



[2019] UKFTT 697 (TC)

TC07469

Income tax - penalty for late filing of returns – late appeal – permission to appeal late – whether reasonable excuse – no – appeal discussed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2019/02452

BETWEEN

MR G D HOPPER

Appellant

-and-

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

Respondents

TRIBUNAL: JUDGE DR KAMEEL KHAN

The Tribunal determined the appeal on 10 November 2019 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 18 April 2019 (with enclosures), HMRC's Statement of Case (with enclosures) received by the Tribunal on 4 June 2019.

DECISION

INTRODUCTION

1. The appellant is appealing against penalties issued under Schedule 55 of the Finance Act (FA) for the late submission of their self-assessment returns for the 2015-2016 tax year.
2. The details are as follows:

TAX YEAR	PENALTY NOTICE DATE	LAST DAY TO APPEAL	APPEAL RECEIVED
2015-16	LFP 07/02/2019	09/03/2017	28/10/2018
2015-16	DP 11/08/2017	10/09/2017	28/10/2018
2015-16	6MP 11/08/2017	10/09/2017	28/10/2018

Late Appeal

3. HMRC considered the late appeal under s.49 TMA 1970 and found that the appellant did not have a reasonable excuse for the delay in appealing and therefore refused the late appeal.
4. Mr Hopper's reasons for appealing late can be summarised as follows:
5. As far I was aware, I was fully paid up and, as I am now no longer self-employed, am not required to submit any self-assessment tax returns. I had not received some correspondence from HMRC.
6. It is HMRC's view that Mr Hopper does not have a reasonable excuse for the late submission of the appeal.
7. The appellant in his appeal sent in a penalty notice dated 11 August 2017 and a penalty reminder dated 18 July 2017 which shows they were received. He submitted his tax return on 5 February 2019.
8. HMRC have asked that when considering the late appeal application, the Tribunal take into account the fact that the length of delay in this case is significant and serious and that HMRC had a legitimate expectation of finality in relation to this matter.

Nature of Appeal

This is an appeal against:

9. A penalty incurred under Paragraph 3 of Schedule 55 Finance Act (FA) 2009 for the late filing of the Individual Tax Return for the year ending 6 April 2016.
10. Daily penalties imposed under Paragraph 4 of Schedule 55 Finance Act (FA) 2009 for the late filing of the Individual Tax Return for the years ending 5 April 2016.
11. Daily penalties imposed under Paragraph 5 of Schedule 55 Finance Act (FA) 2009 for the late filing of the Individual Tax Return for the years ending 5 April 2016.
12. Daily penalties imposed under Paragraph 6(5) of Schedule 55 Finance Act (FA) 2009 for the late filing of the Individual Tax Return for the years ending 5 April 2016.

13. Self-Assessment is based on voluntary compliance. 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.

Filing Date

14. The filing date is determined by Section 8 (1D) TMA 1970 et seq. which states that for the year ended 5 April 2016 a non-electronic return must be filed by 31 October 2016 and an electronic return by 31 January 2016. A late filing penalty is chargeable where a taxpayer is late in filing their Individual Tax return.

Penalties

15. It is essential that taxpayers who file their returns at the right time feel confident that the system does not reward non-compliance and so penalties are imposed for late filing.

16. If the return is not received by the filing date a penalty of £100 is payable in accordance with Paragraph 3 Schedule 55 FA 2009.

17. If after a period of 3 months beginning with the penalty date the return remains outstanding, daily penalties of £10 per day up to a period of 90 days are payable in accordance with Paragraph 4 Schedule 55 FA 2009.

18. If after a period of 6 months beginning with the penalty date the return remains outstanding, a penalty in accordance with Paragraph 5 Schedule 55 FA 2009, the penalty is the greater of 5% of any liability to tax which would have been shown on the return or £300.

19. If after a period of 12 months beginning with the penalty date the return remains outstanding, a penalty in accordance with Paragraph 6 Schedule 55 FA 2009, the penalty is the greater of 5% of any liability to tax which would have been shown on the return or £300.

20. Both the 'filing date' and the 'penalty date' are defined at Paragraph 1(4) Schedule 55 FA 2009.

Reasonable Excuse

21. Paragraph 23 of Schedule 55 FA 2009 provides that a penalty does not arise in relation to a failure to make a return if the person satisfies HMRC (or on appeal, a Tribunal) that they had a reasonable excuse for the failure and they put right the failure without unreasonable delay after the excuse has ended.

