



TC06772

Appeal number: TC/2014/00598

INCOME TAX – penalty for failure to make returns – not aware of need to file – whether reasonable excuse – no

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MARTIN RAMSEY

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE ANNE FAIRPO

The Tribunal determined the appeal on 2 May 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 27 January 2014 (with enclosures), HMRC's Statement of Case (with enclosures) received by the Tribunal on 27 February 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 2011/12 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 12 February 2013

10 (2) a £300 “six month” penalty under paragraph 5 of Schedule 55 imposed on 14 August 2013

(3) “Daily” penalties totalling £900 under paragraph 4 of Schedule 55 imposed on 23 July 2018

15 3. 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 now prepared a full Statement of Case which deals with the substantive appeal (and does not suggest that the Tribunal should refuse to deal with the appeal because it was made late to HMRC). I therefore consider that HMRC have now given consent under s49(2)(a).

20 In addition, the appellant’s appeal was notified to the Tribunal approximately 2 months late. However, since HMRC have not stated that they are objecting to the late notification and have prepared a full Statement of Case, I give permission under s49G(3) or s49H(3) of the Taxes Management Act 1970 for the appeal to be notified late.

25 **Appellant’s case**

4. The appellant’s grounds for appealing against the penalties can be summarised as follows:

(1) He had believed that as he ceased to be a company director in October 2011 he did not need to complete a tax return for the 2011/12 tax year;

30 (2) He completed the form as soon as he became aware that this was not the case;

(3) Due to an HMRC error, he had not received part of the form and so did not complete the form in full. When the form was returned to him, he completed that section and returned it immediate;

35 (4) He had tried to register for self-assessment online but was out of the country and so could not receive a passcode.

(5) He does not have funds to pay the penalties.

5. He accepts that he should pay the initial £100 penalty due to his ignorance of the law but asks that the other penalties be cancelled “as [he] would not have kept appealing” if he had realised that he would still have those penalties against him.

HMRC’s case

5 6. HMRC state that a self-assessment return for the 2011/12 tax year was issued to the appellant on 6 April 2012. The completed paper return was received on 17 July 2013. The deadline for submission of a paper return for the 2011/12 tax year was 31 October 2012 and so the return was filed approximately 9 months late and had incurred the initial late filing penalty, the six-month late penalty and the daily penalties incurred
10 once the return is three months late.

7. HMRC submitted that:

15 (1) The appellant’s belief that no return was required cannot amount to a reasonable excuse; once a notice to file or a paper return has been issued under s8 Taxes Management Act 1970, the appellant is required by law to complete this by the due date.

20 (2) The appellant submitted an incomplete self-assessment return on 9 November 2012, which indicates that the return had been received by the appellant. The pages missing were the self-employment pages. The return was sent back to the appellant for completion on 12 December 2012. If the taxpayer had any difficulty with completing the return, he should have called the HMRC helpline for assistance.

(3) Being out of the country is not a reasonable excuse; a taxpayer should make arrangements to ensure that they comply with tax law before leaving the country or whilst they are overseas.

25 (4) An insufficiency of funds is not a reasonable excuse, under paragraph 23 of Schedule 55, unless attributable to events outside the appellant’s control.

(5) Ignorance of the law is not a reasonable excuse, as stated by Judge Mosedale in *Qualapharm* [2016] UKFTT 100 (TC).

Discussion

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

9. It is not disputed that the tax return for the 2011/12 tax year was submitted on or around 17 July 2013. It should have been submitted by 31 October 2012. Subject to considerations of “reasonable excuse” and “special circumstances” set out below, the penalties imposed are due and have been calculated correctly.

35 10. I note from his grounds of appeal that the appellant seems to believe that the daily penalties and six month penalties have arisen because time has passed as a result of his appealing to HMRC. I should point out that these penalties arose because of the time which passed between the filing deadline and the date on which the return was

eventually filed. The penalties have not arisen or increased as a result of the appeal to HMRC or this Tribunal.

11. 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:

“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”

12. I find that the appellant’s reasons for the failure to submit his tax return do not amount to a reasonable excuse because:

(1) I agree with Judge Mosedale’s decision in *Qualapharm* that “as a matter of policy such ignorance [of the law] cannot amount to a reasonable excuse ... as that would result the law favouring persons who chose to remain in ignorance of the law over those who sought to know the law in order to obey it”. The appellant’s lack of understanding as to his filing obligations does not, therefore, amount to a reasonable excuse.

(2) The return was originally submitted with the self-employment pages missing; the appellant says that these were not included in the return when it was sent to him. HMRC submitted that he should have sought assistance from HMRC if he did not understand how to complete the form.

(3) It is unclear why the self-employment pages were missing and it is not clear whether the appellant realised that they were missing when the return was originally sent to HMRC. However, the appellant does not dispute that the return was sent back to him to be completed, nor that it was sent back to him in December 2012.

(4) I consider that it would have been clear to the appellant in December 2012 that the additional pages needed to be completed. Even if the missing pages were somehow to amount to a reasonable excuse, it remains the case that a reasonable excuse must exist throughout the period until the return was submitted. In this case, I consider that even if the missing pages could somehow amount to a reasonable excuse, that excuse could not have existed beyond December 2012 and the return was not submitted until July 2013. I do not therefore need to consider whether the missing pages could amount to a reasonable excuse in the first place, as the failure to file was not remedied in a reasonable time after the appellant became aware of the failure..

(5) The appellant does not explain how his inability to register online because he was out of the country contributed to the delay in filing his return. He has not explained when he left the country nor how long he was away for. The appellant has not explained why he did not complete the paper return which HMRC sent back to him and has not explained why it took until July 2013 to file the updated return. Accordingly, I do not consider that he has established that his inability to

file the return online because he was overseas could amount to a reasonable excuse.

5 (6) The appellant's lack of funds with which to pay the penalties is barred by law from being a reasonable excuse; no underlying reason for the lack of funds which might amount to a reasonable excuse has been provided by the appellant.

13. Finally I must consider whether HMRC should have made a special reduction because of special circumstances within paragraph 16 of Schedule 55. 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
10 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

15 14. I find that the appellant does not have a reasonable excuse and there are no special circumstances. The appeal is dismissed and the penalties confirmed.

Application for permission to appeal

15. 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
20 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.

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**ANNE FAIRPO
TRIBUNAL JUDGE**

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RELEASE DATE: 17 October 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:

4—

(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:

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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:

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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:

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(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—

(a) ability to pay, or

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(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—

(a) staying a penalty, and

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(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.