 in respect of the tax year 2017/18 pursuant to paragraph 3, Schedule 55 FA09.
25. On 1 July 2019, being 150 days late, the Appellant's 2017/18 TR was filed.
26. On or around 2 July 2019, the Respondents issued to the Appellant:
- (1) A notice of daily penalties in the sum of £900, calculated at £10 per day for 90 days, in respect of the 2017/18 tax year pursuant to paragraph 4, Schedule 55 FA09.
 - (2) A 30-day LPP in the sum of £348 in accordance with paragraph 3(2), Schedule 56 FA09.
27. On or around 27 August 2019, the Respondents issued to the Appellant a 6-month LPP in the sum of £348 in accordance with paragraph 3(3), Schedule 56 FA09.
28. On 11 September 2019, Whitnalls appealed to the Respondents against the 8 LFPs and the 8 LPPs imposed on the Appellant for the tax years 2015/16, 2016/17 and 2017/18.
29. On 9 October 2019, the Respondents rejected the Appellant's appeals against both the LFPs and the LPPs. The Respondents noted that the appeals were each outside the 30-day legislative time frame to bring an appeal, s.31A (1) TMA. The Respondents informed the Appellant that a late appeal could only be accepted if (i) the Appellant had a reasonable excuse for not appealing within the time limit and (ii) the Appellant appealed without unreasonable delay after the excuse ended. The Respondents invited the Appellant, if he thought he had a reasonable excuse, to write to the Respondents setting out the reasons for the delay. Also, the Respondents informed the Appellant that he had until 8 November 2019 to ask the Tribunal to review the case.
30. On 22 October 2019, the Appellant filed his Notice of Appeal ("NOA") seeking permission to make a late appeal to the Respondents against the LFPs and LPPs.
31. On 30 October 2019:
- (1) The parties were informed that the appeal had been assigned to proceed under the 'basic' category.
 - (2) The Appellant was notified that if he intended to rely on any documents not previously sent to the other party then copies had to be sent to the Tribunal and HMRC within 14 days of the letter and, in default, the Tribunal may refuse permission to rely on them at the hearing
 - (3) The Respondents was directed to produce a bundle of documents and authorities, to be provided to the Tribunal and the Appellant no later than 14 days before the hearing.

32. On 16 January 2020, Judge Rankin heard the Application. Neither the Appellant nor his representative attended the hearing. Judge Rankin dismissed the Application. However, in view of an email subsequently received from Mr Jones' agent, Judge Rankin set aside that decision pursuant to paragraphs 38 (2) (d) and 38 (4) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009.

33. On 11 November 2021, the Respondents notified the Tribunal that they opposed the Application.

THE APPELLANT'S SUBMISSIONS

34. In the NOA, the Appellant's agent stated that:

(1) The Appellant was appealing against the late filing of his TR. He had appealed to the Respondents and had been informed that his appeal was late. He was "... *applying to be allowed to make a late appeal to HMRC.*"

(2) The appeal was in time.

(3) "*Our client suffered a series of heart attacks in May 2016 which resulted in him having an operation and ongoing hospital treatment which led to the delay in filing of his 2016 to 2018 Tax Returns and payment of taxes arising. Our client's grandson has suffered from leukaemia during this period and all of the aforementioned matters led to delays with filing Returns and payment of taxes. In light of the above we should be grateful if you could review the late filing and late payment penalties imposed on the Self Assessment record [illegible] If you require documentary evidence in support of the above matters please advise what records you would like us to forward in support.*"

35. At the hearing, the Appellant accepted that the Penalties had been correctly issued. He stated that serious health issues were the reason for the late appeals. He had not filed any witness statements in support of the Application, but he had adduced two pages of medical records. These medical records were limited and did not appear to accord with the Appellant's summary of his medical condition at the relevant time. With the agreement of both parties, we permitted the Appellant to give evidence, specifically as to his medical condition at the relevant time, and the respondent was given the opportunity to ask questions of the Appellant, albeit no questions were asked.

36. The Appellant told us that:

(1) The ill health reasons that led to the cancellation of the Appellant's penalties for the tax years 2013/14 and 2014/15 were:

(a) Spinal problems caused by a road traffic accident that occurred sixteen years earlier.

(b) Gastroenterological difficulties that occurred in 2014.

(2) In March 2016, his grandson was diagnosed with leukaemia. The toll on the Appellant was horrendous especially because he had lost an adopted son to leukaemia. The Appellant was not involved directly in his grandson's care as this was undertaken by the Appellant's son.

