



TC05809

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Appeal number: TC/2013/04569

INCOME TAX – Whether reasonable excuse for late submission of self-assessment tax return - No.

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**FIRST-TIER TRIBUNAL
TAX CHAMBER**

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HAZEL M. REYNOLDS

Appellant

- and -

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

**TRIBUNAL: PRESIDING MEMBER
PETER R. SHEPPARD FCIS FCIB CTA
AIIT**

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The Tribunal determined the appeal on 16 April 2017 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 10 July 2013, and HMRC's Statement of Case received by the Tribunal on 7 February 2017 with enclosures. The Tribunal wrote to the appellant on 7 February 2017 indicating that if she wished to reply to HMRC's Statement of Case she should do so within 30 days. No reply was received.

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DECISION

1. Introduction

5 The appellant's Notice of Appeal states that it is an appeal against penalties totalling
£1,000 imposed by the respondents (HMRC) under Paragraphs 3 and 4 of Schedule
10 55 Finance Act 2009 for the late filing by the appellant of her self-assessment tax
return for the tax years 2010-2011. However the appellant appear to have overlooked
that there was a further £300 penalty imposed by HMRC under Paragraph 5 of
Schedule 55 Finance Act 2009 in respect of the same matter, and HMRC has treated
this as an appeal against that also.

2. Legislation

Finance Act 2009 Schedule 55

Taxes Management Act 1970, in particular Section 8(1D)

15 3. Case law

Crabtree v Hinchcliffe (Inspector of Taxes) [1971] 3 ALL ER 967

Clarks of Hove Ltd v Bakers' Union [1979] 1 All ER 152

David Collis v HMRC [2011] UKFTT 588 (TC)

Garnmoss Ltd trading as Parham Builders [2012] UKFTT 315 (TC)

20 Keith Donaldson v HMRC [2006] EWCA Civ 761

HMRC v Hok Ltd. [2012]UKUT 363 (TCC)

International Transport Roth GmbH v SSHD [2002] EWCA Civ 158

Rowland v HMRC [2006] STC (SCD) 536

25 4. Facts

Schedule 55 of the Finance Act 2009 ("the Schedule") makes provision for the
imposition by Her Majesty's Revenue and Customs ("HMRC") of penalties on
taxpayers for the late filing of tax returns.

30 If a person fails to file an income tax return by the "penalty date" (the day after the
"filing date" i.e. the date by which a return is required to be made or delivered to
HMRC), paragraph 3 of the Schedule provides that the person is liable to a penalty of
£100.

Paragraph 4 of the Schedule provides:

"(1) A person is liable to a penalty under this paragraph if (and only if)–

35 (a) The failure continues after the end of the period of 3 months beginning with the
penalty date,

(b) HMRC decide that such a penalty should be payable, and

(c) HMRC give notice to the person specifying the date from which the penalty is
payable."

(2) The penalty under this paragraph is £10 for each day that the failure continues during the period of 90 days beginning with the date specified in the notice given under sub-paragraph (1)(c).

Paragraph 5 of the Schedule provides

- 5 (1) A person is liable to a penalty under this paragraph if (and only if) - the failure continues after the end of the period of 6 months beginning with the penalty date.
- (2) The penalty under this paragraph is the greater of –
- (a) 5% of any liability to tax which would have been shown in the return in question, and
- 10 (b) £300

The filing date for an individual tax return is determined by Section 8 (1D) of the Taxes Management Act 1970.

15 5. In this case in respect of the tax year ended 5 April 2011 HMRC issued a notice to file to the appellant on 6 April 2011. The filing date for a non-electronic return was 31 October 2011 whereas for an electronic return the filing date was 31 January 2012. The appellant's electronic return was not submitted until 28 August 2012. As the return was not submitted by the filing date of 31 January 2012 HMRC issued a notice of penalty assessment on or around 14 February 2012 in the amount of £100. As the

20 return had still not been received 3 months after the penalty date of 1 February 2012, HMRC issued a notice of daily penalty assessment of £900 on or around 7 August 2012, calculated at £10 per day for 90 days (1 May 2012 to 29 July 2012 is 90 days). As the return had still not been received 6 months after the penalty date of 1 February 2012, HMRC issued a notice of daily penalty assessment of £300 on or around 7

25 August 2012.

30 6. HMRC's approach to daily penalties was the subject of an appeal by Keith Donaldson which culminated in a decision of the Court of Appeal. The Tribunal has read that decision and considers that its conclusions whilst informative have negligible effect on the matters considered in this appeal save that the absence of the correct period for which the daily penalties have been assessed in the notice of assessment does not affect the validity of the notice.

