



**TC06290**

**Appeal number: TC/2017/04412**

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

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**SHAMS UL WAJID**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE IAN HYDE**

**Sitting in public in Birmingham on 15 December 2017**

**Mr Rasheed appeared for the Appellant**

**Mr Khan and Ms Patel, Officers of HMRC, for the Respondents**

## DECISION

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 self-assessment returns for the tax years ending 5 April 2014 and 5 April 2015.

2. Further, the appellant’s appeal was late and HMRC have objected to the appeal being out of time, and so the appellant applies for leave to serve his appeal out of time.

### 10 **The facts**

3. The appellant did not appear at the hearing but Mr Rasheed, the appellant’s current accountant, was able to give some background information.

4. I find the facts to be as set out below.

5. In respect of the year 2013-14;

15 (1) On 6 April 2014 HMRC issued a notice to the appellant to file a tax return for the year 2013-14.

(2) On 18 February 2015 HMRC issued a notice of penalty assessment for £100

(3) On 2 June 2015 HMRC issued a 30 day penalty reminder letter

20 (4) On 30 June 2015 HMRC issued a 60 day penalty reminder letter

(5) On 14 August 2015 HMRC issued;

(a) a penalty of £900 being a daily penalty of £10 a day for 90 days

(b) a 6 month late filing penalty of £300

25 (6) On 23 February 2016 HMRC issued a £300 twelve month late filing penalty.

(7) On 11 January 2017 an electronic tax return for the year 2013-14 was received by HMRC.

(8) The date to file a paper return the year 2013-14 was 31 October 2014 or, if submitted electronically, 31 January 2015.

30 6. In respect of the year 2014-15;

(1) On 6 April 2015 HMRC issued a notice to the appellant to file a tax return for the year 2014-15.

(2) On 17 February 2016 HMRC issued a notice of penalty assessment for £100

35 (3) On 31 May 2016 HMRC issued a 30 day penalty reminder letter

- (4) On 5 July 2016 HMRC issued a 60 day penalty reminder letter
- (5) On 12 August 2015 HMRC issued;
  - (a) a penalty of £900 being a daily penalty of £10 a day for 90 days
  - (b) a 6 month late filing penalty of £300
- 5 (6) On 11 January 2017 an electronic tax return for the tax year 2014-15 was received by HMRC.
- (7) The date to file a paper return the year 2014-15 was 31 October 2015 or, if submitted electronically, 31 January 2016.

10 7. The appellant's position, as set out in correspondence and by Mr Rasheed, was that he had relied upon his previous accountant, a Mr Mahmood of Mahmood Accountancy Taxation. The appellant has been a self-employed taxi driver since 2006. Mr Mahmood was recommended to him and has acted for him for a number of years. The appellant had become liable for penalties in earlier years and made  
15 payments to HMRC in 2011 on the advice of Mr Mahmood but he assumed the payments were for tax and did not realise these were penalties.

8. Mr Rasheed produced to the Tribunal copies of statements of income and expenditure for a number of years, each stamped by Mr Mahmood's practice and dated with a variety of dates in April, May and June immediately following the end of  
20 the relevant tax year. These documents, Mr Rasheed argued, demonstrate that the appellant provided the information to Mr Mahmood to enable him to complete the appellant's tax returns. The appellant also produced a copy of a letter written by Mr Mahmood's practice to Birmingham City Council as evidence that Mr Mahmood was acting for the appellant.

25 9. However, subject to one exception described below, Mr Mahmood did not during the relevant period relevant to the 2013-14 and 2014-15 returns and penalties make any contact or notify HMRC that he was acting for the appellant.

