

[2020] UKFTT 302 (TC)



**TC07784**

**Appeal number: TC/2020/00524**

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

*Income Tax – late payment penalty—whether reasonable excuse –No – Appeal Dismissed.*

**MR RAFAEL HALPIN**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL JUDGE: DR K KHAN**

The Tribunal determined this appeal on 29 June 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 31 January 2020 and HMRC Statement of Cases submitted on 16 March 2020.

## **MATTER UNDER APPEAL**

1. The matter before the Tribunal is an appeal against a late payment penalty charged under Schedule 56, Finance Act (FA) 2009 in respect of the late payment of tax for the year ending 5 April 2018.

<b>Tax Year ending</b>	<b>Date penalty created/issued</b>	<b>Description</b>	<b>Amount (£)</b>
2017-18	9 August 2019	30 days late payment penalty	124.00

## **BACKGROUND**

2. Self-assessment is based on voluntary compliance.
3. From April 2014 changes were introduced to improve the online service offered to Self Assessment taxpayers. The service was provided on GOV.UK and had the facility to enable individual customers to sign up to receive certain Self Assessment information digitally by electronic communications rather than by paper.
4. Payment is due in accordance with Section 59B Taxes Management Act (TMA) 1970 and in this instance the due date for payment was 14 June 2019 under Section 598 (3). A late payment penalty is chargeable where a customer is late in paying tax due.

## **FACTS**

5. The notice to file for the year ending 5 April 2018 was issued to Mr Halpin on or around 7 March 2019. The address the notice to file was issued to was 10 Westoning Road, LU5 6PD, which is the correct address.
6. The filing date was 14 June 2019 for a non-electronic return or 14 June 2019 for an electronic return.
7. Mr Halpin's non-electronic return for the year 2017-18 was received on 23 June 2019.
8. Mr Halpin 's tax liability for the year was £2,487.00.
9. The tax was due to be paid on or before 14 June 2019 in accordance with Section 598(3) TMA 1970.
10. In accordance with Paragraph 3(2) of Schedule 56 FA 2009, at the penalty date of 15 July 2019, 31 days after the due date, £2,487.00 of the tax liability remained unpaid. HMRC digitally issued a notice of penalty assessment on 9 August 2019, in the amount of £124.00, 5% of the tax unpaid at the penalty date (£2,487 @5%= £124.00), to the secure mailbox of Mr Halpin 's Self-Assessment online account , and an email alert was

issued to the personal email address which Mr Halpin had provided.

11. The tax liability was finally paid in full on 18 July 2019.

12. The 'penalty date' as defined at Paragraph 1(4) Schedule 56 FA 2009 means the date on which a penalty is first payable for failing to pay the amount (that is to say, the day after 30 days from the date specified in Section 598(3) or (4)).

## **THE APPEAL**

13. On 6 January 2020, HMRC was in receipt of an appeal under the terms of paragraph 13 Schedule 56 FA2009 in respect of the penalty charged.

14. On 10 January 2020, HMRC sent a letter to Mr Halpin, advising his appeal was out of time (not received within the 30 day window).

15. Mr Halpin's appeal was not received in time, there is no objection to the late appeal and the appeal would therefore be considered by the Tribunal.

16. On 31 January 2020, Mr Halpin lodged an appeal before the First Tier Tribunal.

## **POINTS AT ISSUE**

17. Whether the Appellant has a reasonable excuse for the late payment of tax for the period ending 5 April 2018.

18. If a reasonable excuse exists, whether the payment was received without any unreasonable delay once any excuse had ended.

## **BURDEN AND STANDARD OF PROOF**

19. The onus of proof is for the Respondents to show that the penalty has been correctly calculated. The burden then shifts to the Appellant to demonstrate that a reasonable excuse exists for the default.

20. The standard of proof is the ordinary civil standard, which is on the balance of probabilities.

## **LEGISLATION**

21. Section 598 Taxes Management Act 1970

22. Section 7 Taxes Management Act 1970

23. Section 8 Taxes Management Act 1970

24. Section 9 Taxes Management Act 1970
25. Schedule 56 Finance Act 2009 - paragraph 3 (2), (3) & (4)
26. Schedule 56 Finance Act 2009 - paragraph 1 (1), (4) & (5)
27. Schedule 56 Finance Act 2009 - paragraph 13
28. Schedule 56 Finance Act 2009 - paragraph 16
29. Schedule 56 Finance Act 2009 - paragraph 9
30. Schedule 56 Finance Act 2009 - paragraph 15
31. CH170600 - What are Special Circumstances

