



**TC02641**

**Appeal number: TC/2011/01352**

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**PATRICK WALLACE**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE JOHN WALTERS QC**

Sitting in Chambers on 6 December 2012

Having considered an Application dated 31 July 2012 for the Tribunal to set aside its Decision released on 4 July 2012 striking out the Appellant's appeal by reason of the appeal being made about 2 years and 3 months out of time;

IT IS DIRECTED that

The Tribunal's Decision dated 31 July 2012 will not be set aside for the following Reasons:

## REASONS

1. The Appellant's Application for an extension of time to serve a notice of appeal was heard by the Tribunal in Colchester on 11 June 2012. The hearing was attended by Mr S. Najefy on behalf of the Appellant and Mr M. Ratcliff, on behalf of the Respondents ("HMRC").

2. The Application was refused, as appears in the Decision Notice, on the basis that the Appellant's culpability in delaying lodging his notice of appeal for well over 2 years (for which he and Najefy & Co were 100% responsible) and the prejudice to HMRC in terms of the public interest in good administration and legal certainty in this case outweighed any counterbalancing factor in favour of extending time for the Appellant to bring his appeal (see: the Decision Notice, paragraph 35).

3. By Najefy & Co's Application dated 31 July 2012, it is stated that the Appellant was not provided with HMRC's Statement of Case at any time prior to the date of the hearing and that it was for the first time presented to Mr Najefy at the hearing. That, at least is the gist of what is said in the letter dated 31 July 2012. What is actually stated in the letter is that 'at the hearing HMRC presented our Mr Najefy with a bundle of documents which we were given to understand was HMRC's Statement of Case in the appeal'. The Tribunal will assume for present purposes, but does not find, that the Statement of Case was served late in this way.

4. It is certainly a breach of proper procedure for a Statement of Case to be served out of time. Rule 25(1) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rule 2009 ("the Rules") requires a respondent to send or deliver a statement of case to the Tribunal, the appellant and any other respondent so that it is received (in a Standard case, such as we understand the present appeal to be) within 60 days after the Tribunal sent the notice of appeal (i.e. after the Tribunal gives notice of the proceedings to the respondent in accordance with rule 20(5) of the Rules).

5. Rule 25 provides (at paragraph (4)) that if a respondent provides a statement of case to the Tribunal later than the time required by paragraph (1) or by any extension allowed under rule 5(3)(a) (power to extend time), the statement of case must include a request for an extension of time and the reason why the statement of case was not provided in time.

6. Najefy & Co in their letter dated 31 July 2012 state that their client was dealt with unfairly and in breach of correct procedure at the hearing on 11 June. They state that HMRC were at a distinct advantage in that they came fully prepared with documents which set out their case by reference to statute and case law without their client having had an opportunity to assess their arguments in advance.

7. The Tribunal has also received a letter from the Appellant himself, dated 30 August 2012 stating that Najefy & Co were 'at present in discussions' with HMRC 'to deal with and come to a settlement on this outstanding matter'. He goes on to say that 'as soon as the settlement figure is agreed we will make all necessary payments on behalf of Patrick and Geraldine Wallace without further delay'.

8. The issue for decision by the Tribunal on the Appellant's application for an extension of time was not a technically complicated matter but was essentially a

factual investigation into the nature of and reasons for the delay in lodging the notice of appeal and an assessment of the extent to which the Appellant or his representatives were responsible for the delay, together with a balancing exercise in which prejudice to HMRC from the grant of an extension of time and prejudice to the Appellant from the refusal of an extension of time were weighted against each other.

9. Najefy & Co have not in their letter of 31 July given any specific particulars of why they were of the view that they were prejudiced by the late production of the Statement of Case. Nor have they explained why they did not raise the matter with HMRC long enough before the hearing of the appeal to enable HMRC to cure the defect, or indeed at the hearing of the appeal, to enable the Tribunal to ask Mr Ratcliff for HMRC's side of the story.

10. Without such particulars the Tribunal is unable to conclude that there has been sufficiently serious prejudice to the Appellant to make it right that the Tribunal's Decision should be set aside, nor why the Tribunal should not have granted an extension of time to HMRC to serve the Statement of Case pursuant to rule 5(3)(a) of the Rules. If the Tribunal had not decided to refuse the Application to set the Decision aside, it would have wished to hear representations on the matter from HMRC. The matters considered by the Tribunal at the hearing were essentially matters of fact entirely in the knowledge of the Appellant and Najefy & Co and no matter outside their knowledge was significant as a basis for the conclusion which the Tribunal reached.

11. Furthermore, in view of the contents of the Appellant's letter of 30 August 2012, it appears that the setting aside of the Tribunal's Decision would not achieve anything in terms of practical justice.

12. For these reasons the Appellant's Application to set aside the Decision is refused.

**Right to apply for permission to appeal**

13. 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.

**JOHN WALTERS QC  
TRIBUNAL JUDGE**

**RELEASE DATE: 12 April 2013**

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