10. The exception was that HMRC's records show that on a telephone call on 1 December 2014 made by both the appellant and Mr Mahmood to HMRC, the  
30 appellant gave permission for HMRC to speak to Mr Mahmood. Mr Mahmood then took over the telephone conversation. HMRC's record of that conversation was that Mr Mahmood told HMRC that the appellant was not working. HMRC's position was that this was not true and Mr Mahmood (and by implication the appellant), misled HMRC in the hearing of the appellant. In the absence of the appellant and Mr  
35 Mahmood and in light of HMRC's serious allegations, I do not make any findings as to the substance of the conversation but find as a fact that the conversation took place.

11. Mr Rasheed confirmed in the hearing the accuracy of the appellant's address on HMRC's system and that all correspondence from HMRC relating to filing and penalties was sent to the appellant at his correct home address.

12. The appellant started receiving late filing penalty letters in 2015 which he took to Mr Mahmood who said he would speak to HMRC and get cancelled. Mr Rasheed produced no evidence as to correspondence or communication between the appellant and Mr Mahmood.

5 13. In 2016 Mr Mahmood closed his office and in December 2016 the appellant instructed his new accountants. On 4 January 2017 RR Accounting, the appellant's current accountants, filed form 64-8 notifying HMRC that they were acting for the appellant. Prior to that date no agent was on HMRC's records as acting for the appellant. The new accountants discovered from the HMRC portal at this time that no  
10 returns had been submitted.

14. On 11 January 2017 electronic tax returns for both tax years were received by HMRC.

15. On 16 March 2017 the appellant's current accountants appealed to HMRC in respect of the penalties for both years.

15 16. On 26 May 2017 the appellant appealed to the Tribunal in respect of the penalties and interest for both years.

17. I accept the above account of the relationship between Mr Mahmood and the appellant. Whilst I take no notice of the letter to Birmingham City Council, I find that Mr Mahmood acted for the appellant throughout the relevant period and that the  
20 appellant relied upon him for filing tax returns and handling any penalties that arose. I also find that throughout this period, all correspondence from HMRC relating to filing and penalties was sent to the appellant at his correct home address and, with the exception of the 1 December 2014 call, neither the appellant nor Mr Mahmood made any contact with HMRC.

## 25 **Legislation**

18. The relevant statutory provisions are included as an Appendix to this decision.

19. Section 49 Taxes Management Act 1970 ("TMA") governs the Tribunal's power to permit an appellant to appeal out of time;

"(1) This section applies in a case where-

- 30 (a) notice of appeal may be given to HMRC, but  
(b) no notice is given before the relevant time limit

(2) Notice may be given after the relevant time limit if-

- (a) HMRC agree, or  
(b) where HMRC do not agree, the tribunal gives permission

35 (3) If the following conditions are met, HMRC shall agree to notice being given after the relevant time limit

(4) Condition A is that the appellant has made a request in writing to HMRC to agree to the notice being given

(5) Condition B is that HMRC are satisfied that there was a reasonable excuse for not giving the notice before the relevant time limit

5 (6) Condition C is that HMRC are satisfied that request under subsection (4) was made without unreasonable delay after the reasonable excuse ceased

(7) ...

10 (8) In this section “relevant time limit” in relation to notice of appeal, means the time before which the notice is to be given (but for this section)

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

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

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

“(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

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

(a) ....

(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

25 (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.”

### **Appellant’s arguments**

30 22. There are two issues in this appeal, first, whether the appellant should be granted leave to appeal late and second, whether the appellant has a reasonable excuse or there are special circumstances such that the penalties are not payable.

35 23. Mr Rasheed accepts that the penalties are correctly calculated and notified to the appellant. The appellant’s sole argument on both the late appeal and the substantive appeal is that he was a private hire driver with no knowledge of the tax system and relied on Mr Mahmood throughout, both to file his tax return and, as he had done before, to deal with the penalties. Every time he received a letter from HMRC he

spoke to his accountant and was reassured it was being handled. However, Mr Mahmood essentially deceived the appellant.

