



[2021] UKFTT 117 (TC)

**TC08098**

*INCOME TAX – late filing penalties – unaware that needed to complete return, not self-employed – whether reasonable excuse – no – whether special circumstances – no – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Appeal number: TC/2020/03390**

**BETWEEN**

**KATE CUTHBERTSON**

**Appellant**

**-and-**

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

**Respondents**

**TRIBUNAL: JUDGE ANNE FAIRPO**

The Tribunal determined the appeal on 11 March 2021 without a hearing with the consent of both parties under the provisions of Rule 29 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. A hearing was not held because [insert reason, including reference to any comments from the parties about the process, which should be contained in the decision itself]. The documents to which I was referred are a document bundle of 40 pages, HMRC's Statement of Case, a legislation and authorities bundle of 107 pages, and the Tribunal file.

## DECISION

### Introduction

1. This is an appeal against late filing penalties in relation to a self-assessment return for the tax year ended 5 April 2018, issued under Schedule 55 Finance Act 2009 (“Schedule 55”) as follows:

- (1) Initial late filing penalty of £100, issued on 29 October 2019; and
- (2) Six month late filing penalty of £300, issued on 25 August 2020.

2. This case was originally listed to be heard on 5 January 2021; however, on reviewing the file it became clear that the Tribunal had written to the appellant on 22 December 2020 with HMRC’s Statement of Case and had stated that the appellant was entitled to submit a reply within 30 days of the date of the letter. As this date was substantially after the original hearing date, the hearing was postponed until the Tribunal had confirmed after the relevant deadline that no reply had been received from the appellant.

### Background

3. The appellant was employed by Westminster Council in the relevant tax year, 2017/18. Her employer provided HMRC with a P11D on 20 June 2018 showing an unspecified taxable benefit of £420 had been provided to the appellant in 2017/18. This had not been included in her tax code for that tax year and so further tax became due of £85.80. A P800 calculation showing this was sent to the appellant on 27 June 2018 to the address held on file.

4. Although a tax underpayment such as this is generally collected through adjustment of the PAYE tax code, HMRC were unable to do so in this case because the appellant was on maternity leave between June 2017 and October 2018.

5. HMRC stated that they requested voluntary payment of the unpaid tax, issuing a VPL1 letter on 22 January 2019 to the address held on file. As no reply was received, they issued a VPL2 letter on 16 April 2019 to the same address. Both letters warned that failure to pay would result in the appellant being enrolled in self-assessment and a tax return issued for completion. HMRC stated that no reply was received to this letter.

6. The appellant had already enrolled in self-assessment by 3 July 2019 and had been sent a form confirming that she would need to file a tax return from 30 April 2018. On 10 July 2019 HMRC entered a note on her record regarding the PAYE underpayment and issued a notice to file a tax return for the 2017/18 tax year on 18 July 2019, with the return due to be filed on or before 25 October 2019.

7. As no return was filed, penalties were issued as set out in §1 above.

8. On 6 November 2019, the appellant appealed the initial late filing penalty issued on 29 October 2019. HMRC refused to consider the appeal because the return had not yet been filed.

9. The appellant filed her 2017/18 self-assessment tax return on 1 September 2020.

10. The appellant appealed both penalties to HMRC on 1 September 2020. HMRC responded to say that the appeal was out of time. They have since acknowledged that the appeal was in time with regard to the penalty dated 25 August 2020 and so should not have been rejected as out of time.

11. The appellant appealed to this tribunal on 19 September 2020.

### **Appellant's submissions**

12. The appellant submitted as follows:

- (1) She received a letter in December 2019 stating that she had failed to reply to a letter from HMRC dated 18 July 2019, which had stated that she had not submitted a tax return for the 2017/18 tax year.
- (2) She had not received the letter dated 18 July 2019.
- (3) She was not registered as self-employed in 2017/18 and none of the categories for which a tax return is required applied to her in that year.
- (4) She was out of the country during January 2020, returning to the UK on 19 February 2020 and returning home on 22 February 2020. At this time she worked in social care to develop covid-specific policy for care providers.
- (5) She had a medically managed miscarriage on 30 April 2020 during the COVID-19 lockdown and so communicating with HMRC was not a priority; as she knew she had not been self-employed in 2017/18 she did not consider that this was a significant issue.
- (6) Since June 2020 she has been working as a qualified social worker to assist with the backlog of work and potential issues for vulnerable people because of COVID-19.
- (7) From July 2020 her business had been back open and she had also been raising her three year old son as she had not be able to obtain childcare until 7 September 2020 despite being a keyworker.
- (8) It was only when she received the letter dated 25 August 2020 that she understood that there were penalties due of £400.
- (9) Although HMRC's letter states that she had been issued with VPL1 and VPL2, she did not receive the VPL1 letter.
- (10) The matter has had a negative effect on her anxiety.
- (11) Whilst she should have chosen to resolve this more quickly, she considers that she is being penalised for an error made by HMRC.

13. In correspondence, the appellant stated that she had not been aware that the underpayment had arisen as a result of a benefit in kind provided by Westminster Council, and she could only assume that this was in respect of her train season ticket. She considers that if Westminster Council failed to pay the benefit in kind that this is discrimination with regard to maternity leave as she was entitled to receive all of her contractual benefits during maternity leave. She had not been made aware that she owed money in relation to the benefit in kind.

