



**TC06071**

**Appeal number: TC/2017/02737**

*Income tax - fixed penalties for late filing of self-assessment returns - Appellant was a director of newly formed company and unaware of obligation to file individual returns - whether reasonable excuse - no - appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**KAMALESH JOSHI**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE MICHAEL CONNELL  
MEMBER NOEL BARRETT**

**Sitting in public at Nottingham Justice Centre, Carrington Street, Nottingham  
on 7 June 2017**

**The Appellant did not attend and was not represented**

**Ms Mary Donnelly, Officer of HMRC, for the Respondents**

## DECISION

1. This is an appeal by Kamalesh Joshi ('the Appellant') against penalties totalling  
5 £1,800 imposed by the Respondents ('HMRC') under Paragraphs 3, 5 and 6 of  
Schedule 55 Finance Act 2009, for the late filing by the Appellant of his self-  
assessment ('SA') tax returns for the tax years ending 5 April 2012, 2013 and 2014.

2. The Appellant did not attend the hearing. He had been given notice of the time,  
10 date and venue of the appeal hearing. The Tribunal was therefore satisfied that it was  
in the interests of justice to proceed.

3. The Appellant is a director of Midland Solar Limited, a company which he  
formed in 2011. The Company is a solar energy equipment supplier based in  
Leicester.

4. The Appellant's returns, if filed electronically, were due no later than 31  
15 January in the year following the end of the financial year to which they related. All  
three returns were filed after the due date.

5. The penalties for late filing of a return can be summarised as follows:

i. A penalty of £100 is imposed under Paragraph 3 of Schedule 55  
20 Finance Act ('FA') 2009 for the late filing of the Individual Tax  
Return.

ii. If after a period of 3 months beginning with the penalty date the  
return remains outstanding, daily penalties of £10 per day up to a total  
of £900 are imposed under Paragraph 4 of Schedule 55 FA 2009.

iii. If after a period of 6 months beginning with the penalty date the  
25 return remains outstanding, a penalty of £300 is imposed under  
Paragraph 5 of Schedule 55 FA 2009.

iv. If after a period of 12 months beginning with the penalty date the  
return remains outstanding, a penalty £300 is imposed under  
Paragraph 6 of Schedule 55 FA 2009.

6. Penalties of £100, £300 and £300 were imposed, under (i), (iii) and (iv) above in  
30 respect of years 2012 and 2013. Penalties of £100 and £300 were imposed, under (i),  
and (iii) above, in respect of year 2014.

7. The Appellant's appeal is against all the penalties.

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## **Filing date and Penalty date**

8. Under s 8(1D) TMA 1970 for the year ended 5 April 2012 et seq. a non-electronic return must be filed by 31 October 2012 and an electronic return by 31 January 2013. The ‘penalty date’ is defined at Paragraph 1(4) Schedule 55 FA 2009 and is the date after the filing date.

9. A late filing penalty is chargeable where a taxpayer is late in filing their Individual Tax return.

## **Reasonable excuse**

10. Paragraph 23 of Schedule 55 FA 2009 provides that a penalty does not arise in relation to a failure to make 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 ceased.

11. The law specifies two situations that are not reasonable excuse:

(a) an insufficiency of funds, unless attributable to events outside the Appellant’s control and

(b) reliance on another person to do anything, unless the person took reasonable care to avoid the failure.

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

13. HMRC’s view is that the actions of the 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 upon 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 standard.

14. If there is a reasonable excuse it must exist throughout the failure period.

## **The background facts**

15. The filing date was 31 October in each financial year for a non-electronic return and the 31 January of the year following for an electronic return.

16. The Appellant’s electronic returns for all three years were received on 4 November 2015.

17. As the returns were received after the penalty date in each year, HMRC issued a notices of penalty assessments on or around 20 November 2015, in the amount of £100, £900, £300 and £300 for years 2012 and 2013 and £100, £900 and £300 for year 2014.

5 18. On 21 November 2016 the Appellant appealed against HMRC's decision to impose penalties, saying that he had not received any income in his capacity as director of Midland Solar Limited and that he had left matters with his accountant.

10 19. On 19 January 2016 the Appellant's agent appealed the penalties. Other issues arose with regard to the Appellant's source of income, which resulted in delays and eventually in HMRC reconfirming the penalties.

20. On 28 December 2016 HMRC rejected the Appellant's appeal saying that he had not shown a reasonable excuse for the failure to send his return in on time.

21. On 6 February 2017 the Appellant appealed against the penalty on the grounds that:

15 "I had no knowledge about self-assessment until VAT people ask me. Not even my accountant told me at all. If I had knowledge that I could fill the self-assessments so I was really innocent and honest.

20 But now I have full knowledge of this procedure that's why I am regularly to fill self-assessment now and the future, so please kind with me about this penalty. Please give me opportunity to improve rather than punishment? This is my humble request to you. If I make any mistake in future then you can do penalty twice."

22. On 6 March 2017 HMRC following a review rejected his appeal and upheld their decision.

25 23. On 28 March 2017 the Appellant lodged an appeal with the Tribunal. The grounds of appeal were:

"I started Midland Solar Ltd in 2011. I was a new business man. I had no idea about any taxes. No-one mentioned that you have to do self-assessment. I was paying regularly corporation tax.

