



**TC06671**

**Appeal number: TC/2018/02764**

*INCOME TAX – application for permission to appeal out of time – Application refused*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**WOODEN WALLS OF OLD ENGLAND**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE AMANDA BROWN  
LESLIE HOWARD**

**Sitting in public at St Katherine's House, St Katherine Street, Northampton on  
27 July 2018**

**The appeal was submitted in the name of Wooden Walls of Old England, the name of the pub operated by Susan Blackman as a sole trader. As the appeal concerned personal income tax self-assessment returns the Applicant was properly Mrs Susan Blackman who represented herself.**

**Ms Pallavika Patel, Presenting Officer of HM Revenue and Customs, for the Respondents.**

## DECISION on PRELIMINARY ISSUE

### Introduction

5 1. Susan Blackman (“the Applicant”) seeks to bring appeals in respect of the imposition, by HM Revenue & Customs (“HMRC”), pursuant to Schedules 55 Finance Act 2009 (“FA 2009”) of penalties for late submission of self-assessment tax returns for the tax years 2014/15 and 2015/16.

10 2. In summary the Applicant was required to render self-assessment tax returns for 2014/15 by 31 October 2015 (if paper returns were rendered) or 31 January 2016 (for online returns). For 2015/16 those dates were 31 October 2016 and 31 January 2017 respectively.

15 3. The Applicant’s paper returns were treated by HMRC as rendered for 2014/15 on 23 January 2018 and for 2015/16 on 26 January 2018. The returns were therefore rendered 814 and 452 days late (see paragraphs 11-24 below for the full chronology).

4. HMRC issued penalties to the Applicant in respect of the late filing as set out in the table below:

Tax Year	Penalty Type	Penalty Amount	Penalty issue date
2014/15	SA late filing penalty	£100.00	17/02/2016
2014/15	SA daily penalty	£900.00	12/08/2016
2014/15	SA 6 month late filing penalty	£300.00	12/08/2016
2014/15	SA 12 month late filing penalty	£300.00	21/02/2017
2015/16	SA late filing penalty	£100.00	07/02/2017
2015/16	SA daily penalty	£900.00	29/08/2017
2015/16	SA 6 month late filing penalty	£300.00	29/08/2017

### Legislation

20 5. By virtue of section 8(1) Taxes Management Act 1970 (“TMA”), for the purposes of establishing the amounts in which a person is chargeable to income tax, a person may be required by notice given to him to make or deliver to the officer a return containing such information as may reasonably be required. Section 8(1D) requires that the return must be rendered by 31 October following the end of the tax

year if a paper return is completed and by 31 January following the end of the tax year in the case of an online return.

6. Where a taxpayer does not render the return by the specified time she renders herself liable to penalties under Schedule 55 FA 2009. The penalty regime imposes  
5 £100 penalty for late filing (due as soon as the filing date is missed), daily penalties at £10 per day for 90 days immediately following the first late filing penalty, £300 penalty after months and a further tax geared or minimum £300 penalty after 12 months.

7. Section 31A TMA provides that a taxpayer must bring an appeal by notifying  
10 HMRC of that appeal within 30 days from the date of the assessment against which the appeal is brought.

8. Section 49 TMA provides:

“(1) This section applies in a case where—

- (a) notice of appeal may be given to HMRC, but
- 15 (b) no notice is given before the relevant time limit.

(2) Notice may be given after the relevant time limit if—

- (a) HMRC agree, or
- (b) where HMRC do not agree, the tribunal gives permission.

(3) If the following conditions are met, HMRC shall agree to notice being  
20 given after the relevant time limit.

(4) Condition A is that the appellant has made a request in writing to HMRC to agree to the notice being given.

(5) Condition B is that HMRC are satisfied that there was reasonable excuse for not giving the notice before the relevant time limit.

(6) Condition C is that HMRC are satisfied that request under subsection (4)  
25 was made without unreasonable delay after the reasonable excuse ceased.

(7) If a request of the kind referred to in subsection (4) is made, HMRC must notify the appellant whether or not HMRC agree to the appellant giving notice of appeal after the relevant time limit.

