



TC05838

Appeal number: TC/2013/05285

*INCOME TAX – penalty for failure to make returns - Whether reasonable
excuse for late submission of self-assessment tax return-yes*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

PRADIPKUMAR HINDOCHA

Appellant

- and -

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

Respondents

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

The Tribunal determined the appeal on 25 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 the Notice of Appeal dated 8 August 2013 (with enclosures), and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 9 February 2017. The Tribunal wrote to the appellant on 9 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. The appellant is also appealing against penalties that HMRC have imposed under Schedule 56 of the Finance Act 2009 (“Schedule 56”) for the failure to pay tax on time for the period ending 5 April 2011

2. The penalties that have been charged can be summarised as follows:

10 (1) a £100 late filing penalty under paragraph 3 of Schedule 55 imposed on or around 14 February 2012

(2) a £300 “six month” penalty under paragraph 5 of Schedule 55 imposed on or around 7 August 2012

15 (3) “Daily” penalties totalling £900 under paragraph 4 of Schedule 55 imposed on 7 August 2012

(4) A £96 individual 30 days late payment penalty under paragraph 3(2) of Schedule 56.

(5) A £96 individual 6 months late payment penalty under paragraph 3(3) of Schedule 56.

20 3. The appellant’s main ground for appealing against the penalties is that his ill health constituted a “reasonable excuse” for any failure to submit the return on time.

4. The appellant’s appeal was notified to the Tribunal late. For the following reasons, I have decided to give permission for the appeal to be notified late:

25 The appellant appealed twice to HMRC but as those appeals were out of time they suggested the appellant should seek permission for his appeal to be heard by the Tribunal. As HMRC suggested that the appellant should lodge the appeal late they can have no objection to the Tribunal giving permission for the appeal to be notified late. If the Tribunal had refused to allow the appeal then the grounds of appeal would not have been considered at all. Therefore in the interests of justice and fairness the
30 Tribunal has given permission for the appeal to be notified late.

Findings of fact

5. Included in the bundle of papers before the Tribunal was a medical report dated 11 April 2013 which indicated that the appellant was diagnosed with anxiety and depression in January 2009, and that he had been treated with anti-depressant drugs since that time.
35

6. On 9 August 2013 the Tribunal received a Notice of Appeal against the penalties, it was completed and signed by the appellant’s son Nikesh Hindocha. As the Tribunal had no record of the appellant having appointed an agent they wrote to the appellant on 12 August 2013 enclosing an authority form for completion. On 23 August 2013

the appellant wrote to the Tribunal enclosing the signed form authorising his son Nikesh Hindocha to act on his behalf.

5 7. The appellant's tax return for the year ended 5 April 2011 was issued to him by HMRC on 6 April 2011. It was due to be submitted non-electronically by 31 October 2011 or electronically by 31 January 2012.

8. HMRC received the appellant's tax return electronically on 7 August 2012.

9. As the return was not received by 31 January 2012 HMRC issued a late filing penalty notice on or around 14 February 2012 in the amount of £100.

10 As the return had still not been received by HMRC 3 months after the penalty date daily penalties of £900 were imposed, 90 days at £10 is £900. The penalty date was the day after the return was due, so was 1 February 2012. Therefore the daily penalties commenced on 1 May 2012 and continued for 90 days or submission of the return whichever is the earlier. 90 days from 1 May is 29 July so as the return was not submitted until 7 August 2012 the maximum daily penalty of £900 was imposed by
15 HMRC.

As the return still had not been received by HMRC 6 months after the penalty date they imposed a further penalty of £300.

20 10. A tax calculation by HMRC included in the papers shows that the appellant's tax liability for the period was £1,926.20. This amount which was not disputed, was due to be paid by 31 January 2012 but was not finally paid in full until 30 April 2013.

In respect of this failure the penalty date was 3 March 2012. HMRC issued a notice of penalty assessment on or around 4 September 2012 in the sum of £96 being 5% of the £1,926.20 tax unpaid.

25 As the tax remained unpaid 5 months after the penalty date HMRC issued a notice of penalty assessment on or around 4 September 2012 in the sum of £96 being 5% of the £1,926.20 tax remaining unpaid.

