



TC06871

Appeal number: TC/2015/07082

Income tax - Schedule 55 Finance Act 2009 - fixed and daily penalties for failure to file self-assessment return on time - penalties for failure to pay tax on time - Appellant was caring for his wife - his solicitors had not filed the return as instructed and had not provided the information he needed for him to file the return - five month delay - whether reasonable excuse - no - appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

RAJA ALI

Appellant

- and -

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

TRIBUNAL: JUDGE MICHAEL CONNELL

The Tribunal determined the appeal on 24 August 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 9 November 2015 and HMRC's Statement of Case received by the Tribunal on 3 July 2018 with enclosures. The Tribunal wrote to the Appellant on 3 July 2018 stating that if he wished to reply to HMRC's Statement of Case he should do so within 30 days. The Appellant replied with copies of his earlier submissions to HMRC.

DECISION

1. This is an appeal by Mr Raja Ali ('the Appellant') against penalties totalling £800 imposed by the Respondents ('HMRC') under Paragraphs 5 and 6 of Schedule 55 Finance Act 2009, for his failure to file a self-assessment ('SA') tax return for the tax year ending 5 April 2014, on time.

2. The Appellant also appeals two £58 late payment penalties imposed under Paragraphs 3(2) and 3(3) of Schedule 56 Finance Act ('FA') 2009 for the late payment of the tax due in respect of his tax return for the year ending 5 April 2014.

Background

3. Under s 8(1D) TMA 1970 a non-electronic return must normally be filed by 31 October in the relevant financial year or an electronic return by 31 January in the year following. The Appellant's return for 2013-14, if filed in paper form, was due no later than 31 October 2014, and if filed electronically, no later than 31 January 2015.

4. A late filing penalty is chargeable when a taxpayer is late in filing their tax return. The 'penalty date' is defined at Paragraph 1(4) Schedule 55 FA 2009 and is the date after the filing date.

5. The Appellant's return was received by HMRC on 9 July 2015.

6. 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 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 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.

7. Penalties of £100 and £700 were imposed, under (i) and (ii), above for the late filing of the 2013-14 return.

8. If after a period of 30 days beginning with the penalty date a payment of tax due remains outstanding, a penalty is payable in accordance with Paragraph 3(2) Schedule 56 FA 2009; the penalty is 5% of that amount.

9. If after a period of 5 months beginning with the penalty date, a payment of tax due remains outstanding, a penalty is payable in accordance with Paragraph 3(3) Schedule 56 FA 2009; the penalty is 5% of that amount.

5 10. A penalty of £58 was imposed on 14 July 2015 under Paragraph 3(2) of Schedule 56 FA 2009 for the late payment of the Appellant's tax return for the year ending 5 April 2014.

11. A penalty of £58 was imposed on 14 July 2015 under Paragraph 3(3) of Schedule 56 FA 2009 for the late payment of the tax due under the Appellant's tax return for the year ending 5 April 2014.

10 12. The Appellant appealed all the penalties on 28 July 2015. He said that he:

15 “...had no knowledge of the tax system; he took early retirement to care for his ill wife; the letters sent by HMRC had been misplaced; he had problems getting documents from his solicitors who had been struck off and closed down. Therefore he had no documents to assist him in completing the tax return. His mail had been misplaced; he had a heart problem and surgery during the tax year; and was unaware of the tax processes.”

13. On 22 September 2015 HMRC rejected the appeal but offered a review.

14. On 15 October 2015 the Appellant requested a review of HMRC's decision stating:

20 “I have not had to do the tax returns for the last 45 years of my working life, it has always been completed by my employers. And therefore have no knowledge of the system. Within this period I have always been in employment and have never received any sort of benefit from the state. Within the last 10/15 years I have paid the highest tax rate.

25 I recently took early retirement because of my wife's debilitating illness. You will see from my record that I have been working for about 45 years and have been paying tax in all that time. About a year ago I had a heart issue and have been preoccupied with this, and because of looking after my wife's ill health, and more importantly the issues with the solicitors being struck off, and lack of the basic knowledge of the law we have sent the tax returns late.

30 In addition to this we found the late penalty letter when my wife's carer cleaned the cupboard and found the letters on top of the cupboard in the hallway with the other mail. The only thing I could think of is that we had some building work carried out during this time and can only presume the builders put the letters there. Upon this I wrote to you the next day.

35 As I have stated before that our solicitors were being investigated, unknown to us, and they kept asking us to wait for the paperwork. And then out of the blue we were told that the solicitors had been shut down. I have provided you with their detail for you to check them your selves.

