



TC07610

Appeal number: TC/2019/04837

INCOME TAX – penalty for failure to make returns – not aware of need to file – whether reasonable excuse – no -appeal dismissed in part -Partial reduction of penalties.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

LUKE JOSEPH QUIRKE

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE DR K KHAN

Christopher Jenkins - Member

Sitting in public at Bristol Civil & Family Justice Centre on 10 September 2019

Henry Davison appeared for the Appellant

Halima Rashid, Presenting Officer, HMRC for the Respondents

DECISION

Background

1. The appellant is appealing against penalties that HMRC have imposed under Schedule 55 of the Finance Act 2009 (“Schedule 55”) for a failure to submit an annual self-assessment return for the 2012/13 ;2013/2104 ;2014/2015 tax years on time.

2. The penalties that have been charged can be summarised as follows:

Summary of Returns and Penalties

Tax Year	Type	Date Issued	Date Due	Date Received	How late	Penalty Type	Penalty Issued	Penalty Amount
2011/2012	Notice to file	06-04-2012	31-01-2013 (Online)	09-04-2013 (Online)	2 months and 9 days	Late Filing Penalty	12-12-2013	100.00
2012/2013	Full return	06-04-2013	31-10-2013 (Paper)	06-02-2019 (Paper)	5 years 3 months and 6 days	Late Filing Penalty Daily Penalty 6 Month Late Filing Penalty 12 Month Late Filing Penalty	18-02-2014 18-08-2014 18-08-2014 24-02-2015	100.00 900.00 300.00 300.00
2013/2014	Full return	06-04-2014	31-10-2014 (Paper)	06-02-2019 (Paper)	4 years, 3 months and 6 days	Late Filing Penalty Daily Penalty 6 Month Late Filing Penalty 12 Month Late Filing Penalty	18-02-2015 14-08-2015 14-08-2015 23-02-2015	100.00 900.00 300.00 300.00
2014/2015	Notice to file	06-04-2015	31-01-2016 (Online)	27-01-2019 (Online)	2 Years, 11 months and 27 days	Late Filing Penalty Daily Penalty 6 Month Late Filing Penalty 12 Month Late Filing Penalty	17-02-2016 12-08-2016 12-08-2016 21-02-2017	100.00 900.00 300.00 300.00

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Findings of Fact

3. In addition, the appellant's appeal was notified to the Tribunal between one year and ten months and five years and ten months late.

Given the appellant had penalties of £9,768 but no tax liability and had substantial tax repayments due in the period 12/13 to 17/18 where £40,787 in tax was deducted at source and his agent had received no paperwork on the penalties from HMRC, it was felt that the matter should be heard and explained in more detail.

We were satisfied that it was most likely that a more lucid explanation would be forthcoming from the appellant's agent. In short, we considered that we could fairly and justly deal with the case at the hearing if we had representations by the Appellant's agent who described his client as "flabbergasted" that he had incurred penalties when he has paid all the tax due.

The appeal is on the sum of £4,900. When interest (of £1,304) is added the total due is £6,204.

Appellant's case

4. The appellant's grounds for appealing against the penalties can be summarised as follows:

- (1) He had believed that he had paid all tax and had no liability. It was unfair and disproportionate to have to pay penalties despite having paid all tax due.
- (2) Due to HMRC error his agent had received no notification of the penalties and so did not complete any returns required.
- (3) He was harshly treated by HMRC in not being able to claim tax repayments due to him since he lost the right to claim rebates within the four-year time limit.
- (4) He did not have the ability to understand the self-assessment system and had a "mental block" in dealing with his taxes. He indicated that there was a medical condition associated with cognition but no evidence was presented.

5. HMRC submitted that:

- (1) The appellant's belief that no return was required cannot amount to a reasonable excuse; once a notice to file or a paper return has been issued under s.8 Taxes Management Act 1970, the appellant is required by law to complete this by the due date.
- (2) There is no reasonable excuse since a reasonable taxpayer would find "something wrong" if he had paid his taxes and still received penalties.
- (3) The agent could have assisted the appellant in the completion of his forms.
- (4) The appellant provided no evidence of a medical condition to show he suffered a "mental block" and was not capable of completing his tax returns.

(5) The appellant has been registered in self-assessment since 1996 and as self employed in 2007 and should be very familiar with the system and the requirement to complete returns.

Discussion

It is not disputed that the tax return for the relevant tax years were submitted late as shown on the chart above. Subject to considerations of “reasonable excuse” and “special circumstances” set out below, the penalties imposed are due and have been calculated correctly.

