



TC07695

Appeal number: TC/2019/09009

FIRST-TIER TRIBUNAL
TAX CHAMBER

Income Tax – penalty for failure to file returns on time – whether reasonable excuse – No – whether special circumstances – No.

JOZSEF PRETSNER

Appellant

- and -

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

Respondents

TRIBUNAL JUDGE: DR K KHAN

The Tribunal determined this appeal on 6 April 2020 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 9 August 2019 with enclosures and the Statement of Case submitted on 7 January 2020.

INTRODUCTION

The filing date is determined by Section 8(1D) TMA 1970 et seq. which states that for the year ended 5 April 2018 a non-electronic return must be filed by 31 October 2018 and an electronic return by 31 January 2019. A late filing penalty is chargeable where a taxpayer is late in filing their individual tax return.

MATTER UNDER APPEAL

The matter before the Tribunal is an appeal against late filing penalties charged under Schedule 55, Finance Act (FA) 2009 in respect of the late filing of a Self-Assessment Individual Tax Return.

The late filing penalties charged in the amount of £1300.00 are as follows:

Tax Year ending	Date penalty created/issued	Description	Amount (£)
2017-2018	26/03/2019	Individual late filing penalty	£100
	09/08/2019	Daily penalty	£900
	09/08/2019	6 months late filing penalty	£300
			£1,300

BACKGROUND

1. Self-assessment is based on voluntary compliance. Taxpayers who are within the self-assessment system must file their returns by the due date and pay the tax they owe by the date specified in law.
2. 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.

FACTS

3. The notice to file for the year ending 05 April 2018 was issued to Mr Pretsner on or around 06 April 2018.
4. The address the notice to file was issued to is 12 Daddlebrook, Telford, TF3 20S, the correct address.
5. The filing date was 31 October 2018 for a non-electronic return or 31 January 2019 for an electronic return.
6. Mr. Pretsner's electronic return for the year 2018 was received and processed on 08 August 2019.
7. The return was submitted late.
8. In accordance with Paragraph 3 of Schedule 55 FA 2009, as Mr Pretsner did not submit a return by the filing date of 31 January 2019, he was liable to a penalty of £100. HMRC issued a

notice of penalty assessment on or around 26 March 2019 in the amount of £100. The penalty notices are issued directly to the taxpayer. The notice (SA326D) serves as a warning of the daily penalties so satisfies the requirement of Sch 55 FA2009 para 4(1)(c). This view was confirmed in the Upper Tribunal decision *HMRC v Donaldson* [2014] UKUT53 5.

9. Pursuant to Paragraph 4 of Schedule 55 FA 2009, as the return had still not been received 3 months after the penalty date, Mr Pretsner was liable to daily penalties of £10 per day up to a period of 90 days. HMRC issued a notice of daily penalty assessment on or around 09 August 2019 in the amount of £900, calculated at £10 per day for 90 days.

10. Pursuant to Paragraph 5 of Schedule 55 FA 2009, as the return had still not been received 6 months after the penalty date, Mr Pretsner was liable to a penalty of £300. HMRC issued a notice of penalty assessment on or around 09 August 2019 in the amount of £300.

11. Both the 'filing date' and the 'penalty date' are defined at Paragraph 1(4) Schedule 55 FA 2009.

THE APPEAL

12. On 09 August 2019, HMRC was in receipt of an appeal under the terms of paragraph 20 Schedule 55 FA2009 in respect of the penalties charged.

13. HMRC issued its view on the matter by letter to Mr. Pretsner upholding the decision to charge the penalties. This letter also offered a statutory review or the option to appeal to the First Tier Tribunal.

14. Mr. Pretsner accepted an offer of a review. HMRC issued its conclusion of review letter to Mr Pretsner which upheld the decision to charge late filing penalties.

15. On 25 November 2019, Mr Pretsner lodged an appeal before the First Tier Tribunal.

POINTS AT ISSUE

16. Whether the Appellant has a reasonable excuse for the late filing of the individual tax return for the period ending 2018.

