



TC06169

Appeal number: TC/2017/04368

INCOME TAX – penalty for failure to make returns

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

JACQUELINE SULLIVAN

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE ANNE SCOTT

The Tribunal determined the appeal on 13 October 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 May 2017 (with enclosures), and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 24 July 2017.

DECISION

5 1. The appellant is appealing against a late filing penalty that HMRC have imposed under paragraph 3 of the Finance Act 2009 (“Schedule 55”) for a failure to submit an annual self-assessment return for the year 2015/16 on time.

The Facts

2. On 27 April 2012, HMRC received a letter from the appellant advising that she was now self-employed as a foster carer.

10 3. She had previously been self-employed for a period and she had completed annual self-assessment returns for the years 1997 to 2005. She ceased trading on 24 December 2004.

15 4. Since she became a foster carer she has had a history of incurring penalties for late filing of returns. Penalties were imposed for the tax years ended 5 April 2013, 2014, 2015 and 2016. In addition daily penalties were imposed for 2014 and 2015. The late filing penalties (other than for 2016), daily penalties and a late payment penalty were subsequently cancelled and HMRC sent the appellant duplicate returns and a help sheet.

20 5. The Notice to file for the year ending 5 April 2016 was issued to the appellant on 6 April 2016. The filing date was 31 October 2016 for a non-electronic return or 31 January 2017 for an electronic return.

6. As the return was not received by the filing date, HMRC issued a Notice of Penalty Assessment in the sum of £100 on or around 7 February 2017.

25 7. It is understood that further penalties will be, or have been, charged but they are not the subject matter of this appeal.

8. The return was finally received by HMRC on 29 June 2017.

9. In the interim on 1 March 2017, the appellant appealed against the penalty on the grounds that she had sent the tax form and stating that she wished that HMRC would send her the correct form.

30 10. On 27 March 2017, HMRC responded rejecting her appeal and offering a review.

35 11. On 1 April 2017 she responded reiterating that she had sent in all her tax forms even although she had had the wrong form, she had had a lot of stress as her husband had been taken ill in Turkey and had remained there, so she had to bring the foster children home on her own and that in future she would send tax forms by recorded delivery.

12. The review conclusion was issued by HMRC on 15 May 2017 and that stated:-

- (a) The 2015/16 return had still not been received.
- (b) No dates or supporting evidence had been provided in respect of the husband's illness and there was no explanation as why that had stopped her submitting the return.
- 5 (c) The returns for 2013/14 and 2014/15 had both been submitted almost a year late and HMRC had repeatedly sent her duplicate returns and self-employment pages. The help sheet 236 had been sent to her on four separate occasions.
- (d) Information about penalties was reiterated and it was pointed out that she needed to file the 2017 return on time.
- 10 13. On 21 May 2017 (before she filed the return), the appellant notified her appeal to the Tribunal stating that:-
- (a) I have sent in all my forms on time.
- (b) There was one time she had filled in the wrong tax form.
- (c) She gets two different addresses to send forms and HMRC had told her not
15 to worry because everything is "months behind".

Discussion

Was the return late?

14. There is no doubt that the return was late. The £100 penalty is therefore due unless the appellant had a reasonable excuse for the late submission or special
20 circumstances applied. I discuss special circumstances at paragraphs 20 to 22 below.

Reasonable excuse

15. Was there any reasonable excuse? *Rowland v HMRC*¹ at paragraph 18 makes it clear that a reasonable excuse "... is a matter to be considered in the light of all the circumstances of the particular case".
- 25 16. There is no statutory definition of reasonable excuse but in my view the test articulated by Judge Medd in *The Clean Car Company Limited v CEE*² should be applied. Judge Medd said:-

- 30 "...the test of whether there is a reasonable excuse is an objective one. In my judgment it is an objective test in this sense. One must ask oneself: was what the taxpayer did a reasonable thing for a responsible trader conscious of and intending to comply with his obligations regarding tax, but having the experience and other relevant attributes of the taxpayer and placed in the situation that the taxpayer found himself in at the relevant time, a reasonable thing to do?"

- The same principle applies to all taxpayers, whether traders or not. It would have been prudent to have submitted the return timeously in compliance with the
35 provisions of Section 8 Taxes Management Act 1970.

¹ 2006 STC (SCD) 536

² 1991 VTTR 234

17. Applying this test to the facts, the question is whether the appellant had acted reasonably.

18. The appellant knows that she must complete returns. She knows, or should know, the importance of doing so on time. There is no explanation as to when and how her husband was ill. There is no explanation as to why she appealed the penalty yet still failed to file the return. Given her history of late filing, if she has difficulty with filing she should seek assistance. Assistance is available from the helpline.

19. It is for the appellant to prove that she had a reasonable excuse and she has not done so.

10 *Special Circumstances*

20. Paragraph 16 of Schedule 55 allows HMRC to reduce the penalty below the statutory minimum if they think it right to do so because of special circumstances. As long ago as 1971, in a House of Lords decision dealing with special circumstances in the Finance Act 1965, Lord Reid in *Crabtree v Hinchcliffe (Inspector of Taxes)*³ said
15 “Special must mean unusual or uncommon - perhaps the nearest word to it in this context is ‘abnormal’”.

21. HMRC have confirmed that they did consider whether there were any special circumstances in this case and concluded that there are none. They have patently considered all relevant circumstances.

22. I did consider whether HMRC had acted in a way that no reasonable body could have acted, or whether they took into account some irrelevant matter or disregarded something to which they should have given weight. I think not. I have also considered whether HMRC have erred on a point of law. They have not. I find no reason to disagree with their conclusion. HMRC’s decisions in that regard are not
25 flawed when considered in light of the principles applicable in proceedings for judicial review.

General

23. Parliament has laid down a deadline for submission of tax returns and has provided for penalties in the event of default. Although those penalties have been
30 described by some as harsh, nevertheless they are widely held to be proportionate. In this instance they are within the bounds of proportionality. Furthermore *HMRC v Anthony Boshier*⁴ makes it clear that I do not have the jurisdiction to consider the proportionality of fixed penalties such as those charged in this appeal. I am bound by that decision and have no discretion.

³ 1971 3 All ER 967

⁴ 2013 UKUT 579 (TCC)

24. The decision of the Upper Tribunal in *HMRC v Hok*⁵ is binding on me and that makes it explicit at paragraph 58 that this Tribunal has no jurisdiction to discharge penalties on the ground that their imposition was unfair.

25. The £100 penalty is therefore confirmed.

5 26. 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
10 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.

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**ANNE SCOTT
TRIBUNAL JUDGE**

RELEASE DATE: 17 OCTOBER 2017

⁵ 2012 UKUT 363