



Neutral citation number: [2022] UKFTT 329 (TC)
Case number: TC08590

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2022/02536

Income tax – late filing penalty - whether reasonable excuse

**Heard on: 1st September 2022
Judgment date: 9th September 2022**

Before

**TRIBUNAL JUDGE HOWARD WATKINSON
CHRISTOPHER JENKINS**

Between

LUCY ANNE WATT

Appellant

and

**THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS
Respondents**

Representation:

For the Appellant: Ms. Watt

For the Respondents: Ms. Louise Harsthill, Presenting Officer for HM Revenue and Customs

DECISION

INTRODUCTION

1. With the consent of the parties, the form of the hearing was by video with the Appellant dialling in by telephone due to technical issues with accessing the Tribunal's video platform and Teams. The documents to which we were referred were: a bundle of documents running to 119 pps., HMRC's Statement of Reasons, and a bundle of legislation and authorities.
2. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.
3. This is an appeal by the Appellant against late filing penalties for the tax year 2019/2020 charged to her under Schedule 55 Finance Act 2009 ("**Sch.55**").
4. Ms. Watt was charged the following penalties:

Tax Year ending 5 April	Date of Penalty	Legislation	Description	Amount (£)
2020	9.3.21	Para.3 Sch.55	Initial late filing penalty	£100
	17.8.21	Para.4 Sch.55	Daily late filing penalty	£900
	17.8.21	Para.5 Sch.55	6-Month late filing penalty	£300

5. The issue on this appeal is whether the Appellant has a reasonable excuse for failing to file the return on time.

THE RELEVANT LAW

6. Sub-section 8(1) Taxes Management Act 1970 ("**TMA**") provides as follows:

"8 Personal return

(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 [...]4, a return containing such information as may reasonably be required in pursuance of the notice, and

...

7. Section 115 TMA specifies the requirements for delivery and service of documents under the Taxes Acts. In so far as is relevant, it states:

"115 Delivery and service of documents

(1) A notice or form which is to be served under the Taxes Acts on a person may be either delivered to him or left at his usual or last known place of residence.

(2) Any notice or other document to be given, sent, served or delivered under the Taxes Acts may be served by post, and, if to be given, sent, served or delivered to or on any person by HMRC may be so served addressed to that person—

(a) at his usual or last known place of residence, or his place of business or employment...”

8. The late filing penalty regime is set out in Sch.55. The combined effect of Para.1(1) and (4) Sch.55 is that a person is liable to a penalty when he does not file an income tax return by the date that HMRC has required him to. Paras. 3-6 of Sch.55 set out the initial and subsequent penalty amounts and the periods of time to which they are linked. The burden of proof is on the Respondents to prove the preconditions for the penalty i.e. that the Notice to File was sent, that the return was not submitted and the Appellant is therefore liable to the penalty, that she has been assessed to it, and that the assessment is in the correct amount.

9. By Para.23(1) Sch.55 liability to a penalty does not arise if the Appellant satisfies the Tribunal on appeal that there is a reasonable excuse for the failure to file on time. The limitations on that reasonable excuse set by Para.23(2).

10. There is no statutory definition of “reasonable excuse”. In *Rowland v Revenue & Customs Commissioners* [2006] STC (SCD) 536 the Tribunal noted at [19] that the issue was to be considered in the light of all the circumstances of the particular case. The Respondents also referred the Tribunal to *The Clean Car Company Ltd v The Commissioners of Customs and Excise* [1991] VATTR 234 in which Judge Medd QC set out that the test is an objective one, where the Tribunal must ask itself: “was what the taxpayer did a reasonable thing for a responsible trader conscious of and intending to comply with his obligations regarding tax, but having the experience and other relevant attributes of the taxpayer and placed in the situation that the taxpayer found himself at the relevant time, a reasonable thing to do?”

11. Finally, the Respondents referred the Tribunal to *Christine Perrin v The Commissioners for Her Majesty’s Revenue and Customs* [2018] UKUT 156 (TC) where at [81] the Upper Tribunal set out a useful approach that the First-tier Tribunal can take in considering the issue of reasonable excuse.

“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.”

FINDINGS OF FACT

12. From the HMRC records produced to us, and from what the Appellant said at the hearing, we find the following facts. Whilst the Appellant did not give sworn evidence we found her account to be a credible one, primarily because it was supported in the relevant parts by documentary evidence.

13. On 6.4.20 HMRC issued a notice to file a Self Assessment return for the year ending 5.4.20 by 31.10.20 for a non-electronic return, or 31.1.21 for an electronic return to the Appellant.

