Neutral Citation: [2024] UKFTT 00586 (TC)

Case Number: TC09225

FIRST-TIER TRIBUNAL
TAX CHAMBER

[By remote video hearing]

Appeal reference: TC/2023/08615

INCOME TAX – property letting income received – failure to notify liability to income tax under section 7 of the Taxes Management Act 1970 – whether the Appellant was in default of an obligation imposed by statute – yes – whether the penalties were correctly charged – yes - whether a reasonable excuse has been established by the Appellant – no – Appeal dismissed

Heard on: 11 March 2024
Judgment date: 01 July 2024

Before

JUDGE NATSAI MANYARARA
SONIA GABLE JP

Between

ROY BEVAN

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Roy Bevan, Litigant-in-Person

For the Respondents: Mr Levi Mignott, Litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. The Appellant (Mr Roy Bevan) is appealing against penalties ('the Penalties') that HMRC have issued, pursuant to Schedule 41 of the Finance Act 2008 ('Schedule 41'), in respect of a failure to notify tax liability as a result of property letting income. The Penalties were charged as follows:

Tax Year	Penalty Date	Amount
2006-07	12 January 2023	£12.76 paid
2007-08	12 January 2023	£107.23 paid
2008-09	12 January 2023	£101.60 paid
2009-10	16 January 2023	£109.20
2010-11	16 January 2023	£203.20
2011-12	16 January 2023	£176.00
2012-13	16 January 2023	£198.40
2013-14	16 January 2023	£203.40
2014-15	16 January 2023	£194.80
2015-16	16 January 2023	£101.60
2016-17	16 January 2023	£115.28
2017-18	16 January 2023	£80.00
2018-19	16 January 2023	£80.00
2019-20	16 January 2023	£80.00
2020-21	16 January 2023	£40.00

2. The Penalties were in the total sum of £1,803.11; of which £1,581.52 is unpaid.

3. With the consent of the parties, the form of the hearing was V (video). Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media, or members of the public, could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public. The documents to which we were referred were: (i) the Document Bundle consisting of 225 pages (within which was the Letter of Appeal dated 19 June 2023; and (ii) the Statement of Reasons dated 14 September 2023.

ISSUES

4. The issues in this appeal are:

   (1) Whether the penalties charged to the Appellant were correctly issued.

   (2) If so, whether the Appellant has established a reasonable excuse.

5. In this respect, HMRC bear the initial burden of demonstrating that the Penalties due. Once this is discharged, the burden of proof is upon the Appellant to demonstrate that there is a reasonable excuse.

6. Two further questions arise in determining this appeal. They are: if the Appellant is in default of an obligation imposed by statute: (a) what was the period of default? and (b) did the Appellant have a reasonable excuse throughout the period?

7. The above matters are to be considered in light of all the circumstances of the case.

8. The standard of proof is the civil standard; that of a balance of probabilities

BACKGROUND FACTS

9. In 1999, the Appellant purchased a property. The property was kept for personal use for over seven years, until it was let out from 16 February 2007.

10. On 28 July 2022, HMRC wrote to the Appellant asking for details of income from property. Records indicated that the Appellant owned property that may receive, or have previously received, income through letting

11. On 17 August 2022, the Appellant wrote to HMRC with details of property jointly owned with his wife. He added that the property had generated income, in the sum of £500, from 16 February 2007.

12. On 12 January 2023, HMRC issued a penalty determination under Schedule 41 for the tax years ending on 5 April 2007, 5 April 2008 and 5 April 2009.

13. On 16 January 2023, HMRC issued a notice of penalty assessment under Schedule 41, for the years 2010-11 to 2020-21 (inclusive).

