



Neutral Citation: [2022] UKFTT 210 (TC)

Case Number: TC08533

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

By remote video & telephone hearing

Appeal reference: TC/2021/11429

*Income tax – late filing penalties – whether notice to file sent - whether reasonable  
excuse*

**Heard on:** 7 July 2022  
**Judgment date:** 8 July 2022

**Before**

**TRIBUNAL JUDGE HOWARD WATKINSON  
SONIA GABLE**

**Between**

**PAUL LEIGHTLEY**

**Appellant**

**and**

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

**Representation:**

For the Appellant: The Appellant did not attend the hearing

For the Respondents: **Ms. Iram Tariq**, litigator of HM Revenue and Customs’ Solicitor’s  
Office

## DECISION

### INTRODUCTION

1. With the consent of the parties, the form of the hearing was by video. Ms. Tariq, representing the Respondents, dialled in by telephone due to technical difficulties accessing the video platform. The documents to which we were referred were: a bundle of documents running to 89 pps., HMRC's Statement of Reasons, and a bundle of legislation and authorities.
2. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.
3. This is an appeal by Mr. Leightley against late filing penalties for the tax year 2019/2020 charged to him under Schedule 55 Finance Act 2009 ("**Sch.55**").
4. Mr. Leightley was charged the following penalties:

<b>Tax Year ending 5 April</b>	<b>Date Penalty</b>	<b>of Legislation</b>	<b>Description</b>	<b>Amount (£)</b>
2020	9.3.21	Para.3 Sch.55	Initial late filing penalty	£100
	17.8.21	Para.4 Sch.55	Daily late filing penalty	£900
	17.8.21	Para.5 Sch.55	6-Month late filing penalty	£300

5. The Respondents withdrew from the appeals in relation to the Para.3 and 4 Sch.55 penalties and invited the Tribunal to allow the Appellant's appeals against those penalties. The Tribunal allows the appeals in relation to the penalties of £100 and £900.
6. The remaining appeal is in relation to the Para.5 Sch.55 6-Month late filing penalty of £300.
7. The Appellant did not attend the hearing. On 1.6.22 the Tribunal sent the hearing notice to the Appellant. The Appellant replied to the hearing notice by email of the same date. The Appellant was therefore aware of the hearing. Having received an email from the Appellant on 14.6.22 saying that he apparently could not attend the hearing because he was abroad, on 15.6.22 the Tribunal wrote to the Appellant directing him to confirm in writing within 7 days whether he was seeking postponement, and if so, on what grounds. The Appellant did not respond. The initial direction was then followed by an unless order. The Appellant did not respond to the unless order either. The Tribunal decided to continue the hearing in the Appellant's absence under r.33 of the Tribunal Rules. The Appellant was aware of the hearing, the Respondents were prepared for the hearing, and it was in the interests of justice for the hearing to take place without the Appellant so that there could be finality to the litigation rather than waiting for some uncertain period of time for him to re-engage with the Tribunal.
8. The Appellant's Notice of Appeal dated 9.11.21 stated:  
*"Reason for late appeal – "I was out of work and also missed the notification email that I was sent informing me to submit my self-assessment."*

*“Appeal details: “Firstly I have spent most of my working years in South Africa so was not fully up to speed with regards to having to submit tax self-assessments, etc. That in itself has been a learning curve for me, as things operate completely differently in SA. Secondly, I failed to receive any notification informing me to submit a tax self-assessment, and have only now become aware via my employer that I’m being penalized for failing to submit my self-assessment. This has resulted in an amount being docked from my salary each month, which has caused me to look into the matter further. This is what effectively has brought me to this point. I was also unemployed due to COVID at the time I missed my apparent deadline. I now obviously know for future reference that I have to submit my self-assessment – i.e. next deadline being in January 2022.*

*I would like the £1,200 penalty revoked due to my complete ignorance and lack of experience involved here. This was simply an honest mistake that will not be repeated. I have been unemployed a large portion of the past few years due to COVID, so find the penalty to be harsh, at best, not to mention unaffordable at this point. I’m still in the process of trying to rebuild from the events of the past few years.”*

9. Two issues therefore arise on this appeal:

- (1) Did the Respondents send a Notice to File a return for the tax year ending 5.4.20?
- (2) If so, did the Appellant have a reasonable excuse for failing to file the return?