14. The Appellant had previously filed paper Self Assessment returns, she had never had any issues with doing so, and she had never had any issues with late filing or payment. The Appellant had, at some point prior to her attempted filing of the return addressed below, been sent a notice by HMRC that she was to file her Self Assessment return online, and she therefore set about doing that, for the first time.

15. The log of the Appellant’s session from HMRC’s system shows that on 14.9.20 the Appellant spent from 15.04 to 16:25 completing the Self Assessment return, ending by submitting the “check your return/results” section and then viewing the tax calculation summary. The Appellant had to re-do the calculations for income from properties whilst completing the return. The Appellant did not see the “your tax return is 90% complete” text on the tax calculation, or that it was stated to be estimated.

16. The Appellant then printed out the Self Assessment payment slip and sent a cheque for the total tax due shown on the calculation of £640.60, due for payment by 31.1.20, in good time, such that it was cashed by HMRC on 24.12.20.

17. We find that the Appellant believed that she had submitted the return, hence why she then submitted the payment shown on it. We find that, bearing in mind that this was the first time that the Appellant had submitted a return online, the Appellant reasonably believed that she had submitted the return by submitting the “check your return/results” section and then viewing the tax calculation summary. The Tribunal does not accept the Respondents’ submission that the presence of the warning about the tax return being 90% complete, and the tax calculation stating that it was estimated mean that this Appellant could not reasonably have believed that she had submitted the return. The Appellant’s evidence, which we accept, is that she did not see those parts on the screen.

18. The Tribunal also does not accept the Respondents’ submission that because it was the first time that the Appellant had filed a return online she should have thereafter checked with HMRC that it had been received. Where a taxpayer fills in a paper return for the first time and sends it to HMRC we do not think it reasonable to expect such a taxpayer to always then check with HMRC that it has been received if the taxpayer believes it has been sent. The same logic applies to filing online, where a taxpayer believes the return has been sent, in our view, he or she is not always required to check that the return has been received simply because it is their first time using the system.

19. On 9.3.21 the Respondents notified the Appellant that they were charging her a penalty of £100 because they had not received her tax return for the tax year ended 5.4.20. Also in March 2021 the Respondents sent a Self Assessment Statement to the Appellant showing that her payment of £640.00 was “unallocated” and that her tax account was £1,236.39 in credit.

The Appellant told us that she did not understand what the payment amount being unallocated meant. We find that the Appellant did not understand what this meant.

20. The Appellant then logged on to her tax account which said in relation to that tax year *“You paid the right amount of tax. There is nothing more to pay this year.”* We find that, bearing in mind the contradiction between being told on her online tax account that she had paid the “right amount of tax”, which could reasonably be interpreted as being a reference to the amount declared as due on a Self Assessment return, and simultaneously that she had not submitted a return, the Appellant’s continuing belief that she had in fact submitted the return remained objectively reasonable at this point. We do not accept the Respondents’ submission to the contrary that the 9.3.21 notification can be viewed alone as showing that the Self Assessment return had not been received bearing in mind what the Appellant’s tax account said.

21. On 19.3.21 the Appellant appealed against the £100 penalty to HMRC, stating that she had submitted the tax return online in December 2020 and sent the cheque for the total due, a copy of which she enclosed.

22. On 2.8.21 the Respondents responded to the Appellant’s appeal of 19.3.21, some 4 ½ months after it was sent in, saying that the tax return was not received online saying “This may be because you did not complete the final screen at step 8”. HMRC did not provide any good explanation for this delay at the hearing.

23. On 25.8.21 the Appellant telephoned HMRC twice but did not receive an explanation about the contradictory messages that she received. The Appellant then could not complete a further online return because the system would not let her, and she therefore submitted a paper return on 26.8.21. We therefore find that whilst the Appellant’s belief that she had submitted the return ceased to be objectively reasonable after the receipt of HMRC’s letter setting out definitively both what had gone wrong with the online process and that the return had not been filed, the situation was remedied swiftly thereafter by the filing of the paper return.

DISCUSSION

24. We find that the Respondents have proved that the Notice to File was sent to the Appellant.

25. The Tribunal finds that the Appellant has proved that she had a reasonable excuse for the failure. The Tribunal finds that it was objectively reasonable for the Appellant to have believed that she had filed the Self Assessment return until HMRC’s letter of 2.8.21, and thereafter the default was remedied swiftly.

DECISION

26. For the above reasons the appeal is allowed and the penalty is discharged.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

27. 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.

HOWARD WATKINSON
TRIBUNAL JUDGE

RELEASE DATE: 09TH SEPTEMBER 2022