



TC07016

Appeal number: TC/2017/07271

Income tax - fixed and daily penalties for late filing of self-assessment return - appellant not previously self-employed and erroneously understood the company for which she worked would deal with return - whether reasonable excuse - no - appeal dismissed

FIRST-TIER TRIBUNAL

TAX

SADIA MAHMAMUD GEEDI

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE MICHAEL CONNELL

The Tribunal determined the appeal on 8 February 2019 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 28 September 2017, and HMRC's Statement of Case received by the Tribunal and Appellant on 9 November August 2017 with enclosures. The Tribunal wrote to the Appellant on 18 November 2017 stating that if she wished to reply to HMRC's Statement of Case she should do so within 30 days of receiving a copy from HMRC. The Appellant did not respond.

DECISION

1. This is an appeal by Ms Sadia Mahmamud Geedi ('the appellant') against penalties totaling £1,600 imposed by the Respondents ('HMRC') under Paragraphs 3, 4, 5 and 6 of Schedule 55 Finance Act 2009 for the late filing of her self-assessment ('SA') tax return for the tax year ending 5 April 2014.
2. The penalties for late filing of a return can be summarised as follows:
 - i. A penalty of £100 is imposed under Paragraph 3 of Schedule 55 Finance Act ('FA') 2009 for the late filing of the Individual Tax Return.
 - ii. If after a period of 3 months beginning with the penalty date the return remains outstanding, daily penalties at £10 per day up to a total of £900 are imposed under Paragraph 4 of Schedule 55 FA 2009.
 - iii. If after a period of 6 months beginning with the penalty date the return remains outstanding, a penalty of £300 is imposed under Paragraph 5 of Schedule 55 FA 2009.
 - iv. If after a period of 12 months beginning with the penalty date the return remains outstanding, a penalty of £300 is imposed under Paragraph 6 of Schedule 55 FA 2009.
3. Penalties of £100, £900, £300 and £300 were imposed, under (i) on 18 February 2015, under (ii) and (iii) above on 14 August 2015 and on 23 February 2016 under (iv) above.
4. The appellant's appeal is against all the penalties.

Filing date and Penalty date

5. Under s 8(1D) TMA 1970 et seq. a non-electronic return must be filed by 31 October following the end of the relevant tax year or an electronic return by 31 January of the following year. The 'penalty date' is defined at Paragraph 1(4) Schedule 55 FA 2009 and is the date after the filing date.
6. A late filing penalty is chargeable where a taxpayer is late in filing their Individual Tax return.

The background facts

7. The notice to file for the year ending 5 April 2014 was issued to the appellant on 6 April 2014.
8. The filing date was 31 October 2014 for a non-electronic return or 31 January 2015 for an electronic return. [The appellant's electronic return for the year

ending 5 April 2014 was received by HMRC on 16 February 2017 and processed on the same date].

9. As the return was not received by the filing date, HMRC issued a notice of penalty assessment on or around 18 February 2015 in the amount of £100.

10. As the return had still not been received 3 months after the penalty date, HMRC issued a notice of daily penalty assessment on or around 14 August 2015 in the amount of £900, calculated at £10 per day for 90 days.

11. As the return had still not been received 6 months after the penalty date, HMRC issued a notice of penalty assessment on or around 14 August 2015 in the amount of £300.

12. As the return had still not been received 12 months after the penalty date, HMRC issued a notice of penalty assessment on or around 23 February 2016 in the amount of £300.

13. On 16 February 2017, the Appellant appealed to HMRC against the penalties on the grounds below:

“I am writing to appeal against the late filling bill (E3.662.26) I had received for the self-assessment for the Tax year ending 05 Apr 2014.

I was misinformed with regards to filling my Tax Return, I was told that the Company I was working for will handle all my Tax affairs and as this was my first time being self-employed I honestly believed it. Only to find letter of Fines coming to my House even after I ceased being self-employed on the 5/04/2014.

I can also confirm that during this period I was going through a very stressful time in my life. I accept that it's my responsibility in future to file my Tax return on time. However, I hope having read the above you can take my situation into account and wave the daily penalty as I simply do not have the financial ability to pay the abovementioned amount of £1,662.26”

14. HMRC sent the appellant a decision letter on 15 March 2017 rejecting her appeal on the grounds that it was outside the 30 day time limit but offering a review.

15. On 3 August 2017 the appellant replied saying as below:

“Thank you for your letter dated 11 July 2017, Please note that I did not receive the reply to my original letter dated March 2017, and hence I was not offered an independent review by HMRC. I assume that the reply from HMRC must have got lost in the post. I am therefore kindly asking HMRC for an Independent review of my case.

