



TC05815

Appeal number: TC/2012/10883

INCOME TAX – penalties for late submission of returns – Sch 55 FA 2009

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

SUSAN ROBERTS

Appellant

- and -

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

TRIBUNAL: JUDGE CHARLES HELLIER

The Tribunal determined the appeal on 13 April 2017 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 2 December 2012 (with enclosures), HMRC's Statement of Case with enclosures acknowledged by the Tribunal on 30 January 2017 (with enclosures).

DECISION

1. Mrs Roberts has been assessed by HMRC with penalties totalling £1,600 imposed by HMRC under Schedule 55 Finance Act 2009 for a failure to submit her tax return for 2010/11 in time.

2. The penalties were:

(1) A £100 late filing penalty under para 3 Sch 55, being a penalty for submitting the return after the due date, assessed on 14 February 2012; and

(2) A penalty of £900 under para 4 Sch 55, being £10 for each day the return was late after the date 3 months after it was due, assessed on 7 August 2012;

(3) A £300 penalty under para 5 Sch 55, being a penalty for submitting the return more than 6 months after the day after the return was due, also assessed on 7 August 2012, and

(4) A £300 penalty under para 6 Sch 55 for submitting a return more than 12 months after the day after the return was due, assessed on 19 February 2013..

3. Mrs Roberts' Notice of Appeal is dated 2 December 2012 before the date the last of these penalties was assessed. In that Notice of Appeal she states that the amount of the penalty she is appealing against is "unknown" and that HMRC's review letter was dated 30 October 2012.

4. In their statement of case HMRC treat Mrs Roberts' appeal as being against all four penalties. That statement was sent to Mrs Roberts and she was asked if she wished to submit a Reply to it to the tribunal. She did not.

5. I thought it likely therefore that Mrs Roberts intended that the tribunal should consider her appeal to be against all four penalties and that HMRC intended similarly. I consider that in the circumstances it would be fair for all the penalties to be considered. I am therefore treating Mrs Roberts' appeal as being against all four of them.

6. It appeared that a formal review of the penalties had been neither offered nor sought so that section 49D (1) to (3) and the tribunal could deal with the appeal.

7. In her Notice of Appeal Mrs Roberts gives as her grounds of appeal the following:

(1) her only taxable income derives from a joint interest in a property which is rented out;

(2) she had been asking her accountant to make her return since "last year". The notice of appeal is dated December 2012 so I assume that this refers to occasions in 2011;

(3) her accountant had family health issues and had assured her that he was in contact with HMRC who had granted him more time to make the returns; and

(4) that she lives abroad (because she has severe arthritis) and comes to the UK for only four weeks in any year.

8. In a letter of 9 March 2012 to HMRC Mrs Roberts says that she appeals against the penalty on the grounds of her own bodily ill health, and the physical and mental ill health of her husband.

9. In their statement of case HMRC say:

(1) That Mrs Roberts' residence outside the UK is no reason not to complete a tax return on time;

(2) That they consider that her illness would have had to prevent her from controlling her affairs for it to constitute a reasonable excuse for the delay;

(3) That her husband's ill health would have had to take up a great deal of her time before they would consider it to be a reasonable excuse;

(4) The email correspondence between Mrs Roberts and accountant refers to her accountant's problem in the period from June 2012 to September 2012. There is, they say nothing to excuse his delay in the period 1 February 2012 to May 2012.

Discussion

10. The provisions of the legislation are set out accurately in HMRC's Statement of Case. There is no need for me to repeat them here.

11. The evidence available to me to decide on the primary facts was limited to that in the documents before me. The Appellant did not make a Reply to HMRC's Statement of Case, so I had nothing else before me other than that and the Notice of Appeal and the documents which came with them from which to make any factual findings. That is particularly important because the onus of proving facts to displace the penalty rests on the Appellant.

12. In para 9 above I have recited the arguments made by HMRC in their statement of case. Arguments (2), (3) and (4) are in my view an invitation to provide further information. Had Mrs Roberts provided this tribunal with chapter and verse about the effects of her and her husband's illness, and with information about her accountant's family's health in the early part of 2012, that might, depending of course on its substance, have enabled me to make quite different findings.

13. I find that the return for 2010/11 was submitted electronically, was due on 31 January 2012 and was not received by HMRC until 19 May 2013. It was thus some 1 year and 5 months late,

14. The appellant did not dispute the calculation of the penalties and there was nothing in the papers before me to cast any doubt on their computation. I conclude that they were correctly calculated and accordingly that, subject to any particular excusing provisions of Sch55, the assessment of the penalties was authorised by Sch 55.

