



Neutral Citation: [2023] UKFTT 10 (TC)

Case Number: TC08672

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Held by video

Appeal reference: TC/2022/02221

INCOME TAX – self-assessment tax returns - late filing penalties – whether appropriate and correct – yes - appeal dismissed.

**Heard on: 28 September 2022
Judgment date: 14 December 2022**

Before

**TRIBUNAL JUDGE KELVAN SWINNERTON
MEMBER MR MARK BUFFERY**

Between

JASON MCCAFFREY

Appellant

and

**THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS
Respondents**

Representation:

For the Appellant: Appeared in person.

For the Respondents: Ms A Lafaurie, litigator of HM Revenue and Customs’ Solicitor’s Office.

DECISION

INTRODUCTION

1. This is an appeal by Mr McCaffrey (“the Appellant”) against penalties imposed by HMRC totalling £2,000 under Schedule 55 Finance Act 2009 for the late filing by Mr McCaffrey of his self-assessment (‘SA’) tax returns for the tax years ended 5 April 2019 and 5 April 2020.
2. Under section 8 of the Taxes Management Act 1970 (“TMA”), a person may be required to make and deliver a self-assessment tax return by 31 October following the end of the tax year to which the return relates if on paper or by 31 January after the end of the tax year if filed electronically.
3. A penalty of £100 is payable if a person fails to make or deliver a self-assessment tax return on or before the filing date. If, after three months, the return has not been filed a person is liable to a penalty of £10 for each day that it remains outstanding for a period of up to 90 days from the date specified in a notice from HMRC. A penalty is payable of £300 or 5% of any liability to tax (if greater than £300) which would have been shown in the return if the return is not filed within six months. A further penalty is payable of £300 or 5% of any liability to tax (if greater than £300) which would have been shown in the return if the return is not filed within 12 months.
4. In respect of the tax year 2018-19, the following penalties were imposed: a late filing penalty of £100 under paragraph 3 of Schedule 55; a 6 months penalty of £300 under paragraph 5 of Schedule 55; and a 12 months penalty of £300 under paragraph 6 of Schedule 55. The penalties totalled £700 for the tax year 2018/19.
5. In respect of the tax year 2019/2020, the following penalties were imposed: a late filing penalty of £100, a daily penalty of £900 and a 12 months penalty of £300. The penalties totalled £1300 for the tax year 2019/20.

THE HEARING AND EVIDENCE

6. We considered all of the documentation provided which included a hearing bundle, a bundle of legislation and case law and a document from HMRC entitled ‘Statement of Reason’ dated 4 July 2022.
7. We also heard evidence from the Appellant and submissions from both parties.

THE FACTS

8. The Appellant signed up for paperless contact on 4 February 2018.
9. A telephone conversation took place between the Appellant and HMRC on 5 April 2019.
10. A notice to file a self-assessment tax return for the year ending 5 April 2019 was issued digitally on or about 6 April 2019 to the Appellant.
11. In relation to the tax year 2018-19, penalty notices dated 12 February 2020, 3 November 2020 and 17 February 2021 were issued to the Appellant digitally.
12. The Appellant’s electronic tax return for the tax year 2018-19 was received by HMRC on 20 December 2021. That was 689 days late.

13. The notice to file a self-assessment tax return for the tax year 2019-20 was issued to the Appellant digitally on or about 6 April 2020.
14. In respect of the tax year 2019-2020, penalty notices dated 9 March 2021 and 17 August 2021 were issued to the Appellant digitally.
15. The Appellant's electronic tax return for the tax year 2019-20 was received by HMRC on 7 January 2021. That was 341 days late.
16. On 19 December 2021, the Appellant made an appeal to HMRC in respect of the penalties imposed.
17. On 17 February 2022, HMRC issued a late appeal refusal letter.
18. A Notice of Appeal was received by HMRC on 15 March 2022.

THE LAW

19. The Taxes Management Act 1970 contains provisions relating to the filing of self-assessment tax returns.
20. *Section 8 – Personal return - states:*

(1) For the purpose of establishing the amounts in which a person is chargeable to income tax and capital gains tax for a year of assessment, [and the amount payable by him by way of income tax for that year,] he may be required by a notice given to him by an officer of the Board –

(a) to make and deliver to the officer, on or before the day mentioned in subsection (1A) below, a return containing such information as may reasonably be required in pursuance of the notice, and

(b) to deliver with the return such accounts, statements and documents, relating to information contained in the return, as may reasonably be so required.

21. The penalties at issue in this appeal are imposed by Schedules 55 The starting point is paragraph 3 of Schedule 55 which imposes a fixed £100 penalty if a self-assessment return is submitted late.

22. Paragraph 4 of Schedule 55 provides for daily penalties to accrue where a return is more than three months late as follows:

(1) P is liable to a penalty under this paragraph if (and only if)-

(a) P's 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 P specifying the date from which the penalty is payable.

(2) The penalty under this paragraph is £10 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).

- (3) The date specified in the notice under sub-paragraph (1)(c)-*
 - (a) may be earlier than the date on which the notice is given, but*
 - (b) may not be earlier than the end of the period mentioned in subparagraph (1)(a).*

23. Paragraph 5 of Schedule 5 provides for further penalties to accrue when a return is more than 6 months late as follows:

- (1) P is liable to a penalty under this paragraph if (and only if) P's 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.*

24. Paragraph 6 of Schedule 55 provides for further penalties to accrue when a return is more than 12 months late as follows:

- (1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 12 months beginning with the penalty date.*

25. Paragraph 23 of Schedule 55 contains a defence of "reasonable excuse" as follows:

- (1) Liability to a penalty under any paragraph of this Schedule does not arise in relation to a failure to make a return if P satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that there is a reasonable excuse for the failure.*
- (2) For the purpose of sub-paragraph (1)--*
 - (a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside P's control,*
 - (b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and*
 - (c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without reasonable delay after the excuse ceased.*

26. Paragraph 16 of Schedule 55 gives HMRC power to reduce penalties owing to the presence of "special circumstances" as follows:

- (1) If HMRC think it right because of special circumstances, they may reduce a penalty under any paragraph of this Schedule.*
- (2) In sub-paragraph (1) "special circumstances" does not include-*
 - (a) ability to pay, or*
 - (b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.*
- (3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to-*

- (a) staying a penalty, and
- (b) agreeing a compromise in relation to proceedings for a penalty.

