

[2020] UKFTT 238 (TC)



TC07723

Appeal number: TC/2019/09047

FIRST-TIER TRIBUNAL
TAX CHAMBER

Income Tax – appeal against penalties under Schedule 55 Finance Act 2009 – late filing of returns – whether reasonable excuse for late filing – No – Appeal dismissed.

Mrs S Hamal

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE DR K KHAN

The Tribunal determined this appeal on 8 April 2020 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 29 June 2019 with enclosures and HMRC Statement of Case submitted on 31 December 2019.

INTRODUCTION

The matter before the Tribunal is an appeal against late filing penalties charged under Schedule 55, Finance Act (FA) 2009 in respect of the late filing of a Self-Assessment Individual Tax Return.

The late filing penalties charged in the amount of £670.00 are as follows:

Tax Year ending	Date penalty Created/issued	Description	Amount (£)
2017-2018	23 March 2019	Late filing penalty	£100
	2 July 2019	Daily Penalties	£570
		Total	£670

BACKGROUND

1. Taxpayers who are within the self- assessment system must file their returns by the due date and pay the tax they owe by the date specified in law.
2. The filing date is determined by Section 8(1D) TMA 1970 et seq. which states that for the year ended 5 April 2018 a non-electronic return must be filed by 31 October 2018 and an electronic return by 31 January 2019. A late filing penalty is chargeable where a taxpayer is late in filing their Individual Tax return.

FACTS

3. The notice to file for the year ending 5 April 2018 was issued to Mrs S Hamal on or around 6 April 2018. The address the notice to file was issued to 9 Attlee Crescent WF2 6RF, which is her address.
4. Mrs Hamal's electronic return for the year 2017-18 was received on 26 June 2019. The return was submitted 145 days late.
5. In accordance with Paragraph 3 of Schedule 55 FA 2009, as Mrs Hamal did not submit a return by the filing date of 31 January 2019 she was liable to a penalty of £100. HMRC issued a notice of penalty assessment on or around 26 March 2019 in the amount of £100. The notice (SA326D) serves as a warning of the daily penalties so satisfies the requirement of Sch 55 FA2009 para 4(1)(c). This view was confirmed in the upper Tribunal decision *HMRC v Donaldson* [2014] UKUT535. According to HMRC records Mrs Hamal has accepted this penalty.
6. Pursuant to Paragraph 4 of Schedule 55 FA 2009, as the return had still not been received 3 months after the penalty date, Mrs Hamal was liable to daily penalties of £10 per day up to a period of 90 days. HMRC issued a notice of daily penalty assessment on or around 2 July 2019 in the

amount of £570, calculated at £10 per day for 57 days.

7. Both the 'filing date' and the 'penalty date' are defined at Paragraph 1(4) Schedule 55 FA 2009.

THE APPEAL

8. On 2 July 2019 HMRC was in receipt of an appeal under the terms of paragraph 20 Schedule 55 FA2009 in respect of the daily penalty charged.

9. HMRC issued its view of the matter in a letter on 27 August 2019 upholding the decision to charge the penalties. This letter also offered a statutory review or the option to appeal to the First Tier Tribunal.

10. Mrs Hamal accepted an offer of a review. HMRC issued its conclusion of review letter to Mrs Hamal which upheld the decision to charge late filing penalties.

11. On 29 October 2019 Mrs Hamal lodged an appeal before the First Tier Tribunal.

POINTS AT ISSUE

12. The Tribunal must decide whether the Appellant has a reasonable excuse for the late filing of the individual tax return for the period ending 5 April 2018.

BURDEN AND STANDARD OF PROOF

13. The onus of proof is for the Respondents to show that the penalties have been correctly calculated. The burden then shifts to the Appellant to demonstrate that a reasonable excuse exists for the defaults. The standard of proof is the ordinary civil standard, which is on the balance of probabilities.

LEGISLATION & CASE LAW

14. Section 8 Taxes Management Act 1970
Schedule 55 Finance Act 2009 - paragraph 3, 4, 5 and 6
Schedule 55 Finance Act 2009 - paragraph 1 (1), (4) & (5)
Schedule 55 Finance Act 2009 - paragraph 20
Schedule 55 Finance Act 2009 - paragraph 23
Schedule 55 Finance Act 2009 - paragraph 16
Schedule 55 Finance Act 2009 - paragraph 22
CH170600 What are special circumstances

APPELLANT'S CONTENTIONS

15. The Appellant's submissions are taken from the appeal received 2 July 2019 and request for review dated 2 September 2019:

“With reference to the above subject of self assessment 2017-18, I filed my tax return

in September 2018, but for some reason it did not reach HMRC and I only knew when I got a letter of penalty notice on 26 March 2019.

I then submitted presumably again on 5th April but this also presumably had not reached HMRC because I got another penalty notice.

