



TC06294

Appeal number: TC/2017/05006

Income tax - Schedule 55 Finance Act 2009 - fixed and daily penalties for late filing of self-assessment returns - Appellant living abroad - service of penalties by HMRC at last known address - whether reasonable excuse - no - appeal dismissed

FIRST-TIER TRIBUNAL

TAX

AMANDA JANE HEADEN

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE MICHAEL CONNELL
MEMBER SHAMEEM AKHTAR**

Sitting in public at Alexandra House, The Parsonage, Manchester on 3 October 2017

The Appellant did not attend and was not represented.

Mr Philip Jones, Officer of HMRC, for the Respondents

DECISION

1. This is an appeal by Ms Amanda Jane Headen (“the Appellant”) against decisions by the Respondents (“HMRC”) to impose penalties under Schedule 55 of the Finance Act 2009 (“FA”) for the late filing of self-assessment returns for the tax years ending 5 April 2011 and 5 April 2012.

2. The total amount of the penalties imposed in respect of the failures is £3,200, representing £1,600 late filing penalties for the failure to file on time, a return for 2010-11 and £1,600 for the failure to file on time, a return for 2011-12.

3. Under s 8 Taxes Management Act 1970 (“TMA”), the Appellant was required to deliver for the year ended 5 April 2011 a non-electronic return by 31 October 2011 or an electronic return by 31 January 2012. The return was received on 24 June 2014. Therefore it was late and penalties were chargeable.

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5. If a return is received late, a penalty is chargeable for the late filing unless the taxpayer has a reasonable excuse for not filing the return on time.

6. The penalties for late filing of a return can be summarised as follows:

- i. A penalty of £100 is imposed under Paragraph 3 of Schedule 55 FA for the late filing of the Individual Tax Return.
- ii. If after a period of 3 months beginning with the penalty date the return remains outstanding, daily penalties up to a total of £900 are imposed under Paragraph 4 of Schedule 55 FA.
- iii. If after a period of 6 months beginning with the penalty date the return remains outstanding, a penalty of £300 is imposed under Paragraph 5 of Schedule 55 FA.
- iv. If after a period of 12 months beginning with the penalty date the return remains outstanding, a penalty £300 is imposed under Paragraph 6 of Schedule 55 FA.

The above penalty regime for the late filing of income tax self-assessment returns was introduced in FA 2009 with effect from 6 April 2011 in respect of returns for 2010-11 and later years

7. Penalties were imposed as set out in the table below.

| Date | Year | Description | Amount |
|------------------|--------------|--|---------------|
| 14 February 2012 | 2010 to 2011 | Late Filing Penalty under Schedule 55 FA 2009 | £100 |
| 7 August 2012 | 2010 to 2011 | Daily Penalty under Schedule 55 FA 2009 | £900 |
| 7 August 2012 | 2010 to 2011 | 6 Month Late Filing Penalty under Schedule 55 FA 2009 | £300 |
| 1 April 2014 | 2010 to 2011 | 12 Month Late Filing Penalty for under Schedule 55 FA 2009 | £300 |
| 1 April 2014 | 2011 to 2012 | Late Filing Penalty under Schedule 55 FA 2009 | £100 |
| 1 April 2014 | 2011 to 2012 | Daily filing Penalty under Schedule 55 FA 2009 | £900 |
| 1 April 2014 | 2011 to 2012 | 6 Month Late Filing Penalty under Schedule 55 FA 2009 | £300 |
| 1 April 2014 | 2011 to 2012 | 12 Month Late Filing Penalty for under Schedule 55 FA 2009 | £300 |

Points at issue

8. Whether the Appellant had to file tax returns for 2010-11 and 2011-12 and whether the penalties charged by HMRC were properly imposed.
- 5 9. Whether the Appellant has a “reasonable excuse” for the late filing of each of the tax returns.
10. Whether there are any “special circumstances”, by virtue of which the penalties ought to be reduced.

Legislation

- 10 11. The main legislation is detailed below
- Section 8 Taxes Management Act (TMA) - Return of an individual’s income
- Paragraph 3 of Schedule 55 to the Finance Act (FA) 2009 - Late filing penalty
- Paragraph 4 of Schedule 55 to the FA 2009 - Daily penalties
- 15 Paragraph 5 and 5(a) of Schedule 55 to the FA 2009 - 6 Months late filing penalty
- Paragraph 6 and 6(a) of Schedule 55 to the FA 2009 - 12 Months late filing penalty

Paragraph 16 of Schedule 55 to the FA 2009 - special circumstances.

Paragraph 23 of Schedule 55 to the FA 2009 - reasonable excuse.

Section 115 TMA 1970 which deals with the delivery and service of documents.

5 Section 7 of the Interpretation Act 1978 which deals with service by post.

Background

12. The Appellant has been in self-employment since at least the 2005-06 tax year and will therefore be accustomed to filing SA returns.