## **APPELLANT'S CONTENTIONS**

32. In his appeal to HMRC, Mr Halpin provided the following information.
33. I have been told that despite my late filing penalty for 2017-18 being cancelled, I would still need to pay a late payment penalty. I originally filed my 2017-18 return on 23 June 2019 and then amended it on 7 July. HMRC received payment on 18 July.
34. I am confused why this has incurred a penalty, given that HMRC has cancelled the late filing penalty.
35. I also note that the only deadline I was given for making payment was 31 January 2019 - several months prior to the deadline for filing the tax return.
36. In the appeal to the Tribunal, Mr Halpin made the following points:
  - i. I received a request to complete a tax return for 2017-18 in a letter dated 7 March 2019. I was told to make the return and pay the tax I owe within three months - 7 June. Due to delays in receiving an Activation Code to access my online self-assessment account, I was unable to file my return until 23 June. I then amended this return on 7 July. HMRC received payment on 18 July.
  - ii. I alerted HMRC to the delays in receiving my Activation Code and was told this was a mistake on HMRC's part, related to sending out the code that had affected other users as well. The late filing penalty was consequently cancelled.
  - iii. I was however charged a 30 days late payment penalty. This is despite the 30 day late payment deadline (30 days after 31 January 2019) was before I had been told I needed to make a tax return for 2017-18 (7 March 2019).

## **HMRC'S CONTENTIONS**

37. Paragraph 1 of Schedule 56 to FA 2009 provides that: -

1(1) A penalty is payable by a person ("P") where P fails to pay an amount of tax

on or before the date specified.

38. HMRC submit that the payment was not made by the penalty date of 15 July 2019 and a penalty is therefore payable under paragraph 3(2) of Schedule 56 to FA 2009.

39. The Appellant failed to pay his tax by the due date and there is no reasonable excuse.

## **DISCUSSION**

40. Paragraph 16 of Schedule 56 FA 2009 specifically provides that a penalty does not arise in relation to a failure to make a payment 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.

41. The law specifies two situations that are not reasonable excuse:

- i. an insufficiency of funds, unless attributable to events outside the Appellant's control and
- ii. reliance on another person to do anything, unless the person took reasonable care to avoid the failure.

42. There is no statutory definition of reasonable excuse, which "is a matter to be considered in the light of all the circumstances of the particular case" (*Rowland v HMRC* [2006] STC (SCD) 536 at paragraph 18).

43. HMRC consider reasonable excuse 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.

44. Reasonable excuse was considered in detail in the Upper Tribunal decision in *Christine Perrin v Commissioners for HMRC* (2018) UKUT 0156 (TCC)). Whilst confirming at paragraph 71 of that decision that reasonable excuse should be judged objectively, Judge Herrington stated:

*"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 Coales)."*

45. Whether a person has a reasonable excuse will depend on the particular circumstances in which the failure 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.

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

47. On 25 February 2019, HMRC created a self-assessment record for Mr Halpin. The PAYE (Pay As You Earn) computer system recognised Mr Halpin's total taxable income for the year 2017-18 exceeded £100,000.00, and a self-assessment return would be required for completion.

48. Mr Halpin was issued a notice to file for the year 2017-18 on 7 March 2019. Mr Halpin has confirmed in his appeal to the Tribunal that he received the notice to file.

49. When a notice to file is issued there is an obligation in accordance with legislation to deliver a return by the filing date and to make payment of any tax by the payment deadline. Mr Halpin had until 14 June 2019 to file a 2017-18 return on time, and pay any tax he may owe on time.

50. To support taxpayers with their responsibility HMRC publishes information and advice about their obligations and how they can adhere to them.

51. HMRC's practice is to send correspondence by post, however since 2014 they began a programme to make returns only issued on paper, available digitally. To be able to use HMRC online service, the taxpayer will need to register for an Online Government Gateway account and then enrol for the services they want to use, but in most cases, the taxpayer will be automatically enrolled for the online services associated with the taxes they are registering for so they don't have to do this separately.

52. HMRC records shows on 6 May 2019, Mr Halpin registered to receive some HMRC correspondence to his secure inbox within his self-assessment online account. This has been confirmed by HMRC's Digital Communications specialist team. Mr Halpin provided the personal email address.

