



TC05872

Appeal number: TC/2014/00489

INCOME TAX – Late Payment Penalty - Daily penalties - Schedule 55 Finance Act 2009 - Whether a reasonable excuse? - Yes: posted in time by signed for delivery, proved by the postal slip - Appeal allowed - Penalties cancelled

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MISS MAGDALENA TRZCIŃSKA

Appellant

- and -

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

TRIBUNAL: JUDGE CHRISTOPHER MCNALL

The Tribunal determined the appeal on 2 May 2017, without a hearing, and under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases) having first read:

HMRC's Statement of Case / Paper Hearing Submission received by the Tribunal on 23 February 2017 and its attachments and the correspondence from PolAccount accountants and attachments.

DECISION

1. The Appellant appeals against penalties amounting to £800 that HMRC have imposed under Schedule 55 of the Finance Act 2009 for failure to submit an annual self-assessment return for the year ending 5 April 2012 on time. I set out the relevant legislation in the Appendix.

2. The penalties that have been charged are as follows:

(1) An individual tax return late filing penalty of £100, issued pursuant to Paragraph 3 of Schedule 55 of the 2009 Act

(2) Daily penalties totalling £700 (being a daily penalty of £10 multiplied by 70 days) issued pursuant to Paragraph 4 of Schedule 55 of the 2009 Act;

3. The filing dates for the year ending 5 April 2012 were 31 October 2012 for a non-electronic (paper) return and 31 January 2013 for an electronic return.

4. The appellant's electronic return was received online on 9 July 2013.

15 **The Grounds of Appeal**

5. The principal ground of appeal is that a paper return was submitted on time.

Findings of Fact

6. On the basis of the information and materials before me, and applying the usual civil standard of proof (the balance of probabilities) I make the following findings of fact:

(1) A notice to file for the year ending 5 April 2012 was issued to the appellant on 6 April 2012;

(2) The 2011/12 return was due by no later than 31 October 2012, if filed non-electronically;

(3) On 13 February 2013, HMRC issued a notice of penalty assessment in the sum of £100;

(4) On or around 9 July 2013, HMRC issued a notice of daily penalty assessment in the sum of £700.

7. The 2011/12 return was not received (online) until 9 July 2013. The return was therefore filed late.

8. Hence, and subject to any considerations of 'reasonable excuse' and 'special circumstances', the penalties imposed are due and have been calculated correctly.

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Reasonable Excuse

9. The question for me is whether the Appellant had a reasonable excuse for the late filing.

10. I conclude that she did.

11. I am satisfied, on the basis of the Royal Mail 'signed for' slip sent by her accountants, Polaccount on Tooting Broadway, to HMRC for its consideration that a self-assessment return was sent to HMRC on 29 May 2012. The 'signed for' slip bears the correct HMRC address, and was counter-stamped by the Post Office at Amen Corner Tooting post office on 29 May 2012. That was well in time. The appellant had done what was expected of her, in time. She had behaved as a reasonable taxpayer.

12. If the letter, so addressed, had not been handed across the counter, then the slip would not have been stamped by the Post Office. I note that the unique bar code (which is a sticky-back which affixed to the chit by the postal clerk) is placed over part of the postcode, showing that the address was written first.

13. I am satisfied that the appellant's return was entrusted to the Post Office well in time.

14. The fact that the bar-coded unique reference on the signed for slip could not according to HMRC be located on the Royal Mail and Parcelforce Track and Trace system is not evidence that it had not been posted. The fact that the code did not appear on Track and Trace is nothing more than evidence of the fact that the letter was never received by HMRC.

15. This is a simple point which is substantiated by independent, contemporary documentation.

16. For the sake of completeness, I have no regard to what seem to be faint suggestions from HMRC in its Statement of Case that the appellant was in fact in the country when she said she wasn't. The appellant says that she did not become aware of the situation until July 2013. I believe her. It is inherently credible. I see no reason why she should have chosen to ignore the £100 notice of penalty assessment in February 2012. I note that her accountants acted very promptly indeed when the £700 penalty assessment was issued on 9 July 2013, pointing out that the return had been sent by post in May 2012.

17. Nor do I consider it relevant that the appellant's accountants originally provided an incorrect postal reference (on 10 July 2013). That mistake on their part was put right before the review.

