



**TC07761**

*INCOME TAX – late payment penalties – reasonable excuse – no - special circumstances – no - appeals dismissed.*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Appeal number: TC/2019/09010  
TC/2019/09011**

**BETWEEN**

**(1) SHAHID SHAIKH  
(2) NUSRAT SHAIKH**

**Appellants**

**-and-**

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

**Respondents**

**TRIBUNAL: JUDGE DAVID BEDENHAM**

The Tribunal determined the appeal on 19 June 2020 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 Notices of Appeal dated 25 November 2019 (with enclosures), HMRC's Statement of Case dated 12 February 2020, and a bundle of documents.

## DECISION

### INTRODUCTION

1. The Appellants, who are husband and wife, were each issued with a penalty pursuant to Schedule 56 of the Finance Act 2009 as a result of late payment by each Appellant of tax for the year ended 5 April 2018.
2. The penalty issued to Mr Shaikh was in the amount of £211. The penalty issued to Mrs Shaikh was in the amount of £153.
3. On 23 January 2020, the Tribunal directed that the Appellants' appeals should be heard together.
4. The Appellants accept that their tax liabilities for the year ended 5 April 2018 were not paid on time. However, they submit that they each have a reasonable excuse and/or there are special circumstances such that neither are liable to a penalty.

### BACKGROUND AND FINDINGS OF FACT

5. On or about 6 April 2018 a notice to file for the year ended 5 April 2018 was issued to each of the Appellants. The due date for filing the return was 31 October 2018 for a non-electronic return and 31 January 2019 for an electronic return.
6. The Appellants' returns were filed online on 31 May 2019. The Appellants' respective liabilities were automatically calculated and shown onscreen at the time of filing.
7. Mr Shaikh's liability was £4,238.50. Mrs Shaikh's liability was £3072. Pursuant to s 59(4) of the Taxes Management Act 1970 the due date for payment was 31 January 2019.
8. The Appellants did not pay their respective liabilities until 13 July 2019.
9. The Appellants were, then, each liable for a late payment penalty from 3 March 2019 (being 30 days after the due date for payment).
10. However, the penalties were not issued until 4 June 2019.
11. In relation to each Appellant, the amount of the penalty was 5% of the unpaid liability – which is the percentage provided for in Schedule 56.
12. A late filing penalty (pursuant to Schedule 55 FA 2009) was also issued to each Appellant. However, these late filing penalties were cancelled by HMRC.
13. On 13 July 2019, the Appellants notified appeals to HMRC. In those appeals the Appellants set out the same facts as would eventually be stated in the Notice of Appeal filed with the Tribunal (as set out below).
14. On 14 August 2019, HMRC issued "View of the Matter" letters confirming the decision to issue the late payment penalties.
15. On 13 September 2019, the Appellants requested that HMRC undertake a statutory review of the decisions to issue the penalties.
16. On 28 October 2019, HMRC notified the Appellants that the review officer had upheld the decisions to issue the penalties. In relation to special circumstances, the review officer stated he taken into account that on 20 January 2019, Mr Shaikh had been admitted to hospital for a kidney transplant and that necessitated a 4-6 month recuperation period. The review officer concluded that these facts did not give rise to special circumstances such as to mean the late payment penalty should be reduced.

17. On 25 November 2019, the Appellants filed appeals with the Tribunal.

#### **THE APPELLANT' APPEAL TO THE TRIBUNAL**

18. Mr Shaikh's grounds of appeal were stated as follows:

##### **"Reasoning of Decision**

I would like to challenge the reasoning given on the basis that it expects an individual to have full control of their future life and also control when they will become unwell or have a life changing situation arise.

I was aware of the regulations and fully intended to file my SA tax return on time by 31 January 2019. The fact is that circumstances which were completely out of my control meant I could not complete the submission for a number of months.

I was called up on Sunday 20 January 2019 at 8:30 AM and informed a kidney was available for me and I had to get to St George's hospital immediately. I was operated on that evening. There was reasonable basis to see this because (i) I had only been on the transplant register for three months, whilst the average wait time is 3 years or more; and (2) no one can predict when a donor will become available, that is as the saying goes. I am just commenting factually - I don't have the ability to look into the future.

##### **Special reduction**

Subject to the acceptance my appeal, I believe the "rejection" as an individual undergoing an organ transplant with subsequent recovery would not be considered to qualify as special circumstances.