#### **THE RELEVANT LAW**

10. Sub-section 8(1) Taxes Management Act 1970 (“TMA”) provides as follows:

##### *“8 Personal return*

*(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 [...]<sup>4</sup>, a return containing such information as may reasonably be required in pursuance of the notice, and*  
...”

11. Section 115 TMA specifies the requirements for delivery and service of documents under the Taxes Acts. In so far as is relevant, it states:

##### *“115 Delivery and service of documents*

*(1) A notice or form which is to be served under the Taxes Acts on a person may be either delivered to him or left at his usual or last known place of residence.*

*(2) Any notice or other document to be given, sent, served or delivered under the Taxes Acts may be served by post, and, if to be given, sent, served or delivered to or on any person by HMRC may be so served addressed to that person—*

- (a) at his usual or last known place of residence, or his place of business or employment...”*

12. The late filing penalty regime is set out in Sch.55. The combined effect of Para.1(1) and (4) Sch.55 is that a person is liable to a penalty when he does not file an income tax return by the date that HMRC has required him to. Paras. 3-6 of Sch.55 set out the initial and subsequent penalty amounts and the periods of time to which they are linked. The relevant penalty here is the Para.5 penalty for £300 where the failure to make a return continues after the end of the

period of six months from the initial penalty date (when a penalty is first payable). The burden of proof is on the Respondents to prove the preconditions for the penalty i.e. that the Notice to File was sent, that the return was not submitted and the Appellant is therefore liable to the penalty, that he has been assessed to it, and that the assessment is in the correct amount.

13. By Para.23(1) Sch.55 liability to a penalty does not arise if the Appellant satisfies the Tribunal on appeal that there is a reasonable excuse for the failure to file on time. The limitations on that reasonable excuse set by Para.23(2) include under Para.23(2)(a)

*“(a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside P’s control,”*

14. There is no statutory definition of “reasonable excuse”. In *Rowland v Revenue & Customs Commissioners* [2006] STC (SCD) 536 the Tribunal noted at [19] that the issue was to be considered in the light of all the circumstances of the particular case. The Respondents also referred the Tribunal to *The Clean Car Company Ltd v The Commissioners of Customs and Excise* [1991] VATTR 234 in which Judge Medd QC set out that the test is an objective one, where the Tribunal must ask itself: “was what the taxpayer did a reasonable thing for a responsible trader conscious of and intending to comply with his obligations regarding tax, but having the experience and other relevant attributes of the taxpayer and placed in the situation that the taxpayer found himself at the relevant time, a reasonable thing to do?”

15. Finally, the Respondents referred the Tribunal to *Christine Perrin v The Commissioners for Her Majesty’s Revenue and Customs* [2018] UKUT 156 (TC) where at [81] the Upper Tribunal set out a useful approach that the First-tier Tribunal can take in considering the issue of reasonable excuse.

“81. When considering a “reasonable excuse” defence, therefore, in our view the FTT can usefully approach matters in the following way:

(1) First, establish what facts the taxpayer asserts give rise to a reasonable excuse (this may include the belief, acts or omissions of the taxpayer or any other person, the taxpayer’s own experience or relevant attributes, the situation of the taxpayer at any relevant time and any other relevant external facts).

(2) Second, decide which of those facts are proven.

(3) Third, decide whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In doing so, it should take into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times. It might assist the FTT, in this context, to ask itself the question “was what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?”

(4) Fourth, having decided when any reasonable excuse ceased, decide whether the taxpayer remedied the failure without unreasonable delay after that time (unless, exceptionally, the failure was remedied before the reasonable excuse ceased). In doing so, the FTT should again decide the matter objectively, but taking into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times.”

