



**TC06269**

**Appeal number: TC/2015/00517**

*INCOME TAX – penalties for late filing of tax return – Schedule 55 FA 2009 – whether reasonable excuse: no – whether special circumstances: yes, appellant not liable to UK tax – penalties reduced to nil.*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**ANDREW NEWTON**

**Appellants**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE RICHARD THOMAS**

**Sitting in public at Taylor Ct, London EC1 on 12 December 2017**

**The Appellant did not attend nor was he represented**

**Ms Amy Biney for the Respondents**

## DECISION

1. This was an appeal by Mr Andrew Newton (“the appellant”) against two penalties totalling £1,200 imposed by the Commissioners for Her Majesty’s Revenue and Customs (“HMRC”) for the appellant’s failure to file his tax return for 2012-13 by the due date.

2. Ms Biney may be slightly surprised by this decision. That is because I informed her at the end of her presentation that I would uphold the penalties as I did not think that the appellant had a reasonable excuse (which I still think, as set out later in this decision). I also said that I did not think from what she said and what I had briefly looked at in the bundle that there were special circumstances to justify a reduction. Having had time to examine the bundle in more depth I have come to the conclusion that there are special circumstances.

### 15 **Non attendance**

3. At 2 pm, shortly before the time set for the start of the hearing, the appellant was not present. I noted from the file that the date and place of the hearing had been notified to the appellant by email. As this email address was one provided by the appellant, then by Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (“the Rules”) the appellant must accept delivery of documents by that method, and there was no indication on the file that he had subsequently used any other email address.

4. Given that he had been duly notified of the hearing and because we had the appellant’s grounds of appeal and other correspondence from him putting his case we considered it was in the interests of justice to proceed.

### **Facts**

5. The appellant was issued with a notice to file an income tax return for the tax year 2012-13 on 6 April 2013. That notice required the appellant to deliver the return by 31 October 2013 if filed in paper form or by 31 January 2014 if filed electronically (“the due date”).

6. On 18 February 2014 HMRC issued a notice informing the appellant that a penalty of £100 had been assessed for failure to file the return by the due date.

7. On 18 August 2014 HMRC issued a notice informing the appellant that a penalty of £900 had been assessed for failure to file the return by a date 3 months after the due date.

8. In the same notice HMRC informed the appellant that a penalty of £300 had been assessed for failure to file the return by a date 6 months after the due date.

9. The return was filed electronically on 29 September 2014.

10. On 29 September 2014 the appellant appealed to HMRC against penalties of £1,200, the daily penalty and the 6 month penalty.

11. On 16 October it seems (there is no trace of this letter in the bundle) HMRC rejected the appeal on the basis that the appellant had shown no reasonable excuse for the failure to file on time.

12. On 13 November 2014 the appellant requested a review.

13. On 18 December 2014 HMRC wrote to the appellant with the conclusion of the review. This conclusion was that the penalties were upheld

14. On 17 January 2015 the appellant notified his appeals to the Tribunal.

#### 10 **The law in brief**

15. The law imposing these penalties is in Schedule 55 Finance Act 2009 and in particular paragraph 3 (initial penalty of £100), paragraph 4 (daily penalties) and paragraphs 5 and 6 (fixed or tax geared penalty after 6 and 12 months respectively). The penalties may only be cancelled, assuming they are procedurally correct, if the appellant had a reasonable excuse for the failure to file the return on the due date, or if HMRC's decision as to whether there are special circumstances was flawed.

#### **The appeals**

16. HMRC took the position in the hearing that the initial filing penalty of £100 was under appeal. It seems to me clear that it is not and that the appellant was well aware of that and had made a conscious decision not to appeal it.

17. I have therefore not made any decision on that penalty.

#### **Grounds of appeal & HMRC's response**

18. The appellant's grounds of appeal are set out in three and a half pages of lucid and articulate reasoning, as might be expected of someone who, at the time, was in the final throes of a masters degree in philosophy (though as it was in Paris that he studied I might reasonably have expected something a little more impenetrably post-structuralist in the manner of, say, Derrida, but fortunately not). 60 or so pages of documentation are also attached as evidence for the grounds.

19. The appellant admits that he was aware of the deadline, but says he made a choice between devoting all his energies and attention to finishing his degree and doing his tax return. He assumed that the penalty would be £200 as it had been in previous years.

20. When he discovered that the penalty was £1,200 on top of the initial £100 he appealed on the basis that he had not been aware of the steep increases in late filing penalties that applied for 2012-13. He had examined the communications put out by HMRC and showed that there was a major campaign of advertising to get home the message that the new penalties were far harsher than the old, especially where as in his case, there was no tax due.

21. But, he pointed out, these communication efforts had been aimed only at UK residents. There was no similar campaign aimed at non-residents, and he mentioned a few simple things HMRC could have done to make non-residents aware but they had not done so.

5 22. HMRC denied that there was any such campaign in the UK. They also said that the notice to file clearly shows the new penalties, and reminders to file in December 2012 and the initial penalty notice would also have referred to the penalties.

23. They also said that the appellant would have had access to a computer and so to HMRC's website which also at the time highlighted the new penalties.

#### 10 **Reasons for my decision**

24. In my view there is no reasonable excuse for the failure to file the return by 31 January 2014.

15 25. Despite what HMRC say, the documents attached to his notice of appeal by the appellant clearly show that there was a campaign of advertising and exhortations to file on time to help people avoid the new much steeper penalties. I also accept that that campaign was in the British media only, although there was also material on the HMRC website.

20 26. There is no copy of a notice to file in the bundle. I have found the one that was sent to me personally by HMRC for 2011-12, the first year of the new penalties. It refers to the fact that if the return is three months late "you will receive a daily penalty of £10 a day, up to £900" and also refers to the 6 month penalty of £300.

27. Specimen copies of other documents that would have been sent to the appellant show the same things.

25 28. In my view a person reasonably trying to meet their tax return filing responsibilities would have realised from reading any of these documents that the penalties had changed. The appellant gambled, as he admitted, but he lost: and assuming that the penalties had not changed without making any checks or heeding many warnings is not the action of someone taking reasonable care.

30 29. HMRC did not address the question whether there were special circumstances. This amounts to a flawed decision and I can examine this issue *de novo*.

35 30. From the copy of the appellant's return in the bundle it is clear that not only did he have no tax to pay, he was in all probability not liable to UK tax at all. The only income is income from teaching on a self-employed basis, which was carried out in France. As he did not have a permanent establishment in the UK, then by virtue of article 7(1) of the Double Taxation Convention with France of 19 June 2008 (given effect in UK law by SI 2009/226) the UK had no taxing rights over him.

31. In those circumstances he would not have met the "SA criteria" that HMRC use, and he would not have had any obligation to notify chargeability under s 7 Taxes

Management Act 1970. It seems to me arguable that he would not in any case be legally obliged to complete a UK tax return issued to him.

32. Because of these considerations, which were not taken into account by HMRC, I reduce the £900 daily penalty and £300 6 month penalty to nil

5 33. 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  
10 “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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**RICHARD THOMAS  
TRIBUNAL JUDGE**

**RELEASE DATE: 14 DECEMBER 2017**