



**TC06159**

**Appeal number: TC/2014/01213**

*Income tax - Schedule 55 Finance Act 2009 - fixed penalties for late filing of self-assessment returns - Appellant relied on agent to file his return - whether reasonable excuse - no - appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**STEPHEN PRITCHARD**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE MICHAEL CONNELL**

**The Tribunal determined the appeal on 26 July 2017 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 28 February 2014, and HMRC's Statement of Case. The Tribunal wrote to the Appellant stating that if he wished to reply to HMRC's Statement of Case he should do so within 30 days. The Appellant replied on 20 March 2014.**

## DECISION

1. This is an appeal by Mr Stephen Pritchard ('the Appellant') against penalties totalling £1,300 imposed by the Respondents ('HMRC') under Paragraphs 3,4 and 5 of Schedule 55 Finance Act 2009 for the late filing by the Appellant of his self-assessment ('SA') tax return for the tax year ending 5 April 2012.

2. The Appellant's return, if filed electronically, was due no later than 31 January in the year following the end of the financial year to which it related. The return was therefore due by 31 January 2013, but was not filed until 3 January 2014.

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 Finance Act ('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.

4. Penalties of £100, £900 and £300 were imposed, under (i), (ii) and (iii) above.

5. The Appellant's appeal is against all the penalties.

### *Filing date and Penalty date*

6. Under s 8(1D) TMA 1970 a non-electronic return must be filed by 31 October in the relevant financial year or an electronic return by 31 January in the year following. The 'penalty date' is defined at Paragraph 1(4) Schedule 55 FA 2009 and is the date after the filing date.

7. A late filing penalty is chargeable where a taxpayer is late in filing their Individual Tax return.

### *Reasonable excuse*

8. 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.

9. The law specifies two situations that are not reasonable excuse:

5 (a) an insufficiency of funds, unless attributable to events outside the Appellant's control, and

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

10 10. There is no statutory definition of "reasonable excuse". Whether or not a person had 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).

15 11. 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.

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

*The background facts*

13. The notice to file for the year ending 5 April 2012 was issued to the Appellant on 6 April 2012.

25 14. The filing date for the Appellant's return was 31 October 2012 for a non-electronic return and 31 January 2013 for an electronic return.

15. As the return was not received by the filing date, HMRC issued a notice of penalty assessment on or around 12 February 2013 in the amount of £100.

30 16. As the return was not received until over three and six months after the penalty date, HMRC issued further notices of penalty assessments of £900 on or around 14 August 2013 and £300 on the same date.

17. On 1 September 2013 the Appellant appealed against the penalties on the grounds that his accountant had complied with the filing of his return and the issue "was with HMRC's system".

35 18. HMRC sent the Appellant a decision letter on 12 November 2013 rejecting his appeal and offering a review.

19. On 4 December 2013, the Appellant requested a review of HMRC's decision.

20. The Appellant's electronic return was received on 3 January 2014.

21. HMRC carried out a review and issued their review conclusion on 30 January 2014. The outcome of the review was that HMRC's decision should be upheld as  
5 reliance on a third party was not considered a reasonable excuse.

22. On 28 February 2014, the Appellant notified his appeal to the Tribunal.

*Relevant statutory provisions*

**Taxes Management Act 1970**

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

10 (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-

15 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-

20 (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-

25 (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

30 (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.]

35 (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-

- 5           (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.

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

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

15           (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—

- (a) shall prescribe what constitutes an electronic return, and
- (b) may make different provision for different cases or circumstances.

20           (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.

25           (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.

30           (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.

35           (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:

24. The penalties at issue in the appeal are imposed by Schedule 55 FA 2009.

Paragraph 1 (4) states that the ‘penalty date’ is the date after the ‘filing date’.

5 Paragraph 3 of Schedule 55 imposes a fixed £100 penalty if a self-assessment return is submitted late.

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)-
  - 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 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)-
  - 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).

25 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.
- 30 (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.

35 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.
- 40 (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.

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.
- (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.
- (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.

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.
- (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.
- (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  
(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.

### **The Appellant’s case**

25. The Appellant’s grounds of appeal, as set out in his notice of appeal were:
- “Alan Baxendale is a HMRC accredited accountant. Why is he being described as a third party when he is accredited by them?”