15. The only provisions of Sch 55 which could avail Mrs Roberts are (i) para 23 which provides that a penalty does not arise for a failure if the taxpayer has a reasonable excuse for the failure, and (ii) para 16 which provides for remission or abatement in “special circumstances”. I therefore turn first to consider whether at any
5 tie relevant to the penalties Mrs Roberts *has shown* that she has a reasonable excuse.

16. I find that Mrs Roberts suffers form arthritis and lives abroad for most of the year. There was no evidence before me which indicated that either of these facts prevented her from filling in and returning her tax return on time. Thus neither of them constitute an excuse, and so neither can be a reasonable excuse.

10 17. I find that Mrs Roberts husband was ill in body and mind. I have no evidence before me of the severity of his illness, how it affects him, what calls it makes upon Mrs Roberts, physically or emotionally, or whether it is chronic or acute in its manifestation. I cannot but conclude that it was not shown to be severe enough to affect Mrs Roberts’ ability to organise the making of her 2010/11 tax return before the
15 due date. It therefore cannot constitute a reasonable excuse for the delay.

18. There was no evidence to explain why Mrs Roberts’ accountant had not submitted her return before 31 January 2012, or why it had not been submitted in the period between 1 February 2012 and May 2012. I find therefore that it was not shown that the accountant had any excuse for the delay in that period.

20 19. I have recorded that Mrs Roberts says that she had been asking her accountant to make her return since “last year”, which I have taken to be 2011. I find that Mrs Roberts was relying upon her accountant to submit her return. Such reliance may constitute a reasonable excuse only if she took reasonable care to avoid the failure to deliver the return on time. There was no detail in the evidence before me as to how
25 often Mrs Roberts contacted her accountant in the period before 31 January 2012 or between then and June 2012. That means that there was insufficient evidence for me to conclude that Mrs Roberts took reasonable care in this period to get her return delivered.

30 20. I therefore find that in this period she had no reasonable excuse for the continuing failure.

21. In the period from June 2012 to September 2012 Mrs Roberts has provided email correspondence between her (or on her behalf) with her accountant. I find that this correspondence shows that her accountant was beset by problems with the health of his mother and father. The problems are shown to be serious. I find that in this
35 period these problems so consumed his attention that he did not attend properly to his duties. I find that they were an excuse – and a reasonable excuse for his failure.

22. Further in this period the correspondence shows that Mrs Roberts (or her husband on her behalf) was pressing the accountant to submit the return. I find that that was taking reasonable care to avoid the continuing failure to submit the return.

40 23. There was no evidence before me in relation to the period from October 2012 to the date of submission of the return in May 2013. I consider that the effects of the

5 accountant's parents' illness as recorded in relation to the June to September period also affords a reasonable excuse for the failure to submit a return in October (thus allowing a reasonable time to remedy the failure), but I am unable to conclude – on the evidence before me - that there was any excuse for the failure between 1 November 2012 and 19 May 2013. Nor was there any evidence of steps taken by Mrs Roberts in that period to avoid the continuing failure.

24. In summary I find that only in respect of the 5 month period from 1 June to 31 October 2012 is it shown that Mrs Roberts had any reasonable excuse for her failure.

10 25. I consider that the effect of para 23 is that a day of failure is to be disregarded if there is on that day a reasonable excuse for the failure. In other words I do not consider that an excuse has to continue for the whole period of the default in order for para 23 to provide any relief. I so hold notwithstanding para 23(2)(c) which to my mind extends, rather than limits the scope of the relief.

26. I therefore find that:

15 (1) The return was late and a penalty is exigible under para 3 Sch 55

20 (2) The failure to deliver the return continued after the end of the period 3 months after the day after the return was due, that is to say from 1 May 2012 and continued until 31 May 2012: that was 30 days; then there was a period from 1 June to 31 October 2012, in which, by reason of a reasonable excuse there was not failure to deliver the return; and then there was a further period of 60 days unexcused failure from 1 November 2012 to 30 December 2012. In all that was 90 days unexcused failure after the end of the first three months of delay so a penalty of £900 arises in respect of that period under para 4 Sch 55.

25 (3) The period of unexcused failure then continued after the end of 30 December. The total period of failure therefore lasted 6 months and a penalty of £300 arose under para 5 Sch 55.

30 (4) The unexcused failure then continued from 1 January to 19 May 2013. The total period of unexcused failure was thus just over 10 ½ months. That was insufficiently long to trigger a penalty under para 6 Sch 55. Thus the penalty assessed under para 6 was not due.

27. I find that there was not evidence which I could regard as giving rise to special circumstances within para 16 Sch 55.

Conclusion

35 28. I affirm the penalties of £100, £900, and £300 under para 3, 4 and 5 Sch 55 and allow the appeal in respect of the penalty of £300 under para 6.

Rights of Appeal

29. 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.

5

**CHARLES HELLIER
TRIBUNAL JUDGE**

10

RELEASE DATE: 24 APRIL 2017