



[2021] UKFTT 111 (TC)

TC08092

VAT – penalties for failure to notify understated assessments – whether should have known understated – yes – whether reasonable steps taken to notify – no – whether special circumstances – no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2019/08890

BETWEEN

FAYE ELIZABETH HARRISON

Appellant

-and-

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

Respondents

TRIBUNAL: JUDGE ANNE FAIRPO

The Tribunal determined the appeal on 5 January 2021 without a hearing with the consent of both parties under the provisions of Rule 29 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. A hearing was not held due to the COVID-19 pandemic. The documents to which I was referred constituted a bundle of 174 pages and correspondence from the appellant dated 18 March 2020 and 10 November 2020.

DECISION

Introduction

1. This is an appeal against an under-assessment penalty raised under Schedule 24, Finance Act 2007, in respect of a failure to notify HMRC in time that assessments raised for VAT periods 03/18, 06/18, 09/18 and 12/18 were too low.

Background

2. The appellant owns a small accessories shop. She registered for VAT with effect from 1 February 2018.

3. Her VAT returns for the periods ended 03/18, 06/18, 09/18 and 12/18 were filed late on 24 May 2019.

4. The chronology of assessments, correspondence and compliance in this matter was not disputed and is as follows:

- (1) 18 May 2018: assessment issued for period 03/18, for £331, paid 22 June 2018.
- (2) 17 August 2018: assessment issued for period 06/18, for £584, paid 10 September 2018.
- (3) 30 August 2018: HMRC wrote to the appellant regarding her missing returns and opened an enquiry.
- (4) 26 September 2018: HMRC spoke to the appellant's accountants regarding the missing returns.
- (5) 27 September 2018: HMRC issued a reminder letter to the appellant regarding the missing returns.
- (6) 29 October 2018: HMRC issued a Schedule 36 Notice requesting VAT accounts for the periods 03/18 and 06/18
- (7) 16 November 2019: assessment issued for period 09/18, for £569, paid 25 January 2019.
- (8) 15 February 2019: assessment issued for period 12/18, for £700, paid 17 April 2019.
- (9) 24 May 2019: returns filed for all four periods, showing actual VAT due as follows:
 - (a) 03/18 - £835.04
 - (b) 06/18 - £3,772.26
 - (c) 09/18 - £3,183.08
 - (d) 12/18 - £6,061.15
- (10) 26 June 2019: HMRC issued an underassessment letter to the appellant.
- (11) 12 July 2019: HMRC issued a penalty assessment notice letter to the appellant.
- (12) 11 September 2019: penalty review requested.
- (13) 22 October 2019: HMRC issued a review conclusion letter upholding the decision to issued penalties, varying the penalty rate from 21% to 15% for the 09/18 and 12/18 periods. The effect was to vary the total penalty amount to £1,971.50.
- (14) 13 November 2019: the appellant appealed to this Tribunal.

5. It is therefore not in dispute that the appellant filed her VAT returns late and it is not in dispute that the appellant did not notify HMRC within the required 30 day period that the amounts on the issued assessments were too low.

Relevant law

6. Paragraph 2(1), Schedule 24, Finance Act 2007 ('Schedule 24') provides that a penalty is payable where an assessment issued by HMRC to a taxpayer understates the liability to tax and the taxpayer fails to take reasonable steps to notify HMRC, within the 30 days beginning with the date of the assessment, that it is an underassessment.

7. Paragraph 2(2), Schedule 24 provides that in deciding what steps are reasonable, it is necessary to consider whether the taxpayer knew, or should have known, about the underassessment and to also consider what steps would have reasonable to have been taken to notify HMRC.

8. Paragraph 10, Schedule 24 provides for a reduction in penalties where the taxpayer has subsequently disclosed the underassessment to HMRC. The amount of the reduction depends on the quality of the disclosure and the circumstances of the disclosure.

9. Paragraph 11, Schedule 24 provides that HMRC may reduce a penalty if special circumstances apply.

Appellant's submissions

10. The appellant's grounds of appeal were as follows:

- (1) She was new to VAT on 1 February 2018 and did not understand VAT assessments;
- (2) She relied on her previous accountants to sort out her VAT and feels let down by them;
- (3) She was pregnant.

11. In correspondence, the appellant also submitted that:

- (1) She only became aware of the additional liability when the returns were submitted. The returns were submitted late due to difficulties in obtaining invoices from suppliers, and also as a result of the appellant's pregnancy and subsequent recovery.
- (2) Her previous accountant had failed to submit her quarterly VAT returns, despite being provided with information to do so. The appellant stated on 5 November 2019 that this was "now obvious" to her, and that she had incurred the penalties as a result. She no longer used the services of those accountants.
- (3) Her previous accountants had failed to provide her with guidance and information; she had provided them with all of the trading information on time and was unaware of the fines levied as a result of the late submissions until she received the demand for payment with a threat of legal action.
- (4) As the owner of a small shop and mother of two, she does not have the time or skills required to complete VAT and tax returns, which is why she engaged an accountant. All correspondence from HMRC was passed to her accountants for attention.
- (5) She has reduced her trading hours due to family commitments; this, together with the current virus outbreak, was making trading difficult and she cannot afford to pay penalties arising from her accountants' incompetence.