The law specifies two situations that are not reasonable excuse:

(a) An insufficiency of funds unless attributable to events outside the appellant's control and

(b) Reliance on another person to do anything, unless the person took reasonable care to avoid the failure.

22. There is no statutory definition of reasonable excuse which is a matter to be considered in the light of all the circumstance of the particular case (**Rowland v HMRC (2006) STC (SCD) 536 at paragraph 18**). HMRC consider reasonable excuse to be something that stops

a person from meeting a tax obligation despite them having taken reasonable care to meet that obligation.

23. One must ask oneself, was what the taxpayer did a reasonable thing for a responsible trader conscious of and intending to comply with his obligations regarding tax, but having the experience and other relevant attributes of the taxpayer and placed in the situation that the taxpayer found himself at the relevant time, a reasonable thing to do.

24. Whether a person has a reasonable excuse will depend on the particular circumstances in which the failure and the abilities of the person who has failed. What is a reasonable excuse for one person may not be a reasonable excuse for another person.

25. The onus of proof is for the respondents to show that the penalties have been correctly calculated. The burden then shifts to the appellant to demonstrate that a reasonable excuse exists for the defaults. The standard of proof is the ordinary civil standard which is on the balance of probabilities.

Findings of Facts

26. The notice to file for the year ending 5 April 2016 was issued to the appellant on 6 April 2016 at the address on file. The SA 316 Notice included information relating to the deadlines for submitting a return and the late filing penalty charge for not submitting the return on time. The notice also confirms that more penalties will be due if the return is three, six or twelve months late as required.

27. The filing date was 31 October 2016 for a non-electronic return or 31 January 2017 for an electronic return. The non-electronic return for the year 2015-2016 was received on 5 February 2019 and was processed on 5 March 2019.

28. As the return was not received by the filing date, HMRC issued a notice of penalty assessment on or around 7 February 2017 in the amount of £100. The penalty notice was issued to the address on HMRC's records at that date.

29. The warning of daily penalties on the £100 penalty notice (SA326D) issued to Mr Hopper on 7 February 2017 is the same as that considered in the Donaldson case to be sufficient to comply with paragraph 4(1)(c) of Schedule 55.

30. As the return had still not been received 3 months after the penalty date, HMRC issued a notice of daily penalty assessment on or around 11 August 2017 in the amount of £900, calculated at £10 per day for 90 days.

31. As the return had still not been received 6 months after the penalty date, HMRC issued a notice of penalty assessment on or around 11 August 2017 in the amount of £300.

32. As the return had still not been received 12 months after the penalty date, HMRC issued a notice of penalty assessment on or around 9 October 2018 in the amount of £300.

33. The total of all penalties issued is £1,600.

Appellant's Submissions

34. The appellant has made copious submissions which are summarised below.

35. On 28 October 2018, Mr Hopper appealed against the penalties, stating:

36. "I have been in full time employment since April 2016 and have been paying tax monthly from my salary since then".
37. "I was very surprised to have recently received 2 letters from you requesting payment for a self-assessment returns for years 2015-16, for an amount of £300 and also for 2016-17 for an amount of £1200.00".
38. "I moved home in December 2017 to my current address; I lived at my previous address approx. 2 years, of which I did not receive any demands from you until now".
39. "I was not aware that I had to inform HMRC of a change of address whilst in full time employment, and I have spoken to several other people who have also confirmed they have never informed HMRC of a change of address whilst in full time employment".
40. HMRC sent the appellant a decision letter on 28 December 2018 rejecting his late appeal.
41. On 29 January 2019, the appellant submitted a further letter of appeal, stating the same reasons as in his original appeal and also stating:
42. "I submitted a paper copy of my 2015/16 tax return as advised by the gentleman on the phone and enclosed a cheque for the outstanding £158 from 2014/15".
43. "I then received a letter asking for £334 for self-assessment which I paid 6 Jan 2019. I assumed this was for self-assessment for 2015-16. I had sent in Nov 2018 with the cheque for £158".
44. "I am going to seek legal advice as this is really unfair and when you call to sort it out you get treated like a criminal. I will be recording all future calls to HMRC as evidence of the unwillingness by the majority of staff to assist or be helpful in anyway".
45. HMRC sent a further letter to the appellant on 21 March 2019, again rejecting his late appeal.
46. On 18 April 2019 the appellant notified his appeal to the Tribunal, giving his grounds as;
47. "I got a full-time job in April 2016; I am paid monthly, and PAYE is deducted every month from my wages. I informed HMRC of this via an online form and over the phone. I moved to a new house in November 2016 and redirected my mail, which I have confirmation of from the Royal Mail".
48. "I did not receive any correspondence from HMRC until October 2018 saying I had owed £300 for late filing of my return".

