



TC07340

Appeal number: TC/2017/06305

INCOME TAX-late filing of tax return- penalties-whether reasonable excuse

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

CHRISTINE NORRIS

Appellant

- and -

THE COMMISSIONERS FOR HER MAJESTY'S Respondents

REVENUE & CUSTOMS

**TRIBUNAL: JUDGE MARILYN MCKEEVER
MR JOHN ROBINSON**

**Sitting in public at Ashford Hearing Centre, Ashford House, Ashford TN23 1YB
on 31 May 2018**

Having heard Mr Peter Norris, the Appellant's representative for the Appellant and Mr A Barrett, Presenting Officer, for the Respondents

DECISION

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 for the tax year 2013-14 on time.
2. The penalties that have been charged can be summarised as follows:
 - (1) a £100 late filing penalty under paragraph 3 of Schedule 55 imposed on 18 February 2015
 - (2) a £300 “six month” penalty under paragraph 5 of Schedule 55 imposed on 14 August 2015
 - (3) a £300 “twelve month” penalty under paragraph 6 of Schedule 55 imposed on 23 February 2016. There is no suggestion that there was any deliberate withholding of information.
 - (4) “Daily” penalties totalling £ 900 under paragraph 4 of Schedule 55 imposed on 14 August 2015.
3. The appellant’s grounds for appealing against the penalties can be summarised as follows: she argues that the return had been submitted only a few months late and she had a reasonable excuse for filing the return late.

Findings of fact

4. The Notice to file a tax return and the penalty notices had been sent to the correct address and had been received by the Appellant.
5. The Appellant had filed a paper return for the tax year 2012-13. She had submitted a return for the first time in relation to the 2011-12 tax year. This was late and penalties were charged but subsequently cancelled. The Appellant therefore has some experience of filing tax returns and is aware that penalties are chargeable for late returns.
6. A paper return was due by 31 October 2014 and an online return on 31 January 2015. Mrs Norris’ return was submitted online on 26 April 2017.
7. We heard that Mr Norris dealt with all his wife’s tax affairs for her. Mr Norris said that he had sent his wife’s paper return to HMRC and it was only a few months late. This was owing to pressure of work and the fact he did not really understand tax. He had not realised that the deadline had passed. He thought that he might have sent the return some time in early 2015 but was not sure when and he had not kept a copy. The Appellant did not produce any other evidence that a paper return had been submitted at all, or as to the timing of the alleged submission. We considered that the Appellant had not proved, on the balance of probabilities, that a paper return had been submitted and we concluded that no paper return had been submitted.

8. In any event, during various telephone calls with HMRC, Mr Norris had been informed that his wife's 2013-14 tax return was outstanding and it needed to be submitted as soon as possible. Mr Norris said the calls were a response to the receipt of penalty notices. HMRC's records show that Mr Norris or Mrs Norris were told no return had been received and advised about the need to submit a return on 3 March 2015, 19 March 2015, 21 August 2015 and 13 April 2016. There were other calls which indicated Mr Norris knew the return was still outstanding and HMRC's letters in response to his appeals on behalf of the Appellant stated that the appeals could not be considered until the tax return was submitted.

Discussion

9. Relevant statutory provisions are included as an Appendix to this decision.
10. We have concluded that the tax return for the 2013-14 tax year was submitted on or around 26 April 2017. It should have been submitted by 31 January 2015. Subject to considerations of "reasonable excuse" set out below, the penalties imposed are due and have been calculated correctly.
11. Mr Norris dealt with all his wife's tax affairs. He was clearly aware that the tax return had not been filed. Even if he thought it had been filed, he knew it had not been filed when he received the first penalty notice and spoke to HMRC on 3 March 2015. Had he submitted a return at that point, the penalty would have been limited to £100.
12. We have noted that the Appellant produced no evidence to show if or when a paper return had been submitted and accordingly did not discharge the burden of proving that a paper return had been submitted. Even if such a return had been submitted, it had clearly not been received by HMRC. Mr Norris knew this in March 2015 if not before, yet he delayed for over two years before submitting the return online. He provided no explanation for this lengthy delay. His explanation for missing the paper return deadline was pressure of work and a limited understanding of tax. We note that he had sufficient knowledge to submit returns, as he had done so for his wife for the previous two years and knew that there were penalties for failing to meet deadlines. Mr Norris did not provide us with any explanation for the two year delay and there was nothing to indicate that there was a "reasonable excuse" for the failure to file on time.
13. To the extent that Mrs Norris (whose return it was) had relied on her husband to deal with her return paragraph 23(2)(b) of schedule 55 states that reliance on another person is not capable of being a reasonable excuse unless the taxpayer took reasonable care to avoid the failure. We heard that Mrs Norris simply left things to her husband and there was nothing to indicate that she herself had taken care to comply with her tax return filing obligations.
14. We heard no other reasons for late filing which could constitute a reasonable excuse.

