



TC05744

Appeal number: TC/2017/00756

INCOME TAX – Penalty for failure to file tax returns – Appellant considering that he had no obligation to do so because he had no UK tax liability but failing to note the requirements of Section 8 Taxes Management Act 1970 - Appeal dismissed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

KRZYSZTOF KACZMARCZYK

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE TONY BEARE
MS REBECCA NEWNS**

Sitting in public at Fox Court, 30 Brooke Street, London EC1N 7RS on 15 March 2017.

The Appellant appeared in person

Mr Tony Burke, Officer of HM Revenue and Customs, appeared for the Respondents

DECISION

Introduction

1. This decision relates to appeals made by the Appellant against penalties imposed by the Respondents under Schedule 55 Finance Act 2009 (the “FA 2009”) for a failure to complete and deliver a tax return for each of the years of assessment 2011/12, 2012/13 and 2013/14 pursuant to notices received from the Respondents under Section 8 Taxes Management Act 1970 (the “TMA”).
2. The penalties in question, together with the interest relating thereto as at 24 February 2017, amounted to £3341.55.

Late notice of appeal

3. Before setting out our decision, we would note that the notice of appeal submitted by the Appellant did not cover all of the penalties (and was, in addition, submitted late). At the hearing, the Appellant asked us to extend the scope of his appeals to cover all of the penalties.
4. The legislation allows us to permit late appeals. However, sub-paragraph 20(4) of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (the “Tribunal Rules”) states that, if a notice of an appeal is provided after the end of any period specified in an enactment but the enactment provides that an appeal may be made or notified after that period with the permission of the Tribunal:-
- “(a) the notice of appeal must include a request for such permission and the reason why the notice of appeal was not provided in time; and
- (b) unless the Tribunal gives such permission, the Tribunal must not admit the appeal”.

5. In this case, the Appellant has clearly not complied with sub-paragraph 20(4)(a) of the Tribunal Rules as regards his appeals against certain of the penalties. However, at the hearing, the Respondents said that they had no objection to our admitting the appeals out of time. Sub-paragraph 7(2)(a) of the Tribunal Rules provides that, if a party has failed to comply with a requirement in the Tribunal Rules, the Tribunal may take such action as it considers just, which may include waiving the requirement. As the delays in this case were not material and the Respondents expressed no objection to our admitting the appeals out of time, we agreed to waive that requirement and to permit the appeals against all of the penalties to proceed.

Background

6. The background to the appeals is that the Appellant was, during part or all of each of the three years of assessment in question, a director of a UK incorporated company and was therefore sent a notice by the Respondents under Section 8 TMA requiring him to complete a tax return in respect of each year of assessment.

7. The Appellant does not deny receiving the notices but, in the course of the correspondence which has passed between him and the Respondents leading up to the hearing, he has repeatedly maintained that he had no obligation to complete any tax returns in respect of the relevant years of assessment because he had no liability to UK tax in respect of those years.

8. The Respondents, for their part, have tried to disabuse the Appellant of his view. They have pointed out to the Appellant that the absence of a UK tax liability is relevant to whether or not there is an obligation to file a tax return under Section 7 TMA but that Section 7 TMA applies only in circumstances where there is no extant notice of the obligation to file a tax return issued under Section 8 TMA, as is the case here. The Respondents' position is that the legislation quite clearly states that, upon receipt by a person of a notice under Section 8 TMA, that person has an obligation to file a tax return in respect of the relevant year of assessment.

Discussion

9. In our view, the Respondents are correct and the Appellant has misunderstood the extent of his obligations under the UK tax legislation. This is unfortunate because the Appellant maintains – and neither the Respondents nor we see any reason to disbelieve him – that he did not in fact have any income or capital gains which were taxable in the UK in respect of the years of assessment in question. In particular, it would seem that the Respondents have established to their satisfaction that the companies of which the Appellant was a director were dormant throughout the years of assessment in question and therefore that the Appellant was unlikely to have received or realised income or capital gains which were taxable in the UK.

