



Neutral Citation: [2024] UKFTT 1160 (TC)

Case Number: TC09388

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Taylor House
88 Rosebery Avenue
London
EC1R 4QU

Appeal reference: TC/2024/01554

LATE FILING PENALTIES - whether required to file a self-assessment tax return (sections 8 and 115 of the Taxes Management Act 1970) – yes – whether reasonable excuse for late filing (paragraph 23 of Schedule 55 to the Finance Act 2009) – no – appeal dismissed.

Heard on: 10 October 2024

Judgment date: 24 December 2024

Before

**TRIBUNAL JUDGE MICHAELA SNELDDERS
MRS SONIA GABLE**

Between

MR MOHAMMED MUHSEN YAQOUBI

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Did not appear and was not represented

For the Respondents: Nicola Shardlow, litigator of HM Revenue and Customs’ Solicitor’s Office

DECISION

INTRODUCTION

1. The hearing had been listed as an in person hearing because the Appellant had indicated in the Hearing Attendance Form that he did not have video capability.
2. The Appellant failed to attend the hearing. Following a call from the Tribunal clerk, the Appellant's authorised representative sent an email to the Tribunal, informing the Tribunal that the Appellant was unable to travel to the UK because he lives in Jordan and requesting an adjournment of the hearing.
3. The Tribunal was satisfied that reasonable steps had been taken to notify the Appellant of the hearing and that he had in fact had notice of the hearing. The email from the Appellant's authorised representative did not give any reasons for the Appellant's failure to apply for an adjournment before the day of the hearing or any reassurance that the Appellant or his London based authorised representative would attend an adjourned hearing.
4. The Tribunal decided that it was in the interests of justice to refuse the Appellant's application for an adjournment and proceed with the hearing in the Appellant's absence pursuant to rule 33 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009.
5. The Appellant is appealing late filing penalties in the sum of £1,600 for the late filing of his self-assessment tax return (SATR) for the 2020/21 tax year.
6. The deadline for filing his 2020/21 SATR electronically was 31 January 2022. The Appellant's electronic SATR for 2020/21 was received by the Respondents on 10 February 2023. The Appellant therefore filed his 2020/21 SATR 375 days late.
7. The Respondents served the Appellant with late filing penalty notices in the sum of £1,600 which break down as follows:
 - (1) An initial late filing penalty of £100 assessed on 8 March 2022 pursuant to paragraph 3 of Schedule 55 to the Finance Act 2009. The penalty notice was dispatched to the Appellant on 12 March 2022;
 - (2) Daily late filing penalties of £10 per day for 90 days after the SATR was three months overdue pursuant to paragraph 4 of Schedule 55 to the Finance Act 2009. These daily penalties in the sum of £900 were assessed on 16 August 2022. The penalty notice was dispatched to the Appellant on 23 August 2022;
 - (3) A six month late filing penalty of £300 assessed pursuant to paragraph 5 of Schedule 55 to the Finance Act 2009 on 16 August 2022. The penalty notice was dispatched to the Appellant on 23 August 2022; and
 - (4) A 12 month late filing penalty of £300 assessed pursuant to paragraph 6 of Schedule 55 to the Finance Act 2009 on 14 February 2023. The penalty notice was dispatched to the Appellant on 21 February 2023.
8. The Appellant appeals against these late filing penalties on the grounds that;
 - (1) The Appellant was not legally required to submit a 2020/21 SATR because he did not receive notice from the Respondents to submit his 2020/21 SATR. The Appellant's notice of appeal states:

“did not receive request to file tax return by post he was living abroad, but he kept his correspondence address in London, any posts received for him were handled by the tenant . however HMRC does not provide any proof for

posting, by only saying HMRC has not recorded any underlived correspondences that will sufficient as many letters lost in the post.”

(2) The Appellant has a reasonable excuse for his failure to submit his 2020/21 SATR on time because:

(a) He thought that because he was living abroad and had no tax liability for the 2020/21 tax year that he was not required to file a SATR.

(b) He was abroad and unreachable due to the lack of internet abroad. As a result he had been unable to see or open any of his letters and was unaware of the penalties and charges.

(c) He was unable to return to the UK due to the Covid-19 pandemic restrictions.

(d) He did not have access to the internet abroad so was unable to submit his return online.

(e) There were postal delays that could not be prevented.

PROCEDURAL BACKGROUND

9. Each penalty notice states that the recipient of the notice has 30 days to appeal against the penalty notice. The Appellant’s authorised representative made late appeals against the penalties set out at paragraph 7(1), (2) and (3) above by letter to HMRC dated 10 February 2023.