53. On 5 June 2019, Mr Halpin contacted HMRC by telephone to state on 18 May he had requested an Activation Code to allow online Self-Assessment filing, but had not received it. The officer Mr Halpin spoke to noted HMRC systems showed the Activation Code appeared to have been printed on 19 May. Mr Halpin was advised to request a further Activation Code through his HMRC online account. Mr Halpin stated he was concerned about a penalty as his return would be late. The officer advised Mr Halpin he could appeal any penalties.

54. Mr Halpin filed a 2017-18 electronic return on 23 June 2019. The tax liability calculated by the online system is computed from the figures Mr Halpin entered onto the system. Mr Halpin's 2017-18 tax liability was £2,487.

55. On 26 June 2019, Mr Halpin contacted HMRC by telephone for advice regarding entries on his 2017-18 return. The officer Mr Halpin spoke to arranged for a member of HMRC's Self-Assessment Technical team to contact Mr Halpin.
56. On 7 July 2019, Mr Halpin made an online amendment to his 2017-18 return. The result of the amendment was a reduction of the 2017-18 tax liability to £2,487.00. Mr Halpin paid his 2017-18 tax liability in full on 18 July 2019.
57. As Mr Halpin had opted for paperless contact on 6 May 2019, the 2017-18 30 days late payment penalty notice was sent to his secure online account on 9 August 2019.
58. In his appeal to HMRC, Mr Halpin notes he is confused why he has incurred a penalty, given that HMRC has cancelled the late filing penalty.
59. Mr Halpin was charged a £100 late filing penalty because his electronic return for the year 2017-18 was not filed on or before 14 June 2019. Mr Halpin appealed against the late filing penalty. His appeal was successful as it was accepted that Mr Halpin experienced a delay in receiving an Activation Code from HMRC, required for Self-Assessment online filing, after requesting the code on 18 May 2019.
60. The late Activation Code should only have affected his ability to file an electronic return on time. Being unable to file a return online did not mean that Mr Halpin could not make payment of tax to HMRC.
61. According to his appeal to the Tribunal, Mr Halpin was aware he needed to pay any tax due within three months of the date of the notice to file, as he states 'I was told to make the return and pay the tax I owe within three months - 7 June'. The payment due date was 14 June 2019 as a further 7 days is allowed for postage of the notice to file.
62. In his appeal to the Tribunal, Mr Halpin has referred to the 30 day late payment deadline being 30 days after 31 January 2019, and that this date was before he had been told he needed to make a tax return for 2017-18.
63. In fact, the 30 days late payment deadline in this case was 14 July 2019, 30 days after the payment due date for the 2017-18 tax liability.
64. In the Tribunal's view, Mr Halpin was granted sufficient time, three months and seven days, to determine his tax liability for the year 2017-18, and pay any tax due on time. It was his responsibility to do so. Mr Halpin had a further 30 days after the payment due date to pay his 2017-18 tax liability in full, in order to avoid a late payment penalty. He paid the tax liability after this 30 day period. A late payment penalty was therefore charged.

## **SPECIAL REDUCTION**

65. Paragraph 9 of Schedule 56, Finance 2009 provides HMRC with discretion to reduce any penalty if they think it right to do so because of special circumstances.

66. "Special circumstances" is undefined save that, under paragraph 16(2), it does not include:

- i. ability to pay, or
- ii. the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.

67. The senior courts accept that for circumstances to be special they must be 'exceptional, abnormal or unusual'.

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

69. "Special circumstances" are either:

- i. uncommon or exceptional, or
- ii. where the strict application of the penalty law produces a result that is contrary to the clear compliance intention of that penalty law.

70. 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.

71. Mr Halpin makes several statements about his circumstances in the appeal to support his view that he should not have been charged a penalty under schedule 56 FA 2009, as follows. HMRC considered Mr Halpin's statements in light of paragraph 9(2).

72. In the circumstances, the decision not to reduce the penalties under paragraph 9 was not flawed and there are no special circumstances which would require the Tribunal to reduce the penalties.

## **CONCLUSION**

73. The Tribunal finds as fact that Mr Halpin did not have a reasonable excuse for failure to pay his tax on time, nor by the date the penalty arose.

74. The Tribunal finds that there are no special circumstances which would allow the penalty to be reduced under Special Reduction.



75. The Tribunal finds the penalty imposed in the amount of £124.00 was correctly charged and that the appeal be 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.

**TRIBUNAL JUDGE:**

**DR KAMEEL KHAN**

**RELEASE DATE: 27 JULY 2020**