I would reiterate again that kidney transplants are not run of mill surgeries. They carry considerable risk (just like any major surgery) and also have a significant post recovery time of 4-6 months.

In the recovery period, a patient is constantly aware of multiple daily risks, from rejection, immune suppression increasing risk of serious infections, impacts on other organs, like the heart and liver and variable blood pressure. It was these circumstances that placed a huge mental strain on me as well as my inability to concentrate on anything for a number of months that led to my tax return being filed late. I humbly submit a transplant merits qualification under special circumstances."

19. Mrs Shaikh's grounds of appeal were stated as follows:

##### **"Reasoning of Decision**

I would like to challenge the reasoning given on the basis that it expects an individual to have full control of their future life and also control when they will become unwell or have a life changing situation arise.

I was aware of the regulations and fully intended to file my SA tax return on time by 31 January 2019. The fact is that circumstances which were completely out of my control meant I could not complete the submission for a number of months.

My husband was called up on Sunday 20 January 2019 at 8:30 AM and informed a kidney was available for me and he had to get St Georges hospital immediately. He was operated on that evening. From that point onwards and for the next few months, I was his main carer. My focus was to ensure he was

looked after, attended very frequent hospital visits where they were reviewing his progress. Having such a life changing (albeit for a temporary period) had a significant impact on me and my children, both mentally and physically. I had to take on the role of both parents to look after our family and therefore, I could not devote appropriate time to complete and submit my tax return.

### **Special reduction**

Subject to the acceptance my appeal, I believe the “rejection” as an individual undergoing an organ transplant with subsequent recovery would not be considered to qualify as special circumstances.

In the recovery period, a patient is constantly aware of multiple daily risks, from rejection, immune suppression increasing risk of serious infections, impacts on other organs, like the heart and liver and variable blood pressure. It was these circumstances that placed a huge mental strain on me as well as my inability to concentrate on anything for a number of months that led to my tax return being filed late. I humbly submit that being the only carer for a transplant patient merits qualification under special circumstances.”

20. I accept, and find as fact, the factual assertions made by the Appellants in the Notices of Appeal (I note that none of these facts were disputed by HMRC).

### **HMRC’S CASE**

21. HMRC accept that Mr Shaikh was admitted to hospital on 20 January 2019 and discharged on 24 January 2019. HMRC also accept that following discharge, Mr Shaikh would have needed a period of recuperation hence why HMRC cancelled the late filing penalty.

22. However, HMRC submitted that Mr Shaikh had not established why, having filed his return on 31 May 2019, he was not in a position to then (or shortly thereafter) make payment. Put another way, HMRC submitted that Mr Shaikh’s reasonable excuse for late payment ceased on 31 May 2019 at the latest.

23. HMRC further submitted that Mr Shaikh was late in filing his tax return and paying his liability for the year ended 5 April 2017. However, on being told that Mr Shaikh had been admitted to hospital in January 2018, HMRC cancelled penalties that had been issued. HMRC submit that in circumstances where Mr Shaikh knew that he would have ongoing health issues, he could and should have put in place arrangements to ensure that he could comply with his tax obligations in future.

24. In relation to Mrs Shaikh, HMRC submitted that she was responsible for paying her own tax liability and cannot transfer that responsibility to a third party such as her husband.

25. HMRC also submitted that Mrs Shaikh was late in filing her tax return and paying her liability for the year ended 5 April 2017. However, on being told that Mr Shaikh had been admitted to hospital in January 2018, HMRC cancelled penalties that had been issued. HMRC submit that in circumstances where Mrs Shaikh knew that her husband would have ongoing health issues, she could and should have put in place arrangements to ensure that she could comply with her tax obligations in future.

26. HMRC further submitted that Mr Shaikhs had not established why, having filed her return on 31 May 2018, she was not in a position to then (or shortly thereafter) make payment. Put another way, HMRC submitted that Mrs Shaikh’s reasonable excuse for late payment ceased on 31 May 2019 at the latest.

## DISCUSSION AND DECISION

27. I am satisfied that the statutory pre-conditions for issuing a late payment penalty were met in this case and the penalties were validly issued (I note that the Appellants have not suggested otherwise).

28. In relation to the issue of whether the Appellants (or either of them) have a reasonable excuse for the late payments:

29. Paragraph 16 of Schedule 56 provides:

“(1) If P satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that there is a reasonable excuse for a failure to make a payment—

(a) liability to a penalty under any paragraph of this Schedule does not arise in relation to that failure, and

(b) the failure does not count as a default for the purposes of paragraphs 6, 8B, 8C, 8G and 8H.

