



**TC06472**

**Appeal number: TC/2017/06125**

*Income tax - Schedule 55 Finance Act 2009 - fixed penalties for failure to file self-assessment returns - Appellant's accountants failed to file the Appellant's returns having lost his data but did not notify him of this - penalty notices sent by HMRC to incorrect address - whether reasonable excuse - on the facts - yes - appeal allowed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MUHAMMET BICAKCI**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE MICHAEL CONNELL  
MEMBER MARYVONNE HANDS**

**Sitting in public at Tax Appeals Tribunal, Taylor House, Rosebery Avenue,  
London on 24 October 2017**

**The Appellant in person**

**Mr Christopher Fleming, Officer of HMRC, for the Respondents**

## DECISION

1. This is an appeal by Mr Muhammet Bicakci ('the Appellant') against penalties totalling £3,200 imposed by the Respondents ('HMRC') under Paragraphs 3,4, 5 and 6 of Schedule 55 Finance Act 2009, for his failure to file by the due dates self-assessment ('SA') tax returns for the tax years ending 5 April 2012 and 5 April 2013.
2. The Appellant's returns for 2011-12 and 2012-13, were due no later than 31 January following each tax year. The returns were filed on 19 April 2017.
3. A late filing penalty is chargeable where a taxpayer is late in filing their Individual Tax return. 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, £300 and £300 were imposed, under (i), (ii), (iii) and (iv) above for each of years 2011-12 and 2012-13.
5. The Appellant's appeal is against all the penalties.

### *Reasonable excuse*

6. 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.
7. The law specifies two situations that are not reasonable excuse:
- (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.

8. 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).

9. 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.

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

*The background facts*

11. The Appellant was registered with HMRC as a self-employed, website developer, having commenced business on 1 July 2011, trading as ‘Designer Park’. His accounts were made up to 5 April in each year and therefore his first year’s business accounts were due to be electronically filed by 31 January 2013.

12. HMRC say that notices to file were issued to the Appellant on 6 April 2012 for the tax year 2011-12 and 6 April 2013 for the tax year 2012-13. The notices were issued to 100A Middleton Road, London, being the Appellant’s address as recorded by HMRC.

13. The Appellant says that he left the address of 100A Middleton Road in February 2012, and moved to Flat 1 Crane Heights, Waterside Way, Tottenham Hale, London. He says that he telephoned HMRC to advise of his new address, where he lived until 27 May 2014, before moving to 141C Amhurst Road, London. HMRC’s records indicate that the Appellant notified that second change of address on 8 November 2016.

14. The Appellant says that prior to January 2013 he had instructed Munir Tatar & Associates, Chartered Certified Accountants to deal with his tax returns and signed form 64A so they could notify HMRC that they had authority to act on his behalf. He had also provided them with his address at Flat 1 Crane Heights, Waterside Way.

15. The Appellant’s business income for his first year of trading to 5 April 2012 was £7,159. Because this figure was less than the personal allowance threshold of £7,475 no tax fell due.

16. The Appellant's business income for his second year of trading to 5 April 2013 was £4,806. Because this figure was less than the personal allowance threshold of £8,105 no tax fell due.

17. The Appellant ceased trading on 30 April 2013. Shortly afterwards he notified his accountants and HMRC. He received an acknowledgement from HMRC on 14 August 2013. He produced a copy of the acknowledgement to the Tribunal.

18. The Appellant believed that his accountants had filed tax returns for 2012 and 2013.

19. The email acknowledgement which the Appellant had received from HMRC did not indicate that any returns were outstanding or any tax due.

20. The Appellant says that he was totally unaware that penalties had been issued. He first became aware of the penalties in early 2017, which appears to be shortly after he notified his change of address 141C Amhurst Road, by which time penalties amounted to £3,200 plus interest. The penalty notices had been sent to his previous address at 100A Middleton Road, London.

21. The Appellant contacted his accountants who said that unfortunately their computers had been hacked and they had lost all his data. It appears they were unable to confirm whether or not the Appellant's returns had been sent to HMRC. The Appellant provided them with his records, and tax returns for 2012 and 2013 were filed with HMRC by the Appellant's accountants on 19 April 2017.

22. The Appellant lodged an appeal with HMRC against the penalties, explaining what had happened.

23. HMRC rejected the Appellant's appeal saying that it was out of time. Penalty notices state that a taxpayer has 30 days in which to appeal against a penalty and must provide a reasonable excuse for the late filing of a return.

