



Neutral Citation: [2022] UKFTT 197 (TC)

Case Number: TC 08522

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2021/04564

Income tax – late filing penalties – whether reasonable excuse

Heard on: 15 June 2022

Judgment date: 21 June 2022

Before

**TRIBUNAL JUDGE HOWARD WATKINSON
SUSAN STOTT**

Between

HENRY ANNAFI

Appellant

and

THE COMMISSIONERS FOR HER MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: **Mr. Henry Annafi**, the Appellant

For the Respondents: **Ms. Merlina Sedari**, litigator of HM Revenue and Customs’
Solicitor’s Office

DECISION

INTRODUCTION

1. With the consent of the parties, the form of the hearing was by video. Mr. Annafi and Ms. Sedari attended remotely on the CVP platform. The documents to which we were referred are: a bundle of documents running to 67 pps., HMRC's Statement of Reasons, and a bundle of legislation and authorities.

2. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

3. This is an appeal by Mr. Annafi against late filing penalties for the tax years 2016/2017 and 2017/2018 charged to him under Schedule 55 Finance Act 2009 ("Sch.55").

4. Mr. Annafi was charged the following penalties:

Tax Year ending 5 April	Date of Penalty	Legislation	Description	Amount (£)
2017	13.2.18	Para.3 Sch.55	Initial late filing penalty	£100
	31.7.18	Para.4 Sch.55	Daily late filing penalty	£900
	10.8.18	Para.5 Sch.55	6 Month late filing penalty	£300
	19.2.19	Para.6 Sch.55	12 Month late filing penalty	£300
2018	26.3.19	Para.3 Sch.55	Initial late filing penalty	£100
	9.8.19	Para.4 Sch.55	Daily late filing penalty	£900
	9.8.19	Para.5 Sch.55	6 Month late filing penalty	£300
	18.2.20	Para.6 Sch.55	12 Month late filing penalty	£300

5. Mr. Annafi did not dispute that he received the late filing notices for the two tax years and therefore that the penalty regime in Sch.55 was engaged. During the hearing, Mr. Annafi also accepted, to his credit in the Tribunal's view, that he did not have a reasonable excuse for the late filing of the 2016/2017 year return, and that he no longer disputed the penalties for that year. We see no reason to interfere with the Respondents' conclusion that there were no special circumstances permitting a special reduction of those penalties. We therefore dismiss the appeal in so far as it concerns the £1,600 cumulative penalties for the year 2016/17.

6. Mr. Annafi was, however, adamant that he had a reasonable excuse for the late filing of the 2017/2018 return which was in fact never filed. Mr. Annafi's case was, in summary: that he had told HMRC repeatedly that his self-employment had ceased in early 2017 and that he was not within the self-assessment regime for the 2017/2018 year, he had been told on 16 March 2019 that if he filed the 2016/2017 return and informed HMRC in writing that he was no longer self-employed then the notice to file for 2017/2018 would be cancelled along with any consequent penalties, and that he did subsequently file the 2016/2017 return along with a written explanation that he was not self-employed within that year.

7. Ms. Serdari, for HMRC, helpfully accepted that if Mr. Annafi did indeed file the 2016/2017 return along with a written explanation that he was not self-employed within that year as claimed, then that would amount to a reasonable excuse. However, Ms. Serdari said that HMRC had never received the 2016/2017 return.

8. The issue for the Tribunal was therefore essentially one of fact: has Mr. Annafi proved on the balance of probabilities that, as he claimed, he filed the 2016/2017 return along with a written explanation that he was not self-employed within that year?

THE RELEVANT LAW

9. The late filing penalty regime is set out in Sch.55. The combined effect of Para.1(1) and (4) Sch.55 is that a person is liable to a penalty when he does not file an income tax return by the date that HMRC has required him to. Paras. 3-6 of Sch.55 set out the initial and subsequent penalty amounts and the periods of time to which they are linked.

10. By Para.23(1) Sch.55 liability to a penalty does not arise if the Appellant satisfies the Tribunal on appeal that there is a reasonable excuse for the failure to file on time. The limitations on that reasonable excuse set by Para.23(2) are not engaged here, and we therefore say no more about them.

11. There is no statutory definition of "reasonable excuse". In *Rowland v Revenue & Customs Commissioners* [2006] STC (SCD) 536 the Tribunal noted at [19] that the issue was to be considered in the light of all the circumstances of the particular case. The Respondents also referred the Tribunal to *The Clean Car Company Ltd v The Commissioners of Customs and Excise* [1991] VATTR 234 in which Judge Medd QC set out that the test is an objective one, where the Tribunal must ask itself: "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 at the relevant time, a reasonable thing to do?"