6. The test of whether something is a “reasonable excuse” for the late filing of a tax return is not set out in statute but set out in **Clean Car Company [1991] VTTR 234** which states:

“a reasonable excuse should be judged by the standards of reasonableness which one would expect to be exhibited by a taxpayer who had a responsible attitude to his duties as a taxpayer, but who in other respects shared such attributes of the particular appellant as the tribunal considered relevant to the situation being considered”

The Upper Tribunal recently considered the test for reasonable excuse in **Perrin v HMRC [2018] UKUT 156 (TCC)**.

They concluded that “to be a reasonable excuse, the excuse must not only be genuine, but also objectively reasonable when the circumstances and attributes of the actual taxpayer are taken into account.”

7. I find that the appellant’s reasons for the failure to submit his tax return do not amount to a reasonable excuse because:

(1) The appellant by his own admission did not know he had to complete and file self-assessment return where he had tax deducted at source. Ignorance of the law is no excuse and cannot amount to a reasonable excuse. A lack of knowledge of one’s filing obligations cannot amount to a reasonable excuse.

(2) The appellant did not act reasonably. A taxpayer who continues to receive tax penalty notices and chooses to do nothing about it cannot be said to be acting reasonably. It is self-evident that something is wrong or not being done if a notice is provided with a penalty for a failure to do something required by law.

(3) The fact that the appellant had a tax agent who understood the law and wrote sensible letters and whose services was not used in the circumstances is not the behaviour of a reasonable person.

(4) No evidence was provided to show the tribunal that there was a medical condition which prevented the returns from being submitted.

(5) The fact that a person has had tax deducted at source does not mean that they do not have to file returns.

8. Finally, I must consider whether HMRC should have made a special reduction because of special circumstances within paragraph 16 of Schedule 55.

9. The Upper Tribunal has recently considered special circumstances in **Barry Edwards v HMRC [2019] UKUT 131 (TCC) ('Barry Edwards')**. The case concerned penalties for a failure to file self-assessment returns on time in circumstances where no tax was payable.

The Upper Tribunal said:

“It is clear that, in enacting paragraph 16 of schedule 55, Parliament intended to give HMRC and, if HMRC’s decision is flawed, the Tribunal a wide discretion to reduce a penalty where there are circumstances which, in their view, make it right to do so. The only restriction is that the circumstances must be ‘special’. Whether this is interpreted as being out of the ordinary, uncommon, exceptional, abnormal, unusual, peculiar or distinctive does not really take the debate any further. What matters is whether HMRC (or, where appropriate, the Tribunal) consider that the circumstances are sufficiently special that it is right to reduce the amount of the penalty.”

10. In Barry Edwards, the Upper Tribunal accepted that where the penalties are disproportionate in relation to the amount of tax due, this can constitute special circumstances.

They went on to say:

“85. In our view, there is a reasonable relationship of proportionality between this legitimate aim and the penalty regime which seeks to realise it. The levels of penalty are fixed by Parliament and have an upper limit. In our view the regime establishes a fair balance between the public interest in ensuring that taxpayers file their returns on time and the financial burden that a taxpayer who does not comply with the statutory requirement will have to bear.

86. In view of what we have said about the legitimate aim of the penalty scheme, a penalty imposed in accordance with the relevant provisions of Schedule 55 FA 2009 cannot be regarded as disproportionate in circumstances where no tax is ultimately found to be due. It follows that such a circumstance cannot constitute a special circumstance for the purposes of paragraph 16 of Schedule 55 FA with the consequence that it is not a relevant circumstance that HMRC must take into account when considering whether special circumstances justify a reduction in a penalty.”

11. The requirement in law is to complete a tax return regardless of whether tax has been deducted at source. HMRC can determine the taxpayer’s liability once a return has been filed. If a taxpayer feels he has paid all the tax due then this is more reason to file a return. In this case there were tax repayments due which were not collected because claims were not made and returns filed. It is in the taxpayer’s interest to file returns.

12. One point does stand out. In the SA Notes provided by the Revenue it is stated in small type that on 14 September 2015 they received details of a new agent being appointed for the appellant (FORM 64-8) and recorded the agent’s code. It was established in court that MR Quirke had appointed Mr Henry Davison as his agent. The code in the SA Notes was the same as that of Mr Davison.

13. Mr Davison explained that he had received no correspondence from HMRC regarding Mr Quirke. This was not disputed by HMRC. This would seem to be an administrative error from September 2015 and impacted the appeal deadlines for 2016 starting on 24 March 2016 to 23 March 2017 and penalties totalling £1900. The Tribunal believe that if the penalty notices issued in 2016 and 2017 were sent to Mr Davison they would have been actioned and certainly he would have been aware there was a problem. In the circumstances the penalty for that period is reduced by 50 percent or £950. We consider this abnormal and justifies a reduction.

