



TC04142

Appeal number: TC/2014/03450

Penalty for late filing of self-assessment return - Appellant appointed agent who needed authorisation code from HMRC to submit return - delay in receiving code - whether reasonable excuse - no - appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ZOLTAN HEGEDUS

Appellant

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

Respondents

TRIBUNAL: JUDGE MICHAEL S CONNELL

The Tribunal determined the appeal on 9 October 2014 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 20 June 2014 and HMRC's Statement of Case submitted on 18 July 2014.

DECISION

The Appeal

1. Mr Zoltan Hegedus, ('the Appellant') appeals against a £100 penalty imposed
5 under Paragraph 3 of Schedule 55 Finance Act (FA) 2009 for the late filing of his Individual Tax Return for the year ending 5 April 2013.

2. The point at issue is whether or not the Appellant has a reasonable excuse for submitting a late return.

Relevant legislation

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3. An individual's self-assessment filing date is determined by s 8(1D) TMA 1970 et seq. which states that for the year ended 5 April 2013 a non-electronic return must be filed by 31 October 2013 and an electronic return by 31 January 2014. A late filing penalty is chargeable where a taxpayer is late in filing their Individual Tax return.

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4. If the return is not received by the filing date a penalty of £100 is payable in accordance with Paragraph 3 Schedule 55 FA 2009.

5. If after a period of 3 months beginning with the penalty date the return remains outstanding, daily penalties of £10 per day up to a period of 90 days are payable in accordance with Paragraph 4 Schedule 55 FA 2009.

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6. If after a period of 6 months beginning with the penalty date the return remains outstanding, a penalty is payable in accordance with Paragraph 5 Schedule 55 FA 2009; the penalty is the greater of 5% of any liability to tax which would have been shown on the return or £300.

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7. If after a period of 12 months beginning with the penalty date the return remains outstanding, a penalty is payable in accordance with Paragraph 6 Schedule 55 FA 2009; the penalty is the greater of 5% of any liability to tax which would have been shown on the return or £300.

Background facts

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8. A non-electronic return for the year ending 5 April 2013 was issued to the Appellant on 6 April 2013.

9. The filing date was 31 October 2013 for a non-electronic return or 31 January 2014 for an electronic return.

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10. As a return was not received by the filing date, HMRC issued a notice of penalty assessment on 18 February 2014 in the amount of £100.

11. The Appellant's electronic return for the year 2012-13 was received on 8 February 2014. It was therefore eight days late.

Appellant's contentions

5 12. The Appellant does not dispute that his return was late, but he appeals the £100 fixed late filing penalty.

13. On 14 March 2014 Safi Advisory Services Ltd (agent to the Appellant) appealed against the penalty, stating:

10 "The return was completed and ready to send on 31 January 2014. The only reason for delay was because our client had to forward to me (accountant) authorisation code so I could submit it for him. As soon as code was received the return has been immediately submitted."

14. HMRC replied on 2 April 2014 rejecting the appeal and offering a review.

15. On 29 April 2014 the agent requested a review of HMRC's decision, stating:

15 "... I would like to kindly ask you to review your decision based on following facts:

20 Mr Hegedus might have been filing his returns online himself in the past, nevertheless it was the first year that he has chosen my practice to help him to submit his return. Therefore it is first return that I have done for Mr Zoltan Hegedus and Mr Hegedus had no experience of how long authorisation process takes place and what is required for me to submit his return.

25 Some accountants use commercial programs that allow them to authorise clients on the spot, meaning they do not need to order authorisation codes to file returns. They are able to file returns on the very same day their clients meet them for a first time. This is not the case for my practice. I use free HMRC software to file my client's returns. Unfortunately, the only authorisation procedure that HMRC follows is to order the code online and await for its delivery via post. This takes on average 2-4 weeks and it is beyond my control.

30 My client, Mr Hegedus, did not know that I do not use commercial software until he first met me. I have explained that I will need to order the code as it is first time he is using my practice services. Mr Zoltan Hegedus has had all information available before 31 January and I have updated and prepared return on "unauthorised clients list" in HMRC online system. The return has been created on 31 January 2014. The only thing that prevented me from submitted return was authorisation procedure. As soon as the code arrived at
35 my client's address I have submitted the return.

40 It is beyond my client's influence that the authorisation process takes that long. Mr Hegedus, when he turned to me on 31 January 2014 was under the impression that as he turns to accountant before the deadline it is sufficient enough to submit his return. I am also unable to speed up authorisation process."

16. HMRC carried out a review and issued their review conclusion on 11 June 2014. The outcome of the review was that HMRC's decision should be upheld.