14. On 5 February 2023, the Appellant appealed against the penalty determination and the Penalties.

15. On 24 February 2023, HMRC set out their view of the matter.

16. On 20 May 2023, HMRC issued the review conclusion letter, upholding the decision to issue the Penalties.

17. On 19 June 2023, the Appellant submitted his Notice of Appeal.

APPLICABLE LAW

18. The relevant law, so far as is material to the issues in this appeal, is as follows:

19. Section 7 of the Taxes Management Act 1970 provides that:

> "**7 Notice of liability to income tax and capital gains tax**
>
> (1) Every person who—
>
> (a) is chargeable to income tax or capital gains tax for any year of assessment, and
>
> (b) falls within subsection (1A) or (1B),
>
> shall, subject to subsection (3) below, within. the notification period, give notice to an officer of the Board that he is so chargeable.
>
> …
>
> (3) A person shall not be required to give notice under subsection (1) above in respect of a year of assessment if for that year—
>
> (a) the person's total income consists of income from sources falling within subsections (4) to (7) below,
>
> (b) the person has no chargeable gains, and
>
> (c) the person is not liable to an amount of tax under any provision listed in relation to the person in section 30 of ITA 2007 (additional tax)."

20. Schedule 41 provides that:

> "***Failure to notify etc.***
>
> 1A penalty is payable by a person (P) where P fails to comply with an obligation specified in the Table below (a "relevant obligation").
>
Tax to which the obligation relates	*Obligation*
Income tax and capital gains tax	Obligation under section 7 of TMA 1970 (obligation to give notice of liability to income tax or capital gains tax)."

21. Section 268 of the Income Tax (Trading and Other Income) Act 2005 provides that income tax is charged on the profits of property.

THE SUBMISSIONS

22. Mr Mignott made the following submissions, in summary, in support of HMRC's decision as set out in the Statement of Reasons:

(1) It is not disputed that for the years ending on 5 April 2007 to 5 April 2021 (inclusive), the Appellant did not notify his liability to tax in respect letting income, and in accordance with s 7 of the Taxes Management Act 1970 ('TMA').

(2) Schedule 41 provides that a penalty is payable where a person fails to comply with an obligation under s 7 TMA.

(3) HMRC do not consider that the Appellant deliberately failed to notify his liability to tax. The Penalties were charged at 20% as reductions were given to reflect the Appellant's co-operation.

(4) The Appellant wrongly believed that he had no tax liability without first seeking professional guidance, or guidance from HMRC. The complicated process of purchasing and then letting out property would have required expert advice and assistance from various sources.

(5) Ignorance of the law does not amount to a reasonable excuse.

23. Mr Bevan made submissions, in reply, which can be summarised as follows:

(1) He was unaware that income from jointly let property is deemed by HMRC to be split, equally, between spouses.

(2) His income was taxed at source under Pay-As-You-Earn ('PAYE') and he has never been under self-assessment.

(3) He and his wife regarded all of the profits from the letting to be, exclusively, his wife's income in order to make use of her personal allowance. Therefore, he had no reason to seek advice on the taxation of income and there was nothing that prompted him to check the correct position.

(4) The net annual income generated was below the Appellant's wife's personal allowance.

(5) He has paid the tax due via his self-assessment account without delay.

(6) He does not dispute that he failed to notify his liability to tax.

24. At the conclusion of the appeal hearing, we reserved our decision and issued a Summary Decision thereafter. We now give our full findings of fact and reasons for the Decision.

DISCUSSION

25. The Appellant appeals against Penalties that have been charged for a failure to notify tax liability as a result of property letting income. It is trite law that no penalty can arise in any case where the taxpayer is not in default of an obligation imposed by statute. In *Perrin v R & C Comrs* [2018] BTC 513 ('*Perrin*') (Judges Herrington and Poole), at [69], the Upper Tribunal ('UT') explained the shifting burden of proof as follows:

> "Before any question of reasonable excuse comes into play, it is important to remember that the initial burden lies on HMRC to establish that events have occurred as a result of which a penalty is, prima facie, due. A mere assertion of the occurrence of the relevant events in a statement of case is not sufficient. Evidence is required and unless sufficient evidence is provided to prove the relevant facts on a balance of probabilities, the penalty must be cancelled without any question of "reasonable excuse" becoming relevant."