I then rang HMRC about why this delay had occurred. The kind telephone advisor then went through the steps of my personal account and all the details in the 2017-18 form were there but the last "submit" column has not been clicked.

These omissions have possibly resulted in not reaching the 'self assessment' to HMRC.

I am sorry about this delay which I had no intention to make.”

16. From the Tribunal appeal dated 29 October 2019:-

“I did file the self assessment tax form in September 2018 but because of technical reason did not get submitted to HMRC in time.

Finally the self assessment form was filled, completed and submitted to HMRC on 26th June 2018 with the help of HMRC adviser Mr Robert Lyndsey.

The review and appeal however still failed and penalties of £570.00 still remained to be paid.

The technical reason for late submission was not regarded as sufficient ground for late submission.

In support of filing the self assessment tax in time I would say that the computer issued me the calculation of tax due for 2017-18 was £1240.25 and this amount was paid to HMRC on 25th Jan 2019.

I had no intention of delaying the filing of self assessment, this I hope would be considered as ground for unintentional technical problem and therefore delay in reaching the HMRC.”

HMRC'S CONTENTIONS

17. HMRC say that the responsibility of Mrs Hamal is to ensure her 2017-2018 tax return was filed by the due date.

18. Self-Assessment places a degree of responsibility on customers for their own tax affairs. This includes ensuring that payment of the correct amount of tax is made at the correct time. The tax guidance and HMRC website give plenty of warning about filing and payment deadlines. It is the taxpayer's responsibility to make sure they meet the deadlines. Information about Self-Assessment, the completion of returns, tax payment dates and penalties, is well within the public domain and widely available via the internet including HMRC's website. HMRC contends that Mrs

Hamal in completing her return, would make herself aware of such information and act accordingly to ensure that she adhered to his legal obligations.

19. HMRC records show the tax return for the year ending 5 April 2018 was received on 26 June 2019 and should have been delivered to HMRC by 31 January 2019 in accordance with Section 8(1D) TMA 1970. The return was submitted/received 145 days late. No tax return was submitted on time and there is no reasonable excuse. She may have made a mistake but that is not a reasonable excuse.

DISCUSSION

20. Let us look at the law.

21. Paragraph 1 of Schedule 55 to FA 2009 provides that: -

1(1) A penalty is payable by a person ("P") where P fails to make or deliver a return, on or before the filing date.

22. Paragraph 23 of Schedule 55 FA 2009 specifically provides that a penalty does not arise in relation to a failure to make a return if the person satisfies HMRC (or on appeal, a Tribunal) that there is a reasonable excuse for the failure and they put right the failure without unreasonable delay after the excuse has ended.

23. A reasonable excuse needs to be something that stops a person from meeting a tax obligation despite them having taken reasonable care to meet that obligation. It is necessary to consider what a reasonable person, who wanted to meet their obligation, would have done in the same circumstances and decide if the action of the person met that standard.

24. Reasonable excuse is not further defined beyond paragraph 23 (2) of schedule 55 but was considered in detail in the Upper Tribunal decision in *Christine Perrin v Commissioners for HMRC* ((2018) UKUT 0156 (TCC)). Whilst confirming at paragraph 70 of that decision that reasonable excuse should be judged objectively, Judge Herrington stated at paragraph 71:

*"In deciding whether the excuse put forward is, viewed objectively, sufficient to amount to a reasonable excuse, the tribunal should bear in mind all relevant circumstances; because the issue is whether the particular taxpayer has a reasonable excuse, the experience, knowledge and other attributes of the particular taxpayer should be taken into account, as well as the situation in which that taxpayer was at the relevant time or times (in accordance with the decisions in *The Clean Car Co and Goales*)."*

25. Whether a person has a reasonable excuse will depend on the particular circumstances in which the failure occurred and the abilities of the person who has failed. What is a reasonable excuse for one person may not be a reasonable excuse for another person.

26. If there is a reasonable excuse it must exist throughout the failure period.

27. HMRC's records show Mrs Hamal has been successfully filing her self-assessment tax return online from at least the 2011-2012 tax year. Mrs Hamal states that she thought that she had

submitted the tax return in September 2018.

28. Following the completion of the return the taxpayer checks and corrects any errors that are highlighted. The calculation is then viewed and the following page then has options to view, print and save a copy of the return. The text at the top of this page clearly states 'Before submitting your return you can view, print and save a copy of your return to your own computer. Select 'Next' at the bottom of the screen to go on to submit your return.'

29. To submit the return online the customer has to read and agree a statement confirming that the information provided is complete and correct. As an additional security check, customers are asked to re-input their details User ID and password. When the return had been successfully submitted to HMRC there is an onscreen message to confirm receipt and a confirmation email is sent to the email address provided. The fact that Mrs Hamal did not receive the confirmation messages should have alerted her to the fact that the return had not been successfully submitted to HMRC. As stated above, Mrs Hamal has been completing online self-assessment tax returns for a number of years and this process of submitting a return online has not changed.