Conclusion

14. I find that the appellant does not have a reasonable excuse and there are special circumstances to allow a £950 reduction in penalties imposed in the years 2016 and 2017. The appeal is partly allowed and the penalties are reduced in part.

Application for permission to appeal

15. 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.

Dr K KHAN

TRIBUNAL JUDGE

RELEASE DATE: 19 FEBRUARY 2020

APPENDIX - RELEVANT STATUTORY PROVISIONS

1. The penalties at issue in this appeal are imposed by Schedule 55. The starting point is paragraph 3 of Schedule 55 which imposes a fixed £100 penalty if a self-assessment return is submitted late.

2. Paragraph 4 of Schedule 55 provides for daily penalties to accrue where a return 5 is more than three months late as follows:

4—

(1) P is liable to a penalty under this paragraph if (and only if)—

(a) P's 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 P specifying the date from which the penalty is payable.

(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).

(3) The date specified in the notice under sub-paragraph (1)(c)—

(a) may be earlier than the date on which the notice is given, but

(b) may not be earlier than the end of the period mentioned in subparagraph (1)(a).

3. Paragraph 5 of Schedule 55 provides for further penalties to accrue when a return is more than 6 months late as follows:

5—

(1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 6 months beginning with the penalty date.

(2) The penalty under this paragraph is the greater of—

(a) 5% of any liability to tax which would have been shown in the return in question, and

(b) £300.

4. Paragraph 6 of Schedule 55 provides for further penalties to accrue when a return is more than 12 months late as follows:

6—

(1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 12 months beginning with the penalty date.

(2) Where, by failing to make the return, P deliberately withholds information which would enable or assist HMRC to assess P's liability to tax, the penalty under this paragraph is determined in accordance with sub-paragraphs (3) and (4).

(3) If the withholding of the information is deliberate and concealed, the penalty is the greater of—

- (a) the relevant percentage of any liability to tax which would have been shown in the return in question, and
- (b) £300.

(3A) For the purposes of sub-paragraph (3)(a), the relevant percentage is—

- (a) for the withholding of category 1 information, 100%,
- (b) for the withholding of category 2 information, 150%, and
- (c) for the withholding of category 3 information, 200%.

(4) If the withholding of the information is deliberate but not concealed, the penalty is the greater of—

- (a) the relevant percentage of any liability to tax which would have been shown in the return in question, and
- (b) £300.

(4A) For the purposes of sub-paragraph (4)(a), the relevant percentage is—

- (a) for the withholding of category 1 information, 70%,
- (b) for the withholding of category 2 information, 105%, and
- (c) for the withholding of category 3 information, 140%.

(5) In any case not falling within sub-paragraph (2), the penalty under this paragraph is the greater of—

- (a) 5% of any liability to tax which would have been shown in the return in question, and
- (b) £300.

(6) Paragraph 6A explains the 3 categories of information.

5. Paragraph 23 of Schedule 55 contains a defence of “reasonable excuse” as follows:

23—

(1) Liability to a penalty under any paragraph of this Schedule does not arise in relation to a failure to make a return if P satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that there is a reasonable excuse for the failure.

(2) For the purposes of sub-paragraph (1)—

- (a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside P's control,
- (b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and
- (c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

6. Paragraph 16 of Schedule 55 gives HMRC power to reduce penalties owing to the presence of “special circumstances” as follows:

16—

- (1) If HMRC think it right because of special circumstances, they may reduce a penalty under any paragraph of this Schedule.
- (2) In sub-paragraph (1) “special circumstances” does not include—
 - (a) ability to pay, or
 - (b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.
- (3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to—
 - (a) staying a penalty, and
 - (b) agreeing a compromise in relation to proceedings for a penalty.

7. Paragraph 20 of Schedule 55 gives a taxpayer a right of appeal to the Tribunal and paragraph 22 of Schedule 55 sets out the scope of the Tribunal’s jurisdiction on such an appeal. In particular, the Tribunal has only a limited jurisdiction on the question of “special circumstances” as set out below:

22—

- (1) On an appeal under paragraph 20(1) that is notified to the tribunal, the tribunal may affirm or cancel HMRC’s decision.
- (2) On an appeal under paragraph 20(2) that is notified to the tribunal, the tribunal may—
 - (a) affirm HMRC's decision, or
 - (b) substitute for HMRC's decision another decision that HMRC had power to make.
- (3) If the tribunal substitutes its decision for HMRC's, the tribunal may rely on paragraph 16—
 - (a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or

(b) to a different extent, but only if the tribunal thinks that HMRC's decision in respect of the application of paragraph 16 was flawed.

(4) In sub-paragraph (3)(b) “flawed” means flawed when considered in the light of the principles applicable in proceedings for judicial review.