



*INCOME TAX - late payment penalties - individual return - whether reasonable excuse -no-  
appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**TC07098**

**Appeal number: TC/2018/06292**

**BETWEEN**

**SAVITA DAS**

**Appellant**

**-and-**

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

**Respondents**

**TRIBUNAL: JUDGE JENNIFER TRIGGER**

The Tribunal determined the appeal on 14 January 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 04 October 2018 (with enclosures), HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 19 November 2018 and the Appellant's Reply dated 10 December 2018.

## **DECISION**

### **INTRODUCTION**

1. The appellant is appealing against a penalty imposed by HMRC under Schedule 56 of the Finance Act 2009 ("Schedule 56") for a failure to pay tax on time for the tax year ending 05 April 2017.
2. The penalty is a late payment penalty in the sum of £83.00.
3. The tax was due to be paid on or before 31 January 2018.

4. At the penalty date of 02 March 2018 £1,667.92 of the appellant's tax liability remained unpaid.
5. The penalty was calculated at 5% of the tax unpaid at the penalty date, under paragraph 3 (2) of Schedule 56, imposed on 17 April 2018.
6. Summary judgment was given by the Tribunal. The Decision was released on 28/01/2019 and the appellant made a request for a full statement of reasons on 25/02/2019.

### **Appellant's case**

7. The appellant made her request for a full statement on the following grounds:
  - (1) that she was not aware that the extension of the due date to file a return does not automatically extend the due date for payment of the tax due. The notice to file a self-assessment return does not advise that if there is tax to pay it needs to be paid by 31 January. The appellant received a notice to file a return on 11 January 2018 giving her three months to file and she did file the return within that period. She asserts that she assumed that the tax due date would align with the self-assessment date. She states also that she did not know how much she had to pay by 31 January 2018. Furthermore, this was the first occasion on which she was required to file a tax return.
  - (2) that HMRC does not make clear, in the notice to file, the due date for tax payable. It is not widely advertised by HMRC that in cases where the tax return due date is legitimately delayed after 31 January that the tax payment date remains 31 January. The notice to file for the year ending 05 April 2017 was received by the appellant on 11 January 2018. The due date to file was 18 April 2018 for both a paper return and an electronic return. The appellant's electronic return was received by HMRC on 10 April 2018.
  - (3) that she acknowledges that she might have received the notice to file earlier had she notified HMRC by 05 October 2017 that she had untaxed income but delayed in doing so. In the absence of any indication from HMRC that the tax payment due date was 31 January 2018 she deferred payment of the tax due until 10 April 2018.
  - (4) that she has a reasonable excuse for the late payment of the tax due.

### **HMRC's case**

8. HMRC submitted that the following were the issues to be decided:
  - (1) Whether the individual tax return was correctly issued;
  - (2) Whether the tax due was paid late;
  - (3) Whether the penalty was correctly charged;
  - (4) Whether the appellant had a reasonable excuse in effect throughout the default period.
9. In accordance with section 7(1) Taxes Management Act 1970, (TMA), HMRC contend that the appellant should have informed HMRC that she was in receipt of untaxed income within six months of the end of the 2015-16 tax year namely, 05 October 2016. In fact the appellant informed HMRC about her untaxed income on 05 January 2018. Therefore, she was over 12 months late in informing HMRC about her untaxed income. The appellant provides no explanation for that failure.

10. HMRC set up a self-assessment record for the appellant and issued notices to file returns for tax year 2015-16, the tax year in which the appellant started to receive her untaxed income, and for the tax year 2016-17. Both were issued on 11 January 2018.

11. In reliance on section 7(8) TMA HMRC contend that because the appellant did not comply with section 7(1) TMA, in that she did not inform HMRC within six months of the end of the tax year in which she received her untaxed income, the tax due date remained the same as if the return had been issued under the usual cycle for 2016-17, namely 31 January 2018. She became therefore, liable to a penalty, not exceeding the tax due, namely £1,667.92 for 2016-17, in the sum of £83.00.

12.. The appellant has provided no explanation for the delay in informing HMRC that she was in receipt of untaxed income within the six month time limit. The appellant does concede that she could have provided HMRC with details of her untaxed income within the six month time limit. This is not the action of a prudent taxpayer. The appellant fails to demonstrate that she had due regard for her responsibilities as a taxpayer. There is plenty of information in the public domain which the appellant could have accessed to ensure that all relevant bodies were informed that she had untaxed income. As this was the first occasion that the appellant was required to disclose her untaxed income it placed a higher duty on her to make enquiries and research her responsibilities.

13. The appellant could have accessed the HMRC website where there is a calculator to ascertain the amount of tax payable.

14. All taxpayers are afforded access to information to enable them to comply with their legal responsibilities in this respect. The appellant has been afforded the same.

15. For the reasons given above HMRC do not accept that the appellant has shown a reasonable excuse.

16, HMRC did not apply a special reduction there being, in the opinion of HMRC, no special circumstances.

### **The law**

17. Sections 7, 8, 9 and 59B (3) & (4) Taxes Management Act 1970;

Section 7(1) Taxes Management Act 1970 provides so far as is relevant:

“Every person who-

- (a) is chargeable to income or capital gains tax for any year of assessment and
  - (b) has not received a notice under section 8 of this Act requiring a return for that year of his total income and chargeable gains,
- shall, subject to subsection (3) below, within six months from the end of that year, give notice of the Board that he is so chargeable.”

