



Neutral Citation: [2023] UKFTT 00109 (TC)

Case Number: TC08726

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

Held by video

Appeal reference: TC/2021/11494

*INCOME TAX – self-assessment tax return - late filing penalties – whether appropriate and correct – yes - appeal dismissed.*

**Heard on: 25 October 2022  
Judgment date: 7 February 2023**

**Before**

**TRIBUNAL JUDGE KELVAN SWINNERTON  
MEMBER MR DEREK ROBERTSON**

**Between**

**ONUCHIKA ELEONU**

**Appellant**

**and**

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

**Respondents**

**Representation:**

For the Appellant: Appellant attended via telephone.

For the Respondents: Mr L Ellis, litigator of HM Revenue and Customs’ Solicitor’s Office.

## **DECISION**

### **INTRODUCTION**

1. This is an appeal by Ms Eleonu (“the Appellant”) against penalties imposed by HMRC totalling £1,300 under Schedule 55 of the Finance Act 2009 for the late filing by the Appellant of her self-assessment (‘SA’) tax return for the tax year ended 5 April 2020.
2. Under section 8 of the Taxes Management Act 1970 (“TMA”), a person may be required to make and deliver a self-assessment tax return by 31 October following the end of the tax year to which the return relates if on paper or by 31 January after the end of the tax year if filed electronically.
3. A penalty of £100 is payable if a person fails to make or deliver a self-assessment tax return on or before the filing date. If, after three months, the return has not been filed a person is liable to a penalty of £10 for each day that it remains outstanding for a period of up to 90 days from the date specified in a notice from HMRC. A penalty is payable of £300 or 5% of any liability to tax (if greater than £300) which would have been shown in the return if the return is not filed within six months. A further penalty is payable of £300 or 5% of any liability to tax (if greater than £300) which would have been shown in the return if the return is not filed within 12 months.
4. In respect of the tax year 2019-20, the following penalties were imposed and are under appeal: a late filing penalty of £100 imposed under paragraph 3 of Schedule 55; daily penalties totalling £900 imposed under paragraph 4 of Schedule 55; and a 6 months penalty of £300 imposed under paragraph 5 of Schedule 55.
5. A 12 months penalty has also been imposed for the tax year 2019-20 but that penalty is not the subject of this appeal.

### **THE HEARING AND EVIDENCE**

6. We considered all of the documentation provided which included a hearing bundle with the Notice of Appeal of the Appellant, a bundle of legislation and case law, a document from HMRC entitled ‘Statement of Reason’ dated 25 February 2022 and an e-mail from the Appellant dated 14 July 2022.
7. We also heard evidence from the Appellant and submissions from both parties.

### **THE FACTS**

8. The Appellant works as a senior community practitioner in the NHS.
9. She has attended Mental Health Tribunal hearings previously in the course of her work.
10. Her P60 End of Year Certificate for the tax year to 5 April 2020 states that her employer is Nopalaver Payroll Solutions Ltd.
11. A notice to file a self-assessment tax return for the year ending 5 April 2020 was issued to the Appellant on or about 6 April 2019.
12. It is not disputed between the parties that the notice to file a tax return for the year ending 5 April 2020 was received by the Appellant.
13. The Appellant’s tax return for the year ending 5 April 2020 had not yet, as at the date of the hearing, been received by HMRC.
14. From March to July 2020, the Appellant was in Nigeria with her children.
15. In November 2020, the Appellant visited Citizens Advice in order to obtain assistance in relation to her tax affairs.

16. The Appellant filed a Notice of Appeal dated 12 November 2021.

## THE LAW

17. The Taxes Management Act 1970 contains provisions relating to the filing of self-assessment tax returns.

18. *Section 8 – Personal return - states:*

*(1) For the purpose of establishing the amounts in which a person is chargeable to income tax and capital gains tax for a year of assessment, [and the amount payable by him by way of income tax for that year,] he may be required by a notice given to him by an officer of the Board –*

*(a) to make and deliver to the officer, on or before the day mentioned in subsection (1A) below, a return containing such information as may reasonably be required in pursuance of the notice, and*

*(b) to deliver with the return such accounts, statements and documents, relating to information contained in the return, as may reasonably be so required.*

19. 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.

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

*(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.*

*(1) The penalty under this paragraph is £10 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).*

*(2) 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).*

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

*(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.*

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

- (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 purpose 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 reasonable delay after the excuse ceased.*

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

- (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.*

## **DISCUSSION**

24. The Appellant stated at the hearing that she has always paid tax through PAYE, is not self-employed nor is she the owner of a limited company. In the grounds of appeal, it was stated: *“I have already contacted the HM Revenue to review this [the recent penalty] twice given that it is illegal to ask me who is a waged umbrella employee to submit a self-assessment form to the HM Revenue, as I already have both PAYE and National Insurance deductions from my wages every week”*. It is also stated in the grounds of appeal that: *“My solicitor have had sight of your threat letters sent to put pressure on me to pay penalty that is illegal and he has advised me not to pay this given that: My umbrella company has been deduction all my PAYE and National Insurance contributions appropriately. So they handle all my umbrella payroll, invoices because I am employed agency contractor, working on a temporary contract assignment as a social worker”*.

