



TC06057

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Appeal number: TC/2017/02632

INCOME TAX – Whether reasonable excuse for late submission of self-assessment tax return - No.

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**FIRST-TIER TRIBUNAL
TAX CHAMBER**

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DOMINIC GRAHAM

Appellant

- and -

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

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

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The Tribunal determined the appeal on 1 August 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 21 March 2017, and HMRC's Statement of Case received by the Tribunal on 19 May 2017 with enclosures. The Tribunal wrote to the appellant on 22 May 2017 indicating that if he wished to reply to HMRC's Statement of Case he should do so within 30 days. No reply was received.

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DECISION

1. Introduction

5 This considers an appeal against penalties totalling £1,300 imposed by the respondents (HMRC) under Paragraphs 3,4 and 5 of Schedule 55 Finance Act 2009 for the late filing by the appellant of his self-assessment tax return for the tax year 2014-2015.

2. Legislation

Finance Act 2009 Schedule 55
10 Taxes Management Act 1970, in particular Section 8(1D)

3. Case law

Crabtree v Hinchcliffe (Inspector of Taxes) [1971] 3 ALL ER 967
Clarks of Hove Ltd v Bakers' Union [1979] 1 All ER 152
15 David Collis v HMRC [2011] UKFTT 588 (TC)
Keith Donaldson v HMRC [2006] EWCA Civ 761
HMRC v Hok Ltd. [2012]UKUT 363 (TCC)
Rowland v HMRC [2006] STC (SCD) 536

20 4. Facts

Schedule 55 of the Finance Act 2009 ("the Schedule") makes provision for the imposition by Her Majesty's Revenue and Customs ("HMRC") of penalties on taxpayers for the late filing of tax returns.

25 If a person fails to file an income tax return by the "penalty date" (the day after the "filing date" i.e. the date by which a return is required to be made or delivered to HMRC), paragraph 3 of the Schedule provides that the person is liable to a penalty of £100.

Paragraph 4 of the Schedule provides:

"(1) A person is liable to a penalty under this paragraph if (and only if)–

30 (a) The 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 the person specifying the date from which the penalty is payable."

35 (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).

Paragraph 5 of the Schedule provides

40 (1) A person is liable to a penalty under this paragraph if (and only if) - the 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

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The filing date for an individual tax return is determined by Section 8 (1D) of the Taxes Management Act 1970.

5. In this case in respect of the tax year ended 5 April 2015 HMRC issued a notice to file to the appellant on 4 September 2015. The filing date for a non-electronic return was stated as 11 December 2015 whereas for an electronic return the filing date was 10 31 January 2016. The appellant's electronic return was not submitted until 18 August 2016. As the return was not submitted by the filing date of 31 January 2016 HMRC issued a notice of penalty assessment on or around 17 February 2016 in the amount of £100. As the return had still not been received 3 months after the penalty date of 1 15 February 2016, HMRC issued a notice of daily penalty assessment of £900 on or around 12 August 2016, calculated at £10 per day for 90 days (1 May 2016 to 29 July 2016 is 90 days). As the return had still not been received 6 months after the penalty date of 1 February 2016, HMRC issued a notice of daily penalty assessment of £300 on or around 12 August 2016.

20 6. HMRC's records show that an electronic return was filed on 18 August 2016.

7. HMRC's approach to daily penalties was the subject of an appeal by Keith Donaldson which culminated in a decision of the Court of Appeal. The Tribunal has read that decision and considers that its conclusions whilst informative have negligible effect on the matters considered in this appeal.

25 8. Nevertheless the Tribunal is critical of HMRC in that no copy of any of the penalty notices was included in the bundle of papers provided. The only evidence of the penalties is a copy of HMRC's own internal record showing that penalty notices were issued and it is clear from the appellant's letters that they received the penalty notices. In a case where HMRC are insisting on evidence to support statements made 30 by the appellant's agent it is all the more important that HMRC provide evidence to support their own contentions. In an age where HMRC encourage submissions of returns on-line it is astounding that they appear not to have a computer system that stores a copy of penalty notices issued.