## **FINDINGS OF FACT**

16. From the HMRC records produced to us we find the following facts.

17. A Self-Assessment record was created for the Appellant on HMRC's systems automatically on 23.9.19 because he became a company director on 29.8.19.
18. HMRC recorded the Appellant's address (which we do not repeat here) from 17.7.19. HMRC internal records show the issue of a Notice to File for the 2019/20 tax year with due dates of 31.10.20 (paper) and 31.1.21 (electronic). The records show that the Notice to File was composed in a print-ready format and received by the system to print and despatch on 9.4.20. The system records that the document was enveloped for despatch after printing on 28.4.20 and despatched by Royal Mail post on 4.5.20. From these facts we find that the Notice to File was sent to the Appellant.
19. On 22.2.21 the Appellant accessed his online HMRC account and viewed pages relating to income tax. On 26.2.21 the Appellant accessed his online HMRC account again.
20. On 27.2.21 the Appellant accessed his online HMRC account again and viewed pages relating to income tax including "check-income-tax/underpayment-estimate" and "/check-income-tax/tax-free-allowance."
21. On 1.3.21 the Appellant accessed his online HMRC account and again viewed pages relating to income tax.
22. On 18.3.21, the Appellant accessed his online HMRC account, verified his identity, added Self-Assessment to his account and submitted the individual elements of his Self-Assessment return. What he did not do was submit the completed return. We find that the Appellant was, contrary to his claim in his Grounds of Appeal, well aware by 18.3.21 that he needed to submit a Self-Assessment return, because he took steps to do just that.
23. On 12.4.21 the Appellant accessed his online HMRC account and viewed messages.
24. On 13.4.21 the Appellant was sent an SS330 statement of account electronically, with an email alert. The electronic message was recorded as read.
25. On 27.8.21 an SA370 (late filing penalty) was issued electronically to the Appellant. The text of that message shows it was the 6-month late filing penalty of £300. The SA370 message is recorded as having been read. The Appellant must have received that message, because he attached it to his Notice of Appeal. An electronic alert was also issued to the Appellant. We find that the Appellant was notified of the assessment to the penalty.
26. HMRC's records show that no return for the tax year ended 5.4.20 has been submitted. The Appellant has never contended to the contrary.

#### **DISCUSSION**

27. We find that the Respondents have proved that the Notice to File was sent to the Appellant. We find that the Appellant received it. We find that the Appellant has not submitted a return for the tax year ending 5.4.20. We find that the Respondents have proved that the Appellant was liable to the penalty.
28. We have already found that the Appellant was sent, and received, the Notice to File.
29. The Tribunal does not accept the Appellant's essential assertion that he was a naïf, abroad, and had no knowledge of the Self-Assessment regime because of his inexperience. The Appellant repeatedly logged on to his HMRC account and viewed pages in relation to income tax. The Appellant took some steps to file a self-assessment return on 18.3.21. These facts strongly suggest to the Tribunal that the Appellant was aware of his self-assessment obligations, and we find that he was so aware.
30. The Appellant's claim to impecuniosity is not a reasonable excuse since he has not attributed it to events outside his control. Even if the Appellant had made a mistake, a mistake

such a failing to submit a Self-Assessment return for no good reason does not amount to a reasonable excuse.

31. We find that the Appellant has not proved that he had a reasonable excuse for failing to file the return.

**DECISION**

32. For the above reasons (i) the appeal in relation to the 6-month late filing penalty is dismissed and the penalty of £300 upheld, and (ii) the appeal in relation to the remaining penalties of £100 and £900 is allowed and those penalties are discharged.

**RIGHT TO APPLY FOR PERMISSION TO APPEAL**

33. 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.

**HOWARD WATKINSON  
TRIBUNAL JUDGE**

**Release date: 8 JULY 2022**