24. Indeed Mr Rasheed submitted that his firm are now acting for some 250-300 of other former clients of Mr Mahmood who are in precisely the same situation as the appellant. Mr Rasheed also sought to adduce evidence that Mr Mahmood was being investigated by HMRC for fraud. Mr Rasheed also argued that HMRC have waived penalties many of those taxpayers. This demonstrated Mr Mahmood's behaviour and further, the fact that HMRC had waived penalties for other taxpayers indicated that the Tribunal should allow the appellant's appeal.

25. This reliance and Mr Mahmood's failures led to the appellant failing to file the tax returns, incurring more penalties and being late in making his appeal, although he appealed as soon as he was aware of the situation.

26. Mr Rasheed in his submissions referred to extracts from three decisions of the Special Commissioners and the First-tier Tribunal. In *Rowland v HMRC* [2006] SSCD 536, the Special Commissioners said;

"It was reasonable for [the taxpayer] to rely on her then accountants and it was this reliance that led to the underpayment"

27. Mr Rasheed also relied on *Stephen Rich* TC 1380 where the Tribunal allowed a taxpayer's appeal on the basis that it was reasonable for the taxpayer to rely upon the accountants;

"It was reasonable for Mr Rich to rely on his accountants...it was this reliance that led to the failure to notify his chargeability to income tax on time..."

28. Finally Mr Rasheed relied upon *E Mariner* TC 3039 where the Tribunal allowed a taxpayer's appeal that she had not been negligent because she had relied upon her adviser to complete her return;

"if the advice of a professional... is negligently provided, that negligence is not to be imputed to the taxpayer. The question is whether the taxpayer was negligent. She cannot be principally or vicariously liable for the negligence of her professional advisor unless the factual circumstances in which the advice is given indicate that the matter is fought with difficulty and doubt, with the professional adviser giving no more than honest opinion about which side of a sometimes difficult line the facts of the particular case happen to fall. It is contrary to the very notion of negligence... that the person who perceives there to be a need to take the advice of a professional person upon whom she believes she can properly rely can be said to be negligent if she then relies upon that properly provided advice (even if it turns out to be wrong). That principle applies regardless of whether the advice was given expressly or impliedly."

29. As to the delay in appealing between the current accountants being appointed in December 2016 and the appeal to HMRC on 16 March 2017, Mr Rasheed could offer no explanation as he had not handled the matter. He speculated that the firm has a

booking system which dealt with matters by strict rotation and this may have caused the delay.

### HMRC arguments

5 30. On the question as to whether the appellant should be granted permission to appeal out of time, HMRC argued that *Romaserve (Property Services) Ltd v HMRC* 2015 UKUT 254 provided a clear statement;

“permission to appeal out of time should only be granted exceptionally, meaning that it should be the exception rather than the rule and not granted routinely”

10 31. The approach to take in deciding whether to allow a later appeal is, according to HMRC, set out by Morgan J in the Upper Tribunal in *Data Select Limited v Revenue and Customs Commissioners* [2012] UKUT 187;

15 “[34] Applications for extension of time limits of various kinds are commonplace and the approach to be adopted is well established. As a general rule, when a court or tribunal is asked to extend a relevant time limit the court or tribunal asks itself the following questions: (1) what is the purpose of the time limit? (2) how long was the delay? (3) Is there a good explanation for the delay? (4) what will be the consequences for the parties of an extension of time? and (5) what will be the consequences for the parties of a refusal to extend time.  
20 The court or tribunal then makes his decision in the light of the answers to these questions.”

32. This approach was endorsed in the Court of Appeal in *BPP Holdings Ltd v HMRC* [2016] STC 841;

25 “ [42] In my view the new CPR 3.9 and comments by the Court of Appeal in *Mitchell and Durrant v Chief Constable of Avon and Somerset Constabulary* [2013] EWCA Civ 1624.... clearly show that courts must be tougher and more robust than they have been hitherto when dealing with applications for relief from sanctions for failure to comply with any rule, direction or order. [Counsel for HMRC’s] answer to this point was that the Jackson reforms and CPR 3.9 do  
30 not apply to tribunals. He pointed out that the overriding objective in CPR1 is in different terms to the overriding objective in r 2(3) of the UT rules. From April 2013, CPR 1.1 provides that the overriding objective is to enable the court to deal with cases justly and proportionate cost. CPR 1 also provides that dealing with the cases justly includes ensuring that it is dealt with expeditiously.  
35 [Counsel for the taxpayer] submitted that the courts and tribunals should not apply different standards to matters such as their attitude to the grant of an extension of time.