I am writing to appeal against the late filing bill (£1,675.00) I had received for the self-assessment for the Tax year ending 05 Apr 2014. This is now my third letter.

I was misinformed with regards to filing my Tax Return, I was told that the Company I was working for will handle all my Tax affairs and as this was my first time being self-employed I honestly believed it. Only to find letter of Fines coming to my House even after I ceased being self-employed on the 5/04/2014.

I can also confirm that during this period I was going through a very stressful time in my life. I accept that it's my responsibility in future to file my Tax return on time. However, I hope

Having read the above you can take my situation into account and waive the daily penalty as I simply do not have the financial ability to pay the abovementioned amount of £1,675.00."

16. On 30 August 2017 HMRC rejected the appellant's grounds of appeal and reiterated that it was out of time.

17. On 28 September 2017 the appellant notified her appeal to the Tribunal.

Relevant statutory provisions

Taxes Management Act 1970

Section 8 - Personal return- provides as follows:

(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.

(1A) The day referred to in subsection (1) above is-

- (a) the 31st January next following the year of assessment, or
- (b) where the notice under this section is given after the 31st October next following the year, the last day of the period of three months beginning with the day on which the notice is given

(1AA) For the purposes of subsection (1) above-

(a) the amounts in which a person is chargeable to income tax and capital gains tax are net amounts, that is to say, amounts which take into account any relief or allowance a claim for which is included in the return; and

(b) the amount payable by a person by way of income tax is the difference between the amount in which he is chargeable to income tax and the aggregate amount of any income tax deducted at source and any tax credits to which [section 397(1) [or [397A(1)] of ITTOIA 2005] applies.]

(1B) In the case of a person who carries on a trade, profession, or business in partnership with one or more other persons, a return under this section shall include each amount which, in any relevant statement, is stated to be equal to his share of any income, [loss, tax, credit] or charge for the period in respect of which the statement is made.

(1C) In subsection (1B) above "relevant statement" means a statement which, as respects the partnership, falls to be made under section 12AB of this Act for a period which includes, or includes any part of, the year of assessment or its basis period.

(1D) A return under this section for a year of assessment (Year 1) must be delivered-

(a) in the case of a non-electronic return, on or before 31st October in Year 2, and

(b) in the case of an electronic return, on or before 31st January in Year 2.

(1E) But subsection (1D) is subject to the following two exceptions.

(1F) Exception 1 is that if a notice in respect of Year 1 is given after 31st July in Year 2 (but on or before 31st October), a return must be delivered-

(a) during the period of 3 months beginning with the date of the notice (for a non-electronic return), or

(b) on or before 31st January (for an electronic return).

(1G) Exception 2 is that if a notice in respect of Year 1 is given after 31st October in Year 2, a return (whether electronic or not) must be delivered during the period of 3 months beginning with the date of the notice.

(1H) The Commissioners-

(a) shall prescribe what constitutes an electronic return, and

(b) may make different provision for different cases or circumstances.

(2) Every return under this section shall include a declaration by the person making the return to the effect that the return is to the best of his knowledge correct and complete.

(3) A notice under this section may require different information, accounts and statements for different periods or in relation to different descriptions of source of income.

(4) Notices under this section may require different information, accounts and statements in relation to different descriptions of person.

(4A) Subsection (4B) applies if a notice under this section is given to a person within section 8ZA of this Act (certain persons employed etc. by person not resident in United Kingdom who perform their duties for UK clients).

(4B) The notice may require a return of the person's income to include particulars of any general earnings (see section 7(3) of ITEPA 2003) paid to the person.

(5) In this section and sections 8A, 9 and 12AA of this Act, any reference to income tax deducted at source is a reference to income tax deducted or treated as deducted from any income or treated as paid on any income.

Schedule 55 Finance Act 2009:

18. The penalties at issue in this appeal are imposed by Schedule 55 FA 2009.

Paragraph 1 (4) states that the 'penalty date' is the date after the 'filing date'

Paragraph 3 of Schedule 55 imposes a fixed £100 penalty if a self-assessment return is submitted late.

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.
- (2) The penalty under this paragraph is £10 for 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).
- (3) 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 sub-paragraph (1)(a).

Paragraph 5 of Schedule 55 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.

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 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

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 para-graph 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.

