



TC03919

Appeal number: TC/2013/06953

*INCOME TAX – Penalty – failure to file 2010-11 self-assessment tax return
– Whether reasonable excuse or “special circumstances” – No – Appeal
dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

JOCELYN PATRICK

Appellant

- and -

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

TRIBUNAL: JUDGE JOHN BROOKS

The Tribunal determined the appeal on 8 August 2014 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 7 October 2013 (with enclosures), HMRC’s Statement of Case submitted on 8 November 2013(with enclosures)[and the Appellant’s Response to the Statement of Case (with enclosures).

DECISION

Introduction

1. Mr Jocelyn Patrick appeals against a penalty of £300 imposed by HM Revenue and Customs (“HMRC”) for the failure to file his 2010-11 self-assessment tax return on time.

2. Although in his Notice of Appeal to the Tribunal Mr Patrick refers to an “earlier [penalty] of £100” also imposed for the failure to submit his 2010-11 return he did not appeal against this penalty within the statutory time limit of 30 days. I have considered whether to grant an extension of time to appeal under s 49 of the Taxes Management Act 1970 (“TMA”) and, having taken account of all the circumstances, in particular the absence of any reason or explanation for not appealing on time, concluded that it is not appropriate to do so in this case.

3. Also, as a preliminary point, I should state that I found Mr Patrick’s practice of responding to all letters, whether from HMRC or the Tribunal, by writing in manuscript in any spaces on the front and also on back of the letter he had received (sometimes with arrows to show in which direction these were to be read) rather than reply on a separate piece of paper to be somewhat confusing and made understanding his case considerably more difficult than it needed to be. Nonetheless I have painstakingly and carefully considered all of the papers before me including all of the issues and points raised by Mr Patrick even though, as these mainly refer to issues arising in relation to his 2008-09 tax return (and not the 2010-11 return with which this appeal is concerned) I have not considered it necessary to set out or specifically address each and every point he makes.

Law

4. All subsequent references to paragraphs, unless otherwise stated, are to the paragraphs of schedule 55 to the Finance Act 2009.

5. Under s 8 TMA on being given notice to do so a person is required to deliver a personal self-assessment tax return for a year of assessment (year 1) to HMRC by 31 October in the following tax year (year 2) for a non-electronic (ie paper) return and 31 January (in year 2) if the return is filed electronically (ie online). Section 8(2) TMA provides that every return:

... 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

6. A penalty of £100 is payable under paragraph 3 if a person who is required to file a return fails to do so by the due date.

7. However, if the failure continues “after the end of the period of 3 months beginning with the penalty date” and HMRC decide that a penalty should be payable, on the issue of a notice by HMRC, a penalty of £10 for each day that the failure continues during the period of 90 days beginning with the date specified in the notice may be imposed under paragraph 4.

8. The “penalty date” is, according to paragraph 1(4):

... the date on which a penalty is first payable for failing to make or deliver” a return.

9. If the failure continues after the end of a period of six months after the end of a period beginning with the penalty date a liability to a penalty will arise under paragraph 5 with the penalty being the greater of:

- (a) 5% of any liability to tax which would have been shown in the return in question, and
- (b) £300.

10. A further liability to a penalty will arise under paragraph 6, if the failure continues after the end of the period of 12 months beginning with the penalty date. Paragraph 6(5) provides that 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.

11. Paragraph 16 provides:

- (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.

12. Under paragraph 20 a person may appeal against the decision of HMRC that a penalty is payable and the amount of that penalty.

13. Insofar as it applies to the present case paragraph 22 provides:

- (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.

(5) In this paragraph “tribunal” means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of paragraph 21(1)).

14. Paragraph 23 provides:

(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 [ie the person] 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.

The legislation does not define “reasonable excuse” which is a matter to be considered in the light of all the circumstances of the particular case (see *Rowland v HMRC* [2006] STC (SCD) 536 at [18]).

Facts

15. It is not disputed that Mr Patrick was required, by s 8 TMA, to file a personal self-assessment tax return for 2010-11 and that the filing date for that return was either 31 October 2011 for a paper return or 31 January 2012 if filed online.

16. However, Mr Patrick did not have confidence in online filing, as stated in his appeal of 17 March 2013 to HMRC that he considered that:

These awaited corrections by HMRC [to his 2008-09 tax return] outstanding from HMRC's incorrect actions dictate that it remains unsafe for me to attempt to enter information on HMRC's “on-line” computer resources.

He therefore submitted a paper return for 2010-11 to HMRC. Although Mr Patrick claims that this return was filed by 31 January 2012, HMRC say, and I accept for the reasons below, that it was received by them on 31 January 2013.

