



Neutral Citation: [2025] UKFTT 00761 (TC)

Case Number: TC09561

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

By remote video

Appeal reference: TC/22024/3214

*Keywords Excise duty - application for extension of time to request review - Martland applied
- application dismissed*

Heard on: 3 June 2025
Judgment date: 20 June 2025

Before

**TRIBUNAL JUDGE DAVID HARKNESS
TRIBUNAL MEMBER GILL HUNTER**

Between

AMINUR RAHMAN

Appellant

and

THE DIRECTOR OF BORDER REVENUE

Respondents

Representation:

For the Appellant: Miss Rubina Khalique

For the Respondents: Ms Lauren Bates-Brownsword of counsel, instructed by the Director of
Border Revenue

DECISION

INTRODUCTION

1. The hearing took place on 3 June 2025 using the Teams Video system. The documents to which we were referred were an appeal bundle of 166 pages (including within it a statement of objection from the Respondents). Following directions given at the hearing, we were also sent a copy of an email from Mr Rahman dated 30 July 2023 and a pro forma copy of an appeal notice with the footer “HMRC 09/22”. Mr Rahman gave evidence in person.
2. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

DECISION

3. The Tribunal decided that the appeal should be dismissed.

SUMMARY

4. This was an appeal against a decision (the “Refusal Decision”) of the Director of Border Revenue (“DRB”) refusing to conduct a review of a decision (the “Original Decision”) of DRB made on 17 March 2023 to charge a restoration fee and penalty on Mr Rahman. DRB had made the Refusal Decision on the grounds the request for a review of the Original Decision had been made late.
5. We were presented with two possible tests to apply in assessing whether to allow this appeal. The first being the “reasonable excuse” test and the second being the “relief from sanctions” (“*Martland*”) test. We considered the proper test was the *Martland* test. But in any event, whichever test was to be applied, we concluded that the appeal should be dismissed. In particular that was because we did not have sufficient evidence to show that steps had been taken by Mr Rahman to appeal against the Original Decision until long after expiry of the statutory period for appeal.

FACTS

6. We found the following facts:
 - (1) On 17 March 2023 at Gatwick Airport, Mr Rahman was stopped by a Border Force Officer (“BFO”) having arrived from Dubai with a friend;
 - (2) When questioned by the BFO, Mr Rahman confirmed he lived in the UK and had been on holiday to Dubai;
 - (3) Mr Rahman was wearing a Rolex watch and, on examination of his luggage, the BFO found a box and receipt for a Rolex watch purchased on 16 March 2023;
 - (4) The BFO issued a Seizure Information Notice (Form 156), calculated the VAT and duty due on the purchase price and then added a ten percent (10%) penalty charge for the restoration of the watch;
 - (5) The calculation was that the VAT and duty due was £4,313.94, so with the 10% penalty charge the total owed was £4,745.33 which was paid by Mr Rahman;
 - (6) An email dated 30 July 2023 was sent by Mr Rahman to Border Force claiming that the tax was wrongly charged because Mr Rahman was a resident in the UAE. The email also refers to having “tried the relevant way of dealing with this matter but to no avail, no response”;
 - (7) In November 2023, when travelling via Gatwick airport, Mr Rahman made contact with an officer of the Border Force and, following that contact, on 25 November 2023,

an email was sent from Border Force, Gatwick requesting details of Mr Rahman's residence and evidence of the re-export of the watch;

(8) By a letter dated 28 March 2024 Mr Rahman contacted the Border Force claiming that he had contacted the complaints department twice via email when he had first been charged the VAT and penalty on the watch;

(9) On 25 April 2024, in response to that letter, DRB wrote to Mr Rahman refusing to consider a review of the decision to levy the VAT and penalty charge. That refusal to review is the subject of this appeal.

7. Save for the question of whether he was issued a Seizure Information Notice (Form 156), these facts were not disputed by Mr Rahman. The issue of whether he had been given the Form was potentially important. Mr Rahman's evidence was that he did not remember being given the Form 156 and that he had used internet sources to identify how to challenge the Original Decision. However, in cross examination Mr Rahman accepted it was possible he or his friend had been given that Form 156. He explained that there had been a heated debate at the airport involving the friend accompanying him and the BFO and that he and his friend had left in a hurry. We noted that in his letter of 28 March 2024 Mr Rahman stated that "I was given an address to write to appeal... this was within the 30 day timeframe" (although we understood that Mr Rahman's sister had assisted in writing this letter and she may have misunderstood what had happened at the airport). While the reference to a 30 day timeframe is erroneous, this seems likely to be a reference to Mr Rahman having been given details of how to challenge the Original Decision when he was at the airport. On the balance of probabilities and taking into account that Mr Rahman's evidence was that it was possible he had been given a form, we concluded that Mr Rahman (or his friend on his behalf) had been given Form 156 at the airport.

