



**TC06779**

**Appeal number: TC/2018/00431**

*INCOME TAX – penalty for failure to make returns*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MARIO STANCHEV**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE ANNE FAIRPO**

**The Tribunal determined the appeal on 7 June 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 17 January 2018 (with enclosures) and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 20 March 2018.**

## 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 for the 2015/16 tax year 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 7 February 2017
  - 10 (2) a £300 “six month” penalty under paragraph 5 of Schedule 55 imposed on 11 August 2017
  - (3) “Daily” penalties totalling £900 under paragraph 4 of Schedule 55 imposed on 11 August 2017

### **Appellant’s case**

- 15 3. The appellant’s grounds for appealing against the penalties can be summarised as follows:
  - (1) He was not aware that he had to file a tax return even though he had no income from self-employment to be reported;
  - (2) He had moved house quite often during the relevant period and so had not  
20 received the reminder to file the self-assessment tax return, and he also had no tax adviser during that period;
  - (3) As a result he also had not received the £100 initial late filing penalty which would have alerted him to the need to file his return.
  - (4) The amount of the penalty would cause hardship to him and his family.
- 25 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 s49H(3) of the Taxes Management Act 1970 for the appeal to be notified late.

### **HMRC’s case**

5. HMRC’s case is, in summary:
  - 30 (1) The appellant had advised HMRC in February 2016 that he had commenced self-employment. A notice to file a tax return for 2015/16 was accordingly issued to him on 6 April 2016.
  - (2) The appellant filed an electronic return for the year 2015/16 on 21 October 2017. The due date for filing of an electronic return for the year was 31 January  
35 2017. As the return was more than six months late, the relevant penalties were issued.

(3) A taxpayer is responsible for ensuring that they are aware of and comply with tax law, regardless of whether or not they have a tax agent.

5 (4) It is the taxpayer's responsibility to inform HMRC of any change of address. The notice to file was sent to the address on HMRC's records and there is no record of that notice having been returned undelivered. The notice is therefore deemed to have been served in the ordinary course of postal delivery in accordance with the relevant law. The same applies to the penalty notices sent out.

10 (5) HMRC did not receive a notification of a change of address from the appellant until 2 October 2017, after the penalties were issued. A further change of address was received on 6 December 2017.

### Discussion

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

15 7. It is not disputed that the tax return for the 2015/16 tax year was submitted on or around 21 October 2017. It should have been submitted by 31 January 2017. Subject to considerations of "reasonable excuse" and "special circumstances" set out below, the penalties imposed are due and have been calculated correctly.

20 8. I have taken the appellant's submission as to his lack of knowledge of the requirement to file a return and his changes of address and failure to receive penalty notices as an argument that he has a reasonable excuse for the late filing of the return.

9. There is no statutory definition of "reasonable excuse" but, in my view, the test set out in *Clean Car Company* [1991] VTTR 234 should be applied:

25 "a reasonable excuse should be judged by the standards of reasonableness which one would expect to be exhibited by a taxpayer who had a responsible attitude to his duties as a taxpayer, but who in other respects shared such attributes of the particular appellant as the tribunal considered relevant to the situation being considered"

30 10. It is a taxpayer's responsibility to be aware of their tax filing obligations and to keep HMRC's records as to their address up to date. A taxpayer in the circumstances of the appellant with a responsible attitude to their duties as a taxpayer would, I consider, have checked whether they had any filing obligations for the relevant tax year and would have kept HMRC up to date with their changes of address. The appellant's failure to do either does not amount to a reasonable excuse.

35 11. Similarly, the appellant's lack of a tax agent does not amount to a reasonable excuse for the delay in filing the return: a taxpayer is required to comply with tax law regardless of whether or not they chose to appoint an agent.

40 12. Under paragraph 23(2)(a) of Schedule 55, a lack of funds is specifically precluded from being a reasonable excuse unless it is due to circumstances outside the appellant's control. The appellant has given no reason for his lack of funds and so I find that it does not amount to a reasonable excuse. I note that HMRC in their Statement of Case have

advised the appellant that he may want to contact the HMRC helpline to see whether a Time To Pay arrangement can be established.

*Special circumstances*

13. Finally I must consider whether HMRC should have made a special reduction because of special circumstances within paragraph 16. The Tribunal's jurisdiction in this context is limited to circumstances where it considers HMRC's decision in respect of special circumstances was flawed when considered in the light of the principles applicable in judicial review proceedings. HMRC have considered whether to apply a special reduction and have found nothing that is exceptional, abnormal or unusual to justify such a reduction. Applying the judicial review standards I see no reason to overturn HMRC's decision.

**Conclusion**

14. As I have found that there is no reasonable excuse for the delay in filing the return, nor any special circumstances that would allow for a reduction in the penalties, the appeal is dismissed and the penalties are confirmed in full.

**Application for permission to appeal**

15. 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.

**ANNE FAIRPO  
TRIBUNAL JUDGE**

**RELEASE DATE: 22 October 2018**

## 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—

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

30 (b) £300.

4. Paragraph 6 of Schedule 55 provides for further penalties to accrue when a return is more than 12 months late as follows:

6—

35 (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 12 months beginning with the penalty date.

(2) Where, by failing to make the return, P deliberately withholds information which would enable or assist HMRC to assess P's liability

to tax, the penalty under this paragraph is determined in accordance with sub-paragraphs (3) and (4).

(3) If the withholding of the information is deliberate and concealed, the penalty is the greater of—

- 5 (a) the relevant percentage of any liability to tax which would have been shown in the return in question, and
- (b) £300.

(3A) For the purposes of sub-paragraph (3)(a), the relevant percentage is—

- 10 (a) for the withholding of category 1 information, 100%,
- (b) for the withholding of category 2 information, 150%, and
- (c) for the withholding of category 3 information, 200%.

(4) If the withholding of the information is deliberate but not concealed, the penalty is the greater of—

- 15 (a) the relevant percentage of any liability to tax which would have been shown in the return in question, and
- (b) £300.

(4A) For the purposes of sub-paragraph (4)(a), the relevant percentage is—

- 20 (a) for the withholding of category 1 information, 70%,
- (b) for the withholding of category 2 information, 105%, and
- (c) for the withholding of category 3 information, 140%.

(5) In any case not falling within sub-paragraph (2), the penalty under this paragraph is the greater of—

- 25 (a) 5% of any liability to tax which would have been shown in the return in question, and
- (b) £300.

(6) Paragraph 6A explains the 3 categories of information.

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

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(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.

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(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

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(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.

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

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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

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(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

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(b) agreeing a compromise in relation to proceedings for a penalty.

7. 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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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—

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(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—

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(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.

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

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