35 7. Nevertheless the Tribunal is critical of HMRC in that no copy of any of the penalty notices was included in the bundle of papers provided. The only evidence of the penalties is a copy of HMRC's own internal record showing that penalty notices were issued and it is clear from the appellant's letters that they received the penalty notices for the late penalty of £100 and the daily penalties of £900. The appellant makes no reference at all to the 6 months late penalty of £300. In times where HMRC encourage submissions of returns on-line it is astounding that they appear not to have a computer system that stores a copy of penalty notices issued.

8. The lack of the penalty notices hampers the Tribunal in establishing whether the notices have been issued to the correct address and person, and whether the penalty has been calculated accurately.

9. On 21 August 2012 the appellant appealed against the penalty, she stated:-

5 “In reply to your penalty letter of 07.08.2012 and telephone conversation with your help team, I appeal against these charges as the self assessment form for the year ending 5th April 2011 was done by a paper return as I was not registered online for this service at that time. I will fill in the details on line straight away and look forward to hearing from yourselves on these penalties.”

10 10. On 11 September 2011 HMRC replied saying they did not agree that the appellant had a reasonable excuse for not sending the tax return on time. They said that their records showed that the appellant submitted her 2009-2010 tax return online on 12 February 2011. The letter offered a review

15 11. On 3 October 2012 the appellant wrote to HMRC Personal Tax Appeals Review Unit. The letter included

“In January 2011 I received two separate self assessment request from HMRC, which I thought was rather strange. I therefore tried to set up my self assessment on-line account. However the request for a password reset took longer than I expected and this caused me to miss the 31st January deadline.

20 Not wanting to incur a penalty I duly called the HMRC help line with the account problems and was advised that I could send in a paper copy to negate this penalty due to the time require to resolve the account difficulties. I duly did this and also filed an on-line submission when all my codes and passwords arrived early in February.

25 Additionally when I tried to submit my self assessment for 2011/12 I again had problems to find that two separate accounts had been set up causing major confusion for me. I therefore wonder if there has been a mix-up with my 2010/11 filing due to this problem.

30 I therefore ask that you consider waiving the penalty charges as I believe I made more than reasonable attempts to file in a timely manner only to be caught out by the slowness of the account resolution process and the potential loss of my paper copy, whilst being informed by HMRC that submission of a paper copy would suffice,”

12. On 19 November 2012 HMRC responded having taken the letter of 3 October 2012 as a request for a review.

The letter confirmed the penalties and included:-

35 “The request you received in January 2011 would have been a reminder that your 2009-2010 tax return was still outstanding. This was later filed by internet on 12 February 2011. You would not have received your 2010-2011 notice to file a tax

return until April 2011. Therefore you would have had your password in good time to submit your 2010-11 tax return by 31 January 2012 online.

5 Our records show that you did not contact us until 02 April 2012 after you received 2010-11 penalty notice and you advised us that you did not know you had to complete a tax return.”

13. Appellant’s submissions

10 Some of the appellant’s submissions are included in the paragraphs above. In the Notice of Appeal dated 10 July 2013 the appellant’s agent, her son Philip Robinson, gives the following grounds of appeal:

15 “My mother is a 67 year old woman who in the financial turndown, was made redundant. She has unfortunately been caught in a pension trap and thus only receives less than £10 per week state pension. Therefore she has been forced to carry on working. Due to her age she found it extremely difficult to get work and has had to set up a one woman book keeping business. She has been able to keep her head above water running this, but has struggled with the onward march of the digital age. Nevertheless she has attended additional PC training courses and is able to get by.

20 We understand that the background is somewhat irrelevant to the appeal, but feel the need to appraise the tribunal of the details.

The reason we disagree with HMRC is thus.

