



**TC07004**

**Appeal number: TC/2018/07253**

*INCOME TAX – penalties for late delivery of tax return – whether return file before due date – held yes, by reference to burden of proof – alternatively, whether reasonable excuse: yes for initial penalty, no for daily penalty – daily penalty cancelled.*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**TARIQ MEHMOOD**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE RICHARD THOMAS**

**The Tribunal determined the appeal on 14 February 2019 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 14 November 2018 (with enclosures) and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 4 January 2019.**

## DECISION

1. This was an appeal by Mr Tariq Mehmood (“the appellant) against penalties of £270 assessed on him for his failure to deliver his 2016-17 income tax return on time.

### **Facts**

2. The appellant was, according to HMRC records, issued with a notice to file an income tax return for the tax year 2016-17 on 6 April 2017. That notice required the appellant to deliver the return by 31 October 2017 if filed in paper form or by 31 January 2018 if filed electronically (“the due date”).

3. On 13 February 2018, according to HMRC records, they issued a notice informing the appellant that a penalty of £100 had been assessed for failure to file the return by the due date.

4. The return was filed electronically on 17 May 2018.

5. On 22 May 2018, according to HMRC records, they issued a notice informing the appellant that a penalty of £170 had been assessed for failure to file the return by a date 3 months after the due date.

6. On 25 June 2018 the appellant, through his agent M & M Business Accounting Ltd, trading as Butt & Co, appealed to HMRC against penalties of £270.

7. On 11 July 2018 HMRC rejected the appeals as they said that the appellant had shown no reasonable excuse for the failure to file on time. They informed him that he could request a review or notify his appeal to the Tribunal.

8. On 12 September 2018 the appellant requested a review.

9. On 17 October 2018 HMRC wrote to the appellant with the conclusion of the review. The conclusion was that the penalties were upheld

10. On 14 November 2018 the appellant notified his appeals to the Tribunal.

### **The law in brief**

11. The law imposing these penalties is in Schedule 55 Finance Act 2009 and in particular paragraph 3 (initial penalty of £100) and paragraph 4 (daily penalties). 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.

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

12. The grounds of appeal from the accountant are that:

(1) the appellant sent his return to HMRC on 20 July 2017 and he received an IR Mark with a large number of characters.

(2) The accountant had also had his copy of the SA302. He had experienced some errors with HMRC for a number of clients at the time of filing.

13. HMRC say in response that:

- (1) The appellant is familiar with the SA system, having been self-employed as a taxi driver for 10 years.
- (2) The accountants had been filing returns for the appellant since 2009 so he should be expected to be familiar with the actions taken by his agent “when completing his tax returns”.
- (3) The tax return for 2016-17 was successfully filed electronically on 17 May 2018 so if it had already been filed in 2017 such a submission would not have been permitted.
- (4) The IR Mark quoted is not a valid one.
- (5) The SA302 does not prove there has been a properly submitted tax return.
- (6) Correspondence from HMRC on 13 February and 29 March should have alerted the appellant to the fact that his return was outstanding. Someone who makes no contact with HMRC is not acting as a prudent person, exercising reasonable foresight and due diligence and does not have a proper regard for their responsibilities under the Tax Acts.
- (7) Accordingly the appellant had no reasonable excuse for the late filing

### **Reasons for my decision**

14. HMRC accept that the burden of proof is on them to show the penalties have been correctly calculated. It is more than that: they have to show they have been correctly assessed, ie that the appellant has indeed failed to deliver his tax return by the due date. It is somewhat odd then for the review officer in this case to say that the documents the appellant puts forward do not prove that the return was delivered in time.

15. HMRC evidence according to the compiler of the statement of case is that the return was not submitted in time is that a 2016-17 return is shown in their records as having been accepted by the HMRC SA computer system in May 2018, and that would not have been possible if a return had already been filed. They produce a printout called “return summary” which shows in a box “date of receipt” “17/05/2018”. They also produce a printout of “submission details” requested on 29 November 2018 which shows that an SA100 return was submitted by a fully authorised agent for the year 2016-17 using a product “BTC SA100 Solution” at 12.40.24 on 17 May 2018.

16. The return is shown as received by HMRC’s computer system at 13.40.26 and that IRmark validation was successful and that a success message was sent to the submitter two seconds later. At the top of the details is a correlation ID which consists of 27 letters and numbers.

17. Mrs P Basi, the officer who carried out the review had also said to the appellant that “looking on your self-assessment record your **2015-2016** tax return was sent in on the **20 July 2017**”. [her emboldening]

18. The compiler of the statement of case does not mention this assertion. She says though that Butt & Co have been submitting electronic self-assessment tax returns for the appellant since the 2009-10 tax year and refers to folios 43 to 49 in that connection. Those pages are in fact the “submission details” as derived in §15 for all years 2009-10 and 2011-12 to 2016-17. They do not show specifically that Butt & Co submitted them only that an authorised agent did, but they do show the submission dates for the previous years as follows:

2009-10	20 January 2011 (just in time)
2011-12	29 January 2013 (just in time)
2012-13	23 January 2014 (just in time)
2013-14	28 January 2015 (just in time)
2014-15	2 July 2015 (over 6 months early)
2015-16	20 June 2016 (over 6 months early)
2016-17	17 May 2018 (over 3 months late)

19. Each tax year's details show a different correlation ID which is not the one shown in the accountants letter or on the documents described in §22.

