



**TC05832**

**Appeal number: TC/2013/06381**

*INCOME TAX – penalty for failure to make returns. Whether reasonable excuse for late submission of self- assessment tax return – Yes for one month, after that No. Penalties confirmed, daily penalty in reduced amount.*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**ABDUL WASEY**

**Appellant**

**- and -**

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

**TRIBUNAL: PRESIDING MEMBER  
PETER R. SHEPPARD FCIS FCIB CTA AIT**

The Tribunal determined the appeal on 23 April 2017 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 a letter received by the Tribunal on 9 September 2013 from the appellant's agent and, HMRC's Statement of Case (with enclosures)] acknowledged by the Tribunal on 13 February 2017. The Tribunal wrote to the appellant on 13 February 2017 indicating that if he wished to reply to HMRC's Statement of Case he should do so within 30 days. No reply was received.

## 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] 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) “Daily” penalties totalling £480 under paragraph 4 of Schedule 55 imposed on 25 June 2013
3. The appellant’s grounds for appealing against the penalties can be summarised as follows:
- 15 (1) He argues that he was under the impression that as his income from self-employment was nil he did not need to submit a return.
  - (2) He argues that he did not receive any reminders
  - (3) He argues that he cannot afford the penalty.
  - (4) He argues that he had a “reasonable excuse” for any failure to submit the return on time.
- 20 4. The appellant’s appeal was notified to the Tribunal late. However, since HMRC have stated that they are not objecting to the late notification, I give permission under s49 of the Taxes Management Act 1970 for the appeal to be notified late.

### Findings of fact

- 25 5. Since 2009-2010 the appellant has been self-employed as business development consultant.
6. Companies House records show that the appellant was appointed a director of GB Business Associates Limited on 8 March 2012.
7. On 6 April 2012 a self-assessment tax return for the year ending 5 April 2012 was sent to the appellant at the address shown on HMRC records at that date. The filing date for the return was 31 October 2012 for a non-electronic return or 31 January 2013 for an electronic return. HMRC did not receive the appellant’s electronic return until 17 June 2013.
- 30 8. The appellant’s agent wrote to HMRC advising that the appellant had an accident on 15 November 2012 in which he suffered a fractured ankle which was so serious that he was admitted to hospital for a long time. He was therefore in no position to be able to file his return. Included in the bundle of papers provided to the Tribunal were
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medical certificates showing that the appellant was unfit for work during the period 15 November 2012 to 28 January 2013.

9. The Tribunal accepts that for that period the appellant had a reasonable excuse for not filing his return.

## 5 **HMRC submissions**

10. HMRC say that the appeal is not concerned with specialist or obscure areas of tax law. It is concerned with ordinary every day responsibilities of the appellant to ensure his 2011- 2012 tax return was filed by the due date.

10 11. In respect of reasonable excuse HMRC say that they consider the actions of a taxpayer should be considered from the perspective of a prudent person exercising reasonable foresight and due diligence, having proper regard for their responsibilities under the Tax Acts. The decision depends on the particular circumstances in which the failure occurred and the particular circumstances and abilities of the person who failed to file their return on time. The test is to determine what a reasonable taxpayer,  
15 in the position of the taxpayer, would have done in those circumstances and by reference to that test to determine whether the conduct of the taxpayer can be regarded as conforming to that standard.

HMRC refer to the case of *Rowland* and say the matter is to be considered in the light of all the circumstances of the particular case.

20 HMRC point out that Paragraph 23 (2) (c) of Schedule 55 of the Finance Act 2009 provides that where a person had a reasonable excuse for a failure but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

25 12. HMRC has considered special reduction under (paragraph 16 Schedule 55 of the Finance Act 2009. They say special circumstances must be “exceptional, abnormal or unusual” (*Crabtree v Hinchcliffe*) or “something out of the ordinary run of events” (*Clarks of Hove Ltd. v Bakers’ Union*). HMRC say the special circumstances must apply to the particular individual and not be general circumstances that apply to many taxpayers (*David Collis v HMRC*). HMRC consider that there are no special  
30 circumstances which would allow them to reduce the penalty.

