



**TC06969**

**Appeal number: TC/2018/06205**

*INCOME TAX – penalty for late filing of tax return and late payment of tax  
– reasonable excuse – difficulties contacting accountant – no reasonable  
excuse – Schedule 55, Finance Act 2009 – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MUHAMMAD ZAKARIYYA ISLAM**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE ALEKSANDER  
ELIZABETH BRIDGE**

**Sitting in public at Taylor House, London EC1 on 10 December 2018**

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

**Natasha George, an officer of HM Revenue and Customs, for the Respondents**

## DECISION

1. This is an appeal against HMRC's late filing and late payment penalties as follows:

5	13 February 2018	Late filing penalty	£100
	22 May 2018	Daily penalty	£170
	22 May 2018	Late payment penalty	£2610

2. Mr Islam requested a review by HMRC of the penalties. The review decision was to uphold the penalties, and this decision was communicated to Mr Islam in a decision letter dated 5 September 2018. Mr Islam now appeals against that decision letter.

3. HMRC were represented by Ms George. Mr Islam did not attend and was not represented at the hearing. Nevertheless we were satisfied that that reasonable steps had been taken to notify Mr Islam of the hearing, as the Tribunal had written both to Mr Islam and his then representative notifying them both of the hearing date and venue. As neither Mr Islam nor his representative were in attendance when the hearing was due to start, one of the Tribunal's clerks telephoned Mr Islam's representative, and was told that Mr Islam wanted the hearing to proceed in his absence. In these circumstances, we decided that it was in the interests of justice to proceed with the hearing.

4. We had before us a bundle of documents prepared by HMRC. Included in the bundle was correspondence from Mr Islam's agent setting out Mr Islam's grounds for appeal. These were also set out in the Notice of Appeal.

### Background facts

5. The background facts are not in dispute, and we find them to be as follows.

6. Mr Islam is in his early 20s and reviews games on YouTube. He used to earn considerable amounts from this activity. However, the business is no longer successful, and is in the process of being closed.

7. The due date for filing Mr Islam's tax return for 2016/17 electronically was 31 January 2018. Mr Islam's 2016/17 tax return was filed on 17 May 2018. Payments on account of the tax due for 2016/17 were made on 18 January 2017, 11 August 2017, 16 August 2017, 18 May 2018, 19 May 2018, 20 May 2018, 21 May 2018, and 1 June 2018. Mr Islam's tax liability for 2016/17 was not finally discharged until 1 June 2018.

8. We note that Mr Islam had been subject to a late payment penalty in respect of taxes due for 2013/14, against which he had appealed on the grounds that he had incorrect advice from his previous accountant.

9. HMRC issued a £100 fixed penalty on 13 February 2018 for the failure to file his tax return by the due date. On 22 May 2018, Mr Islam was charged with daily penalties of £170 for late submission of the return and a 30-day late payment penalty of £2610.

## The law

10. The filing date for self-assessment income tax returns that are filed electronically is 31 January following the end of the relevant tax year. In the case of the 2014/15 tax year, the filing date was 31 January 2016.

5 11. Penalties are payable for tax returns that are filed late. Paragraph 3, Schedule 55, Finance Act 2009 provides for a £100 fixed penalty for a late return. Paragraph 4 of Schedule 55 imposes daily penalties of £10 per day (for a maximum of 90 days) if the return is filed more than three months late. Therefore, the maximum penalty chargeable under paragraph 4 is £900.

10 12. Penalties are payable if income tax is paid more than 30 days after the due payment date. Schedule 56, Finance Act 2009 sets the penalty at 5% of the unpaid tax.

13. Paragraph 23 of Schedule 55 provides as follows:

### Reasonable excuse

15 23(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)—

20 (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.

14. Paragraph 16 of Schedule 56 provides as follows:

### Reasonable excuse

30 16(1) If P satisfies HMRC, or (on appeal) the First-tier Tribunal or the Upper Tribunal that there is a reasonable excuse for a failure to make a payment:

(a) liability to a penalty under any paragraph of this Schedule does not arise in relation to that failure: and

35 (b) [...].

(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,

40 (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.