35 9. The lack of the penalty notices hampers the Tribunal in establishing whether the notices have been issued to the correct address and person, and whether the penalty has been calculated accurately.

40 10. On 26 August 2016 the appellant's agent Mon Bookkeeping & Accountancy Services of Clogwyn, Anglesey sent a form SA370 form Self Assessment : appeal against penalties for late filing and late payment to HMRC,. On that form they state the reason for making the appeal was that

“At this time Mr.Graham was unfortunately detained at Her Majesty’s pleasure during this period and was therefore unable to deal with his affairs due to these circumstances....”

The Tribunal observes that no specific dates for the appellant’s detention are quoted.

5 11. In their letter of 1 December 2016 HMRC said that they did not consider that this provided a reasonable excuse for the late return. They observed that “although you were detained in prison, you had income from self-employment that year and therefore had ample time to complete your tax return on time.” The letter offered a review.

10 12. On 6 December 2016 the Appellant’s agent completed a form SA634 Request for a review of decision.

They said “I feel HMRC is treating Mr.Graham unfairly. Although he did have self-employed income it had been subject to tax under the CIS deduction scheme which resulted in my client receiving a refund of tax paid from HMRC. He is in no way
15 avoiding his obligations as he believed that as he had paid tax at source he was complying. 2014-2015 was a very traumatic year for Mr.Graham as he served time in prison. On his release he was suffering from severe anxiety and depression. Despite his problems he had tried his best to get his life back on track. It is totally unfair that HMRC are issuing penalties for non-submission of self-assessment returns when they
20 in fact owed him money.”

The Tribunal observes that once again no specific dates are quoted and no medical evidence is provided.

13. On 30 January 2017 HMRC wrote to the appellant giving the result of the review. The reply included “We received form CWF 1 registering you for self-assessment on
25 27 August 2015, showing that you were self-employed from 2 February 2015. This meant you needed to file a 2014-2015 Self Assessment tax return and on 4 September 2015 we sent you a notice to file the return. The return shows the start date of your self employment as 1 July 2014.

30 You have not told us the dates you were in prison or provided medical evidence that you were unable to cope with life after your release. Your tax returns show that your self-employed earnings were similar in 2014-2015 and 2015-2016. You could have arranged for the return to be filed even if you were in prison when it was due.

35 You contacted us on 15 June 2016 after we sent you a letter warning that we were charging daily penalties. You said that you thought your agent had already filed the return, and that you would check with them. We sent a further penalty letter on 5 July 2016, but the return was not filed until 18 August.

If you employ an agent to complete and file your tax return on your behalf, you remain responsible for ensuring that it is received by the relevant deadline and are liable to the automatic penalty if it is not.

Late filing penalties are raised solely because the Self Assessment tax return is filed late .They are no longer linked to liability and remain fixed even if there is no tax due.”

14. Appellant’s Submissions

5 In addition to the submissions set out above, in a letter dated 24 February 2017 attached to the Notice of Appeal the Appellant’s agent states

“Mr.Graham registered again for self-employment according to your records on 27 August 2015. My client worked from August 2014 to September 2015 when his mental health deteriorated once more. Prior to this Mr.Graham had every intention of appointing an accountant to act on his behalf to complete his Self Assessment tax return for 2014-2015 but due to his fragile state of mind he was unable to deal with his financial affairs and incorrectly believed at this time that he had paid his tax as he was under the Construction Industry Scheme. This was a particularly difficult time for Mr. Graham to be able to face his responsibilities and admit he was unable to cope and needed help.

I would argue that the penalties charged by HMRC show they do not understand Mr. Graham’s illness and they are discriminating against him.

Mr. Graham returned to work in June 2016 and I was contacted shortly afterwards and asked to assist my client with bringing his tax affairs for 2014-2015 and 2015-2016 up to date and I filed on his behalf on 18 August 2016. I do not consider that he has been treated fairly as he did not delay in taking responsibility when he ws able to do so and no monies were owed to HMRC as all tax had been deducted at source and in fact a repayment was issued.”

