



TC05658

Appeal number: TC/2016/03144

*SELF ASSESSMENT – late appeals – closure notices – Schedule 36
penalties – Schedule 24 penalties*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

PAUL RUDDOCK

Appellant

- and -

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

TRIBUNAL: JUDGE Rachel Mainwaring-Taylor

Sitting in public at Royal Courts of Justice, London on 15th November 2016

The Appellant did not attend

Mrs B Sanu of HM Revenue and Customs for the Respondents

DECISION

Preliminary matter

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1. Neither the Appellant nor the Appellant's representative attended the hearing. The Tribunal considered whether to proceed with the hearing in their absence and concluded that reasonable steps had been taken to notify the Appellant of the hearing (notice sent by post to his address as stated in the Notice of Appeal) and that in all the
10 circumstances it was in the interests of justice to proceed with the hearing.

Background

2. HMRC issued closure notices to the Appellant under section 28A (1) and (2) of the Taxes Management Act 1970 ('TMA 1970') on 12th September 2014 for the period ended 5th April 2012 and on 26th November 2014 for the period ended 5th
15 April 2013.

3. HMRC issued penalty notices under Schedule 36 to the Finance Act 2008 on 16th May 2014 and 23rd June 2014 and under Schedule 24 to the Finance Act 2007 on 21st January 2015.

4. The Appellant appealed to the Tribunal against the closure notices on 2nd June
20 2016.

5. The appeal was made out of time. HMRC did not consent to the late appeal. The application before the Tribunal is for permission to make a late appeal.

Sequence of events

6. It is helpful to set out the sequence of events as evidenced by correspondence
25 produced by HMRC:

(1) 29th January 2014 – HMRC launch enquiry into 2011/12 tax return under section 9A TMA 1970.

(2) 19th March 2014 – HMRC issue information notice re 2011/12 tax return under Schedule 36, Finance Act 2008.

30 (3) 16th May 2014 – HMRC impose penalty for non-compliance with information notice, enclosing copy of original notice.

(4) 29th May 2014 – Millen Necker & Co write to HMRC claiming letter of 16th May 2014 is first they have received

(5) 11th June 2014 – HMRC respond stating penalty stands.

35 (6) 23rd June 2014 – HMRC impose further penalty for non-compliance with information notice.

(7) 25th June 2014 - Millen Necker & Co write to HMRC appealing penalty on grounds the first copy of the original information notice they have seen is that enclosed with 23rd June 2014 letter, despite having requested copy on 29th
40 May 2014.

- (8) 1st July 2014 - HMRC reply refusing appeal against penalties due to invalid grounds of appeal.
- (9) 12th September 2014 – HMRC issue closure notice re 2011/12 tax return.
- 5 (10) 12th September 2014 – HMRC launch enquiry into 2012/13 tax return under section 9A TMA 1970.
- (11) 26th November 2014 – HMRC issue closure notice re 2012/13 tax return
- (12) 8th December 2014 – HMRC write setting out proposed penalties under Schedule 24, Finance Act 2007, with deadline for providing information if Appellant disagrees of 7th January 2015.
- 10 (13) 9th December 2014 - Millen Necker & Co write to HMRC stating bank statements sent to HMRC on 22nd October 2014 clarify position, but that they assume these were not received.
- (14) 21st January 2015 –penalties issued under Schedule 24, Finance Act 2007.
- 15 (15) 1st May 2015 - Millen Necker & Co write to HMRC debt collection team stating they believed the matter still under enquiry.

Relevant legislation

7. There are three separate heads of appeal and it is helpful to consider each in turn.

Appeal against closure notices

20 8. The obligation on a taxpayer to file a tax return is contained in sections 7, 8 and 9 of TMA 1970.

25 9. HMRC has power under section 9A of TMA 1970 to enquire into a taxpayer's return if it gives notice of its intention to do so to the taxpayer within the time allowed. Where the return was delivered on or before the filing date, the time allowed is the period of 12 months from the day on which the return was delivered. Where the return was delivered late, the time allowed is the period up to and including the quarter day next following the first anniversary of the day on which the return was delivered.

30 10. Under section 28A of TMA 1970, an enquiry under section 9A is completed when an officer of HMRC informs the taxpayer that he has completed his enquiries and states his conclusions. A closure notice must either state that in the officer's opinion no amendment to the return is required or make the amendments required to give effect to his conclusions.

35 11. The right to appeal against an amendment made by closure notice under section 28A is contained in section 31 TMA 1970. Section 31A TMA 1970 provides that notice of such an appeal must be given in writing within 30 days after the date on which the closure notice was issued.

40 12. Section 49 TMA 1970 provides that notice of an appeal may be given after the specified time limit if HMRC agree, or, where HMRC do not agree, if the Tribunal gives permission. It further provides that HMRC must agree to a late notice of appeal if:

- (1) the Appellant has made a request in writing to HMRC; and
- (2) HMRC are satisfied that there was a reasonable excuse for not giving notice before the relevant time limit; and
- (3) HMRC are satisfied that the request to make a late appeal was made without unreasonable delay after the reasonable excuse ceased.