40 [43] I agree that the CPR does not apply to tribunals. I do not however, accept that the differences in the wording of the overriding objectives in the CPR and UT Rules mean that the UT should adopt a different, ie more relaxed, approach

to compliance with rules, directions and orders than the courts that subject to the CPR...

5 [45] The overriding objective does not require the time limits in those rules to be treated as flexible. I can see no reason why time limits in the UT Rules should be enforced any less rigidly than time limits in the CPR. In my view, the reasons given by the Court of Appeal in *Mitchell* for a stricter approach to time limits are applicable to proceedings in the UT as to proceedings in courts subject to the CPR. I consider that the comments of the Court of Appeal in *Mitchell* on how the court should apply the new approach to CPR3.9 in practice are also useful guidance when deciding whether to grant an extension of time to a party who has failed to comply with a time limit in the UT Rules”

15 33. According to HMRC, the purpose of the time limit is the need for finality in tax matters. The delay was extensive, ranging from 186 days to 727 days. In this context, HMRC referred the Tribunal specifically to paragraph 96 of the Upper Tribunal’s decision in *Romaserve*;

20 “... The exercise of a discretion to allow a late appeal is a matter of material import, since it gives the tribunal a jurisdiction it would not otherwise have. Time limits imposed by law should generally be respected. In the context of an appeal right which must be exercised within 30 days from the date of the document notifying the decision, a delay of more than three months cannot be described as anything but serious and significant.”

34. There is no excuse that has been offered by the appellant to justify the delay, whether the period before the current accountants were appointed or after. There are therefore no grounds for the Tribunal to allow the appeal to be served out of time.

25 35. On the substantive appeal, HMRC’s argued that the appellant does not have a reasonable excuse nor are there any special circumstances to justify the delay in filing the tax returns. He has been registered for self-assessment since October 2006 and his annual return has been late for all years from 2006-07 except 2007-08, leading to numerous penalties. The penalties for 2010 -11 to 2012-13 were cancelled, but on the basis of what appear to HMRC to have been misleading information provided by Mr Mahmood in the telephone call of 1 December 2014.

35 36. As no agent was registered until January 2017, the appellant was sent all the notices and reminder letters. Since the self-assessment record was set up for the appellant there is no evidence that the appellant contacted HMRC except for the call of 1 December 2014. The appellant could not have believed his tax affairs were in order.

40 37. As to the test as to what amounts to a reasonable excuse, HMRC argued that where a taxpayer argues that he has a reasonable excuse the test to be applied is that of a prudent taxpayer having proper regard for their responsibilities under the tax legislation. The test must be applied in the circumstances and in light of the abilities of the taxpayer.



38. In the current appeal HMRC argue that whilst the appellant employed an accountant he remains responsible for ensuring that the tax return is filed in time. The taxpayer cannot wait for a prompt or reminder from HMRC. A taxpayer is responsible for his agent carrying out the task. It is not possible to delegate responsibility.  
5 HMRC's guidance and website give plenty of warnings about filing on time and ignorance of the law is no excuse.

39. On the question of there being a special circumstance, HMRC submitted that "special" means "exceptional, abnormal or unusual" (*Crabtree v Hinchcliffe* [1971] 3 All ER 967) or something out of the ordinary run of events" (*Clarkes of Hove Ltd v Baker's Union* [1979] 1 All ER 152). HMRC did not consider employing an  
10 accountant who did not submit tax returns and had little knowledge of the tax system to be a special circumstance.

