



[2019] UKFTT 0671 (TC)

TC07446

Income tax – individual tax return – late filing penalty – agent - whether electronic filing notice - reasonable excuse – no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2019/01215

BETWEEN

EMMA MAIR

Appellant

-and-

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

Respondents

TRIBUNAL: JUDGE DR KAMEEL KHAN

The Tribunal determined the appeal on 26 September 2019 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 27 February 2019 (with enclosures) and HMRC's Statement of Case submitted on 15 April 2019(with enclosures).

DECISION

INTRODUCTION

1. This is an appeal against penalties totalling £100 imposed by the Respondents ('HMRC') under Paragraph 3 of Schedule 55 Finance Act 2009 ("Schedule 55") for the late filing by the Appellant of her Individual Tax Return for the tax year ending 5 April 2017.

Findings of Facts

2. The return for the year ending 5 April 2017 was issued to the appellant on the 8th of February 2018 at the correct address. The filing date was 15th May 2018 for both non-electronic return and electronic return.

3. The electronic return for the year 2016- 2017 was received on 26 September 2018, four months late. As the return was not received by the filing date HMRC issued a notice of penalty assessment on 22 May 2018 for £100.

4. On 30 October 2018, the appellant appealed against the penalty on the ground that her agent had submitted the return on 27 March 2018 but unaware the electronic submission had failed. HMRC sent the appellant a decision later in December 2018 rejecting her appeal and offering a review.

5. On 19 December 2018 the appellant's agent, AAF Accountancy Limited, requested a review of HMRC's decision, saying, they had filed a return on 27 March 2018 and because they did not receive a rejection email, they assumed the return has been submitted successfully.

6. HMRC carried out a review and issued their conclusion on 15 February 2019. The outcome of the review was that HMRC's decision should be upheld. On 27 February 2019 the appellant notified her appeal to the tribunal. Her main ground of appeal was that her accountant was unaware that their electronic submission of the return failed because no failure notice was received.

7. The appellant paid tax for 2016-2017 on 27 March 2018 once she had received the account statement from her accountant and said she acted in good faith throughout.

8. HMRC's records show that a self-assessment record was set up for the appellant on the 31 January 2018 on receipt of forms showing that the appellant was in receipt of dividend income since 6 April 2016, which meant it was reported 15 months late.

Discussion

9. It is established in law that where the taxpayer relies on another person to do anything it is not a reasonable excuse unless the taxpayer took reasonable care to avoid the relevant act of failure.

10. The law looks to the actions of the taxpayer rather than those of the agent. If the taxpayer acted reasonably in relying on the agent then if there are shortcomings by the agent, the taxpayer would not be penalised.

11. However, the taxpayer cannot simply put their tax affairs in the hands of an agent and then sit back and take no further action. The taxpayer must ensure that the agent carries out their contracted duties correctly. The fact only that a task has been the delegated to a third-party does not give rise to a reasonable excuse nor is there a reasonable excuse where the third-

party has failed to complete the task. This is especially true where administrative tasks are involved rather than substantive advice.

12. The appellant says that her agent filed her returns electronically on the 27 March and was unaware their submission had failed because they did not receive a failure notice.

13. In fact, had the submission of 27 March 2018 been successful, the agent would have received a **successful submission notice** in response to a successful submission. An agent would know immediately if the submission of a return was successful or not. If there was a successful submission on 27 March then the submission on 26 September 2018 would have resulted in an error message.

14. The burden of proof is on HMRC to show that the necessary conditions were met for the issue of penalties. The burden of proof is then on the appellant to show that she had a reasonable excuse for the late filing of her tax return. In each case the standard is the usual civil standard of balance of probabilities.

15. In the light of these observations I will look at what constitutes a reasonable excuse.

Reasonable Excuse

16. A reasonable excuse is considered under paragraph 23 of Schedule 55 which provides a liability does not arise in relation to a failure to make a return if the person satisfies the tribunal that there has been a reasonable excuse for the failure, which was put right without unreasonable delay.