LAW

8. Since this was an appeal against a refusal to review a decision to charge a penalty, the applicable law is s14 and s14A Finance Act 1994. These provide as follows.

9. Section 14(2):

"(2) Any person who is (a) a person whose liability to pay any relevant duty or penalty is determined by, results from or is or will be affected by any decision to which this section applies, (b) a person in relation to whom, or on whose application, such a decision has been made, or (c) a person on or to whom the conditions, limitations, restrictions, prohibitions or other requirements to which such a decision relates are or are to be imposed or applied, may by notice in writing to the Commissioners require them to review that decision."

10. Section 14(3) defines the time limit for requesting a review as follows:

"The Commissioners shall not be required under this section to review any decision unless the notice requiring the review is given before the end of the period of 45 days beginning with the day on which written notification of the decision, or of the assessment containing the decision, was first given to the person requiring review".

11. Section 14(4) provides:

"...it shall be the duty of the Commissioners to give written notification of any decision to which this section applies to any person who (a) requests such a notification; (b) has not previously been given written notification of that decision; and (c) if given such a notification, will be entitled to require a review of the decision under this section."

12. Section 14A [Review out of time] provides:

“(1) This section applies if (a) a person may, under section 14(2), require HMRC to review a decision, and (b) the person gives notice requiring such a review after the end of the 45 day period mentioned in section 14(3).

(2) HMRC are required to carry out a review of the decision in either of the following cases.

(3) The first case is where HMRC are satisfied that (a) there was a reasonable excuse for not giving notice requiring a review before the end of that 45 day period, and (b) the notice given after the end of that period was given without unreasonable delay after that excuse ceased.

(4) The second case is where (a) HMRC are not satisfied as mentioned in subsection (3), and (b) the appeal tribunal, on application made by the person, orders HMRC to carry out a review.”

13. We were presented with two alternative tests as to what was the right approach to determine whether to grant this application. The first being the “reasonable excuse” test and the second being the “relief from sanctions” (“*Martland*”) test. We concluded that we agreed with Judge Popplewell’s reasons and conclusion in paragraph 28 of *SC Duvenbeck Logistik SRL v The Director of Border Revenue* [2021] UKFTT 319 (TC) that our jurisdiction is appellate and that we are not restricted to considering only reasonable excuse when deciding whether or not DRB should be ordered to carry out a review out of time. Instead, the three-stage test in *Martland v HMRC* [2018] UKUT 178 (TCC) should be applied. Neither party disagreed that this was the correct test. The *Martland* test is to:

- (1) establish the length of the delay and whether it is serious and/or significant;
- (2) establish the reason(s) why the delay occurred; and
- (3) evaluate all the circumstances of the case, using a balancing exercise to assess the merits of the reason(s) given for the delay and the prejudice which would be caused to both parties by granting or refusing permission, and in doing so 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”.

14. In case we were wrong about the correct test being the *Martland* test, we also considered the alternative test being in summary that we should consider only whether Mr Rahman had a reasonable excuse for failing to meet the 45 day deadline and gave notice after the end of that period without unreasonable delay after that excuse ceased.

CONSIDERATION OF THE ISSUES

15. Applying the *Martland* approach, our consideration was as follows.

Length of the delay

16. We first considered the length of the delay. The earliest potential request for a review for which we had clear evidence was made on 30 July 2023, which is 134 days after 17 March 2023. Accordingly, the request for review was made 89 days after the expiry of the 45 day period specified in s14(2).

17. We were invited by DBF to consider that the 30 July 2023 email was not a request for a review for the purposes of s14(2) and therefore the letter dated 28 March 2024 was the request for a review. It was made more than 330 days after the expiry of the 45 day period.

18. A delay of 89 days in the context of a 45 day appeal period is clearly serious and significant; if the period is over 330 days the delay is even more serious and significant.

Reason for the delay

19. Mr Rahman's evidence was that:

- (1) he was uncertain of the process for challenging the Original Decision and had used the internet to find information and to download a form to send to DBF;
- (2) he had contacted DBF by email in the first two weeks after 17 March 2023 and had then written a letter to DBF (using the form downloaded from the internet) at some point in the period between 17 March and 30 July 2023;
- (3) he did not have copies of that email or letter, having lost access to the email account from which he had sent the email and not having taken a copy of the letter;
- (4) he had not received a reply to his email of 30 July 2023 and he not taken further steps to pursue the matter until he was travelling through Gatwick in November 2023, at which point he had sought advice in person;
- (5) in consequence of that advice he had written to BF on 28 March 2024 – he had not done so between November 2023 and March 2024 because he was abroad with limited access to his emails.

