



TC06019

Appeal number: TC/2017/02357

Income tax - Schedules 55 and 56 Finance Act 2009 - fixed and daily penalties for late filing of self-assessment returns - penalties for late payment of tax - Appellant made a capital gain on one property and claimed a capital loss on another - Appellant's solicitor's practice had closed following retirement of principal and Appellant had been awaiting information on capital loss from Law Society regarding the transactions and amounts involved - whether reasonable excuse - no - appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Ms YOGESHWARI GOSAI

Appellant

- and -

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

**TRIBUNAL: JUDGE MICHAEL CONNELL
 MEMBER DEREK SPELLER FCA**

Sitting in public at Fox Court, Brooke Street, London on 26 May 2017

Mr Bilal Sajjad Miah for the Appellant

Mr Sadia Shakeel, Officer of HMRC, for the Respondents

DECISION

1. This is an appeal by Ms Yogeshwari Gosai (“the Appellant”) against a decision by the Respondents (“HMRC”) to impose late filing penalties under Schedule 55 of the Finance Act 2009 (“FA”) and late payment penalties under Schedule 56 FA for the tax years ending 5 April 2015.

2. The total value of the penalties imposed in respect of the failures is £9,430, representing £970 late filing penalties and £8,460 representing late payment penalties.

3. 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 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 up to a total of £900 are imposed under Paragraph 4 of Schedule 55 FA.
- 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.
- 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.

The above penalty regime for the late filing of income tax self-assessment returns was introduced in FA with effect from 6 April 2011 in respect of returns for 2010-11 and later years.

4. The penalties for late payment of tax are as follows:

- i. 30 days - 5% of the tax payable
- ii. 6 months – 5% of the tax payable (additional)

The above penalty regime for the late payment of income tax was introduced by FA with effect from 6 April 2011 in relation to 2010-11 and later tax years.

5. Penalties were imposed, as set out in the table below.

Date of penalty	Tax Year	Description	Amount
17 February 2016	2014 to 2015	Late Filing Penalty under Paragraph 3 Schedule 55	£100
12 August 2016	2014 to 2015	Daily Penalty under Paragraph 4 Schedule 55 FA 2009	£870

12 August 2016	2014 to 2015	30 days Months Late Payment Penalty Paragraph 3 under Schedule 56 FA	£4230
12 August 2016	2014 to 2015	6 Months Late Payment Penalty under Paragraph 3 Schedule 56 FA 2009	£4230

Points at issue

6. Whether the Appellant had a “reasonable excuse” for the late filing of the tax return for the tax year ending 5 April 2015.
- 5 7. Whether the Appellant had a “reasonable excuse” for not paying her tax liability in full and on time for the tax year ending 5 April 2015
8. Whether there are any “special circumstances”, by virtue of which the penalties ought to be reduced.

Legislation

- 10 9. The main legislation is detailed below:

Section 8 Taxes Management Act (TMA) 1970 - Return of income

Section 59B TMA 1970 - Payment of income tax which determines the due date for payment of tax liability

Paragraph 3 of Schedule 55 to the FA 2009 - Late filing penalty

- 15 Paragraph 4 of Schedule 55 to the FA 2009 - Daily penalties

Paragraph 5 and 5(a) of Schedule 55 to the FA 2009 - 6 Months late filing penalty

Paragraph 3(2) of Schedule 56 to the FA 2009 - 30 Days late payment penalty

Paragraph 3(3) of Schedule 56 FA the 2009 - 6 Months late payment penalty

Background

10. The Appellant has been in self-employment since 4 October 2004.
11. A notice to file a tax return for the tax year ending 5 April 2015 was issued to the Appellant on 6 April 2015. The filing date for a non-electronic return was 31 October 2015 or 31 January 2016 for an electronic return.
- 25 12. As the return was not received by the filing date, HMRC issued a notice of penalty assessment on or around 17 February 2016 in the amount of £100.
13. On the 26 July 2016, HMRC received the Appellant's return.

14. As the return had not been received 3 months after the penalty date, HMRC issued a notice of daily penalty assessment on or around 12 August 2016, in the amount of £870, calculated at £10 per day up to 26 July 2016.

