



TC05951

Appeal number: TC/2013/06758

*INCOME TAX – penalty for failure to make returns – agent had no UTR –
whether reasonable excuse - no*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ELAINE CHERYL PRICE

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE ANNE FAIRPO

The Tribunal determined the appeal on 27 May 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 27 September 2013 (with enclosures), HMRC's Statement of Case (with enclosures) received by the Tribunal on 15 February 2017.

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 for the tax year 2010-2011 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 (1) Her self-assessment tax return for 2010-2011 was submitted on time. Her accountants submitted a paper self-assessment tax return for 2010-2011 on 31 January 2012 because they had no UTR with which to file the return online, although a UTR had been requested from HMRC on 2 December 2011.

(2) All requests to have the penalties cancelled have been ignored by HMRC.

25 (3) The appellant carries on a furnished lettings business jointly with her mother. All correspondence to HMRC relating to this matter was sent in the same envelope as correspondence relating to the appellant’s mother’s tax position in respect of the same tax year. HMRC have accepted the appellant’s mother’s tax return as being on time but have not done so for the appellant.

30 (4) The appellant argues that she has done everything possible to provide HMRC with the necessary information to have her tax liabilities correctly assessed on time .

Background

35 4. The appellant instructed agents to act on her behalf in tax compliance matters in December 2011. The agents wrote to HMRC on 2 December 2011 submitting a form SA1 (registration for self-assessment) and an agent authorisation form, and requesting a UTR for the appellant. The letter reference is to the appellant only.

5. The agents wrote to HMRC again on 31 January 2012, asking for a response to their letter of 2 December 2011 and enclosing a copy of that letter and its enclosures. A signed copy of the appellant’s tax return was also enclosed, without the UTR. The letter reference is to the appellant only.

40 6. On 16 March 2012 the agents replied to correspondence from HMRC regarding the status of signatures, explaining that original signatures were not included because

the original documents had been sent to HMRC on 2 December 2011. The letter reference is to the appellant only.

7. On 15 August 2012, the agents wrote to HMRC asking for a response to their letter of 16 March 2012. The letter reference is to the appellant only.

5 8. On 27 February 2013, the agents wrote to HMRC and requested cancellation of penalties on the grounds that HMRC had all the necessary information in good time.

9. On 29 April 2013, the agents wrote to HMRC requesting a reply to their letter of 27 February 2013 and noting that the penalties were being clawed back through the appellant's tax code.

10 10. On 12 July 2013, the agents wrote to HMRC in response to a letter from HMRC dated 6 June which arrived 9 July. The letter encloses copies of all correspondence and notes that the original return, signed, was submitted on 31 January 2012.

11. On 30 August 2013, the agents wrote to HMRC in response to a letter from HMRC dated 30 July, again attaching all previous correspondence. The letter states
15 that the agents considered that the penalties had been appealed "as we have referred to them in nearly every letter". The letter asks for the penalty to be cancelled.

12. On 4 September 2013, HMRC wrote to the appellant explaining that the deadline for appealing the penalties to HMRC had passed and advising the appellant that an application to this tribunal to review the decision was now the only option.

20 13. An appeal to this tribunal was made on 27 September 2013.

Findings of fact

14. What follows in the section is taken from the papers, primarily the HMRC statement of case and the exhibits to it and the Notice of Appeal.

25 (1) The appellant registered for self-assessment in October 1996 and was issued a UTR. She filed tax returns using this UTR for the tax years 2008-2009 and 2009-2010.

(2) The appellant's completed paper tax return for the 2010-2011 tax year was received by HMRC on 15 July 2013.

Discussion

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

16. I have concluded that the appellant's self-assessment tax return for the 2010-2011 tax year was submitted on or around 12 July 2013. It should have been submitted by 31 October 2013 as a paper return was submitted. Subject to considerations of "reasonable excuse" and "special circumstances" set out below, the
35 penalties imposed are due and have been calculated correctly.

