



**TC05732**

**Appeal number: TC2013/02259**

*INCOME TAX – penalty for failure to make returns*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**G S WARD**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE SARAH ALLATT**

**The Tribunal determined the appeal on 28 March 2017 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 25 March 2013 (with enclosures) and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 31 January 2017.**

## DECISION

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 for the year ended 5 April 2011 on time.
2. The penalties that have been charged can be summarised as follows:
  - (1) a £100 late filing penalty under paragraph 3 of Schedule 55 imposed on 14 February 2012
  - (2) a £300 “six month” penalty under paragraph 5 of Schedule 55 imposed on 7 August 2012
  - (3) “Daily” penalties totalling £900 under paragraph 4 of Schedule 55 imposed on 14 February 2012.
3. The appellant’s grounds for appealing against the penalties can be summarised as follows:
  - (1) She argues that there was a “reasonable excuse” for any failure to submit the return on time.
4. The appellant’s appeal was notified to the Tribunal late. For the following reasons, I have decided to give permission for the appeal to be notified late:
5. Firstly, the Appellant appealed to HMRC on 26 February 2013 for a ‘re-review’ of her case (which was originally reviewed on 5 February 2013), and was informed by HMRC on 12 March that the proper course of action was to appeal to the Tribunal. She then appealed to the Tribunal on 25 March 2013. Therefore although the appeal was late, the Appellant had responded quickly to both letters from HMRC.
6. Secondly, HMRC in the letter of 12 March had informed the Appellant she could make an appeal out of time to the Tribunal. HMRC have not objected to the appeal out of time. Indeed a quicker response by HMRC to the Appellant’s letter of 26 February would have allowed the appeal to be made in time.

### **Findings of fact**

- (1) It is agreed that the return was due on 31 January 2012 and was submitted on 5 November 2012.
- (2) Tax returns for the previous four years had also been submitted late.

### **Discussion**

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

8. It is agreed that the return was due on 31 January 2012 and was submitted on 5 November 2012. Subject to considerations of “reasonable excuse” set out below, the penalties imposed are due and have been calculated correctly.

9. The Appellant sets out three circumstances that she contends amount to a reasonable excuse for her failure to submit her tax return in time.

10. The first circumstance is that her accountants were extremely busy due to the absence of a sick colleague, who then died during 2013.

11. In her letter of 24 September 2012 to HMRC appealing against the penalties, the Appellant writes ‘Unfortunately my accountants have been extremely busy...[due to the sick colleague]. Although my accounts were given to them on 29<sup>th</sup> July for processing they have only managed to commence work on them today’

12. The year for the 29<sup>th</sup> July date is not specified. I presume from the context of the letter it is 29 July 2012, nearly 6 months after the date that the return was due to be filed. I therefore consider that a reasonable excuse does not apply to this circumstance, as the situation did not apply from the date the return was due to be filed.

13. The second circumstance is that she works six days a week and therefore did not have time to prepare her accounts.

14. A tax return is due to be filed around 10 months after the end of the relevant tax year. Every tax payer has an obligation to file a tax return if issued with one, and the Appellant had been filing tax returns through self-assessment for a number of years. I do not consider her working pattern to constitute a reasonable excuse to fail to comply with this obligation.

15. The third circumstance is that her mother has Alzheimer’s disease and suffered a heart attack in July 2011.

16. Whilst I appreciate that caring for her mother would take up some time, the Appellant would be aware that she had an obligation to file a tax return at the relevant date. For there to be a reasonable excuse for a failure to file a tax return, the failure must be remedied ‘without undue delay’ at the end of the period for which a reasonable excuse exists. The due date for the return was six months after her mother’s heart attack. I do not consider that the illness of her mother constitutes a reasonable excuse for the failure to file a tax return throughout the entire period 31 January to 5 November 2012.

### **Conclusion**

17. For the reasons set out above, I affirm HMRC’s decision to issue the 3 penalties that are the subject of this appeal. The appeal is dismissed.

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

18. 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.

**SARAH ALLATT  
TRIBUNAL JUDGE**

**RELEASE DATE: 31 MARCH 2017**

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## 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—

- 10 (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.
- 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
  - (b) may not be earlier than the end of the period mentioned in
- 20 sub-paragraph (1)(a).

3. Paragraph 5 of Schedule 55 provides for further penalties to accrue when a return is more than 6 months late as follows:

5—

- 25 (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.
- 30

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

6—

- 35 (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.
- (2) Where, by failing to make the return, P deliberately withholds information which would enable or assist HMRC to assess P's liability to tax, the penalty under this paragraph is determined in accordance
- 40 with sub-paragraphs (3) and (4).

(3) If the withholding of the information is deliberate and concealed, the penalty is the greater of—

(a) the relevant percentage of any liability to tax which would have been shown in the return in question, and

5 (b) £300.

(3A) For the purposes of sub-paragraph (3)(a), the relevant percentage is—

(a) for the withholding of category 1 information, 100%,

(b) for the withholding of category 2 information, 150%, and

10 (c) for the withholding of category 3 information, 200%.

(4) If the withholding of the information is deliberate but not concealed, the penalty is the greater of—

(a) the relevant percentage of any liability to tax which would have been shown in the return in question, and

15 (b) £300.

(4A) For the purposes of sub-paragraph (4)(a), the relevant percentage is—

(a) for the withholding of category 1 information, 70%,

(b) for the withholding of category 2 information, 105%, and

20 (c) for the withholding of category 3 information, 140%.

(5) In any case not falling within sub-paragraph (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

25 (b) £300.

(6) Paragraph 6A explains the 3 categories of information.

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

23—

30 (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)—

35 (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

40 (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.

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

16—

- 5 (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.
- 10 (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.

7. 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:

22—

- 20 (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—
- (a) affirm HMRC's decision, or
  - (b) substitute for HMRC's decision another decision that HMRC had power to make.
- 25 (3) If the tribunal substitutes its decision for HMRC's, the tribunal may rely on paragraph 16—
- (a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point),
- 30 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.
- 35 (4) In sub-paragraph (3)(b) “flawed” means flawed when considered in the light of the principles applicable in proceedings for judicial review.

1.