



[2019] UKFTT 539 (TC)

TC07333

Income tax - penalty for failure to make returns

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2019/02650

BETWEEN

MR J LUFFE

Appellant

-and-

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

Respondents

TRIBUNAL: JUDGE MALEK

The Tribunal determined the appeal on 2 August 2019 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 18 April 2019 (with enclosures), HMRC's Statement of Case (with enclosures) dated 22 May 2019.

DECISION

INTRODUCTION

1. The appellant is appealing against penalties that HMRC have imposed under Schedule 55 of the Finance Act 2009 (“Schedule 55”) for a failure to submit an annual self-assessment return on time.
2. The penalties that have been charged can be summarised as follows:
 - (1) a £300 “six month” penalty under paragraph 5 of Schedule 55 imposed on or around 10 August 2018.
 - (2) “Daily” penalties totalling £900 under paragraph 4 of Schedule 55 imposed on or around 31 July 2018.
3. The appellant’s grounds for appealing against the penalties can be summarised as follows:
 - (1) He argues that there was a “reasonable excuse” for any failure to submit the return on time.
4. The appellant’s appeal to HMRC under s31A TMA 1970 was made outside the statutory deadline. HMRC initially refused consent under s49(2)(a) of TMA 1970. However, in their Statement of Case HMRC have said that they have no objection to the taxpayer’s appeal under s31A being made late. I therefore consider that HMRC have now given consent under s49(2)(a).

Findings of fact

5. Based upon the evidence before me I make the following finds of fact:
 - (1) I am satisfied, on the balance of probabilities that a notice to file a return for the year 2016/2017 was sent to Mr. Luff on or around 6 April 2017 at his residential address. This is evidenced by extracts of computer records produced by HMRC and is not contradicted by Mr. Luff.
 - (2) Accordingly Mr. Luff’s return for the tax year 2016/2017 ought to have been submitted on or before 31 January 2018.
 - (3) Mr. Luff’s return was prepared for submission on his behalf by his accountants by around 30 April 2018 and was sent to him for his signature. However, it appears that although he returned his documents to his accountants they did not receive them.
 - (4) In the event Mr Luff’s electronic return for the year 2016/2017 was filed, and received by the Respondents, on 13 November 2018.
 - (5) On or around 31 July 2018 the Respondents sent notice of the “daily” penalty assessment in the sum of £900 to the Appellant. Although it is contended by the Appellant that he did not receive any reminders about the daily increase in penalties I find that he had notice of the applicable “daily” penalties. This is because I accept that the first £100 penalty notice (which has been paid by the Appellant) was received by Mr. Luff on or around 13 February 2018. This notice also sets out the fact that daily penalties can be charged from 1 May and accrue at a rate of £10 a day up to a maximum of £900.
 - (6) On or around 10 August 2018 HMRC sent to the Appellant a notice of assessment to a “six month” penalty in the sum of £300. I am satisfied, on the balance of

probabilities, that this notice of assessment was received by Mr. Luff on or around 10 August 2018. Evidence is presented by HMRC in the form of computer records and this is not challenged by the Appellant.

DISCUSSION

6. Relevant statutory provisions are included as an Appendix to this decision.

7. I have concluded that the tax return for the 2016/17 tax year was submitted on or around 13 November 2018. It should have been submitted by 31 January 2018. Subject to considerations of “reasonable excuse” set out below, the penalties imposed are due and have been calculated correctly.

8. Before turning to considering whether or not Mr. Luff has a reasonable excuse for his failure to submit a return on time I should like to say a word or two about my findings at paragraph 5(5) above. Mr. Luff appears to be saying that he received no “reminders” about the increase in daily penalties. It is pertinent to note that Mr. Luff is talking about reminders – i.e. it is implied that he was aware of the fact that daily penalties applied but this ought to have been brought to his attention at a later date. There is, in my judgment, no requirement for the Respondent to remind taxpayers about their liability to daily penalties providing that the taxpayer was properly notified in the first place. The Court of Appeal considered in *Donaldson v HM Revenue and Customs [2016] EWCA Civ 761* whether or not the wording in the notice imposing a £100 penalty was also sufficient to notify the taxpayer of his or her potential liability to further pay daily penalties. It found that the wording was sufficient and I am bound by that decision. That is the reasoning that underpins my findings at paragraph 5(5) above.

9. The Upper Tribunal in *Perrin v HMRC [2018] UKUT 156 (TCC)* sets out guidance the FTT should follow when evaluating “reasonable excuse” arguments and I adopt that approach below.

10. The starting point is to confirm the burden of proof. The Respondents, having established that the penalties imposed are due and have been calculated correctly, relinquish the burden of proof in favour of the Appellant. It is now for the Appellant to make out a “reasonable excuse”.

11. It is said on Mr. Luff’s behalf that he sent his documents to his accountants and that these documents were lost in the post. In the meantime Mr. Luff went away to work assuming that his accountants had received the documents that he had sent. It is said that this is the cause of the delay in filing his return. These factual matters are not challenged by HMRC and I accept them.

12. The next question for me to consider is whether these facts, viewed objectively, do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In my judgment these facts do not constitute an objectively reasonable excuse. It was incumbent upon Mr. Luff to check that his accountants had received important documents or for his accountants to warn him that these had not been received. It is further far from clear where or for how long Mr. Luff went away for work or how this interfered with his ability to communicate with others. There is no evidence with regards to Mr. Luff’s experience or other attributes which I could have usefully taken into account in assessing Mr. Luff’s reason for default.

CONCLUSION

13. For the reasons set out above I have concluded that the penalties imposed were due and correctly calculated. Mr. Luff has failed to establish that he had a reasonable excuse for his default.

14. Accordingly, I dismiss Mr. Luff's appeal and affirm HMRC's decision.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

2. 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.

**ASIF MALEK
TRIBUNAL JUDGE**

RELEASE DATE: 19 AUGUST 2019