- 25 - HMRC issued 2 on-line accounts for my mother’s self-assessment filing.
- There were additional problems with a password reset causing the on-line filing deadlines to be missed
- We agree with the late filing penalty as it took too long for my mother to contact HMRC regarding the filing.
- My mother contacted HMRC, Liverpool to discuss the on-line filing issues on 4th March, speaking to Mark.....
- 30 - A paper self-assessment was issued which was duly returned. HMRC have no copy of this
- I then got involved and resolved the issue on the on-line submission problems, thereby filing on-line for the lost paper one..
- On 05 June 2012 my mother received a notification of a Daily late payment reminder and duly returned it with the submission number for the on-line returnwhich she believed to have been completed on 20th April 2012.
- 35 - A letter returned by HMRC showed that we had completed the on-line submission for the 2011/12 (which was not due to the 31st January 2013) not the 2010/2011 year.
- 40 - We were very confused and realised our mistake. We duly filed the 2010/11 on-line in August.

45 We are therefore appealing the daily penalty charge of £900 on the grounds of firstly believing that my mother had filed her paper return, secondly on a genuine mistake believing we had filed the return on 20th April 2012 but instead filing the incorrect

year, thirdly on the grounds that reasonable effort was made to resolve the issues created by the two incorrectly set up on-line self-assessment accounts and fourthly and finally due to the lack of knowledge of a 67 year old woman forced to carry on working by a government decision in the 60s-70s.”

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14. HMRC’s submissions

Some of HMRC’s submissions are included in the paragraphs above. In addition HMRC say Taxpayers who are within the self-assessment system must file their returns by the due date and pay the tax they owe by the date specified in law.

10 15. HMRC say their Digital Service shows that the appellant successfully registered for online services on 25 January 2011. This was activated on 4 February 2011 and she successfully filed her 2009-2010 tax return on 12 February 2011. The next log on was on 21 January 2012 but there is no evidence of an attempt to submit the 2010-2011 return at that time. They also say there is no evidence of a helpdesk report in
15 respect of problems filing the 2010-2011 return.

HMRC does not accept that experiencing difficulty accessing the HMRC’s online functions amounts to a reasonable excuse for the late return of the 2010-2011 tax return. The return was issued on 06 April 2011 thus giving the appellant 9 months to complete and submit the online return before the deadline.

20 16. HMRC records show that the appellant’s self-assessment return was submitted electronically on 28 August 2012.

17.. In respect of reasonable excuse HMRC say that they consider the actions of a taxpayer should be considered from the perspective of a prudent person exercising reasonable foresight and due diligence, having proper regard for their responsibilities
25 under the Tax Acts. The decision depends on the particular circumstances in which the failure occurred and the particular circumstances and abilities of the person who failed to file their return on time. The test is to determine what a reasonable taxpayer, in the position of the taxpayer, would have done in those circumstances and by reference to that test to determine whether the conduct of the taxpayer can be regarded
30 as conforming to that standard”.

HMRC refer to the case of *Rowland* and say the matter is to be considered in the light of all the circumstances of the particular case.

18. HMRC say that both the appellant’s level of income and her ability to pay a penalty do not affect her liability to file her return on time.

35 19. HMRC say that their online filing system for self-assessment returns clearly shows the individual tax years concerned. As such HMRC does not accept that an individual or their agent filing a return to an incorrect year amounts to a reasonable excuse.

20. . In respect of the penalty being unfair HMRC say for a penalty to be disproportionate it must be “not merely harsh but plainly unfair.” They refer to the decision in *International Transport Roth GmbH v SSHD*.

5 21. HMRC has considered special reduction under (paragraph 16 Schedule 55 of the Finance Act 2009). They say special circumstances 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*). HMRC say the special circumstances must apply to the particular individual and not be general circumstances that apply to many taxpayers (*David Collis v HMRC*). HMRC consider that there are no special
10 circumstances which would allow them to reduce the penalty.

22. Tribunal’s Observations

This is a case of a taxpayer whose intentions were to submit her tax returns on time but unfortunately misunderstandings and mistakes were made in doing so.

15 The Tribunal considers that it is the Appellant’s responsibility to submit her tax returns on time. The Tribunal considers the appellant was given ample notice to file her return and therefore had ample time to either submit her return or to make arrangements for it to be submitted.

