



[2019] UKFTT 0676 (TC)

TC07451

Income tax – individual tax return – late filing penalty – whether reasonable excuse - agent unable to file return-registration and Form 64-8 - wrong registration code – whether reasonable excuse – no – reliance on third party - appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2019/02345

BETWEEN

JOHN PETTITT

Appellant

-and-

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

Respondents

TRIBUNAL: JUDGE DR KAMEEL KHAN

The Tribunal determined the appeal on 29 October 2019 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 1 April 2019 (with enclosures) and HMRC's Statement of Case submitted on 29 May 2019 (with enclosures).

DECISION

Nature of Appeal

1. This is an appeal against a penalty imposed under Paragraph 3 of Schedule 55 Finance Act (FA) 2009 for the late filing of the Individual Tax Return for the year.
2. Daily penalties imposed under Paragraph 4 of Schedule 55 Finance Act (FA) 2009 for the late filing of the Individual Tax Return for the year.
3. A penalty imposed under Paragraph 5 of Schedule 55 Finance Act (FA) 2009 for the late filing of the Individual Tax Return for the year.

Background

4. Self-assessment (SA) is based on voluntary compliance. Taxpayers who are within the SA system must file their returns by the due date and pay the tax they owe by the date specified in law. The filing date is determined by Section 8 TMA 1970 et seq. A late filing penalty is chargeable where a taxpayer is late in filing their Individual Tax Return.
5. It is essential that taxpayers who file their returns at the right time feel confident that the system does not reward non-compliance and so penalties are imposed for late filing.
6. If the return is not received by the filing date a penalty of £100 is payable in accordance with Paragraph 3 Schedule 55 FA 2009.
7. If after a period of 3 months beginning with the penalty date the return remains outstanding daily penalties of £10 per day up to a period of 90 days are payable in accordance with Paragraph 4 Schedule 55 FA 2009.
8. If after a period of 6 months beginning with the penalty date the return remains outstanding a penalty of £300 is payable in accordance with Paragraph 5 Schedule 55 FA 2009.
9. Both the 'filing date' and the 'penalty date' are defined at Paragraph 1(4) schedule 55 FA 2009.

Finding of Facts

10. HMRC's computer records for Mr Pettitt show a Notice to File was issued on 6 April 2017. The issue of the notice to file or the return is made by an automated serve so HMRC is unable to produce a copy of the actual notice sent to Mr Pettitt. The Notice gives prior warning of penalties if filing is late
11. The filing date was 31 October 2017 for a non-electronic return and 31 January 2018 for an electronic return.
12. Mr Pettitt's electronic return for the year was received on 31 August 2018 which is 7 months late.
13. As the return was not received by the filing date, HMRC issued a notice of penalty assessment (SA326D) on or around 13 February 2018 in the amount of £100. In *Donaldson v HMRC*, the Court of Appeal decided that HMRC had given notice under paragraph 4(1)(c) specifying the date from which the penalty was payable in the SA reminder and SA326D Notice. Both notices the taxpayer would be liable to a £10 daily penalty if their return was more than three months late and specified the date from which they were payable depending on whether the person filed an electronic or paper return.

14. The warning on the £100 penalty notice issued to Mr Pettitt is the same as that considered in the *Donaldson* case to be sufficient to meet the requirements of Para 4 (1)(c) Sch. 55 FA09.
15. If after a period of 3 months beginning with the penalty date the return remains outstanding daily penalties of £10 per day up to a period of 90 days are payable in accordance with Paragraph 4 Schedule 55 FA 2009.
16. HMRC issued a notice of penalty assessment to Mr Pettitt on or around 10 August 2018 in the amount of £900
17. As the return had still not been received 6 months after the penalty date, HMRC issued a notice of penalty assessment to Mr Pettitt on or around 10 August 2018 in the amount of £300.
18. If a late filing (tax geared) penalty is raised for £300 and the return is then filed, or a determination raised, the penalty position is reviewed. Based on the amount of tax due from the return, or determination, the penalty could increase but the penalty will never be amended below £300.
19. If the amount due means that the penalty should be higher, a further penalty will be issued for the additional amount. This is what happened in Mr Pettitt's case. He had not paid enough on the tax geared 6-month penalty because his return had not been sent when the penalty was charged. It was increased by £635 on 4 September 2018 to make up to being 5% of the tax liability shown on the return.
20. The tax liability shown on the return (£18858.74), 5% of which is £943, which is £643 extra on top of the £300 already charged on 10 August 2018, hence the additional approximated 6-month penalty of £635 raised on 4 September 2018. The penalties were £100 late filing, £900 daily penalties, £300 six monthly and £635 tax geared. Total £1935.

Appellant Submissions

21. On 25 March 2019, Mr Pettitt appealed against the penalties on the grounds that:
22. When his new accountant, JSP Chartered Accountants, tried to file his return, they were unable to because HMRC denied them access; hardly his fault or theirs. His accountants have made several appeals against this penalty.
23. HMRC sent Mr Pettitt a decision letter on 26 March 2019 rejecting their appeal because it was late.
24. On 1 April 2019, Mr Pettitt's (new) agent notified their appeal to the Tribunal giving their grounds as before in Mr Pettitt's appeal of 25 March 2019 but reversing it to read:
25. "He, the new agent, was buying out the old agent, Gemjade, but before the transaction could be completed, HMRC blocked Gemjade from filing anything with them."
26. He would like the penalty mitigated to nil as a special circumstance.