- (3) In April 2016, the Appellant suffered 6 heart attacks. Initially, he was treated at Arrow Park Hospital.
- (4) In late April / early May 2016, the Appellant underwent surgery at the Liverpool Chest & Heart Hospital to insert stents. He was discharged from hospital after one week.
- (5) Once discharged, the Appellant was required to attend St Catherine's Hospital once a week for 6 months to learn about medication and exercise.
- (6) Following the heart attacks, the Appellant experienced difficulties with his memory which he addressed by writing things down so as not to forget them. He also experienced what he described as mental health difficulties that lasted for 6-12 months. In particular, he was nervous about putting a strain on his heart. He did not consult a GP about these difficulties. The Appellant's agent confirmed that he had only recently been informed of the Appellant's mental health difficulties.
- (7) A couple of months after his heart attacks, the Appellant returned to his administrative role in the Business. He was able to carry out this role regardless of his memory and mental health difficulties. He has continued in this role ever since. This role involves him booking in the work, dealing with the post and liaising with Mr Flynn of Whitnalls.
- (8) After 6 months, save for ongoing medication, the Appellant received no further treatment for his heart attacks.
- (9) The Appellant was probably, albeit he was unsure, aware of the notices to file the TRs. He was also aware of the notices concerning the penalties which he passed to his accountant to be dealt with. The Appellant took no further steps to deal with the penalty notices. He left the matter in the hands of his accountant. He was unconcerned by the reminders he received from the respondent about the penalties.

HMRC'S SUBMISSIONS

37. The Respondents made the following submissions:

- (1) The Respondents accept that the Appellant's appeal against the 6-month LPP for the tax year 2017/18 in the sum of £348 was in time. The Respondents informed the Tribunal that this LPP would be dealt with by HMRC and the Tribunal could proceed on the basis that the total of the penalties outstanding for the tax year 2017/18 was £1,068, being £1,416 less £348.
- (2) The appeals to the Respondents were made considerably late. Specifically, they were made outside the 30-day time frame set down by s.31A (1) Taxes Management Act 1970 ("TMA 1970.") The appeals are opposed under s.49 TMA 1970.
- (3) The Appellant had been in the SA system for many years, specifically since 13 October 1996. He should have known about the importance of filing returns and paying tax within the relevant deadlines and the possibility of penalties for failing so to do.
- (4) TRs were correctly issued in the normal cycle and were not completed and returned by their respective due dates, s.8 (1D) TMA 1970.
- (5) The delay is serious and significant. The appeals to HMRC are over 2 years and 6 months late. The appeals to the Tribunal are over 2 years and 7 months late.

(6) As to the reasons for the delay, the Appellant has not provided a reasonable excuse for his lateness. In particular, HMRC submitted that the Appellant had sufficient time between issuing the Penalty and his medical appointments to appeal or ask his agent to appeal the penalties.

(7) As to all the circumstances, HMRC contended that if the late appeals were allowed to proceed then they would be prejudiced in that matters which HMRC considered closed some time ago would be reopened which would diminish the finality of litigation and undermine HMRC's ability to make such decisions in the future.

LAW

38. Pursuant to S.8 (1) TMA 1970, taxpayers within the SA system are required, by notice, to make and deliver a TR along with such accompanying information as may be reasonably required.:

“(1) For the purpose of establishing the amounts in which a person is chargeable to income tax and capital gains tax for a year of assessment, [and the amount payable by him by way of income tax for that year,] he may be required by a notice given to him by an officer of the Board

(a) to make and deliver to the officer, a return containing such information as may reasonably be required in pursuance of the notice, and

(b) to deliver with the return such accounts, statements and documents, relating to information contained in the return, as may reasonably be so required.”

39. S.8 (1D) TMA 1970 determines the filing date for the TR as follows

“(1D) A return under this section for a year of assessment (Year 1) must be delivered

(a) in the case of a non-electronic return, on or before 31st October in Year 2, and

(b) in the case of an electronic return, on or before 31st January in Year 2.”

