



**TC06699**

**Appeal number: TC/2014/06333**

*INCOME TAX – penalty for failure to make returns – whether reasonable  
excuse – whether HMRC failed to advise of penalties ^no*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**ANGELA SALE**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE ANNE FAIRPO**

**The Tribunal determined the appeal on 21 May 2018 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 25 November 2014 (with enclosures) and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 23 September 2017.**

## DECISION

- 5 1. The appellant is appealing against penalties that HMRC have imposed under Schedule 55 of the Finance Act 2009 (“Schedule 55”) for a failure to submit an annual self-assessment return] for the tax year 2012-13 on time.
2. The penalties that have been charged can be summarised as follows:
  - (1) a £100 late filing penalty under paragraph 3 of Schedule 55 imposed on 18 February 2014
  - 10 (2) a £300 “six month” penalty under paragraph 5 of Schedule 55 imposed on 24 June 2014
  - (3) “Daily” penalties totalling £900 under paragraph 4 of Schedule 55 imposed on 24 June 2014

### **Appellant’s case**

- 15 3. The appellant’s grounds for appealing against the penalties can be summarised as follows:
  - (1) She did not receive a tax return to complete for the 2012-13 tax year and so did not complete a return by the filing deadline. When she received the £100 penalty late filing fee, she telephoned HMRC on 1 March 2014 to say that she had not received the form.
  - 20 (2) On that call, HMRC were unable to help her with the online form and asked her to send in a paper return, would mean that she would incur daily penalties with effect from 1 February 2014.
  - (3) Further, in the call, HMRC staff did not advise her that, by sending in a paper return, she would be charged daily penalties and that if she had filed online there would be no daily penalties until 1 May 2014.
  - 25 (4) HMRC staff could have advised the appellant to attend a local tax office for help.
4. It was submitted that the penalties were, therefore, a result of HMRC’s failures to advise properly and should be cancelled.
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### **HMRC’s case**

5. HMRC submitted that a return was issued to the appellant on 6 April 2013, and there is no record of any correspondence being returned to HMRC from the appellant’s address.
- 35 6. HMRC further submitted that the appellant had successfully filed tax returns for the tax years 2007-8 2011-12 and so was aware of her obligations to file her return on time and the implications of not doing so.

7. HMRC produced a transcript of the call between the appellant and HMRC on 1 March 2014 and submitted that:

(1) HMRC staff advised the appellant to file her return online to avoid further delay, and the appellant declined to do so;

5 (2) The issue of penalties was explained to the appellant during the call;

(3) HMRC staff advised that it would take several weeks to issue a duplicate paper tax return and advised the appellant that it would be quicker to download one from HMRC's website. The appellant declined to do so.

10 (4) At the appellant had been satisfactorily provided with information, there was no need to refer the appellant one of the small number of tax offices available to taxpayers.

8. HMRC therefore submitted that the appellant was not poorly advised in the call. They had considered whether special circumstances applied and concluded that there were no such circumstances in this case that would allow them to reduce the penalty.

## 15 **Discussion**

9. Relevant statutory provisions are included as an Appendix to this decision.

10. The appellant filed a paper return for the 2012-13 tax year on 12 May 2014. The filing date for a paper return for the 2012-13 tax year was 31 October 2013. It is not disputed that the return was submitted late. Subject to considerations of "reasonable excuse" and "special circumstances" set out below, the penalties imposed are due and have been calculated correctly.

11. The appellant's grounds of appeal are, in effect, that special circumstances should apply to reduce the penalty, rather than that she has a reasonable excuse for the delay in filing.

25 12. Nevertheless, I considered the information provided to determine whether the appellant might have a reasonable excuse for the delay. The test of whether something is a "reasonable excuse" for the late filing of a tax return is not set out in statute but, in my view, the test set out in *Clean Car Company* [1991] VTTR 234 should be applied:

30 "a reasonable excuse should be judged by the standards of reasonableness which one would expect to be exhibited by a taxpayer who had a responsible attitude to his duties as a taxpayer, but who in other respects shared such attributes of the particular appellant as the tribunal considered relevant to the situation being considered"

35 13. I note that the appellant mentions in the call transcript that she had not received a tax return for the 2012-13 tax year. I considered whether that might be an argument that there is a reasonable excuse for the delay but noted the appellant does not dispute HMRC's statement that the return was properly sent out to her and not returned as undeliverable.

