



TC06074

Appeal number: TC/2017/03372

*INCOME TAX – liability for penalties in relation to failure to file tax return
– appeal against assessment to daily penalties upheld – appeal against
remaining penalties dismissed.*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ERICA GOVUS

Appellant

- and -

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

TRIBUNAL: JUDGE TONY BEARE

The Tribunal determined the appeal on 16 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 18 April 2017 (with enclosures) and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 20 June 2017.

DECISION

1. This decision relates to an appeal by Mrs Govus against penalties issued under Schedule 55 of the Finance Act 2009 (the “FA 2009”) in relation to the failure to file her self-assessment tax return for the 2013/2014 tax year of assessment.
2. The penalties in question are:-
 - (a) a penalty of £100 imposed under paragraph 3 of Schedule 55 to the FA 2009;
 - (b) a penalty of £900 imposed under paragraph 4 of Schedule 55 to the FA 2009;
 - (c) a penalty of £300 imposed under paragraph 5 of Schedule 55 to the FA 2009; and
 - (d) a penalty of £300 imposed under sub-paragraph 6(5) of Schedule 55 to the FA 2009.
3. As regards the daily penalty of £900 under paragraph 4 of Schedule 55 to the FA 2009, HMRC has made it clear in its statement of case that it does not wish to pursue that penalty and therefore that that aspect of Mrs Govus’s appeal should be upheld. Accordingly, I uphold Mrs Govus’s appeal to the extent that it relates to that penalty.
4. As regards the remaining penalties described in paragraph 2 above, there is no dispute between the parties as to the fact that the tax return in question has not yet been filed, which means that each of those penalties is, prime facie, applicable.
5. The relevant facts are as follows:-
 - (a) on 1 October 2014, a tax calculation was issued to Mrs Govus in respect of the tax year of assessment 2013/2014 showing an underpayment of tax of £72.80. That calculation was accompanied by a letter in which HMRC advised Mrs Govus that either she would have to make a voluntary payment of tax or the underpayment of tax would be collected through self-assessment;
 - (b) as no reply was received to HMRC’s letter, a further letter was issued by HMRC on 26 December 2014 to the same effect;
 - (c) in the absence of any response to that letter, HMRC issued a notice to file a self-assessment return for the relevant tax year of assessment on 2 April 2015. This required Mrs Govus to file a tax return by 9 July 2015;
 - (d) as no such tax return was received by the filing date, HMRC issued a penalty notice on 14 July 2015 in the amount of £100 under paragraph 3 of Schedule 55 to the FA 2009;
 - (e) this was followed by a statement showing the penalty due which was sent on 10 September 2015, a 30 day daily penalty reminder which was sent on 10 November 2015 and a 60 day daily penalty reminder which was sent on 15 December 2015;

- (f) as no tax return had yet been received six months after the penalty date, HMRC issued a further penalty notice on 12 January 2016 in the amount of £300 under paragraph 5 of Schedule 55 to the FA 2009;
- 5 (g) this was followed by a statement showing (inter alia) the above outstanding penalties which was sent on 10 March 2016;
- (h) as no tax return had yet been received by the date falling twelve months after the penalty date, HMRC issued a further penalty notice on 12 July 2016 in the amount of £300 under sub-paragraph 6(5) of Schedule 55 to the FA 2009;
- 10 (i) this was followed by a statement showing (inter alia) the above outstanding penalties which was sent on 15 September 2016 and a request for payment of the outstanding amounts which was sent on 26 October 2016;
- (j) Mrs Govus did not contact HMRC until 8 November 2016, when she called the HMRC helpline;
- 15 (k) Mrs Govus gave notice to HMRC of her appeal against the above penalty notices on 6 January 2017 and HMRC rejected her appeal on 23 January 2017;
- (l) on 18 February 2017, Mrs Govus requested a review of HMRC's decision and, on 23 March 2017, HMRC notified Mrs Govus that the result of that review was that HMRC's decision should be upheld; and
- 20 (m) on 18 April 2017, Mrs Govus gave notice to the Tribunal of her appeal against the relevant penalties.
6. Mrs Govus submits that she should not be liable to any of the penalties for reasons which may be summarised as follows:-
- 25 (a) in June 2013, she had a life-saving emergency operation which meant that she was subsequently off work for 11 months;
- (b) on her return to work, she was redeployed as she was unable to carry out her previous job;
- 30 (c) she has never been self-employed and so assumed that, when she was asked to fill out a self-assessment, the relevant request had been sent in error;
- (d) she did not receive the letters from HMRC dated 1 October 2014 or 26 December 2014;
- 35 (e) she now understands the importance of filling out forms that she may receive in the future but she honestly did not realise the importance, or the relevance to her, of the forms; and
- (f) she feels that the penalty is large compared to the small amount of tax that she owed and claims that the relevant tax due has been "sorted out by my tax office".
- 40

7. Before considering Mrs Govus's appeal, I would note that, although her notice of appeal to the Tribunal was in time, her notice of appeal to HMRC was not. However, HMRC has not indicated that it is minded to dismiss the appeal on that ground and therefore I have assumed that HMRC has agreed to the late notice of appeal.