HMRC's view

27. Their view is that the new agent did not follow the correct procedure for changing agents. As a result, they, not only delayed, but removed the old agents and were unable to add themselves as new agents.
28. There was a substantial delay in filing as a result. Further, they could have availed themselves of a simpler method of registering as filing agents, which was not done. This would have allowed the SA return to be filed on time.

29. The appellant, on whom the responsibility for filing rest, did not check what the agents were doing to make sure the filing was done and therefore does not have a reasonable excuse.

Discussion

30. On 31 August 2018, the new agent, Jerrett Singh Partnership (“JSP”), appealed against Mr Pettitt’s penalties. However, they were not authorised to handle correspondence on his behalf at that date, so the appeal could not be taken forward.

31. A 64-8 authorisation, which allows an agent the authority to deal with HMRC on someone’s behalf, was not received until 24 October 2018. The returns had to be filed by 31 January 2018, which meant that the authorisation to act as agent needed to be in place several months before the date it was done.

32. As a result, the new agent was not authorised to deal with HMRC on behalf of the appellant before August 2018.

33. Mr Pettitt did not give a date(s) when his new agent tried to file his return, but he or his agent could have filed by simply registering as a **filing agent** pursuant to SAM126001 of the Self-Assessment Manual, which states:

“An individual or agent can file online the SA100 individual’s tax return, trust return and partnership return. They can register for the service by visiting and selecting ‘Log in and file your Self-Assessment Tax Return’...Once the customer has successfully registered for the SA Online Service, they will receive an Activation Code. This Code is sent through the post by the Government Gateway within 7 days of enrolment and should arrive within 10 days (21 days if it is being sent abroad). The customer should then log into SA Online and activate the service. The service must be activated within 28 days of the date shown on the Activation Code letter.”

34. The new agents, JSP, could have used this simple procedure to file the self-assessment return on time and avoided or lessened the penalties on the appellant. The appellant, on whom the primary responsibility falls for filing, could have filed the returns using this method and met the filing deadline but chose not to do so and relied on the agents to file 7 months later on 31 August 2018.

35. In fairness to the new agents, they did try to add themselves as the agent of the appellant on 10 October 2017. However, this was not properly done and they only succeeded in precipitating the removal of the old agent, Gemjade, a practice they were acquiring. It meant that Gemjade were then unable to file. The appellant therefore ended up with two agents neither of whom had the power to file his returns on time.

36. What should have happened is that JSP should have obtained a 10-digit SA reference number before seeking to be registered as agents. The request could have been made online with the code being provided by post. It should have been done with adequate time remaining for filing the return.

37. JSP didn’t ask for a new agent code until more than a year later on 24 October 2018. It appears the new agent gave Gemjade’s old agent code, which had now been removed and it appears it is to this incident the new agent refers in the appeal to Tribunal when they said - “had no choice but to file the return using our other practise’s credentials”. This was not an acceptable way to proceed and it shows the new agents, JSP, in a very bad light. They should have known this would not work.

38. JSP thought they were registering with old recognised credentials, when actually their new 64-8 precipitated the removal of the old agent's code which meant it could not be used again.

39. In the tribunal's view, it was the new agent's actions brought about by a lack of knowledge of how such affairs are dealt with at HMRC, that caused the breakdown in communications and this was not put right until a year later on 24 October 2018.

40. The fact is that when a taxpayer has asked an agent to do something on their behalf, they are responsible for ensuring that the agent carries out the task. They cannot claim to have a reasonable excuse merely because they delegated the task to an agent to complete it. Reliance on a third party is not a reasonable excuse.

41. A taxpayer has to take reasonable care to explain to the agent what they require them to do to meet deadlines for the work. They must make regular checks on progress to ensure compliance with their instructions.

42. The taxpayer must be able to explain what action they took to ensure that the obligation to file the return were met. Failure by an agent would not normally be treated as a reasonable excuse. It is responsibility of the taxpayer to ensure that their return is completed and delivered on time.

43. The table below illustrates the length of time it took for the agent to put things right and the absolute lack of contact with HMRC throughout the whole period to explain exactly what the problem was and ask for help.

44. They did attempt to register under the old agent's code which resulted in the state of affairs which gave rise to the late filing and penalties, as below.

Date of issue	Notice or Penalty	
Late Filing Penalty	13 February 2018	
30-day Reminder	5 June 2018	
60-day Reminder	3 July 2018	
Daily Penalty	10 August 2018	

45. In the circumstances there is no reasonable excuse. There could be none where there was such reliance on the accountants who seem unaware of the procedure for registering as new agents and whose delay meant the appellant incurred penalties, he should not have incurred.

HRA/ECHR & Proportionality

46. The penalties are simply an administrative means of securing the production of timely returns. Their aim is to encourage compliance, not punish defaults. There is no issue under Article 6 ECHR and the taxpayer was made fully aware of their right to a statutory review or to an appeal to an independent tribunal.

47. penalties are not disproportionate and the penalty regime is proportional to its aim. Moreover, the regime includes provisions for 'reasonable excuse' and 'special circumstances' which allow mitigation in appropriate cases.

Special Circumstances

48. HMRC took into account the possibility of special circumstances but concluded that there were no special circumstances that could apply to reduce the penalties. I do not consider that there were any flaws in their decision that would require a review of their conclusion.

Conclusion

49. The appeal is dismissed in respect of the late filing penalty and the late filing penalty of £1,935 is confirmed.

Application for permission to appeal

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 DR KAMEEL KHAN

TRIBUNAL JUDGE

6 NOVEMBER 2019