



**TC05498**

**Appeal number: TC/2015/05825  
TC/2015/06275**

***PROCEDURE – application to make appeal out of time – Corporation Tax return late filing penalties – Notice of VAT assessment – reasons for lateness – discretion of the tribunal – Rules 2 and 20 (4) of the Tribunal Procedure Rules – Data Select applied – application refused***

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**C R VENDING AND ELECTRONICS LIMITED                      Appellant**

**- and -**

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

**TRIBUNAL: JUDGE HEIDI POON  
SHEILA CHEESMAN**

**Sitting in public at the Royal Courts of Justice on 14 March 2016**

**Ronald Collins, Director, for the Appellant**

**Beverley Levy and Mark Ratcliff, Officers of HMRC, for the Respondents**

## DECISION

### Introduction

1. This is an application by CR Vending and Electronics Limited to make an appeal out of time against the penalties of £6,000 for the late filing of Corporation Tax ('CT') returns, and against a notice of VAT assessment for £2,064.
2. The application is made pursuant to rule 20(4) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, ('Tribunal Rules'), which states that if the notice of appeal is provided after the end of any period specified in an enactment, 'unless the Tribunal gives such permission, the Tribunal must not admit the appeal'.
3. Mr Collins, director of the appellant company, appeared for the appellant. Mr Doshi, of the firm of accountants Doshi & Co. acting for the appellant, had intended to attend the hearing, but was unable to do so. The respondents were represented by HMRC officers: Ms Levy for the Corporation Tax appeal and Mr Ratcliff for the VAT appeal. Neither party led formal evidence. HMRC produced a bundle of documents, which included correspondence with Mr Collins and the appellant's agent.
4. The onus of proof with this application is on the appellant to demonstrate that the Tribunal should give permission for its appeals to be heard out of time.

### Factual Background

5. By Notice of Appeal dated 21 September 2015, the appellant appealed against two matters, which are under separate references for case management purposes:
- (1) The penalties for the late filing of Corporation Tax returns for the six consecutive accounting periods ending 5 April 1999, 31 March 2000, 31 March 2001, 31 March 2002, 31 March 2003 and 31 March 2004;
- (2) A notice of VAT assessment covering the periods 10/09, 04/11, 07/11, 10/11, 01/12, and 04/12.

#### *Corporation Tax return late filing penalties*

6. The relevant dates in the appellant's history of compliance are as follows:

Accounting Period End	Notice to file served	Filing Due Date	Date of Receipt	Date of penalty notice	Re-issue of penalty notice
5 April 1999	24/5/1999	5/4/2000	25/9/2015	23/11/2000	4/4/2006
31 March 2000	1/6/2000	31/3/2001	24/3/2006	12/6/2002	4/4/2006
31 March 2001	21/5/2001	31/3/2002	23/3/2006	31/10/2002	4/4/2006
31 March 2002	20/5/2002	31/3/2003	23/3/2006	16/6/2003	30/3/2006
31 March 2003	19/5/2003	31/3/2004	24/3/2006	28/4/2004	30/3/2006
31 March 2004	4/6/2004	31/3/2005	28/4/2006	28/4/2005	30/3/2006

7. Five out of the six CT returns were filed around March and April of 2006, but the CT return for the accounting period ending 5 April 1999 was received by HMRC on 25 September 2015, around the same time as the Notice of Appeal was lodged.

5 8. It would seem that the appellant changed its accounting period end date from 5 April to 31 March without prior notice to HMRC. It was only when the CT returns were submitted for the accounting periods ending 5 April 2000 to 5 April 2004, bearing the new accounting period end of 31 March, that HMRC realised there had been a change of accounting period end date, which triggered a change in the reckoning of the filing due dates for the relevant CT returns.

