



[2021] UKFTT 113 (TC)

TC08094

INCOME TAX – penalties – late filing – whether reasonable excuse – no – whether special circumstances – no – HMRC put no case in respect of daily penalties – appeal upheld in part

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2020/02022

BETWEEN

DANIELLE FRANCE

Appellant

-and-

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

Respondents

TRIBUNAL: JUDGE ANNE FAIRPO

The Tribunal determined the appeal on 5 January 2021 without a hearing with the consent of both parties under the provisions of Rule 29 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. A hearing was not held because of restrictions arising from the COVID-19 pandemic. The documents to which I was referred are a bundle of documents amounting to 47 pages and correspondence between the parties during August and September 2020.

DECISION

Introduction

1. This is an appeal against late filing penalties charged under Schedule 55 of the Finance Act 2009 (“Sch 55”) in respect of the appellant’s self-assessment return for the tax year ended 5 April 2013.
2. The penalties appealed are:
 - (1) Initial late filing penalty of £100, issued 17 March 2015
 - (2) Daily late filing penalties of £900, issued 15 September 2015
 - (3) 6 month late filing penalty of £300, issued 15 September 2015
 - (4) 12 month late filing penalty of £300, issued 15 March 2016
3. In their Statement of Case HMRC noted that they were not putting forward a case for the daily penalties of £900 and, accordingly, the appeal succeeds in respect of the daily penalties.

Application for permission to appeal out of time

4. The correspondence included an application by the appellant to appeal out of time against the penalties. The appellant had appealed to HMRC on 30 September 2019; the statutory deadline for appealing the penalties had expired at least three years earlier.
5. HMRC included in their Statement of Case a notice of objection to this application, noting inter alia the need for litigation to be conducted efficiently and that they should be entitled to rely on the time limits set out in legislation.
6. However, I note from the papers provided that although HMRC’s initial response was to reject the appeal as being late (in a letter dated 4 November 2019), they had invited the appellant to respond if she thought that she had a reasonable excuse for the delay.
7. It appears that the appellant did respond, as (although the bundle did not include a copy of any such response from the appellant) HMRC subsequently considered the appellant’s appeal in respect of the penalties in a letter dated 21 April 2020 (attached to the notice of appeal). That letter concluded that the appellant had no reasonable excuse for not sending in her return on time and not paying the tax due on time. This letter included the statement that, if she disagreed with the decision, the appellant should ask for a review or appeal to the Tribunal by 21 May 2020. The appellant filed her notice of appeal on 9 June 2020, less than three weeks after the date set out in the letter from HMRC.
8. Although it is clear that the appeal to HMRC was made very late, I find that HMRC had accepted that appeal by their letter of 21 April 2020 as that letter substantively considers the reasons which gave rise to the penalties, and not the reasons for any delay in sending in the appeal. That letter does not specifically reject the appeal as being made late.
9. Although the appeal to the Tribunal was also made late, it was less than three weeks late: that is not, in my view, a serious or substantial delay. The appellant did not provide a specific reason for the delay. Nevertheless, balancing all of the circumstances, I consider that it is in the interests of justice for permission to be given to make the appeal to the Tribunal out of time as the delay is not particularly serious and there is no obvious prejudice arising as a result of permission being given, as HMRC had prepared a substantive response to the appeal.

Chronology

10. HMRC submit that a SA316 notice to file for the year ending 5 April 2013 was issued to the appellant on or around 4 December 2014, to the address on file (which is the same address

as that used by the appellant in making the appeal). HMRC provided a copy of the appellant's microfiche record showing the details of the issue of that notice.

11. The return was issued because the appellant had underpaid tax of £504.40 for the tax year and had not made payment when requested in January and April 2014. HMRC were unable to collect the amount via the appellant's tax code.

12. The filing date given for both paper and electronic filing was 11 March 2015.

13. HMRC issued the appealed penalty assessments on the dates set out at §2 above. Extracts from HMRC's records showing such dates were provided.

14. On 25 March 2015 the appellant appealed to HMRC in respect of the initial late filing penalty of £100. On 1 July 2015, HMRC wrote to say that they could not consider the appeal as the appellant's tax return had not been received. The letter noted that daily penalties were being charged as the return then more than three months late.

15. The appellant's electronic return was received by HMRC on 4 July 2016 and was, accordingly, 481 days late.

Appellant's submissions

16. The appellant submitted as follows:

(1) She was not aware that she had to file a self-assessment return and did not understand why she had to complete a return as she had not been self-employed.

(2) She had trusted her employer to make the correct deductions under PAYE.

(3) She had not received any letters from HMRC about the return until 14 September 2019, and then had received another letter from the "Specialist Taskforce" on 30 September 2019.

(4) She had been "passed from pillar to post" within HMRC trying to resolve the situation as she had received notices of enforcement.