(8) In this section “relevant time limit”, in relation to notice of appeal, means  
30 the time before which the notice is to be given (but for this section)”

9. Where an appeal has been made to, and rejected by HMRC, the taxpayer may notify that appeal to the Tribunal within 30 days of the rejection of HMRC’s appeal (section 49D TMA). The Tribunal have the discretion to extend the time limit for

such an appeal by virtue of rule 5 Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009.

10. Also relevant to the present appeal are the provisions of section 115 TMA and section 7 Interpretation Act 1978. Together these provisions have the effect that any notice served by HMRC by post to the address held by them on file will be deemed to have been properly served.

### **Chronology and findings of fact**

11. HMRC contend that the Applicant was issued with a notice to file for 2014/15 on 6 April 2015 and for 2015/16 on 6 April 2016; such notices having been sent to the Applicant at 19 Chapel Lane, Blisworth, this being the address held on HMRC's system for the Appellant. No evidence of those notices was before the Tribunal other than the return summary information produced by HMRC's computer system.

12. When no return was rendered penalty notices were issued as set out in the table at paragraph 4 above. Again these notices were sent to 19 Chapel Lane.

13. The Applicant moved from 19 Chapel Lane on 10 November 2015 but did not notify HMRC of the change of address at that time.

14. During February 2017, debt collection in respect of sums due to HMRC (including the late filing penalties) began. Despite the un-notified change of address the bailiffs were able to locate the Applicant at her new address.

15. On 22 February 2017 the Applicant contacted HMRC by telephone regarding the contact from the bailiffs. HMRC's record of the call shows that the Applicant was "advised outstanding returns need filing *and then* can appeal penalties" (emphasis added).

16. By letter dated 23 March 2017 the Applicant wrote to HMRC following receipt of a statement from them. The letter states:

"Thank you for your statement. When your correspondence found its way to me at my new address I spoke to someone at your offices and advised them that I had not been in employment since my last job with Barratt Homes.

I also advised that no correspondence had reached me and you advised me that my old accountants had not sent any returns.

You advised that you would send out self-assessment paperwork for the last 2 years which I would complete and return *and then* I would be able to appeal against the penalties you have imposed as I was not aware I had to make a return if I was not earning, and I had not received any correspondence from you to that effect.

To date I have not received the returns to complete, only the statement dated 9<sup>th</sup> March and should therefore be obliged if you would send me the paperwork to complete as discussed”.

17. On 5 April 2017 HMRC’s contact log records receipt of a letter informing HMRC that the Applicant did not receive the 2015 and 2016 notices to file and did not, in any event, know why she needed to file self-assessment returns for those years. The Tribunal assumes that this letter was that dated 20 March 2017. The contact log records “Duplicate 2015 and 2016 SARs issued and letter advising s/e from 01/05/2013”.

18. On 20 April 2017 the Applicant wrote to HMRC enclosing what are described as “completed” duplicate tax returns. The Applicant explains that she had not earned in the last 2 years. She also explained that she had previously had an accountant who had filed her 2013 tax return. After the retirement of that individual she had appointed new accountants to complete the final accounts and tax returns. The individual dealing with her affairs had gone on long term sick leave and she was seeking to understand what had been filed by them on her behalf. She further explained that there had been losses in the self-employment business which was, by that point, being run by a manager (as the Tribunal understands this business was the Wooden Walls of Old England pub). The Applicant took up employment on 24 April 2017 with Modwen Properties PLC.

19. On 25 August 2017 HMRC’s log then shows: “2015/2016 SA UTR unlogged and returned, SE page required as SE selected but page included. Additional notes cannot be accepted. ... SA605 issued with sup pages”. A second entry for the same date records: “SA Returns for 2014-15 received 25 April 2017 unlogged, returned to taxpayer with SA605 dated 29/08/2017, SE page missing. Missing SE page and return sent back to TP with SA605 letter”. HMRC contended before the Tribunal that the returns failed to include the self-assessment pages and so were rejected and returned to the Applicant for the pages to be completed. The Tribunal cannot quite piece this together from the notes. However, the Applicant did not contest this to be the case and the Tribunal is prepared to accept it.