- *How could I resubmit files when the documents were no longer in my possession?*
- *As a HMRC accountant he knows what is expected of him and by when. He is a professional accountant.*
- 5     • *I have made numerous calls and visits to him and was repeatedly told it was all sorted- why should I not believe him- a professional accountant?*
- *How come two professional bodies one being HMRC the other the accredited accountant hold a lay person responsible for something that they could not sort between them?*
- 10    • *Has HMRC considered that I'm not the only client of Mr Baxendale that has been affected by the same problem?*
- *Mr Baxendale made a payment of £800 to HMRC of his own money in November 2013 I did not prompt him to do this and learned about it after the event- is this not him accepting responsibility?"*

15    26. On 20 March 2014 the Appellant supplemented his grounds of appeal as follows:

*"This is an appeal against the late returns penalties on the grounds that the accountant had complied with the filing of the return for 2011-12 and the issue is with HMRC's system.*

20     *On page 5 of the statement of case from HMRC it is noted that my compliance history is very poor, submitting late returns each year from 2004-05. The reason for the history being poor is because the reference number being used to file my returns was found to be incorrect. During this time, the late payment penalties were accruing into thousands of pounds. Each time I chased my accountant he assured me that the issue was with HMRC and not to worry about it as it would all be sorted.*

25     *Indeed, when HMRC did eventually contact my accountant direct, after numerous requests, it transpired that he had been filing under an incorrect reference number and the returns for all the previous years were resubmitted on 19th December 2013. The returns for 2011-12 were resubmitted less than 2 weeks later, after the Christmas holiday period, on 3rd January 2014. In summary, at the end of December 2013 and*  
 30     *early January 2014, there were 5 years returns resubmitted and there was a new submission for 2012-13.*

35     *HMRC agreed that the penalties that had been in dispute for all these years and all related fees were to be waived. The late fees for 2011-12 are being calculated from 31st January 2013, but these were still in dispute at this time and had not been resolved and so by definition were not late.*

*I request that the Tribunal consider the above facts as a Reasonable Excuse for late filing, and also to consider that these are special circumstances which would allow the penalty to be reduced under Special Reduction by HMRC.*



*Having spoken to my accountant this week, he has informed me that he has sent letter to HMRC and the Tribunals Service explaining the circumstances which may prove to be much clearer than I am trying to say here, as it is his area of expertise.*

5 *I would also like you to consider how the automated correspondence letters, email backlog at your communication centre and not being able to speak to somebody on the telephone is able to escalate issues and carry out investigation at HMRC have all added to the stress and confusion. I have enclosed a copy of View Statement as an example of the type of communication received from HMRC and suggest that this is not customer friendly, not easy to understand.*

10 *The Statement is difficult to interpret as line 36 and line 37 show balance of account as £0.00, but line 38 shows I owe £1278.93 as of 10 Dec 13. I've also been told that a payment of £800.00 was processed on 10th October 2013 - I'm assuming that this was paid by my accountant as I know that I didn't make the payment.*

15 *My point here is that communication from HMRC is often dis-jointed and difficult to understand and that the support provisions for taxpayers are insufficient and inefficient. This can lead to mistakes being made by HMRC, but it is the taxpayer that is penalised.”*

### **HMRC's Case**

20 27. Late filing penalties are raised solely because the SA tax return is filed late in accordance with Schedule 55 Finance Act 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.

28. Where a return is filed after the relevant deadline a penalty is charged. The later a return is received, the more penalties are charged.

25 29. The 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 his tax returns were filed by the legislative dates and payment made on time.

30 30. 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 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.

35 31. Penalties are in place to promote efficient operation of the taxation system and are intended as a measure of fairness, so that customers who file late do not gain any advantage over those who file on time.

32. 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.

33. A Notice to File a 2011-12 SA tax return was issued to the Appellant on 6 April 2012. As he did not submit his 2011-12 electronic tax return by 31 January 2013 a late filing penalty notification was issued on 12 February 2013. There is no statutory requirement for HMRC to issue reminders. This penalty notice should have acted as a prompt to the Appellant to take the necessary corrective action.

34. The penalty notice would have advised the Appellant that he should file his outstanding tax return as soon as possible and that if he were to appeal against HMRC's decision to charge a penalty, he must do so within 30 days of the charge date.

### *Special Reduction*

35. 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.

36. 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).

37. Where 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".

38. HMRC have considered the Appellant's grounds of appeal, but these do not amount to special circumstances which would merit a reduction of the penalties. Accordingly, HMRC's decision not to reduce the penalties under paragraph 16 was not flawed.

### **Conclusion**

39. 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.

40. 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.

41. HMRC sent a late filing penalty to the Appellant on or around 12 February 2013 for £100. Irrespective of the Appellant's previous filing difficulties, generated it appears by his agent, this should have acted as a prompt to him that his return for 2011-12 had not been submitted. His return was not received until 3 January 2014, almost a year late

42. As stated above, the law specifies that reliance on another person to do anything, unless the person took reasonable care to avoid the failure is not reasonable excuse.

43. Paragraph 23 of Schedule 55 qualifies the defence of "reasonable excuse" when relying upon another person:

"...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 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".

44. Given the inordinate delay in filing his 2011-12 return, the Appellant cannot rely on Paragraph 23.

45. Accordingly no reasonable excuse has been shown for the Appellant's failure to file his tax returns for 2011-12 on time and the late filing penalties have therefore been charged in accordance with legislation.

46. The Tribunal find that there are no special circumstances which would allow the penalty to be reduced under Special Reduction regulations

47. The appeal is therefore dismissed and the late filing penalties confirmed.

48. 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: 11 OCTOBER 2017**