



Neutral Citation: [2022] UKFTT 230 (TC)

Case Number: TC08551

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

[By remote video/telephone hearing]

Appeal reference: TC/2021/12519

*Income tax – late filing penalties – application to make late appeal – Martland applies – application refused*

**Heard on:** 11 July 2022  
**Judgment date:** 26 July 2022

**Before**

**TRIBUNAL JUDGE MCGREGOR  
LESLIE HOWARD**

**Between**

**MR TEJ LAWATI**

**Appellant**

**and**

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

**Representation:**

For the Appellant: Mr Darius Burge of Burge and Co Accountants

For the Respondents: Mr Ellis, solicitors office of HMRC

## DECISION

### INTRODUCTION

1. With the consent of the parties, the form of the hearing was V (video) using the Tribunal video platform. A face to face hearing was not held because a short remote hearing was appropriate. The documents to which we were referred are a document bundle of 63 pages and a statement of reasons from HMRC of 38 pages.
2. 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.

### BACKGROUND

3. The appeal made by Mr Lawati related to late filing penalties and late payment penalties issued in respect of the tax years 2017-18 and 2018-19.
4. At the start of the hearing, Mr Burge, on behalf of Mr Lawati withdrew the appeal against the late filing and payment penalties for the 2018-19 year.
5. We were therefore left with late filing penalties (initial, daily, 6 months and 12 months) for 2017-18 only.
6. The question before us was whether to admit the appeal against these penalties out of time.
7. We announced at the hearing that we would not allow the late appeal and that we would follow up with a written decision.

### PARTIES ARGUMENTS

8. Mr Burge, on behalf of Mr Lawati, submitted that:
  - (1) Mr Lawati had not received the notices of penalty;
  - (2) Mr Burge had not received the notices of penalty and only became aware of them when he sought to obtain a refund of tax in relation to the 2019-20 tax year but it was not forthcoming because there were outstanding penalties to pay;
  - (3) Mr Burge had in fact made a mistake in submitting that Mr Lawati had started self-employment in the 2017-18 year, but once he realised he needed to submit that return, he decided to do so rather than speak to HMRC to remove the obligation to file the return;
  - (4) Given there was no tax to pay in respect of 2017-18, it is disproportionate to impose penalties of £1600 for one late return.
9. Mr Ellis submits that we must apply the principles in *Martland v HMRC* [2018] UKUT 0178, in particular:
  - (1) The appeal was received by HMRC on 24 March 2021 and the appeals were between 370 and 698 days late in terms of statutory time limit, depending on which penalty the appeal was against.
  - (2) This level of lateness is both serious and significant when compared with a deadline of 30 days from the notice of penalty;
  - (3) HMRC has issued correspondence to the last known address for Mr Lawati, at all times, including changing the address for correspondence in response to changes submitted by Mr Burge on his behalf;

- (4) Even if Mr Lawati had not received notice of the penalties initially because he had not notified HMRC of his change of address on a timely basis, the summary of his self-assessment position was sent to the correct address on 11 June 2020; the appeal was still not submitted for over a further 8 months;
- (5) Therefore Mr Lawati did not have a good reason for the delay;
- (6) An evaluation of all the circumstances of the case, including:
  - (a) the need to enforce compliance with statutory time limits;
  - (b) the need for litigation to be conducted efficiently and at proportionate cost – HMRC submit that they would be prejudiced because they would have to divert resources to defend an appeal that they were entitled to consider closed; and that other taxpayers would be prejudiced because resources would be diverted away from their appeals (including those that were submitted on time);
  - (c) although the taxpayer would be prevented from bring his appeal at all by such refusal, in HMRC’s view that is insufficient to warrant granting the application when balanced against the other factors; and
  - (d) if the merits of the underlying appeal are to be considered, the merits of the taxpayer’s appeal appear to be weak.

#### **FINDINGS OF FACT**

10. We find the following facts from the bundle of evidence before us and the evidence put forward by Mr Burge as to his own actions:

- (1) Mr Burge submitted a CWF1 form on behalf of Mr Lawati in 2018 which identified a start of self-employment for Mr Lawati on 10 March 2018;
- (2) The tax return for 2017-18 was submitted on 21 March 2021;
- (3) Penalty notices for the late return were issued as follows:
  - (a) Initial late filing on 26 March 2019 to Oaken Copse (see below for explanation of the address)
  - (b) Daily penalties and 6 month filing penalty on 9 August 2019 to Oaken Copse
  - (c) 12 month late filing penalty on 18 February 2020 to St Peter’s Road;
- (4) A self-assessment summary was sent to Mr Lawati at Carmarthen Close on 11 June 2020;
- (5) Mr Burge sent a letter of appeal to HMRC dated 21 March 2021, which referred to the penalties for both tax years 2017-18 and 2018-19;
- (6) The appeals against the 2018-19 penalties were rejected by HMRC on the grounds they were late on 14<sup>th</sup> April 2021 - no mention of the 2017-18 penalties is made in this letter;
- (7) Mr Burge followed up with another appeal letter on 21 April 2021;
- (8) HMRC rejected the appeals against all of the 2017-18 and 2018-19 appeals on 27 September 2021.
- (9) Mr Lawati appealed to the Tribunal on 26 October 2021 (within the 30 day time limit set out in the 27 September 2021 letter).