17. If a reasonable excuse exists, whether the return was received without any unreasonable delay once any excuse had ended.

BURDEN OF PROOF

18. The onus of proof is for the Respondents to show that the penalties have been correctly calculated. The burden then shifts to the Appellant to demonstrate that a reasonable excuse exists for the default.

STANDARD OF PROOF

19. The standard of proof is the ordinary civil standard, which is on the balance of probabilities.

LEGISLATION & CASE LAW

20. Section 8 Taxes Management Act 1970,
Schedule 55 Finance Act 2009 - paragraph 3, 4, 5 and 6
Schedule 55 Finance Act 2009 - paragraph 1 (1), (4) & (5)
Schedule 55 Finance Act 2009 - paragraph 20
Schedule 55 Finance Act 2009 - paragraph 23
Schedule 55 Finance Act 2009 - paragraph 16
Schedule 55 Finance Act 2009 - paragraph 22
CH170600 What are special circumstances
Section 7 Interpretation Act 1978

APPELLANT'S CONTENTIONS

21. Appeal dated 09 August 2019; this is a summary of his accountant's ground of appeal.
22. Mr. Pretsner was a director of Lyco Trade Solutions Ltd until 20th of February 2018.
23. He believed the accountant who was preparing the reports and closed the company prepared his personal tax returns as well as they did it in the previous year, but they didn't.
24. He found this out when he received the late filing penalty notice on the 26th of March 2019. Then he asked another accountant who promised he will prepare the self assessment but look like it didn't happen as he received a penalty notice on the 2 July 2019. He asked our office to prepare his self-assessment which we sent to HMRC on the 8th of August 2019.
25. He did not receive any income from Lyco Trade Solution Ltd in the 2017-18 tax year. His only income came from Dale Brothers UK Ltd, £13457.07 through PAYE. According to HMRC website, Mr Pretsner do not have to prepare self-assessment if his income was under £40,000 and received less than £5000 as a dividend. In this case he's income was £13457.07 and no dividend received.
26. Request for review decision 11 September 2019 Mr. Pretsner stated the following:
27. Grounds for appeal 25 November 2019 is as follows:

'I understand the legislation and what I've received from the previous letter. I would like to avoid this fine, as I called the accountant who promised numerous times and at the still didn't do it. A third accountant gave it in at the end. I didn't have and tax debit, I even have an overpayment. I pay a lot of tax every year and honestly. Both of my son's were in a motorbike accident couple months ago and now we are in debt. This is why I asked to avoid the fine.'

HMRC Contentions

28. HMRC say there is no reasonable excuse and the penalties should be upheld. They also say there should be no Special Reductions and all penalties were levied in accordance with the law.

Discussions

29. It is the responsibility of Mr Pretsner to ensure his 2017-2018 tax return was filed by the legislative date and payment made on time. Mr Pretsner had been a company director for Lyco Trade Solution Ltd from 02 August 2016.

30. The criteria for inclusion in Self-Assessment (SA) is not solely determined by that fact that someone may or may not be self-employed. Tax returns are issued for a variety of reasons and once issued they must be completed and submitted to HMRC by Section 8 Taxes Management Act 1970.

31. A notice to file was issued to Mr Pretsner on the 06 April 2018 under S8 TMA 1970, to the address held on record at HMRC. As the return was still outstanding at the end of May 2019 HMRC issued a 30-day daily penalty reminder on 04 June 2019 followed by a 60-day daily penalty reminder on 02 July 2019. The penalty reminders are issued automatically to the address on record at the time at HMRC.

32. There is no evidence the notice or penalty assessments were returned to HMRC undelivered from the address to which they were issued. There is no record of Mr Pretsner or his agent contacting HMRC regarding problems with his agent completing the return until an appeal dated 09 August 2019 was received.

33. HMRC records show the 2017-2018 tax return was received on 08 August 2019 and should have been delivered to HMRC by 31 January 2019, under Section 8(1D) TMA 1970. The return was received 189 days late.

