



[2021] UKFTT 0439 (TC)

TC 08323

Income tax – fixed penalties for late filing of self-assessment return – whether reasonable excuse - no – appeal dismissed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2021/01430

BETWEEN

MR LEE SAVAGE

Appellant

-and-

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

Respondents

TRIBUNAL: JUDGE KELVAN SWINNERTON

The hearing was decided on the papers on 30 September 2021 having read the Notice of Appeal of 26 April 2021, HMRC’s Statement of Case dated 2 July 2021 as well as all of the other documentation provided.

DECISION

INTRODUCTION

1. This is an appeal by Mr Savage against penalties imposed by HMRC under Schedule 55 of the Finance Act 2009 (“FA 2009”) for a failure to submit his self-assessment tax return for the tax year 2018-19.
2. HMRC imposed the following penalties upon the Appellant: (1) a £100 late filing penalty under paragraph 3 of Schedule 55 imposed on 12 February 2020 (2) a £300 “six months” penalty under paragraph 5 of Schedule 55 imposed on 3 November 2020 (3) a £300

“twelve months” penalty under paragraph 6 of Schedule 55 imposed on 17 February 2021. The total amount of the penalties imposed upon the Appellant is £700.

3. Under section 8 of the Taxes Management Act 1970 (“TMA”), a person may be required to make and deliver a self-assessment tax return by 31 October following the end of the tax year to which the return relates if on paper or by 31 January after the end of the tax year if filed electronically.

4. A penalty of £100 is payable if a person fails to make or deliver a self-assessment tax return on or before the filing date. If, after three months, the return has not been filed a person is liable to a penalty of £10 for each day that it remains outstanding for a period of up to 90 days from the date specified in a notice from HMRC. A penalty is payable of £300 or 5% of any liability to tax (if greater than £300) which would have been shown in the return if the return is not filed within six months. A further penalty is payable of £300 or 5% of any liability to tax (if greater than £300) which would have been shown in the return if the return is not filed within 12 months. No daily penalties were charged in this case.

THE LAW

5. The Taxes Management Act 1970 contains provisions relating to the filing of self-assessment tax returns.

6. *Section 8 – Personal return - states:*

(1) For the purpose of establishing the amounts in which a person is chargeable to income tax and capital gains tax for a year of assessment, [and the amount payable by him by way of income tax for that year,] he may be required by a notice given to him by an officer of the Board –

(a) to make and deliver to the officer, on or before the day mentioned in subsection (1A) below, a return containing such information as may reasonably be required in pursuance of the notice, and

(b) to deliver with the return such accounts, statements and documents, relating to information contained in the return, as may reasonably be so required.

(1A) The day referred to in subsection (1) above is-

(a) the 31st January next following the year of assessment, or

(b) where the notice under this section is given after the 31st October next following the year, the last [day of the period of three months beginning with the day on which the notice is given]

(1AA) For the purposes of subsection (1) above-

(a) the amounts in which a person is chargeable to income tax and capital gains tax are net amounts, that is to say, amounts which take into account any relief or allowance a claim for which is included in the return; and

(b) the amount payable by a person by way of income tax is the difference between the amount in which he is chargeable to income tax and the aggregate amount of any income tax deducted at source ...

7. The starting point with respect to penalties is paragraph 3 of Schedule 55 which imposes a fixed £100 penalty if a self-assessment return is submitted late.

8. Paragraph 4 of Schedule 55 provides for daily penalties to accrue where a return is more than three months late as follows:

(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 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 subparagraph (1)(a).

9. Paragraph 5 of Schedule 5 provides for further penalties to accrue when a return is more than 6 months late as follows:

(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.

10. Paragraph 6 of Schedule 55 provides for further penalties to accrue when a return is more than 12 months late as follows:

(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.

11. Paragraph 23 of Schedule 55 contains a defence of "reasonable excuse" as follows:

(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 purpose 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 reasonable delay after the excuse ceased.