30 I came to know about self-assessment when VAT people came in 2014 and they ask me about self-assessment, at that time I realised that I have to do this, then I took immediately action and I filed all the self-assessments.

Even HMRC did not write to me that you have to do? This is not a good practice for new business comer.

35 Like me many new business starter will be victim of this type of penalty, Plus interest on the penalty. This is like a extra income for HMRC, so they will not

care to inform that new comer in business. This is my first time mistake, after I am regular in self-assessment.

5 If you want to promote a new business comer that you must have mercy for first time. At least inform a new comer that you have to submit your self-assessment, so they don't make mistake which I made innocently. This is a duty of HMRC to inform about this, but it never happen.

This is my first mistake done by innocently, so HMRC must have mercy on me, if I make any mistake then they can take action that is reasonable, but not for first time.

10 This is my humble request to court and HMRC.”

### **Relevant statutory provisions**

Taxes Management Act 1970:

24. Section 8 - Personal return- provides as follows:

15 (1) For the purpose of establishing the amounts in which a person is chargeable to income tax and capital gains tax for a year of assessment, [and the amount payable by him by way of income tax for that year,] he may be required by a notice given to him by an officer of the Board-

20 a) to make and deliver to the officer, on or before the day mentioned in subsection (1A) below, a return containing such information as may, reasonably be required in pursuance of the notice, and

b) to deliver with the return such accounts, statements and documents, relating to information contained in the return, as may reasonably be so required.

(1A) The day referred to in subsection (1) above is-

25 (a) the 31st January next following the year of assessment, or

(b) where the notice under this section is given after the 31st October next following the year, the last [day of the period of three months beginning with the day on which the notice is given]

(1AA) For the purposes of subsection (1) above-

30 (a) the amounts in which a person is chargeable to income tax and capital gains tax are net amounts, that is to say, amounts which take into account any relief or allowance a claim for which is included in the return; and

(b) the amount payable by a person by way of income tax is the difference between the amount in which he is chargeable to income tax and the aggregate

amount of any income tax deducted at source and any tax credits to which [section 397(1) [or [397A(1)] of ITTOIA 2005] applies.]

5 (1B) In the case of a person who carries on a trade, profession, or business in partnership with one or more other persons, a return under this section shall include each amount which, in any relevant statement, is stated to be equal to his share of any income, [loss, tax, credit] or charge for the period in respect of which the statement is made.

10 (1C) In subsection (1B) above “relevant statement” means a statement which, as respects the partnership, falls to be made under section 12AB of this Act for a period which includes, or includes any part of, the year of assessment or its basis period.]

(1D) A return under this section for a year of assessment (Year 1) must be delivered-

15 (a) in the case of a non-electronic return, on or before 31st October in Year 2, and

(b) in the case of an electronic return, on or before 31st January in Year 2.

(1E) But subsection (1D) is subject to the following two exceptions.

20 (1F) Exception 1 is that if a notice in respect of Year 1 is given after 31st July in Year 2 (but on or before 31st October), a return must be delivered-

(a) during the period of 3 months beginning with the date of the notice (for a non-electronic return), or

(b) on or before 31st January (for an electronic return).

25 (1G) Exception 2 is that if a notice in respect of Year 1 is given after 31st October in Year 2, a return (whether electronic or not) must be delivered during the period of 3 months beginning with the date of the notice.

(1H) The Commissioners—

(a) shall prescribe what constitutes an electronic return, and

(b) may make different provision for different cases or circumstances.

30 (2) Every return under this section shall include a declaration by the person making the return to the effect that the return is to the best of his knowledge correct and complete.

(3) A notice under this section may require different information, accounts and statements for different periods or in relation to different descriptions of source of income.

5 (4) Notices under this section may require different information, accounts and statements in relation to different descriptions of person.

(4A) Subsection (4B) applies if a notice under this section is given to a person within section 8ZA of this Act (certain persons employed etc. by person not resident in United Kingdom who perform their duties for UK clients).

10 (4B) The notice may require a return of the person's income to include particulars of any general earnings (see section 7(3) of ITEPA 2003) paid to the person.

15 (5) In this section and sections 8A, 9 and 12AA of this Act, any reference to income tax deducted at source is a reference to income tax deducted or treated as deducted from any income or treated as paid on any income.

Schedule 55 Finance Act 2009:

25. The penalties at issue in this appeal are imposed by Schedule 55 FA 2009.

26. Paragraph 1 (4) states that the 'penalty date' is the date after the 'filing date'.

20 27. Paragraph 3 of Schedule 55 imposes a fixed £100 penalty if a self-assessment return is submitted late.

28. Paragraph 4 of Schedule 55 provides for daily penalties to accrue where a return is more than three months late as follows:

(1) P is liable to a penalty under this paragraph if (and only if)-

25 (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.

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(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)-

35 (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).

29. Paragraph 5 of Schedule 55 provides for further penalties to accrue when a return is more than 6 months late as follows:

5 (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.

10 (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  
(b) £300.