10 9. As a result of the change of accounting period end date to 31 March for the years 2000 to 2004, HMRC re-issued the late filing penalty notices for those years (in two batches) on 30 March 2006 and 4 April 2006. The amount of penalty was £1,000 for each of the six years, and was imposed in accordance with para 17(3) Sch 18 to the Finance Act 1998 ('FA 1998), and the total penalties under appeal are £6,000.

15 10. Following receipt of correspondence from HMRC Debt Management dated 21 August 2015 regarding a winding up order, Mr Doshi responded on behalf of the appellant on 9 September 2015, and contended that since no corporation tax was payable for the years 1999 to 2004, no penalty was chargeable.

20 11. By letter dated 11 September 2015, Debt Management responded to Mr Doshi by stating that the penalties remained due and payable, and that if their client did not agree, an appeal against the penalties would need to be made to the Corporation Tax office, and a copy of the letter of appeal be provided to the Debt Management team.

12. By letter dated 25 September 2015, Mr Doshi notified HMRC of the appeal against to the Tribunal, stating that 'we are making a late appeal application'.

25 13. By letter dated 23 October 2015 to both the appellant and Mr Doshi, HMRC refused to accept the late appeal, and referred the appellant to its right to apply to the Tribunal to rule that HMRC must accept the late appeal.

30 14. By notice dated 21 September 2015, the appellant appealed to the Tribunal; the Notice of Appeal to the Tribunal would seem to pre-date the letter of appeal to HMRC of 25 September 2015.

15. On 2 December 2015, HMRC made an application for the appeals to be struck out due to the appeal being made out of time to HMRC.

16. On 23 December 2015 Mr Doshi wrote to oppose the strike out application.

#### *Notice of VAT Assessment under appeal*

35 17. On 19 April 2013, Officer Reena Patel requested information and invoices from the appellant to verify claims of input VAT for periods from 07/09 to 01/12.

18. Following exchange of correspondence and receipt of the information, Officer Patel wrote to the appellant on 25 November 2013, setting out her conclusions on various input VAT claims which were to be disallowed as the expenses did not relate to the appellant's business. She informed the appellant that she would be issuing a  
5 Notice of Assessment to reflect the adjustments, which she indicated in her letter had been 'discussed and agreed'.

19. The Notice of Assessment was issued on 9 December 2013, and covered amendments made to six return periods, the first being 10/09, followed by five other consecutive periods beginning with period 04/11 to 04/12 inclusive.

10 20. On 31 March 2014, a notice of penalty assessment was issued for £511.05 in relation to the inaccuracies that have occasioned the VAT assessment. The penalty was suspended in full.

21. As related earlier, HMRC Debt Management wrote on 21 August 2015 regarding a winding up order. Mr Doshi replied on 9 September 2015, stating:

15                     'We disagree with the VAT assessments completely. The Tax Payer claims he has never received them.'

22. By Notice of Appeal dated 21 September 2015 to the Tribunal, the appellant appealed against the Notice of VAT Assessment of 9 December 2013.

20 23. In Mr Doshi's letter of 23 December 2015, which was to oppose the strike out application, the reason given was 'that the director of the company had severe health issues, therefore the appeal was not submitted in time'.

24. The VAT assessment was issued on 9 December 2013 and originally stood at £3,407. In the course of preparing for the strike out application, the assessment was reviewed and it was noted that the first period of the assessment, namely 10/09 for  
25 £1,343 was out of time. The VAT assessment is consequently reduced to £2,064.

### **Appellant's Grounds of Application**

25. Notwithstanding Mr Doshi's claim to HMRC, stating that 'we are making a late appeal application', section 6 of the Notice of Appeal for an application to make or notify an appeal out of time to the Tribunal is left completely blank. No reasons have  
30 been stated as regards the lateness of the appeals therefore. Reasons for a hardship application, and grounds in relation to the substantive appeals are stated.