10. HMRC issued a late appeal refusal letter on 8 March 2023 on the grounds that the Appellant had provided no excuse for appealing against the penalty notices late. This letter was sent to the Appellant and the Appellant’s authorised agent.

11. The Appellant’s authorised agent made a further appeal by letter dated 27 March 2023 and then again by letter dated 1 December 2023.

12. HMRC responded to the Appellant by letter dated 28 December 2023, copying in the Appellant’s authorised agent, rejecting the late appeal on the basis that he had not provided a reasonable excuse for appealing late.

13. The authorised agent wrote to HMRC again on 9 January 2024 appealing the penalty notices.

14. HMRC replied to the appeal dated 9 January 2024 by issuing a View of the Matter Letter dated 5 February 2024 to the Appellant and the Appellant’s authorised agent. In this letter HMRC accepts the late appeal against the penalty notices but rejects the substantive appeal on the grounds that the Appellant did not have a reasonable excuse for filing his 2020/21 SATR late. This letter also offered a statutory review or the option to appeal to the First Tier Tribunal.

15. The Appellant’s authorised agent completed the request for a statutory review on behalf of the Appellant on 8 February 2024 and this was received by HMRC on 12 February 2024.

16. HMRC issued its Review Conclusion Letter to the Appellant and the Appellant’s agent in a letter dated 19 February 2024. The Review Conclusion Letter upheld the decision to charge the late filing penalties. This letter also informed the Appellant that if he disagreed with the conclusion he could appeal to the Tribunal within 30 days of the date of the letter.

17. The Appellant submitted an appeal to this Tribunal on 23 February 2024, within the 30 day time limit to do so.

LEGAL OBLIGATION TO FILE A SATR

18. The Appellant's first ground of appeal is that he asserts that he did not have a legal obligation to file a SATR for the 2020/21 tax year because he did not receive the notice from HMRC requiring him to do so because he was living abroad at the time it was sent to him.

19. Section 8 of the Taxes Management Act 1970 provides that a person must submit a SATR if they are served with a notice to do so by HMRC ("a section 8 notice").

20. A section 8 notice to submit a 2020/21 SATR was dispatched by HMRC on 15 April 2021 to the Appellant at his last known address, 8 Collingham Road, London SW5 0LT. The Appellant's authorised representative confirmed in a telephone conversation with HMRC on 19 February 2024 that this is also the address that his authorised agent has on record for the Appellant. The section 8 notice was sent by HMRC's service provider, Communisis, with an estimated delivery date of 19 April 2021.

21. Pursuant to section 115 of the Taxes Management Act 1970 a section 8 notice sent by post to a person at their last known place of residence is served on that person for the purposes of section 8. HMRC has no record of this notice being returned undelivered and the notice is therefore deemed to have been served on the Appellant on or around 19 April 2021.

22. For the purpose of establishing the Appellant's legal obligation to submit his 2020/21 SATR, it is not relevant that the Appellant did not physically receive the section 8 notice at that time due to being abroad.

23. We find therefore that the section 8 notice was properly served on the Appellant pursuant to section 115 of the Taxes Management Act 1970 on or around the 19 April 2021 and the Appellant was therefore legally required to submit his 2020/21 SATR.

LATE FILING PENALTIES

24. The Appellant filed his 2020/21 SATR 375 days late, on 10 February 2023, and was therefore liable for the Schedule 55 late filing penalties set out in paragraph 7 above.

25. Where an individual is liable for a late filing penalty under Schedule 55, paragraph 18 of that Schedule provides that HMRC must assess the penalty, notify the individual of the penalty assessment and state in the notice the period for which the penalty is assessed.

26. HMRC provided the Tribunal with copies of printouts from their system which showed that the penalties were assessed on the dates set out in paragraph 7 above and that the penalty notices were dispatched to the Appellant on the dates set out in paragraph 7 above. HMRC also provided the Tribunal with specimens of the penalty notices that were issued to the Appellant.

27. The penalty notices were sent to the Appellant at his last known address on the dates indicated in paragraph 7 and these notices were therefore properly served on the Appellant pursuant to paragraph 115 of the Taxes Management Act 1970.

REASONABLE EXCUSE

28. Paragraph 23 of Schedule 55 to the Finance Act 2009 provides as follows:

"(1) If P [a person] satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that there is a reasonable excuse for a failure to make a return

...

(a) liability to a penalty under any paragraph of this Schedule does not arise in relation to that 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.