Paragraph 20 of Schedule 55 gives a taxpayer a right of appeal to the Tribunal and paragraph 22 of Schedule 55 sets out the scope of the Tribunal’s jurisdiction on such an appeal. In particular, the Tribunal has only a limited jurisdiction on the question of “special circumstances” as set out below:

- (1) On an appeal under paragraph 20(1) that is notified to the tribunal, the tribunal may affirm or cancel HMRC's decision.
- (2) On an appeal under paragraph 20(2) that is notified to the tribunal, the tribunal may--
 - (a) affirm HMRC's decision, or
 - (b) substitute for HMRC's decision another decision that HMRC had power to make.
- (3) If the tribunal substitutes its decision for HMRC's, the tribunal may rely on paragraph 16--
 - (a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or
 - (b) to a different extent, but only if the tribunal thinks that HMRC's decision in respect of the application of paragraph 16 was flawed.
- (4) In sub-paragraph (3)(b) "flawed" means flawed when considered in the light of the principles applicable in proceedings for judicial review.

The Appellant’s case

19. The appellant’s grounds of appeal are as set out in correspondence and her Notice of Appeal to the Tribunal as below:

“I was told the Company I was working for will handle all my Tax affairs, as this was my first time being self-employed I honestly believed it.

During this period I was going through a very stressful time in my life. I accept it is my responsibility in future to file my return on time.”

She added that a close family member had passed away.

HMRC's Case

20. This appeal is not concerned with specialist or obscure areas of tax law. It is concerned with the ordinary every day responsibilities of the appellant to ensure her 2013-14 tax return was filed by the legislative date and payment made on time.

21. The appellant registered for SA on 17 December 2013, as a self-employed Passenger Assistant from 8 July 2013. As she was self-employed in the 2013-14 tax year she was required to complete a SA return regardless of the amount of income.

22. As the return was not received by 31 January 2015, the first £100 late filing penalty notice was issued in accordance with legislation, this notice also gave warning of further penalties. As the return was still outstanding at the end of May 2015, 30 day and 60 day daily penalty reminders were issued on 2 June 2015 and 30 June 2015 respectively. These notices should have alerted the appellant to the fact that HMRC still required a return from her for the 2013-14 tax year.

23. The notice to file the 2013-14 return, subsequent penalty reminders and notices of penalties were all sent to the address held on record for Ms S M Geedi at the time, namely Flat 36 Dawkins Court SE1 6AY. There is no record of any mail being returned as undelivered from that address, the documents are therefore deemed to have been served within the ordinary course of postal delivery in line with s 7 of the Interpretation Act 1978. As there has been no change of address in the period concerned it is HMRC's contention that the notices were received by the appellant.

24. If the appellant believed the company she was working for were handling her tax affairs, she has not provided any evidence which may have supported that belief or stated what action she took to check that the company would be filing her return. She would have needed to supply them with her total income and expenses for the year to enable them to complete the return. That belief would have been challenged on receipt of the first penalty.

25. In any event, entrusting such a task of filing the return to a third party does not of itself absolve the customer of further responsibility for ensuring that the return is filed on time. There may be circumstances in which the customer's failure, through her agent, to comply with, e.g., the obligation to make the return on time can amount to a “reasonable excuse”. To be such a circumstance it must

be something outside the control of the taxpayer and her agent. It must be something exceptional. There is no evidence of that.

26. HMRC believe any taxpayer wishing to comply with their obligation would have acted upon receipt of a penalty for something they believed had been done. If honestly believing it had or was being dealt with was a reasonable excuse, it ended upon receipt of the first penalty and was not remedied within a reasonable time, so the excuse did not last throughout the period of failure.

27. The appellant appointed an agent to act on her behalf on 15 November 2016 but the 2013-14 return was still not submitted until some 4 months after their appointment and 24 months after the filing deadline. HMRC consider the long delay in submitting the return unreasonable under any circumstances.

28. The appellant says she was stressed due to the death of a close family member, but she has not said which family member or date of death. HMRC normally agree that the death of a close relative shortly before the filing deadline is a reasonable excuse as long as the customer had already taken steps to have their tax return ready on time. HMRC would then expect the return to be submitted within a reasonable time.

29. These penalties did not occur as a result of something which was entirely out of the appellant's control. The amount of the penalties charged is set within the legislation. HMRC has no discretion over the amount charged and must act in accordance with the legislation. By not applying legislation and as such not to have imposed the penalty would mean that HMRC was not adhering to its own legal obligations.

30. It is the contention of HMRC that in order for the appellant's appeal to succeed, she must demonstrate that a reasonable excuse existed which prevented her from complying with her Income Tax obligations. HMRC have concluded, based on the evidence held, that no reasonable excuse exists and as a consequence the penalties were correctly charged in accordance with legislation.

Special Reduction

31. Paragraph 16(1) of Schedule 55 allows HMRC to reduce a penalty if they think it is right because of special circumstances.