(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

(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.”

30. In *Christine Perrin v HMRC* [2018] UKUT 0156 (TCC), the Upper Tribunal considered an appeal relating to a late filing penalty in which the Appellant submitted there was a reasonable excuse because she genuinely believed that her tax return had already been filed (even though it had not been) and this is why she did not file the return on time. The Upper Tribunal stated:

“71. In deciding whether the excuse put forward is, viewed objectively, sufficient to amount to a reasonable excuse, the tribunal should bear in mind all relevant circumstances; because the issue is whether the particular taxpayer has a reasonable excuse, the experience, knowledge and other attributes of the particular taxpayer should be taken into account, as well as the situation in which that taxpayer was at the relevant time or times (in accordance with the decisions in *The Clean Car Co* and *Coales*).

72. Where the facts upon which the taxpayer relies include assertions as to some individual's state of mind (e.g. “I thought I had filed the required return”, or “I did not believe it was necessary to file a return in these circumstances”), the question of whether that state of mind actually existed must be decided by the FTT just as much as any other facts relied on. In doing so, the FTT, as the primary fact-finding tribunal, is entitled to make an assessment of the credibility of the relevant witness using all the usual tools available to it...

73. Once it has made its findings of all the relevant facts, then the FTT must assess whether those facts (including, where relevant, the state of mind of any relevant witness) are sufficient to amount to a reasonable excuse, judged objectively.

74. Where a taxpayer's belief is in issue, it is often put forward as either the sole or main fact which is being relied on – e.g. “I did not think it was necessary to file a return”, or “I genuinely and honestly believed that I had

submitted a return”. In such cases, the FTT may accept that the taxpayer did indeed genuinely and honestly hold the belief that he/she asserts; however that fact on its own is not enough. The FTT must still reach a decision as to whether that belief, in all the circumstances, was enough to amount to a reasonable excuse. So a taxpayer who was well used to filing annual self-assessment returns but was told by a friend one year in the pub that the annual filing requirement had been abolished might persuade a tribunal that he honestly and genuinely believed he was not required to file a return, but he would be unlikely to persuade it that the belief was objectively a reasonable one which could give rise to a reasonable excuse.”

31. As stated above, I have accepted the Appellants’ factual account in relation to Mr Shaikh’s hospitalisation and the need for a subsequent period of recuperation. I also accept that Mrs Shaikh was caring for her husband during his period of recuperation and was acting as sole carer for their children.

32. However, by 31 May 2019 the Appellants were clearly in a position to file their respective tax returns (this is evidenced by the fact that they *did* file their tax returns on that date). If the Appellants were in a position to file their returns, I do not see why they could not also at that time have made payment of the amounts due. In other words, I accept HMRC’s submission that any reasonable excuse had ceased to be operative by 31 May 2019. I also find that the Appellants did not remedy the failure without unreasonable delay after the excuse had ceased (because payment was not made until 13 July 2019). In those circumstances, I do not need to determine HMRC’s other submissions (in relation to whether the Appellants should, in view of their knowledge of Mr Shaikh’s condition, have made contingency arrangements and the extent to which Mrs Shaikh took “reasonable care” for the purposes of paragraph 16(2)(b)).

33. As to Special Circumstances:

34. Paragraph 9 of Schedule 56 provides:

“(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

...”

35. By paragraph 15(3) of Schedule 56, I can only rely on paragraph 9 of Schedule 56 to a different extent to HMRC if I am satisfied that HMRC’s application of paragraph 9 was “flawed”. Paragraph 15(4) of Schedule 56 makes clear that “*flawed*” for these purposes “means flawed when considered in the light of the principles applicable in proceedings for judicial review.” I am not satisfied that HMRC’s application of paragraph 9 was flawed. I am satisfied that HMRC took into account all relevant facts (and did not take into account irrelevant facts) and otherwise reached a decision that was properly open on the facts of this case. As already stated, the Appellants were in a position to file tax returns by 31 May 2019. In those circumstances, HMRC was entitled to form the view that the Appellants could and should also have made payment of their outstanding liabilities on or around that date at the latest, and that no special circumstances existed such as to mean that the penalty should be reduced.

36. The appeal of each Appellant is dismissed.

37. 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.

**DAVID BEDENHAM  
TRIBUNAL JUDGE**

**Release date: 29 June 2020**