20. The Applicant resubmitted the returns for 2014/15 and 2015/16 on 24 January 2018 and 26 January 2018 respectively.

21. On 5 February 2018 the Applicant, via a new accountant, appealed the penalties on the basis that “My client’s previous accountant produced the necessary annual accounts for the above tax years and charged accordingly but did not submit the corresponding tax returns for 2015 and 2016. My client was unaware that her tax returns had not been submitted as she had paid for her accounts to be produced, but believes her accountant became unwell, and that their business was subsequently closed. In this case I request that the penalty fines be cancelled, I can confirm that all outstanding self-assessment tax returns have now been submitted”.

22. At the hearing the Applicant confirmed that she had paid the previous accountant but did not produce the invoice. The Applicant also explained that there

had been issues with the accountant in question as he had failed to file the tax returns for her husband (from whom she is separated and who lives at a separate address). He received a penalty notice but had remedied the position. The Applicant accepted that she had not made any enquiry into whether her tax return(s) had been submitted following the identification of the error in connection with her husband's return. She stated that she did not question it because she was not expecting to pay any tax for either year and because she, herself, had not received any penalty notices (her husband was tax paying). The Tribunal accepts the evidence that the Applicant was unaware of the penalties but did not follow up with the accountant.

23. By letter dated 15 March 2018 rejected the appeal as out of time on the basis that the Applicant had established no reasonable excuse for the delay in appealing.

24. On 31 March the Applicant notified her appeal to the Tribunal.

### **Approach to out of time appeals**

25. It is clear, by reference to the provisions of s49 TMA that HMRC have a discretion whether to allow an out of time appeal made to them but are mandated to allow the appeal out of time where the conditions A – C set out in section 49(4) – (6) are met. As set out above these conditions require the Applicant to satisfy HMRC that she had a reasonable excuse for the failure to bring her appeal within the 30 days required under section 31A TMA and that the appeal was brought without undue delay after the reasonable excuse ended.

26. The statutory concept of reasonable excuse appears across all taxes and in different situations. There is much case law on reasonable excuse.

27. In that context a vast body of case law becomes potentially relevant. In particular the recent case of *Christine Perrin [2018] UKUT 0128*.

28. In a comprehensive judgment the Upper Tribunal considers the case law on reasonable excuse:

“[70] ... the task facing the FTT when considering a reasonable excuse defence is to determine whether facts exist which, when judged objectively, amount to a reasonable excuse for the default and accordingly give rise to a valid defence. The burden of establishing the existence of those facts, on the balance of probabilities, lies on the taxpayer. In making its determination, the tribunal is making a value judgement ...

[71] In deciding whether the excuse put forward is, viewed objectively, sufficient to amount to a reasonable excuse, the tribunal should bear in mind all relevant circumstances; because the issue is whether the particular taxpayer has a reasonable excuse, the experience, knowledge and other attributes of the particular taxpayer should be taken into account, as well as the situation in which that taxpayer was at the relevant time or times (in accordance with the decisions in *The Clean Car Co* and *Coales*). (original emphasis)

....

[81] When considering a “reasonable excuse” defence therefore, in our view the FTT can usefully approach matters in the following way:

5 (1) First, establish what facts the taxpayer asserts give rise to a reasonable excuse (this may include the belief, acts or omissions of the taxpayer or any other person, the taxpayer’s own experience or relevant attributes, the situation of the taxpayer at any relevant time and any other relevant external facts).

(2) Second, decide which of these facts are proven.

10 (3) Third, decide whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In doing so, it should take into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times. It might assist the FTT, in this context, to ask itself the question “was what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?”

15 (4) Fourth, having decided when any reasonable excuse ceased, decide whether the taxpayer remedied the failure without unreasonable delay after that time (unless, exceptionally, the failure was remedied before the reasonable excuse ceased). In doing so, the FTT should again decide the matter objectively, but taking into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times.

20 [82] One situation that can sometimes cause difficulties is when the taxpayer’s asserted reasonable excuse is purely that he/she did not know of the particular requirement that had been shown to have been breached. It is a much-cited aphorism that “ignorance of the law is no excuse”. And on occasion this has been given as a reason why the defence of reasonable excuse cannot be available in such circumstances. We see no basis for this argument. Some requirements of the law are well known, simple and straight forward but others are much less so. It will be a matter of judgment for the FTT in each case whether it was objectively reasonable for the particular taxpayer, in the circumstances of the case, to have been ignorant of the requirement in question, and for how long. ...