DISCUSSION

27. The Appellant maintains that he was contacted by HMRC on 5 April 2019 by telephone and that, during that conversation he explained that he was not able to register for self-assessment. The Appellant states further that, as a consequence of that telephone call with HMRC, he expected to be provided with instructions on how to register for self-assessment but that no such instructions were forthcoming from HMRC. The Appellant's case also is that he only became aware, in December 2021, of the digital communications that had been sent to him. On becoming aware of the various digital communications in December 2021, he then submitted his tax return for the tax year 2018-19 and, shortly thereafter, submitted his tax return for the tax year 2019-2020.

28. HMRC assert that it is the responsibility of the Appellant to monitor his digital account in relation to any digital communications sent to that account. HMRC state also that, each time a digital notification was sent to the Appellant's online personal tax account, a message alert was sent by e-mail to the Appellant's personal e-mail address provided to HMRC by the Appellant. HMRC assert that there is no evidence from its digital communications team that any message alerts were delivered unsuccessfully to the personal e-mail address that had been provided to HMRC by the Appellant.

29. At the hearing, the Appellant made clear to us that he was familiar with the use of digital communications by HMRC because of his use of them in respect of other aspects of his tax affairs. We can see no reason why we should not accept the confirmation of HMRC that its digital communications team did not receive any notification that the message alerts had been delivered unsuccessfully. We find that the message alerts from HMRC to the Appellant were sent to the personal e-mail address of the Appellant such that the Appellant would have received a message alert on each occasion that a digital communication had been sent to his personal tax account.

30. There is a dispute between the parties as to which of them initiated the telephone conversation that took place between them on 5 April 2019. The Appellant maintains that he received a telephone call from HMRC whereas HMRC state that there was an incoming call from the Appellant to HMRC. We were provided with a record from HMRC of that telephone conversation. That record refers to an incoming telephone call from the Appellant (or the taxpayer) to HMRC. We were not provided with any note of the telephone conversation from the Appellant. We are prepared to accept, therefore, that the record of HMRC of the telephone conversation is accurate with respect to who initiated the telephone call. We find that the Appellant telephoned HMRC on 5 April 2019.

31. With respect to what was discussed by the Appellant with HMRC during that telephone call on 5 April 2019, the record provided by HMRC refers to penalties having been cancelled. It states: "*TP telein re 17/18 LFP on his account. TP adv pen cancelled by prev adv. Adv also given on how he can enrol for online services*".

32. Ms Lafaurie for the Respondents informed us that the reference to cancelled penalties related to self-assessment penalties for the previous tax year, that of 2017-18. That was not disputed by the Appellant at the hearing although he could not state with certainty whether cancelled penalties were discussed. We are prepared to accept that the record of HMRC of the telephone conversation is accurate in relation to the discussion about cancelled penalties. We

find, therefore, that the Appellant was already familiar with the self-assessment process prior to the first of the two tax years in question in this appeal given that we accept that a discussion took place, on 5 April 2019, between the Appellant and HMRC about tax penalties for the tax year of 2017-18.

33. The note of HMRC of 5 April 2019 refers also to advice having been given to the Appellant about how he could enrol for online services. The note does not say anything about HMRC stating that it will send instructions to the Appellant on how to do this. We can see on basis, therefore, why the Appellant would have expected instructions to have been sent to him in relation to how to enrol for online services. Having said that, and based upon the Appellant's own account, we find it most difficult to understand why the Appellant would have done nothing after the telephone call of 5 April 2019 to establish what was required in relation to the self-assessment process if he had doubts or required clarification of what it was necessary to do. The Appellant, it appears, did not take any steps at all to clarify the situation or to obtain instructions from HMRC yet he clearly would have known the consequences, in terms of potential penalties, of such inaction particularly as he appears to have had penalties cancelled for the year of 2017-18.

34. It is not in dispute between the parties that the Appellant, on 17 December 2021, read a message in his personal tax account. That is more than two and a half years after the telephone conversation with HMRC on 5 April 2019. We see no reason why the Appellant did not read the digital communications sent to his personal tax account much sooner given that we have found already that the Appellant did receive e-mail message alerts to his personal e-mail address that digital communications had been sent by HRMC to his personal tax account. No credible explanation was provided to us by the Appellant for not having read much earlier the digital communications sent by HMRC to the Appellant's personal tax account. His failure to do so led to his failure to make himself aware of those communications.

35. We find that the Appellant has failed to show any reasonable excuse for not filing the tax returns for 2018-19 and 2019-20 on time.

DECISION

36. The late filing penalties totalling £2,000 have been charged in accordance with legislation and no reasonable excuse has been shown for the failure of the Appellant to file his tax returns for the tax years of 2018-19 or 2019-20 on time.

37. There are no special circumstances which would allow the penalties to be reduced under the Special Reduction provisions.

38. We dismiss the appeal of the Appellant and confirm the penalties in the sum of £2,000.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

39. 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.

TRIBUNAL JUDGE KELVAN SWINNERTON

Release date: 14th DECEMBER 2022