(5) Her ex-employer is responsible for the underpayment.

(6) She cannot afford to pay the penalties as she is a lone parent in part-time employment.

HMRC submissions

17. HMRC made the following submissions:

(1) It was not disputed that the return was filed late and so the penalties were correctly calculated and issued in accordance with the legislation.

(2) No correspondence has been returned undelivered from the appellant's address and so the documents were effectively served under the provisions of s115 Taxes Management Act 1970 and s7 Interpretation Act 1978.

(3) HMRC are unable to clarify why the appellant's employer did not deduct the correct amount of tax; however, the appellant was notified of the shortfall via a P800 issued in June 2013 and she did not dispute the amount or state that her employer had made an error.

(4) HMRC submitted that a taxpayer wishing to comply with their obligations would have acted on receipt of the initial penalty and so, if not being aware of the need to file a return amounted to a reasonable excuse, that excuse ended when the appellant received the initial late filing penalty.

(5) The appellant does not therefore have a reasonable excuse for the failure to file the return on time throughout the period of default.

(6) The inability to pay is not a reasonable excuse, under para 16(2)(a) Sch 55.

18. HMRC considered whether there were any special circumstances and took note of the following:

- (1) that the appellant is a single mother on a low income;
- (2) that she was unaware that she had to submit a return;
- (3) that she was “passed from pillar to post” within HMRC;
- (4) that the underpayment arose from her employer’s error.

19. HMRC concluded that a special reduction was not appropriate because the appellant had been notified of the underpayment, and had not filed her return despite contact with HMRC in the interim. An inability to pay was also not a special circumstance.

20. HMRC submitted that special circumstances must be sufficiently special that a decision to charge a penalty at the level required by statute would be contrary to Parliament’s intention when the penalty regime was introduced (*Barry Edwards v HMRC* [2019] UKUT 131 (TCC)). HMRC submitted that the penalty of the type charged was, in these circumstances, directly appropriate in order to encourage future compliance with filing obligations.

Decision

21. Paragraph 1 of Sch 55 provides that a penalty is payable where a person fails to file a tax return on time. It is not disputed that the appellant’s tax return was filed late, nor is the amount of the penalties disputed. The question that arises is whether the appellant has a reasonable excuse for the delay in filing the return, which would mean that no penalty is due, or whether there are special circumstances that would merit a reduction in the penalty.

22. For a reasonable excuse to apply, that reasonable excuse must persist throughout the period of default.

23. The appellant states as part of her grounds of appeal that she did not know that she had to file a return and that she had not received any letters from HMRC until September 2019. However, she contacted HMRC in March 2015 to dispute the initial filing penalty, stating that she had not been made aware that she had to submit the return personally and thought it would be done via her employer.

24. I find, therefore, that the appellant was aware in March 2015 that she was required to file a tax return for the tax year ended 5 April 2013, and that she knew at that time that she was late in filing that return.

25. The appellant provided no specific explanation as to why her return was not filed until July 2016.

26. I consider, therefore, that even if the appellant’s lack of awareness of the need to file a return could amount to a reasonable excuse, that reasonable excuse ended in March 2015 and so does not cover the period of default.

27. The appellant’s submissions with regard to her employer do not provide a reasonable excuse as to the delay in filing: as noted above, she was aware by March 2015 that she needed to file a return.

28. The appellant’s status as a lone parent on low income is also not, in my view, a reasonable excuse for the failure to file her return. The appellant does not explain why such a status could

have delayed the filing of the return and I consider that a reasonable taxpayer in her position, knowing that the return was required, would have filed the return either on time or at least shortly after receiving the penalty notice in March 2015.

29. Inability to pay is, by law, not a reasonable excuse until it is attributable to events outside the appellant's control: case law has established that this means due to unforeseen circumstances, rather than something that would apply to any taxpayer in the appellant's position. As such, the appellant's low income does not establish a reasonable excuse.

30. I find, therefore, that the appellant does not have a reasonable excuse for the failure to file her return on time.

31. Turning to consider special circumstances, I note that this Tribunal's jurisdiction is limited to considering whether HMRC's decision is flawed in a judicial review sense.

32. Having considered HMRC's submissions with regard to special circumstances, I do not consider that HMRC's decision with regard to special circumstances is flawed in a judicial review sense.

Decision

33. As I find that there was no reasonable excuse for the delay in filing the return, and that no special circumstances apply to reduce the penalty, the appeal against the initial filing penalty, the 6 month late filing penalty and the 12 month late filing (totalling £700) is dismissed. The appeal against the daily late filing penalties of £900 is upheld as HMRC put forward no case in respect of those penalties.

Right to apply for permission to appeal

34. 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.

**ANNE FAIRPO
TRIBUNAL JUDGE
RELEASE DATE: 19 APRIL 2021**