29. The Appellant has not satisfied HMRC that he had a reasonable excuse for failing to deliver his 2020/21 SATR on time. It is therefore for this Tribunal to consider the Appellant's excuse and determine whether it is a reasonable excuse and, if it is, whether the Appellant delivered the return without unreasonable delay after the reasonable excuse ended.

30. In the case of *Christine Perrin v Commissioners of Revenue & Customs* [2018] UKUT 156 (TCC) ("Perrin") the Upper Tribunal provided clear guidance to the First-tier Tribunal on how it should approach the consideration of a "reasonable excuse" defence as follows:

"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."

31. Step 1 – The facts that the Appellant is relying on are set out in paragraph 8(2) above.

32. Step 2 – HMRC does not dispute these facts except for 8(2)(e) that there were postal delays that could not be prevented. We therefore accept the facts set out in 8(2)(a)-(d) as proven.

33. With respect to postal delays, the Appellant has not submitted any evidence that there were postal delays. The Appellant did not receive his post because he had moved abroad and did not provide HMRC with his overseas postal address nor did he make effective arrangements for his post to be forwarded to him. This is not a postal delay that could not be prevented as it was an inevitable consequence of the Appellant moving abroad. The Appellant could have put arrangements in place to avoid or mitigate the delay but he did not. We find therefore that there were not postal delays that could not be prevented.

34. Step 3 – The Appellant thought that he did not have to submit a 2020/21 SATR because he was living abroad and did not have a tax liability for the 2020/21 tax year. The Upper Tribunal decision in the case of Perrin also provides guidance on the extent to which ignorance of the law can amount to a reasonable excuse as follows:

“82. One situation that can sometimes cause difficulties is when the taxpayer’s asserted reasonable excuse is purely that he/she did not know of the particular requirement that has been shown to have been breached. It is a much-cited aphorism that “ignorance of the law is no excuse”, and on occasion this has been given as a reason why the defence of reasonable excuse cannot be available in such circumstances. We see no basis for this argument. Some requirements of the law are well-known, simple and straightforward but others are much less so. It will be a matter of judgment for the FTT in each case whether it was objectively reasonable for the particular taxpayer, in the circumstances of the case, to have been ignorant of the requirement in question, and for how long.”

35. In order to establish whether the Appellant’s ignorance of the requirement for him to submit a SATR even when living abroad and having no tax liability amounts to a reasonable excuse we must therefore decide whether it was objectively reasonable for this particular Appellant, in the circumstances of this case, to have been ignorant of this requirement in these circumstances.

36. The Appellant had filed a SATR for the 2019/20 tax year in which he declared property income of £14,400. He also had property income in 2020/21 of £11,500. If the Appellant had carried out a very basic internet search he would have easily discovered the SATR filing obligations of overseas landlords of UK property. Before leaving the UK the Appellant did not notify HMRC that he was no longer self-employed in the UK nor that he was leaving the UK.

37. We find that it was not reasonable for the Appellant to assume, without carrying out any research or making any enquiries, that he would not need to declare his UK rental income in a SATR simply because he was no longer resident in the UK and his UK rental income was below his personal allowance. It is even less reasonable for the Appellant to assume that he would not be required by HMRC to submit a 2020/21 SATR, given that he had been required to do so the previous year and he had not notified HMRC of any change of circumstances.

38. It follows that we do not accept that it was reasonable for the Appellant in his particular circumstances to have been ignorant of the requirement for him to file a 2020/21 SATR having made no enquiries as to his legal obligations as a non-resident landlord and having failed to notify HMRC of any change of circumstances. The Appellant’s ignorance of the law is not therefore a reasonable excuse.

39. With respect to the remaining facts relied upon, these are all foreseeable circumstances that could have been managed to avoid the Appellant being subject to late filing penalties. A diligent taxpayer would have put arrangements in place before he left the UK to ensure that his tax affairs were dealt with while he was abroad. The fact that the Appellant did not do this cannot be a reasonable excuse for that failure.

40. Step 4 – As the Appellant did not have a reasonable excuse for his failure to file his 2020/21 SATR on time we do not need to consider step 4.

41. We have also considered HMRC’s decision not to exercise its discretion to reduce the penalties on the grounds of special circumstances and we find that this decision is not flawed. We agree with HMRC that the Appellant has not put forward any special circumstances that would allow it to exercise its discretion to reduce the penalties.

DECISION

42. For the reasons set out above, the appeal against the late filing penalties for the late filing of the Appellant's 2020/21 SATR in the sum of £1,600 is dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

43. 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.

Release date: 24th DECEMBER 2024