



TC05829

Appeal number: TC/2013/06330

INCOME TAX – penalty for failure to make returns. Whether reasonable excuse for late submission of self- assessment tax return - No.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ADELE E. BARLOW

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S Respondents
REVENUE & CUSTOMS**

**TRIBUNAL: PRESIDING MEMBER
PETER R. SHEPPARD FCIS FCIB CTA AIIT**

The Tribunal determined the appeal on 20 April 2017 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 3 September 2013, with enclosures, HMRC's Statement of Case, with enclosures, acknowledged by the Tribunal on 13 February 2017. The Tribunal wrote to the appellant on 13 February 2017 indicating that if she wished to reply to HMRC's Statement of Case she should do so within 30 days. No reply was received.

DECISION

1. The appellant is appealing against penalties that HMRC have imposed under
5 Schedule 55 of the Finance Act 2009 (“Schedule 55”) for a failure to submit an
annual self-assessment return on time.

2. The penalties that have been charged can be summarised as follows:

(1) a £100 late filing penalty under paragraph 3 of Schedule 55 imposed
on 19 March 2013.

10 (2) a £300 “six month” penalty under paragraph 5 of Schedule 55 imposed
on 17 September 2013.

(3) a £300 “twelve month” penalty under paragraph 6 of Schedule 55
imposed on 18 March 2014

15 (4) “Daily” penalties totalling £900 under paragraph 4 of Schedule 55
imposed on 17 September 2013.

3. The appellant’s grounds for appealing against the penalties can be summarised as
follows:

20 (a) She argues that there was a “reasonable excuse” for any
failure to submit the return on time.

(b) She argues that she received no correspondence that she
was in fact registered for self-assessment.

(c) She submits there was no income to recognise in the
relevant period and a zero return has now been filed.

25 The appellant’s appeal was notified to the Tribunal late. However, since HMRC have
stated that they are not objecting to the late notification, I give permission under s49
of the Taxes Management Act 1970 for the appeal to be notified late.

4. Findings of fact

30 Companies House records confirm that the appellant was a director of Adele Barlow
Limited from 20 April 2011 to 10 June 2014. The appellant received income under
pay as you earn during the 2011-2012 tax year from the directorship as declared to
HMRC.

35 5. The appellant registered online on 24 November 2012 as receiving income from a
directorship. On 6 December 2012 a self-assessment tax return for the year ending 5
April 2012 was sent to the appellant at the address shown on HMRC records at that
date. The filing date for the return whether electronic or non-electronic was 13 March
2013.

40 6. HMRC say that form 64-8 authorising FKGB Accounting to be the appellant’s
agent was not received by HMRC until 19 July 2013. Therefore HMRC would not
have written to them re the appellant before that date.

7. HMRC say that at the date of submission of their statement of case (8 February 2017) they had not received a return. They point to a computer printout to support that but the printout which is a self-assessment return summary is dated 20 September 2016. A letter to HMRC dated 25 July 2013 from the appellant's accountant states "a
5 zero return has now been filed."

8. The appellant's agent was given opportunity to respond to HMRC's statement of case but has made no submissions. Thus there has been no objection to the statement that the return has not been received. Paragraph 6 below shows that if a nil return had been filed on 25 July 2013 as indicated in the Appellant's agent's letter of that date
10 the penalties would have been £600 less. However the absence of any response leaves the Tribunal no alternative but to find that by 20 September 2016 no return had been received by HMRC. As that covers the period for which the penalties were imposed there is no need for the Tribunal to consider whether or not a return has been submitted since then.

9. As the return was not submitted by the filing date of 13 March 2013 HMRC issued a notice of penalty assessment on or around 19 March 2013 in the amount of £100. As the return had still not been received 3 months after the penalty date of 14 March 2013, HMRC issued a notice of daily penalty assessment of £900 on or around
15 17 September 2013, calculated at £10 per day for 90 days (14 March 2013 to 11 June 2013 is 90 days). As the return had still not been received 6 months after the penalty date of 14 March 2013, HMRC issued a notice of penalty assessment of £300 on or
20 around 17 September 2013. As the return had still not been received 12 months after the penalty date of 14 March 2013, HMRC issued a notice of penalty assessment of £300 on or around 18 March 2014.

10. In her notice of Appeal the appellant relies entirely on her accountant's letter of 25 July 2013. That letter states

"I refer to your letter sent 16 July 2013

I refer to the fines issued to my client Adele Barlow

The client (nor myself) had received no correspondence that she was in fact registered
30 as self-assessment until 2 weeks ago. There was no income to recognise in this particular period and a zero return has now been filed.

Ms Barlow has been trying to contact HMRC on a weekly basis to understand what the latest was with HMRC registration. She originally thought she need to register but realised 2013/4 was the year she should have been registered from.

35 On that basis, please can you remove the penalties from the system and she will file as expected going forward."

No letter from HMRC dated 16 July 2013 was included in the bundle provided to the Tribunal.