11. As indicated above, there is some confusion in this case about the relevant address of Mr Lawati.

12. HMRC's records show addresses as follows (we have given limited details in order to protect privacy):

- (1) St Peter's Road for October – November 2017;
- (2) Oaken Copse from November 2017 – December 2019;
- (3) St Peter's Road again for December 2019-March 2020;
- (4) Carmarthen Close from March 2020.

13. HMRC's records show that they recorded the return to St Peter's Road from a second CWF1 form that was submitted online by Mr Burge in December 2019.

14. When challenged, Mr Burge could not recall having made a second CWF1 submission and said he would not have included the St Peter's Road address on any such submission because he knew that Mr Lawati was living at Carmarthen Close from December 2019.

15. We accept Mr Burge's evidence that the address should have changed from Oaken Copse to Carmarthen Close from December 2019 and that therefore the inclusion of St Peter's Road in HMRC's records was a mistake. However, we did not see or hear any evidence that would suggest this was a mistake on HMRC's part, rather we saw evidence of Mr Burge accessing Mr Lawati's online system with HMRC and changing the address.

#### **DISCUSSION AND DECISION**

16. We agree with Mr Ellis that we must follow the guidance of the Upper Tribunal in *Martland v HMRC* [2018] UKUT 0178, which requires us to follow the approach in *Denton v White* [2014] EWCA Civ 90 ("*Denton*") in deciding whether to allow the application requiring HMRC to consider the late appeal.

17. This is to:

- (1) establish the length of the delay and whether it is serious and/or significant;
- (2) establish the reason(s) why the delay occurred; and
- (3) evaluate all the circumstances of the case, using a balancing exercise to 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, and in doing so 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".

18. We agree with HMRC that the delay in making the appeal to HMRC was serious and significant.

19. It is Mr Lawati's burden to show us the reason for that failure. Mr Lawati did not attend the hearing and had not written or dictated any kind of witness evidence and therefore we had nothing other than submissions from Mr Burge to assert that the reason for this lateness was due to lack of notification from HMRC.

20. It was not disputed that a notification was made by Mr Burge to HMRC that Mr Lawati had started self-employment from 10 March 2018. Apart from a comment at the start of the hearing, there had not previously been any suggestion that there should not have been a tax return submitted for tax year 2017-18; and in fact Mr Lawati had submitted such a return, including self-employed income for that year in March 2021.

21. We therefore do not find any good reason in the suggestion that there was a mistake made in the starting period for self-employment.

22. Despite some confusion over the address and a short period (which covered the date of the final 12 month late penalty) where an incorrect address was recorded on HMRC's systems, we find that at least the first three notices of penalties were sent to the correct address and that subsequent correspondence that made clear the existence of such penalties were sent by HMRC to the correct address held on their records.

23. We therefore find that Mr Lawati has not shown any good reason for the delay to making the appeals.

24. Finally, we consider all the other circumstances of the case, including the importance of keeping to time limits and proportionate cost of litigation. We highlight that, by contrast to other cases, this was not a case where HMRC were "on notice" that there was an ongoing dispute about the applicability of the penalties, therefore they would not have been anticipating having to defend this appeal. We do not find anything in the wider circumstances to weigh in Mr Lawati's favour.

25. Therefore we are not persuaded that we should exercise our discretion to allow the late appeal application.

26. We make one final comment. Mr Burge asked us to consider proportionality – highlighting that there was no tax to pay in 2017-18 and therefore penalties amounting to £1600 were disproportionate. This assertion relates to the imposition of the penalties themselves and is therefore not a matter relevant the question of the lateness of the appeal and therefore we have not considered it here. We however highlight the decision of *Barry Edwards* [2019] UKUT 131 (TCC), where the Upper Tribunal found the late filing regime as a whole to be proportionate, finding (paragraph 85):

“The levels of penalty are fixed by Parliament and have an upper limit. In our view the regime establishes a fair balance between the public interest in ensuring that taxpayers file their returns on time and the financial burden that a taxpayer who does not comply with the statutory requirement will have to bear.”

#### **DISPOSITION**

27. For the reasons set out above, we dismiss Mr Lawati's application for the appeals against late filing penalties in 2017-18 to be admitted late.

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

28. 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.

**ABIGAIL MCGREGOR  
TRIBUNAL JUDGE**

**Release date: 26 JULY 2022**