



Neutral Citation: [2024] UKFTT 00081 (TC)

Case Number: TC09046

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Held by video

Appeal reference: TC/2023/07626

INCOME TAX – self-assessment tax return - late filing penalties – whether appropriate and correct – yes - appeal dismissed.

**Heard on: 13 November 2023
Judgment date: 16 January 2024**

Before

**TRIBUNAL JUDGE KELVAN SWINNERTON
MEMBER MS REBECCA NEWNS**

Between

SARAH GODLIMAN

Appellant

and

THE COMMISSIONERS FOR HER MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr R Carey.

For the Respondents: Ms N Shardlow, litigator of HM Revenue and Customs’ Solicitor’s Office.

DECISION

INTRODUCTION

1. This is an appeal by Ms Godliman (“the Appellant”) against penalties imposed by HMRC totalling £1,400 under Schedule 55 of the Finance Act 2009 for the late filing by the Appellant of her self-assessment (‘SA’) tax returns for the tax years ended 5 April 2018 and 5 April 2019.
2. Under section 8 of the Taxes Management Act 1970 (“TMA”), a person may be required to make and deliver a self-assessment tax return by 31 October following the end of the tax year to which the return relates if on paper or by 31 January after the end of the tax year if filed electronically.
3. A penalty of £100 is payable if a person fails to make or deliver a self-assessment tax return on or before the filing date. If, after three months, the return has not been filed a person is liable to a penalty of £10 for each day that it remains outstanding for a period of up to 90 days from the date specified in a notice from HMRC. A penalty is payable of £300 or 5% of any liability to tax (if greater than £300) which would have been shown in the return if the return is not filed within six months. A further penalty is payable of £300 or 5% of any liability to tax (if greater than £300) which would have been shown in the return if the return is not filed within 12 months.
4. In respect of the tax year 2017-18, the following penalties were imposed and are under appeal: a late filing penalty of £100 imposed under paragraph 3 of Schedule 55; a 6 months penalty of £300 imposed under paragraph 5 of Schedule 55; and a 12 months penalty imposed under paragraph 6 of Schedule 55. Those penalties total £700.
5. In respect of the tax year 2018-19, the following penalties were imposed and are under appeal: a late filing penalty of £100 imposed under paragraph 3 of Schedule 55; a 6 months penalty of £300 imposed under paragraph 5 of Schedule 55; and a 12 months penalty imposed under paragraph 6 of Schedule 55. Those penalties total £700.
6. In the interests of clarity, the penalties imposed upon the Appellant by HMRC for the tax years of 2013-14 and 2016-17 are not being pursued by HMRC and have been cancelled.

THE HEARING AND EVIDENCE

7. We considered all of the documentation provided which included a hearing bundle with the Notice of Appeal of the Appellant, a bundle of legislation and case law, and a document from HMRC entitled ‘Statement of Reason’ dated 23 June 2023.
8. We considered at first the application for permission to make a late appeal and decided to grant permission for the late appeal and then went on to consider the substantive appeal.
9. We considered all of the evidence provided and heard submissions from both parties. The Appellant did not attend the hearing nor provide a witness statement.

THE FACTS

10. A notice to file a self-assessment tax return for the year ending 5 April 2018 was issued to the Appellant on or about 10 January 2020.
11. It is not disputed between the parties that the notice to file a tax return for the year ending 5 April 2018 was received by the Appellant.
12. The Appellant’s tax return for the year ending 5 April 2018 was received electronically by HMRC on 27 October 2021 which is 559 days late.

13. A notice to file a self-assessment tax return for the year ending 5 April 2019 was issued to the Appellant on or about 16 January 2020.
14. It is not disputed between the parties that the notice to file a tax return for the year ending 5 April 2019 was received by the Appellant.
15. The Appellant's tax return for the year ending 5 April 2019 was received electronically by HMRC on 27 October 2021 which is 553 days late.
16. The tax returns submitted by the Appellant for the tax years of 2017-18 and 2018-19 both detail income received from employment and profit from self-employment.
17. The Appellant filed a Notice of Appeal dated 12 April 2023.

THE LAW

18. The Taxes Management Act 1970 contains provisions relating to the filing of self-assessment tax returns.

19. *Section 8 – Personal return - states:*

(1) For the purpose of establishing the amounts in which a person is chargeable to income tax and capital gains tax for a year of assessment, [and the amount payable by him by way of income tax for that year,] he may be required by a notice given to him by an officer of the Board –

(a) to make and deliver to the officer, on or before the day mentioned in subsection (1A) below, a return containing such information as may reasonably be required in pursuance of the notice, and

(b) to deliver with the return such accounts, statements and documents, relating to information contained in the return, as may reasonably be so required.