5 15. The Appellant was required to make a full balancing payment on 31 January 2016 for the year ending 5 April 2015. The Appellant did not pay the remaining tax liability until 2 August 2016.

16. HMRC issued a 30 days late payment penalty on 12 August 2016 for the amount of £4,230.

17. On 12 August 2016, a 6 months late payment penalty was issued for £4,230.

10 18. On 7 October 2016, the Appellant's representative appealed to HMRC. HMRC rejected this appeal, stating that the Appellant did not have a reasonable excuse.

19. On 5 December 2016, the Appellant's representative requested a review from an independent HMRC officer not already involved in the case.

15 20. On 2 February 2017, a conclusion of the review letter upholding the earlier decision was sent by HMRC to the Appellant and her representative.

21. The Appellant appealed to the Tribunal on 15 March 2017.

Appellant's grounds of appeal.

20 22. In her Notice of appeal to the Tribunal the Appellant's initial grounds of appeal (via her accountants) were that:

“Please note that it was beyond the control of our client to file the tax return for 2014/15 on time as the information and documents required to complete the Tax Return were not available and our client had to contact the Solicitors' Offices to obtain the relevant information via Law Society.

25 Please note that the reasonable excuse for not filing the Tax Return 2014/15 on time was the obstacles to obtain the relevant documents from the Solicitors' Office and it was not possible to file a complete tax return in absence of that information.

30 The Tax Return in question had Capital Gains pages to be included and the solicitors involved in the completion of property were not available so the client had to arrange for documents to be supplied via Law Society which took several months.

In addition to the above there was a Capital Loss involved in purchase of another property. We required HMRC's opinion on whether the Capital Loss could be off-set against the Capital Gains and it took a few weeks for HMRC to fully reply to us on the query raised.

35 Due to the above factors we were unable to complete the Correct Tax Return on time and as the client was not aware of the actual Tax Liability she was unable to pay the

same. You can check from the records that our client paid her full Tax Liability of £85,900.16 as soon as practically possible on completion of the records.”

5 23. At the hearing, Mr Miah for the Appellant explained that the Appellant buys, sells and rents out properties. She had sold one property which resulted in a capital gain and had exchanged contracts on another, paying a 10% deposit of £100,000, but due to a down valuation by her lender following exchange, was unable to secure the necessary funds to complete. The seller eventually forfeited the deposit.

10 24. He said that the Appellant’s solicitors had closed down following the retirement of the principal and the Appellant’s files had been transferred to another firm by the Law Society. It took many months for him to obtain the information needed regarding the two transactions in order to complete the Appellant’s tax return.

15 25. The Appellant considered that she was entitled to a capital loss on the £100,000 forfeited by her seller, but HMRC argued that because she had never actually purchased and owned the property she was not entitled to a capital loss. There had been no disposal to generate a capital loss.

20 26. The Appellant eventually accepted the position as asserted by HMRC and paid the tax due. She nonetheless asserts that she has a reasonable excuse for the late filing of her return and late payment of the tax due.

HMRC’s Case

25 27. It is accepted that the onus is on HMRC to show default. Once HMRC have discharged that burden it is for the Appellant to provide a reasonable excuse for her failure to submit the returns to make payment of the tax due by the due dates.

28. The Appellant is not disputing either that the returns were filed late or that payment of the tax due was late.

29. Late filing penalties and late payment penalties are due in accordance with Schedules 55 and 56 FA.

30 30. Where a return is filed after the relevant deadline, a penalty is charged. The later a return is received, the more penalties are charged. The same applies with regard to the payment of tax due. This information was clearly shown on the notice to file.

35 31. This appeal is not concerned with specialist or obscure areas of tax law. It is concerned with the ordinary every day responsibilities of the Appellant to ensure that her tax return was filed by the legislative date and payment made on time.

32. Self-assessment places a greater degree of responsibility on customers for their own tax affairs. This includes ensuring that HMRC receive payment of the correct amount of tax and National Insurance at the correct time. The tax

guidance provided by HMRC and HMRC's website give plenty of warning about filing and payment deadlines. It is the customer's responsibility to make sure they meet the deadlines.

