



**TC06585**

Appeal number: TC/2018/01160

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**CHOUKRI BELMAHDI**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE ANNE SCOTT**

**The Tribunal determined the appeal on 3 July 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 10 February 2018 (with enclosures), HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 4 April 2018 and the Appellant's Reply dated 20 April 2018 (with enclosures).**

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## DECISION

### **The issue**

1. HMRC's Statement of Case and the Notice of Appeal states that this is an appeal against "daily" penalties totalling £900 imposed under paragraph 4 of Schedule 55 Finance Act 2009 ("Schedule 55") and 6 months late filing penalties imposed under paragraph 5 of Schedule 55 for the late filing of the self-assessment tax return for the year ending 5 April 2016 amounting to £300. The appellant has paid the £100 late filing penalty.
2. HMRC state that because the Notice of Appeal refers only to £1200 penalty, the appellant has not appealed the £100 late filing penalty. However, I note that the review conclusion letter refers to the late filing penalty in addition to the other two penalties. The general tenor of the correspondence leads me to believe that English may not be the appellant's first language. That being the case I am treating this as an appeal against all of the penalties.

### **The background**

3. The Notice to File for the year ending 5 April 2016 was issued to the appellant on 6 April 2016. That Notice to File includes information relating to the deadlines for submitting a return and also the late filing penalty charges.
4. The filing date was 31 October 2016 for a non-electronic return or 31 January 2017 for an electronic return.
5. The electronic return was eventually filed on 8 August 2017 and processed on that day.
6. In the interim since the return had not been received by the filing date, HMRC issued a Notice of Penalty Assessment on or around 7 February 2017 in the amount of £100.
7. On 17 February 2017, the appellant called HMRC in relation to the cancellation of his direct debit and was advised that his priority was to submit the 2015/16 return before more penalties were imposed.
8. On 6 June 2017 a 30 day penalty reminder was issued to the appellant and on 15 June 2017 the appellant appealed the penalties and confirmed that he had received the penalty reminder notice. The appeal was on the basis that his business had been placed into liquidation.
9. On 4 July 2017, HMRC issued a 60 day penalty reminder notice.
10. On 24 July 2017, HMRC wrote to the appellant explaining that his appeal could not be considered until such time as the return was filed.
11. On 26 July 2017, HMRC telephoned the appellant telling him to submit his tax return as soon as possible. (The return was filed on 8 August 2017.)

12. On 11 August 2017, the “daily” penalty assessment in the sum of £900 was issued together with the 6 months late penalty assessment in the sum of £300.
13. On 25 September 2017, the appellant again appealed the late filing penalties stating that the return had now been filed.
14. On 2 November 2017, that appeal was rejected and on 28 November 2017 the appellant requested a review stating again that his company had gone into liquidation and he had not been aware that a personal tax return needed to be filed. Furthermore he had only employment income at that juncture and he was not self-employed.
15. The review conclusion upheld the penalties pointing out that it had been his responsibility to inform HMRC of any changes in circumstances including a change in income or employment and they had no evidence in relation to the company going into liquidation.
16. On 10 February 2018, the appellant notified his appeal to the Tribunal.
17. The appellant was registered for self-assessment for the period 24 October 2008 to 31 March 2010 as a general grocer and then as a director from 26 November 2013 to 28 February 2017.

## Discussion

18. There is no doubt that the return was late and that gives rise to the penalties. Paragraph 23 of Schedule 55 provides that a penalty does not arise in relation to a failure to make a return if the person satisfies HMRC (or on appeal, the Tribunal) that they had a reasonable excuse for the failure and they put right the failure without unreasonable delay after the excuse has ended.

19. Reasonable excuse is not defined in the legislation. Not every excuse is a reasonable excuse. I agree with Judge Berner in *Barrett v HMRC*<sup>1</sup> at paragraph 154 where he said:

“The test of reasonable excuse involves the application of an impersonal, and objective, legal standard to a particular set of facts and circumstances. 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”.

20. Perhaps the appellant did get muddled about what he should have done, but the question as to whether a genuine mistake can amount to a reasonable excuse has been considered in *Garnmoss Limited t/a Parham Builders v HMRC*<sup>2</sup> where Judge Hellier said in the context of reasonable excuse for VAT default surcharges at paragraph 12:

“What is clear is that there was a muddle and a *bona fide* mistake was made. We all make mistakes. This was not a blameworthy one. But the Act does not provide shelter for mistakes, only for reasonable excuses. We cannot say that this confusion was a reasonable excuse. ...”.

21. The appellant has been filing self-assessment tax returns for a number of years. He should have known that when he is sent a return he is required to file it. The first

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<sup>1</sup>2015 UKFTT 329 (TC)

<sup>2</sup> 2012 UKFTT 315 (TC)

penalty and the penalty reminders said explicitly that the return had to be filed. In any event, in the two telephone calls referred to in paragraphs 7 and 11 above, HMRC told him explicitly that he needed to file the return. He did not do so until almost two weeks after the second call. No adequate explanation of his continuing failure after the first telephone call has been given.

22. In all these circumstances I find that he has not established a reasonable excuse for the delay in filing the return.

23. Paragraph 16 of Schedule 55 allows HMRC to reduce the penalty below the statutory minimum if they think it right to do so because of special circumstances. As long ago as 1971, in a House of Lords decision dealing with special circumstances in the Finance Act 1965, Lord Reid in *Crabtree v Hinchcliffe (Inspector of Taxes)*<sup>3</sup> said “Special must mean unusual or uncommon - perhaps the nearest word to it in this context is ‘abnormal’”.

24. HMRC have confirmed that they did consider whether there were any special circumstances in this case and concluded that there are none. They have patently considered all relevant circumstances.

25. I did consider whether HMRC had acted in a way that no reasonable body could have acted, or whether they took into account some irrelevant matter or disregarded something to which they should have given weight. I think not. I have also considered whether HMRC have erred on a point of law. They have not. I find no reason to disagree with their conclusion. HMRC’s decisions in that regard are not flawed when considered in light of the principles applicable in proceedings for judicial review.

26. Parliament has laid down a deadline for submission of tax returns and has provided for penalties in the event of default. Although those penalties have been described by some as harsh, nevertheless they are widely held to be proportionate. In this instance they are within the bounds of proportionality. Furthermore *HMRC v Anthony Bosher*<sup>4</sup> makes it clear that I do not have the jurisdiction to consider the proportionality of fixed penalties such as those charged in this appeal. I am bound by that decision and have no discretion.

27. In his reply to the Statement of Case the appellant refers to his self-assessment refund. The penalties are not in any way related to the question of whether any tax is due or repayable. They relate only to the late filing of the return.

28. The decision of the Upper Tribunal in *HMRC v Hok*<sup>5</sup> is binding on me and that makes it explicit at paragraph 58 that this Tribunal has no jurisdiction to discharge penalties on the ground that their imposition was unfair.

29. For all the reasons given above I dismiss this appeal and confirm the penalties.

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

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<sup>3</sup> 1971 3 All ER 967

<sup>4</sup> 2013 UKUT 579 (TCC)

<sup>5</sup> 2012 UKUT 363

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.

**ANNE SCOTT**

**TRIBUNAL JUDGE**  
**RELEASE DATE: 6 JULY 2018**