40. Payment is due in accordance with S.59B (1 & 4) TMA 1970 as follows:

(1) Subject to subsection (2) below, the difference between

(a) the amount of income tax and capital gains tax contained in a person's self-assessment under section 9 of this Act for any year of assessment, and

(b) the aggregate of any payments on account made by him in respect of that year (whether under section 59A [of this Act or under Schedule 2 to the Finance Act 2019] or otherwise) and any income tax which in respect of that year has been deducted at source,

shall be payable by him or (as the case may be) repayable to him as mentioned in subsection (3) or (4) below [but nothing in this subsection shall require the repayment of any income tax treated as deducted or paid by virtue of section...246D(1) of the principal Act [, section 626 of ITEPA 2003 or section 399(2)14 or... 530(1) of ITTOIA 2005]...

- (4) *In any other case, the difference shall be payable or repayable on or before the 31st January next following the year of assessment.*”

41. Paragraph 1 (1 & 4) of Schedule 55 FA09 defines ‘filing date’ and ‘penalty date’ as follows:

“1 (1) *A penalty is payable by a person (“P”) where P fails to make or deliver a return, or to deliver any other document, specified in the Table below on or before the filing date...*

(4) *In this Schedule—*

“filing date”, in relation to a return or other document, means the date by which it is required to be made or delivered to HMRC;

“penalty date”, in relation to a return or other document [falling within any of items 1 to 3 and 5 to 13 in the Table], means the date on which a penalty is first payable for failing to make or deliver it (that is to say, the day after the filing date)...”

42. Paragraphs 3 Schedule 55 FA09 provides that if P fails to submit his TR by the filing date he “... *is liable to a penalty under this paragraph of £100*” for each tax year.

43. Paragraphs 4 Schedule 55 FA09 applies where a TR has still not been received 3 months after the penalty date and provides that:

“4 (1) *P is liable to a penalty under this paragraph if (and only if)—*

(a) *P's failure continues after the end of the period of 3 months beginning with the penalty date,*

(b) *HMRC decide that such a penalty should be payable, and*

(c) *HMRC give notice to P specifying the date from which the penalty is payable.*

(2) *The penalty under this paragraph is £10 for each day that the failure continues during the period of 90 days beginning with the date specified in the notice given under sub-paragraph (1)(c).*

- (3) *The date specified in the notice under sub-paragraph (1)(c)—*
- (a) *may be earlier than the date on which the notice is given, but*
- (b) *may not be earlier than the end of the period mentioned in sub-paragraph (1)(a)."*

44. Paragraphs 5 Schedule 55 FA09 applies where a TR has still not been received 6 months after the penalty date and provides that:

- "5 (1) *P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 6 months beginning with the penalty date.*
- (2) *The penalty under this paragraph is the greater of—*
- (a) *5% of any liability to tax which would have been shown in the return in question, and*
- (b) *£300."*

45. Pursuant to paragraph 3 of Schedule 56 FA09 the following penalties arise:

- (1) First, in accordance with paragraph 3 (2) of Schedule 56 FA09 "*...P is liable to a penalty of 5% of the unpaid tax.*"
- (2) Second, in accordance with paragraphs 3 (3) of Schedule 56 FA09 "*... If any amount of the tax is unpaid after the end of the period of 5 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.*"
- (3) Third, in accordance with paragraphs 3 (4) of Schedule 56 FA09 "*...If any amount of the tax is unpaid after the end of the period of 11 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.*"

46. Paragraph 20 of Schedule 55 FA09 and paragraph 13 of Schedule 56 FA09 provide P with a right of appeal to HMRC against (i) a decision that a penalty is payable and (ii) the amount of that penalty.

47. S.31A (1) TMA 1970 stipulates that "*Notice of an appeal under section 31 of this Act must be given (a) in writing, (b) within 30 days after the specified date, (c) to the relevant officer of the Board.*"

48. S.49 TMA 1970 provides as follows in respect of the late notice of an appeal:

- "(1) This section applies in a case where*
- (a) *notice of appeal may be given to HMRC,*
- (b) *but 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).”

49. Further, Rule 20 (4) of the Tribunal Rules states that:

“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.”