26. The factual prerequisite is, therefore, that HMRC have the initial burden of proof and the standard of proof is the civil standard; that of a balance of probabilities.

Q. Is the Appellant in default of an obligation imposed by statute?

27. Section 7(1) TMA (supra) places an obligation on every person who is chargeable to income tax for any year of assessment to notify HMRC of this fact. The time-limit for notifying chargeability income is six months from the end of the tax year in which the liability arises. The six-month time-limit ensures that a taxpayer can be sent a tax return in sufficient time to complete the tax return within the normal cycle for the year**.**

28. The Appellant accepts that he was in receipt of letting income. The tax due on the letting income has been paid and is not in issue. The Appellant does not dispute that for the years ending 5 April 2007 to 5 April 2021 (inclusive), he did not notify HMRC of his liability to tax in respect of the property income. Therefore, subject to considerations of 'reasonable excuse' and 'special circumstances' set out below, the penalties imposed are due and have been calculated correctly.

Q. Has a reasonable excuse been established by the Appellant?

29. Paragraph 20 of Schedule 41 provides for the discharge of a penalty where a taxpayer has a reasonable excuse for their failure to notify. There is no statutory definition of 'reasonable excuse'. Whether or not a person had a reasonable excuse is an objective test and is a matter to be considered in the light of all of the circumstances of the particular case: *Rowland v R & C Comrs* (2006) Sp C 548 ('*Rowland*'), at [18]. The test we adopt in determining whether the Appellant has a reasonable excuse is that set out in *The Clean Car Co. Ltd. v C&E Commissioners* [1991] VATTR 234 ('*Clean Car*'), in which Judge Medd QC said this:

> "The test of whether or not there is a reasonable excuse is an objective one. In my judgment it is an objective test in this sense. One must ask oneself: was what the taxpayer did a reasonable thing for a responsible trader conscious of and intending to comply with his obligations regarding tax, but having the experience and other relevant attributes of the taxpayer and placed in the situation that the taxpayer found himself at the relevant time, a reasonable thing to do?"

30. Although *Clean Car* was a VAT case, it is generally accepted that the same principles apply to a claim of reasonable excuse in direct tax cases.

31. In *Perrin*, the UT set out a four-step process for the First-tier Tribunal ('FtT') to use when considering whether a person has a reasonable excuse.

> "81. When considering a "reasonable excuse" defence, therefore, in our view the FTT can usefully approach matters in the following way:

> (1) First, establish what facts the taxpayer asserts give rise to a reasonable excuse (this may include the belief, acts or omissions of the taxpayer or any other person, the taxpayer's own experience or relevant attributes, the situation of the taxpayer at any relevant time and any other relevant external facts).
>
> (2) Second, decide which of those facts are proven.
>
> (3) Third, decide whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In doing so, it should take into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times. It might assist the FTT, in this context, to ask itself the question "was what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?"
>
> (4) Fourth, having decided when any reasonable excuse ceased, decide whether the taxpayer remedied the failure without unreasonable delay after that time (unless, exceptionally, the failure was remedied before the reasonable excuse ceased). In doing so, the FTT should again decide the matter objectively, but taking into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times.

32. The UT explained that the experience and knowledge of the particular taxpayer should be taken into account in considering whether a reasonable excuse has been established. The UT concluded that for an honestly held belief to constitute a reasonable excuse, it must also be objectively reasonable for that belief to be held. The word '*reasonable*' imports the concept of objectivity, whilst the words '*the taxpayer*' recognise that the objective test should be applied to the circumstances of the actual (rather than the hypothetical) taxpayer. The standard by which this falls to be judged is that of a prudent and reasonable taxpayer, exercising reasonable foresight and due diligence, in the position of the taxpayer in question and having proper regard for their responsibilities under the Taxes Acts: *Collis v HMRC* [2011] UKFTT 588 (TC) ('*Collis*').

33. The decision depends upon the particular circumstances in which the failure occurred. Where the person had a reasonable excuse for the failure but the excuse ceased, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

34. In *Harrison v R & C Comrs* [2022] BTC 525, the UT viewed the four-stage approach to be guidance, rather than a set of principles to be followed.