26. From the correspondence between the parties, and from Mr Collins' oral representations at the hearing, the main reason given for the lateness of making the appeals was the state of ill health of its director, Mr Collins, over a protracted period.  
35 At the hearing, Mr Collins spoke of his health problems rendering him 'incapable of doing anything [him]self'; of 'fighting for [his] medical benefits' which the accountants said was 'not [their] things'; of his worries and concerns over the well-being of other members of his family.

27. The grounds put forward in relation to the substantive appeals include:

5 (1) In respect of the CT filing penalties, the appellant drew support from HMRC's guidance notes IHTM36023 (pertaining to Inheritance Tax), and contended that since no corporation tax was due, no return was required. If no returns are required, no penalties are chargeable.

(2) In relation to the Notice of VAT Assessment, the appellant claimed that the notice had never been received by Mr Collins.

### **HMRC's Contentions**

#### *CT late filing penalties*

10 28. Ms Levy addressed the Tribunal on the application in relation to the appeal against the CT return late filing penalties. She stated that the filing penalties were imposed in accordance with s 31A of the Taxes Management Act 1970 ('TMA'), the appellant is required to make its appeal to HMRC in writing within the time limits specified by the legislation, which is 30 days after the specified date.

15 29. The specified date in the present case is 30 days after the *re-issue* of the penalty notices on 30 March 2006 and 4 April 2006, which means the appeal against the penalties should have been made to HMRC by 29 April 2006 and 4 May 2006.

20 30. The appeal, having been received by HMRC on 25 September 2015, was late by 3,432 days and 3,437 days respective to the revised time limits following the re-issue of the penalty notices; this equates to being over 9 years out of time.

31. HMRC contended that the appellant did not have a reasonable excuse for making the late appeal by over 9 years, and that no valid reason has been given for this lateness. In the absence of a reasonable excuse, HMRC refused the late appeal.

25 32. On applying to the Tribunal, relevant factors other than those relating to a reasonable excuse can be taken into account in the exercise of the Tribunal's judicial discretion. HMRC's submissions addressed some of these relevant factors, such as fairness of the system to all taxpayers, the need to give finality in legal proceedings, to which we will return later in our decision.

30 33. Finally, Ms Levy submitted that there is no likelihood of the appeal succeeding since a CT return is due for filing regardless of whether any corporation tax is due.

#### *Notice of VAT assessment*

34. In respect of the Notice of VAT assessment, Mr Ratcliff submitted that it was issued on 9 December 2013, and the appellant first registered its disagreement by Mr Doshi's letter dated 9 September 2015, which made the appeal 621 days late.

35 35. The letter of 9 September 2015 would appear to have been prompted by HMRC's warning of a winding up order issued by the Debt Management team, and

with which a Statement of Liabilities was enclosed. HMRC contended that there had been no indication from the appellant of its disagreement with the assessments until the letter of 9 September 2015, in which Mr Doshi related that the appellant claimed that it had never received the VAT assessments.

5 36. HMRC submitted that the Notice of Assessment was sent to the principal place of business, which was the same address as previous correspondence. There was no indication that previous correspondence did not reach the appellant, as evidenced by Mr Collins' fax to HMRC on 24 October 2013, whereby an 'annotated' copy of Officer Patel's letter dated 15 October 2013 was faxed to the respondents as a reply.

10 37. HMRC submitted that the Notice of Assessment had been served correctly in accordance with s 98 VATA; that is, the notice was sent by post in a letter addressed to that person at the last or usual residence or place of business of that person.

15 38. On 15 March 2015, HMRC wrote to the appellant and HMRC's log of action history shows that a winding up petition had been served on 16 April 2015, which included the VAT liability. However, the appellant made no attempt to dispute the VAT assessments until after the outstanding CT return (for APE 5 April 1999) had been submitted some six months after the letter.

20 39. It is HMRC's position that the appellant was aware of the assessments, and the respondents therefore do not accept that the appellant was not served with the Notice of VAT Assessment.

