



TC04498

Appeal number: TC/2014/00847

Returns submitted late – late appeal against penalties – application to appeal out of time – Taxes Management Act 1970, s31A – Appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MISS EMMA A MURPHY

Appellant

- and -

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

**TRIBUNAL: JUDGE KENNETH MURE, QC
MEMBER: JOHN ADRAIN, M Leg Sc, FCA**

Sitting in public at Wellington House, Glasgow on Tuesday 2 June 2015

Appellant:- Mrs Lesley Murphy with Gerald Murphy (parents of appellant)

Respondents:- Ms Linda McGuigan, Presenting Officer of HMRC

DECISION

Introduction

1. In this appeal Miss Murphy was represented principally by her mother whom
5 she had authorised to appear (appellant's letter dated 20 December 2013). In the
event her interests were supported by both her parents.

2. It is accepted that Miss Murphy submitted her Tax Returns for 2010/11 and
2011/12 late, so incurring penalties. She appealed out of time against the imposition
of the penalties. The Tribunal's task was simply to consider whether the appeal
10 should be allowed to proceed late (HMC & TS's letter of 15 January 2015). The
hearing did not extend to dealing with the substantive merits of the appeal.

The evidence

3. There was before us HMRC's records which set out the timetable of the issuing
of Returns, due dates for submission, and the actual dates when these were received
15 by HMRC, and also the dates of the issuing of notices and penalties. This narrative
was not challenged in any significant respect. Ms McGuigan explained that copies of
the actual notices issued were not preserved and could not be produced. These letters
followed a pro forma style (these were produced) and HMRC maintained records
showing when various notices and other items of correspondence were issued (which
20 records were also produced).

4. It appears that during the material time Miss Murphy had serious health
problems. After exhaustive medical tests these have been diagnosed as endocrinal.
For the most part, her parents conceded, she was able to work and seek work, but her
health difficulties seriously disrupted her life. In particular, while she worked for the
25 most part in London, she received her medical care in Glasgow, where her parents
reside.

5. Unfortunately no medical reports describing Miss Murphy's condition and its
effects on her were produced. This matter was raised in the course of preparation for
this appeal (we note HMRC's letter to the Tribunal Service dated 31 July 2014).
30 Notwithstanding, we think that we can accept her parents' account that these health
considerations did to an extent disrupt the ordinary pattern of her life.

6. The appeal relates to the late submission of two Returns by Miss Murphy. The
Return for 2010/11 was issued on 2 February 2012 and due to be submitted by
9 May 2012. It was received late on 1 September 2013 (Folio 3 p4). The Return for
35 2011/12 was issued on 6 April 2012 and due to be submitted (electronically) by
31 January 2013 or (if on paper) by 31 October 2012. It too was received late on
2 September 2013. We would observe that there was no dispute about tax liability,
and payment of tax, although consequentially late, was met in full.

7. There is produced (Folio 3 p12) a Schedule setting out Notices of Penalty
40 issued, the due and actual dates for appeal, and the length of delays. Also, there is

(Folio 3 p3) a record of Miss Murphy's registration for self-assessment and (p1-2) a record of contact between her and HMRC by telephone and correspondence.

Submissions

5 8. The thrust of Ms McGuigan's argument was that at all material times Miss Murphy was or should reasonably have been aware of her responsibility to complete and submit the Returns timeously. Miss McGuigan stressed that in spite of her health problems during this time it appeared that Miss Murphy was able to work in a responsible job in the financial services industry.

10 9. For employment reasons Miss Murphy had set up her own company in July 2010. She was obliged under FA2008 to notify HMRC of her liability to taxation for 2010/11 by 5 October 2010. That there had been a failure to notify this timeously (Folio 3 p11-10). A 30 day reminder notice had been issued on 11 September 2012 (19), followed by a 60 day "reminder" (18) on 9 October 2012. Comprehensive guidance had been given including reference to a website.

15 10. Significantly Miss Murphy had contacted HMRC by telephone on 15 October 2012 at which stage only a £100 penalty had been imposed. Had she acted then further penalties could have been avoided, Ms McGuigan observed. Because of her failure these further penalties were incurred including penalties for 2011/12. The next "customer contact" which Miss Murphy had with HMRC was at
20 the Stratford Tax Office in July 2013, about nine months later.

25 11. Ms McGuigan observed that 14 penalty notices and six Self-Assessment Statements had been issued to Miss Murphy before she lodged her appeal. These had been sent to her parental home at 27 Boclair Road, Bearsden, Glasgow, which was the address given to HMRC. No items of correspondence had been returned as undelivered.

12. In these circumstances HMRC considered that there was no reasonable excuse for the delay (Folio 2 p2-27). They accepted as a valid Notice of Appeal Miss Murphy's father's letter of 4 February 2014 (Folio 1 p2).

