

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**



[2019] UKFTT 0703 (TC)

**TC07475**

*INCOME TAX - late filing penalties - whether reasonable excuse – no – whether special circumstances- no- appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Appeal number: TC/2019/02041**

**BETWEEN**

**BIKRAMJIT MANN**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE JENNIFER TRIGGER  
MRS SHAMEEN AKHTAR**

**Sitting in public at Birmingham Tax Tribunal, Centre City Tower (13<sup>th</sup> floor reception),  
5-7 Hill Street, Birmingham, B5 4UU on 17 October 2019**

**Mr A Grewal, for the Appellant**

**Mr Faisal Khan Officer, Solicitors Office and Legal Services, HM Revenue and Customs  
for the Respondents**

**DECISION**

1. Mr Bikramjit Mann, (the “appellant”), appealed against penalties that the respondents, (HMRC), have imposed under Schedule 55 of the Finance Act 2009 (“Schedule 55”) for failure to submit an annual self-assessment return on time for tax years 2010-11 and 2011-12.
2. The penalties that have been charged can be summarised as follows:

## **2010-11**

- (1) A £100.00 late filing penalty imposed under paragraph 3 of Schedule 55 on 14 February 2012 ;
- (2) Late filing “daily” penalties totalling £900.00 imposed under paragraph 4 of Schedule 55 on 07 August 2012.
- (3) A £300.00 “six month” late filing penalty imposed under paragraph 5 of Schedule 55 on 07 August 2012; and
- (4) A £300.00 “twelve month” late filing penalty imposed under paragraph 6 of Schedule 55 on 19 February 2013.

## **2011-12**

- (1) A £100.00 late filing penalty imposed under paragraph 3 of Schedule 55 on 12 February 2013.

Accordingly, the penalties totalled £1,700.00.

### **Application to extend the period in which to appeal**

3.The appellant’s appeal to HMRC under s 31A of the Taxes Management Act 1970 (TMA) was made outside the statutory deadline. HMRC initially refused consent under s 49(2) of the TMA. However, in their Statement of Case HMRC have said that they have no objection to the appellant’s appeal under s31A being made late. I therefore considered that it is in the interests of justice to extend the time in which to submit the appeal and proceeded to hear the appeal.

### **Background**

4.The appeal before me was against penalties imposed by HMRC for failure to file individual self-assessment tax returns on time for the tax years 2010-11 and 2011-2012.

5.In the appeal bundle there was mention of outstanding VAT. Mr Grewal informed me that the appellant was appealing both the penalties for the late filing of his self-assessment returns for the tax years in question and outstanding VAT. The appellant confirmed that that was the case. The appellant had attended today to finalise both appeals.

6.Only the self-assessment appeal had been listed before me by Her Majesty’s Courts and Tribunals Service (HMCTS). There was very little evidence before me on the VAT appeal. HMRC had prepared their response to the self-assessment appeal only and had no instructions in respect of the VAT appeal. A short adjournment was granted to enable Mr Khan to take instructions. Mr Khan was instructed to oppose the self-assessment only. If the appellant wished that the VAT appeal be heard at the same time as the self-assessment appeal then Mr Khan was instructed to request an adjournment.

7.After discussion with Mr Grewal the appellant decided to proceed with the appeal as listed and to appeal the outstanding VAT at a later date.

8. The appellant's appeal before me was against late filing penalties imposed for tax years 2010-11; 2011-12; 2014-15; 2015-16 and 2016-17. However, HMRC records showed that the late filing penalties outstanding were for the tax years ending 05 April 2011 and 05 April 2012 only.

9. The penalties previously issued for tax years 2014-15; 2015-16 and 2016-17 had been cancelled by HMRC and were no longer due.

10. The appellant accepted that the appeal proceeded in respect of the tax years 2010-11 and 2011-12 only.

### **Grounds of appeal**

The appellant claimed that he had a reasonable excuse based on the following matters:

11. On 01 April 2014 the appellant was informed by HMRC not to submit any returns whilst an investigation was being carried out by HMRC into outstanding VAT.

12. HMRC informed the appellant that the daily penalties were stood behind the appeal of *Keith Donaldson v HMRC* where the daily penalties were being considered by the Tax Tribunal.

13. On 12 February 2019 by letter of that date the appellant sets out his grounds of appeal which can be summarised as follows:

14. That the appellant had not ignored any letters that he received and maintained constant communication with HMRC via letter and telephone calls.

15. That the appellant was in this position because his original requests in letters to HMRC that he be de-registered for self-assessment and VAT had not been actioned by HMRC.