8. There are two possible bases on which the arguments set out in paragraph 6 above might justify a cancellation of, or a reduction in, the relevant penalties.

9. The first is paragraph 23 of Schedule 55 to the FA 2009, which provides that there shall be no liability to a penalty in relation to a failure to make a tax return if the taxpayer satisfies HMRC or (on appeal) the Tribunal that there is a reasonable excuse for his or her failure. In that regard, there is some guidance in paragraph 23 of Schedule 55 to the FA 2009 as to certain things which cannot amount to a reasonable excuse. There is also some guidance on the question in prior case law. Subject to those matters, the question of whether Mrs Govus has a reasonable excuse for her failure to file the relevant tax return is a matter for me to determine.

10. The second is paragraph 16 of Schedule 55 to the FA 2009, which empowers HMRC to reduce the penalty under any paragraph of the Schedule because of "special circumstances". If HMRC decides that particular circumstances do not amount to "special circumstances", then I cannot substitute my own judgment in that regard unless HMRC's decision was flawed in the judicial review sense, by which I mean that, in reaching its decision on that point, HMRC must have taken into account matters which it should not have taken into account or failed to take into account matters which it should have taken into account. So, in comparison to her reasonable excuse argument, there is a much higher threshold for Mrs Govus to surmount if she wishes to argue that her circumstances amount to "special circumstances" given that HMRC considers this not to be the case.

11. In addition, although Mrs Govus has not raised these arguments, I need to consider, whether in relation to all three penalties, HMRC has complied with its obligation under sub-paragraph 18(1)(c) of Schedule 55 to the FA 2009 – the obligation to state in the penalty notice the period in respect of which the penalty is assessed – and, if it has not so complied, whether its failure to do so is a matter of form and not of substance such that, pursuant to the decision of the Court of Appeal in *Revenue and Customs Commissioners v Donaldson* [2016] STC 2511, the relevant notice remains valid by virtue of sub-section 114(1) of the Taxes Management Act 1970.

12. Turning first to the question of whether Mrs Govus has a reasonable excuse for her failure to file the relevant tax return, I do not think that she does. I accept that Mrs Govus has not deliberately defaulted on her obligation to file her tax return and that she has made a genuine mistake. However, I think it was incumbent upon Mrs Govus to ensure that she complied with her statutory obligation in that regard and did not simply ignore the letters which she was receiving from HMRC.

13. As noted in paragraph 5 above, HMRC sent a number of letters to Mrs Govus over the period in question and, by her own admission, she simply assumed that HMRC was in error and did not take any action in response to them. Even taking into account the fact that some of the letters may not have arrived, there was sufficient

5 correspondence to indicate to someone acting reasonably and prudently in managing his or her tax affairs that it would be advisable to contact HMRC to sort out the problem. The fact that Mrs Govus did not do so until 8 November 2016 shows that Mrs Govus did not take the steps which might reasonably have been expected of her in this regard. So I do not think that Mrs Govus has a reasonable excuse for her failure to file the relevant tax return.

14. For similar reasons, I agree with HMRC that the circumstances described in paragraph 6 above do not amount to “special circumstances” for the purposes of paragraph 16 of Schedule 55 to the FA 2009.

10 15. Finally, although HMRC’s statement of case did not enclose a copy of the specific penalty notices that were issued to Mrs Govus, it did enclose pro formas of those notices and it is clear from those pro formas that each notice would have complied with the requirements in sub-section 18(1)(c) of Schedule 55 to the FA 2009.

15 16. For the reasons set out above, I uphold the penalty assessments referred to in sub-paragraph 2(a), (c) and (d) above. I am sorry that this is the outcome of Mrs Govus’s appeal because the £700 of penalties considerably exceeds the amount of tax owed by Mrs Govus which led to HMRC’s requiring a self-assessment tax return from Mrs Govus in the first place. However, as I have noted in paragraphs 12 and 13
20 above, Mrs Govus could have avoided this outcome if she had contacted HMRC sooner than she did.

17. I would add that it is not clear from HMRC’s statement of case that Mrs Govus’s tax affairs are yet in order. It appears that Mrs Govus has yet to file the relevant tax return and there is no indication from HMRC’s statement of case that the
25 outstanding tax has been settled (although Mrs Govus has alleged that it has been in her notice of appeal to the Tribunal). So I would urge Mrs Govus to contact HMRC as soon as possible to clarify her outstanding obligations in this context.

18. 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
30 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.

35

TONY BEARE
TRIBUNAL JUDGE

40

RELEASE DATE: 21 AUGUST 2017