34. In his appeal, Mr. Pretsner stated 'He has not received any income from Lyco Trade Solution Ltd in the 2017-18 tax year, he's only income came from Dale Brothers UK Ltd, £13457.07 through PAYE.'

35. Mr. Pretsner had declared earnings of £13457.07 from his employment with Dale Brohers Ltd. HMRC records show that he received earnings from Lyco Trade Solution Ltd for the period 01 April 2017 to 31 August 2017 of £5000, which has not been declared on the return.

36. The law requires a return to be made and Paragraph 1 of Schedule 55 to FA 2009 provides that:

1(1) A penalty is payable by a person ("P") where P fails to make or deliver a return on or before the filing date.

37. The 2018 self-assessment return was not delivered by the filing date, and penalties are therefore payable under paragraph 3, 4 and 5 of Schedule 55 to FA 2009.

38. Paragraph 23 of Schedule 55 FA 2009 specifically provides that a penalty does not arise in relation to a failure to make a return if the person satisfies HMRC (or on appeal, a Tribunal) that there is a reasonable excuse for the failure and they put right the failure without unreasonable delay after the excuse has ended.

39. There is no statutory definition of reasonable excuse, which "is a matter to be considered in the light of all the circumstances of the particular case" (*Rowland v HMRC* [2006] STC (SCD) 536 at paragraph 18).

40. A reasonable excuse is something that stops a person from meeting a tax obligation despite them having taken reasonable care to meet that obligation. It is necessary to consider what a reasonable person, who wanted to meet their obligation, would have done in the same circumstances and decide if the action of the person met that standard.

41. Reasonable excuse was considered in detail in the Upper Tribunal decision in *Christine Perrin v Commissioners for HMRC* [2018] UKUT 0156 (TCC)). Whilst confirming at paragraph 70 of that decision that reasonable excuse should be judged objectively, Judge Herrington stated at paragraph 71 :

"In deciding whether the excuse put forward is, viewed objectively, sufficient to amount to a reasonable excuse, the tribunal should bear in mind all relevant circumstances; because the issue is whether the particular taxpayer has a reasonable excuse, the experience, knowledge and other attributes of the particular taxpayer should be taken into account, as well as the situation in which that taxpayer was at the relevant time or times (in accordance with the decisions in The Clean Car Co and Coales)."

And at paragraph 74:

"Where a taxpayer's belief is in issue, it is often put forward as either the sole or main fact which is being relied on - e.g. 'I did not think it was necessary to file a return', or 'I genuinely and honestly believed that I had submitted a return'. In such cases, the FTT may accept that the taxpayer did indeed genuinely and honestly hold the belief that he/she asserts; however, that fact on its own is not enough. The FTT must still reach a decision as to whether that belief, in all the circumstances, was enough to amount to a reasonable excuse. So a taxpayer who was well used to filing annual self assessment returns but was told by a friend one year in the pub that the annual filing requirement had been abolished might persuade a tribunal that he honestly and genuinely believed he was not required to file a return, but he would be unlikely to persuade it that the belief was objectively a reasonable one which could give rise to a reasonable excuse."

42. Whether a person has a reasonable excuse will depend on the particular circumstances in which the failure occurred and the abilities of the person who has failed. What is a reasonable excuse for one person may not be a reasonable excuse for another person.

43. If there is a reasonable excuse it must exist throughout the failure period.

44. The Appellant has stated he received no income from Lyco Trade Solutions Ltd, which is clearly inaccurate. HMRC records show he did receive income from that company between April – August 2017.

45. He also stated his sons were involved in a “motorbike accident a couple of months ago and they are now in debt”. Mr. Pretsner has not explained how this situation led to his return being filed late.

46. Illness can only be considered a reasonable excuse if the illness was so serious that it prevented Mr Pretsner from controlling his business and private affairs immediately before the deadline of 31 January 2019 to the date he sent the tax return in. Mr Pretsner has not provided any evidence or information regarding the accident for HMRC to consider whether he had a reasonable excuse for not filing his 2018 tax return on time or for what period a reasonable

excuse would cover.

