



Neutral Citation: [2024] UKFTT 891 (TC)

Case Number: TC09308

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

[By remote video hearing]

Appeal reference: TC/2024/00316

*Late filing penalties – reasonable excuse – whether fair and proportionate – appeal dismissed*

**Heard on:** 25 September 2024

**Judgment date:** 7 October 2024

**Before**

**TRIBUNAL JUDGE SUSAN TURNER  
CHRISTOPHER JENKINS**

**Between**

**AMBER AWAN**

**Appellant**

**and**

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

**Respondents**

**Representation:**

For the Appellant: Dr Shakil Awan

For the Respondents: Nicola Shardlow, litigator of HM Revenue and Customs' Solicitor's Office

## DECISION

### INTRODUCTION

1. This is an appeal against late filing penalties imposed under sch 55 Finance Act 2009 (FA 2009) in respect of the late filing of a self-assessment tax return for the tax year 2021/22. The penalties are made up of an initial late filing penalty of £100 and daily late filing penalties of £880, making total penalties of £980.

2. The form of the hearing was V (video) and all parties attended remotely via Microsoft Teams. We referred to a document bundle of 56 pages; a bundle of legislation and authorities of 151 pages; and a statement of reasons prepared by HMRC.

3. 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.

### BACKGROUND AND FACTS

4. Mrs Awan has been in receipt of property income since April 2015 and is registered for self-assessment. She had, many years earlier, been within the self-assessment regime as a sole trader.

5. For the 2015/16; 2018/19; 2019/20; and 2020/21 tax years, Mrs Awan filed self-assessment tax returns.

6. For tax years 2016/17 and 2017/18, Mrs Awan's total income fell below the personal allowance.

7. For the tax year 2016/17, HMRC withdrew the requirement for Mrs Awan to submit a tax return upon request before the filing deadline.

8. For the 2017/18 tax year, Dr Awan spoke to HMRC before the filing deadline to explain that Mrs Awan's income from property fell below the filing threshold and HMRC withdrew the requirement to complete a tax return for that year accordingly.

9. For the 2018/19 tax year, Dr Awan spoke to HMRC before the filing deadline to ask whether a tax return needed to be filed and HMRC confirmed that a tax return would need to be filed for that tax year because of level of income from property.

10. Since falling within the self-assessment regime, 2019/20 was the only tax year for which Mrs Awan's income exceeded her personal allowance.

11. For the 2020/21 tax year, Mrs Awan filed a tax return despite her total income falling below the personal allowance and her net income from property falling below £2,500.

12. On 5 October 2021, Mrs Awan signed up to receive paperless contact from HMRC into her online personal tax account (PTA).

13. On 6 April 2022, an electronic notice to file a self-assessment tax return was issued to Mrs Awan's PTA. An email alert was sent to Mrs Awan's verified email address on 8 April 2022.

14. Mrs Awan's tax return for the 2021/22 tax year was filed on 27 July 2023, 177 days after the due date of 31 January 2023. The tax calculation for this tax year shows that Mrs Awan received net income from property in excess of £2,500. However, her income fell below the personal allowance threshold and no tax was payable.

15. A penalty notice in respect of the £100 initial late filing penalty was issued to Mrs Awan's PTA on 14 February 2023 and an email alert was sent to Mrs Awan's verified email address on 16 February 2023.
16. From 1 May 2023, once the self-assessment was more than three months late, daily penalties began to accrue.
17. A daily penalty reminder was issued to Mrs Awan's PTA on 9 June 2023 (the First Daily Penalty Reminder) and an email alert was sent to Mrs Awan's verified email address.
18. A further daily penalty reminder dated 4 July 2023 (the Second Daily Penalty Reminder) was sent by post to Mrs Awan's registered postal address.
19. Contact was made on behalf of Mrs Awan with HMRC's debt management team on 27 July 2023, and the initial late filing penalty was paid and the outstanding tax return was submitted.
20. On 15 August 2023, HMRC issued a notice of penalty assessment in respect of the daily penalties an amount of £880 to Mrs Awan's PTA and an email alert was sent to Mrs Awan's verified email address on 31 August 2023.
21. Mrs Awan appealed the decision to impose late filing penalties to HMRC on 8 August 2023 and, on 13 November 2023, HMRC wrote to Mrs Awan upholding the penalties.
22. On 29 November 2023, Mrs Awan accepted an offer of a review by HMRC, and HMRC responded with a review conclusion letter on 20 December 2023 upholding the decision to charge late filing penalties.
23. Mrs Awan's Notice of Appeal to this Tribunal is dated 5 January 2024.

