



TC04638

**Appeal numbers: TC/2012/02910
TC/2012/06818**

Procedure – application for extension of time for requesting full findings of fact and reasons for decision refusing reinstatement of struck out appeal – application refused

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**SIKANDER HAYAT (1)
MATLOOB HUSSAIN (2)**

Appellants

-and-

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

Respondents

TRIBUNAL: JUDGE KEVIN POOLE

Sitting in Chambers in Birmingham on 29 September 2015

DECISION

Introduction

1. This decision concerns a late application for full findings of fact and reasons
5 in respect of a decision issued on 9 July 2014.

The facts

2. I find the following facts, based on the Tribunal's correspondence file.

History and background

3. On 14 February 2012, the Tribunal received a notice of appeal (originally
10 dated 10 August 2011), lodged on behalf of the first appellant by his representative
Mahmood Accountancy. Attached to the notice of appeal were two closure notices
issued by HMRC and addressed to the first appellant. They were both dated 13 April
2010, and made amendments to the first appellant's self-assessment returns for 2005-
06 (in the sum of £9,967) and 2006-07 (in the sum of £43,734). It appears from the
15 Tribunal's acknowledgement of this notice of appeal that it had been the subject of
some correspondence over the previous two months, having initially been submitted
to the Tribunal on 6 December 2011 but returned as defective (probably due to a
failure to attach copies of the closure notices). It was treated as an application for
permission to make a late appeal and the first appellant was informed that it would
20 proceed straight to a hearing.

4. On 9 March 2012 the Tribunal notified the first appellant that the hearing of
the application had been listed for 17 April 2012 in Northampton.

5. On 19 March 2012, the first appellant contacted the Tribunal and informed it
that he had appointed a new representative, Salhan Accountants Limited ("Salhans").

6. On 26 March 2012 Salhans wrote to the Tribunal, confirming that the first
25 appellant had been made bankrupt on 15 February 2012 by the High Court, but that an
application for annulment of the bankruptcy had been made, which application was
due to be heard by the High Court on 16 May 2012. In the circumstances, the
Tribunal adjourned the hearing listed for 17 April 2012 on 29 March 2012, and stayed
30 all proceedings on the application until 30 June 2012.

7. On 19 June 2012, Salhans contacted the Tribunal to inform it that the first
appellant's bankruptcy had been annulled and requesting that his application for
permission to make a late appeal should now be listed for hearing.

8. On the same date, they informed the Tribunal that the second appellant (the
35 first appellant's father), who had previously been made bankrupt by HMRC, had now
also had his bankruptcy annulled and accordingly they would be submitting an
application for a late appeal on his behalf.

9. On 28 June 2012, the Tribunal received a notice of appeal from Salhans on behalf of the second appellant. He was seeking to appeal against total liabilities of £120,052.92 (including income tax, NIC, interest, surcharges and penalties) in relation to the years 1997-98 to 2006-07 inclusive.
- 5 10. The two files were considered together at the Tribunal and ultimately on 16 October 2012 a notice of hearing in respect of both applications was sent to Salhans, informing them that the applications would be heard in Birmingham on 10 December 2012.
- 10 11. On 22 October 2012, HMRC informed the Tribunal that they had accepted the first appellant's late appeal and on 30 October 2012 they informed the Tribunal that they had accepted the second appellant's late appeal. They therefore asked for the hearing on 10 December 2012 to be cancelled, and for a six month stay to enable negotiations to take place. On 31 October 2012, the Tribunal informed the parties of the cancellation.
- 15 12. On 9 November 2012, the Tribunal issued joint directions on the two files, recategorising the first appellant's appeal as standard, and extending the time for delivery of HMRC's statement of case until 1 May 2013.
- 20 13. On 26 April 2013, HMRC applied for an extension of time to 24 May 2013 to deliver their statement of case. This was granted by the Tribunal by direction issued on 14 May 2013. On 16 May 2013, HMRC delivered their statements of case in respect of both appeals.
- 25 14. In relation to the first appellant, the disputed amount of tax and NIC appearing from the statement of case is £79,116 (covering 2007-08 as well as 2005-06 and 2006-07). In relation to the second appellant, the disputed amount of tax and NIC over the years 1997-98 to 2005-06 is £81,305.24.
15. On 13 June 2013, the Tribunal received notification from Salhans that they were no longer acting for the appellants.
16. On 25 June 2013, HMRC delivered their lists of documents on the two appeals.
- 30 17. On 5 July 2013, the Tribunal issued case management directions on the two appeals, writing to the appellants direct and informing them that it would continue to do so until new representatives were appointed.
- 35 18. On 23 July 2013, both appellants wrote to the Tribunal, requesting extra time for compliance with the case management directions in view of their disinstruction of Salhans. They asked for an extension until 16 November 2013 for delivery of their lists of documents and listing information. On 2 August 2013 the Tribunal issued directions allowing the extension of time.
19. On 4 November 2013, the Tribunal wrote to the appellants, reminding them of the 16 November 2013 deadline.

