



TC07868

Penalties for late filing of self assessment tax return

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2020/01828

BETWEEN

SIMON BOX

Appellant

-and-

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

Respondents

TRIBUNAL: JUDGE SARAH ALLATT

The Tribunal determined the appeal on 28 September 2020 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 bundles provided on 15 September 2020.

DECISION

1. The appellant is appealing against penalties that HMRC have imposed under 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 13 February 2018.

(2) a £100 late filing penalty under paragraph 3 of Schedule 55 imposed on 26 March 2019.

(3) a £300 “six month” penalty under paragraph 5 of Schedule 55 imposed on 10 August 2018.

(4) a £300 “six month” penalty under paragraph 5 of Schedule 55 imposed on 9 August 2019

(5) a £300 “twelve month” penalty under paragraph 6 of Schedule 55 imposed on 19 February 2019. Note HMRC are NOT charging this for ‘deliberate’ behaviour.

(6) “Daily” penalties totalling £900 under paragraph 4 of Schedule 55 imposed on 31 July 2018

(7) “Daily” penalties totalling £900 under paragraph 4 of Schedule 55 imposed on 9 August 2019

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

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

(2) He argues that, owing to the presence of “special circumstances”, the amount of the penalty should have been reduced.

4. The appellant’s appeal to HMRC under s31A TMA 1970 was made outside the statutory deadline. However, HMRC have now prepared a full Statement of Case which deals with the substantive appeal (and does not suggest that the Tribunal should refuse to deal with the appeal because it was made late to HMRC). I therefore consider that HMRC have now given consent under s49(2)(a).

Findings of fact

5. On 6 April 2017 the Appellant was issued with a notice to file a tax return for the year ending 5 April 2017.

6. The filing date was 31 October 2017 for a non-electronic return or 31 January 2018 for an electronic return. The electronic return was received on 2 October 2019.

7. On 6 April 2018 the Appellant was issued with a notice to file a tax return for the year ending 5 April 2018.

8. The filing date was 31 October 2018 for a non-electronic return or 31 January 2019 for an electronic return. The electronic return was received on 2 October 2019.
9. The notices were issued to the last known address of the Appellant.
10. The Appellant was in the Construction Industry Scheme and had filed self assessment tax returns for previous years.
11. The Appellant does not dispute any of the above facts.
12. HMRC has considered all the special circumstances detailed by the Appellant in his appeal letters.
13. The Appellant suffered a family breakdown and had to leave the family home. He did not have access to his belongings for a period of time. We have no specific dates for these occurrences.
14. The Appellant also had depression at the relevant time brought on by other family circumstances. We have no medical evidence before this Tribunal.

Discussion

15. Relevant statutory provisions are included as an Appendix to this decision.
16. I have concluded that the tax return for the both the 16/17 and 17/18 tax years were submitted on 2 October 2019. They should have been submitted by 31 January 2018 and 31 January 2019 respectively. Subject to considerations of “reasonable excuse” and “special circumstances” set out below, the penalties imposed are due and have been calculated correctly.
17. The taxpayer has implied that the penalties are disproportionate to the failure to submit the returns on time. In *Barry Edwards v HMRC* [2019] UKUT 0131 (TCC), the Upper Tribunal considered whether the fact that significant penalties had been levied for the late filing of returns where no tax was due was a relevant circumstance that HMRC should have taken into account when considering whether there were "special circumstances" which justified a reduction in the penalties. The Upper Tribunal 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. Accordingly, the Upper Tribunal determined that the mere fact that a taxpayer has no tax to pay does not render a penalty imposed under Schedule 55 for failure to file a return on time disproportionate and, as a consequence, is not a relevant circumstance that HMRC must take into account when considering whether special circumstances justify a reduction in a penalty. It follows that I have concluded that the mere fact of the size of the penalties in relation to the tax due does not justify a reduction in the penalty either on the grounds of proportionality generally or because of the presence of “special circumstances”.
18. I have considered the facts of this case and whether they amount to a reasonable excuse for the failure to submit the returns. I note that HMRC say that the taxpayer, even though he had no access to his records, could have submitted returns with provisional figures.
19. I note that the taxpayer says that his mental health at the time meant he could not focus on his tax returns and that he only managed to carry on working with the support of friends.

20. I note that HMRC take the view that as Mr Box was able to work, they would expect him also to meet his obligations to HMRC.

21. I note that I have no dates for when Mr Box was obliged to leave his home, nor for when he managed to recover some of his belongings.

22. I consider that the fact that Mr Box had to leave his home and did not have access to his belongings for a period of time amounts to a reasonable excuse for a limited period of time. I do not consider that this excuse should last longer than 3 months.

23. I therefore allow the appeal against the £100 penalty for the failure to submit the 2016/17 tax return on time.

24. I consider that the excuse ceased to exist after 3 months, being a long enough time to ask a third party to recover belongings.

25. I note that HMRC have considered special circumstances in this case and I do not consider their reasoning flawed. Therefore I do not have jurisdiction to alter that decision.

Conclusion

1. The £100 penalty issued on 13 February 2018 is cancelled.
2. All the other penalties are affirmed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

3. 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.

**SARAH ALLATT
TRIBUNAL JUDGE**

RELEASE DATE: 14 OCTOBER 2020

APPENDIX – RELEVANT STATUTORY PROVISIONS

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

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)—
 - (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 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
 - (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—

- (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.

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

6—

- (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.
- (2) Where, by failing to make the return, P deliberately withholds information which would enable or assist HMRC to assess P's liability to tax, the penalty under this paragraph is determined in accordance with sub-paragraphs (3) and (4).
- (3) If the withholding of the information is deliberate and concealed, the penalty is the greater of—
 - (a) the relevant percentage of any liability to tax which would have been shown in the return in question, and
 - (b) £300.
- (3A) For the purposes of sub-paragraph (3)(a), the relevant percentage is—

- (a) for the withholding of category 1 information, 100%,
 - (b) for the withholding of category 2 information, 150%, and
 - (c) for the withholding of category 3 information, 200%.
- (4) If the withholding of the information is deliberate but not concealed, the penalty is the greater of—
- (a) the relevant percentage of any liability to tax which would have been shown in the return in question, and
 - (b) £300.
- (4A) For the purposes of sub-paragraph (4)(a), the relevant percentage is—
- (a) for the withholding of category 1 information, 70%,
 - (b) for the withholding of category 2 information, 105%, and
 - (c) for the withholding of category 3 information, 140%.
- (5) In any case not falling within sub-paragraph (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.
- (6) Paragraph 6A explains the 3 categories of information.

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

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.
- (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, 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.

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.
- (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.

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