15. In the case of this appeal, P is Mr Islam in both Schedule 55 and 56.

16. Paragraph 23 of Schedule 55 and paragraph 16 of Schedule 56 are drafted in similar terms. In both cases, reliance on another person to do something can only be a reasonable excuse if the taxpayer took reasonable care to avoid the failure that gave rise to the penalty. Once the excuse has ceased, the taxpayer must remedy the failure without unreasonable delay.

17. Both Schedule 55 and Schedule 56 make provision for "special reductions" in paragraphs 16 and 9 respectively. Again, they are drafted in very similar terms. These allow HMRC to reduce a penalty if there are "special circumstances".

### **Submissions of the parties**

18. Ms George submits that it the dates on which Mr Islam filed his tax return for 2016/17 and paid the tax due are not in dispute. The relevant assessments were sent by post to Mr Islam's last known address on HMRC's file. Therefore, the statutory requirements for the late filing penalties levied under Schedule 55 and the late payment penalties levied under Schedule 56 were satisfied.

19. Ms George submits that Mr Islam does not have a reasonable excuse for the failure to file his tax return on time or to pay his tax on time. She submits that his reliance on his accountants cannot be a reasonable excuse, unless he can show that he took reasonable care to avoid the failure, and that he has not shown that he took such care.

20. Finally, Ms George submits that there are no special circumstances that would justify a reduction in the penalties.

21. From the correspondence on the file, Mr Islam says that he had been told by his former accountants that his 2016/17 self-assessment tax return had been submitted on time. He had made payments on account of his tax of £10,000 on each of 11 and 16 August 2017 (£20,000 altogether). However, he had concerns that the tax return had not been submitted, and repeatedly tried to contact his contact at the accountancy firm before the due date to verify that it had in fact been filed. He was not able to get through to his accountant. Mr Islam then started to contact other accountancy firms in order to switch representation, but because of their high prices, he continued to search for a more affordable option. At this point, he obtained details for another individual at the firm of accountants, who has brought matters up to date. Mr Islam submits that as soon as he realised that payment was late, he made full payment from the funds he had kept aside to pay his expected tax bill.

### **Conclusion**

22. We find that the requirements set out in Schedules 55 and 56 for the levying of the penalties that are the subject of this appeal have all been satisfied. We find that Mr Islam did not have a reasonable excuse for his failures, and that there are no special circumstances that would justify a reduction in the penalties. We therefore dismiss this appeal.

23. Mr Islam's reliance on his accountants to prepare and file his returns cannot be a reasonable excuse, unless Mr Islam took reasonable care to avoid the failures that gave rise to the penalties. Mr Islam states that he repeatedly contacted his accountant, but was not able to get in touch with him. But Mr Islam does not give any details as to what these attempts were, and when he made them. As Mr Islam subsequently arranged for another accountant at the same firm to prepare his tax returns, we find his explanation implausible. Mr Islam does not give a date for his appointment of his new accountant, nor does he explain why it took more than three months following the filing date for the tax return to be ultimately filed.

24. As regards the payment of tax, although payments were made in August 2017, these were in fact – for the most part – late payments on account that were due for payment on 31 January 2017 and 31 July 2017. Of the £20,000 paid, only £7515.37 was allocated to the balancing payment due on 31 January 2018. The payments made in 2018 were all late payments in respect of the balancing payment that fell due on 31 January 2018. Whilst we appreciate that Mr Islam may have had difficulties knowing the amount of the balancing payment due on 31 January 2018, he has not explained why he had not paid in full the first and second payments on account by their respective due dates of 31 January 2017 and 31 July 2017 – particularly if he had put aside funds to meet this obligation.

25. We find that Mr Islam did not have a reasonable excuse for his failure to fail his tax return on time and to pay his tax on time. To the extent that he had relied on his accountants, this cannot be a reasonable excuse, unless Mr Islam took reasonable care to avoid the failure. We find that he did not take such care.

26. We find that there are no special circumstances that would justify a special reduction in the amount of the penalties.

27. This appeal is therefore dismissed.

28. 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.

**NICHOLAS ALEKSANDER**  
**TRIBUNAL JUDGE**  
**RELEASE DATE: 08 FEBRUARY 2019**