30 13. Ms McGuigan then referred us to the relevant case-law. The 30 day appeal period was prescribed by Section 31A TMA 1970. This can be extended by HMRC under Section 49 if there is a *reasonable excuse*. She acknowledged that the Tribunal may have a greater discretion and she referred us to Rules 2 and 5 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The Tribunal had to act fairly and justly to both parties. She noted in particular the comments of
35 Sir Stephen Oliver in *Ogedegbe* [2009] UKFTT 364 (TC) at para 7 –

“While this Tribunal has got power to extend the time for making an appeal, this will only be granted exceptionally. Moreover, there must be at least an arguable case for making the appeal.”

40 Ms McGuigan referred also to *Data Select Limited* [2012] UKUT 187 (TCC) para 34 where Morgan J indicated that the Tribunal should consider the purpose of the time

limit, the length of any delay, any explanation provided, the consequences of extending time and refusing time. This approach was followed in *Leeds City Council* [2014] UKUT 0350 (TCC).

5 14. In short in the present case while Miss Murphy had certain health problems, these did not render her unfit to work, Ms McGuigan submitted. Also she was able to engage with HMRC on two occasions – by phone in October 2012 and then at a meeting at Stratford in July 2013. Miss Murphy, Ms McGuigan continued, should have been aware of her delay and the consequences in liability to penalties.

10 15. The burden of justifying an extension of time to lodge the Notice of Appeal rested on the appellant and had not been discharged. For these reasons, Ms McGuigan concluded, the appeal should be dismissed.

15 16. In reply on behalf of Miss Murphy her parents submitted that there was a *reasonable excuse* for the delay, and that it arose from her ill-health, and lack of familiarity with the tax complications of taking up work on a self-employed basis. Mr and Mrs Murphy did not dispute the issuing of the penalties and other notices.

20 17. They explained that after a lengthy series of medical tests, Emma’s condition was finally diagnosed as relating to her endocrinal system. She had had to attend hospitals in Glasgow, although she was working in London. She had no family support there. Her medical condition was variable and at stages had been very debilitating.

25 18. Mr and Mrs Murphy explained their concern that the penalties here were about 52% of the tax liability which had been paid. Over £13,000 had been paid in tax, and once assessed it had been settled without delay. They explained that they had experienced problems dealing with several tax offices about essentially one issue. The tax officers to whom they had spoken had seemed to be somewhat confused with the system of self-assessment and penalties.

30 19. The pattern of Emma’s work had been variable, periodic, and had been subject to regular reviews. She worked in the financial services industry, having completed a degree in mathematics and having served various internships. Her parents considered that because of her health problems and the disruption this had caused to her routine, she had been unable to deal with the added stress of handling her tax affairs. They considered that HMRC should have appreciated Emma’s personal difficulties, especially after the face-to-face meeting with her in July 2013.

35 20. For all of these reasons Mr and Mrs Murphy considered that the Notice of Appeal should be allowed late.

Decision

40 21. In reaching our conclusion we appreciate that our discretion may allow a greater leeway than the *reasonable excuse* test prescribed in Section 49 which affects the respondents. However, we consider that we have to pay close attention to the pronouncements of Sir Stephen Oliver, QC and Morgan J noted above. The material

factors which we have to take account of in the present case are in our view the appellant's state of awareness; the length of the delays (from 84 to 543 days); the effect on the appellant of her health problems; and the amount of the penalties. While there was a delay in making payment of the tax due because of the late submission of the Returns, tax was settled thereafter in full.

22. We note as significant that the appellant made direct contact with HMRC by the telephone call in October 2012, at which stage only a £100 penalty had been issued. There was thereafter an extended delay of nine months until the next contact in July 2013 when Miss Murphy visited HMRC's Stratford office. Yet the Returns were not lodged for over a month thereafter on 1 and 2 September 2013.

23. It seems clear that the appellant received albeit at her parents' house the various Notices of penalties and assessments which were issued. (The parental home was the address notified to HMRC.)

24. On the basis of her parents' account Miss Murphy was able to work more or less continuously. While we appreciate that she underwent a series of hospital tests and must have been pre-occupied with her illness, she was "functioning" at such a level as would have enabled her to deal with her tax Returns or at least seek professional advice. While unfamiliar to the appellant, the matters arising do not seem to have been substantial or complex ones. It is nowhere suggested that, during the period of the delay, there were extended periods throughout which Miss Murphy could not have attended to her tax affairs.

25. We appreciate that Miss Murphy was unfamiliar with routine aspects of employment in particular ensuring that full declaration of earnings be made to HMRC, but she is an educated individual. She had set up her own personal service company. Had she pursued the completion and submission of her tax Returns in October 2012, only a nominal penalty would have resulted. In the circumstances we do not consider the amount of the penalties which accrued on a daily basis to be disproportionate.

26. We are not prepared to extend the time for lodging the Notice of Appeal. The application is accordingly refused. Notwithstanding we have a degree of sympathy for Miss Murphy in her predicament. She had serious health concerns which would no doubt have been upper most in her mind.

27. 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.

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KENNETH MURE, QC
TRIBUNAL JUDGE

RELEASE DATE: 23 June 2015

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