HMRC View:

49. This appeal is concerned with the ordinary everyday responsibilities of Mr Hopper to ensure his 2015-16 tax return was filed by the legislative due date. Self-assessment places responsibility on customers for their own tax affairs. This includes ensuring that the Revenue get payment of the correct amount of tax and National Insurance at the correct time. The tax guidance and HMRC website give plenty of warning about filing and payment deadlines. It is the taxpayer's responsibility to make sure they meet the deadlines.
50. The appellant received the notices to file at his last known address. He did not inform HMRC of any change of address and, in the circumstances, he does not have a reasonable excuse. He has been in the self-assessment system for several years and knows the deadlines for filing and the consequences for late filing.

51. There are no special circumstances which would give rise to a reduction in the penalties.

Discussion

Late Appeal

52. I considered that it was in the interest of justice to proceed. I am satisfied that the materials provided to the tribunal would be sufficient to enable us to determine the appeal. The appellant has made substantial representations about several matters and it would be best to address these in a considered decision.

Appeal

53. The appellant has been completing self-assessment returns for a number of years. HMRC expect him to be aware of his obligations under self-assessment, one of those obligations is to file the return by the relevant deadline and make any payment due without prompt or reminder from HMRC. HMRC records show that the appellant has filed his tax returns late every year since 2011/12, the first year he was required to complete a return.

54. The notice to file a return (SA316) for the year 2015-2016 was issued to the appellant on 6 April 2016. The notice to file for each year was issued to the address held on record at the time, namely 16 Sylvan Way, West Wickham BR4 9HB.

55. HMRC records show there is no record of this having been returned undelivered by Royal Mail. The appellant has confirmed that whenever he changed address, he arranged for his post to be redirected. The documents are therefore deemed to have been served within the ordinary course of postal delivery. It is HMRC's contention that the forms were received by Mr Hopper in line with Section 7 of the Interpretation Act 1978, which is where notices are posted they are deemed to be delivered in the ordinary course of the post, which is the next day. It would have been sensible and reasonable to inform HMRC of any change of address.

56. HMRC records show that the penalty notices issued for 2015-16 were issued to the correct address, held on HMRC's records at the issue date. The appellant included copies of penalty notices in his appeal.

57. As the 2015-16 return was not received by the deadline of 31 January 2017 the first £100 penalty notice (SA326D) was issued on around 7 February 2017 to the address held on record at the time.

58. This notice also warned that daily penalties can be charged from 1 February for a paper return or 1 May for online returns. There is no record of these having been returned undelivered by Royal Mail, the documents are therefore deemed to have been served within the ordinary course of postal delivery in line with Section 7 of the Interpretation act 1978.

59. The warnings on the £100 penalty notices issued to the appellant on or around 7 February 2017 the same as that considered in the *Donaldson case* to be sufficient to meet paragraph 4(1)(c) of Sch. 55.

HMRC's records shows that:

