



TC06303

Appeal number: TC/2017/06454

INCOME TAX – penalties for failure to file personal tax returns – belief that did not need to file return because of low income – reminders and penalty notices not received because of changes of address – whether or not reasonable excuse – held not – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

TIMOTHY MICHAEL ABBEY

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE PHILIP GILLETT

The Tribunal determined the appeal on 30 November 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 27 August 2017 and HMRC's Statement of Case, which was received by the Tribunal on 19 September 2017.

DECISION

1. This was an appeal against late filing penalties totalling £2,320 imposed on the
5 appellant under paras 3, 4, 5 and 6(5) Sch 55 Finance Act 2009 for the late filing of
individual tax returns for 2014-15 and 2015-16.

2. The appeal was made out of time and HMRC have indicated that they oppose
Mr Abbey's application to make the appeal out of time. However, as the facts behind
the late appeal are essentially the same as those for the substantive appeal I have
10 decided that it is in the interests of justice and fairness to give permission for a late
appeal in accordance with s49G(3) or 49H(3) Taxes Management Act 1970.

Grounds of Appeal

3. The appellant's grounds of appeal can be summarised as follows:

(1) After the death of his mother on 20 June 2015, following a long battle
15 with cancer, Mr Abbey worked very little whilst dealing with her death.

(2) He thought that as his income for the years in question did not exceed his
personal allowance he did not have to submit a return.

(3) He has changed address three times over the last three years and
reminders from HMRC were not forwarded to him.

4. In his request for a decision including full facts and findings Mr Abbey put
20 forward further grounds for appeal as follows:

(1) The first indication he had about an overdue tax return was the text
message sent to his mobile phone on 14/06/2017 to which he replied straight
away and submitted his accounts as soon as he could. He does not understand
25 why this text message protocol was not implemented in the first instance of a
late penalty and only after almost two years.

(2) Mr Abbey argues that by submitting his returns within 3 weeks of
receiving a text message from HMRC on 14/06/17, he has proven that he was
ready and willing to rectify his late submission and give proof of his earnings as
30 soon as the message reached him. He also attached a screen shot of the text
message.

(3) Mr Abbey argues that HMRC have a system in place using text messages
to alert people of late penalty fines for a reason. He would simply like to know
why? Is a letter more official than a text message, do HMRC acknowledge text
35 messaging as an official way of informing people of late penalties. Is it only
implemented after a certain amount of fines have be accumulated or time
passed? What is the exact protocol for alerting someone when they are late to
submit their tax returns by text message? Most importantly why did it take 2
years to receive a text message and not straight away if it is an acknowledged
40 form of communication from HMRC.

5 (4) If a text message was sent to Mr Abbey on purpose by HMRC on the 14/06/17, he demands to know why I do not see this as an error on the behalf of HMRC not to have done so straight away and not 2 years later. Mr Abbey states that it has been made clear to him that I will not consider changing address three times in as many years, therefore not receiving any written notice and not being aware of any penalties, as an excuse. Mr Abbey's mobile phone number (+447773900959) has stayed the same for this period of time and an attempt to contact him on the matter of a late penalty fine was made on the 14/06/17 after 10 25 months of the first missed submission date April 2015. If a text had been used he suggests that there would be no dispute against the likelihood of notices deemed to have been properly served under the provisions of s7 Interpretation Act of 1978.

15 (5) Mr Abbey asks what my views are on the official use of text messages and if HMRC have the means to do so, why have they failed to let him know by text message any earlier than they did. If a text message was sent to him on the 6th April 2015, he would have known to complete and file my tax return and all of this would have been avoided. Mr Abbey argues that he cannot be penalised for not having updated his postal address when HMRC clearly have the means to contact him via text message and have done so but 25 months late.

20 (6) With his limited income and lack of assets a significant fine will in all likelihood make Mr Abbey financially insolvent and he asks why I have not acknowledged this as a significant point in his case when proof of his earnings has been provided. Mr Abbey states that he simply cannot afford to pay this fine living in London when his income is less than half the current London Living Wage of £19,890. 25

(7) Ultimately Mr Abbey asks how HMRC can justify this fine when no tax was due in the first instance and now decide that a fine of £2,320 is a fair punishment. He says that he understands that he is legally obliged to complete and file a tax return to HMRC and that he has done so, albeit late. He also asks 30 how any financial penalty is applicable when he has proven that there is no outstanding tax to be paid.

(8) Finally, Mr Abbey asks for an explanation of why his late penalty fines have risen significantly from around £1,700 to over £2,300 when he was told on the phone by HMRC 21/06/17 that the fines would stop once his self- 35 assessment returns for 2014/15 and 2015/16 were submitted.

Facts

2014-15

5. The facts of the case according to HMRC, which have not been challenged by Mr Abbey, are set out in their Statement of Case as follows:

40 (1) The notice to file a tax return for the year 2014-15 was issued to the appellant on 6 April 2015.