17. On 20 June 2014 the Appellant's agent appealed to the Tribunal, reiterating the previous grounds of appeal and further stating:

5 “..HMRC uses different rules for different clients. This situation (new clients
turning to me days before the deadline) happens every year to some of new
clients who leave their affairs until January. As 31 January is widely advertised in
media many people assume it is January when they must complete returns, they
do not know it can be done earlier. However it has never been a problem in the
10 past. I have explained situation with authorisation delays to HMRC and penalties
were always waived. It is first year that HMRC insists on charging penalty to my
client (Mr Hegedus). Moreover penalties for other clients were cancelled. I attach
for your reference an example of identical situation for other clients of mine ...
15 for whom penalties were cancelled. I do not believe that it is right to treat clients
differently in same circumstances.”

HMRC's view

18. The Appellant's grounds of appeal can be summarised as follows:

- 20 i. This was the first year that the Appellant had chosen to engage the
agent and had no experience of how long the authorisation process
takes and what was required for the agent to submit his return.
- 25 ii. As the agent uses HMRC's free software rather than a commercial
software package, an authorisation code has to be sought for each new
client to allow online filing. This code can be ordered online but is
delivered to the client via post. The Appellant did not know that the
agent was using HMRC's software rather than commercial software
until they first met.
- 30 iii. The return was created on 31 January 2014; the only thing that
prevented the agent from submitting it was the authorisation procedure.
As soon as the authorisation code arrived at the client's address, the
return was submitted.
- 35 iv. It is beyond a client's influence that the authorisation process takes so
long. The Appellant, when he turned to the agent on 31 January 2014,
was under the impression that as he engaged an agent before the
deadline this was sufficient enough to submit his return.
- v. Penalties for other clients were waived in similar circumstances.

19. It is incumbent on taxpayers to make sure that they have adequate procedures in place to meet their tax obligations and to ensure that their Self-Assessment Tax Return is correctly completed and submitted to HMRC by the legislative deadlines.

20. The legislation at s 8 TMA 1970 states that for the year ended 5 April 2013 the Self-Assessment tax return must be filed on paper by 31 October 2013 or online by 31 January 2014.
- 5 21. The notice to file issued on the 6 April 2013 confirmed the filing dates and warned that a penalty would be charged if the return is received after the appropriate deadline.
22. There is no record of a return for 2012-13 being received from the Appellant or his agent prior to receipt of an electronic return on 8 February 2014.
- 10 23. HMRC would submit that as the notice to file was issued on 6 April 2013, the Appellant had ample time to arrange for his return to be filed online prior to 31 January 2014. The fact he waited until the last minute before attempting to file the return, and therefore running the risk that a problem may arise which would result in late submission, is in HMRC's view not the actions of a taxpayer exercising reasonable foresight and due diligence, having proper regard for their responsibilities
15 under the Tax Acts.
24. In addition, Government Gateway records show that the Appellant registered for online filing on 16 October 2012, enrolled for the SA online service on 24 November 2012 and activated the service on 29 November 2012; as such the systems were in place so that his 2012-13 Self-Assessment return could have been filed online by the
20 legislative due date. However the Appellant chose instead without good reason to wait until the end of January 2014 before approaching an agent to file the return.
25. HMRC have no records to indicate that there were any problems with the SA online filing system, which is active 24 hours a day seven days a week, nor that the Appellant contacted HMRC to advise of any filing difficulties.
- 25 26. It is the responsibility of the taxpayer to ensure that the regulations are followed and their return is delivered to HMRC by the legislative deadline. This responsibility cannot be transferred or removed by engaging an agent or any other person to act on their behalf. Successful submission of the return remains the responsibility of the taxpayer at all times.
- 30 27. Taxpayers must ensure their filing obligations are met. Even if they choose to have an agent file the return on their behalf they must make sure that the agent has the necessary skills and equipment to complete the task successfully by the legislative due date.
- 35 28. By the agent's own admission the Appellant did not engage his services until 31 January 2014, whereupon he was informed that the return could not be filed by the agent until an authorisation code was applied for and received which could take, according to the agent, two to four weeks.
- 40 29. On 31 January 2014 (the statutory online filing date) the Appellant could still have successfully filed the return via his own online account which was active since November 2012. However he chose without good reason to wait and allow his agent

to submit the return after receipt of the authorisation code, in the knowledge that his return would be filed late.

5 30. Information about Self-Assessment, the completion of returns, return filing dates, penalties, agent authorisation procedures and the issue of authorisation codes and related matters are well within the public domain and widely available via the Internet including HMRC's website.

31. A person acting in a reasonable manner to ensure that they adhered to their legislative tax obligations would make themselves aware of such information and act accordingly.