15. On more than one occasion during telephone calls to HMRC the appellant had been given contradictory advice by an employee of HMRC regarding the filing of a return for either VAT or self-assessment. On some occasions he had been advised to file a zero return.

16. The appellant believed that he had not received certain letters from HMRC. He assumed also that HMRC did not receive letters from him because they failed to action his requests to them.

17. The appellant had wanted to have the matter resolved at the earliest opportunity. Sometimes it was months before there was any contact or correspondence with HMRC.

18. The appellant did not file his returns on time because HMRC did not do as he requested. They had ignored his requests for advice, help and assistance.

19. An employee of HMRC at a date not given but apparently between November 2018 and January 2019 advised the appellant that as he had had no response to his letters there should be no fines, charges or penalties.

20. The appellant has always accepted that he owed money to HMRC but he was unwilling to accept any penalties or charges that he deems unfair.

21. Furthermore the appellant disputed the calculations. This was because his self-assessment income had always been below the personal allowance and the VAT figure was incorrect because his turnover was a lot less than calculated.

22. The appellant's appeal to the Tribunal dated 05 April 2019 cited the appellant's letter dated 12 February 2019, to HMRC, as the grounds of appeal to the Tribunal.

### **Findings of fact**

23. That the appellant was registered for self-assessment on 29 March 2004 and required to file returns once issued under s8 of the Taxes Management Act 1970.

24 That the notice to file, reminder notices and penalty notices for the tax year ending 05 April 2011 were issued to the appellant at the address held on record for the appellant by HMRC. That address having been given to HMRC by the appellant, namely 278, Wolverhampton, Walsall, WS2 8RQ.

25. That a notice to file a self-assessment tax return for the tax years 2010-11 and 2011-12, was issued to the appellant on 06 April 2011, 06 April 2012 respectively. That neither of the returns were returned to HMRC as undelivered.

26. That the online filing date for the tax year 2010-11 was 31 January 2012.

27. That the return was not submitted by the filing date.

28. That HMRC issued to the appellant a late filing penalty in the sum of £100.00 under paragraph 3 of schedule 55 on 14 February 2012.

29. That as the return had not been received more than 60 days after the filing date HMRC imposed on the appellant late filing daily penalties amounting to £900.00 under paragraph 4 of Schedule 55 and a "six month" late filing penalty of £300.00 under paragraph 5 of Schedule 55 on 07 August 2012.

30. That as the return had still not been filed 12 months after the filing date HMRC imposed on the appellant a "twelve month" late filing penalty in the sum of £300.00 under paragraph 6 of Schedule 55 on 19 February 2013.

31. That the return for the tax year 2010-11 was filed on 19 March 2014.

32. That for the tax year 2011-12 the notice to file, the reminder letters and the penalty notices were issued to the appellant at the appellant's address held on record by HMRC namely 278, Wolverhampton Road, Walsall, WS2 8RQ. That none of those documents were returned to HMRC as undelivered.

33. That the filing date for on line submission was 31 January 2013.

34. That the return was not submitted by the filing date.
35. That HMRC imposed on the appellant a late filing penalty of £100.00 on 12 February 2013.
36. That the return for 2011-12 was filed on 19 March 2014.
37. That HMRC had correctly calculated the late filing penalties.
38. That the appellant failed to demonstrate a reasonable excuse existed for the failure to file the returns on time under paragraph 23 of Schedule 55.
39. That there were no special circumstances to justify a Special Reduction under paragraph 22(3) of Schedule 55.

## **Discussion**

40. None of the documents served on the appellant in respect of tax years 2010-11 and 2011-12 were returned to HMRC as undelivered under the service provided to HMRC by the Royal Mail. Accordingly, the Tribunal deemed, on the balance of probabilities, that service had been effected on the appellant of the notices to file and the penalty notices under s7 Interpretation Act 1978.

41. The penalties levied were fixed by law and applied to all taxpayers. There was no discretion in either HMRC or the Tribunal to alter those penalties save in express circumstances which are set out in paragraphs 22 and 23 of Schedule 55. Accordingly, the penalties were not disproportionate and those penalties had been correctly calculated and imposed by HMRC for the late filing of the returns.

42. In reaching this decision the Tribunal considered the case of *Barry Edwards v HMRC [2019] UKUT 0131 (TCC)* in which it was held that the mere fact that a taxpayer had little tax liability for the relevant tax year does not justify the reduction in the penalty on either the grounds of proportionality generally or because of the presence of “special circumstances”.

43. In addition a reduction for special circumstances must be used sparingly in circumstances where there is something exceptional or beyond the taxpayer’s control. That HMRC considered whether there were special circumstances which would warrant a special reduction but found that there were none. The Tribunal found that the decision of the HMRC was not flawed when considered in the light of the principles applicable in proceedings by way of judicial review. It followed therefore that the Tribunal could not substitute its own decision for that of HMRC to reduce the penalties.

