



**TC06289**

**Appeal number: TC/2017/04883**

***INCOME TAX – LATE FILING PENALTIES - WHETHER  
REASONABLE EXCUSE OR SPECIAL CIRCUMSTANCE – NO –  
APPEAL DISMISSED***

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**KHAZIR IQBAL**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE IAN HYDE**

**Sitting in public at Oxford on 8 November 2017**

**The appellant appeared in person**

**Miss Lawrence, Officer of HMRC, for the Respondents**

## DECISION

- 5 1. The appellant is appealing against penalties imposed by HMRC under Schedule 55 of the Finance Act 2009 (“Schedule 55”) for his failure to submit on time a self-assessment return for the tax year ending 5 April 2014.

### **The facts**

2. In addition to HMRC’s bundle Mr Iqbal gave oral evidence as to the facts in this appeal.
- 10 3. I find the facts to be as set out below.
4. On 24 September 2014 the appellant registered on-line for self-assessment
5. On 16 October 2014 HMRC issued a notice to the appellant to file a tax return for the year 2013-14.
6. On 18 February 2015 HMRC issued a notice of penalty assessment for £100
- 15 7. On 2 June 2015 HMRC issued a 30 day penalty reminder letter
8. On 30 June 2015 HMRC issued a 60 day penalty reminder letter
9. On 14 August 2015 HMRC issued;
- (1) a penalty of £900 being a daily penalty of £10 a day for 90 days
- (2) a 6 month late filing penalty of £300
- 20 10. On 7 October 2015 HMRC received form 64-8 notifying HMRC that the appellant’s accountant was acting
11. On 1 February 2016 an electronic tax return for the year ending 5 April 2014 was received by HMRC.
12. On 23 February 2016 HMRC issued a £300 twelve month late filing penalty
- 25 13. On 6 March 2016 the appellant appealed to HMRC.
14. On 9 June 2017 the appellant appealed to the Tribunal.
15. As the notice to file was sent after 31 July but on or before 31 October, the filing date to file a paper return was 23 January 2015 or, if submitted electronically, 31 January 2015.
- 30 16. The appellant did not deny he was aware of his obligation to file a tax return. His evidence was that on 12 September 2014 he took a half-day’s holiday from work and went to see Mr Mahmood, his accountant, in Birmingham and discussed his tax

return with him. This was not his first visit to his accountant to discuss his tax return so the visit in question was to finalise the return. The appellant's evidence was that following the meeting the appellant then took the tax return away with him back home to Banbury, put a first class stamp on the envelope and posted it in a post box on Merton Street near his house. He could not recall which day he posted it on but he recalls posting it after Friday prayers.

17. The next he heard anything was in February 2015 when he received a late filing penalty saying that the tax return had not been filed. The appellant got in touch with Mr Mahmood who said he would sort it out. The appellant received more penalty notices during 2015 and each time he contacted his accountant who said he should ignore the penalties as he was dealing with it.

18. The appellant was not aware that Mr Mahmood had filed an electronic return and he only became aware of the errors through new accountants in February 2016. The appellant appealed as soon as he could on 6 March 2016, which was probably within a week or so of finding out.

19. HMRC disputed these facts on the basis that a return was not received by HMRC until 1 February 2016, some 366 days late. The appellant has not provided evidence of postage. Further, the appellant's evidence has been inconsistent as he had previously stated in correspondence that his accountant posted the return. The appellant did not register under self-assessment until 24 September 2014 and so HMRC consider it unlikely the appellant would have prepared a return and filed it prior to registering for self-assessment. Further, if the appellant had filed a return on 12 September, the appellant should have queried receipt of the notification to file a return sent on 16 October 2014 and all the penalty notices and reminders received subsequently.

20. On the appellant's behaviour since September 2014, HMRC argue that there was no record of either the appellant or his accountant contacting HMRC. In October 2015 the appellant's accountant submitted form 64-8 to HMRC notifying HMRC that he was acting, some 8 months after the notification of late penalty in February 2015. It took more than three months from this notice of acting for the appellant's return to be filed on line.