5 33. The Appellant has been making Self-Assessment tax returns for many years. Therefore, HMRC consider her to be experienced with the Self-Assessment system including the due dates for filing and paying the tax due.

34. HMRC issued a notice to file a tax return for 2014-15 on 6 April 2015, which advised that the deadline for filing online was 31 January 2016. Therefore the Appellant had nine months to complete and submit the tax return.

10 35. In the Appellant's Grounds of Appeal, it is stated that relevant information and documents for the tax returns were not available. HMRC has provisions in place so that estimated figures can be submitted on tax returns. The Appellant failed to do this.

15 36. The Appellant stated that she was awaiting a decision from HMRC about a capital loss, and that HMRC took weeks to respond. HMRC contend that the Appellant's agent contacted HMRC on the 10 May 2016, this was 100 days after the filing deadline of the tax return. HMRC responded within a matter of days.

20 37. In line with Paragraph 23(1) Schedule 55 FA 2009, an appeal against a late filing penalty will be successful if the taxpayer shows that there is a reasonable excuse for filing late.

38. HMRC rely in this instance on *Clean Car Company v The Commissioners of Customs & Excise* [1991] VATTR 234, before Judge Medd who stated:

25 "The test of whether or not there is a reasonable excuse is an objective one. In my judgment it is an objective test in this test. 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 and placed in the situation that the taxpayer found himself at the relevant time, a reasonable thing to do? Put in another way which does not I think alter the question: was what the taxpayer did not an unreasonable thing for a trader of the sort I have envisaged, in the position the taxpayer found himself to do?"

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Although the decision in this case is not binding, HMRC's view is that the reasoning is relevant to this appeal.

35 39. The Appellant's tax liability was due on 31 January 2016 and no payment was made until 2 August 2016 when a bank payment of £85,900.16 was made. This was 184 days late.

40. 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.

Conclusion

5 41. 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 42. In considering whether the Appellant has a reasonable excuse for the default, it is necessary to consider his or her actions from the perspective of a prudent taxpayer exercising reasonable foresight and due diligence and having proper regard for their responsibilities provided by legislation. 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 would have been complied with.

43. The Appellant had been successfully filing tax returns since 2004-05 and would have been aware of the filing and payment deadlines.

15 We concur with HMRC's submissions as contained above and agree that the late filing penalties have been charged in accordance with legislation. HMRC has provisions in place so that estimated figures can be submitted on tax returns. The Appellant failed to do this.

20 44. The Appellant had asked for HMRC's view as to whether the £100,000 could be offset against her gains, as a capital loss, but did not do so until 10 May 2016, and HMRC replied the following day.

25 45. The Appellant did not file her tax returns until 26 July 2016 and did not settle her tax liability until 2 August 2016. She would have had sufficient information from her own records of the transaction, by way of copy correspondence, bank statements and otherwise, which would have enabled her to at least estimate the capital gain and the capital loss (insofar as it was allowable).

46. The Appellant has not shown a reasonable excuse either for the late filing of her returns or the late payment of tax due for the year in question.

30 47. Paragraph 1(1) of Schedule 56 FA 2009 states that a penalty is payable where the amount of tax is not paid by a specified date; the specified date for deadline for payment was 31 January 2016. Paragraph 3 of FA 2009 then allows HMRC to charge a penalty at the value of 5% of the unpaid tax. The unpaid tax was £84,617.04 and 5% of this was £4,230.

35 48. Paragraph 7 of FA 2009 states that if the liability is still unpaid 6 months after the penalty date the appropriate rate of a penalty is 5% of the amount of £84,617.04, i.e. the amount of £4,230.

49. There are provisions in place so that a penalty is reduced under Special Reductions - paragraph 9 of FA 2009. However the circumstances faced by the Appellant were not exceptional.

50. The appeal is therefore dismissed and the late filing and late payment penalties are confirmed.

51. 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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**MICHAEL CONNELL
TRIBUNAL JUDGE**

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RELEASE DATE: 24 JULY 2017