40. The reasons for the input VAT being disallowed are as follows:

VAT Period	Amount assessed	Reason
10/09	£1,343 (withdrawn)	Not in respect of taxable supplies
04/11	£129	Not in respect of taxable supplies
07/11	£52	Not in respect of taxable supplies
10/11	£667	No evidence of deduction
01/12	£249	Over-claimed compared to invoice
	£273	Not a tax invoice
	£156	Not addressed to appellant, nor re: taxable supplies
04/12	£394	Credit note not accounted for
	£144	Credit note not accounted for

25 41. The assessment for period 10/09 of £1,343 has been withdrawn for being out of time. As regards the other periods, HMRC contended that the matters were discussed with the director in 2013 before the notice of assessment was issued. The appellant has not given any grounds against these adjustments, other than to assert that they had never been received; the appeal therefore has no likelihood of success.

## Discussion

42. In determining the outcome of this application, the Tribunal has to exercise the discretion given under rule 20(4) against the overriding objective under rule 2 of the Tribunal Rules, which is to deal with cases fairly and justly, ‘in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and resources of the parties’.

43. The relevant factors that need to be weighed up to determine whether the relevant time limits should be extended are well established by the authority of *Data Select Ltd v HMRC* [2012] UKUT 187 (TCC). The Tribunal’s decision is made in the light of the answers to the five questions set out by Morgan J in *Data Select* at [34]:

- (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?
- (5) What will be consequences for the parties of a refusal to extend time?

44. The purpose of a time limit for lodging an appeal is two-fold: to ensure procedural fairness and to confer finality in litigation. The party with the right to appeal also has the obligation to exercise that right within the relevant time limit, in order that the other party in the possible litigation can know within that time limit whether there is an appeal for which requisite action needs to be taken. In the absence of an appeal being lodged within the time limit, the opposing party is entitled to have the assurance that the matter is at an end on the expiry of the time limit. Fairness demands that the right to appeal and the obligation to comply with the time limit go hand in hand, and that there can be finality in litigation by reference to the time limit.

45. The aim of the rule, as stated by Judge Bishopp in *Leeds City Council v HMRC* [2014] UKUT 0350 (TCC) at [24], ‘is to require a party asserting a right to do so promptly, and to afford to his opponent the assurance that, after the time limit has expired, no claim will be made’.

46. The delay in lodging the appeals is inordinate in this application. Both appeals to HMRC were made by the letter dated 9 September 2015, many months after the expiry of the respective time limits. The time limits to appeal against the late filing penalties expired on 29 April 2006 and 4 May 2006, and the delay was over 9 years. The time limit to appeal against the notice of VAT assessment expired 30 days after its issue on 9 December 2013, and the delay was more than 20 months or 621 days.

47. The Tribunal also notes that the time limits in respect of the late filing penalties have already been extended on the re-issue of the penalty notices following a change of the accounting period end date to 31 March. For example, the original notice of penalty for accounting period ending 5 April 2000 was first issued on 12 June 2002. On its re-issue for the accounting period ending 31 March 2000 on 4 April 2006, the time limit became 4 May 2006. Without the re-issue of the penalty notices, the delay would have been in the region of 13 years.

48. We also note the CT return for the accounting period ended 5 April 1999 was eventually filed on 25 September 2015, while the CT returns for the other accounting periods were filed in March and April of 2006.

49. There can be no reasonable excuse for the inordinate delay, however it was caused, whether for the filing of the CT returns or for the making of the appeals. Mr Collins had as his explanation that the delay was due to his severe ill health and family concerns. These factors might have given rise to a reasonable excuse for a short delay, but could not be construed in any manner as a reasonable excuse for a delay of over 9 years (for the CT appeal) and over 20 months (for the VAT appeal).

50. A reasonable taxpayer, having proper regard for his statutory obligations and the purposes of time limits, would have engaged the service of an agent to deal with matters on his behalf, if he could not deal with any himself, as Mr Collins claimed. Indeed, it would seem that the appellant did have an agent to call upon at all material times. Viewed in this light, there can be no reasonable excuse for the delay in making the appeals, let alone the inordinate delay of 9 years or 20 months for the respective appeals.