(2) The filing date was 31 October 2015 for a non-electronic return or 31 January 2016 for an electronic return.

(3) The appellant's electronic return for the year was received by HMRC on 30 June 2017.

5 (4) As the return was not received by HMRC by the filing date HMRC issued a notice of penalty assessment on or around 17 February 2016 in the amount of £100.

(5) As the return had still not been received by HMRC three months after the penalty date HMRC issued a notice of daily penalty assessment on or around 12
10 August 2016 in the amount of £900, calculated at £10 per day for 90 days.

(6) As the return had still not been received by HMRC six months after the penalty date HMRC issued a notice of daily penalty assessment on or around 12 August 2016 in the amount of £300.

15 (7) As the return had still not been received by HMRC 12 months after the penalty date HMRC issued a notice of daily penalty assessment on or around 21 February 2017 in the amount of £300.

2015-16

(8) The notice to file a tax return for the year 2015-16 was issued to the appellant on 6 April 2016.

20 (9) The filing date was 31 October 2016 for a non-electronic return or 31 January 2017 for an electronic return.

(10) The appellant's electronic return for the year was received by HMRC on 1 July 2017.

25 (11) As the return was not received by HMRC by the filing date HMRC issued a notice of penalty assessment on or around 7 February 2017 in the amount of £100.

(12) As the return had still not been received by HMRC three months after the penalty date HMRC issued a notice of daily penalty assessment on or around 4 July 2017 in the amount of £620, calculated at £10 per day for 62 days

30 Legal framework

6. No penalty will be charged in respect of the late filing of a tax return if the appellant is considered to have a reasonable excuse for the late filing.

35 7. The expression "reasonable excuse" is not defined in the legislation but para 23(2) Sch 55 Finance Act 2009 does specify two situations that are not to be regarded as a 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 appellant took reasonable care to avoid the failure.

8. In addition para 23(2)(c) Sch 55 provides that:

(c) where the person had a reasonable excuse for the failure but the excuse has ceased, he/she is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse has ceased.

5 9. The question of what “reasonable excuse” means has also been addressed in a
number of cases and can be summarised as follows. The decision depends upon the
particular circumstances in which the failure occurred and the particular
circumstances and abilities of the person who failed to file their return on time. The
test is to determine what a reasonable taxpayer, in the position of the taxpayer, would
10 have done in those circumstances and by reference to that test to determine whether
the conduct of the taxpayer can be regarded as conforming to that standard.

10. Importantly, the test is whether or not the taxpayer’s behaviour is reasonable in
his particular circumstances, with his knowledge and understanding of tax issues. No
higher standard, and no lower standard, than that.

15 **Discussion**

11. Mr Abbey’s main grounds of appeal are that he did not think he needed to file a
return because his income was below the personal allowance and therefore no income
tax was due.

12. In addition, he moved house a number of times and did not receive the various
20 statements and penalty and warning notices from HMRC.

13. Mr Abbey also refers to the death of his mother, which was clearly a great loss
to him. However I think it is reasonable to expect him to be able to deal with his tax
affairs within, at least, three months of her death.

14. However, the real reason he failed to file his tax returns was either that he
25 simply forgot to file the returns or that he, wrongly, believed that one was not
necessary because of the low level of his income. This is a common
misunderstanding. Unfortunately, if HMRC decide to require someone to complete
and file a tax return then they are legally obliged to do so, whatever the level of their
income. In this case, HMRC have decided that Mr Abbey is required to file a tax
30 return simply because he is self-employed, whatever his level of income. Once
HMRC have decided to issue a notice to file a tax return then the taxpayer is required
to file that return, whatever his level of income.

15. If Mr Abbey held a genuine belief that he did not need to file a tax return then
that that might be regarded as a reasonable excuse, as long as that belief was
35 reasonably held. However I can find nothing in Mr Abbey’s representations which
might lead him to hold this belief. He does not say that he had received specific
advice to this effect from a professional adviser, or from someone else whom he
might trust to give such advice. It was simply his personal view that it didn’t make
sense for him to file a return when his income was below the personal allowance
40 threshold. Unfortunately this was incorrect.

16. Mr Abbey does not say that he did not receive the notices to file a return for the years in question and although HMRC records on this point are not totally persuasive in themselves, it seems highly likely that notices to file were sent to the addresses on HMRC records at the time and they are therefore deemed to have been properly served under the provisions of s7 Interpretation Act 1978.

17. Mr Abbey states that he moved house three times in three years and suggests that this may be a reason why he did not receive all the notices and warnings. I note that HMRC records do show these changes of address, although perhaps not all at the correct times. However, it is the taxpayer's responsibility to ensure that HMRC are kept informed of any changes of address or, alternatively, to arrange for any post to be forwarded by Royal Mail. Mr Abbey does not seem to acknowledge this responsibility or accept that he in any way may have been responsible for the fact that he did not receive the various notices from HMRC. To the extent that Mr Abbey did not receive any of these notices and penalties I find that this was down to his own failure to keep HMRC informed or to make proper arrangements for the forwarding of post.