44. The relevant statutory provisions are included as an Appendix to this decision.

45. The Tribunal had to decide if there was a reasonable excuse demonstrated by the appellant.

46. In order to reach a conclusion the Tribunal considered the decision of the Upper Tribunal in *Perrin v HMRC [2018] UKUT 156 (TCC)* which Held that a Tribunal is required to deal with the following issues when considering whether there is a reasonable excuse:

- a) Firstly, establish what facts the taxpayer asserts give rise to a reasonable excuse. The appellant relies on the contents of his notice of appeal to the Tribunal to demonstrate a reasonable excuse.
- b) Secondly, decide which of those facts are proven. The appellant had dispensed with the services of his accountant, Battire & Co, in 2010. He tried to obtain his UTR and his papers from his accountant but they were not forthcoming. The appellant paid the accountant for his services in the tax year 2009-10. Despite that fact the accountant did not release the requested papers to the appellant. The appellant abandoned all attempts to recover his papers from the accountant. This meant that for tax years 2010-11 and 2011-12 the appellant was solely responsible for the completion and submission of his tax returns.
- c) Thirdly, decide whether, viewed objectively, those proven facts do indeed amount to a reasonable excuse. The appellant failed to engage the services of another accountant. He had been registered for self-assessment since 29 March 2004 and ought to have been aware of his responsibilities to complete and file a tax return. The appellant took no action to complete the tax returns himself for the tax years the subject of this appeal, neither did he seek advice from anyone to enable him to complete those returns. He did nothing. It was not until 2013 after the penalties had been charged that the appellant sought advice. The Tribunal decided that the appellant had not acted as a prudent taxpayer. The self-assessment regime places the responsibility on a taxpayer to comply with his legal responsibility to file his tax return on time. Furthermore the appellant had failed to make any or any adequate enquiries as to his responsibility to file the final returns. No reasonable excuse had been demonstrated.
- d) Fourthly, decide when any reasonable excuse ceased. As no reasonable excuse had been demonstrated by the appellant the Tribunal did not consider this point.

45. The Tribunal had regard to the following:

*Donaldson v HMRC [2016] EWCA Civ 761* which held that as the appellant knew the start date for the period of the daily penalty and the notice of assessment told him that the end date of the period was 90 days later, the omission of the period from the notice was one of form and the appellant was not misled or confused by the omission. The omission did not affect the validity of the notice.

*The Commissioners for Her Majesty's Revenue and Customs v Hok Limited [2012] UKUT 363 (TCC)* which held that there was no ability to discharge a penalty on the grounds of unfairness.

46. A taxpayer becomes liable to penalties of this kind for no other reason than his continuing failure to file a return; no proof of qualitative misconduct is required. The two £100.00 late filing penalties, the £900.00 late filing daily penalties, the "six month" late filing penalty and the "twelve month" late filing penalty were simply a means of securing the production of timely returns.

47. For the reasons given in the body of this judgment the appeal was unsuccessful.

48. Accordingly, the penalties totalling £1,700.00 are due and payable by the appellant and remain outstanding for the tax years 2010-11 and 2011-12.

**Right to apply for permission to appeal.**

49. 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.

**JENNIFER TRIGGER  
TRIBUNAL JUDGE**

**RELEASE DATE: 20 NOVEMBER 2019**

## APPENDIX

### Relevant provisions of Schedule 55 of the Finance Act 2009

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)—
- 20 (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).
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—
- 30 (a) 5% of any liability to tax which would have been shown in the return in question, and
- (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).
- 5 (3) If the withholding of the information is deliberate and concealed, the penalty is the greater of—
- (a) the relevant percentage of any liability to tax which would have been shown in the return in question, and
  - (b) £300.
- 10 (3A) For the purposes of sub-paragraph (3)(a), the relevant percentage is—
- (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%.
- 15 (4) If the withholding of the information is deliberate but not concealed, the penalty is the greater of—
- (a) the relevant percentage of any liability to tax which would have been shown in the return in question, and
  - (b) £300.
- 20 (4A) For the purposes of sub-paragraph (4)(a), the relevant percentage is—
- (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%.
- 25 (5) In any case not falling within sub-paragraph (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 (6) Paragraph 6A explains the 3 categories of information.
5. Paragraph 23 of Schedule 55 contains a defence of “reasonable excuse” as follows:
- 23—
- 35 (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)—
- (a) an insufficiency of funds is not a reasonable excuse, unless
- 40 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—

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(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.

(3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to—

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(a) staying a penalty, and

(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

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(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.