11. **Appellant's submissions**

On 26 April 2013 HMRC received an undated letter from the appellant. This includes

30 "For the last 4 years I have been suffering from depression, anxiety and panic attacks. I have not received any support from my family or friends and hence have not been able to fill in my tax returns. I received help from my son in 2012, which enabled me and him to complete my tax returns for the previous years. I am now receiving help from my family and friends and my depression is under control therefore I should be able to complete my future tax returns on time.

35 I hope you will be able to do something about the penalties applied, as I was in no state of mind and had no proper control over my finances. I have attached a letter from my doctor who has observed my conditions and treated me for them.

12. On 4 June 2013 the appellant's agent wrote to HMRC appealing against the penalties

The letter included

5 "In my previous appeal letter I stated that my father suffers from depression and anxiety which prevented him to complete his tax return, this was as his finances were not in order and he was unable to sort this out. Due to his illness he has not been able to delegate anyone else to complete his return until recently when I was able to sort some of his finances out, one of the priorities being his tax return. Also it is stated in the doctors' letter that my father suffered from retinal detachment, from which he has never fully recovered, mentally and physically.

As well as his tax return not being filed many of his other finances have not been in order His day to day living has deteriorated along with his quality of life, hence him suffering from depression and anxiety and not actually being able to get the menial day to day activities done, let alone his finances and taxes.

15 In more recent times his health has been improving and with my help we were able to file his tax return and are now trying to get the charges cancelled due to them being from his ill health....."

13. In the Notice of Appeal dated 8 August 2013 the appellant's agent states:

20 "I explained to HMRC the reasons for the appeal being made late, namely that my father (the appellant) has been of ill health and suffering from anxiety, depression and stress. All of his financial affairs are being handled by some members of the family, and as his consent and input was required for the appeal it was not carried out within the specified time. Only recently have I been able to gather information regarding the appeal and therefore submit an appeal. Please see attached letter dated 04/06/13 which was the second letter that was sent to HMRC regarding the appeal. Their response dated 09/07/13 was very disappointing as they have not specified why they will not consider the appeal, but they simply "cannot". I therefore believe, due to my father's circumstances, his appeal against charges should be reviewed."

14. HMRC submissions

30 On 14 May 2013 and 9 July 2013 HMRC refused to accept the appellant's letters of appeal in both cases on the grounds that the deadline for making an appeal had passed. They suggested the appellant contacts the Tribunal.

35 15. 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 2010-2011 tax returns was filed by the due date.

Self-assessment is based on voluntary compliance. Taxpayers who are within the self-assessment system must pay the tax they owe by the date specified in law.

16. HMRC say their records show that the appellant's tax returns for several years back to 2007/2008 were submitted after the legislative filing date.

17. Even though HMRC sympathise with the appellant for illness to be considered a reasonable excuse the illness must be so serious that it prevented the appellant from
5 controlling his business and private affairs immediately before the deadline to the date he sent his tax return in. HMRC would agree that coma, major heart attack stroke or any other serious mental or life threatening illness as a reasonable excuse.

However where illness is an ongoing condition the appellant would be expected to make arrangements for making and sending the tax return in on time. As the appellant
10 had from the end of the 2010-2011 tax year on 5 April 2011 until 31 January 2012 in which to arrange for the completion of his return HMRC believe that this is sufficient time under most circumstances.

18. In respect of reasonable excuse HMRC say Paragraph 23 of Schedule 55 of the Finance Act 2009 provides that a penalty does not arise in relation to a failure to make
15 a return if the person satisfies HMRC (or on appeal, a Tribunal) that they had a reasonable excuse for the failure and they put right the failure without unreasonable delay after the excuse has ended.

The law specifies two situations that are not reasonable excuse:

- 20 (a) An insufficiency of funds, unless attributable to events outside the appellant's control.
- (b) Reliance on another person to do anything, unless the person took reasonable care to avoid the failure.

There is no statutory definition of "reasonable excuse". Whether or not a person has a reasonable excuse is an objective test and "is a matter to be considered in the light
25 of all the circumstances of the particular case" *Rowland v HMRC* (2006) STC (SCD) 536 at paragraph 18.

HMRC's view is that 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
30 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, 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
35 standard.

19. 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
40 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 circumstances which would allow them to reduce the penalty.