20. On 11 November 2013, the Tribunal received a form of authority from the first appellant, appointing G & S Accountants Limited (“G&S”) as his representative; and on 15 November 2013 (in response to an enquiry from the Tribunal) a further form of authority was submitted, appointing G&S as the second appellant’s representative.
5 The first appellant explained in an email dated 15 November 2013 that he had previously appointed another accountant, but that accountant had suffered a stroke on 2 September 2013 and had been in hospital since then. He asked for “a few months’ extension” to enable G&S to get properly involved. G&S themselves contacted the Tribunal on 14 and 15 November 2013, asking for an extension until “late January
10 2014”.

21. HMRC did not object, so the Tribunal issued directions on 28 November 2013, extending time for delivery of the appellants’ lists of documents and listing information until 7 February 2014.

22. On 30 January 2014, the Tribunal wrote to G&S, reminding them of the 7
15 February deadline.

23. On 3 March 2014, G&S wrote to the Tribunal, requesting an extension of time to 30 June 2014. On 26 March 2014, the Tribunal issued a Direction stating that unless the appellants supplied their lists of documents and listing information by 16 May 2014, the appeals would be struck out.

20 24. Nothing further being received from the appellants or G&S, the Tribunal issued a Direction on 12 June 2014 striking out the appeals.

25. On 18 June 2014, an email was received at the Tribunal from G&S, “requesting to change the hearing date somewhere in August 2014” regarding the two appeals. Then, on 23 June 2014 a letter was received at the Tribunal from them,
25 asking for the appeals to be reinstated and listed for hearing in August 2014. It was stated that “the reason for the delay was due to missing documents from the solicitor, some bank statements and other financial documents from other banks.”

26. On 7 July 2014, after reading the Tribunal correspondence files, my decision refusing the reinstatement application was issued, setting out a short summary of
30 events since the issue of the case management Directions on 5 July 2013. That decision included, as its final paragraph, the following statement of the appellants’ appeal rights:

35 “This document contains a summary of the findings of fact and reasons for the decision. A party wishing to appeal against this decision must apply within 28 days of the date of release of this decision to the Tribunal for full written findings and reasons. When these have been prepared, the Tribunal will send them to the parties and may publish them on its website and either party will have 56 days in which to appeal. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and
40 forms part of this decision notice.”

27. On 12 November 2014, the Tribunal received by post an application dated 10 November 2014 for permission to appeal against the decision dated 7 July 2014. This application included the following text under the heading “Reasons why the application is made late (if applicable)”:

5 “We apologise for not meeting the deadlines set by the tribunal to respond back.

This was due to ill health of our client’s father.

Also, there was a lot of documents to study, calculate and the old accountant was not forth coming.

10 We are in a position now to come to the date of the tribunal and provide all the evidence to demonstrate that there had not been an accurate assessment.”

28. In the same application form, no grounds of appeal were given – the box headed “Please state what error(s) of law you consider the tribunal has made and the result you are seeking” was left blank.

29. On 1 December 2014, the Tribunal wrote to G&S, acknowledging the application, but pointing out that “before your application can be considered you must first apply for Full Findings of Fact and Reasons as per the original Summary Decision of 9 July 2014”.

20 30. Nothing further was heard until 22 May 2015, when the Tribunal received letters dated 15 May 2015 from G&S and the first appellant (“pp” the second appellant) asking for “one last fair trial on humanitarian ground”.

31. In the first appellant’s letter, he said this:

25 “I assure you that the delays, ill health of my father, the injury I v faced as a result of car accident, were beyond my control. Also, my father lost his job in September 2014 and we were under severe financial pressure in repaying the mortgage and other loans.