23. The return for the period 2010-2011 was due to be submitted on-line by 31 January 2012, but was submitted late on 28 August 2012. Penalties totalling £1,300
20 are therefore due unless the appellant can establish a reasonable excuse for the delay as referred to in Paragraph 23(1) Schedule 55 Finance Act 2009.

24. The Tribunal has considered carefully the grounds of appeal set out in the Notice of appeal. The appellant’s son accepts that it took too long for his mother to contact HMRC regarding filing and therefore the late filing penalty of £100 is due. It was also
25 accepted that the appellant became confused and submitted figures on 20 April 2012 for the 2011/12 return when she was intending to submit those figures for the 2010-11 return.

30 In the case of *Garnmoss Ltd trading as Parham Builders* the Tribunal observed at paragraph 12 “*What is clear is that there was a muddle and a bona fide mistake was made. We all make mistakes. This was not a blameworthy one. But the Act does not provide shelter for mistakes, only for reasonable excuses. We cannot say that this confusion was a reasonable excuse.*”

35 In this case the Tribunal considers that the appellant made the simple mistake of submitting figures on-line on 20 April 2012 for the wrong tax year. It is that confusion that led to the appellant to believe that she had submitted a return online for 2010-2011 when in fact she had not. It was a most unfortunate slip but one which does not provide a reasonable excuse for the appellant’s failure to submit her return on-time.

40 25. In respect of the third of the grounds of appeal whilst it is evident that reasonable efforts were made to resolve the on-line issues it is clear that these were made after the 31 January 2012 deadline had passed. The Tribunal also notes that HMRC advised

the appellant that the return remained outstanding on 5 June 2012 but there was then a delay until 28 August 2012 when the return was submitted.

5 26. In respect of the fourth of the grounds of appeal the Tribunal considers a government decision in the 1960s-70s cannot be considered to establish a reasonable excuse for failing to submit a tax return on time in 2011.

10 27. In respect of the submission of a paper return the appellant has not submitted a copy of this return or any evidence of its posting. Its submission may not have negated the penalty because a paper return was due by the earlier date of 31 October 2011. So by February 2012 a paper return would have been late and a late filing penalty of £100 would have been incurred. In addition a daily penalty of £10 would have commenced on 1 February 2012. However HMRC have no evidence of this return being received, and no evidence in the form of a copy of the paper return or a certificate of posting has been submitted to the Tribunal.

15 28. It is therefore with some regret that the Tribunal concludes that the appellant has established no reasonable excuse for her failure to submit her 2010-2011 tax return on time.

20 29. In respect of whether the level of the penalties is disproportionate to the offence, harsh and unfair the Tribunal points out that the level of the fines is laid down in legislation and the Tribunal has no power to amend them unless they are incorrectly imposed or they are inaccurately calculated.

25 In *HMRC v Hok Ltd* the Upper Tribunal at paragraph 36 said "...The statutory provision relevant here, namely TMA S100B, permits the Tribunal to set aside a penalty which has not in fact been incurred, or to correct a penalty which has been incurred but has been imposed in an incorrect amount, but it goes no further. In particular neither that provision, nor any other gives the Tribunal discretion to adjust a penalty of the kind imposed in this case, because of a perception that it is unfair, or for any similar reason. Pausing there, it is plain that the First-tier Tribunal has no *statutory* power to discharge, or adjust, a penalty because of the perception that it is unfair."

30 30. Paragraph 16 (1) of Schedule 55 Finance Act 2009 allows HMRC to reduce the penalty below the statutory minimum if they think it is right because of special circumstances. HMRC have considered whether there any special circumstances in this case which would allow them to reduce the penalty and have concluded there are none. The Tribunal sees no reason to disagree.

35 31. HMRC has applied the late filing penalties in accordance with legislation. The Appellant has not established a reasonable excuse for the late submission of her tax return for the period 2010-11. There are no special circumstances to allow reduction of the penalty. Therefore the appeal against the late filing penalties of £1,300 is dismissed.

40 32. 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.

**PETER R. SHEPPARD
TRIBUNAL JUDGE**

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RELEASE DATE: 20 APRIL 2017