



TC05283

Appeal number: TC/2016/00265

PROCEDURE – application for permission to make a late appeal – HMRC decision made in 2008 – unreliable and inconsistent evidence – application refused

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**STEPHEN HOWARD PEARCE
t/a S P ENGINEERING**

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE ANNE REDSTON

Sitting in public at the Tribunal Centre, Fox Court, London on 26 July 2016

The Appellant in person

**Miss Akua Adusei of HM Revenue & Customs Appeals and Reviews Unit, for
the Respondents**

DECISION

1. This was the application by Mr Stephen Pearce, who trades as SP Engineering, for permission to make a late appeal against an HMRC VAT assessment dated 3 October 2008 for £6,330.
2. The Tribunal refused the application.
3. Mr Pearce owed HMRC other amounts, but he confirmed at the beginning of the hearing that his application concerned only the £6,330.

The law,

4. Rule 4(1) of the VAT Tribunal Rules, SI 1986/590 reads:

“Subject to paragraph (2) of this rule and any direction made under rule 19, a notice of appeal shall be served at the appropriate tribunal centre before the expiration of 30 days after the date of the document containing the disputed decision of the Commissioners.”

5. Rule 4(2) was not relevant on the facts of this case. Rule 19 reads:

“A tribunal may of its own motion or on the application of any party to an appeal or application extend the time within which a party to the appeal or application or any other person is required or authorised by these rules or any decision or direction of a tribunal to do anything in relation to the appeal or application (including the time for service for a notice of appeal or notice of application) upon such terms as it may think fit.”

6. The VAT Tribunal Rules were generally replaced by the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 from 1 April 2009. However, they continued to have effect for decisions made before that date, unless they had already been appealed to the Tribunal, see the Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009, Sch 3, para 4.

7. The statutory review provisions now included in Value Added Taxes Act 1994, ss 83A-G also did not come into force until 1 April 2009, and so did not apply to the decision Mr Pearce is now seeking to appeal.

8. It follows that Mr Pearce’s appeal to the Tribunal should have been made within 30 days after 3 October 2008, in accordance with Rule 4 of the VAT Tribunal Rules. However, Rule 19 gives the Tribunal power to allow a late appeal.

The evidence

9. Miss Adusei provided a helpful bundle of documents. On 19 July 2016 Mr Pearce sent the Tribunal an email to which certain further documents were attached; these were not copied to HMRC. I adjourned the case for a short period so Miss Adusei could consider those documents.

10. Mr Pearce also gave oral evidence, was cross-examined by Miss Adusei and answered questions from the Tribunal. I found much of his evidence to be unreliable both because it was inconsistent and because it could not be reconciled with the contemporaneous evidence in HMRC's bundle, see §29ff below.

5 11. On the basis of the evidence which I did accept, I find the following facts.

The facts

12. On 26 February 2008, Mr Rob Marles, an HMRC Officer, visited Mr Pearce's premises. He took away copies of bank statements for the period from 1 September 2005 to 31 August 2006.

10 13. On 6 March 2008, Mr Marles wrote to Mr Pearce, saying that the amount banked exceeded the declared turnover for VAT purposes by £42,512.13. He asked Mr Pearce to explain that difference by 19 March 2008.

15 14. On 3 October 2008, Mr Marles raised the assessment for £6,330, plus interest. His attached decision letter ended by saying that "a request for an independent reconsideration will not affect your right to appeal directly to the VAT Tribunal". He went on to provide the telephone number and email address from which Tribunal forms could be obtained.

20 15. On 17 October 2008, Mr Mike Barnes, Mr Pearce's accountant, wrote to Mr Marles. His letter was on headed paper: the heading is "Accountancy Services (Surrey)" in large letters. He began:

"We refer to your letter of 3 October 2008 and regret the delay in dealing with this matter. Included in our client's bankings are numerous loans from his mother, as follows [a list of fifteen amounts ranging from £50 to £2,835]."

25 16. On 29 October 2008, Mr Marles wrote to Mr Pearce asking for documentary evidence to support the claimed loans from his mother. He asked for a reply by 14 November 2008.

30 17. On 18 November 2008 at 8.34 am, Mr Pearce called HMRC and spoke to a Mr David Squires. Mr Pearce said that the information requested by Mr Marles would be sent by the end of the following week and he hoped this would be acceptable.

18. On 1 December 2008 Mr Pearce called HMRC again, saying his mother had ordered the bank statements and they would be with Mr Marles in two further weeks.

35 19. On 20 January 2009, Mr Marles wrote to Mr Pearce, saying "I am still awaiting a reply to my letter dated 29 October 2008". He asked for a reply by 27 January 2009.