HMRC's submissions

12. HMRC submitted as follows:

- (1) The notifications of underassessment were received:
 - (a) approximately 11 months after the 30 day notification deadline for the 03/18 period;
 - (b) approximately 8 months after the deadline for the 06/18 period;
 - (c) approximately 7 months after the deadline for the 09/18 period; and
 - (d) approximately 5 months after the deadline for the 12/18 period.

13. HMRC contacted the appellant four times before she finally submitted her returns; HMRC therefore submitted that she knew or should have known of the underassessments and she failed to take any steps to notify HMRC that there had been underassessments during the 30 day period for notification.

14. Under paragraph 4C of Schedule 24, the penalty payable is 30% of the potential lost revenue for each of the periods. The potential lost revenue is the difference between the amount assessed and the actual amount of VAT declared. The penalty may be reduced under paragraph 10 of Schedule 24, to a minimum of 15%.

15. For the periods 03/18 and 06/18, HMRC took into account the level of assistance provided by the appellant and reduced the penalty to 21% as HMRC had to request information on several occasions and had to use Schedule 36 powers to formally request information.

16. For the periods 09/18 and 12/18, the penalty was reduced to the minimum 15% as no specific requests had to be made for these returns.

17. HMRC considered whether special circumstances existed, and took into account the following:

- (1) That assessments were paid as soon as requested.
- (2) That the appellant was not aware of any additional liability until the returns were submitted and that the returns were submitted late due to delays in receiving copy invoices and due to the appellant's pregnancy.
- (3) The appellant relied on her accountants.
- (4) She was new to VAT and did not understand VAT assessments.

18. HMRC submitted that none of these amounted to special circumstances as they were circumstance that apply to many taxpayers. In particular, lack of awareness of the VAT regime cannot be a special circumstance.

Decision

19. Considering the relevant law, the questions for this Tribunal are therefore:

- (1) Whether the appellant knew, or should have known, that the assessments were understated;
- (2) What steps would have been reasonable to have taken to notify HMRC;
- (3) Whether there are any special circumstances which would apply to remove the penalty.

20. The appellant states that she did not know that the assessments were understated until, at least, the returns were submitted and she received a demand for payment. The question is whether she should have known that the assessments were understated.

21. I consider that a reasonable and prudent taxpayer in the same position as the appellant, receiving an assessment from HMRC, would take steps to understand the significance of the document and would have considered whether the assessment was correct. The appellant has provided no evidence that she paid any particular attention to the assessments other than to pay them.

22. I have considered the appellant's submissions regarding her reliance on her accountants but note that she has provided no evidence that she made any enquiries of them regarding the assessments, given that she states that she was unaware that the assessments were understated until many months after the first assessment was issued. She also seems not to have made any enquiries of them as to why her returns were not being submitted, as she states that she was not aware that they had failed to file those returns until some time after the returns were filed in May 2019 even though the assessments and the correspondence from HMRC from August 2018 onwards would have made this clear. The appellant states that she passed all correspondence from HMRC to her accountants: from her submissions, it appears that the appellant did not take any note of such correspondence before passing it over.

23. I consider that the steps which it would have been reasonable for the appellant to undertake to notify HMRC would have been to make enquiries of her accountants, to obtain the correct information from them, and to then contact HMRC (whether by phone or otherwise) to advise them that the assessment was too low.

24. It was also submitted that the appellant's accountants did not have all of the information required to check the accuracy of the assessment as they were waiting for copy invoices from the appellant's suppliers. No explanation was given as to why the appellant did not provide the original invoices to her accountants. Even if detailed information was not available, I consider that a reasonable and prudent taxpayer would have contacted HMRC to at least explain that accurate figures were not yet available. The appellant did none of these things.

25. I have considered the submissions as to the appellant's pregnancy causing delays but note that no dates for the pregnancy (or birth) were given and that the pregnancy is provided as a reason for the failure to notify in respect of all the assessments and also for the delay in filing the returns. Given that this encompasses a period of more than one year, and that no submissions were made as to any difficulties involved in the pregnancy, I do not consider that the appellant's pregnancy would have barred her from taking reasonable steps to notify HMRC of the underassessments.

26. I find that the penalties were correctly calculated, noting that HMRC have reduced the penalty for the two later periods as no Schedule 36 notice was issued in respect of those.

27. I have considered HMRC's submissions regarding special circumstances, and the Tribunal's limited jurisdiction in respect of such, and do not consider that there are any grounds to disturb HMRC's decision that there are no special circumstances which would merit a reduction in the penalties in this case.

Decision

28. As noted above, I consider that the appellant should have known that the assessments were understated and that she failed to take reasonable steps to notify HMRC of the underassessments within the deadline in each case, and that there are no special circumstances which merit a reduction in the penalty.

29. The appeal is therefore dismissed and the penalty upheld in full.

Right to apply for permission to appeal

30. 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.

**ANNE FAIRPO
TRIBUNAL JUDGE**

RELEASE DATE: 19 APRIL 2021