14. In the call, the appellant also noted that she did not know how to use a computer and so could not file online. However, applying the test above, I find that a taxpayer in the circumstances of the appellant, intending to comply with their tax obligations, would have ensured that their return was filed on time. The appellant had been within  
5 the self-assessment regime for some years and I consider that she should have been aware that her return needed to be filed by the end of October 2013 if she wanted to file her return on paper.

15. Accordingly, I do not consider that the appellant should be regarded as having a reasonable excuse for the delay.

10 16. Considering the appeal on the basis of special circumstances, the Tribunal's jurisdiction in this context is limited to circumstances where it considers HMRC's decision in respect of special circumstances was flawed when considered in the light of the principles applicable in judicial review proceedings. HMRC have considered whether to apply a special reduction and have found nothing that is exceptional,  
15 abnormal or unusual to justify such a reduction.

17. Having reviewed the call transcript, which was not disputed by the appellant, I find that the appellant was advised to file her tax return online and that she was advised of the penalty consequences of filing a paper return. Her response was that "I can't do online" and that she did not know how to use computers and so wanted to submit a  
20 paper return instead. Applying the judicial review standards I see no reason to overturn HMRC's decision that special circumstances do not apply.

### **Conclusion**

18. The appeal is dismissed and the penalties upheld in full.

### **Application for permission to appeal**

25 19. 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  
30 accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

35 **ANNE FAIRPO**

**TRIBUNAL JUDGE**  
**RELEASE DATE: 31 August 2018**

## APPENDIX – RELEVANT STATUTORY PROVISIONS

1. The penalties at issue in this appeal are imposed by Schedule 55. The starting point is paragraph 3 of Schedule 55 which imposes a fixed £100 penalty if a self-assessment return is submitted late.

5 2. Paragraph 4 of Schedule 55 provides for daily penalties to accrue where a return is more than three months late as follows:

4—

(1) P is liable to a penalty under this 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 this 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

20 (b) may not be earlier than the end of the period mentioned in sub-paragraph (1)(a).

3. Paragraph 5 of Schedule 55 provides for further penalties to accrue when a return is more than 6 months late as follows:

5—

25 (1) P is liable to a penalty under this 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 this paragraph is the greater of—

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

30 (b) £300.

4. Paragraph 6 of Schedule 55 provides for further penalties to accrue when a return is more than 12 months late as follows:

6—

35 (1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 12 months beginning with the penalty date.

(2) Where, by failing to make the return, P deliberately withholds information which would enable or assist HMRC to assess P's liability

to tax, the penalty under this paragraph is determined in accordance with sub-paragraphs (3) and (4).

(3) If the withholding of the information is deliberate and concealed, the penalty is the greater of—

- 5 (a) the relevant percentage of any liability to tax which would have been shown in the return in question, and
- (b) £300.

(3A) For the purposes of sub-paragraph (3)(a), the relevant percentage is—

- 10 (a) for the withholding of category 1 information, 100%,
- (b) for the withholding of category 2 information, 150%, and
- (c) for the withholding of category 3 information, 200%.

(4) If the withholding of the information is deliberate but not concealed, the penalty is the greater of—

- 15 (a) the relevant percentage of any liability to tax which would have been shown in the return in question, and
- (b) £300.

(4A) For the purposes of sub-paragraph (4)(a), the relevant percentage is—

- 20 (a) for the withholding of category 1 information, 70%,
- (b) for the withholding of category 2 information, 105%, and
- (c) for the withholding of category 3 information, 140%.

(5) In any case not falling within sub-paragraph (2), the penalty under this paragraph is the greater of—

- 25 (a) 5% of any liability to tax which would have been shown in the return in question, and
- (b) £300.

(6) Paragraph 6A explains the 3 categories of information.

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

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(1) Liability to a penalty under any paragraph of this 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) 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

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(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.

6. Paragraph 16 of Schedule 55 gives HMRC power to reduce penalties owing to the presence of “special circumstances” as follows:

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16—

(1) If HMRC think it right because of special circumstances, they may reduce a penalty under any paragraph of this Schedule.

(2) In sub-paragraph (1) “special circumstances” does not include—

(a) ability to pay, or

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(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

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(b) agreeing a compromise in relation to proceedings for a penalty.

7. 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:

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(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—

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(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—

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(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.

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(4) In sub-paragraph (3)(b) “flawed” means flawed when considered in the light of the principles applicable in proceedings for judicial review.

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