



TC05897

Appeal number: TC/2013/06391

INCOME TAX – penalty for failure to make returns. Whether reasonable excuse for late submission of self- assessment tax return - No.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

KRYSTYNA BELDYCKA

Appellant

- and -

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

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

The Tribunal determined the appeal on 21 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 28 August 2013, HMRC's Statement of Case, with enclosures, acknowledged by the Tribunal on 13 February 2017. The Tribunal wrote to the appellant on 13 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.

DECISION

5 1. The appellant is appealing against penalties that HMRC have imposed under Schedule 55 of the Finance Act 2009 (“Schedule 55”) for a failure to submit an annual self-assessment return on time.

2. The penalties that have been charged can be summarised as follows:

(1) a £100 late filing penalty under paragraph 3 of Schedule 55 imposed on 14 February 2012.

10 (2) a £300 “six month” penalty under paragraph 5 of Schedule 55 imposed on 7 August 2012.

(3) a £300 “twelve month” penalty under paragraph 6 of Schedule 55 imposed on 19 February 2013

15 (4) “Daily” penalties totalling £900 under paragraph 4 of Schedule 55 imposed on 7 August 2012.

3. The appellant’s grounds for appealing against the penalties can be summarised as follows:

20 (a) She contends that she submitted the return by post to reach HMRC on time.

(b) She argues that she used “an accountant who said everything is ok. I was paying her for every tax return and she didn’t do it.”

(c) She says she cannot afford to pay the penalties.

25 The appellant’s appeal was notified to the Tribunal late. However, since HMRC have stated that they are not objecting to the late notification, I give permission under s49 of the Taxes Management Act 1970 for the appeal to be notified late.

4. Findings of fact

30 A notice to file a self-assessment return for the year ending 5 April 2011 was sent to the appellant on 6 April 2011.

The filing date for the return was 31 October 2011 for a non-electronic return or 31 January 2012 for an electronic return.

5. The appellant’s non-electronic return for the year 2010-2011 was received by HMRC on 25 July 2013.

35 6. As the non-electronic return was not submitted by the filing date of 31 October 2011 HMRC issued a notice of penalty assessment on or around 14 February 2012 in the amount of £100. As the return had still not been received 3 months after the

penalty date of 1 November 2011, 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 November 2011 to 29 January 2012 is 90 days). As the return had still not been received 6 months after the penalty date of 1 November 2011, HMRC issued a notice of penalty assessment of £300 on or around 7 August 2012. As the return had still not been received 12 months after the penalty date of 1 November 2011, HMRC issued a notice of penalty assessment of £300 on or around 19 February 2013.

7. On 23 July 2013 the appellant sent to HMRC a ‘Self-Assessment: Appeal against penalties for late filing and late payment’ form SA 370. On page the appellant has written that it is an appeal against the penalties issued on 7 August 2012 totalling £1,200. However in her reasons for making appeal the appellant wrote

“I’m writing to you to beg you to cancel the penalty notices for all tax years. I had an accountant who said everything is Ok. I was paying her for every tax return and she didn’t do it. I don’t know what to do. You have asked me to pay a few thousand pounds which I cannot afford to do it.”

HMRC rejected the appeal on the grounds that it was made out of time.

8. The appellant’s returns for the periods 2009-2010, 2010-2011, 2011-2012, and 2012-2013 were all received on paper by HMRC on 25 July 2013.

Appellants submissions

9. In addition to that stated above in her Notice of Appeal the appellant states “ I have done my self-assessment on time and sent it to you by post. You have stated that I haven’t done it..... HMRC have lost my letter not me so I shouldn’t be charged anything.”

HMRC submissions.

10. In addition to the above HMRC say that the appeal is not concerned with specialist or obscure areas of tax law. It is concerned with ordinary every day responsibilities of the appellant to ensure her 2010-2011 tax return was filed by the legislative date.

11. HMRC say that the appellant has been registered as a self-employed cleaner from 29 April 2008. She registered as self-employed on 7 July 2008 and has been required to complete self-assessment returns since the 2008-2009 tax year.

12. HMRC say if a person employs an agent to complete and file their tax return on their behalf, they remain responsible for ensuring it is received by the relevant deadline and are liable to the automatic penalty if not.

13. 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 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 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.

14. 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 circumstances which would allow them to reduce the penalty.

15 Discussion

15. Relevant statutory provisions are included as an Appendix to this decision.

16. Having considered the submissions I have concluded that a non-electronic tax return for the 2010-2011 tax year was not received by HMRC until 25 July 2013. It should have been submitted to reach them by 31 October 2011. Subject to considerations of “reasonable excuse” and “special circumstances” set out below, the penalties imposed are due and have been calculated correctly.

17. Paragraph 23 of Schedule 55 of the Finance Act 2009 provides that reliance on another is not regarded as a reasonable excuse. If, as the appellant alleges, the appellant’s accountant has failed to provide the appellant with the services she has paid her for, that is a matter for the appellant to take up with her accountant.

18. Inability to pay a penalty does not provide a reasonable excuse. The penalty was imposed after the failure to submit the return on time. It is therefore impossible to use ‘inability to pay’ as a reasonable excuse for the late submission.

19. The appellant states somewhat belatedly in the Notice of Appeal to the Tribunal that she submitted a written return on time but suggests HMRC lost it. The appellant has provided no evidence such as a proof of posting to support her contention.

20. In my opinion none of the reasons put forward by the appellant can establish a reasonable excuse for the late submission to HMRC of the appellant’s self-assessment tax return for the period 2011-2012.

18. 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.

19. 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 £1,600 is dismissed.

20. 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 are any special circumstances in this case which would allow them to reduce the penalty and have concluded there are none. The Tribunal considers that their conclusion is not flawed and sees no reason to disagree.

21. Conclusion

15 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 HMRC's decision is affirmed and the appeal against the late filing penalties totalling £1,600 is dismissed.

20 22. Application for permission to appeal

This document contains a summary of the findings of fact and reasons for the decision. A party wishing to appeal against this decision must apply within 28 days of the date of release of this decision to the Tribunal for full written findings and reasons. When these have been prepared, the Tribunal will send them to the parties and may publish them on its website and either party will have 56 days in which to appeal. 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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**PETER R. SHEPPARD
TRIBUNAL JUDGE**

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RELEASE DATE: 27 APRIL 2017

APPENDIX – RELEVANT STATUTORY PROVISIONS

1. The penalties at issue in this appeal are imposed by Schedule 55 of the Finance Act 2009. The starting point is paragraph 3 of Schedule 55 which imposes a fixed £100 penalty if a self-assessment return is submitted late.

5 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)—

- 20 (a) may be earlier than the date on which the notice is given, but
(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—

- 30 (a) 5% of any liability to tax which would have been shown in the return in question, and
(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 6 months beginning with the penalty date.

(5) 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
- (b) £300.

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

23—

- 10 (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)—
 - 15 (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
 - 20 (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.

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

16—

- 25 (1) If HMRC think it right because of special circumstances, they may reduce a penalty under any paragraph of this Schedule.
- (2) In sub-paragraph (1) “special circumstances” does not include—
 - 30 (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.
- (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.

35 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.

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

5 (a) affirm HMRC's decision, or

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

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

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

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

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