47. The Appellant also stated that he had an overpayment of tax for the 2018 tax year. However, late filing penalties are raised solely because the self-assessment tax return was submitted late. They are not linked to liability and remain fixed even if there is no tax or a repayment is due.

48. Paragraph 23(2)(b) of Schedule 55 FA 2009 specifically precludes reliance on a third party unless the Appellant took reasonable care to avoid the failure. We do not accept the reliance on his accountant, as an excuse. The responsibility to submit a self-assessment tax return by the due date remains with Mr Pretsner regardless of whether he delegated that task to another person. Unless the failure of the agent when considered in the light of all the circumstances amounts to a reasonable excuse and Mr Pretsner could not have taken reasonable steps to meet his obligation. This is not the case here.

49. Mr. Pretsner should take reasonable care to explain to the agent what he requires them to do, to set deadlines for the work and to make regular checks on progress, reminding where appropriate. Mr Pretsner would have been expected to be able to inform HMRC of what action he took to ensure that the obligation to file the return was met and normally but not always, to know the reason why the failure occurred. He seemed to have relied exclusively on his agents. Entrusting the agent with responsibility to file the return does not absolve Mr Pretsner of his responsibility to ensure the return is filed on time.

50. In order for Mr Pretsner's appeal to succeed, he must demonstrate that a reasonable excuse existed which prevented him from complying with his income tax obligations. Based on the evidence no reasonable excuse exists for the late submission of the individual tax return. The penalties were correctly charged in accordance with legislation.

SPECIAL REDUCTION

51. Under Paragraph 16 of Schedule 55, Finance 2009 provides HMRC with discretion to reduce any penalty if they think it right to do so because of special circumstances.

52. HMRC's policies on penalties are set out in the Compliance Handbook, and CH170600, defines "special circumstances" as follows:

Special circumstances are either

- i. uncommon or exceptional, or
- ii. where the strict application of the penalty law produces a result that is contrary to the clear compliance intention of that penalty law.

53. To be special circumstances the circumstances in question must apply to the particular individual and not be general circumstances that apply to many taxpayers by virtue of the penalty legislation.

54. At paragraph 36 of his decision in "*David Collis v HMRC*" [2011] UKFTT 588 (TC), Judge Roger Berner said:

"In the context of a decision of HMRC as to whether a reduction in a penalty should be

made on account of special circumstances, the general test will be whether the decision is so demonstrably unreasonable as to be irrational or perverse, such that no reasonable authority could ever have come to it."

55. At paragraph 86 in the Upper Tribunal case of *Barry Edwards v HMRC* [2019] UKUT 137 (TCC), it was confirmed that the Schedule 55 regime was proportionate and penalties are correctly due even in circumstances where there is no additional tax liability,

56. 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.

57. Mr Pretsner makes several statements about his circumstances in the letters dated 09 August 2019 and 11 September 2019 to support the view that he should not have been charged penalties under schedule 55 FA 2009. These representations are neither uncommon nor exceptional, nor do they suggest that the strict application of the penalty law produces a result that is contrary to the clear compliance intention of the relevant law in his case.

58. Paragraph 22(2) and (3) of Schedule 55, FA2009 provide the Tribunal with the power to substitute HMRC's decision with another decision that HMRC had the power to make. The Tribunal may rely on paragraph 16 (Special Reduction) but only if they think HMRC's decision was 'flawed' when considered in the light of the principles applicable in proceedings for judicial review. The Tribunal does not think the decision of HMRC is flawed.

CONCLUSION

59. The Tribunal finds as fact that Mr Pretsner did not have a reasonable excuse lasting throughout the period for the late submission of his individual return for the period ending 05 April 2018.

60. There are no special circumstances which would allow the penalty to be reduced under Special Reduction.

61. The penalties imposed in the amount of £1,300 were correctly charged in accordance with legislation and the appeal is dismissed.

RIGHT TO APPLY 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.

TRIBUNAL JUDGE: DR KAMEEL KHAN

RELEASE DATE: 5 MAY 2020