



[2021] UKFTT 114 (TC)

TC08095

PENALTIES – late payment – statement of liability received late – whether reasonable excuse – no – whether special circumstances – no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2020/02901

BETWEEN

KENNETH POWELL

Appellant

-and-

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

Respondents

TRIBUNAL: JUDGE ANNE FAIRPO

The Tribunal determined the appeal on 11 March 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 because of restrictions arising from the COVID-19 pandemic. The documents to which I was referred are a document bundle of 49 pages, HMRC's Statement of Case, a reply (described as a Statement of Case) from the appellant, and a legislation and authorities bundle of 81 pages.

DECISION

Introduction

1. This is an appeal against a late payment penalty of £80 issued under Schedule 56 Finance Act 2009 (“Sch 56”) in respect of the tax year ended 5 April 2019.

Background

2. It was not disputed that:

(1) The appellant was required to file a tax return for the tax year ended 5 April 2019, and that the return was filed electronically in time on 9 January 2020.

(2) The relevant tax was due and payable on or before 31 January 2020. The penalty date for late payment was 2 March 2020.

(3) The appellant paid the tax due by cheque on 5 March 2020.

(4) The penalty was issued on 17 March 2020.

3. The appellant appealed the penalty to HMRC on 31 July 2020, having received the penalty notice on 20 July 2020. HMRC rejected the appeal on the basis that the 30 day statutory deadline for appealing had expired.

4. The appellant appealed to this tribunal on 11 August 2020.

5. HMRC subsequently acknowledged that they had rejected the appeal incorrectly, as the issuing of penalty notices had been paused as a result of the COVID-19 pandemic and was not restarted until 16 July 2020 and so an extra 3 months had been given for appeals to be made.

Appellant’s submissions

6. The appellant submitted in his grounds of appeal that he had received the original tax bill on 28 February 2020 and paid by return post. The penalty dated 17 March 2020 was not received until July, and so there were obvious postal issues and he requested that the penalty be waived.

7. In his appeal to HMRC, the appellant submitted that he had not received a statement from HMRC and could not use the HMRC online service due to software failure.

8. In his reply (“Statement of Case”) provided to the Tribunal on 27 November 2020, the appellant submitted that:

(1) He has always paid his tax by cheque.

(2) He knew that the tax was due and payable on 31 January 2020, but he did not know the amount due as his accountants had filed his return on his behalf.

(3) His accountants calculated the tax liability.

(4) He did not receive the tax liability statement until 29 February 2020.

(5) Due to postal issues with receiving the tax liability statement and the following penalty notices, the appellant did not receive communication from HMRC in a timely manner.

(6) The appellant has no access to HMRC online services or electronic payments.

(7) The appellant has recently been passing over responsibility for many aspects of business and personal affairs to his representative and mistakenly thought that the tax liability was one of these aspects.

HMRC's submissions

9. HMRC submitted, in summary, that:

- (1) The appellant has been in self-assessment since 1996/7 and should be aware of the due dates for payment of tax.
- (2) HMRC has not produced periodic statements of tax due since January 2016. The last periodic statement issued to the appellant was sent on 27 November 2014. The appellant paid the tax due in the intervening years without statements being issued.
- (3) HMRC only notify the tax payment due to those who file paper returns by 31 October following the end of the tax year and request HMRC to calculate the tax due.
- (4) The tax due from the appellant was calculated when the return was completed, before it was submitted online, as box 10 on the form had been checked. The tax due is also calculated automatically on submission of the return.
- (5) It was not objectively a reasonable excuse in the circumstances of this case for the appellant to have been ignorant of his obligation to pay tax, and no other reasonable excuse had been put forward.
- (6) HMRC had considered whether special circumstances applied but concluded that, in this case, there was nothing put forward to show that the penalty legislation had produced a result contrary to the compliance intention of Parliament.

Discussion

10. Sch 56 provides that a penalty is payable where tax is paid late, unless the taxpayer has a reasonable excuse or there are special circumstances which apply such that the penalty should be reduced.

11. It is not disputed that the tax was paid late and, as such, a penalty is due unless the appellant can establish that he has a reasonable excuse or that there are special circumstances.

Is there a reasonable excuse?

12. The appellant has put forward various contentions which are not entirely consistent with each other, although I consider that this is due to confusion than intentional. These explanations are (in summary) that:

- (1) HMRC did not tell him how much tax to pay until the end of February 2020;
- (2) His accountants did not tell him how much tax to pay until the end of February 2020.

13. The appellant acknowledged that he knew that tax was due and payable by the end of January 2020. The appellant also acknowledged that his accountants had calculated the liability. Nevertheless, he has offered no explanation as to why he did not ask his accountant for details of the amount to be paid before the due date for payment of the tax.

14. I have considered whether the appellant's reference in his Statement of Case to having mistakenly thought that he had passed responsibility for tax liability to his accountants was a reference to the appellant having thought that the accountants would pay the liability on his behalf and thus a reason for not having made the payment by 31 January 2020.

15. However, such an explanation is not consistent with the appellant's other earlier submissions as to waiting for a statement in order to make payment. In addition, the appellant states that he made payment immediately on receiving the statement, which is not consistent with a belief that payment should have been made by his accountants on his behalf. As such, I do not consider that this comment in his reply can be extrapolated in this way.

16. Taking into account the circumstances of the case described and taking into account the decision of the Upper Tribunal in *Christine Perrin v HMRC* [2018] UKUT 0156 (TCC), I consider that a reasonable and prudent taxpayer in the appellant's position would have made enquiries of his accountants as to the amount due for payment before the deadline for payment. Even if the appellant mistakenly believed that a statement of tax due would be provided by HMRC, he knew the due date for payment and I consider that a reasonable and prudent taxpayer would have made such enquiries when no statement was received from HMRC before that date.

17. As such, I do not consider that the appellant has established that he has a reasonable excuse for the delay in making payment.

Are there special circumstances?

18. The Tribunal has limited jurisdiction with regard to the question of whether there are special circumstances meriting a reduction in a penalty and can only consider whether or not HMRC's decision is flawed in a judicial review sense.

19. I have considered HMRC's submissions with regard to special circumstances. They considered only the appellant's original submissions (that he did not know the tax was due and that he could not pay online) and, to that extent, have not taken into account all relevant information as they have not considered the grounds of appeal or the additional information in the appellant's "Statement of Case". It is therefore open to me to consider whether or not there are special circumstances which would merit a reduction in the penalty.

20. Taking into account all of the information provided by the appellant and set out in §§6-8 above, I do not consider that there are special circumstances which would merit such a reduction.

Decision

21. As I have concluded that the appellant does not have a reasonable excuse for the delay in making payment, and that there are no special circumstances which would apply to reduce the penalty, the appeal is dismissed and the penalty upheld.

Right to apply for permission to appeal

22. 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