Conclusion

15. We have found that Mrs Norris' tax return for the year 2013-14 was filed more than two years late and that there was no reasonable excuse for the failure to file.
16. Accordingly we affirm HMRC's decision and dismiss the appeal.

Application for permission to appeal

17. 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.

**MARILYN MCKEEVER
TRIBUNAL JUDGE**

RELEASE DATE: 22 AUGUST 2019

APPENDIX – RELEVANT STATUTORY PROVISIONS

1. The penalties at issue in this appeal are imposed by Schedule 55. The starting point is paragraph 3 of Schedule 55 which imposes a fixed £100 penalty if a self-assessment return is submitted late.

2. Paragraph 4 of Schedule 55 provides for daily penalties to accrue where a return is more than three months late as follows:

4—

(1) P is liable to a penalty under this paragraph if (and only if)—

(a) P's failure continues after the end of the period of 3 months beginning with the penalty date,

(b) HMRC decide that such a penalty should be payable, and

(c) HMRC give notice to P specifying the date from which the penalty is payable.

(2) The penalty under this paragraph is £10 for each day that the failure continues during the period of 90 days beginning with the date specified in the notice given under sub-paragraph (1)(c).

(3) The date specified in the notice under sub-paragraph (1)(c)—

(a) may be earlier than the date on which the notice is given, but

(b) may not be earlier than the end of the period mentioned in sub-paragraph (1)(a).

3. Paragraph 5 of Schedule 55 provides for further penalties to accrue when a return is more than 6 months late as follows:

5—

(1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 6 months beginning with the penalty date.

(2) 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.

4. Paragraph 6 of Schedule 55 provides for further penalties to accrue when a return is more than 12 months late as follows:

6—

(1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 12 months beginning with the penalty date.

(2) Where, by failing to make the return, P deliberately withholds information which would enable or assist HMRC to assess P's liability

to tax, the penalty under this paragraph is determined in accordance with sub-paragraphs (3) and (4).

(3) If the withholding of the information is deliberate and concealed, the penalty is the greater of—

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

(3A) For the purposes of sub-paragraph (3)(a), the relevant percentage is—

- (a) for the withholding of category 1 information, 100%,
- (b) for the withholding of category 2 information, 150%, and
- (c) for the withholding of category 3 information, 200%.

(4) If the withholding of the information is deliberate but not concealed, the penalty is the greater of—

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

(4A) For the purposes of sub-paragraph (4)(a), the relevant percentage is—

- (a) for the withholding of category 1 information, 70%,
- (b) for the withholding of category 2 information, 105%, and
- (c) for the withholding of category 3 information, 140%.

(5) In any case not falling within sub-paragraph (2), 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.

(6) Paragraph 6A explains the 3 categories of information.

5. Paragraph 23 of Schedule 55 contains a defence of “reasonable excuse” as follows:

23—

(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 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.

6. Paragraph 16 of Schedule 55 gives HMRC power to reduce penalties owing to the presence of “special circumstances” as follows:

16—

- (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.

7. Paragraph 20 of Schedule 55 gives a taxpayer a right of appeal to the Tribunal and paragraph 22 of Schedule 55 sets out the scope of the Tribunal’s jurisdiction on such an appeal. In particular, the Tribunal has only a limited jurisdiction on the question of “special circumstances” as set out below:

22—

- (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.