



**TC08283**

*INCOME TAX – self assessment – late filing penalties – whether reasonable excuse – no – whether special circumstances – yes – appeal upheld in part.*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Appeal number: TC/2020/04301**

**BETWEEN**

**KEITH PUTTOCK**

**Appellant**

**-and-**

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

**Respondents**

**TRIBUNAL: JUDGE ANNE FAIRPO**

**The Tribunal determined the appeal on 18 June 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 restrictions arising from the coronavirus pandemic. The documents to which I was referred are a document bundle of 92 pages and HMRC's Statement of Case dated 27 January 2021.**

## DECISION

### Introduction

1. This is an appeal against late filing penalties totalling £1300 charged under Schedule 55 Finance Act 1998 (“Schedule 55”) in relation to the late filing of a return for the 2017/18 tax year.
2. The penalties appealed are:
  - (1) Initial late filing penalty of £100, under para 3 Schedule 55, issued 26 March 2019;
  - (2) Daily late filing penalty of £900, under para 4 Schedule 55, issued 29 October 2019;
  - (3) Six month late filing penalty of £300, under para 5 Schedule 55, issued 29 October 2019.

### Background facts

3. Most of the procedural background was not disputed and so I find the following facts:
  - (1) Mr Puttock filed his 2017/18 return on 24 July 2019.
  - (2) The penalties were issued on the dates set out in §2 above.
  - (3) Mr Puttock appealed the decision to issue penalties in November 2019 and contended that he had a reasonable excuse. The appeal form was dated 6 November 2019 and accompanied by a letter from Mr Puttock’s agents dated 13 November 2019. HMRC concluded that the reasons given did not amount to a reasonable excuse.
  - (4) On 14 February 2020, Mr Puttock requested a review of that decision. On 6 August 2020 HMRC issued a review conclusion letter upholding the decision to charge the penalties.

### Submissions and evidence

4. In his grounds of appeal, Mr Puttock’s agents contended as follows:
  - (1) The construction company for which Mr Puttock worked did not provide information about tax deducted in time for the return to be prepared on time.
  - (2) Mr Puttock believed that he did not owe any tax but did not know what to do as he could not afford professional advice at the time. A tax refund was absorbed by the penalties charge and legacy debts to HMRC, including interest relating to charges dating back to 1999.
5. In the agents’ appeal to HMRC, they contended that:
  - (1) Mr Puttock had insufficient funds to pay an accountant. He had not received a tax return for completion and, as all tax had been paid, he believed he did not need to complete a tax return.
  - (2) He cannot afford the penalties.
6. In a letter requesting a review of the decision, Mr Puttock’s agents contended that:
  - (1) Mr Puttock had struggled to obtain suitable tax information from the construction company to complete his self-assessment return on time.
  - (2) He could not afford to pay an agent for the relevant tax year as HMRC had used a tax refund for the 2016/17 tax year against legacy debts.

- (3) Mr Puttock had had a facial operation and general stress and as such was unable to complete his 2017/18 tax return on time.
7. In Mr Puttock's request for an appeal, he stated that:
- (1) He had assumed that his accountant was completing the tax return and he had provided his accountant with all of the information for the tax year.
  - (2) He thought the first reminder had been sent in error. When more reminders arrived, he tried to contact his accountants but did not receive a response to emails and phone calls.
  - (3) Once he had contacted HMRC and realised how serious it was, he completed the return and sent it off.
  - (4) He would have sent the return before it was overdue if he had realised that his accountant had not dealt with it.
  - (5) He had had an operation on his face which led to a lot of time off work and a slow recovery.
  - (6) The penalty would cause financial hardship.
8. HMRC made the following submissions:
- (1) Mr Puttock had been registered for self-assessment in May 2000 and completed tax return until 2003/4 when he ceased self-employment. He registered for the Construction Industry Scheme (CIS) in May 2001.
  - (2) Mr Puttock's self-assessment record was reactivated in November 2017 and an unsolicited 2016/17 tax return was received from Mr Puttock on 14 December 2017.
  - (3) It is a taxpayer's responsibility to meet deadlines and they should not wait for reminders from HMRC. Reliance on an accountant also does not amount to a reasonable excuse as it remains the taxpayer's responsibility to take reasonable steps to ensure that their accountant files the return. No evidence was provided that any such steps had been taken.
  - (4) If CIS information had not been received, the taxpayer should have kept the information provided by the engager with each payment and should have completed his tax return accordingly. Alternatively, he could have contacted HMRC for assistance and there is no record that he did so. No evidence was provided of any attempts made to obtain the information from the engager.
  - (5) On 15 July 2019, Mr Puttock telephone HMRC regarding the return and stated that he was not sure of his income.
  - (6) Mr Puttock did not provide enough information as to his ill health for this to be taken into consideration in concluding whether there was a reasonable excuse for the delay in filing.
  - (7) The existence of legacy debts does not provide a reason for reducing or eliminating penalties.
  - (8) HMRC had considered whether special circumstances existed which merited a reduction in the penalty. They had considered the contentions regarding difficulties obtaining CIS information and Mr Puttock's ill health and had concluded that no such circumstances existed.

## Decision

### *Whether a notice to file was received*

9. Mr Puttock's agents, in their letter of appeal to HMRC, stated that Mr Puttock had not receive a tax return for completion. This was not repeated in subsequent correspondence, which stated that he was unable to afford to pay an agent to complete the return and that he had been unable to obtain information from the construction company which engaged him. It was also not consistent with Mr Puttock's statement in his appeal to HMRC that he believed his agent was dealing with the return.

10. I therefore conclude that HMRC issued Mr Puttock with a notice to file for the year ending 5 April 2018 on or around 6 April 2018. The due date for filing was either 31 October 2018 (for a paper return) or 31 January 2019 (for an electronic return).