13. Where an appellant gives notice of appeal to HMRC, the appellant may require HMRC to review the matter or the appellant may notify the appeal to the tribunal (section 49A TMA 1970).

14. Where an appellant requires HMRC to review a decision, HMRC must notify the appellant of HMRC's view of the matter in question within 30 days beginning with the day on which HMRC receives the notification from the appellant or such longer period as is reasonable (section 49B TMA 1970).

15. Where an appellant notifies the appeal to the tribunal, the tribunal is to decide the matter in question (section 49D TMA 1970). However, in a case where HMRC have given a notification of their view of the matter in question under section 49B, the appellant may only notify the appeal to the tribunal within the 'post review period' i.e. 30 days from the date of the document in which HMRC give notice of the conclusions of the review or after that time only if the tribunal gives permission (section 49G TMA 1970).

Appeal against penalties under Schedule 24, Finance Act 2007

16. Under Schedule 24 Finance Act 2007, a penalty is payable by a person (P) where P gives HMRC a document (including a tax return under section 8 of TMA 1970) which contains an inaccuracy which amounts or leads to an understatement of a liability to tax, a false or inflated statement of a loss or a false or inflated claim to repayment of tax and the inaccuracy was careless or deliberate on P's part (para 1).

17. The amount of a penalty under Schedule 24 depends on whether P's inaccuracy was careless, deliberate but not concealed or deliberate and concealed (paras 3 and 4). A penalty may be reduced to reflect the degree to which P discloses information to and cooperates with HMRC (paras 9 and 10).

18. Where P becomes liable to a penalty under para 1, HMRC must assess the penalty and notify P stating in the notice the period to which the penalty relates (para 13). The assessment is treated in the same way as an assessment to tax for procedural purposes. An assessment must be made within 12 months of the end of the appeal period for the decision correcting the tax.

19. P may appeal to the tribunal against a decision by HMRC that a penalty is payable by P or as to the amount of a penalty payable by P and the tribunal may confirm or cancel HMRC's decision or substitute another decision that HMRC had power to make (paras 15 and 16).

Appeal against penalties under Schedule 36, Finance Act 2008

20. Where a person fails to comply with an information notice, he is liable to a penalty of £300 (paragraph 39, Schedule 36, Finance Act 2008).

21. Where a person becomes liable for a penalty involving an information notice under paragraph 39, HMRC may assess the penalty and if they do so must notify the person within the later of 12 months of latest of the day when the person became liable to the penalty, the end of the period in which notice of an appeal against the information notice could have been given and, if notice of such an appeal was given, the date on which the appeal was determined (paragraph 46, Schedule 24, Finance Act 2007).

22. A person may appeal against a decision that a penalty is payable by that person or a decision as to the amount of such a penalty (paragraph 47, Schedule 36, Finance Act 2008).

Submissions

23. The Tribunal took the grounds set out in the Notice of Appeal as being the Appellant's submissions. Those grounds are as follows:

(1) The appeal was made late because the Appellant had not received a reply to his agent's first appeal to HMRC.

(2) The enquiry caseworker had not responded to any of the Appellant's correspondence.

(3) The officer had included income from a limited company in the assessment issued to the Appellant despite contradictory details shown on the Appellant's bank statements.

24. In response to the Appellant's grounds of appeal, HMRC stated they had no record of any bank statements or evidence from the Appellant supporting the figures in his tax returns.

25. HMRC submitted that any appeal against the closure notices and penalty notices should have been made within 30 days of the dates shown on those documents, in accordance with section 49G of TMA 1970:

(1) The first Schedule 36 penalty notice in the sum of £300 was issued on 16th May 2014 so an appeal should have been made by 15th June 2014.

(2) The second Schedule 36 penalty notice in the sum of £760 was issued on 23rd June 2014. An appeal against it was received on 25 June 2014, which was considered and rejected by HMRC on 1st July 2014. No further appeal was made until 2nd June 2016.

(3) The closure notice for the 2011/12 tax return was issued on 12 September 2014 so an appeal should have been made by 11th October 2014. None was received.

(4) The closure notice for the 2012/13 tax return was issued on 26 November 2014 so an appeal should have been made by 25th December 2014. None was received.

(5) Schedule 24 penalty notices were issued on 21st January 2015 so an appeal should have been made by 20th February 2015. None was received.

26. The appeal to the Tribunal dated 2 June 2016 was made outside the 30 day limit for all of the assessments: 469 days late for the Schedule 24 penalty notices, 555 days late for the 2012/13 closure notice and 630 days late for the 2011/12 closure notice.

27. HMRC concluded that the Appellant had brought his appeal very late and without reasonable excuse for doing so and requested that permission to admit the appeal late should be refused.