12. Finally, the Respondents referred the Tribunal to *Christine Perrin v The Commissioners for Her Majesty's Revenue and Customs* [2018] UKUT 156 (TC) where at [81] the Upper Tribunal set out a useful approach that the First-tier Tribunal can take in considering the issue of reasonable excuse.

"81. 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, having decided 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

13. We found Mr. Annafi to have given a straightforward and credible account. Where he had made errors as to dates he was quick to accept them. His acceptance that he had no reasonable excuse in relation to the 2016/17 penalties in our view enhanced the credibility of his overall account.

14. Mr. Annafi ceased self-employment in January 2017. He completed some documents relating to his previous work in March 2017, but that was tying up administrative matters. Mr. Annafi then commenced paid employment in July 2017.

15. On Saturday 12 May 2018 Mr. Annafi telephoned HMRC. He did so because he had received the notice to file for the 2017/18 year. Mr. Annafi told the agent that he spoke to that he had ceased self-employment and therefore would not be within the self-assessment regime for the 2017/18 year. Mr. Annafi was told that he needed to file a return for the 2016/17 year and to note on it what he had said about ceasing to be self-employed. Mr. Annafi asked whether he could make representations about the need to file the 2016/17 return and was told that he could, but that the agent could not say how they would be treated. Mr. Annafi sent a letter to HMRC with his representations, but did not receive a response to it.

16. On 16 March 2019 Mr. Annafi again spoke to HMRC. The transcript of that call was in evidence before us. Mr. Annafi informed the agent that he had not worked for himself since 2017 and that he had not earned in excess of what he understood to be the threshold for paying income tax in the 2016/17 year. The agent asked Mr. Annafi various questions, saying:

“...at the end it will tell me if you do or do not meet the rules to complete a tax return... Now if it's a case of you don't then I can remove you out of self-assessment and it will cancel all the penalties.”

17. Mr. Annafi explained that he had undertaken consultancy work until March/April 2017 and the agent told him that he would need to complete a tax return for the 2016/17 year. The agent talked Mr. Annafi through how to print a hard copy return from the www.gov.uk website. The transcript records that Mr. Annafi apparently went online as he was being talked through the process.

18. Mr. Annafi was then told:

“On the return itself where it says additional information, if you just state in there that your self-employment ceased in March (inaudible) final payment, March 2017. What we'll do then is once

we get this in we'll log this on your file, close your record down for 18-19 so we'll do away with the request for a tax return in 2018/19...Sorry '17 to '18, my apologies. We'll do away with any requests for that year, we'll cancel any penalties for that financial tax year because essentially you don't meet the rules to complete a tax return."

19. The Agent also advised Mr. Annafi of how to appeal the penalties that he had received for the 2016/17 year (no penalties having yet been issued for 2017/18).

20. Mr. Annafi ended the call by saying:

"Fantastic thanks so much... Brilliant OK, I feel a hell of a lot better."

21. Mr. Annafi then says that he completed the Self Assessment return for 2016/17 and sent it to HMRC with an explanation that he had ceased self-employment in March 2017 on a SA370 form. Mr. Annafi says that he would have been a "complete idiot" not to have done so because he had been told that it was the only way that he could ensure that he did not receive further penalties. Ms. Sedari tells us that HMRC did not receive the return and letter, but we find that Mr. Annafi sent it.

22. Ms. Sedari challenged why Mr. Annafi did not file a return online, but we did not understand that challenge bearing in mind that Mr. Annafi had been told in the same telephone call that doing the return by paper would be the way to get it done with as quickly as possible.

23. Mr. Annafi sent a letter to HMRC dated 17.6.20 in which he said he had sent in the 2016/17 return with an accompanying letter.

DISCUSSION

24. Ms. Sedari for the Respondents accepted that if Mr. Annafi had sent in the 2016/17 return with an explanation that he had ceased self-employment in March 2017 then he would have had a reasonable excuse for not filing the 2017/18 return.

25. In the Tribunal's view Ms. Sedari was right to do so. Applying *Perrin*, it would amount to a reasonable excuse. What Mr. Annafi did was objectively reasonable in the circumstances. He informed HMRC by telephone in May 2018 that he was no longer employed, when it became clear that this had not prevented further penalties being issued he telephoned HMRC again and was told in no uncertain terms that if he filed the 2016/17 return with an explanation that he was not self-employed during the 2017/18 tax year then the requirement to file a return for that year would be removed, and no penalties issued. He then did what he had been advised to do.

26. We therefore find that Mr. Annafi had a reasonable excuse for not filing the 2017/18 return and his appeal is allowed to that extent.

DECISION

27. For the above reasons (i) the appeal in relation to the 2016/17 penalties is dismissed and the penalties of £1,600 upheld, and (ii) the appeal in relation to the 2017/18 penalties is allowed and those penalties are discharged.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

28. 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.

**HOWARD WATKINSON
TRIBUNAL JUDGE**

Release date: 22 June 2022