10 32. The agent says that new clients such as the Appellant are disadvantaged by the fact they use free HMRC software rather than commercial software. This in HMRC's view has no bearing on the appeal or can be deemed a reasonable excuse for the failure. As previously stated, despite the Appellant having the facility to file the return via his own online account, he chose to engage the agent to file the return instead,
15 knowing on 31 January 2014 that the return would not be filed on time.

33. The notice to file was correctly issued and as such the Appellant was legally bound to complete and file a 2012-13 SA return by the legislative deadlines. There is nothing within this appeal that would have relieved him of this obligation.

20 34. The penalty was imposed in accordance with legislation as the return was filed late, a fact that the Appellant is not contesting.

35. HMRC have no discretion in the calculation of the penalty amount as it is set in statute. Schedule 55 FA 2009 refers and all taxpayers who fail to submit their 2012-13 Self-Assessment Tax return on time will be subject to penalty under this section.

25 36. In the case of *Hok Ltd v Revenue & Customs*, the Upper Tribunal found that HMRC's decision to charge Hok Ltd penalties for late filing of their Employer's Annual Return was correct, and that the First-tier Tribunal acted beyond its jurisdiction in discharging the penalties. The First-tier Tribunal does not have the power to discharge or adjust a fixed penalty which is properly due because it thinks it is unfair. The decision of the Upper Tribunal creates a precedent and is binding on all
30 cases where similar issues are raised.

37. Although the Upper Tribunal decision in relation to Hok Ltd related to penalties for the late filing of an Employer's Annual return, the £100 penalty charged in this case for late filing of the Self-Assessment Tax return is also a fixed penalty.

35 38. HMRC have to be seen to be consistent in their approach to all customers, particularly to those who comply with the regulations.

39. With regard to 'Special Reduction' (Paragraph 16 Schedule 55 FA 2009) Paragraph 16(1) allows HMRC to reduce a penalty below the statutory minimum if they think it is right because of special circumstances. While 'special circumstances' are not defined the courts accept that for circumstances to be special they must be

'exceptional, abnormal or unusual' (*Crabtree v Hinchcliffe*) or 'something out of the ordinary run of events' (*Clarks of Hove Ltd v Bakers' Union*).

40. HMRC have considered special reduction but their view is that there are no special circumstances which would allow it to reduce the penalty.

5 Conclusion

41. The onus of proof rests with HMRC to show that the penalty was correctly imposed. If so established, the onus then rests with the Appellant to demonstrate that there was reasonable excuse for late filing of his return. The standard of proof is the
10 ordinary civil standard of the balance of probabilities.

42. There is no statutory definition of 'reasonable excuse', which is a matter to be considered in the light of all the circumstances of the particular case. A reasonable excuse is normally an unexpected or unusual event that is either unforeseeable or beyond the taxpayer's control, and which prevents them from complying with their
15 obligation to pay on time. A combination of unexpected and unforeseeable events may, when viewed together, be a reasonable excuse.

43. In this case there was no unexpected or unforeseeable event which caused the Appellant to delay submission of his SA return. Systems were in place so that the Appellant's 2012-13 Self-Assessment could be returned. There was no reason why he
20 should instead wait until the end of January 2014 before approaching an agent to file the return.

44. As HMRC submit, the Appellant had ample time to arrange for his return to be filed online prior to 31 January 2014. The fact he waited until the last minute before attempting to file the return, and therefore run the risk that a problem may arise, are
25 not the actions of a taxpayer exercising reasonable foresight and due diligence, having proper regard for their responsibilities under the Tax Acts.

45. The existence of a different case or cases which have been settled in another manner do not have any impact on the appeal. Each case must be determined on its own merits. The Appellant concedes that his return was filed late and in the
30 Tribunal's view has not provided a reasonable excuse for his failure to file the return for 2012-13 on time.

46. Information about Self-Assessment, the completion of returns, return filing dates, acknowledgement messages, penalties and the online services helpdesk is well within the public domain and widely available via the Internet including HMRC's website.

35 47. A taxpayer acting in a reasonable manner to ensure that they adhered to their legislative obligations would make themselves aware of such information and act accordingly.

48. The Tribunal finds that the late filing penalty charged is in accordance with legislation and there is no reasonable excuse for the Appellant's failure to file his tax
40 return on time. There are also no special circumstances which would allow the penalty

to be reduced under the Special Reduction regulations. The appeal is accordingly dismissed and the £100 late filing penalty confirmed.

5 49. 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.

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**MICHAEL S CONNELL
TRIBUNAL JUDGE**

RELEASE DATE: 19 November 2014

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