35. In *Barrett v HMRC* [2015] UKFTT 329 (TC), Judge Berner said this:

> "The test of reasonable excuse involves the application of an impersonal, objective, legal standard to a particular set of facts and circumstances. The test is to determine what a reasonable taxpayer in the position of the taxpayer would 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."

36. And:

> "The test is one of reasonableness. No higher (or lower) standard should be applied. The mere fact that something that could have been done has not been done does not of itself necessarily mean that an individual's conduct in failing to act in a particular way is to be regarded as unreasonable. It is a question of degree having regard to all the circumstances, including the particular circumstances of the individual taxpayer. There can be no universal rule; what might be considered an unreasonable failure on the part of one taxpayer in one set of circumstances might be regarded as no unreasonable in the case of another whose circumstances are different."

37. We proceed by determining whether facts exist which, when judged objectively, amount to a reasonable excuse for the defaults which have occurred and, accordingly, give rise to a valid defence. In this regard, we have assessed whether the facts put forward and any belief held by the Appellant are sufficient to amount to a reasonable excuse.

38. In further amplification of his Grounds of Appeal, the Appellant submits, *inter alia*, that (i) he was unaware that income from a jointly owned, let property is deemed by HMRC to be split equally between spouses and there was nothing that prompted him to check what the correct position was; (ii) his income was taxed at source under PAYE and he has never been under self-assessment; (iii) he and his wife regarded all of the profit from the letting to exclusively be his wife's income in order for her to utilise her personal allowance; (iv) he had no reason to seek advice on the taxation of the letting income; (v) he has paid the tax due for 2006-07 to 2008-09 via his self-assessment account without delay; (vi) he does not dispute the fact that he failed to notify.

39. Whilst we find that the Appellant was a credible witness whose evidence represents a truthful and accurate description of the circumstances leading up to the default, the evidence before us does not support a finding that a reasonable excuse has been established in the circumstances of this appeal.

40. In respect of the first of the Appellant's submissions and the lack of awareness concerning how property income is viewed in respect of spouses who are joint owners of rental property, we find that the Appellant did not exercise due diligence by seeking the appropriate specialist advice (from a tax adviser or from HMRC) to establish the tax consequences of receiving letting income. In this respect, we have borne in mind the comments of the tribunal in *Hesketh & Anor v HMRC* [2018] TC 06266, where Judge Mosedale held that Parliament intended all of its laws to be complied with, and that ignorance of the law was not an excuse. The onus is upon an appellant to ensure that they properly understand their obligations under the law. In *Spring Capital v HMRC* [2015] UKFTT 8 (TC), at [48], Judge Mosedale said this:

> "Ignorance of the law cannot, as a matter of policy, ever amount to a reasonable excuse for failing to observe the law. This is because otherwise the law would favour those who chose to remain in ignorance of it above those persons who chose to acquaint themselves with the law in order to abide by it."

41. Similarly, in *Lau v HMRC* [2018] UKFTT 230 (TC), Judge Anne Scott held, at [37] to [38], that:

> "Parliament cannot have intended ignorance of the law to be a reasonable excuse because Parliament must have enacted the law with the intention that it would be obeyed. In all these circumstances, ignorance of the law simply cannot amount to a reasonable excuse."

42. In *Gilbert v HMRC* [2018] UKFTT 437 (TC), at [38] and [40], Judge Helier said this:

> "38. … It seems to me that in construing what was intended by Parliament as being capable of being a reasonable excuse the question is what conduct Parliament intended to penalise in relation to a transgression of the law. The answer to that is that it did not intend to penalise behaviour in which the conduct of the taxpayer was reasonable in the circumstances even if that resulted in a breach of the law. But what is reasonable must be judged against the actions of a hypothetical person who had in mind the need to comply with whatever statutory obligations might apply to him from time to time"
>
> …
>
> 40. In relation to a breach of the law the answer to the question: "what caused the taxpayer's ignorance of the change in the law?" will affect whether he or she acted reasonably In some cases that cause may well afford a reasonable excuse: for example if the taxpayer had been in

