



TC06058

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Appeal number: TC/2017/03008

INCOME TAX – Whether reasonable excuse for late submission of self-assessment tax return - No. Late filing penalty of £100 confirmed. Daily penalties of £460 not pursued by HMRC

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**FIRST-TIER TRIBUNAL
TAX CHAMBER**

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REIHANEH JAHANSOOZ

Appellant

- and -

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

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

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The Tribunal determined the appeal on 1 August 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 7 April 2017, and HMRC's Statement of Case received by the Tribunal on 2 June 2017 with enclosures. The Tribunal wrote to the appellant on 5 June 2017 indicating that if she wished to reply to HMRC's Statement of Case she should do so within 30 days. A reply date 30 June 2017 was received and considered by the Tribunal.

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DECISION

1. Introduction

5 The appellant's e-mail to the Tribunal dated 7 April 2017 was taken as a Notice of Appeal. It states that it is an appeal against penalties totalling £560 imposed by the respondents (HMRC) under Paragraphs 3 and 4 of Schedule 55 Finance Act 2009 for the late filing by the appellant of her self-assessment tax return for the tax year 2014-2015.

2. Legislation

10 Finance Act 2009 Schedule 55
Taxes Management Act 1970, in particular Section 8(1D)

3. Case law

15 Crabtree v Hinchcliffe (Inspector of Taxes) [1971] 3 ALL ER 967
Clarks of Hove Ltd v Bakers' Union [1979] 1 All ER 152
David Collis v HMRC [2011] UKFTT 588 (TC)
Keith Donaldson v HMRC [2006] EWCA Civ 761
Rowland v HMRC [2006] STC (SCD) 536

20 4. Facts

Schedule 55 of the Finance Act 2009 ("the Schedule") makes provision for the imposition by Her Majesty's Revenue and Customs ("HMRC") of penalties on taxpayers for the late filing of tax returns.

25 If a person fails to file an income tax return by the "penalty date" (the day after the "filing date" i.e. the date by which a return is required to be made or delivered to HMRC), paragraph 3 of the Schedule provides that the person is liable to a penalty of £100.

Paragraph 4 of the Schedule provides:

"(1) A person is liable to a penalty under this paragraph if (and only if)–

30 (a) The 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 the person specifying the date from which the penalty is payable."

35 (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).

The filing date for an individual tax return is determined by Section 8 (1D) of the Taxes Management Act 1970.

5. In this case the penalties totalling £560 which were the subject of the appeal dated 7 April 2017 are made up of a late filing penalty of £100 under paragraph 3 of Schedule 55 Finance Act 2009 and daily penalties of £460 under paragraph 4 of Schedule 55 Finance Act 2009.

5 In their statement of case HMRC state

“HMRC will not be defending the appeal against the daily penalties, and therefore that aspect of the appeal wins”

6. In her letter to the Tribunal dated 30 June 2017 the Appellant wrote

10 “ I was essentially asking for an exceptional exemption from the daily penalty beyond the initial £100 late filing penalty.....

Reading their submission, they only confirm the late filing penalty, implicitly dropping the additional daily penalty.

If this is the correct understanding of their conclusion, I fully agree on this proposal.”

15 7. The appellant’s tax return for the period showed that no tax was due. It appears that the tax return was sent to her after the due date which caused her confusion as to when it should be filed. The appellant also had problems submitting the return on line so submitted a paper return.

8. **HMRC’s submissions**

20 In respect of the £100 late filing penalty HMRC has considered special reduction under (paragraph 16 Schedule 55 of the Finance Act 2009. They say special circumstances must be “exceptional, abnormal or unusual” (*Crabtree v Hinchcliffe*) or “something out of the ordinary run of events” (*Clarks of Hove Ltd. v Bakers’ Union*). HMRC say the special circumstances must apply to the particular individual and not be general circumstances that apply to many taxpayers (*David Collis v HMRC*).
25 HMRC consider that there are no special circumstances which would allow them to reduce the penalty.

9. **Tribunal’s Observations**

30 Paragraph 16 (1) of Schedule 55 Finance Act 2009 allows HMRC to reduce the penalty below the statutory minimum if they think it is right because of special circumstances. HMRC have considered whether there any special circumstances in this case which would allow them to reduce the £100 penalty and have concluded there are none. The Tribunal sees no reason to disagree.

35 10. In the light of the statement by HMRC in their statement of case the Tribunal accepts that HMRC confirms that it will not be pursuing the £460 daily penalty. That being the case the appellant accepts that a late filing penalty of £100 is due. The Tribunal therefore confirms the late filing penalty of £100 under paragraph 3 of Schedule 55 of the Finance Act 2009.

11. As the parties are in agreement on the resolution of this matter there is no need for The Tribunal to make any further comment.

12. HMRC has applied the late filing penalty in accordance with legislation. The Appellant has not established a reasonable excuse for the late submission of her tax return for the period 2014-15. There are no special circumstances to allow reduction of the penalty. Therefore the appeal against the late filing penalty £100 is dismissed.

13. 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.

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PETER R. SHEPPARD
TRIBUNAL PRESIDING MEMBER

RELEASE DATE: 09 AUGUST 2017