25 [83] It is regrettably still the case that HMRC sometimes continue to argue that the law requires any reasonable excuse to be based on some “unforeseeable or inescapable” event, echoing the dissenting remarks of Scott LJ in *Commissioners for Customs & Excise v Steptoe [1992] STC 757*. It is quite clear that the concept of “reasonable excuse” is far wider than those remarks

implied might be the case. ... The statutory phrase is “reasonable excuse”, and those are the words to be applied by HMRC and the FTT interpreted as set out above; the addition or substitution of other words beyond those used in the statute can very easily obscure rather than clarify the value judgment as to whether or not a taxpayer has a reasonable excuse, and should be avoided.

29. In connection with Schedule 55 penalties what constitutes a reasonable excuse is also constrained by the provisions of paragraph 23 which excludes an insufficiency of funds (unless attributable to events outside the taxpayer’s control) and reliance on another person (unless the taxpayer took reasonable care to avoid the failure).

30. Similar limitations are not replicated in connection with a reasonable excuse under s49 TMA

31. It appears from the language of s49 TMA that the discretion of the Tribunal is a freestanding provision from that given to HMRC. In particular the provisions of s49(3) TMA do not appear to apply to the Tribunal and it further appears that the Tribunal has no power to review the decision of HMRC to refuse to accept the appeal out of time. Instead the Tribunal takes the view that it must apply the approach advocated more widely in connection with granting applications out of time, including late appeals to the Tribunal itself (as distinct from late appeals to HMRC).

32. The approach taken by the FTT to out of time appeals has evolved over time. This evolution has, to a degree, reflected changes to the procedural approach required under the civil procedure rules as they are applied in the wider court system in the context of relief from sanctions.

33. The Court of Session Outer House specifically considered the approach required to be taken by the Tribunal under s49 TMA in *Advocate General for Scotland v General Commissioners of Aberdeen City [2006] STC 1218*. At that time s49 was slightly differently drafted and provided: An appeal may be brought out of time if on an application for the purpose an inspector or the Board [of Inland Revenue] is satisfied that there was a reasonable excuse for not bringing the appeal within the time limited, and that the application was made thereafter without unreasonable delay, and gives consent in writing; and the inspector or the Board, if not satisfied, shall refer the application for determination by the Commissioners.

34. The Court in that case determined that the approach of the Tribunal under s49 should reflect that adopted in the wider court system. It was stated that the “central feature of such provisions is that they are exceptional in nature; the normal case is covered by the time limit.” The judge went on to list a number of considerations which were “typically relevant” when determining an out of time application but did not intend to provide a comprehensive or exclusive list. Included within the list was whether there was a reasonable excuse for not observing the time limit an example given of a reasonable excuse is “because the appellant was not aware and could not with reasonable diligence have become aware that there were grounds for appeal”. Also included was a requirement that the appellant acted with reasonable expedition once the excuse ceased. Questions of relative prejudice then arise.



35. In the case of *Data Select Ltd v HMRC [2012] UKUT 187* (most often relied upon by HMRC) Morgan J reinforced a 5 tiered approach to the question of out of time applications:

- 5
- (1) What is the purpose of the time limit? – in this case the 30 day time limit for making an appeal
  - (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 the consequences for the parties of a refusal to extend time?

10 36. Most recently in the case of *William Martland [2018] UKUT 0178* the Upper Tribunal gave further consideration to the approach to be adopted by the Tribunal in out of time applications. That Tribunal has indicated that the more formulaic checklist approach adopted by Morgan J in *Data Select* should be viewed as the means for undertaking an assessment of all the circumstances. The Tribunal states:

15 “44. When the FTT is considering applications for permission to appeal out of time, therefore, it must be remembered that the starting point is that permission should not be granted unless the FTT is satisfied on balance that it should be. In considering that question, we consider the FTT can usefully follow the three-stage process set out in *Denton [Denton and others v TH White Limited and others [2014] EWCA Civ 906]*:

- 20
- (1) Establish the length of the delay. If it was very short (which would, in the absence of unusual circumstances, equate to the breach being “neither serious nor significant”), then the FTT “is unlikely to need to spend much time on the second and third stages” – though this should not be taken to mean that applications can be granted for very short delays without even moving on to a consideration of those stages.
  - (2) The reason (or reasons) why the default occurred should be established.
  - (3) The FTT can then move onto its evaluation of “all the circumstances of the case”. This will involve a balancing exercise which will essentially assess the merits of the reason(s) given for the delay and the prejudice which would be caused to both parties by granting for refusing permission.
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- 30

35 45. That balancing exercise should take into account the particular importance of the need for litigation to be conducted efficiently and at proportionate cost, and for statutory time limits to be respected. By approaching matters in this way, it can readily be seen that, to the extent they are relevant in the circumstances of the particular case, all the factors raised in *Aberdeen* and *Data Select* will be covered, without the need to refer back explicitly to those cases and attempt to structure the FTT’s deliberations artificially by reference to those

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factors. The FTT's role is to exercise judicial discretion taking account of all relevant factors, not follow a checklist.

5 46. In doing so, the FTT can have regard to any obvious strength or weakness of the applicant's case; this goes to the question of prejudice – there is obviously much greater prejudice for an appellant to lose the opportunity of putting forward a really strong case than a very weak one. ....”

10 37. As indicated in paragraph 31 above the Tribunal takes the view that its discretion to allow an out of time appeal to HMRC is a freestanding discretion. In exercising that discretion the Tribunal is required to adopt is the three stage approach confirmed in *Martland*. Whilst there is no direct review of HMRC's decision to the extent necessary or relevant the Tribunal considers that conditions A – C will be factors to be taken into account should the Tribunal reach stage 3.

### **The Applicant's grounds for an out of time appeal**

38. The Applicant's grounds of appeal stated to be:

15 “We appeal against the penalties within a 30 day period, as Mrs Blackman had paid her previous accountant in good faith to submit her tax returns (as above). And as there was no income tax due, she was unaware that they had not been sent to HMRC. Once Mrs Blackman discovered that her tax returns had not been submitted, she telephoned the HMRC self-assessment helpline on several  
20 occasions and wrote to HMRC explaining the matter.”

39. During the hearing the Applicant explained that she had not received the penalty liability notices which had been sent to her old address and she was not therefore aware of the time limit in which to appeal.

25 40. The Applicant also explained in further detail that the reason for her failure to file her tax returns was that she believed that the accountant had done so and/or they were not needed. She accepted that she did not chase or enquire of the accountant the status of the returns and also accepted that in prior years she had reviewed the contents of the return prior to signature.

### **HMRC's submissions**

30 41. HMRC based their submissions on the three stage *Denton* test referenced in *Martland*.

35 (1) Seriousness and significance of the failure: “The late [sic] of the SA return for the year 2014/2015 is serious. The penalties are correct applied during 17/02/2016, 29/08/2016. In relation to the year 2015/2016 the Penalties were issued in accordance with legislation shown above and have been correctly applied and notified.”

(2) The reason for default: “HMRC contend the appellant has offered no reason for the failure to comply. Reliant [sic] on an agent to submit returns

5 is also the responsibility of the Appellant to ensure that the agent has complied with the duties for which he was engaged. Appellant claims not to have received the SA returns and the reason for needed to complete the HMRC submit the SA returns have never been returned under “Returned Letter Service (RLS)”. Appellant appointed an agent on 30 March 2013 to undertake SATR completion and so has always been aware of the necessity to complete the returns and the deadlines by which they should be completed.”

10 (3) Evaluation of all of the circumstances: “HMRC contend that both the level of default is serious and the lack of credible, reasonable excuse evidence should be considered”.

15 42. In the course of submissions HMRC reinforced and reiterated the above submissions and did not in any real measure address the Applicant’s case for late appeal i.e. that she was unaware of the need to bring an appeal within the time limits because the penalties had been sent to her old address. HMRC’s representative’s only comment in this regard was to remind the Tribunal that section 115 TMA and s7 Interpretation Act meant that the penalty notices were all deemed to have been correctly served.

20 43. During the course of submission HMRC also reasserted the position taken in correspondence that the Applicant’s right of appeal against the penalties also required the Applicant to have filed her returns before it could be exercised. When the Tribunal sought confirmation of this position, and after a short adjournment, HMRC confirmed that it was not necessary to render returns before making an appeal to HMRC under s31A TMA.