### **HMRC submissions**

14. HMRC submitted, in summary:

- (1) The return was not disputed to have been filed late and the penalties were properly raised in accordance with the legislation.
- (2) The appellant needs to show that she has a reasonable excuse for the late filing in order to displace the penalty, or that special circumstances apply which would merit a reduction in the penalty.
- (3) No correspondence was returned undelivered from the appellant's address.

(4) The appellant's contention that she was not self-employed and had not received the VPL1, nor the letter issued on 18 July 2019, did not objectively constitute a reasonable excuse as HMRC had also issued her with a P800 on 27 June 2018 and a VPL2 letter on 16 April 2019.

(5) HMRC agreed that the appellant was not self-employed but submitted that the return was required in order to recover an amount of tax relating to a benefit in kind that had not been deducted under PAYE.

(6) Although HMRC acknowledged that the appellant was dealing with some difficult issues during 2020, she contended that she had not established a reasonable excuse for the late submission of the return.

15. HMRC considered whether or not special circumstances applied to merit a reduction in the penalty and took into consideration the following information in the appellant's correspondence: that she was not self-employed and had no other income during that time.

16. HMRC concluded that there were no special circumstances meriting a reduction in the penalty and that the penalty is appropriate in the light of the compliance intention of Parliament with regard to the penalty regime.

## **Discussion**

17. The appellant's contentions with regard to the question of whether the benefit in kind to which the underpayment relates amounts to discrimination are not a matter over which this Tribunal has jurisdiction, although I would point out that the fact that the underpayment of tax arose because the benefit was stated to have been paid by her employer.

18. There is no dispute that the return was filed more than six months after the due date for filing. The question therefore is whether the appellant has a reasonable excuse for the delay in filing, or whether special circumstance apply to merit a reduction in the penalty.

*Is there a reasonable excuse?*

19. There is no specific definition of a reasonable excuse, although it has been established a reasonable excuse must exist throughout the period of default and the failure to file must be remedied once the reasonable excuse has ceased to exist.

20. The appellant made a number of submissions which relate to the question of whether or not she had a reasonable excuse for the delay in filing. These, in effect, are that she did not realise that she had to complete a tax return as she had not received the letter of 18 July 2019 requiring her to complete a return and had no reason to believe that she was required to complete a return.

21. The appellant states only that she did not receive the VPL1, although the context in which she makes that statement is such that she appears to believe that the VPL1 was the letter sent on 18 July 2019, rather than the letter sent on 21 January 2019. The appellant makes no reference to not having received the P800 calculation in June 2018, nor does she say that she did not receive the VPL2 sent in April 2019.

22. Nevertheless, even if the appellant did not receive the letter requiring her to complete a tax return, I consider that, once she had received HMRC's letter of 21 January 2020, the appellant was then aware that HMRC required her to complete a return and that explanation was no longer capable of being a reasonable excuse.

23. The appellant's return was not filed until September 2020: the reasons given are that:

(1) The appellant was out of the UK until the end of February 2020;

- (2) She had a miscarriage at the end of April 2020;
- (3) She was busy with work from June onwards.

24. Although I have sympathy with the appellant's medical problems and acknowledge the difficulties relating to working whilst providing childcare during the COVID-19 pandemic, no explanation has been given as to why the appellant did not complete the return during March or early April 2020 following her return to the UK and receipt of HMRC's letter of 21 January 2020. Indeed, in her grounds of appeal the appellant notes that she "should have chosen to resolve this more quickly".

25. The question of what amounts to a reasonable excuse is set out in *Perrin v HMRC* [2018] UKUT 156 (TC) at §71:

"In deciding whether the excuse put forward is, viewed objectively, sufficient to amount to a reasonable excuse, the tribunal should bear in mind all relevant circumstances; because the issue is whether the particular taxpayer has a reasonable excuse, the experience, knowledge and other attributes of the particular taxpayer should be taken into account, as well as the situation in which that taxpayer was at the relevant time or times."

26. Taking this into consideration I find that, if the appellant's lack of awareness of the need to file a return amounted to a reasonable excuse, that reasonable excuse ended at the latest when she received HMRC's letter of 21 January 2020. I consider that a reasonable taxpayer, in the circumstances of the appellant, would have filed a return shortly thereafter and that the appellant has provided no reasonable excuse for the further delay in filing the return.

*Whether there were special circumstances*

27. HMRC is permitted to reduce the penalty below the statutory minimum if they think it right to do so because of special circumstances. The Tribunal's jurisdiction in this context is limited to circumstances where it considers HMRC's decision in respect of special circumstances was flawed when considered in the light of the principles applicable in judicial review proceedings.

28. HMRC have considered whether to apply a special reduction and have found nothing that is exceptional, abnormal or unusual to justify such a reduction. Applying the judicial review standards I see no reason to overturn HMRC's decision.

**Decision**

29. For the reasons given above, the appeal is dismissed.

**Right to apply for permission to appeal**

30. 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.

**ANNE FAIRPO  
TRIBUNAL JUDGE**

**RELEASE DATE: 20 APRIL 2021**