Section 7(8) Taxes Management Act 1970 provides so far as is relevant:

“If any person, for any year of assessment, fails to comply with subsection (1) above, he shall be liable to a penalty not exceeding the amount of tax-

- (a) in which he is assessed under section 9 or 29 of this Act in respect of that year, and
- (b) which is not paid on or before 31 January next following that year.”

Schedule 56 Finance Act 2009 paragraphs 1, 3, 9, 13, 15 and 16;

Schedule 56 paragraph 16 provides so far as is relevant:

“(1) Liability to a penalty under any paragraph of this Schedule does not arise in relation to a failure to make a return if the person 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 the person’s control,

(b) where the person relies on another person to do anything, that is not a reasonable excuse unless he/she took reasonable care to avoid the failure, and

(c) where the person had a reasonable excuse for the failure but the excuse has ceased, he/she is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.”

*Perrin v HMRC [2018] UKUT 156 (TCC)* in which the Upper Tribunal held “that to be a reasonable excuse, the excuse must not only be genuine, but also objectively reasonable when the circumstances and attributes of the actual taxpayer are taken into account.

...Once it has made its findings of all the relevant facts, then the FTT must assess whether those facts (including, where relevant, the state of mind of any relevant witness) are sufficient to amount to a reasonable excuse, judged objectively.

Where a taxpayer’s belief is in issue, it is often put forward as either the sole or main fact which is being relied on –eg. “...I genuinely and honestly believed that I had submitted a return”. In such cases, the FTT may accept that the taxpayer did indeed genuinely and honestly hold the belief that he/she asserts; however that fact on its own is not enough. The FTT must still reach a decision as to whether that belief, in all the circumstances, was enough to amount to a reasonable excuse. So a taxpayer who was well used to filing annual self -assessment returns but was told by a friend one year in a pub that the annual filing requirement had been abolished might persuade a tribunal that he honestly and genuinely believed he was not required to file a return, but he would be unlikely to persuade it that the belief was objectively a reasonable one which could give rise to a reasonable excuse.”

The approach to be taken by the FTT in a reasonable excuse case is described in *Perrin* as follows:

“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, decide 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.”

### **Findings of fact**

18. The Tribunal found that:

- (1) the individual self-assessment return for tax year 2016-17 was correctly issued by HMRC;
- (2) the tax due was received late by HMRC;
- (3) the penalty was correctly charged in accordance with the law; and
- (4) there was no reasonable excuse.

### **Reason for the decision**

19. It was not disputed that the individual self-assessment return for tax year 2016-17 was correctly issued by HMRC and that tax due was paid late. The Tribunal consider that HMRC established that the penalty was properly issued and properly calculated. The question is therefore whether the appellant has a reasonable excuse for her failure to pay tax on time for the tax year ending 05 April 2016-17.

20. There is no statutory definition of “reasonable excuse”. However, in accordance with the case of *Perrin* the Tribunal must establish what facts the appellant asserts.

21. It is the appellant’s case that she received a notice to file a return on 11 January 2018 which gave her three months in which to file the return and that he did file the return within that three month period. She assumed that payment of the tax due would align with the due date by which the return must be filed. Furthermore, the appellant was unaware of the amount of tax due as at 31 January 2018 and that this was the first occasion on which she was required to file a tax return. She believes that the forms issued to him by HMRC were unclear because the date by which the tax must be paid was not displayed.

22. The appellant has failed to act as prudent taxpayer. She was required to file a tax return and pay tax due. This was the first time she had had to file a tax return. A responsible taxpayer would have made inquiries to find out what she had to do. The appellant conducted no research. She could have contacted HMRC by telephone or accessed their website. Furthermore, information is readily available within the public domain.

25. The appellant contends that she should not be charged the penalty because her return was issued late and she was unable to calculate the amount of tax payable. However, the return was only issued late because the appellant failed to inform HMRC that she was in receipt of untaxed income. HMRC did not state the amount of tax due because the disclosure was not made within

the six month time limit. No reason has been given by the appellant for her failure to disclose to HMRC details of her untaxed income at an earlier date. Accordingly, the Tribunal determined that the appellant has failed in her duty as a taxpayer to act in a responsible manner.

26. The amount of tax due could have been ascertained by the appellant had she accessed the HMRC website.

27. The facts which are not proved by the appellant are that the payment of tax due would align with the due date for filing the return; that the forms issued by HMRC are misleading and that it was not possible to ascertain the amount of tax due as at 31 January 2018.

28. What the appellant omitted to do, or believed to be the law, are objectively not reasonable for this appellant in the circumstances relied upon.

29. Accordingly, the appellant fails to prove that she had a reasonable excuse for the failure to pay the tax due throughout the period of default and the appellant further fails to show that she put right the default without unreasonable delay.

30. In relation to the question of a special reduction the Tribunal can only substitute its decision for that of HMRC's if it concludes that the decision made by HMRC was flawed when considered in the light of the principles applicable in proceedings for judicial review. The Tribunal having carefully considered all the evidence cannot so conclude.

31. Accordingly, the appeal is dismissed and the appellant remains liable for the penalty of £83.00.

**RIGHT TO APPLY FOR PERMISSION TO APPEAL**

32. 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.

**JENNIFER ANN TRIGGER  
TRIBUNAL JUDGE**

**RELEASE DATE: 15 APRIL 2019**