10 13. On 30 October 2008 SAH Systems Limited [Company number 06737617] was incorporated. The Company is described at Companies House as a ‘software consultancy and supply’ business. The Appellant and Stephen Headen were the appointed directors. The registered address of the Company was 25 Adswood, Old Hall Road, Cheadleholme, Cheadle, SK8 5QZ, which was also described as the Appellant’s address.

15 14. In the year 2008-09 a £100 penalty was issued for failing to file a return. The penalty (raised under the previous legislation) was cancelled in September 2010. As far as HMRC were concerned, returns had been issued to the last known address or the Appellant.

20 15. In the Company’s last annual return to Companies House, dated 30 October 2010, the Appellant is still named as a director and the company secretary. She remained a director and the company secretary until 28 August 2012 when the Company was dissolved.

16. No annual return was filed for the year to 30 October 2011.

25 17. HMRC had issued the 2010-11 return to the Appellant on 6 April 2011. The return is described as a “Full Return” which means a paper copy was issued to the Appellant. The return due date was shown as 31 January 2012. The return was received on 24 June 2014, which is some two years and four months plus late.

30 18. HMRC issued the 2011-12 return to the Appellant on 6 April 2012. Again the return is described as a “Full Return”. The return due date was shown as 31 January 2013. The return was received on 24 June 2014 which is some one year four months plus late.

35 19. The returns were issued to 25 Adswood, Old Hall Road, Cheadleholme Cheadle, SK8 5QZ which was the residential address held for the Appellant on HMRC’s computer systems between 17 August 2006 and 26 March 2014. It was also the registered office of SAH Systems Limited until its dissolution in August 2012.

20. This address was therefore the only known place of residence of the Appellant, and HMRC submit that the returns were properly served under s 8 TMA to the Appellant and that the use of this address meets the requirements of s 115 TMA.

21. In addition under s 7 of the Interpretation Act 1978, the letter was served in the ordinary course of post.

22. In a letter dated 4 April 2017 from the Appellant's accountants they say:

"Mrs. Headen was a Spanish resident in the period October 2006 until she returned to the UK in October 2013. She was not therefore required to fill in a UK tax return. She lived at Bungalow 15 Vista Mar, Calavadella, San Jose, Ibiza, Spain. During that time she had no home in the UK."

23. HMRC say that they have never had a Spanish address registered from the Appellant. There is no trace of a Spanish address being notified to HMRC. The SA notes make reference to addresses but never a Spanish one.

24. A taxpayer must tell HMRC if either they are:

- Leaving the UK to live abroad permanently
- Going to work abroad full-time for at least one full tax year.

25. The taxpayer should complete form P85. There is ample guidance on how to do this in HMRC's online advice – *'Income Tax: leaving the UK - getting your tax right (P85)'*.

26. Even if a taxpayer lives abroad they still have to make a return of their UK income. Most people when they do move have mail forwarded to them, but by law, whether the taxpayer did this or not, the returns and penalty notices are deemed to have been served. A search online will tell a taxpayer of the need to complete a return if they are sent one. Many 'ex-pats' have to complete tax returns. Leaving the UK does not mean they do not have to make returns to HMRC.

27. HMRC's records show that the Appellant has been a company director from 7 December 2005, which is why returns were first issued. It appears she retired as a director, but then subsequently re-registered for self-assessment on 31 October 2008, being the date of her appointment as a director of SAH Systems Limited.

28. The returns were received on 24 June 2014. They were filed online and whoever completed it must have known the username and password. The 2010-11 return confirms the directorship. The 2011-12 return again confirms the

employment. Both returns are ‘nil returns’. Whoever completed them had access to the online account.

5 29. In the returns the Appellant said that her husband ran the company SAH Systems Limited, she received nothing from the company and that she was a director in name only.

30. Between June 2014 and early 2017 it appears that nothing more happened until HMRC’s Debt Management department engaged the collection process and contacted the Appellant.

10 31. On 4 April 2017, the Appellant’s accountant Chronicle Accountants Limited, Whaley Bridge, High Peak wrote to HMRC saying that the penalties should be cancelled because the Appellant had lived in Spain since October 2006, and was not required to complete a UK tax return.

32. HMRC treated this as an appeal but upheld the penalties by letter on 7 June 2017.

15 33. The Appellant appealed to the Tribunal on 14 June 2017.

Relevant legislation

34. The legislation relevant to service and due delivery of documents is contained in s 115 TMA which states -

20 ‘ (1) A notice or form which is to be served under the Taxes Acts on a person may either be 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 -

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

(b) in the case of a company, at any other prescribed place and, in the case of a liquidator of a company, at his address for the purposes of the liquidation or any other prescribed place.’

And in Section 7 of the Interpretation Act 1978, which states -

30 ‘Where an Act authorises or requires any document to be served by post (whether the expression “serve” or the expression “give” or “send” or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter
35 would be delivered in the ordinary course of post.’