Decision

18. The appeal is allowed and I cancel HMRC's decision and the penalties.

19. 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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**DR CHRISTOPHER MCNALL
TRIBUNAL JUDGE**

RELEASE DATE: 08 MAY 2017

APPENDIX – RELEVANT STATUTORY PROVISIONS

1. The penalties at issue in this appeal are imposed by Schedule 55. The starting point is paragraph 3 of Schedule 55 which imposes a fixed £100 penalty if a self-
5 assessment return is submitted late.

2. Paragraph 4 of Schedule 55 provides for daily penalties to accrue where a return is more than three months late as follows:

4—

- (1) P is liable to a penalty under this paragraph if (and only if)—
- 10 (a) P's 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 P specifying the date from which the penalty is payable.
- 15 (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).
- (3) The date specified in the notice under sub-paragraph (1)(c)—
- (a) may be earlier than the date on which the notice is given, but
- 20 (b) may not be earlier than the end of the period mentioned in sub-paragraph (1)(a).

3. Paragraph 5 of Schedule 55 provides for further penalties to accrue when a return is more than 6 months late as follows:

5—

- 25 (1) P is liable to a penalty under this paragraph if (and only if) P's 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
- 30 (b) £300.

4. Paragraph 6 of Schedule 55 provides for further penalties to accrue when a return is more than 12 months late as follows:

6—

- 35 (1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 12 months beginning with the penalty date.
- (2) Where, by failing to make the return, P deliberately withholds information which would enable or assist HMRC to assess P's liability
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to tax, the penalty under this paragraph is determined in accordance with sub-paragraphs (3) and (4).

(3) If the withholding of the information is deliberate and concealed, the penalty is the greater of—

- 5 (a) the relevant percentage of any liability to tax which would have been shown in the return in question, and
(b) £300.

(3A) For the purposes of sub-paragraph (3)(a), the relevant percentage is—

- 10 (a) for the withholding of category 1 information, 100%,
(b) for the withholding of category 2 information, 150%, and
(c) for the withholding of category 3 information, 200%.

(4) If the withholding of the information is deliberate but not concealed, the penalty is the greater of—

- 15 (a) the relevant percentage of any liability to tax which would have been shown in the return in question, and
(b) £300.

(4A) For the purposes of sub-paragraph (4)(a), the relevant percentage is—

- 20 (a) for the withholding of category 1 information, 70%,
(b) for the withholding of category 2 information, 105%, and
(c) for the withholding of category 3 information, 140%.

(5) In any case not falling within sub-paragraph (2), the penalty under this paragraph is the greater of—

- 25 (a) 5% of any liability to tax which would have been shown in the return in question, and
(b) £300.

(6) Paragraph 6A explains the 3 categories of information.

30 5. Paragraph 23 of Schedule 55 contains a defence of “reasonable excuse” as follows:

23—

35 (1) Liability to a penalty under any paragraph of this Schedule does not arise in relation to a failure to make a return if P satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that there is a reasonable excuse for the failure.

(2) For the purposes of sub-paragraph (1)—

- 40 (a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside P's control,
(b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and

(c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

5 6. Paragraph 16 of Schedule 55 gives HMRC power to reduce penalties owing to the presence of “special circumstances” as follows:

16—

(1) If HMRC think it right because of special circumstances, they may reduce a penalty under any paragraph of this Schedule.

10 (2) In sub-paragraph (1) “special circumstances” does not include—

(a) ability to pay, or

(b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.

15 (3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to—

(a) staying a penalty, and

(b) agreeing a compromise in relation to proceedings for a penalty.

20 7. Paragraph 20 of Schedule 55 gives a taxpayer a right of appeal to the Tribunal and paragraph 22 of Schedule 55 sets out the scope of the Tribunal’s jurisdiction on such an appeal. In particular, the Tribunal has only a limited jurisdiction on the question of “special circumstances” as set out below:

22—

(1) On an appeal under paragraph 20(1) that is notified to the tribunal, the tribunal may affirm or cancel HMRC's decision.

25 (2) On an appeal under paragraph 20(2) that is notified to the tribunal, the tribunal may—

(a) affirm HMRC's decision, or

(b) substitute for HMRC's decision another decision that HMRC had power to make.

30 (3) If the tribunal substitutes its decision for HMRC's, the tribunal may rely on paragraph 16—

(a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or

35 (b) to a different extent, but only if the tribunal thinks that HMRC's decision in respect of the application of paragraph 16 was flawed.

40 (4) In sub-paragraph (3)(b) “flawed” means flawed when considered in the light of the principles applicable in proceedings for judicial review.