### **Decision: late appeal**

40. Section 31A TMA requires a taxpayer to appeal to HMRC a notice of  
15 assessment within 30 days. The appeal was made on 11 January 2017, outside the statutory deadline of 30 days.

41. HMRC have not agreed to a late appeal under section 49(2)(a) TMA in respect of the appeal and so this Tribunal must determine whether to give permission in accordance with section 49(2)(b) TMA.

20 42. HMRC have correctly quoted from the relevant authorities on the approach to be taken by Tribunal in considering whether to grant extensions of time. However, I would for completeness add the following useful comments from *BPP*;

25 "[37]. There is nothing in the wording of the relevant rules that justifies either a different or particular approach in the tax tribunals of FtT and the UT to compliance or the efficient conduct of litigation at a proportionate cost. To put it plainly, there is nothing in the wording of the overriding objective of the tax tribunal rules that is inconsistent with the general legal policy described in *Mitchell* and *Denton*. As to that policy, I can detect no justification for a more relaxed approach to compliance with rules and directions in the tribunals and  
30 while I might commend the Civil Procedure Rules Committee for setting out the policy in such clear terms, it need hardly be said that the terms of the overriding objective in the tribunal rules likewise incorporate proportionality, cost and timeliness. It should not need to be said that a tribunal's orders, rules and practice directions are to be complied with in like manner to a court's. If it needs  
35 to be said, I have now said it.

[38]. A more relaxed approach to compliance in tribunals would run the risk that non-compliance with all orders including final orders would have to be tolerated on some rational basis. That is the wrong starting point. The correct starting point is compliance unless there is good reason to the contrary which  
40 should, where possible, be put in advance to the tribunal. The interests of justice are not just in terms of the effect on the parties in a particular case but also the

impact of the non-compliance on the wider system including the time expended by the tribunal in getting HMRC to comply with a procedural obligation. Flexibility of process does not mean a shoddy attitude to delay or compliance by any party.”

5 43. The Court of Appeal expressly did not consider the principles in *Data Select* but the Senior President of Tribunal said at paragraph 44:

“Morgan J applied CPR 3.9 by analogy...in just the manner I have suggested is appropriate”.

10 44. In summary the Tribunal must apply the principles in *Data Select*, conscious of the recent guidance from the Court of Appeal in *BPP* highlighting the need for parties to comply with the principles in CPR 3.9 being the need for litigation to be conducted efficiently and at proportionate cost and to enforce compliance with rules, practice directions and orders.

15 45. Bearing in mind these general principles, the principles set out in *Data Select* require the Tribunal to ask itself the following questions;

(1) What is the purpose of the time limit?

(2) How long was the delay?

(3) Is there any good explanation for the delay?

(4) What will be the consequences for the parties of an extension of time?

20 (5) What will be the consequences for the parties of a refusal to extend time?

*What is the purpose of the time limit?*

25 46. The purpose of the time limit is to provide certainty in tax compliance and ensure disputes cannot be raised long after the relevant matters occurred.

*How long was the delay?*

30 47. The delay in this matter ranged from 186 to 727 days. This is a very long period of time, set against the comments of the Upper Tribunal in *Romaserve* at paragraph 96 that in the context of a 30 day time limit “a delay of more than three months cannot be described as anything but serious and significant”. The delay here must therefore be seen as very serious and significant.

*Is there any good explanation for the delay?*

35 48. There were two periods of delay in making the appeals, up to the appointment of the new accountants and then a two and a half month delay from their appointment to the appeal being served on 16 March 2016.

49. The appellant argues that the behaviour of Mr Mahmood upon whom the appellant relied is a good explanation for the first period. As to the second, Mr Rasheed was unable to provide any reason beyond his firm's method of dealing with matters by rotation.