24. On 9 August 2017 the Appellant lodged a notice of appeal with the Tribunal.

#### *Relevant statutory provisions*

#### **Taxes Management Act 1970**

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

(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-

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-

(a) the 31st January next following the year of assessment, or

5 (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-

10 (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

15 (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.]

20 (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-

25 (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.

30 (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).

35 (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.

5 (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.

(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.

10 (4) Notices under the section may require different information, accounts and statements in relation to different descriptions of person.

(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).

15 (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.

(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.

20 **Schedule 55 Finance Act 2009:**

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

27. Paragraph 1 (4) states that the 'penalty date' is the date after the 'filing date'.

28. Paragraph 3 of Schedule 55 imposes a fixed £100 penalty if a SA return is submitted late.

25 29. 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)-

30 (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.

35 (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)-

(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).

5 30. 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.

(2) The penalty under the paragraph is the greater of-

10 (a) 5% of any liability to tax which would have been shown in the return in question, and

(b) £300.

31. Paragraph 23 of Schedule 55 contains a defence of "reasonable excuse" as follows:

15 (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.

(2) For the purposes of sub-paragraph (1)-

20 (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

25 (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.

### **The Appellant's case**

30 32. In his grounds of appeal to the Tribunal the Appellant says that he relied upon his accountants to file tax returns of 2012 and 2013. He was not aware that the returns had not been filed and also unaware of the penalties until early 2017. He had notified HMRC of his first change of address in February 2012, and having notified HMRC that he had ceased trading their acknowledgement did not indicate any outstanding returns or other issues. His accountants were unable to say whether or not his returns  
35 had been filed, but in any event they should have informed him that they had lost his data. He had heard nothing from them and reasonably expected to have been notified if his returns had not been filed.

### **HMRC's Case**

40 33. The Notice to File the 2011-12 to 2012-13 SA tax returns were issued to the Appellant on 6 April in each year.

34. HMRC say that they have no record that any correspondence issued to the Appellant has been returned undelivered to HMRC.

35. A late filing penalty is raised solely because a SA tax return is filed late, in accordance with Schedule 55 FA 2009, even if a customer has no tax to pay, has already paid all the tax due or is due a refund.

5 36. The onus lies with HMRC to show that the penalties were issued correctly and within legislation. If the Tribunal find that HMRC have issued the penalties correctly the onus then reverts to the Appellant to show that he has a reasonable excuse for the late filing of his SA returns.

10 37. 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.

### **Conclusion**

38. Paragraph 23 of Schedule 55 contains a defence of “reasonable excuse” as follows:

15 (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.

(2) For the purposes of sub-paragraph (1)-

(a) .....

20 (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.

25 39. 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. A reasonable excuse must exist for the whole period of the default. It 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  
30 complied with.

40. The Appellant had heard nothing from his accountant following his instructions to them to file his tax returns. Understandably he assumed that they had done so. The accountants appear to have lost the Appellant’s data in a hacking incident but did not inform him of this or that they had not filed his returns. He had heard nothing from  
35 HMRC, but that was because they did not have his new address at Flat 1 Crane Heights, Waterside Way, although the Appellant maintains that he notified both HMRC and his accountants of his address change.



41. The Appellant did not notify HMRC of his change of address to 141C Amhurst Road, until November 2016 although he had moved there in April 2014. However he had no reason to do so. He was not self-employed and had no reason to expect any contact with HMRC.

5 42. In August 2013 the Appellant received an acknowledgement from HMRC of his email that he had ceased self-employment. HMRC therefore had his email address. HMRC did not indicate that there were any outstanding returns or other issues, despite the fact that, at that date, the Appellant's tax return for 2012 was outstanding and a late filing penalty of £100 had been issued in March 2013.

10 43. As soon as the Appellant became aware of the fact that his returns had not been filed and penalties issued, he immediately contacted his accountants in order that the situation could be remedied. He also contacted his solicitors who lodged the notice of appeal with the Tribunal.

15 44. On the facts we therefore find that the Appellant has shown a reasonable excuse for not filing his 2012 and 2013 tax returns on time.

45. The appeal is therefore allowed late and the filing penalties discharged

46. 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**

**RELEASE DATE: 26 APRIL 2018**