21. The burden of proof is on the appellant. The appellant has not provided any proof either as to the time of postage or as to the address to which the return was sent. Further, there are uncertainties in the appellant's recollection of events and inconsistencies in the timing given the appellant only registered for self-assessment on 24 September 2014, 10 days after the appellant's meeting with his accountant. On balance therefore I therefore find that the appellant has not discharged the burden of proof and so I find as a fact that the appellant did not file his return on 12 September 2014 or any other date around that time as he has claimed and that the first return filed with HMRC was the return received by HMRC on 1 February 2016.

## **Legislation**

22. The relevant statutory provisions in Schedule 55 Taxes Management Act 1970 (Schedule 55”) are included as an Appendix to this decision.

23. Paragraph 16 of Schedule 55 provides that a penalty may be reduced if there are “special circumstances”;

5 “(1) If HMRC think it right because of special circumstances, they may reduce a penalty under any paragraph of this Schedule”

24. Further, there is a defence in paragraph 23 to the imposition of penalties if there is a “reasonable excuse” for the failure;

10 “(1) liability to a penalty under any paragraph of this Schedule does not arise in relation to the failure to make a return if the person satisfies HMRC or (on appeal) the First-tier Tribunal .... that there is a reasonable excuse for the failure

(2) for the purposes of sub-paragraph (1)-

(a) ....

15 (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 the person had a reasonable excuse for the failure but the excuse ceased he/she is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.”

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## Discussion

25. The appellant’s first ground for appealing against the penalties is that he completed and posted a paper tax return in September 2014 prior to the filing date.

26. As to events after September 2014, the appellant argued that he relied on his accountant in that when he received the penalty notice he contacted his accountant but he was told the accountant was sorting it. Every time he received a letter from HMRC he spoke to his accountant and was reassured it was being handled. This led to the appellant incurring more penalties and to the appellant being late in making his appeal, although he appealed as soon as he was aware of the situation.

30 27. HMRC’s argued that appellant’s return for the year 2013-14 was not received until 1 February 2016, some 366 days late and the appellant does not have a reasonable excuse nor are there any special circumstances to justify this delay.

35 28. HMRC argued that where a taxpayer claims that he has a reasonable excuse the test to be applied is as set out in the decision of Judge Medd QC in *Clean Car Co Ltd* [1991] BVC 568;

“the question of whether a particular trader had a reasonable excuse should be judged by the standards of reasonableness which one would expect to be

exhibited by a taxpayer who had a responsible attitude to his duties as a taxpayer, but in other respects shared such attributes of the particular Appellant as the tribunal considered relevant to the situation being considered”

29. Further, it is not a reasonable excuse for a taxpayer to rely on his accountant. In  
5 *Favourtech Systems Ltd* [2014] 03338 the Tribunal said;

“36. This question was recently discussed in *Lithgow* [2012] TC 02296 where the tribunal judge Geraint Jones QC said;

10 “I cannot take the view that the failings of a professional agent can ordinarily be considered objectively reasonable as an excuse. If that was the position than professional agents would be able to ignore deadlines for filing or undertaking other tasks safe in the knowledge that the client could not be penalised because the clients would simply point to the failings of their various professional agents”

15 37. Nevertheless, there are some situations in which a company can be found reasonably to have relied on its accountant. Judge Jones distinguishes the two situations at [14];

20 “If a taxpayer claims that his accountant has been negligent, for example, by failing to meet a deadline for filing a return undertaking some other administrative task, then the negligence of the accountant will not usually provide a defence to a penalty because the accountant is simply acting as the taxpayer’s agent or functionary in filing the document that needs to be filed by a particular deadline. In other words, he is acting as an agent or functionary for his principal; but not as an independent professional advisor. However, in a situation where a professional advisor is not  
25 retained simply to act as a functionary, but is retained to give professional advice based upon the best of his skill and professional ability, he is not then a functionary or agent for his principal. He is a professional person acting under a retainer to give professional advice upon an identified issue. He is bound to provide that advice to the best of his professional  
30 skill and ability, whilst taking reasonable care in and about preparing and giving that advice. In other words, he’s acting as a true professional, rather than as an agent or functionary.”

38. I agree with this analysis. A similar approach has been adopted in a significant number of other Tribunal judgements.”