17. The appellant contends that her tax return was submitted on time.

18. The appellant submitted a paper tax return, the due date for filing of which was 31 October 2011. The appellant's agents submit that her return was sent to HMRC on 31 January 2012. It was clearly not submitted on time.

5 19. The appellant's agents state that, as HMRC had not provided them with a UTR, they were unable to file the appellant's tax return online and so had provided HMRC with a paper tax return instead.

20. The appellant had been issued a UTR and succeeding filing her tax returns using that UTR for the previous two tax years. The appellant's failure to provide the UTR to her agents does not amount to a reasonable excuse for the late filing of the return.

10 21. It was submitted on behalf of the appellant that all correspondence relating to her tax return up to and including August 2012 was submitted in the same envelope as correspondence relating to her mother's tax affairs and that HMRC had accepted her mother's tax return for the 2010-2011 tax year, which had been in an envelope that had included the appellant's tax return for the same year. It is suggested that HMRC
15 mislaid the correspondence relating to the appellant.

22. No evidence was submitted to support this submission: all copy letters provided refer to the appellant only. However, even if the return was sent to HMRC in the same envelope as that for another taxpayer, neither the appellant nor her agent queried the status of the return in August 2012 when the return for her mother was apparently
20 accepted by HMRC. No further correspondence with HMRC took place until February 2013 and the return itself was not sent to HMRC until July 2013.

23. I would have expected a reasonable taxpayer, and an agent, to have raised a query in these circumstances when no acceptance of the return had been received in August 2012, when the taxpayer's mother's return was accepted. Even if the appellant
25 could be said to have a reasonable excuse in the apparent mis-laying of her correspondence by HMRC, which has not been demonstrated, such reasonable excuse would have ceased in August 2012.

24. A return must be submitted within a reasonable time of the cessation of such reasonable excuse in order for penalties not to apply (para 23(c) of Schedule 55). In
30 this case, the return was submitted approximately 11 months after the date on which would have been clear to a reasonable taxpayer that HMRC had not received the return. As such, even if there had been a reasonable excuse, it had ceased long before the return was received by HMRC.

25. Paragraph 16(1) of Schedule 55 allows HMRC to reduce a penalty if they think it
35 is right because of special circumstances. "Special circumstances" is undefined save that, under paragraph 16(2), it does not include ability to pay, or the fact that a potential loss of revenue from one taxpayer is balanced by a potential overpayment by another.

26. In other contexts "special" has been held to mean "exceptional, abnormal or
40 unusual" (*Crabtree v Hinchcliffe* [1971] 3 All ER 967), or "something out of the ordinary run of events" (*Clarks of Hove Ltd v Bakers' Union* [1979] 1 All ER 152). The special circumstances must also apply to the particular individual and not be

general circumstances that apply to many taxpayers by virtue of the penalty legislation (*David Collis* [2011] UKFTT 588 (TC), paragraph 40).

5 27. I find that there are no special circumstances which would merit a reduction of the penalties below the statutory amount and the penalties are appropriate in the circumstances.

Conclusion

28. The appellant's paper self-assessment tax return for the 2010-2011 tax year should have been submitted by 31 October 2011. It was received by HMRC on 15 May 2013.

10 29. For the reasons given my conclusion is that the appellant does not have a reasonable excuse for the failure to file her 2010-2011 self-assessment return on time and that there are no special circumstances which would merit a reduction of the penalties:

(1) HMRC's decision to charge the late filing penalty of £100 is upheld;

(2) HMRC's decision to charge the "six month" penalty of £300 is upheld;

15 (3) HMRC's decision to charge the "twelve month" penalty of £300 is upheld;

(4) HMRC's decision to charge the "daily" penalties of £900 is upheld.

Application for permission to appeal

20 30. 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.

30 **ANNE FAIRPO**
TRIBUNAL JUDGE

RELEASE DATE: 14 JUNE 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-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 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

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.

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