20. On 26 January at 5.20pm Mr Pearce called Mr Marles and said his accountant had all the relevant material but was too busy to send it because he was dealing with returns, but would send it the following week.

21. On 12 February 2009, Mr Marles called HMRC's Debt Management Unit to say he had not received a reply from Mr Pearce.

22. A long period followed during which there was no contact between the parties. On 15 July 2013, HMRC sent a bankruptcy warning letter to Mr Pearce. This said he
5 owed HMRC £39,238.86; this sum included the £6,330. Mr Pearce received a High Court summons and subsequently contacted Taxaid.

23. On 14 November 2014 Mr Pearce wrote to HMRC saying that the amounts demanded were more than he owed. On 2 April 2015 he wrote again, saying that:

10 "the money was lent to me by my mum, bank statements to prove it were sent to you and also all the paperwork with all the details."

24. On 13 April 2015, HMRC advised Mr Pearce that his only recourse was to make an application for a late appeal to the Tribunal.

25. On 11 September 2015, Mr Pearce wrote to HMRC saying:

15 "I enclose a copy of a letter from my accountant which appears to have been completely overlooked or ignored, the contents of which will reduce any liability I may have. Would you now please re-open my file."

26. The attached letter is dated 10 October 2008. It is not on headed paper or signed. The writer is neither named nor identified. The format of the letter is (a)
20 identical to the letter of 11 September 2015 to which it is attached, and (b) markedly different from the format of the letter dated 17 October 2008 from Mr Barnes, Mr Pearce's accountant. The text of the letter says:

25 "Further to your letter of 6 March 2008 and reminder dated 3 October 2008, we return a copy of your letter duly annotated by our clients [sic] mother."

27. On 15 October 2015, HMRC wrote to Mr Pearce, enclosing a copy of the Tribunal Notice of Appeal.

28. On 7 January 2016, an incomplete Notice of Appeal form was received by the Tribunals Service from Mr Pierce; it was sent back to him twice before all the missing
30 information was provided. The Notice of Appeal was eventually filed on 21 March 2016.

Mr Pearce's submissions and his oral evidence

29. Mr Pearce said he should be allowed to make a late appeal because he had provided the relevant supporting information to Mr Marles, and this information
35 showed that the money in his bank account was not in fact from his business, but had been lent to him by his mother and his son. It was not his fault that HMRC had failed to act on that information; had they done so, the debt would have been cancelled.

30. Mr Pearce sought to rely on the following documents, which were attached to the email sent to the Tribunal on 19 July 2016:

- (1) three pages of his son's bank account; and
- (2) an annotated copy of Mr Marles' letter of 6 March 2008. Against each deposit there listed, there is a hand-written explanation ("the annotated letter").

The annotated letter

5 31. Mr Pearce told the Tribunal that on receipt of Mr Marles' letter of 3 March 2008, he "wrote back straight away" to Mr Marles, and sent him the annotated letter, which he said explained the source of the deposits.

32. He was, however, unable to explain why this annotated letter was not referred to in any of Mr Marles' subsequent correspondence, or by Mr Pearce himself during
10 any of his phone calls to HMRC.

33. Mr Pearce also said that the annotated letter had been sent to Mr Marles as an attachment to the letter dated 10 October 2008 which said "we return a copy of your letter duly annotated by our clients mother".

The letter dated 10 October 2008

15 34. At the beginning of the hearing, Mr Pearce said he had written and signed the letter dated 11 September 2015, and that the attached letter of 10 October 2008 had been written by Mr Barnes, his accountant. However, later in the hearing he said that both letters had been written by Mr Barnes, the first at Mr Pearce's direction.

35. He was unable to explain any of the following:

20 (1) why Mr Barnes did not use headed paper for this letter, when the letter sent only a week later, on 17 October 2008, was on paper headed "Accountancy Services (Surrey)";

(2) why, if Mr Barnes had written the letter dated 10 October 2008, he did not refer to it in his letter of 17 October 2008, but instead said "We refer to your
25 letter of 3 October 2008 and *regret the delay in dealing with this matter*";

(3) why Mr Barnes had not signed the letter; and

(4) why neither Mr Pearce nor HMRC had referred to the letter during any of their communications after 10 October 2008.

The bank statements

30 36. Mr Pearce initially told the Tribunal that Mr Barnes had attached his mother's and son's bank statements to the letter of 17 October 2008. However, having been taken through HMRC's telephone conversation notes by Miss Adusei, he subsequently accepted that no bank statements had been sent up to HMRC before 26
35 January 2009, the date on which he called Mr Marles and said that his accountant would send the missing documents the following week.

37. Mr Pearce then changed his evidence and said that the bank statements were sent the week after 26 January 2009. However, he could not explain why, if that was the case, Mr Marles called the Debt Management Unit on 12 February 2009 and told them nothing had been received from Mr Pearce.