5 50. HMRC point out that the appellant has had along history of penalties and so must have been aware of the regime. Further, he was served with reminder letters which highlighted the need to appeal. There was no evidence the appellant did anything except rely on his accountant in both periods, which is not good enough.

10 51. Reliance on Mr Mahmood as a reason for delay in making the appeal overlaps with whether it is also a reasonable excuse. Even if I were minded to accept the delay caused by reliance on Mr Mahmood, I do not accept there was any good reason for the two and a half month delay from appointment of the new accountants to making the appeal.

*What will be the consequences for the parties of an extension of time?*

15 52. If the appellant is granted an extension of time he will be allowed to continue his appeal. For HMRC, an extension of time would require HMRC to consider the substantive appeal. However, the substantive appeal was addressed in the same hearing and HMRC could not point to any prejudice to HMRC in having to argue the case in 2017 rather than two years ago.

20 *What will be the consequences for the parties of a refusal to extend time?*

53. The appellant would be denied the ability to challenge the penalties were he not granted an extension of time. This would have serious financial consequences for him.

25 54. For HMRC if there was no extension of time, they would in theory not need to argue the substantive appeal, but as explained above, as the substantive appeal has already been argued this is not relevant.

*Generally*

30 55. The Court of Appeal in *BPP* took compliance as its starting point, requiring there to be a good reason for non-compliance. In this appeal, I do not find a good reason for delay and weighing the factors as set out by Morgan J in *Data Select* in the round, conscious in particular of the prejudice that would be suffered by the appellant, it is my decision that the appellant should not be granted leave to appeal out of time.

56. In conclusion I determine that the appellant's application for permission to appeal late to HMRC be refused.

**Decision: substantive appeal**

35 57. Given my finding above, it is unnecessary for me to consider the substantive issues in respect of the appeal. However, I have for completeness considered the issues arising.

58. In respect of both returns, as it is agreed that the appellant did not submit a return until 11 January 2017, then necessarily he did not file a return by the due date for a paper return each year, being for 2013-14 31 October 2014 or, if submitted electronically, 31 January 2015 and for 2014-15 31 October 2015 or, if submitted electronically, 31 January 2016. Accordingly, subject to considerations of “reasonable excuse” and “special circumstances” set out below, the penalties imposed are due in respect of each year.

59. The appellant’s argument, that he relied on assurances from his accountant amounts to an argument that the appellant had a “reasonable excuse” or that there were “special circumstances” within schedule 55.

60. Where a taxpayer argues that he has a reasonable excuse the standard 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”

61. Further in accordance with paragraph 23(1)(c) of Schedule 55, if there is a reasonable excuse it must exist throughout the failure period.

62. 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.

63. Mr Rasheed relied upon a number of Special Commissioner and First-tier Tribunal decisions in his argument but did not produce the decisions in full so it is difficult to understand the context, which is of fundamental importance in these cases. The full decision in *Rowland* was produced in HMRC’s bundle and I note that it was concerned with whether reliance on negligent advice may be a reasonable excuse in the context of underpayment of tax, not with the statutory obligation to file a tax return by a due date. In *Rich* it appears that the taxpayer told his accountant to notify HMRC of chargeability to tax but did not do so. It is not clear from Mr Rasheed’s summary of the decision but the appellant in that case may have met the standard of a responsible taxpayer. In *E Mariner*, again the context is not clear and in any event the Judge Jones’ observations are consistent with the distinction between negligent advice and the obligation to file a return on time which he made in *Lithgow* [2012] TC 02296;

“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 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 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."

64. In my view reliance on an adviser to file a return is not of itself a reasonable excuse. 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. It may be that in the circumstances a taxpayer can demonstrate that he or she has fulfilled his obligations as a responsible taxpayer but delegation to an adviser is not of itself sufficient.

65. The appellant had filed tax returns for previous years but there is no evidence he challenged Mr Mahmood as to why he had not filed a return for 2013-14 or 2014-15. Further, 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 by HMRC. For example, the appellant has not produced evidence that he asked why he had not been asked to sign a tax return for these years or spoke to HMRC or demanded copies of correspondence from his accountant.