18. Mr Abbey has made reference in his request for a decision containing full facts and findings to the fact that he was eventually made aware of his failure to file a tax return by a text message from HMRC and that once he had received this text he acted very quickly to rectify the position. I fully accept that he acted very quickly following the receipt of this text. However, according to the screenshot provided by Mr Abbey, the text in question opens with the words "Is your self-assessment tax return still outstanding? To reduce any additional penalties you will need to pay, you must submit your tax return now along with any payment due." This is not therefore a specific statement that Mr Abbey has failed to file his tax returns or that penalties are accruing, it simply asks whether or not his tax return is still outstanding. It is clear however from his rapid response that Mr Abbey realised immediately that he had not submitted his tax returns for the two years in question and that he needed to do so. This might even suggest that Mr Abbey was fully aware of his responsibility to file a tax return but had simply forgotten to do so.

19. Mr Abbey has asked some specific questions as to HMRC's protocol for using text messages to communicate with a taxpayer. This is something which is outside my knowledge and is not specifically governed by legislation and I am therefore unable to assist him on this point. However, I can say that HMRC are under no obligation to send reminders where tax returns are outstanding, and whether or not they send out reminders can in no way be regarded as an excuse for not filing a tax return on time in the first place. HMRC clearly do have the ability to send text messages to taxpayers but their prime method of communication is by traditional mail and it is not down to HMRC to identify alternative means of communication with a taxpayer if the traditional method does not provide a response. Mr Abbey somehow seeks to lay the blame for the late filing of his tax returns on the failure of HMRC to send him this text earlier. I find this somewhat disingenuous.

20. Mr Abbey also argues that it is unfair to charge a penalty when no tax liability is payable. I fully understand and sympathise with this point of view and indeed, up to

2009-10 the amount of any late filing penalty was limited to the amount of any tax payable. However, with effect for 2010-11 and subsequent years, Parliament made a specific decision to remove this limitation. They presumably made this change in order to encourage taxpayers to file their returns on time even in cases such as this
5 where no tax was payable. Given that this was the clear intention of Parliament, this is not a decision with which I can interfere.

21. Mr Abbey also makes reference to his inability to pay the penalties and that their imposition will make him insolvent. These are very substantial penalties, which many might consider out of all proportion to the offence, but nevertheless, these are
10 the penalties which Parliament has decided to impose. Again I sympathise with Mr Abbey but this is not something which the law allows me to take into account. If he has a genuine difficulty with paying the penalties then I believe it would be best for him to talk to HMRC to see if a suitable accommodation can be reached.

22. HMRC have the ability under para 16 Sch 55 FA 2009 to reduce the penalties where there are “special circumstances”. The expression “special circumstances” is not defined in the legislation but para 16(1) states specifically that “special
15 circumstances” does not include an inability to pay. The meaning of “special circumstances” has also been considered in other cases, unrelated to late filing penalties, and in general it is taken to mean something which is exceptional, abnormal or unusual or something out of the ordinary run of events. HMRC state that they have
20 considered whether or not special circumstances exist in this case and have decided that they do not. I can only interfere with this decision if I believe that HMRC’s reasoning is flawed in some way and in this case I cannot see that there are special circumstances. I do not therefore believe that I am able to interfere with their decision
25 in this case.

23. Mr Abbey has also effectively argued that the penalties charged are disproportionate. The Tribunal’s powers on an appeal are set out in paragraph 22 of Schedule 55 and do not include any general power to reduce a penalty on the grounds that it is disproportionate. Moreover, Parliament has, in paragraph 22(3) of Schedule
30 55, specifically limited the Tribunal’s power to reduce penalties to cases where there are “special circumstances”. I have considered the question of “special circumstances” above and cannot find a reason to interfere with HMRC’s decision on this point. Therefore, for reasons similar to those set out in *HMRC v Bosher*, [2013] UKUT 01479 (TCC), I do not consider that I have a separate power to consider the
35 proportionality or otherwise of the penalties.

24. The simple fact remains that Mr Abbey either made a mistake as to his requirement to file a tax return or simply forgot that he was required to file a return. Unfortunately, the law does not provide relief for mistakes, but only for what is deemed to be a reasonable excuse.

40 25. I can therefore find nothing in what Mr Abbey says which might constitute a reasonable excuse for the late filing of his returns.

Decision

26. For the above reasons, I have decided that the appellant's appeal against the penalties charged under paras 3, 4, 5 and 6(5) Sch 55 FA 2009 should be DISMISSED.

27. 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.

PHILIP GILLETT
TRIBUNAL JUDGE

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