

[2017] UKFTT 331 (TC)



TC05808

Appeal number: TC/2012/10923

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

INCOME TAX – penalties for late submission of returns

STEPHEN J NOCK

Appellant

- and -

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

TRIBUNAL: JUDGE CHARLES HELLIER

The Tribunal determined the appeal on 12 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 3 December 2012 (with enclosures), HMRC's Statement of Case (with enclosures) receipt of which was notified by the Tribunal to the Appellant on 30 January 2017 and letters from the Appellant's representative to the tribunal of 31 December 2012, 14 May 2013, 8 August 2013, and 21 August 2013.

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DECISION

1. Mr Nock has been assessed to three penalties together totalling £1,300 imposed by HMRC under Schedule 55 Finance Act 2009 for a failure to submit his 2010/11 tax return in time.

2. The penalties assessed were:

(1) A £100 late filing penalty under para 3 Sch 55, being a penalty for submitting the return after the due date;

(2) A penalty of £900 under para 4 Sch 55, being £10 for each day the return was late after the date 3 months after it was due; and

(3) A penalty of £300 under para 5 Sch 55, being a penalty assessable if the failure to submit the return continued after 6 months after the due date.

3. There was a bit of a muddle in relation to the submission of Mr Nock's Notice of Appeal. It was dated 3 December 2012 and originally received by the tribunal on 7 December 2012. Later however Mr Nock's advisers were told by the tribunal that it had not been received and they sent a "copy of the original" to the tribunal with a letter of 8 August 2013. This however was not an exact copy of the original for under question 3(b) it declared that the amount of the penalty appealed against was £1,200 whereas the form received on 7 December 2012 declared the penalties appealed against as £900. It was a pity that this change was not made clear.

4. Further the sum of the three penalties listed above is £1,300 rather than £1,200. Furthermore, HMRC's letter of 25 September 2012 addressing the Appellant's appeal to HMRC in respect of the penalties deals with all three penalties and is attached to the notice of appeal as being the decision appealed against.

5. In the circumstances I take this as an appeal against all three penalties even if any appeal might be said to have been made late.

6. The Appellant argues that:

(1) Mr Nock's tax return showed a repayment of £726.56 due to him. The imposition of a penalty of £1,200 (£1,300) is excessive;

(2) Prior to 19 June 2012 Mr Nock had had difficulties with completing his returns and had buried his head in the sand. He appointed DJ Johnson Accountancy Service to act for him on that date. He should be applauded, not penalised, for his actions in getting his tax affairs up to date;

(3) Mr Nock has also changed the way he works so that tax is now paid as he goes along under the CIS scheme, with the result that he should not get behind with his tax affairs.

7. HMRC argue that:

(1) The legislation has been correctly applied and

(2) The penalties are not disproportionate.

8. **Discussion**

9. The provisions of the legislation are set out accurately in HMRC's Statement of Case. There is no need for me to repeat them here.

10. The evidence available to me to decide on the primary facts was limited to that in the documents before me. The Appellant did not make a Reply to HMRC's Statement of Case, so I had nothing before me other than the Notice of Appeal, the Statement of case and the documents which came with it to refute any factual assertions in the statement of case.

11. I find that Mr Nock's tax return for 2010/11 was made electronically and as a result was due to be filed by 31 January 2012.

12. I find that his 2010/11 return was received by HMRC on 13 August 2012. It was therefore just over 7 months late.

13. I therefore conclude that the conditions in the legislation for the imposition of the penalties were satisfied. There was no dispute about the amounts of the penalties and no indication in the evidence before me that they had been incorrectly calculated. I find that they were correctly calculated.

14. The legislation contains only two provisions which may eliminate a penalty. These are (i) if there is a reasonable excuse for the delay, and (ii) if there are "special circumstances".

15. I find nothing in the evidence before me to indicate that Mr Nock had a reasonable excuse for the delay. The provision applies only to an excuse for the failure, it does not address whether the penalty is of an excessive amount. It is said that Mr Nock had had difficulties and had buried his head in the sand. The reasons for such conduct might provide a reasonable excuse – for example if a taxpayer suffered serious depression over a period. However there is no evidence that such was the case for Mr Nock's. I therefore find that there was no reasonable excuse.

16. I accept that Mr Nock's conduct in appointing advisors to help him is laudable but I fear that the legislation does not provide any scope for taking such later conduct into consideration.

17. Paragraph 16 of Sch55 permits a reduction (which may be to nil) if there are "special circumstances". There was however no evidence of special circumstances afflicting Mr Nock. I conclude that there were none.

18. Thus I find that the terms of Sch55 permit the assessment of these penalties.

19. The Appellant argues that the penalties were excessive. This may be seen as an argument that for the purposes of those provisions of the Convention on Human Rights incorporated into UK law by Human Rights Act 1998 the deprivation of property occasioned by the penalties was a disproportionate interference with Mr Nock's property.

20. The authorities make plain however that such an interference is disproportionate only when in the context of its aim – in this case encouraging the submission of returns on time – it is not just harsh but plainly unfair. In my judgement these

penalties are harsh but they are not plainly unfair. As a result I conclude that the provisions of that Act cannot avail Mr Nock.

Conclusion

21. I dismiss the appeal.

Rights of Appeal

22. 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.

**CHARLES HELLIER
TRIBUNAL JUDGE**

RELEASE DATE: 20 APRIL 2017