



TC08302

INCOME TAX – self-assessment – late filing penalties – whether reasonable excuse – no – whether special circumstances – no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2020/04134

BETWEEN

MATTHEW TIPPER

Appellant

-and-

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

Respondents

TRIBUNAL: JUDGE ANNE FAIRPO

The Tribunal determined the appeal on 17 July 2019 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.

DECISION

Introduction

1. This is an appeal against a six month late filing penalty of £300 for failure to file a self-assessment return for the 2018/19 tax year. The penalty was issued by HMRC on 3 November 2020 under paragraph 4 Schedule 55, Finance Act 2009.

Submissions

2. The appellant (Mr Tipper) stated that he had been sent a notice to complete an “online self-assessment review” in March 2020, and he had completed an online self-assessment form. The next communication received had been this penalty of £300.

3. Mr Tipper said that he had never been self-employed and had paid all taxes through PAYE until he became unemployed in 2020. He believed that he had been the victim of an online transmission error which had since been rectified as he had now filed his return. He asked for penalties to be removed as he was being punished for poor IT systems.

4. HMRC contended that Mr Tipper had been sent a notice to file a self-assessment return on 24 October 2019, as HMRC had become aware that his annual income was over £100,000 and so he now fell into one of the categories of taxpayers required to complete a tax return. HMRC stated that the notice had not been returned undelivered to HMRC, and Mr Tipper had not stated that he did not receive it.

5. As the notice was issued outside the normal cycle, the filing deadline was 31 January 2020 for both an electronic return and a paper return. Mr Tipper filed the return online on 1 December 2020.

6. As the return was filed late, HMRC had issued the following penalties and provided copies of extracts from their records showing the relevant information:

- (1) 12 February 2020: a £100 late filing penalty. This had not been appealed
- (2) 3 November 2020: the penalty now appealed.

7. HMRC submitted that they considered that the notice to file had been correctly served and that, as the return was received late, the penalties were correctly raised in accordance with the provisions of Schedule 55, Finance Act 2009.

8. HMRC contended that Mr Tipper had not demonstrated that he had a reasonable excuse, mitigating the penalty, for the following reasons:

- (1) The fact that he was an employee did not mean that he was exempt from filing the tax returns for which he had received a notice to file;
- (2) Mr Tipper could not have filed or attempted to file an online tax return in March 2020 as, although he had a Government Gateway account, he had not added Self Assessment to the services available to him until 24 November 2020 when Mr Tipper spoke to HMRC’s helpline. Until that was added to his account, Mr Tipper would not have been able to access the online tax return.
- (3) The initial late filing penalty of £100 should have alerted Mr Tipper to the fact that his return was late in February 2020, as should the self-assessment statement of account issued on 12 March 2020.

9. HMRC contended that it was not objectively reasonable in the circumstances of this case, for Mr Tipper to have been ignorant of their obligation to file the tax return for the year to 5 April 2019 by the due date of 31 January 2020. When viewed objectively it was not reasonable for him to be unaware of his filing obligations after the issue of the self-assessment statement

and penalty notices. HMRC contended that Mr Tipper could have contacted the Respondents or checked online.

10. To the extent that Mr Tipper contended that the penalty was unfair, HMRC submitted that the penalties were proportionate and that the regime as a whole was proportionate to his aim, that of securing the timely submission of returns and encourage compliance. The case of *Barry Edwards* [2019] UKUT 131 (TCC) had concluded that the penalty regime was proportionate even in cases where there is no additional tax liability in respect of a late return. It was submitted that *Hok* [2012] UKUT 363 (TCC) had concluded that this Tribunal does not have freestanding jurisdiction to consider penalties on the grounds of fairness.

Discussion

11. Mr Tipper did not specifically dispute whether the penalty had been correctly calculated and assessed. Having considered the information provided, I find that HMRC had issued a notice for file for the relevant year, the return was clearly filed more than six months late, and so I conclude that it was correctly assessed and calculated.

12. The question therefore is whether Mr Tipper had a reasonable excuse for the delay in filing his tax return. 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).

13. Mr Tipper’s reasonable excuse was, in summary, that he believed that he had completed a return in March 2020 and that any delay was the result of online communication errors.

14. Mr Tipper did not specifically dispute having received the notice to file sent in October 2019. Although he states that he was sent a notice to complete an online return in March 2020, I consider it likely that he has confused the self-assessment statement sent at that time with the notice to file sent to him in October 2019.

15. In the transcript of his telephone call with HMRC he stated that he did not remember going into a government gateway account, he had just filled out a form online.

16. It is not clear what form Mr Tipper believed he had completed in March 2020, but it was clearly not an HMRC online Self-Assessment form as these can only be accessed via the Government Gateway system. Mr Tipper did not have access to Self-Assessment via the Government Gateway system until November 2020. There was no evidence from Mr Tipper that whatever he had completed in March 2020 could be reasonably thought to have been an online tax return. He did not, for example, indicate that he had tried to use third party tax return software.

17. In the absence of any such evidence, I cannot conclude that it was objectively reasonable for Mr Tipper to have believed that he had filed a tax return with HMRC.

18. Mr Tipper’s status as an employee does not, if it is so intended, amount to a reasonable excuse. Lack of familiarity with filing tax returns does not diminish the need to comply with deadlines. The fact that Mr Tipper’s tax was paid via PAYE does also not provide a reasonable excuse; it has been well-established in case law that the penalty regime is proportionate even where no further tax is due once a return is filed.

19. As such, I find that Mr Tipper has not established that he had a reasonable excuse for the late filing of his return.

20. HMRC is permitted to reduce the penalty below the statutory minimum if they think it right to do so because of special circumstances. The Tribunal’s jurisdiction in this context is limited to circumstances where it considers HMRC’s decision in respect of special

circumstances was flawed when considered in the light of the principles applicable in judicial review proceedings.

21. HMRC have considered each of Mr Tipper's submissions in considering whether to apply a special reduction and have found nothing that is exceptional, abnormal or unusual to justify such a reduction. Applying the judicial review standards, I see no reason to overturn HMRC's decision.

Decision

22. As I have concluded that Mr Tipper does not have a reasonable excuse, and that there are no special circumstances meriting a reduction in the penalty, the appeal is dismissed and the penalty upheld.

Right to apply for permission to appeal

23. 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: 20 OCTOBER 2021