#### THE LAW

24. Section 8(1) Taxes Management Act 1970 (TMA 1970) provides that:

##### **"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, 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."

25. In this case, the electronic notice to file issued to Mrs Awan's PTA on 6 April 2022 required Mrs Awan to submit a tax return for the tax year 2020/21 in accordance with S8(1) TMA 1970 by the filing date of 31 January 2023.
26. Paragraph 1, sch 55 FA 2009 provides that a penalty is payable by a person (P) where P fails to make or deliver a return on or before the relevant filing date.
27. Paragraphs 3 and 4, sch 55 FA 2009 set out the penalty amounts as follows:
  - "Paragraph 3  
P is liable to a penalty under this paragraph of £100.
  - Paragraph 4  
(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)."

28. In this case, the relevant penalty notices were issued to Mrs Awan as set out at [15] to [18] above. Mrs Awan first became liable to an initial penalty of £100, and the daily penalty, accrued between 1 May 2023 and 27 July 2023, was calculated at a rate of £10 for 88 days, totalling £880.

29. The burden of proof rests with HMRC to show that the penalties have been correctly issued.

30. Under para 23, sch 55 FA 2009, a penalty does not arise in relation to a failure to make a return if a person satisfies HMRC or, on appeal, this Tribunal, that there is a "reasonable excuse" for the failure to submit a return within the due date and they put right the failure without unreasonable delay after the excuse has ended. However, insufficiency of funds, unless attributable to events outside the Appellant's control, or reliance on another person, unless the person took reasonable care to avoid the failure, is not a reasonable excuse.

31. Although there is not a definition of reasonable excuse in in the legislation, this Tribunal is required to approach the question of reasonable excuse in accordance with the decision of the Upper Tribunal in *Christine Perrin v HMRC* [2018] UKUT 0156 (TCC) at [81]:

"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.”

32. The burden of proof rests with the Appellant to demonstrate that a reasonable excuse exists.

33. Finally, provisions relating to special reductions are contained in para 16, sch 55 FA 2009 as follows:

**“Special reduction**

(1) If HMRC think it right because of special circumstances, they may reduce a penalty under any paragraph 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.”

**THE ISSUES**

34. The Tribunal heard that there was no dispute about the lateness of the filing, that Mrs Awan had signed up to receive electronic communications, or that communications had been sent to the PTA. The Tribunal was therefore content that the penalties had been issued correctly and the issues remaining to be considered by the Tribunal were:

- (1) Whether Mrs Awan had a reasonable excuse for the late filing of the tax return;
- (2) If a reasonable excuse exists, whether the return was received without unreasonable delay once the excuse had ended; and
- (3) Whether HMRC’s decision in relation to any special reduction was flawed.

**SUBMISSIONS**

**Submissions for Mrs Awan**

35. For Mrs Awan, Dr Awan told the Tribunal that they first heard about the late filing penalties in early June 2023. He said that this followed receipt of a letter by post from HMRC which included details of the initial late filing penalty of £100. Dr Awan told the Tribunal that he was unsure whether this letter included details of the daily penalties but thought it may have done.

36. It is not clear precisely which letter Dr Awan refers to here. The First Daily Penalty Reminder, dated June 2023, was issued to Mrs Awan’s PTA, but we were told that Mrs Awan had not looked at her PTA at this point, and also that the relevant letter arrived by post. The Second Daily Penalty Reminder, dated July 2023, was sent by post, though around a month later. In either case, the letter would have referred to the daily penalties, and Dr Awan told the Tribunal that it was the receipt of this letter which prompted him to contact HMRC about the late filing and related penalties.

37. Dr Awan accepted that an oversight had led Mrs Awan to fail to file the tax return on time or to make contact with HMRC to request the requirement to file be withdrawn. The Tribunal heard that, in 2021/22, Mrs Awan had started a new job as a teaching assistant and

was very busy in the post-Christmas period. She has a family and Dr Awan also has a busy job, creating several demands on their time.

38. Dr Awan told the Tribunal that, when Mrs Awan became aware that the tax return should have been filed and that penalties had been imposed, the £100 fine was paid immediately and the filing was made. HMRC's records show that Dr Awan contacted HMRC and the tax return was filed on 27 July 2023. He acknowledges that Mrs Awan would not have checked her PTA on a regular basis and therefore would not have seen the electronic notices sent before this time.

39. We also heard that, on two previous occasions, Mrs Awan had been told there was no need to file a tax return when contact had been made with HMRC to explain that Mrs Awan's income would fall below the personal allowance threshold. Dr Awan says this caused some confusion, and that it was unclear to Mrs Awan that HMRC needed to be contacted to withdraw the requirement to file a tax return. Indeed, in her Notice of Appeal, Mrs Awan says that she thought she would not need to file because of the advice received from HMRC in previous years.