30 We apologise for not meeting the deadlines set by the tribunal to respond back. However, we are now in a position to come to the date of the tribunal and provide all the evidence to demonstrate there had not been an accurate assessment.”

32. In the letter from G&S, they said this:

35 “We strongly believe that the figures submitted by the previous accountant are incorrect. We had taken extension in regards to this but due to the previous accountants personal health problems he was unable to compile the documents.

We were in the process of calculating all their previous years' taxes from a lot of documents provided by our client and the previous accountant, which due to ill health of our client's father was hindered."

5 33. In response to a request from the Tribunal, HMRC submitted their representations on the application (objecting to it) on 2 September 2015.

The law

10 34. The application which this decision addresses is the appellants' application for an extension of time for requesting full findings of fact and reasons for the summary decision issued on 7 July 2014. Effectively, however, if I refuse the application the appeals will be at an end and the appellants will have lost the chance of contesting the various assessments and amendments raised by HMRC.

15 35. When a party disagrees with a summary decision issued by the Tribunal, the Tribunal's procedure rules require him to obtain full findings of fact and reasons for that decision as a first step in any appeal. This is because a party cannot properly formulate an appeal without having those full findings and reasons. Tribunal procedure rule 35 includes the following paragraphs:

"(3) Unless each party agrees that it is unnecessary, the decision notice must –

20 (a) include a summary of the findings of fact and reasons for the decision; or

(b) be accompanied by full written findings of fact and reasons for the decision.

25 (4) If the Tribunal provides no findings and reasons, or summary findings and reasons only, in or with the decision notice, a party to the proceedings may apply for full written findings and reasons, and must do so before making an application for permission to appeal under rule 39 (application for permission to appeal).

30 (5) An application under paragraph (4) must be made in writing and be sent or delivered to the Tribunal so that it is received within 28 days after the date that the Tribunal sent or otherwise provided the decision notice under paragraph (2) to the party making the application."

36. The Tribunal has power to extend time limits, pursuant to paragraph 5(3)(a) of its procedure rules, which provide that "the Tribunal may, by direction... extend or shorten the time for complying with any rule..."

35 37. The overriding objective of the Tribunal's procedure rules is set out in rule 2 of those rules as follows:

"The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly."

38. There has been a great deal of case law dealing with the criteria to be applied by the Tribunal when considering applications for extension of time. The classic exposition (which has been endorsed recently by the Upper Tribunal in *Leeds City Council v HMRC* [2014] UKUT 0350 (TCC)) is that of Morgan J in *Data Select Ltd v Revenue and Customs Commissioners* [2012] UKUT 187 (TCC):

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“[34] ... Applications for extensions of time limits of various kinds are commonplace and the approach to be adopted is well established. As a general rule, when a court or tribunal is asked to extend a relevant time limit, the court or tribunal asks itself the following questions: (1) what is the purpose of the time limit? (2) how long was the delay? (3) is there a good explanation for the delay? (4) what will be the consequences for the parties of an extension of time? and (5) what will be the consequences for the parties of a refusal to extend time. The court or tribunal then makes its decision in the light of the answers to those questions.

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[37] In my judgment, the approach of considering the overriding objective and all the circumstances of the case, including the matters listed in CPR r 3.9, is the correct approach to adopt in relation to an application to extend time pursuant to section 83G(6) of VATA. The general comments in the above cases will also be found helpful in many other cases. Some of the above cases stress the importance of finality in litigation. Those remarks are of particular relevance where the application concerns an intended appeal against a judicial decision. The particular comments about finality in litigation are not directly applicable where the application concerns an intended appeal against a determination by HMRC, where there has been no judicial decision as to the position. Nonetheless, those comments stress the desirability of not re-opening matters after a lengthy interval where one or both parties were entitled to assume that matters had been finally fixed and settled and that point applies to an appeal against a determination by HMRC as it does to appeals against a judicial decision.

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[38] As I have indicated, the FTT in the present case adopted the approach of considering all the circumstances including the matters specifically mentioned in CPR 3.9. It was not said that there was any error of principle in that approach. In my judgment, the FTT adopted the correct approach.”