15. HMRC’s submissions

25 Some of HMRC’s submissions are included in the paragraphs above. In addition HMRC say Taxpayers who are within the self-assessment system must file their returns by the due date and pay the tax they owe by the date specified in law.

16. In respect of reasonable excuse HMRC say 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).

HMRC’s view is that the actions of a 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 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”.

17. 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
5 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.

18. Tribunal’s Observations

10 The Tribunal considers that it is the Appellant’s responsibility to submit his tax returns on time. The Tribunal considers the appellant was given sufficient notice to file his return and therefore had enough time to either submit his return or to make arrangements for it to be submitted.

15 19. The return for the period 2014-2015 was due to be submitted on-line by 31 January 2016, but was submitted late on 28 August 2016. Penalties totalling £1,300 are therefore due unless the appellant can establish a reasonable excuse for the delay as referred to in Paragraph 23(1) Schedule 55 Finance Act 2009.

20 20. The Tribunal has considered carefully the grounds of appeal set out in the Notice of appeal. It is not disputed that the appellant submitted his return late. The Tribunal therefore considered whether the appellant had reasonable excuse for this failure. It is
20 accepted that the appellant spent a period of time in prison and then suffered ill health. Each of these could potentially establish a reasonable excuse for the appellant. HMRC recognised this and asked for the dates that the appellant was in prison and for medical evidence of the ill health. In the Tribunal’s view this was a reasonable course for HMRC to take. In the Tribunal’s view HMRC have not discriminated against the
25 appellant nor have they been unfair to him. It is perfectly normal to ask a taxpayer to give more precise details and to provide evidence to support his contentions.

Unfortunately neither the appellant nor his agent has provided the requested information leaving HMRC little option but to confirm the penalties.

30 The Tribunal does not consider that HMRC’s request for this information presents too onerous a task for either the appellant or his agent. The appellant must know or be able to readily find out the date he was sent to prison, and the date he was released. In addition if he has suffered ill health his doctor should be able to assist by confirming that the appellant was ill and the effects of that ill health on his ability to organise his affairs.

35 21. The Tribunal considers that the appellant may well have reasonable excuse for the late submission of his return. The Tribunal also considers there may be special circumstances which could allow a reduction of the penalty. However despite being specifically asked by HMRC to provide more detailed evidence both to support the dates the appellant was in prison and to confirm the appellant’s ill health during the
40 period after his release such information has not been provided by either the appellant or his agent. This lack of supporting evidence means that with some regret the Tribunal is left with no alternative but to conclude that the appellant has not established a reasonable excuse for his failure to submit his 2014-2015 tax return on time.

22. In respect of whether the level of the penalties is disproportionate to the offence, harsh and unfair the Tribunal points out that the level of the fines is laid down in legislation and the Tribunal has no power to amend them unless they are incorrectly imposed or they are inaccurately calculated.

5 In HMRC v Hok Ltd the Upper Tribunal at paragraph 36 said "...The statutory provision relevant here, namely TMA S100B, permits the Tribunal to set aside a penalty which has not in fact been incurred, or to correct a penalty which has been incurred but has been imposed in an incorrect amount, but it goes no further. In particular neither that provision, nor any other gives the Tribunal discretion to adjust a
10 penalty of the kind imposed in this case, because of a perception that it is unfair, or for any similar reason. Pausing there, it is plain that the First-tier Tribunal has no *statutory* power to discharge, or adjust, a penalty because of the perception that it is unfair."

15 23. 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. In view of the lack of supporting evidence referred to above the Tribunal sees no reason to disagree.

20 24. HMRC has applied the late filing penalties in accordance with legislation. The Appellant has not established a reasonable excuse for the late submission of his tax return for the period 2014-15. There are no special circumstances to allow reduction of the penalty. Therefore the appeal against the late filing penalties of £1,300 is dismissed.

25 25. 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
30 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

35 | **PETER R. SHEPPARD**
TRIBUNAL PRESIDING MEMBER

RELEASE DATE: 09 AUGUST 2017