50. In **Martland v HMRC [2018] UKUT 178 (TCC)**, the Upper Tribunal held at paragraph 44 that when considering applications for permission to appeal out of time the Tribunal can follow the three-stage process established in **Denton and Ors v TH White Limited and Ors [2014] EWCA Civ 90**:

“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 & CONCLUSIONS:

51. The first stage of the **Denton** process is to establish the length of the delay(s) which involves identifying the breach(es). Thereafter, we are required to assess the seriousness and significance of those breach(es). The breaches in question are the Appellant’s failures to file appeals against the LFPs and the LPPs within the statutory deadline. The Appellant should have filed his appeals with HMRC as set out in the following tables:

Year	Penalty Issued date	Description	Amount	Penalty Due date	Appeal rec. to HMRC 11 Sep 19	Appeal rec. to Tribunal 22 Oct 19
2015/16	07/02/17	LFP	100.00	09/03/17	915 day late (2yrs.6m. 2d)	956 days late (2y.7m.13d)
2015/16	11/08/17	Daily Penalty	900.00	10/09/17	731 day late (2yrs 1d)	772 days late (2y.1m. 13d)
2015/16	11/08/17	6mh LFP	300.00	10/09/17	731 day late (2yrs. 1d)	772 days late (2y.1m. 13d)
2015/16	20/02/18	30 day LPP	291.00	22/03/18	537 day late (1yr,5m.2w. 6d)	578 days late (1y. 7mth)

2015/16	20/02/18	6mth LPP	291.00	22/03/18	537 day late (1yr, 5m,2w 6d)	578 days late (1y. 7m)
2015/16	20/02/18	12mth LPP	291.00	22/03/18	537 day late (1y, 5m.2w 6d)	578 days late (1y. 7m)
TOTAL			2173.00			

Year	Penalty Issued date	Description	Amount	Penalty due date	Appeal rec to HMRC 11 Sep 19	Appeal received 22 Oct 19
2016/17	13/02/18	LFP	100.00	15/03/18	544 day late (1y.5m,3w 6d)	585 days late (1y. 7m. 7d)
2016/17	31/07/18	Daily Penalty	900.00	30/08/18	377 day late (1y. 1w. 5d)	18 days late (1y.1m 22d)
2016/17	10/08/18	6mth LFP	300.00	09/09/18	367 day late (1y.2d)	408 days late (1y.1m.13d)
2016/17	19/02/19	30 day LPP	234.00	21/03/19	173 day late (5m. 3w)	214 days late (7m 1d)
2016/17	19/02/19	6mth LPP	234.00	21/03/19	173 day late (5m. 3w)	214 days late (7m. 1d)
2016/17	19/02/19	12 mth LPP	234.00	21/03/19	173 day late (5m. 3w)	214 days late (7m. 1d)
TOTAL			2002.00			

Year	Penalty Issued date	Description	Amount	Penalty due date	Appeal rec. to HMRC 11 Sep 19	Appeal received 22 Oct 19
2017/18	26/03/19	LFP	100.00	25/04/19	139 day late (4m. 2w 3d)	180 days late (5m. 27d)
2017/18	02/07/19	Daily Penalty	620.00	01/08/19	41 day late (1m, 1w.3d)	82 days late (2m. 21 d)
2017/18	02/07/19	30 day LPP	348.00	01/08/19	41 day late (1m,1w.3d)	82 days late (2m. 21 d)
TOTAL			1068.00			

52. All of the appeals were filed outside the statutory deadline. In fact, the majority of the appeals were filed significantly outside the statutory deadline. The longest delay is 2 years, 6 months and 2 days in respect of the 2015/16 LFP. All, bar two of the delays, exceed 3 months. The two shortest delays were for 1 month, 1 week and 3 days in respect of the 2017/18 daily penalty and 30-day LPP.

53. We consider that each of the above delays are significant and serious. In reaching this consideration, we have reminded ourselves of the Upper Tribunal's observation in **Romasave (Property Services) Limited [2015] UKUT 254 20 (TCC)** 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.” For the avoidance of doubt, we do not understand the Upper Tribunal’s observation in **Romasave** to mean that a delay of less than three months cannot be described as both serious and significant. We consider that it is a question to be determined on the facts of each case. Whilst we acknowledge that the delays in respect of the 2017/18 daily penalty and 30-day LPP were less than 3 months (being 1 month, 1 week and 3 days respectively), we have concluded that these too were serious and significant.

54. The second stage of the **Denton** process requires the Tribunal to establish the reason or reasons why the default(s) occurred. As to the reason(s), the Appellant refers to and relies on his ill health and the impact on him of his grandson’s ill health. Whilst the Appellant’s medical records do not fully accord with the Appellant’s chronology of his ill health, we accept the Appellant’s evidence, as detailed in paragraphs 36 (1-8) above. However, we do not consider that the reasons relied on by the Appellant constitute good reasons for the late appeals. In reaching this conclusion we rely on the following principal points:

(1) The due dates for the electronic filing of the relevant TRs were: 31 January 2017 for the 2015/16 TR, 31 January 2018 for the 2016/17 TR and 31 January 2019 for the 2017/18 TR.