25. At the hearing, the Appellant stated also that she is a survivor of domestic violence, that she has had to move accommodation several times as a consequence of that and has recently moved to a new home. The Appellant explained that she did not know how to complete a self-assessment tax return and was genuinely ignorant of the process to be followed in that respect. She stated also that, after having received assistance from Citizens Advice in November 2020, she had at that time completed a self-assessment tax return for the tax year 2019-20 and sent it to HMRC.

26. HMRC contended that it is entitled to satisfy itself that no tax is due by requiring a tax return to be completed. HMRC stated that, despite the claims of the Appellant that she had completed and sent a tax return in November 2020 for the tax year of 2019-20, there was no record of any tax return for 2019-20 having been received by HMRC from the Appellant.

27. Turning to a consideration of the issues, we of course have sympathy for the Appellant relating to domestic violence issues and in respect of related circumstances requiring a change of accommodation. We were not, though, provided with any documentary evidence in that respect nor with any specific information as to how that may have impacted upon the capacity of the Appellant to file a self-assessment tax return for 2019-20. Neither was domestic violence mentioned in the grounds of appeal.

28. The Appellant gave evidence that she started living at the address of 59 Hawthorne Avenue, Gorton, Manchester in April 2007 and, when asked at the hearing when she had moved from that address, she stated that she had not lived at that address for almost two years. That would suggest that the Appellant moved from that address towards the end of 2020. The notice of appeal of the Appellant of November 2021, however, details the address of the Appellant as 59 Hawthorne Avenue, Gorton, Manchester which is one year later than the Appellant claims to have left that address. In any event, it is clear and we find that the Appellant was living at that address in April 2019 such that we find also that any change of accommodation of the Appellant has no relevance to the Appellant having received the notice to file a self-assessment return in April 2019 and to having been made aware in April 2019 of the requirement to file a self-assessment tax return for 2019-20.

29. The Appellant was on holiday in Nigeria with her children in March 2020 and, due to travel restrictions imposed by the Covid-19 pandemic, was not able to return to the UK until July 2020. About four months later, the Appellant sought assistance from Citizens Advice with respect to her tax affairs and, specifically, in relation to filing a self-assessment tax return. The Appellant had, therefore, despite any lack of understanding on her part clearly been made aware at that point in time of what she needed to do with respect to filing a self-assessment tax return for the year 2019-20. Despite the claim of the Appellant that she filed a self-assessment tax return in November 2020, the Appellant did not provide any documentary record of having done so. We have not been provided with any documentary evidence that she did so. HMRC has no record of any tax return for 2019-20 for the Appellant having been received. Based upon the available evidence, we find that the Appellant did not file a self-assessment tax return for the year 2019-20 in November 2020 nor at any later point in time by either post or online. We find that, as at the date of the hearing, no self-assessment tax return for the year 2019-20 has been submitted by the Appellant.

30. The Appellant has questioned why she was required to file a self-assessment tax return given her work arrangements. The grounds of appeal, as detailed above, refer to the Appellant having received legal advice from a solicitor to not pay the penalties imposed given the work arrangements of the Appellant. We were not provided with any additional information at the hearing by the Appellant in relation to that. In any event, we find that the Respondent is entitled to satisfy itself that no tax is due by requiring a tax return to be completed. We find it difficult to understand why the Appellant did not do anything, after receipt of the notice to file a self-assessment tax return for 2019-20, to clarify what was required of her and why she did not appear to take any such steps to do so until November 2020 by her own account.

31. We were not provided with any medical documentation to demonstrate that the Appellant was suffering from any medical conditions which may have constituted a reasonable excuse for not filing the tax return for 2019-20 on time.

32. Having considered all of the circumstances of this case, we find that the Appellant has failed to show any reasonable excuse for not filing the tax return for 2019-20 on time.

**DECISION**

33. The late filing penalties totalling £1,300 have been charged in accordance with legislation and no reasonable excuse has been shown for the failure of the Appellant to file her tax return on time for the tax year of 2019-20.

34. There are no special circumstances which would allow the penalties to be reduced under the Special Reduction provisions.

35. We dismiss the appeal of the Appellant and confirm the penalties in the sum of £1,300.

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**RIGHT TO APPLY FOR PERMISSION TO APPEAL**

36. 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.

**KELVAN SWINNERTON**

**TRIBUNAL JUDGE**

**RELEASE DATE: 07<sup>th</sup> FEBRUARY 2023**