> a coma, or was advised by HMRC or another reputable source that the law would not or was unlikely to change in a relevant period, or if the taxpayer did not have the mental capacity to understand the possibility of a change in the law; in other circumstances the cause of that ignorance may be unlikely to found a reasonable excuse: for example a simple assumption that there would be no change or a decision to do nothing unless asked to do something by HMRC. In the first set of examples it might be said that the taxpayer acted reasonably having regard to his circumstances and the need for compliance, in the second the reverse."

43. As held by Clauston J in *Holland v German Property Administrator* [1936] 3 All ER 6, at p 12:

> "the eyes of the court are to be bandaged by the application of the maxim as to ignorantia legis."

44. It is therefore trite law that ignorance of the law cannot come to the defence of a violation of the law: see also *Qualaphram Ltd v HMRC* [2016] UKFTT 100 (TC), at [121]. We find that the Appellant proceeded on the misunderstanding, or assumption, that the letting income would not be split between himself and his wife, for tax purposes, given that they jointly owned the property.

45. In respect of the second of the Appellant's submissions, the fact that the Appellant's income was taxed at source is not determinative of the appeal. This is because a person's income does not only include their salary. It also potentially includes other income, such as taxable social security benefits, bank or building society interest (in excess of the annual savings allowance), share dividends, or profits from any self-employment or property rental in excess of rental allowances. Various types of tax relief are taken into consideration in determining a person's Adjusted Net Income ('ANI'). Such reliefs include Gift Aid charitable contributions and personal pension contributions. HMRC would not, therefore, have any way of knowing about additional income that had not been notified to them.

46. In respect of the third of the Appellant's submissions (that relating to the decision that the property income would be treated as exclusively being his wife's income), we have found that the Appellant failed to seek the appropriate advice and proceeded on the basis of a misguided assumption. Moreover, the incontrovertible fact in this appeal is that the rental income was paid into the Appellant's own account.

47. We find Mr Bevan to be a very honest and open witness who fully acknowledged that he did not appreciate all of the subtleties of the issues concerning property income that is split between join owners. His thinking was that it was his wife's income as his wife did not have any other income. Clearly, a mistake was made. A mistake can be described as an erroneous belief, which is what happened in the appeal before us. Whilst the default may not have been intentional, this does not amount to a reasonable excuse in the circumstances of this appeal. In *Garnmoss Ltd. T/A Parham Builders v HMRC* [2012] UKFTT 315 (TC), the tribunal held (in the context of a VAT appeal and the question of reasonable excuse) that:

> "12. What is clear is that there was a muddle and a bona fide mistake was made. We all make mistakes. This was not a blameworthy one. But the Act does not provide shelter for mistakes, only for reasonable excuses. We cannot say that this confusion was a reasonable excuse."

48. The rent was deposited into the Appellant's account, as accepted by the Appellant.

49. In *Katib v HMRC* [2019] UKUT 189 (TCC) ('*Katib*'), the UT (in the context of a late appeal) concluded that the lack of experience of the appellant and the hardship that is likely to be suffered was not sufficient to displace the responsibility on the appellant. The differences in fact in *Katib* and the appeal before us do not negate the principle established in relation to the duty placed upon taxpayers to adhere to statutory duties.

50. In respect of the fourth of the Appellant's submissions and the conclusion that there was no need to seek advice, we find that it would have been prudent for the Appellant to seek advice in relation to letting income and the tax consequences of such income. The fact that the rental income remained fixed at £500 (or below the market rate) does not translate into the arrangement being inconsequential, in respect of any liability to tax.

51. We find that whilst the Appellant may have honestly believed that he was not required to notify his liability to tax, having purchased a property which was subsequently let, in our judgment it was not objectively reasonable for the Appellant to have failed to consider the ramifications. In those circumstances, the initial belief is not objectively reasonable. We are not told of any efforts by the Appellant to inform himself of the requirements of taxable income over and above the fact that his employment income was being taxed at source under PAYE.