17. On 15 February 2012, as the 2010-11 return had not been received, HMRC issued Mr Patrick with a late filing penalty notice in the sum of £100. Mr Patrick appealed against this penalty on 29 March 2012 on the grounds that the issues with his 2008-09 return were “still unresolved”. In the absence of any mention by Mr Patrick of his having submitted a 2010-11 tax return in his appeal against the February 2012 penalty notice I can only conclude, and find as a fact, that he did not file a paper version of 2010-11 tax return by 31 January 2012.

18. A further penalty, in the sum of £300 was issued by HMRC on 7 August 2012 as the return had not been received after six months from the filing date.

19. Although Mr Patrick's paper return was received by HMRC on 31 January 2013 as it contained a photocopied, as opposed to an original, signature and therefore did not satisfy the declaration requirement of s 8(2) TMA it was not accepted by HMRC. The return was accordingly sent back to him on 12 February 2013 for his signature. However, at the time HMRC prepared its Statement of Case for this appeal, 4 November 2013, Mr Patrick had not submitted his 2010-11 tax return.

20. As the return had not been filed 12 months after the penalty date a further penalty notice in the sum of £300 was issued to Mr Patrick on 19 February 2013. It is this penalty which is the subject of this appeal.

21. On 29 March 2013 Mr Patrick appealed to HMRC against the penalty. However, it was upheld following a review the outcome of which was notified to Mr Patrick in a letter dated 10 September 2013.

22. Mr Patrick appealed to the Tribunal on 7 October 2013 on the following grounds:

"HMRC were made aware throughout 2010 (and repeatedly since) that details in HMRC's records were not in accordance with what I had submitted on my 2009 [ie 2008-09] tax return in 2010, and were much to my disadvantage. HMRC sent me copies of "on-line" screen prints with incorrect detail when I had not submitted "on-line": I had submitted by written (manuscript) tax return. In spite of multiple communication, even to date nothing has been rectified. With wrong "on-line" tax return pages falsely purporting to be mine. Uncorrected still by January 2012, I was compelled to submit another written (manuscript) tax return for 2012 January instead of an "on-line" tax return, because of the danger of the earlier year's incorrect "on-line" copy pages (which were not completed by me) being incorrectly validated by my submitting any "on-line" return for 2011, before HMRC had corrected the anomaly "on-line" which HMRC had copied to me and had been clearly and repeatedly noted by me was incorrect.

Repeatedly I have communicated the problem as over the more than 2 years now different HMRC officers and individuals have given me to understand that HMRC is aware of the problem before fading into silence and/or inaction once again.

As this still had not been rectified for me by HMRC by the last week of 2012 January, I was compelled to submit a written return, in order to avoid the clear and present danger which HMRC had not (and still haven't yet to date) rectified.

It is unfair in this instance to penalise the situation which HMRC could have resolved so easily, and which instead they at HMRC choose to use apparently for attrition of one's essence in the grinding of requests and inaction from HMRC to alleviate this anomaly and release one from its grasp.

The decision should have been to waive the penalty."

Discussion and Conclusion

23. It is clear from his grounds of appeal, as well as subsequent correspondence and response to HMRC's Statement of Case that Mr Patrick is not happy with, as he sees it, the unfair conduct of HMRC. However, as this Tribunal, the Tax Chamber of the First-tier Tribunal, was created by statute its jurisdiction is defined and limited by legislation (eg the TMA and Finance Act 2009) and does not extend to the power to supervise the conduct of HMRC. This is clear from the decision, which is binding on me, of the Tax and Chancery Chamber of the Upper Tribunal in *HMRC v Hok Ltd* [2012] UKUT 363 (TC).

24. Therefore I can only consider whether Mr Patrick has a reasonable excuse for failing to file his 2010-11 self-assessment tax return on time or if the penalty should be reduced because of any "special circumstances".

25. Irrespective of any perceived error or difficulties that he may have encountered in relation to the submission of any previous self-assessment tax return Mr Patrick was still required by s 8 TMA to file a return for 2010-11. However, he has not done so as in the absence of an original (as opposed to photocopied) signature, the paper return received by HMRC on 31 January 2013 cannot be treated as satisfying s 8(2) TMA.

26. Therefore until a signed 2010-11 self-assessment tax return is received by HMRC it remains outstanding; as such Mr Patrick is liable to the penalties imposed on him unless he has a reasonable excuse for his failure to file the return or there are special circumstances for reducing them. Having carefully considered all the circumstances of the present case I am unable to find any reasonable excuse for the failure to file the 2010-11 self-assessment tax return or any special circumstances for reducing the penalties.

27. I therefore dismiss the appeal and confirm the penalty in the sum of £300.

Right to Apply for Permission to Appeal

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.

**JOHN BROOKS
TRIBUNAL JUDGE**

RELEASE DATE: 11 August 2014