20. There are suggestions in the written evidence that Mr Rahman attempted to contact DBF before 30 July 2023. For example the 30 July email refers to Mr Rahman having “tried the relevant way of dealing with this matter but to no avail..”; and the 28 March 2024 letter states “... I initially contacted the complaints department twice via email and post when I was first charged ...”.

21. On the other hand, the notice of appeal states “I initially wrote to Gatwick border force and completed the appropriate form I was advised to do so by the officers to make my appeal. This letter was sent by post. I waited for a response and then made contact again”. This suggests that rather than needing to download a form from the internet, Mr Rahman was given a form at Gatwick airport to complete in order to make an appeal.

22. We considered that Mr Rahman was trying to present his honest recollections of the events and the correspondence he had sent to DBF, but that with the passage of time his recollections are not clear enough for us to be able to find any facts as to what contact and when he had with DBF in the period 17 March 2023 and 30 July 2023. For the requirements of s14(2) to be met, Mr Rahman would have had to give a notice requiring a review within the 45 day period; we did not have sufficient evidence to be able to find that that had happened. Even the 30 July 2023 email was not a completely clear notice for the purpose of s14(2) since it states “I believe the tax was wrongly imposed, can you help me to resolve this or show me where I can appeal this matter”; that could be read as a request for advice on what steps to take in order to challenge the decision rather than being a formal request for a review of the decision for the purposes of s14(2). On balance we think the 30 July 2023 e-mail should be treated as a request for a review for the purposes of s14(2), but the lack of clarity of the wording in this e-mail is indicative that any correspondence Mr Rahman may have sent before 30 July 2023 might well not have amounted to a request for the purposes of s14(2).

23. In any event, for the purposes of the *Martland* test, our summary of the reason for the delay between 17 March 2023 and 30 July 2023 was that Mr Rahman was probably thinking about what to do and may have sent some correspondence to DBF but it was not clear to us what may have been sent or when.

24. If we were considering the delay between 17 March 2023 and 28 March 2024, our summary of the reason for the delay was that Mr Rahman was travelling and/or busy with other

matters to the effect that pursuing a challenge to the Original Decision was not at the top of his agenda.

Evaluating all the circumstances of the case

25. Considering all of the circumstances:

- (1) we concluded that the delay was serious and significant (both in relation to the delay from 17 March to 30 July 2023 and even more so if we are looking at the delay to 28 March 2024);
- (2) the reasons given for the delay were unsupported by documentary evidence and Mr Rahman's evidence was not entirely clear or consistent (unsurprising given the passage of time);
- (3) in relation to the delay to 30 July 2023, even if Mr Rahman had tried to make contact with DBF in order to challenge their decision, he seemed to us to have shown a distinct lack of urgency or vigour in pursuing the matter;
- (4) in relation to the delay to 28 March 2024, Mr Rahman was busy with other matters, which does not seem a good reason for the delay;
- (5) it is important that time limits are respected and DBF will suffer prejudice given the need to reopen this case and other taxpayers will suffer from resources being devoted to considering this matter;
- (6) the merits of Mr Rahman's appeal. The UT said in *Martland* that there is "much greater prejudice for an applicant to lose the opportunity of putting forward a really strong case than a very weak one". The merits of the appeal may therefore be a relevant factor in the balancing exercise. However, the UT also said that the Tribunal should not "descend into a detailed analysis" of the merits of the matter. Mr Rahman's grounds for requesting a review were that in summary he was a UAE resident. We did not take evidence on the merits of Mr Rahman's case, but we noted that his address in the papers we were given was in the UK and that in his evidence he referred to travelling from the UK via Gatwick in November 2023 to go on holiday. All of this pointed to his residence being in the UK, which suggested the merits of his case might be weak;
- (7) the interests of justice do not automatically result in the grant of extensions of time to appeal;
- (8) if the application is not granted, Mr Rahman will lose the ability to challenge the original decision;
- (9) if the application is granted, Mr Rahman will gain the chance to have the Original Decision reviewed, but that does not mean that the Original Decision will be changed;
- (10) there is public interest in the finality of litigation and prejudice will be caused to DBF if it is required to reopen a matter believed concluded;
- (11) the starting point is that permission should not be granted unless the FTT is satisfied on balance that it should be.

26. Taking these factors into account we were of the view that the circumstances suggested on balance that the appeal should be refused.

Overall conclusion if Martland applies

27. For the reasons set out above, we refused the appeal.

Applying the alternative test

28. Applying the alternative test, we considered if Mr Rahman had a reasonable excuse for failing to meet the 45 day deadline and gave notice after the end of that period without unreasonable delay after that excuse ceased. For the reasons set out in [25(2) to (4)] we found that he did not have a reasonable excuse for failing to meet the 45 day deadline.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

29. 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.

Release date: 20th JUNE 2025