



TC03509

Appeal number: TC/2013/06892

INCOME TAX - penalty for late payment of income tax due upon self assessment – whether there was a “reasonable excuse” – no – whether there were special circumstances – no

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

STANLEY WILLIAM BARKER

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY’S Respondents
REVENUE & CUSTOMS**

TRIBUNAL: JUDGE JOANNA LYONS

The Tribunal determined the appeal on 08 January 2014 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 06 October 2013, HMRC’s Statement of Case (with enclosures) acknowledged by the Tribunal on 06 November 2013 and the Appellant’s Reply dated 09 December 2013.

DECISION

Introduction

- 5 1. This is an appeal against a penalty of £100, imposed for the late filing of the appellant's individual self-assessment income tax return for the tax year 2011-12.

The issue

2. Mr Barker appeals on the grounds that there was a reasonable excuse for the failure to submit the return. This is disputed by HMRC.

10 The law

3. In so far as it is relevant to this appeal the relevant law is summarised below.
4. Paragraph 3 Schedule 55 Finance Act 2009 ("FA") provides that a penalty of £100 is payable if the return is made after the due date.
5. Paragraph 23 (1) Schedule 55 FA provides that "Liability to a penalty does not
15 arise ... if the person satisfies the Tribunal that there is a reasonable excuse for the failure".
6. Paragraph 23(2) (c) Schedule 55 FA provides "Where a person had a reasonable excuse for the failure but the excuse ceased he is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse
20 ceased"
7. There is no statutory definition of the term "reasonable excuse". Case law has established that a reasonable excuse "is a matter to be considered in the light of all the circumstances of the particular case". *Rowland v HMRC [2006] STC (SCD) 536*.
8. Paragraph 16 (1) Schedule 55 FA provides "If HMRC think it right because of
25 special circumstances they may reduce the penalty" In the case of *Crabtree V Hinchcliffe (inspector of Taxes) [1971] 3 All ER 967* established that the word "special ..must mean unusual or uncommon".
9. The Tribunal may reduce or cancel the penalty due to special circumstances only "if tribunal thinks that HMRC's decision in respect of the application of
30 paragraph 16 was flawed" Paragraph 22 (3) (b) Schedule 55 FA. The word "flawed" is defined to be a decision which is either unlawful or wholly unreasonable such that it would be open to "judicial review". Para 22 (4).

The agreed facts

10. Mr Barker was due to file a self assessment tax return for the year 2011-12. The return was due to be filed on 03 June 2013 and remains outstanding.

5 11. Mr Barker is an accountant and had previously been authorised by HMRC to act as his own agent. He had acted in this capacity when filing his self assessment tax return for the previous year.

12. On 05 October 2012 HMRC were informed that Mr Barker had appointed the firm of accountants, Grant Thornton, to act on his behalf in filing the return. As a result of this Mr Barker was no longer authorised to act as an agent on his own behalf.

10 13. On 14 November 2012 Mr Barker informed HMRC that Grant Thornton were no longer acting as his agents.

The arguments

14. Mr Barker submits that he received confusing information from HMRC and was uncertain as to how to go about re-registering as his own agent.

15 15. HMRC submit that the agency problem was resolved before the due date and Mr Barker was clearly informed of their decision before the due date.

Reasons for decision

Reasonable excuse for the period to 03 June 2013

20 16. I accept that Mr Barker acted reasonably in applying to be reinstated as his own agent on 14 November 2012, considerably in advance of the due date. I also find that he was confused by the correspondence regarding his obligation to file the return.

17. For these reasons I find that there was a reasonable excuse for the failure to submit the return by 03 June.

Reasonable excuse for the continuing default

25 18. At the date the appeal was lodged the return had not yet been submitted. Paragraph 23(2) (c) Schedule 55 FA provides that where there is a reasonable excuse the taxpayer will continue to have a reasonable excuse if he remedies the default without “unreasonable delay”.

30 19. In this case Mr Barker was in a position to file the return in August 2013 and assured HMRC that the return would be properly filed. He has provided no explanation for the subsequent delay in filing the return. Accordingly I am not satisfied that Mr Barker took steps to file the return without “unreasonable delay”.

Special circumstances

20. HMRC have decided not to reduce or cancel this penalty due to special
circumstances. I do not find this decision to be flawed as there are no unusual or
uncommon features of the case and for the reasons given in paragraph 18 and 19
5 above.

Decision

21. There is no reasonable excuse for the continuing failure to file the return.

22. The appeal against the late filing penalty of £100, is dismissed.

Rights of appeal

10 23. 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
15 “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)”
which accompanies and forms part of this decision notice.

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**JOANNA LYONS
TRIBUNAL JUDGE**

RELEASE DATE: 23 April 2014

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