



**TC06352**

**Appeal number: TC/2017/08299**

*INCOME TAX – penalty for failure to make returns – reasonable excuse –  
reasonable care in reliance on agent*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MR DEIVIDAS KRZEVECKIJ**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE ABIGAIL MCGREGOR**

**MEMBER MR IAN MENZIES-CONACHER**

**Sitting in public at Taylor House, London on 15 December 2017**

**The Appellant represented himself**

**Mr Muhammad Khan, presenting officer of HMRC, for the Respondents**

## DECISION

5 1. The appellant is appealing against penalties that HMRC have imposed under Schedule 55 of the Finance Act 2009 (“Schedule 55”) for a failure to submit an annual self-assessment return on time.

2. The penalties have been charged in relation to the tax return for the tax year 2015-16 as follows:

10 (1) a £100 late filing penalty under paragraph 3 of Schedule 55 imposed on 7 February 2017, and

(2) “Daily” penalties totalling £90 under paragraph 4 of Schedule 55 imposed on 16 May 2017.

3. The appellant’s grounds for appealing against the penalties can be summarised as follows:

15 (1) he does not submit the returns himself because he doesn’t understand how to do it, he relies entirely on his accountant to do it for him;

(2) he understood from his accountant that the relevant return was submitted on time.

20 4. These grounds differed from the original notice of appeal, which had stated that a paper return had been submitted by the accountant on time. No evidence was submitted to support this conclusion. It transpired during the course of the hearing that Mr Krzeveckij had not been aware of this submission, which had been made by his accountant. HMRC did not object to the change in grounds of appeal at the hearing.

5. HMRC submits that:

25 (1) The penalties were validly issued because the return was submitted late;

(2) The appellant does not have a reasonable excuse because a prudent taxpayer would have checked that his accountant had submitted his tax return, particularly given the tax return for the previous tax year had also attracted late filing penalties.

### 30 **Findings of fact**

6. It was not disputed in this appeal that:

(1) the notice to file a return was issued on 6 April 2016;

(2) the return was due in paper form by 31 October 2016 or online by 31 January 2017;

35 (3) the return was submitted online on 9 May 2017; and

(4) the initial late filing penalty notice and daily filing penalty notices were issued by HMRC and received by the taxpayer.

7. We find the following facts based on the evidence presented to us:

(1) Mr Krzeveckij appointed his agent in late 2013 or early 2014 and she was added as agent on his self-assessment account in January 2014;

5 (2) Mr Krzeveckij sent his bank statements and other information to his agent in late May or early June 2016 for the purposes of completing his tax return;

(3) In mid-June 2016 he sent a text message to his agent asking for confirmation that she had received the paperwork and that the tax return had been submitted;

10 (4) On 22 June 2016, the agent texted back to confirm that she had received the paperwork and submitted the return and was waiting for confirmation from HMRC; and

(5) When Mr Krzeveckij received the penalty notices in February 2017, he contacted his agent, who told him not to worry about them and she would sort it out.

## 15 **Discussion**

8. Relevant statutory provisions are included as an Appendix to this decision.

9. We have concluded that the tax return for the 2015-16 tax year was submitted on or around 9 May 2017 online. It should have been submitted by 31 January 2017. Subject to considerations of “reasonable excuse” set out below, the penalties imposed  
20 are due and have been calculated correctly.

10. Therefore the only question to be determined is whether Mr Krzeveckij had a reasonable excuse for the failure to submit the return on time.

11. As set out in the appendix, where a taxpayer relies on any other person to do anything, that is not a reasonable excuse unless he took reasonable care to avoid the  
25 failure.

12. As a matter of fact based on the evidence presented by Mr Krzeveckij, who seemed to us to be a reliable and trustworthy witness, we find that he did place complete reliance on his agent to complete and submit his returns on his behalf. He accepted entirely that he did not have the knowledge or expertise to do this himself and had  
30 therefore appointed the agent to do them for him. We also find that Mr Krzeveckij was relying on his agent as a professional adviser, rather than as a mere functionary, as those terms were distinguished in *Elizabeth Mariner v HMRC* [2013] UKFTT 657 (TC).

13. On the question of whether he had taken reasonable care to avoid the failure, HMRC submit that, because there had been penalties incurred for late filing in previous  
35 years, he should have put appropriate procedures in place to make sure that his obligations in relation to his tax compliance have been met.

14. We accept that it is not sufficient for a taxpayer simply to appoint an agent and wash his hands of all matters relating to his tax returns. However, we do not think that this is what Mr Krzeveckij did. In fact, aware of his own lack of expertise, Mr

Krzeveckij appointed an agent, submitted the necessary information to her in ample time to meet the deadlines and, crucially, contacted her to check that she had received the information and had submitted the return and received confirmation in response that she had submitted the return. While an exchange of text messages may not be the most  
5 common way to deal with an accountant, it was clearly the way in which Mr Krzeveckij corresponded with his agent and it showed sufficient evidence that he had taken reasonable care to avoid the failure to submit the return.

### **Conclusion**

15. On the basis of the analysis above, we find that Mr Krzeveckij did have a  
10 reasonable excuse for the late filing of his return and therefore the appeal against the penalties is allowed.

### **Application for permission to appeal**

16. This document contains full findings of fact and reasons for the decision. Any  
15 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.

20

**ABIGAIL MCREGOR  
TRIBUNAL JUDGE**

25

**RELEASE DATE: 23 FEBRUARY 2018**

## APPENDIX – RELEVANT STATUTORY PROVISIONS

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

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

4—

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

10 (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.

15 (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).

(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

20 (b) may not be earlier than the end of the period mentioned in sub-paragraph (1)(a).

3. Paragraph 23 of Schedule 55 contains a defence of “reasonable excuse” as follows:

23—

25 (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 purposes of sub-paragraph (1)—

30 (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

35 (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 unreasonable delay after the excuse ceased.

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

40 16—

(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

5 (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

10 (b) agreeing a compromise in relation to proceedings for a penalty.

5. Paragraph 20 of Schedule 55 gives a taxpayer a right of appeal to the Tribunal and paragraph 22 of Schedule 55 sets out the scope of the Tribunal’s jurisdiction on such an appeal. In particular, the Tribunal has only a limited jurisdiction on the question of “special circumstances” as set out below:

15 22—

(1) On an appeal under paragraph 20(1) that is notified to the tribunal, the tribunal may affirm or cancel HMRC's decision.

(2) On an appeal under paragraph 20(2) that is notified to the tribunal, the tribunal may—

20 (a) affirm HMRC's decision, or

(b) substitute for HMRC's decision another decision that HMRC had power to make.

(3) If the tribunal substitutes its decision for HMRC's, the tribunal may rely on paragraph 16—

25 (a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or

(b) to a different extent, but only if the tribunal thinks that HMRC's decision in respect of the application of paragraph 16 was flawed.

30 (4) In sub-paragraph (3)(b) “flawed” means flawed when considered in the light of the principles applicable in proceedings for judicial review.