11. In respect of reasonable excuse HMRC say that they consider the actions of a taxpayer should be considered from the perspective of a prudent person exercising
40 reasonable foresight and due diligence, having proper regard for their responsibilities

under the Tax Acts. The decision depends on the particular circumstances in which the failure occurred and the particular circumstances and abilities of the person who failed to file their return on time. The test is to determine what a reasonable taxpayer, in the position of the taxpayer, would have done in those circumstances and by reference to that test to determine whether the conduct of the taxpayer can be regarded as conforming to that standard.

HMRC refer to the case of *Rowland* and say the matter is to be considered in the light of all the circumstances of the particular case.

12. HMRC has considered special reduction under (paragraph 16 Schedule 55 of the Finance Act 2009). They say special circumstances must be “exceptional, abnormal or unusual” (*Crabtree v Hinchcliffe*) or “something out of the ordinary run of events” (*Clarks of Hove Ltd. v Bakers’ Union*). HMRC say the special circumstances must apply to the particular individual and not be general circumstances that apply to many taxpayers (*David Collis v HMRC*). HMRC consider that there are no special circumstances which would allow them to reduce the penalty.

Discussion

13. The appellant’s agent says that the appellant received no correspondence from HMRC. This was sent to the last known address on HMRC’s file. The appellant’s agent says that the appellant has been trying to contact HMRC on a weekly basis yet HMRC records show that following registration on 24 November 2012 the appellant made no contact with them until she contacted them on 20 June 2013 enquiring about the late filing penalties. On that occasion she was advised that her 2011-2012 return remained outstanding. No evidence has been submitted in support the statement that the appellant had been trying to contact HMRC on a weekly basis.

14. The appellant’s agent says that there was no income to recognise.

No income is not a reason to fail to submit a tax return. Zero returns are required. The appellant’s agent has not submitted any evidence to show the zero return was submitted by 25 July 2013. In any event it appears that the appellant had received income from her directors fees which had been subject to PAYE during the period and these would have to be declared even if no further tax is due.

15. Relevant statutory provisions are included as an Appendix to this decision.

16. I have concluded that the tax return for the 2011-2012 tax year was not submitted by 20 September 2016. It should have been submitted by 13 March 2013. Subject to considerations of “reasonable excuse” and “special circumstances” set out below, the penalties imposed are due and have been calculated correctly.

17. In my opinion none of the reasons put forward by the appellant’s agent establish a reasonable excuse for the late or non submission of the appellant’s self assessment tax return for the period 2011-2012.

18. Paragraph 16 (1) of Schedule 55 Finance Act 2009 allows HMRC to reduce the penalty below the statutory minimum if they think it is right because of special

circumstances. HMRC have considered whether there any special circumstances in this case which would allow them to reduce the penalty and have concluded there are none. The Tribunal sees no reason to disagree.

19. HMRC has applied the late filing penalties in accordance with legislation. The Appellant has not established a reasonable excuse for the late submission of her tax return for the period 2010-11. There are no special circumstances to allow reduction of the penalty. Therefore the appeal against the late filing penalties of £1,600 is dismissed.

20. Paragraph 16 (1) of Schedule 55 Finance Act 2009 allows HMRC to reduce the penalty below the statutory minimum if they think it is right because of special circumstances. HMRC have considered whether there are any special circumstances in this case which would allow them to reduce the penalty and have concluded there are none. The Tribunal considers that their conclusion is not flawed and sees no reason to disagree.

21. **Conclusion**

HMRC has applied the late filing penalties in accordance with legislation. The Appellant has not established a reasonable excuse for the late submission of her tax return for the period 2010-11. There are no special circumstances to allow reduction of the penalty. Therefore HMRC's decision is affirmed and the appeal against the late filing penalties totalling £1,600 is dismissed.

22. Application for permission to appeal

This document contains a summary of the findings of fact and reasons for the decision. A party wishing to appeal against this decision must apply within 28 days of the date of release of this decision to the Tribunal for full written findings and reasons. When these have been prepared, the Tribunal will send them to the parties and may publish them on its website and either party will have 56 days in which to appeal. 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.

PETER R. SHEPPARD
TRIBUNAL JUDGE

RELEASE DATE: 27 APRIL 2017

APPENDIX – RELEVANT STATUTORY PROVISIONS

1. The penalties at issue in this appeal are imposed by Schedule 55 of the Finance Act 2009. The starting point is paragraph 3 of Schedule 55 which imposes a fixed £100 penalty if a self-assessment return is submitted late.

5 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)—

10 (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.

15 (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

20 (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—

25 (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

30 (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—

35 (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.

(5) 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.

5. Paragraph 23 of Schedule 55 contains a defence of “reasonable excuse” as follows:

- 5 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.
- 10 (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,
- 15 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.

20 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.
- 25 (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
- 30 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

35 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.
- 40 (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—

5 (a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or

10 (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.