12. Paragraph 16 of Schedule 55 gives HMRC power to reduce penalties owing to the presence of "special circumstances" as follows:

(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.

FINDINGS OF FACT AND REASONS

13. With respect to this case, the notice to file a self-assessment tax return for the tax year ending 5 April 2019 was sent to the Appellant on or around 5 April 2019. The filing date for the Appellant's self-assessment tax return was 31 October 2019 for a paper return or 31 January 2020 for a return to be filed electronically.

14. As at the date of HMRC's Statement of Case of 2 July 2021, the Appellant's self-assessment tax return for 2018-19 had not been received and remained outstanding.

15. In his Notice of Appeal, the Appellant states (amongst other things) that: "*I have never been self employed and have never in my life filled out a tax return, so I replied with a letter stating this in the meantime I gave received another letter stating that I now owe £702.49 and I have no idea why, at the same time the[y]'d be deducting it from my wages through a direct earnings attachment*".

16. HMRC state that, on 30 October 2018, a self-assessment record was created for the Appellant after details had been provided by the Appellant in an online registration form (SA1) from the Appellant which showed that the Appellant was in receipt of untaxed income as from 30 October 2018.

17. The notice to file a self-assessment tax return was issued to the Appellant at the address of 28 Castleton Boulevard, PE25 2TX. That was the address held for the Appellant on HMRC records.

18. HMRC state that there is no record of the notice to file having been returned undelivered. Additionally, HMRC state that neither is there any record of any other mail sent

by it to the Appellant having been returned undelivered. The receipt of the self-assessment tax return and the penalty notices does not appear to be in dispute between the parties. I find that the self-assessment tax return and the penalty notices were received by the Appellant.

19. With respect to the requirement for the Appellant to complete a self-assessment tax return for the tax year ending 5 April 2019, HMRC state that a self-assessment tax return must be completed by a taxpayer even if a taxpayer does not owe any tax or even if a taxpayer has already paid all of the tax that is owed.

20. In relation to the letter which the Appellant referred to having sent to HMRC, it was stated by HMRC that it has no record of having received such a letter.

21. As referred to above, paragraph 23 of Schedule 55 FA 2009 specifically provides that a penalty does not arise in relation to a failure to make a return if the person satisfies HMRC (or on appeal, a Tribunal) that there is a reasonable excuse for the failure and they put right that failure without unreasonable delay after the excuse has ended.

22. The legislation does not define the meaning of “reasonable excuse” but this has been subject to a detailed review in the case of *Christine Perrin v HMRC Commissioners* [2018] UKUT 0156 (“*Perrin*”).

23. In respect of the circumstances of this appeal, the Appellant was under a legal obligation to complete the tax return. That legal obligation applied regardless of whether or not the Appellant had ever completed a tax return previously and regardless of whether or not the Appellant owed any tax.

24. HMRC contend that, if the Appellant believed that he did not need to complete a self-assessment or that he had made a mistake in registering for self-assessment, he could have taken prompt action to remedy the situation when first becoming aware of the obligation to file a tax return but he took no such action. I agree. The Appellant refers to having sent a letter to HMRC but has not specified the date of any such letter and has not provided any evidence of having sent such a letter. HMRC has no record of ever having received such a letter from the Appellant.

25. Based upon the evidence before me, I find that Mr Savage does not have a reasonable excuse for the late filing of his tax return for the year 2018-19.

DECISION

26. The late filing penalties totalling £700 have been charged in accordance with legislation and no reasonable excuse has been shown for the failure of Mr Savage to file his tax return on time.

27. There are no special circumstances which would allow the penalties to be reduced under the Special Reduction provisions.

28. The appeal of Mr Savage is dismissed and the penalties in the sum of £700 are confirmed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

29. 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.

**KELVAN SWINNERTON
TRIBUNAL JUDGE**

Release date: 29 NOVEMBER 2021