66. Mr Rasheed made the argument that other taxpayers have been put in the same position by Mr Mahmood and, further, HMRC have waived penalties for many of those taxpayers. Even if it were true (as to which I have not been shown sufficient evidence and so do not express an opinion) these arguments are not relevant to this appeal. First, the only behaviour of Mr Mahmood that is relevant is that in respect of this appellant. That the accountant may have done the same to other clients is of no relevance. Second, to the extent the appellant's argument is that HMRC may have waived penalties for other clients of Mr Mahmood and so from the perspective of fairness this Tribunal should allow the appellant's appeal, again it is not relevant. Indeed it is a well-established principle that this Tribunal does not have jurisdiction over such public law arguments. An appeal of this nature must be decided on its own facts in accordance with the relevant legislation and case law.

67. I therefore find that the appellant did not have a reasonable excuse for failing to file his tax returns for the relevant years.

68. 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.

5 **Conclusion**

69. I do not grant the appellant leave to file his appeal late. Further, I find that there is no reasonable excuse for the appellant filing his return late for either 2013-14 or 2014-15 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.

10 70. 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  
15 "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**

71. Section 31(1) Taxes Management Act 1970 (“TMA”) provides;

(1) An appeal may be brought against-

- 5
- (a) ...
  - (b) ...
  - (c) ...
  - (d) any assessment to tax which is not a self-assessment”

10 72. Section 31A TMA provides;

“(1) Notice of an appeal under Section 31 of this Act must be given-

- (a) in writing,
  - (b) within 30 days after the specified date,
  - (c) to the relevant officer of the Board
- 15
- (2) ...
  - (3) ...
  - (4) In relation to an appeal under section 31(1)(d) of this Act-
    - (a) the specified date is the date on which the notice of assessment was issued, and
    - 20 (b) the relevant officer of the Board is the officer by whom the notice of assessment was given.
  - (5) The notice of appeal must specify the grounds of appeal”

73. Section 49 TMA provides;

- 25
- “(1) This section applies in a case where-
    - (a) notice of appeal may be given to HMRC, but
    - (b) no notice is given before the relevant time limit
  - (2) Notice may be given after the relevant time limit if-
    - (a) HMRC agree, or
    - 30 (b) where HMRC do not agree, the tribunal gives permission

(3) If the following conditions are met, HMRC shall agree to notice being given after the relevant time limit

(4) Condition A is that the appellant has made a request in writing to HMRC to agree to the notice being given

5 (5) Condition B is that HMRC are satisfied that there was a reasonable excuse for not giving the notice before the relevant time limit

(6) Condition C is that HMRC are satisfied that request under subsection (4) was made without unreasonable delay after the reasonable excuse ceased

10 (7) ...

(8) In this section “relevant time limit” in relation to notice of appeal, means the time before which the notice is to be given (but for this section)

1.

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

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

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

4—

20 (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

25 (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).

(3) The date specified in the notice under sub-paragraph (1)(c)—

30 (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).

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

35 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.



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

6—

10 (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.

15 (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).

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

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

(b) £300.

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

25 (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%.

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

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

(b) £300.

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

35 (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%.

(5) In any case not falling within sub-paragraph (2), the penalty under this paragraph is the greater of—

40 (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.

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

23—

- 5 (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.
- 10 (2) For the purposes 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
- 15 (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.

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

16—

- (1) If HMRC think it right because of special circumstances, they may reduce a penalty under any paragraph of this Schedule.
- 25 (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—
- 30 (a) staying a penalty, and
- (b) agreeing a compromise in relation to proceedings for a penalty.

9. 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—

- (1) On an appeal under paragraph 20(1) that is notified to the tribunal, the tribunal may affirm or cancel HMRC's decision.
- 40 (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.

5 (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

10 (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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