### *Whether there is a reasonable excuse*

11. There is a considerable disparity between the contentions made by Mr Puttock in his appeal to HMRC in November 2019 and those made by his agents in various items of correspondence with HMRC and the notice of appeal.

12. Mr Puttock states that he believed that his accountant was dealing with the return and that he had provided all the necessary information; his agents state that he was unable to afford to pay an accountant and that CIS information had not been received from a construction company in time to complete a return. Mr Puttock's agents also contended that he had believed that he did not need to complete a tax return as he did not owe any tax; however, Mr Puttock had filed a tax return for the previous year when he also did not owe any tax.

13. On balance, I consider that it is more likely that Mr Puttock's explanations are an accurate reflection of the position and that perhaps his agents have misunderstood matters.

14. This is particularly because I note that, from HMRC's self-assessment records, Mr Puttock called HMRC on 15 July 2019 about his 2017/18 tax return; his wife also called HMRC on his behalf the following day regarding the return. HMRC's notes record that they sent him a paper return to complete for 2017/18 on 16 July 2019. HMRC received Mr Puttock's return nine days later on 24 July 2019, which I consider supports his contention that he would have filed the return earlier if he had realised earlier that his accountant had not dealt with it.

15. However, the disparity in accounts does not provide any reasonable excuse for the delay in filing.

16. The Upper Tribunal in *Perrin* [2018] UKUT 156 (TCC) held that "to be a reasonable excuse, the excuse must not only be genuine, but also objectively reasonable when the circumstances and attributes of the actual taxpayer are taken into account" (§75).

17. The reasons given for the delay are that Mr Puttock did not realise his accountant had not filed the return, and that Mr Puttock had suffered from ill health. I consider that Mr Puttock believed that this was the case, but I do not consider that it was an objectively reasonable excuse in this case.

18. Mr Puttock had completed a tax return voluntarily in late 2017 for 2016/17; he was clearly aware of the need to complete a tax return. I consider that a reasonable taxpayer, aware of his obligations, would have made enquiries of his accountant when a tax return had not been received for signature or approval before the filing date for such a return. I also consider that such a taxpayer would have made enquiries of his accountant when the first reminder was received. Mr Puttock did not provide any evidence that any such enquiries were made.

19. I note Mr Puttock's health issues but, as no date is given as to when these issues arose, it is not possible to conclude that these had any impact on the lateness of the return. Given that

Mr Puttock also considered that his accountant was dealing with the return, it seems unlikely that these health issues would have made any difference to the position.

20. Although I have preferred Mr Puttock's version of events to those provided by his agents, I do not consider that his agents' contentions amount to a reasonable excuse either. Lack of funds to pay an accountant does not amount to a reasonable excuse, as I consider that a reasonable taxpayer would at least attempt to complete a tax return on their own on time. Mr Puttock was clearly able to complete his return quickly once he had received a copy from HMRC. A lack of CIS information similarly does not amount to a reasonable excuse as I consider that such a taxpayer would have provided (on time) an estimated return pending confirmation of the relevant figures, from their own records of tax deducted under CIS. The belief that a tax return was not required because no tax was owed does not amount to a reasonable excuse as I consider that a taxpayer in that position would check the position, and a return had been filed the previous year in the same circumstances.

21. I note the contentions from both Mr Puttock and his agents as to financial hardship but it is established in statute that lack of funds cannot amount to a reasonable excuse, and Mr Puttock has not suggested that the lack of funds is due to anything unusual outside his control.

22. As such, I do not consider that Mr Puttock's contentions (or those of his agents) amount to a reasonable excuse.

*Whether special circumstances apply*

23. HMRC submitted that they had considered whether special circumstances applied to reduce the penalties. They had considered the contentions regarding difficulties obtaining CIS information and Mr Puttock's ill health and had concluded that no special circumstances exist.

24. To be "special circumstances", the circumstances in question must operate on the individual, and not be a mere general circumstance that applies to many taxpayers by virtue of the scheme of the provisions themselves, and must be something out of the ordinary, something uncommon or exceptional, abnormal or unusual, and normally something external to the person doing the action in question, in contrast to something within his control.

25. The Tribunal has limited jurisdiction with regard to the question of whether there are special circumstances meriting a reduction in a penalty. It is only if the Tribunal considers that HMRC's decision is flawed in a judicial review sense that the Tribunal can substitute its own decision.

26. In this context the relevant principles are whether the decision maker has taken into account all relevant factors, and that they have not taken into account any irrelevant factors, and that the decision is one a reasonable decision maker having regard to the available evidence could make.

27. In this particular case, I consider that HMRC's decision is flawed in that it fails to take into account the fact that, according to HMRC's SA notes, they provided Mr Puttock with a paper return on 16 July 2019 and did not advise him that he could complete his return online. They failed to warn him that completing a paper return rather than completing an electronic return would immediately render him liable to greater daily penalties and a six month penalty.

28. As I consider that there are special circumstances, I consider it appropriate to reduce the penalties to those which would apply if Mr Puttock had filed an electronic return rather than a paper return on 24 July 2019 and so:

- (1) the six month penalty is reduced to nil; and
- (2) as the return was filed 84 days after the three-month penalty date (1 May 2019), the daily penalties are reduced to £840.

**Decision**

29. Although I find that there is no reasonable excuse for the late filing of the return, I consider that there are special circumstances applying which merit a reduction of the six month penalty to nil and a reduction in the daily penalties to £840. The initial late filing penalty is upheld. The total penalties due are therefore reduced to £940.

**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: 23 SEPTEMBER 2021**

## **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.