



**TC04327**

**Appeal number: TC/2013/02717**

*Income Tax – Penalties – delay in filing SA Return – whether reasonable excuse – No – whether special circumstances – No – Finance Act 2009, Schedule 55 – Appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**DOUGLAS TATE**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE KENNETH MURE, QC**

**Sitting in public at Manchester on 19 February 2015**

**Appellant – in person**

**Respondents – Mrs Helen Roberts, Officer of HMRC**

## DECISION

1. In this appeal the appellant, the taxpayer, represented himself with assistance  
5 from his wife. The respondents, HMRC, were represented by Mrs Roberts.

2. Mrs Roberts agreed to open the proceedings by setting out HMRC's arguments,  
so focussing attention on those aspects on which the appellant should respond. In the  
event the issues for the Tribunal to determine were whether the appellant had a  
*reasonable excuse* during (any part of) the period of delay in submitting his Tax  
10 Return and whether any *special circumstances* justifying the mitigation of penalties  
by HMRC were present. There was no dispute about the length of the delay in filing  
the Return or in the calculation of penalties.

3. The appellant failed to file timeously his Self-Assessment Return for 2010/11.  
It was filed electronically on 13 August 2012. An electronic Return would have been  
15 due on 31 January 2012 (a "paper" Return would have been due earlier on  
31 October 2011). Accordingly the Return was over six months late, and three  
penalties were imposed, *viz* an initial late-filing penalty of £100, daily penalties for  
90 days totalling £900, and a "six month" late filing penalty of £300. Accordingly I  
had to consider particularly the appellant's circumstances during the period from  
20 January to August 2012.

4. The factual narrative was not in dispute. The appellant is a plumber and gas-  
fitter and was self-employed until late 2010. Thereafter he was unemployed for  
several months. He claimed Job Seekers Allowance from December 2010 to  
April 2011. He was employed briefly during that month but was again unemployed  
25 and in receipt of Job Seekers Allowance until July 2011. He then obtained  
employment with Lovell Partnerships Limited as a gas service engineer, and he has  
continued in full-time employment to date. During 2012, therefore, the appellant was  
in full-time employment. In his Grounds of Appeal and in a letter dated  
18 February 2013 (copy produced) the appellant referred to an earlier period when he  
30 was beset by serious personal difficulties. His mother had been diagnosed with breast  
cancer in June 2009 and required an extended period of treatment into 2010. To  
compound this upset his wife had a molar pregnancy diagnosed in 2010 for which she  
required treatment until about May 2012. Clearly, the appellant's life and routine  
were in turmoil during the 2009-2011 period and he was pre-occupied in caring for  
35 and generally supporting them both. However, although his wife's treatment  
continued into 2012, at that stage he was able to work full-time and the pattern of his  
life had returned to a reasonable stability.

5. In her concluding submissions Mrs Roberts argued that there was neither a  
*reasonable excuse* nor *special circumstances* which might serve to mitigate the  
40 penalties. During the critical period of the delay, *viz* January-August 2012 the  
appellant was in full-time employment. These concepts are strictly interpreted and in  
her view, while the appellant would have remained concerned about his wife and  
mother then, that concern did not meet the necessary criteria. An insufficiency of  
funds does not specifically amount to a *reasonable excuse*. Some exceptional factor

or unforeseeable event throughout the material time might qualify. No such exceptional factor was present here, and neither a *reasonable excuse* nor *special circumstances* had been demonstrated.

### **Decision**

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6. The penalty here is significant, some £1,300. In fact Mrs Roberts advised the Tribunal that no tax was in fact due by the appellant for 2010/11. Nonetheless, there is a duty to file a tax Return. The appellant should have been aware of this. Mrs Roberts produced a record of the issuing of the Return and copy correspondence from HMRC warning of the consequences of delay. (This was considered recently in *HMRC v Donaldson* [2014] UKUT 0536 (TCC). While I accept that the appellant was in the immediately preceding period pre-occupied with concerns for his wife and mother (and these then *might* possibly have excused a failure then), that acute period preceded 2012. By 2012 the appellant was able to undertake full-time employment. I am not satisfied that during the months January-August 2012 (or any part thereof) the appellant had a *reasonable excuse* for his delay. Nor do I consider that there are *special circumstances* justifying mitigation of the penalties.

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7. While I am sympathetic to the appellant, and note that in fact no tax was due by him, for the reasons stated I have to confirm the penalties imposed of £1,300 and dismiss this Appeal.

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8. 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.

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**KENNETH MURE  
TRIBUNAL JUDGE**

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**RELEASE DATE: 17 March 2015**