As I saw it, we couldn't send our tax returns until we had the papers from the solicitors. This seemed the logical way. I was not aware that you could send half completed tax return. This is again lack of knowledge of the system.

5 I believe the solicitors phoned the tax office on our behalf to inform you of the reason the tax return will be delayed. I don't believe I saw any reminders from HMRC, I presumed that was the other reason we did not get the reminders.

10 I believe because of my ignorance of basic law, and lack of information are my reasons for the late return, together with the problems my mail and in large with our solicitors being investigated and then struck off. I believe these are reasonable excuses. I hope you will look at my request for a review charitably and cancel the penalty notice on this occasion. We have already in arrears with the tax and have arranged to pay the outstanding amount on a monthly basis for the next 18 months or so. I have been working for over 45 years and have paying taxes on the dot, and have never claimed anything from the state. I am asking for a charitable response please.”

15 15. HMRC carried out a review, and issued their review conclusion on 10 November 2015. The outcome of the review was that HMRC’s decision should be upheld, as the Appellant had failed to provide a reasonable excuse as to why he had filed the tax return late and as to why he had paid the outstanding amount late.

20 16. On 9 November 2015 the Appellant notified his appeal to the Tribunal, reiterating his earlier grounds of appeal and also saying that he had a heart problem and surgery during the tax year; he stated that he was unaware of the tax processes.

Reasonable excuse

25 17. 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.

18. 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

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

35 19. 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 of all the circumstances of the particular case” (*Rowland V HMRC* (2006) STC (SCD) 536 at paragraph 18).

20. 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.

Relevant statutory provisions

Taxes Management Act 1970

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

(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-

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-

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

(b) where the notice under the 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-

(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.]

(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 the 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.

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

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

(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.

5 (1E) But subsection (1D) is subject to the following two exceptions.

(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

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

(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-

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

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

(2) Every return under the 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.

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

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

25 (4A) Subsection (4B) applies if a notice under the section is given to a person within section 8ZA of the Act (certain persons employed etc. by person not resident in United Kingdom who perform their duties for UK clients).

(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.

30 (5) In the section and sections 8A, 9 and 12AA of the 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:

22. The penalties at issue in the appeal are imposed by Schedule 55 FA 2009.
23. Paragraph 1 (4) states that the ‘penalty date’ is the date after the ‘filing date’.
24. Paragraph 3 of Schedule 55 imposes a fixed £100 penalty if a SA return is submitted late.
25. 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 the paragraph if (and only if)-
 - (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.
 - (2) The penalty under the 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
 - (b) may not be earlier than the end of the period mentioned in sub-paragraph (1)(a).
26. Paragraph 5 of Schedule 55 provides for further penalties to accrue when a return is more than 6 months late as follows:
- (1) P is liable to a penalty under the 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 the 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.
27. Paragraph 23 of Schedule 55 contains a defence of “reasonable excuse” as follows:
- (1) Liability to a penalty under any paragraph of the 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 28. 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 the Schedule.

10 (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.

15 (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.

20 29. 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.

25 (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.

30 (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

35 (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.

HMRC’s Case

40 30. The Appellant submits that his solicitors were going to file his return for him, but were closed down and struck off. They had the information he needed to file the return himself and would not release this, which meant that he was unable to submit his income tax return on time. HMRC contends that it is the Appellant’s duty to ensure his tax affairs are in order and therefore ensure that his return is submitted on
45 time. HMRC does not accept his reliance on a third party to submit his tax return for him as a reasonable excuse, as this remains the tax payer’s responsibility at all times.

5 31. The Appellant states that he had no knowledge of the tax system. However, HMRC provides assistance to tax payers on the SA system by way of internet and telephone. The Appellant could have accessed these, in order to complete the tax return. HMRC submits that a lack of knowledge of the tax system is not a reasonable excuse.

32. The Appellant states that his mail was misplaced. HMRC do not accept this as a reasonable excuse as the taxpayer is aware of the requirement to complete their tax return when registered for SA in accordance with tax legislation. The Appellant was required to adhere to this.

10 33. The Appellant further submits that he had health issues and was also responsible for his ill wife. We are unaware of the period from which this excuse began or ended as the Appellant has not submitted further information. On considering the evidence at hand, HMRC do not believe the Appellant had a reasonable excuse for his failure to complete the tax return on time nor to pay the outstanding amount on time.