Findings of fact

28. It is helpful to consider the subjects of the appeal separately.

29. On examining the documents before me, I find that:

10 (1) With respect to the 2011/12 tax return, the enquiry was launched in time and correctly, the closure notice met the requirements of s28A TMA 1970, and the Appellant appealed more than 19 months late.

15 (2) With respect to the 2012/13 tax return, the enquiry was launched in time and correctly, the closure notice met the requirements of s28A TMA 1970, and the Appellant appealed more than 17 months late.

(3) The Schedule 24 penalties were issued in accordance with the legislation and the Appellant appealed them more than 15 months late.

Schedule 36 penalties

20 30. The position in relation to the Schedule 36 penalties is slightly less clear as the Appellant's agents claimed not to have received certain documents.

31. HMRC issued an information notice under Schedule 36 on 19th March 2014, stating that a £300 penalty would be payable if the Appellant failed to comply by 18th April 2014. He did not comply and a penalty notice for £300 was issued on 16th May 2014. The deadline for appealing that penalty notice was 15th June 2014.

25 32. The Appellant's agent, Millen Necker & Co wrote to HMRC on 29th May 2014 saying they had not received the letter of 19th March 2014. HMRC replied on 11th June 2014 stating that the information notice had been sent to the Appellant and the agent on 19th March 2014 and since neither copy had been returned they were assumed to have been received and the penalty stood.

30 33. The notice stated that a further £300 penalty would be payable if the Appellant did not provide the information requested by 15th June 2014 and that continued non-compliance from that date may result in further penalty charges of £60 day from the date of the notice (i.e. 16th May 2014).

35 34. On 23rd June 2014, having not received the information requested, HMRC charged a penalty of £20 per day for the period from 16th May 2014 to 23rd June 2014, totalling £760. The deadline for appealing this penalty was 23rd July 2014.

35. On 25th June 2014 the Appellant's agent appealed the penalty issued on 23rd June 2014 on the grounds that by their letter of 29th May 2014 they had requested a copy of the information notice, which they had still not received to date. The agent claimed

that no copy was enclosed with the 16th May 2014 penalty and asked that the penalties be withdrawn on the basis they had first received the request for information on 25th June 2014, under cover of HMRC's 23rd June 2014 letter.

5 36. On 1st July HMRC replied to the agent that they could not accept the appeal of 25th June 2014 since the grounds were not valid.

37. The 23rd June 2014 notice stated that further penalties may be imposed if the Appellant did not comply with the original information notice by 23rd July 2014. In fact, HMRC imposed no further Schedule 36 penalty charges.

10 38. On examining the documents before me, I see that all correspondence from HMRC was sent both to the Appellant directly and to Millen Necker & Co. Millen Necker & Co appear to claim in their letters that they did not receive anything from HMRC until 16th May 2014 and did not receive details of the information requested until 23rd July 2014. There is no claim that the Appellant did not receive the letters sent to him directly.

15 39. I see no evidence that neither the Appellant nor his agent received any of the correspondence or notices sent by HMRC.

Discussion and conclusion

40. In *Data Select Ltd v HMRC* [2012] UKUT 187 (TCC) Morgan J, at [34], said:

20 "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
25 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 answer to those questions."

41. In *Leeds City Council v HMRC* [2014] UKUT 350 (TCC) at [24], Judge Bishopp said the purpose of the time limit:

30 "...is to require a party asserting a right to do so promptly, and to afford his opponent the assurance that, after the time limit has expired, no claim will be made."

42. The length of the delay in this case is considerable. The time limits for appealing the various notices were 30 days and the Appellant appealed substantially more than a year late in each case.

35 43. The reasons given for the delay are lack of responses from HMRC and a contradiction between the basis of HMRC's assessment and information in bank statements provided to HMRC.

44. During 2014, Millen Necker & Co wrote to HMRC three times. None of these letters provides the information requested by HMRC in their initial letter of 24th

January 2014 and subsequent information notice of 19th March 2014. During the same period, HMRC wrote to the Appellant and Millen Necker & Co ten times.

5 45. Whilst a claim not to have received correspondence may have been viewed initially as a reason for providing information late, it cannot be viewed as a reason for not having appealed over such a considerable period.

46. I see no evidence of bank statements having been provided to HMRC and HMRC state they have received none. Whether or not the statements were sent, this does not constitute a reason for failing to appeal over such a long period of time.

10 47. The Appellant will suffer a detrimental effect by not being permitted to continue with his appeal, since the notices will stand. However, it is in the interests of justice to have regard to the importance of compliance with the tax system.

15 48. The decision whether to permit a late appeal is a balancing exercise. In making it I must have regard to the overriding objective of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 to deal with cases "fairly and justly" and this includes "avoiding delay".

49. Having regard to all the circumstances in this case I conclude that the delay is significant and no good explanation for it has been given. I therefore refuse permission to make a late appeal.

50. Accordingly, I direct that the appeal be struck out.

20 51. 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
25 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

30 **RACHEL MAINWARING-TAYLOR**
TRIBUNAL JUDGE

RELEASE DATE: 10 FEBRUARY 2017