“Special circumstances” is undefined save that, under paragraph 16(2), it does not include ability to pay, or the fact that a potential loss of revenue from one taxpayer is balanced by a potential overpayment by another.

32. In other contexts “special” has been held to mean ‘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). The special circumstances must also apply to the particular individual and not be general circumstances that apply to many taxpayers by virtue of the penalty legislation (*David Collis* [2011] UKFTT 588 (TC), paragraph 40).

33. HMRC have considered the appellant's submissions and assert that there are no special circumstances which would merit a reduction of the penalties below the statutory amount and that the penalties are appropriate in the circumstances.

34. Where a person appeals against the amount of a penalty, paragraph 22(2) and (3) of Schedule 55 FA 2009 provide the Tribunal with the power to substitute HMRC's decision with another decision that HMRC had the power to make. The Tribunal may rely on paragraph 16 (Special Reduction) but only if they think HMRC's decision was 'flawed when considered in the light of the principles applicable in proceedings for judicial review'.

35. HMRC submit that its decision not to reduce the penalties under paragraph 16 was not flawed, but in any event there are no special circumstances which would require the Tribunal to reduce the penalties.

Conclusion

36. Paragraph 23 of Schedule 55 FA 2009, provides that a penalty does not arise in relation to a failure to make a return if the person satisfies HMRC (or on appeal, a Tribunal) that they had a reasonable excuse for the failure and they put right the failure without unreasonable delay after the excuse ceased. That is, if there is a reasonable excuse it must exist throughout the failure period.

37. 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 the circumstances of the particular case" (*Rowland v HMRC* (2006) STC (SCD) 536 at paragraph 18).

38. The actions of the taxpayer should be considered from the perspective of a prudent person, exercising reasonable foresight and due diligence, having proper regard for their responsibilities under the Tax Acts. The decision depends upon the particular circumstances in which the failure occurred and the particular circumstances and abilities of the person who failed to file their return on time. 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.

39. HMRC sent a late filing penalty to the appellant on 18 February 2015 for £100. This should have acted as an alert that she had not filed her return. The appellant was informed of the penalties at the time they were issued.

40. The appellant would have also received the 90 day penalty of £900 and the 6 month penalty of £300 on or around 14 August 2015.

41. The due filing date for the online return is clearly shown on the notice to file form SA316 issued to the appellant on 6 April 2014. In addition, the due filing dates and the consequences of late filing are clearly shown on the HMRC website and were therefore available to the appellant.

42. A taxpayer can choose to file a paper return or submit the return online. If a taxpayer chooses to file a return online, it must reach HMRC by midnight on 31 January 2015. Where a return is filed after the relevant deadline a penalty is charged. The later a return is received, the more penalties are charged. This information was clearly shown on the form SA316 Notice to File issued to the appellant on 6 April 2014.

43. To support taxpayers with their responsibility HMRC publishes information and advice about their obligations and how they can adhere to them. This information about SA, the completion of returns, tax payment dates, penalties and so on, is well within the public domain and widely available via the internet including HMRC's website. An individual acting in a responsible manner to ensure that they adhered to their legal obligations would make themselves aware of such information and act accordingly.

44. As the return for the tax years 2013-14 was received late the penalties have been charged in accordance with legislation. Penalties are in place to promote efficient operation of the taxation system and are intended as a measure of fairness, so that customers who file late do not gain any advantage over those who file on time. The amount of the penalties charged is set within the legislation. HMRC has no discretion over the amount charged and must act in accordance with the legislation.

45. Late filing penalties are raised solely because the self-assessment tax return is filed late. They are no longer linked to liability and remain fixed even if there is a repayment or no tax due. The effect the penalties may have on the appellant financially is not a reasonable excuse to reduce or cancel the penalties.

46. On the available evidence I accept HMRC's submissions that the penalties were correctly issued and that the appellant has not shown a reasonable excuse for the failures which led to the penalties.

47. Furthermore, any excuse the appellant may have had for the delay in filing her return did not subsist throughout the entire period of delay as it was not filed until 16 February 2017, and therefore does not amount to a reasonable excuse.

48. The late filing penalties have therefore been charged in accordance with legislation and there is no reasonable excuse for the appellant's failure to file her tax return on time, nor by the date the penalties arose.

49. I find that there are no special circumstances which would allow the penalty to be reduced under Special Reduction regulations.

50. The appeal is therefore dismissed and the late filing penalties totalling £1,600 are confirmed.

51. 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.

**MICHAEL CONNELL
TRIBUNAL JUDGE**

RELEASE DATE: 28 FEBRUARY 2019