30. Mrs Hamal says she believed that she had completed the return and indeed, she had a figure of tax paid and paid it on 25 January 2019. HMRC contends that the tax calculation can be seen before the tax return is fully submitted. HMRC records show that there was no tax due to be paid for the year 2017-18. In fact, Mrs Hamal was due to a tax refund based on the tax return submitted 26 June 2019.

31. The evidence presented shows the following activity on Mrs Hamal's self assessment account.

22/09/2018 - the 2017-18 income tax return was part completed

04/04/2019 - the 2017-18 income tax return was part completed

26/06/2019 - the 2017-18 income tax return was fully completed

32. Mrs Hamal has said 'I had no intention of delaying the filing of self assessment. this I hope would be considered as ground for unintentional technical problem and therefore delay in reaching the HMRC'. In this respect, the Tribunal is guided by the case of *Garnmoss Limited t/a Parham Builders* (2012) Judge Hellier stated:

"What is clear is that there was a muddle and a bona fide mistake was made. We all make mistakes. This was not a blameworthy one. But the Act does not provide shelter for mistakes, only for reasonable excuses. We cannot say that this confusion was a reasonable excuse"

33. It seems clear that the Appellant made a mistake in filing her returns and consequently failed to submit her return fully until 26 June 2019 and as a consequence the late filing and daily penalties were correctly charged in accordance with Schedule 55 Finance Act 2009. There was no improper motive.

34. As the return for the tax year 2017-2018 was received late the penalties have been charged in accordance with legislation. Penalties are in place to promote efficient operation of the taxation

system and are intended as a measure of fairness, so that customers who file late do not gain any advantage over those who file on time. The amount of the penalties charged is set within the legislation. HMRC has no discretion over the amount charged and must act in accordance with the legislation. The First Tribunal does not have the power to discharge or adjust a penalty which is properly due because it thinks it is unfair.

35. The Tribunal have concluded, based on the evidence held, that no reasonable excuse exists and as a consequence the penalties were correctly charged in accordance with legislation.

SPECIAL REDUCTION

36. Paragraph 16 of Schedule 55, Finance 2009 provides HMRC with discretion to reduce any penalty if they think it right to do so because of special circumstances.

“Special circumstances” is undefined save that, under paragraph 16(2), it does not include:

ability to pay, or

the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.

37. HMRC's policies on penalties are set out in the Compliance Handbook, and CH170600, defines "special circumstances" as follows:

Special circumstances are either

uncommon or exceptional, or

where the strict application of the penalty law produces a result that is contrary to the clear compliance intention of that penalty law.

38. To be special circumstances the circumstances in question must apply to the particular individual and not be general circumstances that apply to many taxpayers by virtue of the penalty legislation.

39. The Upper Tribunal case of *Barry Edwards v HMRC* (2019) UKUT 137 confirmed that the Schedule 55 regime was proportionate and penalties are correctly due even in circumstances where there is no additional tax liability.

40. Mrs Hamal makes several statements about her circumstances in her appeal letters to support their view that she should not have been charged penalties under Schedule 55 FA 2009, as follows: -

“I filed my self assessment initially in September 2018, but for some reason it did not reach HMRC.

I then submitted presumably again on 5th April but this had not reached HMRC.

Following a call to HMRC it appeared that all the 2017-18 details were on the form but the last submit column had not been clicked.

I am sorry about this delay which I had not intended to make.”

41. HMRC has considered Mrs Hamal statements in light of paragraph 16(2) and HMRC's replies are show below: -

As explained to Mrs Hamal, HMRC records show that she did not fully submit her 2017-18 tax return.

HMRC acknowledge that Mrs Hamal had not intentionally not fully submitted her return.

42. Accordingly, HMRC have considered the circumstances described by Mrs Hamal in the aforementioned letters and submits they are neither uncommon nor exceptional, nor do they suggest that the strict application of the penalty law produces a result that is contrary to the clear compliance intention of the relevant law in her case.

43. The Tribunal finds that the decision of HMRC not to reduce the penalties under paragraph 16 was not flawed and that there are no special circumstances which would require the tribunal to reduce the penalties.

CONCLUSION

44. The Tribunal finds that Mrs Hamal did not have a reasonable excuse lasting throughout the period for the late submission of their individual return for the period ending 5 April 2018.

45. There are no special circumstances which would allow the penalty to be reduced under Special Reduction.

46. The Tribunal finds that the penalties imposed in the amount of £670 were correctly charged in accordance with legislation and the appeal is dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

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.

DR KAMEEL KHAN

TRIBUNAL JUDGE

RELEASE DATE: 22 MAY 2020