20. Thus what Mrs Basi said was not true. The 2015-16 return was submitted over a year earlier than the date she gave. There is also no evidence of any late filing penalties for 2015-16 in the SA statements in the bundle. I have nothing to indicate what prompted Mrs Basi to pick that date or where in HMRC records she found it.

21. What HMRC have not provided includes any records showing online activity or contact with the HMRC helpdesk from Butt & Co on 20 July 2017 which might support or refute the accountant's claims of difficulties with the Gateway with other clients. Instead they say the appellant has not provided it.

22. The appellant's evidence consist of the following:

1. A document headed "Individual Tax Return for Tax Year 6 April 2016 to 5 April 2017 for Tariq Mehmood" Above that and to the right in smaller letters is the IRmark with the 27 characters referred to in the accountant's letter of 25 June 2018.

Then there is the heading "Tax Calculation (SA302) and a tax calculation (or as I call it at my age a computation) showing a personal allowance of £11,000, the correct figure for 2016-17.

At the bottom left in small type are the words "Prepared by Butt & Co Accountants on 20/7/2017 at 09:29".

2. A document headed as in 1. and with the same IRmark and wording at the foot, but with the subheading "Computed Payment Schedule" showing income tax and Classes 2 and 4 NICs due of £308.32 with nil payments on account for next year .

3. A printout out of a "Tax Return 2017" showing the same IRmark and at the top left "Tariq Mehmood" followed by his UTR with on the next line "Prepared by Butt & Co Accountants on 20/7/2017 at 09:29". On page TR8 box 21 (about supplementary pages) has an "X". Box 22 the declaration of truth has a blank box for signature which is empty, as far as I can make out but the copy is faint. Under the form shows "Date DD MM YYYY". The printout also includes the Form SA102(S) – short self-employment pages and pages TC1 and 2 the self assessment (or Tax calculation summary) as HMRC call it which shows the same figures as in 2.

23. About this evidence HMRC say that SA302 is not considered as proof by HMRC. It is just a calculation of the appellant's tax liability. But they do not say or produce any evidence to show that an SA 302 like this can be generated before the submission of the return.

24. As to the IR Mark HMRC say that (and show a document saying it) a check on the Government Gateway shows that the IR Mark is not valid. This check was done for Heather Laughton the compiler of the statement of Case so it must have been done between 14 November 2018 (the Notice of Appeal) and 4 January 2019 (statement of case submitted to the Tribunal). This was therefore long after even the submission date HMRC say was valid, let alone that when the appellant says he submitted it. No information is given as to how long the Government Gateway keeps these strings of letters and numbers, or even whether they are in fact generated by the Government Gateway. It is certainly true that the correlation ID for the 2018 submission is not the same as that in the appellant's letters and documents but I can see no reason why it should be.

25. Looking at the appellant's evidence there is no proof that the return was in fact submitted on 17 July 2017. Anyone familiar with submitting their own return will know that a print can be taken of the completed return before submission, but that is all I am prepared to assume without evidence from either party. The appellant's evidence is consistent with both the return having been submitted and not having been submitted.

26. I have considered all the evidence that has been put forward. Neither party's evidence is in my view sufficient to allow me to say that I am satisfied on the balance of probabilities that the return was or was not submitted by the appellant and received by HMRC. This is one of the very rare cases where I do rely on the burden of proof. I note that HMRC do not rely on any statutory presumptions to switch the burden to the appellant. I therefore find for the appellant on the basis that HMRC have not discharged the burden of proof of showing that the appellant failed to file the return in good time.

27. Had I not so found then I would have held that the appellant had a reasonable excuse for the failure to file the return by 31 January 2018. The appellant would have entrusted Butt & Co, as for many years' previously, to do what they did in all previous years, file the return. It is clear that he must have taken the records to his accountant in ample time to allow them to prepare his return. The submission records show, *pace* Mrs Basi, that in more recent years he had provided the records within a few months of the end of the tax year instead of waiting for January as he did before. He had no reason to think that anything was wrong until he got the £100 penalty notice in February 2018. Relying on a third party, his accountant, he took what care was reasonable in the circumstances to prevent a failure to file. I would, had it been necessary, cancelled the initial penalty.

28. But while that excuse existed at the filing date it ceased to apply once he had received the penalty. That should have aroused him to contact his accountant to find out what was going on. It didn't, and so in my view the reasonable excuse ceased before daily penalties started to accrue.

29. But as to the daily penalties there is no "SA reminder" or "SA 326D" in the papers, so HMRC have not shown that the condition in paragraph 4(1)(c) Schedule 55 FA 2009 has been complied with. (See *Duncan v HMRC* [2017] UKFTT 340 (TC) (Judge Jonathan Richards)). I would therefore cancel them.

30. I do not need to address the question whether there were special circumstances.

**Decision**

31. Under paragraph 22(1) Schedule 55 Finance Act 2009 I cancel the initial and daily penalties.

32. 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.

**RICHARD THOMAS  
TRIBUNAL JUDGE**

**RELEASE DATE: 26 FEBRUARY 2019**