It's not my fault

Management of taxes



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Catherine Newman shares her experience of the *SP Taylor* case that asked whether there was a reasonable excuse for late filing

Key Points

What is the issue?

HMRC need to consider the provisions of FA 2009 Sch 55 para 23(2) on what is not a reasonable excuse in their entirety and not their narrow interpretation

What does it mean to me?

If you think there is a reasonable excuse, do not give up fighting the case

What can I take away?

Tribunals can overturn HMRC's rulings and it is worth applying to them. This can be done in person or through a review of papers, which can be scanned and emailed to the tribunal

Before I took the case of SP Taylor to the First-tier Tribunal (FTT), HMRC appeared not to accept any reasonable excuse claim for late filing unless there was serious illness or a death directly related to the individual concerned. There is no statutory definition of reasonable excuse, which 'is a matter to be considered in the light of all the circumstances of the particular case' (*Rowland v HMRC* [2006] STC (SCD) and Anthony Wood trading as *Propaye v HMRC* [2011] UKFTT 136 (TC)).

HMRC consider a reasonable excuse to be an unexpected or unusual event that is either unforeseeable or beyond the taxpayer's control and which prevents them complying with their obligation to file on time. A combination of unexpected and unforeseeable events may, when viewed together, be a reasonable excuse. HMRC's position is that the actions of the taxpayer should be considered from the perspective of a prudent person exercising reasonable foresight and due diligence, having proper regard for their responsibilities under the tax acts.

Legislation sets out the provisions of FA 2009 Sch 55 para 23(2) on what is not a reasonable excuse. It includes:

> '(b) where the appellant relies on any other person to do anything that is not a reasonable excuse unless the appellant took reasonable care to avoid the failure.'

HMRC hold store with the fact that the notice to file issued on 6 April automatically creates an obligation in the taxpayer's mind to complete their return. This is flawed. This year, notices to file were not issued until June and July. Banks and portfolio managers are issuing certificates of tax deducted later each year.

Facts of the case

In the case of *SP Taylor* I simply forgot to file the 2013 return. I was so relieved to have survived the 31 January deadline and started to enjoy life. This was the first time since 1997 that I had forgotten to file a client's tax return. I had prepared the return and texted the liability to Mr Taylor. I work from home in the countryside where my business is fitted around bringing up my two girls; it's an unconventional office structure. Clients either make an appointment or just call by. This means dropping everything mid-afternoon to do school runs and ferrying my daughters to their various activities. In Mr Taylor's case, he just comes in every year on a Sunday morning in the middle of January and I always complete his return, as indeed I did in January 2014.

I took the claim for reasonable excuse to the FTT because I felt I had strong grounds for making one. Because I failed to file the return, I felt I would have to pay the penalty. My family situation changed in December 2013 when my father-in-law became ill. In *SP Taylor* HMRC said: 'HMRC maintain that the workload and domestic circumstances of his agent does not provide Mr Taylor with a reasonable excuse for the late filing of his 2012/13 tax return.'

I also felt that the role of tax adviser should be considered; we do more than file self-assessment returns. I have corporation tax clients and clients who need their VAT returns preparing, which involves doing their bookkeeping. We check notices of coding, P800 reconciliations and advise clients on how to pay their liabilities; we may have to research technical issues. Clients do not ring HMRC, they ring us. In January I was trying to register three clients for self-assessment. However hard I try to persuade clients to visit me before January, I end up doing a lot of business then.

We now work in an environment where one phones HMRC and their contact centre requests a call-back, from which point I generally put down the file or I miss their call when it finally comes days or weeks later. This represents a major problem for advisers.

I asked HMRC for an internal review, but to no avail. I contacted my MP who said that even the tax panel of MPs did not think there was any prospect of success.

I read Keith Gordon's article on the case of Christine Perrin in the August 2014 issue of *Tax Adviser* which described the annoyance expressed by Anne Redston at the tight definition HMRC applied for reasonable excuse to succeed. I contacted Keith outlining my case and he advised that judges fail to look at the provision 'unless all

reasonable steps were taken to avoid the situation'. I also copied a Nichola Ross-Martin article with the salient points underlined. All arguments were acknowledged in *SP Taylor*, but HMRC said: 'This appeal is not concerned with a specialist or obscure area of tax law. It is concerned with the ordinary everyday responsibilities of Mr Taylor to ensure that his 2012/13 tax return was filed by the legislative due date.' HMRC argued that Mr Taylor could have phoned me to check that the return had been filed or he could have visited Government Gateway to learn that the return had not been filed.

The case went to the FTT and, surprisingly, was rejected by Judge John Dent who said: 'Reliance on a third party, such as an accountant, cannot relieve the appellant of his own duty to file his return on time.' He added: 'The late filing penalty is in accordance with the legislation and there are no special circumstances allowing the penalty to be reduced.'

Keith advised me that I could apply to the Upper Tribunal (UT) for permission to appeal against the decision on the basis that there was an error in law. There would be no cost at that stage but, if the case went to the UT, it could be exorbitant. I drafted my application to appeal, to which Keith added:

> 'The judge seems to have confused my oversight with my client's obligations. It is asserted that he provided me with the information to complete his tax return on his behalf in good time. He had every reason to believe that his filing obligations would be met and I cannot think of any reasonable measures that he could have taken beyond what he did. Mr Taylor would have had no reason to think it hadn't been filed as it has always been filed on time in the past. If Mr Taylor or any other clients kept ringing me up, I would get no work done at all and this let down my January client base completely. Mr Taylor does not have a computer or a Government Gateway account. Clients do not need a Government Gateway account if they have an agent. Also, the system is not in real time, so is not accurate until 1/2 February.'

Judge Kevin Poole said: 'I note that that the appellant brought his information to me on 18 January 2014 and, therefore, on time.' He added:

> 'The original judgment was inconsistent with the terms of FA 2009 Sch 55 para 23(2), which specifically contemplates that reliance on a third party can constitute a reasonable excuse for a failure to file on time, in the circumstances

set out in that paragraph.

> ‘It seems that the judge [John Dent] was effectively attributing the agent’s negligence to the appellant and then deciding that the appellant had no reasonable excuse based on the fact of the agent’s negligence. This is not the statutory test.’

Having ruled he considered there to have been an error in law, Judge Poole gave both sides 28 days to provide further contentions when it would be referred to another judge. HMRC did not reply. Judge Barbara King found that Mr Taylor could not have taken any further steps than he did and he had a reasonable excuse.

As Keith put it: ‘Common sense prevailed in the end and who would have stuck it out for so long?’

Without Keith, it is unlikely I would have been successful; and I would like to thank him for his constant support. He even reassured me that I am not per se a negligent accountant, as the previous judges had stated.