Appellant's grounds of appeal

35. The Appellant's accountants in the Notice of Appeal lodged with the Tribunal submit the following grounds of appeal -

5 “Our client was not tax resident in the UK 2006-2013. No tax return should have been issued or filed. Mrs. Headen did not file any herself - she does not know who did (probably her ex-husband)

 All tax returns issued for the period 2005-2006 to 2012-2013 should be cancelled and consequently all fines, penalties and interest quashed.”

HMRC's case

10 36. HMRC can issue anyone with a tax return at any time. Section 8 TMA is quite clear. Once an individual is given notice by HMRC to make a return of income and capital gains, they must make such a return within the time allowed.

15 37. This is not a difficult or complicated concept; it is clear and straight-forward. Whether or not the taxpayer thinks a return is or is not due is not relevant. Once an individual is issued with a notice to file, they must make a return or they will fall foul of the legislation. A nil return is still a return and to file a return would stop late filing penalties.

20 38. HMRC send penalty notices in February when returns are not received by 31 January. They also sent letters in June and July 2012 warning that HMRC is charging daily penalties if a return is over three months late.

25 39. Penalties were issued on 14 February 2012 and 7 August 2012. This would have put the Appellant on notice that returns had to be filed. The Appellant must have been aware that the Company of which she was a director and Company secretary was still extant and that she had an obligation to file a return even if it was a nil return.

 40. On 16 May 2014, HMRC received an appeal from the Appellant saying that she had not worked for 15 years. The appeal was rejected as the Appellant had been a director of SAH Systems Limited from incorporation in 2008 until its dissolution in 2012.

30 41. HMRC accept that the penalties might be seen large at £1,600 for each year, but they have been set by Parliament. Up until 1 April 2011 penalties for late filing were linked to a return having a liability. If there was no liability the penalties were reduced to nil. HMRC had charged late filing penalties for 2009-10 under the old legislation of s 93 TMA 1970. A nil return meant that under the old rules the penalties were reduced to nil. Parliament changed this with the introduction of Schedule 55 FA 2009 removing the mitigation to zero. Parliament intended that if you are given notice to file a return, you must do so and if you do not you will be charged penalties which cannot be reduced to zero if you had no

liability. The intention is to make filing requirements harsher to encourage people to file returns if required to do so.

5 42. There is nothing which would suggest there were any special circumstances. Ignorance of the law is not a reasonable excuse and a simple telephone call or letter to HMRC would confirm the need to file a return. Not only did HMRC issue returns but also it sent penalty warning letters.

Conclusion

10 43. Self-assessment places a greater degree of responsibility on customers for their own tax affairs. This includes ensuring that HMRC receive returns on time. The tax guidance provided by HMRC and HMRC's website give plenty of warning about filing deadlines. It is the customer's responsibility to make sure they meet the deadlines.

15 44. The Appellant has been making self-assessment tax returns for many years. Therefore, HMRC consider her to be experienced with the self-assessment system including the due dates for paper and online returns.

45. When a person appeals against a penalty they are required to have a reasonable excuse which existed for the whole period of the default. There is no definition in law of reasonable excuse, which is a matter to be considered in the light of all the circumstances of the particular case.

20 46. In considering whether the Appellant has a reasonable excuse for the default it is necessary to consider her actions from the perspective of a prudent tax-payer exercising reasonable foresight and due diligence and having proper regard for their responsibilities provided by legislation. A reasonable excuse is normally an unexpected or unusual event, either unforeseeable or beyond the person's control,
25 which prevents him or her from complying with an obligation which otherwise would have been complied with.

47. It is accepted that the onus is on HMRC to show default. Once HMRC have discharged that burden it is for the Appellant to provide a reasonable excuse for her failure to submit the returns by the due dates.

30 48. The Appellant may have been residing in Spain and received no income from SAH Systems Limited. Nonetheless she was a Director, and obliged to file tax return for the years in question. She should have been aware of the fact that penalties would be levied in the event of a late return, even if it was a nil return.

35 49. We agree with HMRC that there are no special circumstances which may have otherwise allowed the Tribunal to abate or discharge the penalties.

50. Late filing penalties for the years in question are due in accordance with Schedules 55 FA 2009.

51. Where a return is filed after the relevant deadline, a penalty is charged. The later a return is received, the more penalties are charged. The same applies with regard to the payment of tax due. This information was clearly shown on the notices to file issued to the Appellant in each year.

5 52. This appeal is not concerned with specialist or obscure areas of tax law. It is concerned with the ordinary every day responsibilities of the Appellant to ensure her tax returns were filed by the legislative date and payment made on time. The Appellant had been successfully filing tax returns since 2006 and would have been aware of the filing deadlines.

10 53. We concur with HMRC's submissions and agree that the late filing penalties have been charged in accordance with legislation and the Appellant has not shown a reasonable excuse for the late filing of her returns for each of the years in question.

54. The appeal is therefore dismissed and the late filing penalties confirmed

15 55. 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.

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MICHAEL CONNELL

25 **TRIBUNAL JUDGE**

RELEASE DATE: 9 January 2018

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