17. The law specifies two situations that are not reasonable excuse:

(a) An insufficiency of funds, unless attributable to events outside the appellant's control, and

(b) Reliance on another person to do anything, unless the person took reasonable care to avoid the failure.

18. There is no statutory definition of "reasonable excuse". Whether or not a person had a reasonable excuse is an objective test and

"is a matter to be considered in the light of all the circumstances of the particular case"
(*Rowland V HMRC (2006) STC (SCD) 536 at paragraph 18*).

19. HMRC's view is that the actions of the taxpayer should be considered from the perspective of a prudent person, exercising reasonable foresight and due diligence, having proper regard for their responsibilities under the Tax Acts. The decision depends upon 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 conduct of the particular taxpayer is examined through the lens of a reasonable taxpayer.

20. The caselaw has provided guidance on the step by step approach to be taken in looking at reasonable excuse. In the case of *Christine Perrin v HMRC Commissioners [2018] UKUT 0156*, the Upper Tribunal held as follows:

"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.”

21. The appellant believes that she has a reasonable excuse. She employed an agent to file her returns, an administrative task and acted in good faith. The agent believed that they had filed the return. However, the electronic filing failed.

22. The relevant question is, was it reasonable in the absence of a successful filing notice, to assume the return had been filed. The answer is clearly no. An experienced user of the HMRC website, such as the agent, should have realised that the absence of an electronic acknowledgment of filing meant that there was not a successful filing of the submitted return.

23. The primary responsibility for filing rests with the appellant. Filing a return is a simple administrative task and one would have expected the taxpayer to follow up with HMRC to confirm if the filing was successful if no filing message was given. This is what a reasonable person would do in the circumstances. It is not a difficult task and it is a sensible step to take where there is doubt.

24. This was not done and should have been done especially where dividend income was being notified to HMRC 15 months late. When the returns were submitted on 26 September 2018, a message would have been given if there was a successful previous submission but the fact that the return was accepted by the digital system meant that there was only one successful submission of the return for 2016-2017 and that was the late filing. The penalty notice two months later on 15 May 2018 should also have alerted the taxpayer that there was a late filing.

25. The appellant says that the fine is harsh. The penalty is fixed by law and there is little discretion to reduce the penalty. The penalties are in place to ensure compliance with the law and the taxation system and the appellant has acknowledged the return was filed late. The tribunal does not believe the penalty of £100 is disproportionate in the circumstances.

26. The tribunal understands why Ms Mair would feel aggrieved but she should look to her agent for an explanation of why the returns were not submitted on time.

27. The appellant had paid her tax on time but this does not mitigate the penalty which was properly imposed in accordance with the law.

28. In the circumstances, the appellant does not have a reasonable excuse since relying on the third-party does not constitute a reasonable excuse.

29. HMRC can also reduce a penalty because of “special circumstances” under paragraph 16 of Schedule 55. The tribunal can only interfere with HMRC's decision if the decision in respect of the application of the special circumstances provisions is “flawed” when considered in the light of principles applicable to judicial review.

30. HMRC have confirmed that they did consider whether there were any special circumstances and concluded that there are none. I do not consider the HMRC decision to be flawed and there are no special circumstances in this case.

31. The Upper Tribunal, in a helpful decision in *Barry Edwards v HMRC [2019] UKUT 0131 (TCC)*, concluded that the penalty regime set out in Schedule 55 establishes a fair balance between the public interest in ensuring that taxpayers file their returns on time and the financial burden that a taxpayer, who does not comply with the statutory requirement, will have to bear. This Tribunal agrees with that decision and its application to the facts of this case.

Conclusion

32. The appeal is dismissed and the penalty applied is upheld.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

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.

JUDGE DR KAMEEL KHAN

TRIBUNAL JUDGE

RELEASE DATE: 6 NOVEMBER 2019