Discussion

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

5 21. I have concluded that the tax return for the 2010/2011 tax year was submitted on or around 7 August 2012. It should have been submitted by 31 January 2012. Subject to considerations of “reasonable excuse” and “special circumstances” set out below, the penalties imposed are due and have been calculated correctly.

10 22. The Tribunal has considered HMRC’s evidence that the appellant failed to submit his tax return by the deadline for each of the 4 tax years from 2007/8 to 2010/11. It is noted that the deadlines for all these returns fall within a period following the January 2009 date on which the appellant was diagnosed with anxiety and depression.

23. The appellant appealed to HMRC on two occasions. On each occasion his appeal was not considered by HMRC as they said it was out of time.

15 24. The Tribunal notes that in their statement of case HMRC state that they would consider serious mental illness provides a reasonable excuse. The question for the Tribunal is therefore whether what the appellant has been suffering from can be classed as a serious mental illness.

20 25. Against that HMRC argue that where illness is an ongoing condition the appellant would be expected to make arrangements for making and sending the tax return in on time.

25 26. In the Tribunal’s view the illness was an ongoing condition. However the nature of that illness was such that it affected the appellant in such a way as he was unable to make those arrangements. It is evident from his son’s submissions that the appellant’s day to day living has deteriorated along with his quality of life, hence him suffering from depression and anxiety and not actually being able to get the menial day to day activities done, let alone his finances and taxes. Such depression can be classed as a serious mental illness.

30 Slowly but surely, and with the help of his son, the appellant recovered from his illness so that by 30 April 2013 all outstanding returns and payments had been made. In his letter of 26 April 2013 the appellant wrote I am now receiving help from my family and friends and my depression is under control therefore I should be able to complete my future tax returns on time.

35 27. In the circumstances the Tribunal has decided that the anxiety and depression and panic attacks suffered by the appellant constitute a serious mental illness and therefore by HMRC’s own criteria provide the appellant with a reasonable excuse for the late submission of his 2010-2011 tax return and the late payment of the tax due for the

2010-2011 period. The Tribunal considers that reasonable excuse ceased on 26 April 2013.

28. HMRC has considered special reduction under (paragraph 16 Schedule 55 of the Finance Act 2009. HMRC consider that there are no special circumstances which would allow them to reduce the penalty. As the Tribunal has found that the appellant had a reasonable excuse for the failure to submit the return and make payment on time there is no need for it to comment on whether or not there were special circumstances.

29. **Conclusion**

The Tribunal has found that the appellant's self-assessment tax returns for the tax year ending 5 April 2011 should have been submitted non-electronically by 31 October 2011 or electronically by 31 January 2012. The return was received late by HMRC on or around 7 August 2012.

The Tribunal has also found that the tax due by the appellant for the period 2011-2012 was due to be paid by 31 January 2012 but was not finally paid in full until 30 March 2013.

However the appellant has established a reasonable excuse for the late submissions and late payment. That excuse started in January 2009 and ceased on 26 April 2013. By 30 April 2013 the outstanding amount had been paid in full. Thus matters had been put right within a reasonable time from when the excuse ceased. Therefore the appeal is allowed.

Application for permission to appeal

30. 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: 05 MAY 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:

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:

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—

30 (a) 5% of any liability to tax which would have been shown in the return in question, and

(b) £300.

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

23—

35 (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
- (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.

5. 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.
 - (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—
 - (a) staying a penalty, and
 - (b) agreeing a compromise in relation to proceedings for a penalty.

6. 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.
 - (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.
 - (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

(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.

5 (4) In sub-paragraph (3)(b) “flawed” means flawed when considered in the light of the principles applicable in proceedings for judicial review.

Schedule 56 details the penalties for late payment of tax.

10 *Amount of penalty: occasional amounts and amounts in respect of periods of 6 months or more*

3 (1) This paragraph applies in the case of—

(a) a payment of tax falling within any of items 1, 3 and 7 to 24 in the Table,

15 (b) a payment of tax falling within item 2 or 4 which relates to a period of 6 months or more, and

(c) a payment of tax falling within item 2 which is payable under regulations under section 688A of ITEPA 2003 (recovery from other persons of amounts due from managed service companies).

(2) P is liable to a penalty of 5% of the unpaid tax.

20 (3) If any amount of the tax is unpaid after the end of the period of 5 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.