## **Discussion**

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

14. I have concluded that the tax return for the 2011-2012 tax year was submitted on or around 17 June 2013. It should have been submitted by 31 January 2013. Therefore  
35 subject to considerations of “reasonable excuse” and “special circumstances” set out below, the penalties imposed are due and have been calculated correctly.

15. The appellant argues that as his income from self-employment for the tax year ending 5 April 2012 was nil he was under the impression that he did not need to

submit the return. The appellant had been appointed a director of GB Business Associates Ltd during the tax year and therefore may well have been in receipt of income from that source. In the Tribunal's view it was reasonable of HMRC to issue a return to the appellant. Once issued the completed return should be submitted to HMRC even if the return shows no income from self-employment.

16. The appellant argues he did not receive any reminders. The Tribunal considers that there is no obligation on HMRC to send reminders. HMRC sent a return for completion which showed alternative deadlines for submission of the return depending on whether the appellant preferred to submit his return non-electronically or electronically. It is the appellant's responsibility to meet the deadlines that apply to his preference.

17. The Tribunal considers that appellant's argument that he cannot afford the penalty does not provide him with a reasonable excuse for submitting his return late. The penalty was imposed after the failure to submit on time.

18. In respect of reasonable excuse the Tribunal has found that the appellant had reasonable excuse for not submitting his return in the period for which medical certificates have been provided. That period ended on 28 January 2013. Where a reasonable excuse for a failure to submit a return on time is established it is expected that once that excuse ceases the failure will be remedied without unreasonable delay.

The filing date for the return was 31 January 2013 which is only 3 days after the excuse ceased and therefore the Tribunal considers the appellant has reasonable excuse for failing to submit his return by that date. The Tribunal considers that a reasonable delay in these circumstances would be one month. Therefore it would have been reasonable to expect the appellant to submit his return by 28 February 2013. The Tribunal therefore amends the filing date for the appellant's return to 28 February 2013. This therefore amends the penalty date to 1 March 2013.

19. Thus in respect of the late filing penalty the Tribunal finds that the appellant did not file his electronic return until 17 June 2013 which is well after the revised filing date so a late filing penalty of £100 is due by the appellant.

20. In respect of the daily penalties the penalty is due if the appellant had not filed his return after the end of 3 months from the penalty date. As the revised penalty date is 1 March that penalty becomes due on 1 June 2013 and is imposed at a daily rate of £10. The penalty under this section is therefore £170 being 17 days (1 to 17 June 2013) at £10 per day.

21. Paragraph 16 (1) of Schedule 55 Finance Act 2009 allows HMRC to reduce the penalty below the statutory minimum if they think it is right because of special circumstances. HMRC have considered whether there are any special circumstances in this case which would allow them to reduce the penalty and have concluded there are none.

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## 22. Conclusion

The Tribunal has accepted that the appellant has established he had a reasonable excuse for failing to submit his self-assessment tax return by the deadline of 31 January 2013. The Tribunal considers that his excuse ceased on 28 February 2013 and has therefore extended the filing date for the return to that date. As the appellant failed to file his online return until 17 June 2013 a late filing penalty of £100 is due. In addition because the appellant did not file his return within 3 months of the penalty date he is liable to daily penalties of £10 per day for each day after that period of 3 months the return remains outstanding. Thus penalties totalling £170 are due for the period 1 to 17 June 2013.

23. Paragraph 16 (1) of Schedule 55 Finance Act 2009 allows HMRC to reduce the penalty below the statutory minimum if they think it is right because of special circumstances. HMRC have considered whether there are any special circumstances in this case which would allow them to reduce the penalty and have concluded there are none. The Tribunal considers that their conclusion is not flawed and sees no reason to disagree.

24. Therefore the appeal is allowed in part. The appeal against the imposition of the penalties is dismissed but the amount of the daily penalties is reduced from £480 to £170

## Application for permission to appeal

25. This document contains a summary of the findings of fact and reasons for the decision. A party wishing to appeal against this decision must apply within 28 days of the date of release of this decision to the Tribunal for full written findings and reasons. When these have been prepared, the Tribunal will send them to the parties and may publish them on its website and either party will have 56 days in which to appeal. 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.

**PETER R. SHEPPARD**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 27 APRIL 2017**

## 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)—

- 20 (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).

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

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25 (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)—

- 30 (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  
35 (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.

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

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(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.

5. 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.

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(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.

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(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.