(2) The LFPs and LPPs were issued between 7 February 2017 and 2 July 2019, as detailed in the tables above, with due dates 30-days later.

(3) In April 2016, the Appellant suffered 6 heart attacks. A couple of months after his heart attacks, the Appellant returned to his administrative role in the Business and has continued in that role ever since. By September 2016, being 6 months after his heart attacks, the Appellant was not receiving any treatment, save for medication, for his heart attacks. Whilst the Appellant experienced and continues to experience difficulties with his memory following the heart attacks, he addressed and addresses these by writing things down so as not to forget them. The Appellant did not contend that his memory difficulties were causative of the late appeals. Also, whilst the Appellant’s mental health difficulties continued until somewhere between September 2016 and the end of March 2017 these did not prevent him continuing in his administrative role. In particular, he was able to book in work, deal with the post, pass the penalty notices to his accountant and liaise with Mr Flynn of Whitnalls. Therefore, the Appellant’s ill health does not constitute a good reason for his failure to appeal the LFPs and LPPs, the first one of which was issued on 7 February 2017 and due on 9 March 2017.

(4) As to his grandson’s ill health, we accept that this would have placed a considerable toll on the Appellant, especially in light of the earlier loss of his adopted son. However, we note both that the Appellant was not involved directly in his grandson’s care and that he was able to return to and remain in his administrative role.

(5) We note that the Appellant handed the penalty notices to his accountant to deal with. No evidence was given as to the communications that passed between the Appellant and his accountant in respect of the penalty notices. Therefore, we do not know why the accountant, if instructed so to do, did not file appeals against the LFPs and LPPs in time and, accordingly, we are unable to conclude that the accountant failed to do so. Further, if, contrary to our conclusion, the accountant did fail to file the appeals in time then we do not consider that the Appellant can distance himself from this failure given that he simply sat back and took no further steps despite continuing to receive reminders from HMRC. We consider that the Appellant did not take all reasonable steps to ensure that the appeals were filed in time or at least much sooner.

55. In summary, whilst we have sympathy for the difficulties the Appellant has suffered, for the reasons given above, we consider that neither the Appellant's ill health nor the impact on him of his grandson's ill health amount, either individually or cumulatively, to a good reason for the late appeals.

56. The third stage of the **Denton** process requires us to consider all the circumstances of the case. This involves a balancing exercise which takes into consideration the merits of the reasons for the delay, the prejudice caused to both parties by granting or refusing permission, the importance of complying with statutory time limits and the need for finality of litigation. In addition, we can have regard to the strengths or weaknesses of the Appellant's case as this goes to the question of prejudice. However, we are not required to conduct an in-depth analysis of the underlying merits.

57. As to all the circumstances of the case, the delays are serious and significant and there is no good reason for them. The Appellant has been in the SA system for many years and should have known about the importance of filing returns and paying tax within the relevant deadlines. Further, in light of his appeals against penalties imposed for the tax years 2013/14 and 2014/15, the Appellant was aware of the time limits involved and the possibility of penalties for failing to file returns and/or pay tax. Statutory time limits are of great importance. They are intended to create certainty by enabling quick and effective determination of appeals and to assist HMRC in collecting and the taxpayer in paying the correct amount of tax. In respect of the prejudice to both parties, if permission is given then the Appellant will be able to proceed with his appeal and the Respondents will be required to reopen matters they considered closed which would impact the finality of litigation. If permission is refused, this will mean that the Appellant will be unable to proceed with his appeal, but it will reinforce the importance of complying with statutory time limits and the finality of litigation. As to the underlying merits, we note that the Appellant relies on the same grounds, being his and his grandson's ill health, as a special circumstance / reasonable excuse in accordance with paragraphs 16 and 23 of Schedules 55 and 56 FA09. For the reasons given in paragraphs 54 (1-4) above, we consider the underlying merits to be weak.

58. We have conducted the required balancing exercise taking into consideration all of these reasons, we have concluded that permission should not be granted and, accordingly, the Appellant's application is refused.

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.

**JENNIFER NEWSTEAD TAYLOR
TRIBUNAL JUDGE**

Release date: 07 JANUARY 2022