30. Paragraph 23 of Schedule 55 contains a defence of "reasonable excuse" as follows:

15 (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.

20 (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  
25 (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 31. Paragraph 16 of Schedule 55 gives HMRC power to reduce penalties owing to the presence of "special circumstances" as follows:

(1) If HMRC think it right because of special circumstances, they may reduce a penalty under any paragraph of this Schedule.

35 (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.

40 (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.

45 32. 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:

- (1) On an appeal under paragraph 20(1) that is notified to the tribunal, the tribunal may affirm or cancel HMRC's decision.
- 5 (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.
- 10 (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
- 15 (4) In sub-paragraph (3)(b) “flawed” means flawed when considered in the light of the principles applicable in proceedings for judicial review.

### **The Appellant's Case**

- 20 33. The Appellant's grounds of appeal are as set out in his Notice of Appeal to the Tribunal (see paragraph 23 above).

### **HMRC's Case**

- 25 34. At the hearing, HMRC waived daily penalties of £10 per day up to a total of £900, previously imposed for each year, under Paragraph 4 of Schedule 55 FA 2009, because HMRC had not given the notice required under paragraph 4(1)(c) of Schedule 55 FA 2009, specifying the date from which the daily penalties were payable.

- 30 35. Late filing penalties for the year ended 5 April 2012 et seq., are due in accordance with Schedule 55 Finance Act 2009, even if a customer has no tax to pay, has already paid all the tax due or is due a refund.

36. Where a return is filed after the relevant deadline a penalty is charged. The later a return is received, the more penalties are charged.

- 35 37. This appeal is not concerned with specialist or obscure areas of tax law. It is concerned with the ordinary every day responsibilities of the Appellant to ensure his tax returns were filed by the legislative dates and payment made on time.

- 40 38. Self-assessment places a greater degree of responsibility on customers for their own tax affairs. This includes ensuring that HMRC receive payment of the correct amount of tax and National Insurance at the correct time. The tax guidance and HMRC's website give plenty of warning about filing and payment deadlines. It is the customer's responsibility to make sure they meet the deadlines.

39. Penalties are in place to promote efficient operation of the taxation system and are intended as a measure of fairness, so that customers who file late do not gain any advantage over those who file on time.

5 40. The amount of the penalties charged is set within the legislation. HMRC has no discretion over the amount charged and must act in accordance with the legislation. By not applying legislation and as such not to have imposed the penalty would mean that HMRC was not adhering to its own legal obligations.

### **Special Reduction**

10 41. Paragraph 16(1) of Schedule 55 allows HMRC to reduce a penalty if they think it is right because of special circumstances. “Special circumstances” is undefined save that, under paragraph 16(2), it does not include ability to pay, or the fact that a potential loss of revenue from one taxpayer is balanced by a potential overpayment by another.

15 42. In other contexts “special” has been held to mean ‘exceptional, abnormal or unusual’ (*Crabtree v Hinchcliffe* [1971] 3 All ER 967), or ‘something out of the ordinary run of events’ (*Clarks of Hove Ltd v Bakers' Union* [1979] 1 All ER 152). The special circumstances must also apply to the particular individual and not be general circumstances that apply to many taxpayers by virtue of the penalty legislation (*David Collis* [2011] UKFTT 588 (TC), paragraph 40).

20 43. HMRC have considered the Appellant’s inexperience and the fact that he had not previously filed personal self-assessment returns. These are not special circumstances which would merit a reduction of the penalties below the statutory amount.

25 44. Where a person appeals against the amount of a penalty, paragraphs 22(2) and (3) of Schedule 55, FA 2009 provide the tribunal with the power to substitute HMRC’s decision with another decision that HMRC had the power to make. The tribunal may rely on paragraph 16 (Special Reduction) but only if they think HMRC’s decision was ‘flawed when considered in the light of the principles applicable in proceedings for judicial review’.

30 45. HMRC’s decision not to reduce the penalties under paragraph 16 was not flawed. There are no special circumstances which would require the tribunal to reduce the penalties.

### *Reasonable Excuse*

35 46. When a person appeals against a penalty they are required to have a reasonable excuse which existed for the whole period of the default. There is no definition in law of reasonable excuse, which is a matter to be considered in the light of all the circumstances of the particular case.

47. A reasonable excuse is normally an unexpected or unusual event, either unforeseeable or beyond the person's control, which prevents him or her from complying with an obligation which otherwise they would have complied with.

5 48. No reasonable excuse has been shown for the Appellant's failure to file his tax returns on time for 2012, 2013 and 2014.

49. The late filing penalties have therefore been charged in accordance with legislation.

### **Conclusion**

10 50. We find that there are no special circumstances which would allow the penalty to be reduced under the Special Reduction regulations and that the Appellant has not shown a reasonable excuse for the late filing of his returns.

51. The appeal is therefore dismissed and the late filing penalties confirmed.

15 52. The Appellant appears to have made various payments on account of assessments and/or the penalties and these payments should be taken into account on collection of the penalties.

20 53. 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.

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**MICHAEL CONNELL  
TRIBUNAL JUDGE**

**RELEASE DATE: 16 AUGUST 2017**

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