40. Finally, Dr Awan submitted that it was not the initial £100 penalty but the subsequent daily penalties which were disproportionate. He told the Tribunal that penalties totalling £980 for failure to file when no tax had been due seemed unfair, especially when Mrs Awan acted promptly to rectify the situation once notified by post. Dr Awan says that it would have helped them if a physical letter had been sent around the time of the first penalty, as, by the time Mrs Awan became aware of the late filing and penalty notices by post, significant daily penalties had already been accrued.

41. Dr Awan was keen to stress to the Tribunal that Mrs Awan was a responsible taxpayer. There are no outstanding taxes and the fines have been paid. There has been no deliberate attempt to delay or avoid any responsibility.

### **Submissions for HMRC**

42. During the hearing, Ms Shardlow explained the statutory nature of the penalties and the amounts. She says the only route to reduction of the penalties would be by a special reduction but that this would only be available in special circumstances in accordance with para 16, sch 55 FA 2009. She submits that there are no special circumstances in this case and that HMRC's decision not to reduce the penalties is not flawed. HMRC also note in their statement of reasons that the case of *Barry Edwards v HMRC* [2018] UKUT 131 (TCC) confirms that the sch 55 penalty regime is proportionate and that penalties fall due even where there is no additional tax liability.

43. Ms Shardlow submitted that Mrs Awan could have called HMRC before the filing date to discuss whether a tax return would be required. Ms Shardlow explained that a self-assessment record would be closed after two years of inactivity. However, this circumstance does not arise in this case. For tax year 2017/18, the need to file had indeed been withdrawn. However, self-assessment criteria had been met in tax years 2018/19 and 2019/20. This led HMRC to send a notice to file for tax year 2020/21, even if there was no tax to pay. Ms Shardlow submits that Mrs Awan would have had to contact HMRC to notify of any change of circumstances, otherwise a tax return would be required in accordance with S8 TMA 1970.

44. Finally, Ms Shardlow noted that it was Mrs Awan's responsibility to look at her PTA, having signed up for electronic communications. If Mrs Awan had checked the account and seen the first penalty notice, the penalties would not have escalated by the accrual of daily penalties. In addition, Ms Shardlow reminded the Tribunal that emails alerting Mrs Awan to the penalty notices had been sent to her verified email address.

## **DISCUSSION AND DECISION**

45. There is no dispute that the penalties were correctly issued. The self-assessment tax return for the 2021/22 tax year was submitted on 27 July 2023, after the due date, and notice to file had been served to Mrs Awan's PTA in accordance with s 8 TMA 1970. Penalty notices had been served in accordance with sch 55 FA 2009 to Mrs Awan's PTA, and email notifications were sent to her verified email address.

46. We therefore considered the submissions of the parties relating to reasonable excuse with care and find that the facts of this case, viewed objectively, do not amount to a reasonable excuse for the late filing of Mrs Awan's tax return for tax year 2021/22. We acknowledge that Mrs Awan faced many competing demands on her time and also that there had been occasions in the past when HMRC had agreed that a filing would not be required. However, in this case, no call was made to HMRC ahead of the filing date to request the withdrawal of the notice to file, and it was only upon receipt by post of a daily penalty reminder that Mrs Awan became aware of the need to submit the tax return and about the accruing penalties. Mrs Awan had signed up to online communications and should have checked her online account. Notifications, both to file and of the initial and daily penalties, had been sent, and Mrs Awan had agreed to this method of communication in October 2021.

47. There is no suggestion that Mrs Awan has sought to avoid meeting any payment obligation or indeed that any tax for the 2021/22 tax year was due. This appeal is concerned solely with the obligation to file a tax return and the penalties for late filing imposed under sch 55 FA 2009. As noted by HMRC, the case of *Barry Edwards v HMRC* [2018] UKUT 131 (TCC) confirms that the sch 55 penalty regime is proportionate and that penalties fall due even where there is no additional tax liability.

48. With respect to special reductions, we therefore find that there are no special circumstances which indicate that HMRC's decision not to make any special reduction of the penalties was flawed.

49. It follows that the Tribunal has decided that the appeal should be **DISMISSED**.

## **RIGHT TO APPLY FOR PERMISSION TO APPEAL**

50. 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.

**SUSAN TURNER  
TRIBUNAL JUDGE**

**Release date: 07<sup>th</sup> OCTOBER 2024**