60. A 30-day Daily penalty reminder on 6 June 2017 to the address on record.

61. A 60 Day Daily penalty reminder on 18 July 2017 to the address on record.

62. A Daily Penalty and 6 Month Late Filing penalty notice issued on 11 August 2017 to the address on record.

63. A statement on 7 March 2017 to the address on record which showed late filing penalties of £100 becoming due.
64. A statement on 18 April 2017 to the address on record which showed late filing penalties of £100 due.
65. A statement on 16 May 2017 to the address on record which showed late filing penalties of £100 due.
66. A statement on 12 September 2017 to the address on record which showed late filing penalties of £900- and 6-months late filing penalty of £300 becoming due.
67. A statement on 16 October 2018 to the address on record which showed late filing penalties of £100, £900 and 6 month and a 12-month late filing penalty of £300 become due
68. A statement on 29 November 2018 to the address on record which showed late filing penalties of £100, £900, 6 month and 12-month late filing penalties
69. The appellant says, in his appeal, that he contacted HMRC as soon as he could, however although the penalty notices, reminders and a number of statements were issued in 2017, the appellant did not contact HMRC until October 2018. Even then he did not submit his tax return until February 2019.
70. The first penalty notice and the statements should have made the appellant aware the self-assessment return for the year 2015-2016 was still outstanding and that penalties were accruing.
71. A reasonable person wishing to comply with their obligation would have acted upon receipt of the first penalty notice for something they believed had already been done. They would not have allowed the lack of filing to continue.
72. The appellant has said that he changed his address, HMRC contend that he must have received the penalty notices because he has included them in his appeal. The penalty notices were issued before the appellant says he changed address in December 2017. There is no evidence that the appellant contacted HMRC to query the reason for the penalty being charged until his first telephone call on 16 October 2018.
73. In his appeal, the appellant says that HMRC “staff did not listen to anything he was saying and that throughout the conversations the staff were unhelpful and treated him like a criminal”.
74. HMRC record of the calls made on 16 October (2) and 8 January 2019 show this is not the case.
75. What is clear is that the appellant did not understand the penalties. He could not fully explain what returns had been made nor what the amounts of tax and penalties outstanding he was ringing about. It is clear that tax matters, filing and penalties, were proving difficult as it does to many taxpayers.
76. In his appeal the appellant says that he moved house in November 2016 but that he arranged to have his mail redirected. The notice to file the 2015-16 tax return was issued on 6 April 2016, before he had moved.
77. In his appeal, the appellant says that he did not receive any correspondence from HMRC until October 2018. Mr Hopper has included copies of penalty notices issued during 2017 in his appeal.

78. Each time the appellant rang HMRC tried to explain to him the amount of liability outstanding but as he did not know to what amounts he was referring to, this made it difficult for the HMRC adviser. The balance on the appellant's account would have differed because interest is added to the balance.

79. The appellant said that "there is no way anyone can understand correspondence from yourself as nothing received actually explains what it is". The notice to file the return the penalty notices and the statements explain precisely what they refer to.

80. HMRC Debt Management were also sending correspondence to the appellant to collect the outstanding amounts.

81. The appellant has not shown that any reasonable excuse existed for the failure to submit his 2015-16 tax return. The address the notice was issued to was correct at the issue date and the appellant received penalty notices which should have acted as a prompt to him. The appellant included the penalty notices in his appeal.

82. A responsible person who thought he had submitted his return for the year ended 5 April 2016 would have contacted HMRC to find out why a penalty had been charged. This may well have avoided any subsequent penalties. He did not act as a reasonable person. The appellant has not demonstrated that he had a reasonable excuse based on the evidence presented to the tribunal.

83. The penalties were correctly charged and the appeal is dismissed.

Special Reduction

84. Paragraph 16 (1) allows HMRC to reduce a penalty if they think it 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 over payment by another.

85. In other contexts, "special" has been held to mean 'exception, abnormal or 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.

86. HMRC have considered that the appellant changed his address and says that he did not receive anything until October 2018. HMRC submit that they are not special circumstances which would merit a reduction of the penalties below the statutory amount and that the penalties are appropriate in the circumstances.

87. Where a person appeals against the amount against the amount of the penalty, paragraph 22(2) and (3) of Schedule 55, FA 2009 provide the tribunal with the power to substitute HMRC's decision with another decision that HMRC had the power to make.

88. The tribunal may rely on paragraph 16 (Special Reduction) but only if they think HMRC's decision was 'flawed when considered in the light of the principles applicable in proceedings for judicial review'. The tribunal does not believe the decision was flawed and there is no reason to reduce the penalties imposed. The penalties at 4 June 2019 were £1,964.

89. The tribunal agrees the penalties are proportionate. There is a reasonable relationship of proportionality between this legitimate aim of the legislation and the penalty regime which seeks to realise it and the penalties imposed here are proportionate.

Decision

90. Appeal dismissed and penalties which were imposed are upheld.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

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.

**JUDGE DR KAMEEL KHAN
TRIBUNAL JUDGE**

RELEASE DATE: 14 NOVEMBER 2019