25 **Discussion**

30 44. HMRC’s case as set out in their statement of case and as presented to the Tribunal did not address the failure which is the focus of this Tribunal’s attention. HMRC focused on the reason why the Applicant had failed to render her self-assessment tax return on time and the correctness of the penalties (this despite accurately setting out the *Martland* test).

45. The focus of this application is to consider the Applicant’s failure to make an appeal to HMRC against the penalties by reference to the *Martland* approach.

*Length of the delay*

35 46. The statutory provisions require that an appeal be bought within 30 days. By application of the statutory provisions therefore the appeals were each late:

Tax Year	Penalty Type	Due date for appeal	Date of appeal	Days late

2014/15	SA late filing penalty	17/03/2016	26/02/2018	697
2014/15	SA daily penalty	11/09/2016	26/02/2018	564
2014/15	SA 6 month late filing penalty	11/09/2016	26/02/2018	564
2014/15	SA 12 month late filing penalty	21/03/2017	26/02/2018	342
2015/16	SA late filing penalty	07/03/2017	26/02/2018	356
2015/16	SA daily penalty	28/09/2017	26/02/2018	151
2015/16	SA 6 month late filing penalty	28/09/2017	26/02/2018	151

47. It is thus clear that the delay is lengthy and, in light of the need to ensure compliance with statutory limits for appeal this delay is both serious and significant and it is necessary for the Tribunal to consider stages 2 and 3.

5 *Reasons for the delay*

48. The explanation for the Applicant's failure to make an appeal to HMRC within the statutory time limit is that she was unaware of the time limit. In the first instance she was unaware of the time limit because she was unaware of the existence of the penalties. Once she became aware of the penalties, on the face of it she was being  
10 told by HMRC that before she could appeal the penalties she needed to render the relevant self-assessment returns. She claimed to have appealed within 30 days of rendering her returns.

*Consideration of all the relevant circumstances*

49. HMRC contend that as the penalties were effectively served (by virtue of the  
15 provisions of section 115 TMA and s7 Interpretation Act) on the Applicant she should be taken to have been aware of the need to appeal within 30 days.

50. The Tribunal considers that there is a distinct difference between the proper service of, initially, the notice to file and then, the notice of liability to a penalty and an awareness of their existence in the context of bringing a late appeal.

20 51. However, this apparent difference is not one which can necessarily apply to the 2014/15 return. HMRC's contact log shows that the Appellant moved from Wooden Walls of Old England, 25 High Street, Collingtree NN4 0NE with effect from 27 January 2015 to 19 Chapel Lane, Blisworth, NN7 3BU. She failed to notify a further change of address until the initial submission of her tax returns in 2017 and at that

point notified that she had left 19 Chapel Street to return to 25 High Street on 10 November 2015.

52. Thus when the notice of file for 2015 was sent on 6 April 2015 the Applicant was resident at 19 Chapel Lane. As the Tribunal understands it the notice requiring a self-assessment and the associated documentation informs taxpayers of the required date for filing and warns of the risk of penalty for failure to comply.

53. The Tribunal finds that the notice of filing and all associated warnings were sent to the address held on file by HMRC at a time when the Applicant was in residence and as such should have made the Applicant aware of the risk of penalties for failure to file.

54. The Applicant contends that she believed that her accountant had filed the return and as she was expecting no tax to be payable she did not expect to hear anything from HMRC and so was genuinely unaware of both the risk to penalties and to the fact that they had been raised.

55. The Tribunal is cognisant of the fact that it appears that the Applicant only first became liable to self-assessment on 1 May 2013 when she took over the Wooden Walls of Old England. She had therefore only been in self-assessment for one year prior to the receipt of the 2014/15 self-assessment return. The 2013/14 return had shown she was loss making.

56. The Tribunal reminds itself that generally speaking ignorance of the basic law, particularly the requirement to render a return is not something which can constitute a reasonable excuse. It is however, something which can, as part of “all the circumstances” be considered in the context of an out of time appeal though subject to appropriate weight being given.

57. Also relevant in the context of considering all the circumstances is the fact that the Applicant was clearly told on two occasions by HMRC that she needed to render the self-assessment return before she could appeal the penalties.

