



**TC06655**

**Appeal number: TC/2018/02448**

*INCOME TAX – penalty for failure to make returns – death of parent –  
whether reasonable excuse for several months delay in filing – no*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**GRZEGORZ IRENEUSZ PLECHOWSKI**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE ANNE FAIRPO**

**The Tribunal determined the appeal on 7 August 2018 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 6 December 2017 (with enclosures), and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 29 May 2018.**

## 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 for the 2015/2016 tax year 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 7 February 2017
- 10 (2) a £300 “six month” penalty under paragraph 5 of Schedule 55 imposed on 11 August 2017
- (3) “Daily” penalties totalling £900 under paragraph 4 of Schedule 55 imposed on 11 August 2017

### **Appellant’s submissions**

- 15 3. The appellant’s grounds for appealing against the penalties are that he has a reasonable excuse for the delay, for reasons which can be summarised as follows:
- (1) His father died on 2 December 2016 and, as he was very close to his father, he went through a very difficult time following the death;
- (2) It took him over a year to come to terms with his father’s death and during that time he could not cope with paper work, including that relating to his taxes.
- 20 4. 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, in their Statement of Case HMRC have said that they have no objection to the taxpayer’s appeal under s31A being made late.

### **HMRC submissions**

- 25 5. HMRC accepted that the death of a parent close to a filing deadline could constitute a reasonable excuse where the appellant could show that they had taken steps to have the return ready on time but where then delayed in filing.
6. Further, HMRC submitted that, to constitute a reasonable excuse, the effect of the bereavement must be that it prevents the individual from controlling their business and private affairs from immediately before the deadline up to the date on which the tax return is filed.
- 30 7. HMRC provided copies of records that showed the appellant continued to be paid via PAYE throughout the period in question, indicating that he continued to work.
- 35 8. HMRC therefore submitted that the appellant has not established that he had a reasonable excuse for a delay of over 10 months in filing his tax return.

## Findings of fact

9. The appellant filed his tax return online. It is not disputed that the due date for filing was 31 January 2017. It is not disputed that the return was received by HMRC on 6 December 2017 and so it is an agreed fact that the return was filed late.

5 10. The appellant's father died on 2 December 2016.

11. The appellant moved house on 18 December 2016 and notified the change of address to HMRC by letter on 14 April 2017.

12. The appellant does not dispute that he received the penalty notices and so I find that the penalty notices were correctly issued on the appellant.

## 10 Discussion

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

14. It is not disputed that the appellant's tax return for the 2015/16 tax year was submitted late. Subject to considerations of "reasonable excuse" and "special circumstances" set out below, the penalties imposed are due and have been calculated correctly.

15 15. The test of whether something is a "reasonable excuse" for the late filing of a tax return is not set out in statute but, in my view, the test set out in *Clean Car Company* [1991] VTTR 234 should be applied:

20 "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 who in other respects shared such attributes of the particular appellant as the tribunal considered relevant to the situation being considered"

25 16. A reasonable excuse must exist throughout the period of the failure, such that the failure must be remedied within a reasonable period after the reasonable excuse has ceased to apply.

17. The appellant contends that he has a reasonable excuse for the late filing of the return because of the effect on him of the death of his father, making him unable to deal with paperwork for a year.

30 18. I accept that, at around December 2016, the death of a parent could constitute a reasonable excuse. However, it is clear from the evidence that the appellant was in fact capable of dealing with HMRC paperwork by 14 April 2017 at the latest, as he was able to write to HMRC to inform them that he had moved house in December 2016.

35 19. The appellant has also not challenged HMRC's evidence that he was working throughout the period in question.

20. To the extent that the appellant had a reasonable excuse, therefore, I find that such reasonable excuse had ceased more than seven months before the tax return was filed

and so the tax return was not filed within a reasonable time after the reasonable excuse ceased so that the consequences of delay continue to apply.

21. Finally I must consider whether HMRC should have made a special reduction because of special circumstances within paragraph 16. The Tribunal's jurisdiction in this context is limited to circumstances where it considers HMRC's decision in respect of special circumstances 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.

### **Conclusion**

22. The appeal is dismissed and the penalties are confirmed.

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

23. 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.

**ANNE FAIRPO**

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**TRIBUNAL JUDGE**  
**RELEASE DATE: 14 August 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:

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(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 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

30 (b) £300.

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

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

- 5 (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—

- 10 (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—

- 15 (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—

- 20 (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—

- 25 (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.

5. 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)—

- (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

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(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:

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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—

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(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—

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(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:

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(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—

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(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—

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(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.

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(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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