10. If the Appellant had simply completed and delivered the tax returns that he was asked by the Respondents to complete in respect of those years of assessment, he would have had no liability to UK tax in respect of them. We would urge the Appellant to complete the tax returns as soon as possible on the basis that he does have an obligation to do so under UK law.

11. Given the likely absence of any substantive liability to UK tax, the quantum of the penalties and the related interest, at over £3,300, seems large. We recognise that the Appellant has been given repeated opportunities to correct his understanding of the law and has failed to take those opportunities. However, we do wonder whether the Respondents have been a little harsh in this case given that they have established that the companies in respect of which the Appellant was a director were dormant throughout the years of assessment in question.

12. Under Section 8B TMA, the Respondents would have been able to withdraw their notices under Section 8 TMA in respect of the years of assessment 2012/13 and 2013/14 (but not the year of assessment 2011/12) by extending the withdrawal period referred to in sub-section 8B(6) TMA and could then have cancelled the related penalties for those years of assessment under paragraph 17A Schedule 55 FA 2009.

13. Indeed, at the hearing, the Appellant referred to an acquaintance of his who, upon receiving similar notices from the Respondents and responding in like fashion to the Appellant, had not been penalised for failing to complete the requested tax returns. So it would seem that, in at least one other case, the Respondents have been prepared to exercise their powers under Section 8B TMA and paragraph 17A Schedule 55 FA 2009 to avoid this eventuality.

14. Alternatively, the Respondents could have determined that these were “special circumstances” justifying an abatement in the penalties. In their review decision of 14 November 2016, the Respondents made it clear that they had considered whether or not the Appellant’s circumstances amounted to “special circumstances” and had concluded to the contrary.

15. Whilst we think that it is unfortunate for the Appellant that the Respondents have not exercised either of their discretions in this regard, we do not have the power to substitute our own judgment for that of the Respondents in this regard unless the Respondents’ decision in either case can be said to be flawed in the judicial review sense of that expression. We do not consider this to be the case. We have found no evidence that the Respondents’ determination that there were no “special circumstances” was unreasonable in the judicial review sense of the expression. And, even if the Respondents failed to consider the possibility of extending the necessary time period for withdrawing, and then withdrawing, the notices in respect of the years of assessment 2012/13 and 2013/14 pursuant to Section 8B TMA, we do not think that that failure was sufficiently unreasonable in the judicial review sense of the expression for the Respondents’ decision to be over-turned.

16. This means that we would be able to abate or mitigate the penalties imposed on the Appellant in this case only if we could conclude that:-

(a) the penalties offend against the principle of proportionality – that is to say, the penalties go beyond what is strictly necessary for the objectives pursued and are disproportionate to the gravity of the infringement; or

(b) the Appellant has a reasonable excuse for his non-compliance.

17. Turning to the first of those, it is clear that the penalties imposed by Schedule 55 FA 2009 are wholly within the margin of appreciation which is conferred on Parliament for devising a suitable penalty regime. There is nothing disproportionate about any of the penalties that has been imposed in this case. The quantum of the aggregate amount at stake is a function of the fact that the Appellant’s failure related to three separate years of assessment and has been ongoing for over 12 months. So we do not consider that the penalties in this case contravene the principle of proportionality.

18. As for the second, we do not think that the Appellant does have a reasonable excuse for his failure in this case. Ignorance of the law is not a reasonable excuse,

particularly where the Respondents have repeatedly explained to the Appellant that he was looking at the wrong provision in the legislation – that is to say, Section 7 TMA instead of Section 8 TMA.

5 19. In conclusion, and with some regret given the quantum of the penalties, we dismiss the Appellant’s appeals against the penalties that have been assessed upon him.

10 20. 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 paragraph 39 of the Tribunal Rules. 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.

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**TONY BEARE
TRIBUNAL JUDGE**

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RELEASE DATE: 28 MARCH 2017