39. In addition, the Upper Tribunal in *Romasave (Property Services) Limited* [2015] UKUT 0254 (TCC) has recently also endorsed this approach, adding the following comment:

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“The exercise of a discretion to allow a late appeal is a matter of material import, since it gives the tribunal a jurisdiction it would not otherwise have. Time limits imposed by law should generally be respected. In the context of an appeal right which must be exercised within 30 days from the date of the document notifying the decision, a

5 delay of more than three months cannot be described as anything but
serious and significant. We note, although judgment was given only
after we had heard this appeal, that in *Secretary of State for the Home
Department v SS (Congo) and others* [2015] EWCA Civ 387 the Court
of Appeal, at [105], has similarly described exceeding a time limit of 28
10 days for applying to that court for permission to appeal by 24 days as
significant, and a delay of more than three months as serious. Although
each case must be considered in its own context, we can find nothing in
this case which would alter our finding in this respect. As the court in
SS (Congo) observed, one universal factor in this respect is the
desirability of finality in litigation, a factor that is present in this case:
see *Data Select* at [37] above. We are also mindful of the comments of
Sir Stephen Oliver, sitting in the First-tier Tribunal, in *Ogedegbe v
Revenue and Customs Commissioners* [2009] UKFTT 364 (TC)
15 (discussed in *Markland v Revenue and Customs Commissioners* [2011]
UKFTT 559 (TC) and by this tribunal in *O’Flaherty v Revenue and
Customs Commissioners* [2013] UKUT 0161 (TCC)) 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.”

20 **Discussion and decision**

40. Bearing in mind that a decision on whether or not to extend time for
requesting full findings of fact and reasons is, in the present circumstances, analogous
to a decision on extending the time for bringing an appeal in the first place, I propose
to follow the above approach.

25 41. The purpose of the time limit in rule 35(5) is twofold.

(1) It enables the parties and the Tribunal to know, a comparatively short time
after the issue of a summary decision, whether it is likely to be appealed.
Thus it provides some assurance as to the finality of a summary decision after
the 28 day period, enabling the parties to move on to other matters. If the
30 Tribunal receives a request for full findings and reasons, it routinely informs
the other party of that request, so they are aware of the possibility of an
appeal.

(2) It also ensures that the Judge who issued the decision is made aware
quickly that he will be required to provide full findings of fact and reasons –
35 judicial memory can fade and it is generally important for a judge to know at
an early stage that full findings and reasons will be required.

42. The summary decision in this case was issued on 9 July 2014. The time limit
for requesting full findings and reasons therefore expired on 6 August 2014. It was
not until 12 November 2014 (over three months later) that the Tribunal received the
40 first indication of any dissatisfaction from the appellants (when the abortive
application for permission to appeal was received) and after G&S were informed by
the Tribunal’s letter dated 1 December 2014 of the need to apply for full findings of
fact and reasons, it was not until 22 May 2015 that the Tribunal received the belated
application.

43. No specific reasons for the delay have been given. The first appellant has made general reference to the ill health of his father, an injury caused in a car accident, his father's loss of his job and severe financial pressure. Whilst this may provide some explanation for delays in providing detailed information to HMRC, I do not consider it can explain the failure to take the simple step of making a short written request for full findings of fact and reasons until some ten months after the issue of the original decision, or the failure to give any indication of disagreement with the decision until four months after its issue.

44. If I grant the extension of time, the appellants will be permitted to apply for permission to appeal to the Upper Tribunal against the decision to refuse reinstatement of their appeals. The strength of that application is unknown, as no grounds have been indicated in support of it, beyond "humanitarian grounds". So far as HMRC are concerned, the result would be that they would have to continue to devote time and resource to these long-running appeals which had been considered closed as a result of the decision in July 2014 to refuse reinstatement. If I refuse the extension of time, the appellants will be definitively shut out from contesting the various tax liabilities (which are significant in amount) and HMRC will be able to close their file and move on to other matters.

45. I consider it is also appropriate to take account of the conduct of the appeals up to July 2014 in reaching a decision on this application. The default in this case was not an isolated error by appellants who have otherwise conducted the appeals in a reasonably diligent manner; it is the continuation of a pattern which has been firmly established since the assessments and closure notices were first issued.

46. In the circumstances, I do not think it is appropriate to grant the extension of time sought by the appellants. The application is REFUSED.

47. 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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**KEVIN POOLE
TRIBUNAL JUDGE**

RELEASE DATE: 28 SEPTEMBER 2015