



[2018] UKFTT 457 (TC)

TC06635

Appeal number: TC/2017/04976

Capital Gains Tax – penalties – late filing of non-resident capital gains tax return – whether reasonable excuse – whether ignorance of law an excuse – yes – appeal allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MARTIN REID

Appellants

- and -

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

TRIBUNAL: JUDGE ANNE SCOTT

The Tribunal determined the appeal on 18 June 2018 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 15 June 2017 (with enclosures), HMRC's Statement of Case (with enclosures) dated 30 October 2017 and the Appellant's Reply dated 8 December 2017.

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DECISION

Introduction

- 5 1. The appellant, Mr Reid, appeals against penalties for the late submission of a non-resident capital gains tax return (“NRCGT”) charged under Schedule 55 Finance Act 2009 (“Schedule 55”) for the tax year ended 5 April 2016. The penalties are as follows:-

Penalty	£
Late filing penalty (Schedule 55, paragraph 3)	100
6 months late filing penalty (Schedule 55, paragraph 5)	300
12 months late filing penalty (Schedule 55, paragraph 6)	300
Total	700

- 10 2. In the first instance HMRC had also issued daily penalties in the sum of £900 but those have now been withdrawn.

The law

- 15 3. In relation to disposals made on or after 6 April 2015, Parliament introduced new sections into the Taxes Management Act 1970 (“TMA”) to make non-residents liable to make new returns, referred to as NRCGT returns. The legislation was contained in the Finance Act 2015.

- 20 4. With effect from 26 March 2015, a NRCGT return under Section 12ZB TMA was added to Schedule 55 by Finance Act 2015, section 37 and Schedule 7, paragraph 59. Paragraph 1(1) of Schedule 55 makes a person liable to a penalty if they fail to deliver a return of a type specified by the due date.

5. A failure to file the return on time engages the penalty regime in Schedule 55 (and references below to paragraphs are to paragraphs in that Schedule).

6. Penalties are calculated on the following basis:-

- 25 (a) Failure to file on time (ie the late filing penalty) - £100 (paragraph 3);
(b) Failure to file for 6 months (ie the 6 month penalty) – 5% of the payment due, or £300 (whichever is the greater) (paragraph 5); and

(c) Failure to file for 12 months (ie the 12 month penalty) – 5% of payment due or £300 (whichever is the greater) (paragraph 6).

7. If HMRC considers the taxpayer is liable to a penalty it must assess the penalty and notify it to the taxpayer (paragraph 18).

5 8. A taxpayer can appeal against any decision of HMRC that a penalty is payable and against any such decision as to the amount of the penalty (paragraph 20).

9. On an appeal, this Tribunal can either affirm HMRC's decision or substitute for it another decision that HMRC had the power to make (paragraph 22).

Special circumstances

10 10. If HMRC think it is right to reduce a penalty because of special circumstances, they can do so. Special circumstances do not include (amongst other things) an ability to pay (paragraph 16).

11. On an appeal to the Tribunal, the Tribunal can either confirm the same percentage reduction as HMRC have given for special circumstances or it can change that reduction if the Tribunal thinks that HMRC's original percentage reduction was flawed in the judicial review sense (paragraphs 22(3) and (4)).
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Reasonable excuse

12. A taxpayer is not liable to pay a penalty if HMRC, or this Tribunal (on appeal) decides that (s)he has a reasonable excuse for the failure to make the return
20 (paragraph 23(1)).

13. However, both an insufficiency of funds, or reliance on another person, are statutorily prohibited from being a reasonable excuse. Furthermore, where a person has a reasonable excuse, but the excuse has ceased, the taxpayer is still deemed to have that excuse if the failure is remedied without unreasonable delay after the excuse has ceased (paragraph 23(2)).
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The Facts

14. HMRC's Statement of Case is inaccurate in that it appears to refer to the date of disposal of the property in the UK owned by the appellant as being 30 July 2015. The title information HMRC produced shows the purchase price being paid on
30 15 July 2015. The appellant stated that the house was sold in June 2015. On the balance of probability the date of disposal was 30 June 2015 and not 30 July 2015 since it is the earlier date that is referred to in correspondence with HMRC.

15. The appellant had been residing overseas since the tax year 2009/10. Prior to leaving the UK to work overseas, the appellant had checked the tax position and believed that, as was indeed the case at that time, that the disposal of any property
35 should be declared in the annual tax return.

16. In early 2015 he was told that he would be made redundant from his post in the Philippines. At that point his wife was living in their home in the UK in Leicester. As it was unlikely that he could find a job in Leicester, the decision was taken to dispose of the property.

5 17. Although the appellant initially thought that he would be returning to the UK on a permanent basis, in fact, although he returned to the UK in mid-October 2015, he subsequently obtained a job in UAE and left the UK again in January 2016. Therefore he was non-resident for the tax year 2015/16.

10 18. Mr Reid only became aware that an NRCGT return should have been completed when the property was sold when he came to complete his self-assessment return for the 2015/16 tax year. Up until that point he was wholly unaware of the change in the law.

19. The NRCGT return was filed on 6 September 2016.

20. It is a matter of agreement that there is no tax liability.

15 21. On 18 October 2016, HMRC issued the penalty determinations to the appellant.

22. I accept that at the point at which the property was sold, the appellant reasonably believed that he would be resident in the UK for the tax year 2015/16.

Discussion

20 23. What is a reasonable excuse? There is no statutory definition but it is well established law that the concept of “reasonable excuse” is an objective test applied to the circumstances of the individual payer. I agree with Judge Berner in *Barrett v HMRC*¹ at paragraph 154 where he states:-

25 “The test of reasonable excuse involves the application of an impersonal, and 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”.

30 24. As I indicate above, I accept that at the point that the appellant sold the property, and indeed it was the reason why he sold the property, the appellant believed that he would be living and working in the UK from October 2015.

25. Accordingly, even if he had known about the change in the law, which he did not, there was no reason for him to complete a NRCGT return in July 2015. There was no reason for him to check the rules for non-residents when he decided to sell the property because he was about to become UK resident.

35 26. As soon as he realised the requirement to file a return, since he was again non-resident, he acted without delay.

¹ 2015 UKFTT 329

27. In the particular circumstances of this taxpayer, I find that objectively, he acted completely reasonably and therefore the appeal succeeds.

28. 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.

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ANNE SCOTT

TRIBUNAL JUDGE

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RELEASE DATE: 21 June 2018