38. Although he agreed that Mr Barnes would have sent a covering letter to Mr Marles with the bank statements, Mr Pearce did not have a copy of that covering letter. He told the Tribunal that, although Mr Barnes was still his accountant, he had not thought it necessary to ask him if he had a copy. Mr Pearce also did not have a copy of his mother's bank statements, so had requested a further copy from her bank a few days before this hearing.

39. Mr Pearce was also unable to explain why he would have sent three pages from his son's bank account to Mr Marles, given that none of the previous correspondence refers to loans or bank statements from his son, but only from his mother.

10 *Credibility and further findings of fact*

40. Miss Adusei said that HMRC did not accept that Mr Pearce had provided Mr Marles with any bank statements or the annotated letter. I agree. As noted earlier in this decision, I found all Mr Pearce's evidence set out in paragraphs §29 to §39, to be inconsistent and unreliable.

15 41. I find as facts that:

(1) Mr Pearce did not send his mother's and/or son's bank statements to Mr Marles;

(2) he did not send the annotated letter to Mr Marles; and

(3) the first time the annotated letter and his son's three bank statements were supplied to HMRC was at this hearing.

Tribunal contact information

42. At the end of the hearing, Mr Pearce said he had never received the decision letter of 3 October 2008 attached to the assessment in question, so had never received the information about how to contact the Tribunal.

25 43. His attention was then drawn to the opening sentence of Mr Barnes' letter of 17 October 2008, which reads "We refer to your letter of 3 October 2008..." Mr Pearce then said that he had received the first page of the decision letter but not the second, which contained the Tribunal's contact details. I find this to be wholly implausible and do not accept it.

30 **Miss Adusei's submissions**

35 44. Miss Adusei said that the period of delay was extremely long, given that the statutory time limit is 30 days. She also pointed out that Mr Pearce had been advised by HMRC in April 2015 to make a late appeal to the Tribunal; this advice had been repeated on 15 October 2015. However a further two months had passed before Mr Pearce attempted to file his Notice of Appeal.

The law on late appeals

45. In *Data Select Ltd v HMRC* [2012] STC 2195, Morgan J said at [34]:

"Applications for extensions of time limits of various kinds are commonplace and the approach to be adopted is well established. As a

5 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.”

10 46. In *Romasave Property Services v HMRC* [2015] UKUT 254 (TCC), the Upper Tribunal (Judges Berner and Falk) said at [91] that the Tribunal must:

“...take into account, in the context of the overriding objective of dealing with cases fairly and justly, all relevant circumstances, and...disregard factors that are irrelevant.”

15 47. The Tribunal went on to say at [96] that:

“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 delay of more than three months cannot be described as anything but serious and significant.”

20 48. In *Galvin v HMRC* [2012] UKFTT 280 (TC) at [22] the Tribunal (Judge Aleksander and Mr Hughes) said:

“Time limits exist to provide finality to legal proceedings to both sides, and allow HMRC to move on to other cases, something that is in the general public interest.”

25 **Application to this case**

49. I begin with the four questions in *Data Select*. I agree with the Tribunal in *Galvin* as to the purpose of the 30 day time limit.

50. The second question is the extent of the delay. Here, the delay is extremely long, over seven years, which is both serious and significant.

30 51. The third question is whether there was a good reason for the delay. Mr Pearce said that HMRC had been provided with all relevant paperwork in 2008 and 2009. I have rejected that evidence and found that he provided neither the annotated letter, nor any bank statements. There was therefore no basis on which Mr Pearce could have thought that the assessment should have been discharged.

35 52. As Miss Adusei said, even after Mr Pearce had been told in April 2015 that an application to the Tribunal was required, he did not attempt to file the Notice of Appeal for almost nine further months, and even then it was incomplete.

53. I find that there was no good reason for Mr Pearce’s delay between 2008 and April 2015, or for his further delay between April 2015 and January 2016.

54. The fourth and fifth questions concern the prejudice to the parties. There is of course prejudice to Mr Pearce if permission is not granted, because the assessment of £6,330 will become final. But were permission to be given, there is also prejudice to HMRC, who will have to divert time and resources from other work to prepare for, and attend, a further Tribunal hearing.

55. I have considered whether there are any other factors which I should take into account, but none has been put to me and I have not identified any.

56. Having weighed all relevant factors, I find that the balance is overwhelmingly in favour of refusing permission.

10 **Decision and appeal rights**

57. For the reasons set out above, Mr Pearce’s application for permission to make a late appeal is refused.

58. 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.

59. 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.

**ANNE REDSTON
TRIBUNAL JUDGE**

RELEASE DATE: 04 AUGUST 2016