20. 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.

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

(1) P is liable to a penalty under this paragraph if (and only if)-

(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.

(2) The penalty under this paragraph is £10 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

(b) may not be earlier than the end of the period mentioned in subparagraph (1)(a).

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

- (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 (b) £300.*
23. Paragraph 6 of Schedule 55 provides for further penalties to accrue when a return is received more than 12 months late. A penalty under this paragraph is the greater of 5% of any liability to tax which would have been shown in the return and £300.
24. Paragraph 23 of Schedule 55 contains a defence of "reasonable excuse" as follows:
- (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 purpose 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 reasonable delay after the excuse ceased.*
25. Paragraph 16 of Schedule 55 gives HMRC power to reduce penalties owing to the presence of "special circumstances" as follows:
- (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-*
- (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.*

DISCUSSION

26. The Appellant states, in the grounds of appeal, that she has been placed by error in the self-assessment regime and that she should not have been required to complete a self-assessment return. It is stated also that the figures detailed in the tax returns for 2017-18 and 2018-19 contain errors and that neither of those tax returns should have detailed any income (or profit) from self-employment but only income from employment. At the hearing, Mr Carey emphasised that the Appellant had worked for a non-compliant employer who had not provided the Appellant with payslips nor P60 forms and that she was an employee and not self-employed. In the grounds of appeal, it is maintained also that the amounts of the penalties are not proportionate to the income involved.

27. HMRC, in the Statement of Reason, in summary contend the Appellant has failed to demonstrate that a tax return was not required with reference being made to the tax returns for 2017-18 and 2018-19, submitted in October 2021, containing both income from employment and profit from self-employment. Reference is made to the Appellant having accessed HMRC systems on 5 April 2019 and again in November 2019 in respect of registering for self-assessment as a business (sole trader). At the hearing, Ms Shardlow emphasised that no contact had been made by the Appellant with HMRC after tax returns were sent to her in January 2020 in respect of the Appellant having contested the need for her to complete a tax return.

28. In relation to a consideration of the issues, the documentation provided does demonstrate, and we find, that the Appellant when submitting her tax returns in October 2021 for the years 2017-18 and 2018-19 did state that income was received from employment and profit was received from self-employment for both of those years.

29. The tax return for 2017-18 detailed income from all employments of £4,130 and profit from self-employment of £6880. The tax return for 2018-19 detailed income from all employments of £1551 and profit from self-employment of £8424. We were not provided with any evidence from the Appellant that any attempts had been made to correct the information detailed on those tax returns nor to inform HMRC that the information detailed on those tax returns deriving from self-employment was incorrect.

30. We find that the Appellant made no attempt to correct the information detailed on the tax returns for 2017-18 and 2018-19 in relation to profit from self-employment. We find that we were not provided with any sound explanation at the hearing or otherwise as to why the tax returns for 2017-18 and 2018-19 detailed profit from self-employment in error.

31. The documentation provided also showed, and we find, that the Appellant logged into and accessed HMRC systems on both 5 April 2019 and 6 November 2019 in respect of registering for self-assessment as a business (sole trader). That, in any event, is not in dispute between the parties.

32. In summary, the Appellant maintains that she should not have been placed in the self-assessment regime and should not have been required to file a self-assessment tax return given her work arrangements and given that she was an employee. HMRC maintain that the tax returns for both the years in issue do, in fact, detail profit from self-employment as well as income from employment. We find that HMRC is entitled to satisfy itself that no tax is due by requiring a tax return to be completed. We find it difficult to understand why the Appellant did not do anything at all, after receipt of the notice to file self-assessment tax returns for 2017-18 and 2018-19, to clarify what was required of her or to challenge the need for her to complete tax returns.

33. Having considered all of the circumstances of this case, we find that the Appellant has failed to show any reasonable excuse for not filing tax returns for 2017-18 and 2018-19 on time.

DECISION

34. The late filing penalties totalling £1,400 have been charged in accordance with legislation and no reasonable excuse has been shown for the failure of the Appellant to file her tax returns on time for the tax years of 2017-18 and 2018-19.

35. There are no special circumstances which would allow the penalties to be reduced under the Special Reduction provisions.

36. We dismiss the appeal of the Appellant and confirm the penalties in the sum of £1,400.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

37. 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 KELVAN SWINNERTON
TRIBUNAL JUDGE**

Release date: 16th JANUARY 2024