52. In respect of the fifth of the Appellant's submissions, and the fact that the tax due has been paid, we find that this does not translate into an absence of liability to a penalty. Liability to a penalty in the circumstances that exist in this appeal (where a failure to notify is accepted) is set within the legislation.

53. HMRC do not consider that the Appellant acted deliberately and the penalties were set at 20%. Reductions were further given to reflect the co-operation given by the Appellant. We find that the penalties have been correctly charged.

Q. Do any special circumstances apply?

54. Paragraph 14 of Schedule 41 allows for the reduction of a penalty if HMRC think it right to do so because of special circumstances. The Tribunal may rely on special reduction, but only if HMRC's decision was 'flawed' when considered in the light of the principles applicable in proceedings for judicial review'. That is a high test. It is in the context of that specific jurisdiction that the question of proportionality must be considered. From time to time the FtT has made general observations about what might constitute special circumstances. There have been a number of cases on special circumstances, from which we derive the following principles:

> (1) While "special circumstances" are not defined, the courts accept that for circumstances to be special they must be "exceptional, abnormal or unusual" (*Crabtree v Hinchcliffe* [1971] 3 All ER 967) or "something out of the ordinary run of events" (*Clarks of Hove Ltd v Bakers Union* [1979] 1 All ER 152).
>
> (2) HMRC's failure to consider special circumstances (or to have reached a flawed decision that special circumstances do not apply to a taxpayer) does not mean the decision to impose the penalty, in the first place, is flawed.
>
> (3) Special circumstances do not have to be considered before the imposition of the penalty. HMRC can consider whether special circumstances apply at any time up to, and during, the hearing of the appeal before the tribunal.
>
> (4) The tribunal may assess whether a special circumstances decision (if any) is flawed if it is considering an appeal against the amount of a penalty assessed on a taxpayer.

55. The special circumstances must apply to the individual and not be general circumstances that apply to many taxpayers: see *Collis*, at [40] and *Bluu Solutions Ltd v Commissioners for Her Majesty's Revenue & Customs* [2015] UKFTT 95.

56. HMRC considered the Appellant's case and found that no special circumstances apply. We have considered the Grounds of Appeal and the arguments presented by the Appellant therein. We hold that no special circumstances apply and HMRC's decision is not flawed.

57. We have also considered the case of *R & C Comrs v Hok Ltd* [2012] UKUT 363 (TCC); [2013] STC 255. There, the Upper Tribunal similarly held that the FtT did not have power to discharge penalties on the ground that their imposition was unfair. In *Rotberg v R & C Comrs* [2014] UKFTT 657 (TC), it was accepted that the FtT's jurisdiction went only to determining how much tax was lawfully due and not the question of whether HMRC should, by reason of some act or omission on their part, be prevented from collecting tax otherwise lawfully due. The Upper Tribunal held, at [109], that the FtT has no general supervisory jurisdiction. Applying *Aspin v Estill* [1987] STC 723, the Upper Tribunal found, at [116], that the jurisdiction of the FtT in cases of that nature was limited to considering the application of the tax provisions themselves.

58. These conclusions are not an indictment on the Appellant as an individual, but represent a balanced appraisal of the evidence. Having regard to the findings of fact, and in light of the relevant test, we are satisfied that the Appellant has not established a reasonable excuse. For all of the foregoing reasons, the appeal is dismissed.

CONCLUSIONS

59. We hold that:

(1) The Penalties have been charged in accordance with the legislation.

(2) The Penalties have been reduced to the minimum sum permitted by the legislation.

(3) The Appellant has not established a reasonable excuse.

60. In reaching these findings, the Tribunal has applied the test set out in *Clean Car.*

61. For the reasons set out above, the appeal is dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

62. 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.

NATSAI MANYARARA
TRIBUNAL JUDGE

Release date: 01st JULY 2024