



**TC08281**

*INCOME TAX - application for permission to make a late appeal to HMRC - Martland applied - application refused*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Appeal number: TC/2020/03937**

**BETWEEN**

**JULIET VANDI**

**Appellant**

**-and-**

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

**Respondents**

**TRIBUNAL: JUDGE ANNE FAIRPO**

The Tribunal determined the appeal on 19 July 2021 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 6 November 2020 (with enclosures) and HMRC's Statement of Case dated 14 January 2021.

## DECISION

### Introduction

1. This is an application for permission to make a late appeal to HMRC in respect of the following late filing penalties:

- (1) 2011/12: initial late filing penalty of £100 issued on 19 May 2015
- (2) 2011/12: six month late filing penalties of £300 issued on 17 November 2015
- (3) 2012/13: initial late filing penalty of £100 issued on 19 May 2015
- (4) 2012/13: six month late filing penalties of £300 issued on 17 November 2015
- (5) 2013/14: initial late filing penalty of £100 issued on 19 May 2015
- (6) 2013/14: six month late filing penalties of £300 issued on 17 November 2015
- (7) 2013/14: twelve month late filing penalties of £300 issued on 17 May 2016

2. Ms Vandt had also appealed daily penalties for the tax years 2011/12, 2012/13 and 2013/14. HMRC did not put forward a case in respect of these and therefore the appeal succeeds against these daily penalties.

3. The total amount appealed by Ms Vandt included an amount which is a PAYE underpayment. She put forward no grounds of appeal in respect of this amount.

### Background

4. HMRC's evidence was that notices to file for each of the relevant tax years were issued to Ms Vandt on 5 February 2015, requiring her to file the relevant returns by 12 May 2015. The same filing date applied regardless of whether the returns were filed electronically or on paper. Ms Vandt does not dispute having received these.

5. As Ms Vandt had not filed the returns by the relevant dates, the penalties were issued by HMRC on the dates set out above. She did not dispute having received the penalty notices.

6. Ms Vandt filed the relevant returns on 30 July 2018.

7. Ms Vandt appealed to HMRC in respect of the penalties on 24 February 2020. On 27 April 2020 HMRC refused to consider the appeal on the basis that it was out of time. She wrote to HMRC again on 8 June 2020 appealing against the penalties. HMRC replied on 30 October 2020 stating that they still could not accept the appeal as it was out of time.

8. Ms Vandt appealed to this Tribunal on 6 November 2020.

### Submissions and evidence

9. Ms Vandt contended that:

- (1) She was under tremendous emotional stress due to a bereavement in her family in March 2015. She had to embark on several travels to perform the traditional rites for the deceased. This took her off her normal activities and prevented her from filing these returns on time.
- (2) As HMRC's letter refusing to accept the appeal contained a statement that any appeal against this decision should be made by 29 November 2020, her appeal was not late.

10. HMRC submitted that:

(1) The approach to be taken by the tribunal is that set out in *Martland* ([2018] UKUT 178) and that the starting point is that permission to appeal late should not be granted unless, on balance, the tribunal is satisfied that it should be. In *Romasave* ([2015] UKUT 254) the Upper Tribunal had held that permission to appeal out of time should only be granted exceptionally.

(2) In *Martland*, the Upper Tribunal considered that the three-stage process in *Denton* ([2014] EWCA Civ 906) should be followed, so that the tribunal should consider:

(a) The seriousness or significance of the delay;

(b) The reason for the delay; and

(c) Evaluate all of the circumstances of the case, balancing the merits of the reasons given for the delay and the prejudice to the parties in granting or refusing permission. 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.

(3) In this case, HMRC noted that the appeal to HMRC was made almost 5 years after the first of the penalties were issued, and almost four years after the last penalty was issued. They contended that this was a serious and significant delay.

(4) Although they had sympathy with Ms Vandi's bereavement, they did not consider that this amounted to a reasonable excuse for the whole of the period of delay.

(5) Considering all of the circumstances, HMRC contended that permission should be refused.

### Relevant law

11. 30. s49 of the Taxes Management Act 1970 ("TMA 1970") provides:

"49 Late notice of appeal

49(1) This section applies in a case where-

(a) notice of appeal may be given to HMRC but

(b) no notice is given before the relevant time.

49(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.

...

49(8) In this section "relevant time limit", in relation to notice of appeal, means the time before which the notice is to be given (but for this section)."

### Discussion

12. The question for this Tribunal is whether Ms Vandi should be permitted to make a late appeal to HMRC. In determining this, the approach set out by the Upper Tribunal in *Martland* is clearly appropriate.

*Is the delay serious and significant?*

13. It was not disputed that the statutory time limits for appealing the penalties were thirty days from the date of issue of each of the penalties, nor that the penalties were first appealed in February 2020.

14. The delay in bringing the appeal was therefore, at least, three and a half years in respect of the latest of the penalties and almost four years in respect of the first of the penalties. The Upper Tribunal in *Romasave* stated (§96) that “a delay of more than three months cannot be described as anything but serious and significant”. The delay in this case is therefore clearly “serious and significant”.

*What is the reason given for the delay?*

15. The reasons given by Ms Vandt is that she suffered a family bereavement in March 2015 and had undertaken travel to complete rites for the deceased.

16. Ms Vandt also contended that her appeal was in time as she had appealed to the Tribunal within the time limit set out in HMRC’s letter of 30 October 2020. With regard to this latter point, the fact that Ms Vandt appealed to this Tribunal in time against HMRC’s refusal to accept the appeal does not mean that her appeal against the penalties is not out of time.

*17. Evaluation of the circumstances*

18. The Tribunal has sympathy with Ms Vandt’s loss in March 2015. Whilst a bereavement can be a good reason for a delay in making an appeal, and I note Ms Vandt’s explanation that she undertook travel to perform rites for the deceased, it does not explain a delay of, at a minimum, three and a half years in appealing to HMRC. I therefore consider that the reason given does not explain the length of the delay which was, as I note, serious and significant.

19. With regard to the prejudice to the parties, if I refuse permission to appeal then Ms Vandt will be unable to challenge the penalties further. Whilst it is not appropriate to conduct an exhaustive analysis of the merits of the substantive appeal, the circumstances should be reviewed to determine if there is clearly a strong case, where there may be greater prejudice to an appellant in refusing permission to appeal.

20. Ms Vandt’s grounds of appeal are the same as the explanation for the delay, that she has a reasonable excuse for the failure to file the return as a result of the bereavement. This is not, for the same reasons given above, a strong case in favour of Ms Vandt.

21. There is a principle that litigation should be finalised as expeditiously as is reasonably possible, as noted in *Martland*. HMRC are entitled to expect that an appellant will appeal within the statutory time limits and so, if no appeal is made, that the matter has become final. If permission were granted, HMRC would be required to reopen a case and expend time, at least, on a matter that they had been entitled to consider final.

**Decision**

22. Considering the approach set out in *Martland*, this is a serious and significant delay. I do not consider that the reasons given are reasonable excuses for the delay and, balancing all the circumstances, I do not consider that the prejudice to Ms Vandt in refusing permission to make a late appeal to HMRC outweighs the other circumstances in the case and as such I should not depart from the starting point set out in *Martland* that permission to appeal late should not be granted.

23. For the reasons stated, the application for permission to make a late appeal is refused.

**Right to apply for permission to appeal**

24. 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.

**ANNE FAIRPO  
TRIBUNAL JUDGE**

**RELEASE DATE: 23 SEPTEMBER 2021**