58. The Tribunal then considers it appropriate to look at the Applicant’s conduct following her having established that the penalties had been issued in February 2017. She swiftly contacted HMRC and requested duplicate returns. She was advised that she could not appeal the penalties until she rendered the returns. However, she completed the duplicate returns in April 2017 but did not then make an appeal to HMRC at that point.

59. Whilst HMRC then took 4 months to identify that the returns had been completed indicating there was self-employment income but without the relevant self-employment pages and the returns were “unlogged” with the Applicant being advised that the returns needed to be resubmitted, the Applicant then took until January 2018 to refile the returns.

60. It is clear that she did act promptly after filing in January 2018 to seek to appeal and to then notify the appeal to the Tribunal but no explanation was provided for the

delay in making an appeal after she initially lodged the duplicate returns (which she presumably believed to be complete and accurate) in April 2017 or at any time until February 2018. She was not aware until August 2017 that HMRC had not accepted the returns.

5 61. The position vis a vis 2015/16 is similar though, in connection with this return it is clear that the notice to file and all penalties went to the address HMRC held for her but from which she had moved.

62. In connection with the 2015/16 return the Tribunal was initially concerned as to the potential impact of HMRC's delay on both the penalty position and the appeal.  
10 HMRC unlogged the return on 25 August 2017 and imposed the daily and 6 month penalties on 29 August 2017 giving the impression that the 6 month penalty arose during the delay caused by HMRC. On a fuller consideration however it appears that whilst a correct filing of the 2015/16 return on 25 April 2017 would have prevented her from incurring the 6 month penalty this would only have been by 5 days (the 6  
15 month penalty falling on 30 April 2017. It surprises the Tribunal that even with paper captured returns it was not obvious to HMRC immediately that the return was not complete. However, given that when the Applicant was notified of the need to refile it took her 6 months the Tribunal does not consider that any real prejudice was caused by HMRCs delay in this regard.

20 63. It should perhaps also be noted that as a consequence of filing a paper return the Applicant had, in fact, rendered herself liable to a 12 month late filing penalty (which fell due on 31 October 2017) which HMRC did not assess.

64. As to the question of prejudice. As noted in *Martland* there is much greater prejudice to a taxpayer who has a strong case than one with a weak one. Whilst not  
25 determining the issue the Tribunal should take an initial view of the substance of the underlying case as part of its evaluation of all the circumstances.

65. The Applicant's case on the substantive issue is that she had reasonable excuse for failure to file on the basis that she believed that her accountant had rendered her returns as he had been paid to make up the accounts and render the returns.

30 66. Schedule 55 paragraph 23 explicitly removes from the scope of a reasonable excuse reliance on a third party unless the taxpayer has taken reasonable care to avoid the failure. The Applicant in this case accepted that she had not followed up with the accountant even though she was aware that an issue had arisen in relation to her husband's financial and fiscal affairs. In light of this admission the Tribunal sees that  
35 it would be a significant challenge for the Applicant to obviously succeed in relation to establishing a reasonable excuse against the penalties even if the appeal were to be permitted out of time.

67. Taking all these factors together the Tribunal considers that the balance of prejudice lies against allowing the Appellant to appeal out of time. As identified in  
40 the various cases considered in above the purpose of the appeal time limit is to promote legal certainty and security and time limits should be respected unless there

is good reason for them not to be enforced. Had the Applicant made an appeal to HMRC within 30 days of having rendered the returns in April 2017 there would have been more of a case for an out of time appeal for 2015/16. The Applicant's lack of awareness of the penalties and HMRC's direction that a return was required before the appeal had been brought might have indicated that an out of time appeal was appropriate; however, the Applicant would still have struggled with satisfying the Tribunal that the strength of the case resulted in a potential prejudice to her. There is little point in granting an out of time appeal in circumstances where the outcome of the appeal itself is almost doomed to fail.

10 **Decision**

68. For these reasons the Tribunal refused the application to accept an out of time appeal.

69. This document contains full findings of fact and reasons for the preliminary decision. Any party dissatisfied with this preliminary 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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**AMANDA BROWN  
TRIBUNAL JUDGE**

**RELEASE DATE: 22 AUGUST 2018**

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