51. Turning to the consequences for the appellant for refusing permission of the late appeals, the Tribunal has considered the merits of both appeals, and is of the view that neither appeal has a reasonable prospect of succeeding.

52. The reason given for the appeal against the CT return late filing penalties is that no corporation tax is due, no penalty is therefore chargeable. The obligation to file a CT return arises when the notice to file is served, and there had been effective service of such a filing notice for each of the accounting periods as detailed at §6.

53. Filing a CT return is an essential part of self-assessment and for the possible check of the taxpayer's tax position, even if the position means no tax is payable. The guidance applicable to Inheritance Tax is not relevant to Corporation Tax. Here upon the service of a notice to file a CT return, the obligation to file by the taxpayer follows, as the night the day, until the obligation is discharged, and a failure to comply with the filing date will trigger the imposition of penalties. The taxpayer cannot unilaterally decide that HMRC should deduce from the silence of the taxpayer through non-compliance that it means no tax liability is due. The agent's argument is fallacious; there can be no basis of the appeal succeeding even if it were admitted.

54. As regards the Notice of VAT Assessment, from the documents produced, Mr Collins would seem to be fully aware of the check into the appellant's VAT repayments. He was in correspondence and discussion with Officer Patel; it would seem that he personally dealt with the requests for supporting documents; he received Officer Patel's letter dated 15 October 2013 on 17 October 2013 as annotated by him on the letter that was faxed back to HMRC on 24 October 2013 with his enclosures.

55. The documentary evidence and Mr Collins' oral representations support Officer Patel's remark in her letter of 25 November 2013 that the adjustments to the VAT returns had been 'discussed and agreed'. Her November letter signified the closure of

the matter, to be followed by the notice of assessment on 9 December 2013. With Mr Collins' knowledge and involvement in dealing with the VAT checks, it would seem reasonable that he would be aware of and be expecting an imminent closure to the matter around the time the notice of assessment was issued.

5 56. Furthermore, there is no evidence that other correspondence from HMRC had failed to reach the appellant to give credence to the taxpayer's claim that there had been no effective service of the notice of VAT assessment dated 9 December 2013. It is probable that Mr Collins had registered that the appellant was not allowed to claim certain input VAT included in some of its submitted returns, but he might not have appreciated the effect of disallowing those input VAT claims would result in a VAT liability for the appellant by clawing back the input VAT that was over-claimed.

10 57. The appellant has had the cash flow advantage from claiming the deduction of these sums of input VAT that were not due. The Tribunal also notes that HMRC's recovery of the input VAT of £1,343 in relation to 10/09 has now been withdrawn for being out of time, which means the appellant (or Mr Collins) has been allowed to keep the VAT repayment that was not due. Furthermore, the penalty for inaccuracies in relation to the VAT returns has been suspended in full. The appeal against the VAT assessment on the ground of non-receipt does not appear to have any merits, and the consequence of refusing permission of the late appeal is to disallow the input VAT that seemed to have been erroneously claimed in the first place.

15 58. In contrast, the prejudice to HMRC is significant if the application were to be allowed. It means these matters will be re-opened. HMRC are entitled to have the assurance of finality in litigation over these matters which are five to fifteen years old. Fairness dictates that such finality should be accorded; public interest demands the time and resources of HMRC and the Tribunal should be deployed in dealing with live cases; the consequential costs will be disproportionate and contrary to the overriding objective of dealing with cases (not just the appellant's) justly and fairly.

### **Decision**

25 59. For the reasons stated, the application to appeal out of time is refused.

30 60. 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.

**DR HEIDI POON  
TRIBUNAL JUDGE**

40 **RELEASE DATE: 17 NOVEMBER 2016**