



TC05890

Appeal number: TC/2013/07465

INCOME TAX – penalty for failure to make returns- whether reasonable excuse for late filing – No. whether special circumstances –No.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

LINDIE DALTON

Appellant

- and -

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

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

The Tribunal determined the appeal on 12 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 23 October 2013, and HMRC’s Statement of Case (with enclosures) acknowledged by the Tribunal on 16 February 2017. The Tribunal also considered the appellant’s letter to HMRC also dated 23 October 2013.

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 or around 14 February 2012

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

(3) a £300 “twelve month” penalty under paragraph 6 of Schedule 55 imposed on or around 26 February 2013

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

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

(1) She argues that there was a “reasonable excuse” for any failure to submit the return on time.

20 (2) She argues that, owing to the presence of “special circumstances”, the amount of the penalty should have been reduced.

4. Findings of fact

25 (1) HMRC issued a return for the year ending 5 April 2011 to the appellant on 6 April 2011. Unless otherwise directed by HMRC the latest date for submission of a self-assessment tax return for the year ended 5 April 2011 for a non-electronic return was 31 October 2011, or for a return submitted electronically 31 January 2012 (Section 8 (1D) TMA 1970 et seq). The appellant’s non-electronic return was received by HMRC on 12 February 2013.

30 (2) The appellant, who was a nurse working for the NHS and also privately, left the UK in December 2010 and went to South Africa. It was therefore necessary for her to complete a return for the period 6 April 2010 to December 2010.

35 (3) On 9 August 2013 the appellant wrote to HMRC. That letter included:-
“I left the UK (indefinitely) in Dec 2010 and had to pack my whole life up in boxes. This was a very quick decision and resultantly I didn’t file my tax return prior to me leaving the UK. All my paperwork was packed away in boxes while I kept all my info backed up in electronic format on a USB. I must also admit that as I left my tax return was not at the forefront of my mind as I knew I didn’t owe any tax.....But out of previous
40 experience I knew that even if you are late and you don’t owe anything

then your penalties are cancelled. (Which I was informed on the 9th August 2013, via telephone to the tax line, has not been the case anymore since 2010). In the meantime on my return to SA my car was stolen in July 2011 with my laptop and USB (which contained the info on my income). I forgot that I had paper copies and thought that all the info was lost.”

The Tribunal observes that this letter confirms that the appellant was aware that her return was late.

(4) The special circumstances referred to by the appellant are included in her letter to HMRC dated 23 October 2013. She wrote “...my car has been stolen with all my data on a USB stick then I didn’t have any access until I came across all my hard copies in my boxes that was in storage. These events were completely unforeseeable and exceptional. The underlying liability remains that I never owed outstanding so it is very unreasonable to pay penalties on something that I do not owe.

(5) HMRC say that they “do not agree that Miss Lindie Dalton has special circumstances for the late filing of her return. Her car was stolen in July 2011 holding the USB stick with the data to complete her return. HMRC would argue that Miss Lindie Dalton had ample time from the date her car was stolen until the filing deadline of 31 January 2012 to retrieve her hard copies and file the return.”

(6) In respect of postal delays the appellant included in the letter of 9 August to HMRC “Communication with your department has been a tedious and expensive exercise from South Africa as each letter send cost R280/18.6 pounds.”

The appellant advised that she had to send post privately as she could not trust the South African postal services as there had been huge delays in delivery of post.

She said she tried alternatives but to no avail.

5. HMRC submit that the late filing penalties for 2010-2011 onwards are no longer automatically reduced even if there is no tax to pay but remain fixed. An information sheet had been enclosed with the 2010-2011 tax return issued on 6 April 2011. To avoid penalties the tax return must be received by the appropriate deadline. Late filing penalties are raised solely because the self-assessment tax return is filed late They are no longer linked to liability and remain fixed even if there is no tax due.

Discussion

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

7. I have concluded that the tax return for the 2010-2011 tax year was received over a year late by HMRC on or around 12 February 2013. It should have been submitted by 31 January 2012. Subject to considerations of “reasonable excuse” and “special circumstances” set out below, the penalties imposed are due and have been calculated correctly.

8. In respect of the appellant's car being stolen in July 2011 together with her laptop and USB stick The Tribunal observes that such an event could constitute either a reasonable excuse or special circumstances but in the circumstances of this case The Tribunal agrees with HMRC that the appellant had ample time after this unfortunate event in which to submit her self-assessment tax return non-electronically by 31 October 2011 or electronically by 31 January 2012. In addition the appellant accepts that she had forgotten that she had paper copies of the lost information. The Tribunal therefore concludes that the theft of the appellant's car, laptop and USB stick does not provide the appellant with a reasonable excuse for non-submission of her self-assessment tax return by the deadline. The Tribunal finds that HMRC's decision that it does not constitute special circumstances is not flawed.

9. In respect of postal delays referred to by the appellant in her letter of 9 August 2013 The Tribunal observes that this letter is dated well after the appellant had arrived in South Africa. She admitted that she did not give tax matters priority because she wrongly thought the penalties would be waived. The Tax Tribunal considers that if the appellant had given higher priority to submission of her tax return these delays could have been negotiated within the deadline for submission of the return. The appellant left the UK in December 2010 and a non-electronic return was required by 31 October 2011 or an electronic return by 31 January 2012.

10. It is apparent that based on previous experience the appellant thought that the fact that no tax was due would result in any penalties being waived. She did not check her thinking with HMRC. Whilst the appellant might have calculated that no tax was due HMRC could not know that until they receive the return. The appellant later found that the law had changed and the penalties were no longer waived. It is apparent that she had overlooked an information sheet included with the return which advised that the penalties would no longer be automatically waived. From 2010 the penalties are for late submission of the return and are not connected with payment. The information sheet issued is headed in very large bold letters "Avoid the new late filing and late payment penalties."

11. For these reasons the Tribunal considers that the appellant has not established a reasonable excuse for the late submission of her self-assessment tax return for the year ended 5 April 2011.

Conclusion

12. 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.

Application for permission to appeal

13. 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: 16 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-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.

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

23—

(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)—

- (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.

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.