35 30. In the current appeal HMRC argue that the appellant cannot simply blame his accountant. A taxpayer faced with a series of letters from HMRC and with a responsible attitude to his duties as a taxpayer would have done more than simply ask his accountant every time what was happening and relied on him to manage matters. There was no record of the appellant contacting HMRC during this period.

40 **Decision**

31. The appellant's appeal to HMRC under s31A TMA 1970 was made outside the statutory deadline. HMRC initially refused consent under s49(2)(a) of TMA 1970. However, HMRC have said in the hearing that they have no objection to the taxpayer's appeal under s31A being made late. I therefore consider that HMRC have now given consent under s49(2)(a).

32. On the appellant's first argument in the substantive appeal as to posting of the return, as I have found as a fact that the appellant did not submit a return until 1 February 2016, then necessarily he did not file a return by the due date being a paper tax return by 23 January 2015 or, if submitted electronically, 31 January 2015. Accordingly, subject to considerations of "reasonable excuse" and "special circumstances" set out below, the penalties imposed are due.

33. The appellant's second argument, that he relied on assurances from his accountant, this amounts to an argument that the appellant had a "reasonable excuse" or that there were "special circumstances" within schedule 55.

34. I agree with HMRC that the standard to be applied in determining whether a taxpayer has a reasonable excuse is as set out by Judge Medd QC *Clean Car Co Ltd*, being that of a taxpayer with a responsible attitude to his duties as a taxpayer. Further in accordance with paragraph 23 (1)(c) of Schedule 55, if there is a reasonable excuse it must exist throughout the failure period.

35. The appellant does not deny that he received the penalty notifications from HMRC. The issue is whether the appellant making enquiries of his accountant and reliance on his accountant's reassurances is sufficient to amount to a reasonable excuse. In my view reliance on an adviser to file a return is not of itself a reasonable excuse. As set out by Judge Jones, it is a taxpayer's duty to submit a tax return and to do so on time and this cannot be abrogated by delegation to an adviser.

36. Faced with a series of letters, a responsible taxpayer would have investigated the position further than simply relying on the accountant's reassurances, particularly as the letters continued to be sent. For example the appellant has not produced evidence that he spoke to HMRC or demanded copies of correspondence from his accountant.

37. Finally I must consider whether HMRC should have made a special reduction because of special circumstances within paragraph 16. A special circumstance is generally taken to mean something exceptional, abnormal or unusual. The Tribunal's jurisdiction in this context is limited by paragraph 22 of Schedule 55 to circumstances where it considers HMRC's decision in respect of the application of paragraph 16 was flawed when considered in the light of the principles applicable in judicial review proceedings. HMRC have considered whether to apply a special reduction and have found nothing that is exceptional, abnormal or unusual to justify such a reduction. Applying the judicial review standards I see no reason to overturn HMRC's decision and I affirm it.

**Conclusion**

38. I find that there is no reasonable excuse for the appellant filing his return late nor are there any reasons to overturn HMRC’s decision that there are no special circumstances. Accordingly I dismiss the appeal and affirm the penalties.

5 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 10 “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

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**IAN HYDE  
TRIBUNAL JUDGE**

**RELEASE DATE: 5 JANUARY 2018**

## APPENDIX – RELEVANT STATUTORY PROVISIONS

1. The penalties at issue in this appeal are imposed by Schedule 55.

5 2. Paragraph 3 of Schedule 55 imposes a fixed £100 penalty if a self-assessment return is submitted late.

3. 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  
15 (c) HMRC give notice to P specifying the date from which the penalty is payable.

(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).

20 (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 sub-paragraph (1)(a).

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

25 5—

(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.

30 (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.

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

35 6—



(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.

5 (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 with sub-paragraphs (3) and (4).

10 (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

(b) £300.

15 (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

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

20 (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

(b) £300.

25 (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

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

30 (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

(b) £300.

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

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

23—

(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)—

- 5 (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
- 10 (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.

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

15 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—
  - 20 (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—
  - 25 (a) staying a penalty, and
  - (b) agreeing a compromise in relation to proceedings for a penalty.

8. 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:

30 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—
  - 35 (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—

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

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(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.

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

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