15 34. For the Appellant's appeal to succeed, he must demonstrate that a reasonable excuse existed which prevented him from complying with his Income Tax obligations throughout the period of failure from 31 January 2015 to 9 July 2015, when the return was filed. Based on the evidence provided, no reasonable excuse exists and as a consequence the penalties were correctly charged in accordance with legislation

20 35. A late filing penalty is raised solely because a SA tax return is filed late in accordance with Schedule 55 FA 2009, even if a customer has no tax to pay, has already paid all the tax due or is due a refund. Legislation has been changed and penalties are no longer linked to liability. When a return is filed after the relevant deadline a penalty is charged. The later a return is received, the more penalties are charged.
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36. The onus lies with HMRC to show that the penalties were issued correctly and within legislation. If the Tribunal find that HMRC have issued the penalties correctly the onus then reverts to the Appellant to show that he has a reasonable excuse for the late filing of his SA return.

30 37. Under Paragraph 23 (1) Schedule 55 FA 2009, liability to a penalty does not arise in relation to failure to make a return if the taxpayer has a reasonable excuse for failure.

38. 'Reasonable excuse' was considered in the case of *The Clean Car Company Ltd v The Commissioners of Customs & Excise* by Judge Medd who said:

35 "It has been said before in cases arising from default surcharges that the test of whether or not this is a reasonable excuse is an objective one. In my judgment it is an objective test in this sense. One must ask oneself: was what the taxpayer did a reasonable thing for a responsible trader conscious of and intending to comply with his obligations regarding tax, but having the experience and other relevant attributes of the taxpayer
40 and placed in the situation that the taxpayer found himself at the relevant time, a reasonable thing to do?" [Page 142 3rd line et seq.].

39. HMRC considers a reasonable excuse to be something that stops a person from meeting a tax obligation on time despite them having taken reasonable care to meet that obligation. HMRC's view is that the test is to consider what a reasonable person, who wanted to comply with their tax obligations, would have done in the same circumstances and decide if the actions of that person met that standard.

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

41. HMRC have considered the Appellant's submission that he took early retirement to care for his wife and had ongoing health issues. HMRC are unable to consider a special reduction without further information from the Appellant about the circumstances and his health issues which he stated he had at the time.

42. The Appellant has not provided a reasonable excuse for his failure to file his individual tax returns for the year 2013-14 on time. The penalties have been correctly charged in accordance with the legislation.

43. 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

44. 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.

45. 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).

46. When a person appeals against the amount of a penalty, paragraph 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'.

47. HMRC have considered the Appellant's grounds of appeal, but his circumstances do not amount to special circumstances which would merit a reduction of the penalties

48. Accordingly, 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.

Conclusion

5 49. 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.

10 50. 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.

15 51. HMRC first sent a late filing penalty to the Appellant on or around 18 April 2014 for £100. This should have acted as a prompt to him that his return was due and had not been submitted. The £100 penalty notice would have also advised the Appellant that if his return was more than three months late HMRC would begin charging his a penalty of £10 for each day it remained outstanding for a maximum of 90 days. The penalty notices would have also warned about the six month £300 penalty.

20 52. The Appellant's return was not filed until 9 July 2015. The delay was over five months. This is a significant delay.

53. The reasons given by the Appellant for the delay in filing his 2013-14 return do not amount to a reasonable excuse. An excuse must endure through the entire period of default.

25 54. The Tribunal has sympathy with the Appellant, given that he was caring for his wife, and that he was not accustomed to the SA tax regime. However, having been issued with a Notice to File and therefore being aware of the 31 January 2015 deadline, he should have prepared for this and could have appointed another agent to deal with his return. He could have also telephoned HMRC for assistance.

55. Misplacing his mail cannot be considered a reasonable action excuse.

30 56. The Appellant submits that he had health issues and was also responsible for his ill wife. The Appellant has not submitted further information. A reasonable excuse must endure for the whole period of default. For the Appellant's appeal to succeed, he must demonstrate that the reasonable excuse existed which prevented him from complying with his Income Tax obligations throughout the period of failure from 31 January 2015 to 9 July 2015 when the return was filed. Based on the evidence
35 provided, no reasonable excuse exists and as a consequence the penalties were correctly charged in accordance with legislation.

57. There are no special circumstances which would allow the penalties to be reduced under Special Reduction and therefore the appeal is dismissed and the £800 late filing penalties and £116 late payment penalties are therefore confirmed.

58. 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.

**MICHAEL CONNELL
TRIBUNAL JUDGE**

RELEASE DATE: 17 DECEMBER 2018