



**TC04210**

**Appeal number: TC/2014/03726**

*INCOME TAX – penalty for late filing of return – whether a reasonable excuse – no – whether special circumstances – no – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**STEPHEN JONES**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE CHRISTOPHER STAKER**

**The Tribunal determined the appeal on 6 October 2014 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 7 July 2014 (with enclosures), HMRC's Statement of Case dated 11 September 2014 (with enclosures), the Appellant's reply dated 16 September 2014, and other papers in the case.**

**© CROWN COPYRIGHT 2014**

## DECISION

### Introduction

- 5 1. The Appellant appeals against penalties totalling of £440 imposed under paragraphs 3 and 4 of Schedule 55 to the Finance Act 2009 in respect of the late filing of his self-assessment tax return for tax year 2012-13.

### The applicable legislation

2. Paragraph 1(1) of Schedule 55 to the Finance Act 2009 provides:
- 10 (1) A penalty is payable by a person (“P”) where P fails to make or deliver a return, or to deliver any other document, specified in the Table below on or before the filing date.
3. Paragraph 2 of Schedule 55 to the Finance Act 2009, read together with the Table in paragraph 1, has the effect that paragraphs 3-6 of Schedule 55 apply in the case of a self-assessment tax return.
- 15 4. Paragraph 3 of Schedule 55 to the Finance Act 2009 provides that “P is liable to a penalty under this paragraph of £100”.
5. Paragraph 4 of Schedule 55 to the Finance Act 2009 relevantly provides that:
- (1) P is liable to a penalty under this paragraph if (and only if)—
- 20 (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.
- 25 (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).
6. Paragraph 16 of Schedule 55 to the Finance Act 2009 relevantly provides that:
- (1) If HMRC think it right because of special circumstances, they may reduce a penalty under any paragraph of this Schedule.
- 30 (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.
- 35 (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.

7. Paragraph 22 of Schedule 55 to the Finance Act 2009 relevantly provides that:

5 (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

10 (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.

15 8. Paragraph 23 of Schedule 55 to the Finance Act 2009 relevantly provides that:

(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.

20 (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,

25 (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.

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

9. The Appellant's case is as follows. The Appellant is a disabled person. In order to reduce his reliance on benefits he started a company with two friends. The company was not successful and the Appellant appointed an accountant to bring the company to a close, and he declared his profit from the company to be nothing. The Appellant assumed that bringing his company to a close would also end his need for filing self-assessment returns. The Appellant apologises for this mistake. The Appellant had no tax to pay, and in all the circumstances the penalty is unreasonable. The Appellant would find the fine difficult to pay, which is equivalent to a month's income.

40 10. In his reply, the Appellant emphasised again that the penalties imposed amount to a twelfth of his annual income, that the penalties will force him into a further level of poverty, and that he accepts the original £100 fine imposed upon him. The

Appellant adds that he thinks that a reasonable person would applaud him for his attempt despite his disability to reduce his reliance on the state, and that he feels that he is being treated differently to wealthy taxpayers.

### **The HMRC case**

5 11. The HMRC case in essence is as follows. The appeal is not concerned with an  
obscure area of tax law but with the ordinary everyday responsibility to file a tax  
return by the due date. The due date for the return was clearly stated on the notice to  
file that had been sent to the Appellant and information about deadlines and  
consequences of failing to meet them are available on the internet. The Appellant did  
10 not file a tax return until 3 June 2014 despite the issue of a notice to file on 6 April  
2013, a reminder in December 2013, the first penalty notification of 18 February 2014  
and HMRC letters of 24 March 2014 and 27 May 2014 advising that it was overdue.  
After the first 18 February 2014 penalty notification, the Appellant also had a  
15 telephone conversation with HMRC on 28 February 2014, in which he was also  
advised by HMRC that his return was outstanding. By ignoring all these reminders,  
the Appellant did not act in the manner of a prudent person, exercising reasonable  
diligence and due foresight, having proper regard for his responsibilities under the  
Taxes Acts. The Appellant has not established that illness or personal difficulties  
were so serious that they reasonably prevented him from filing the return on time.  
20 The Appellant has not established the existence of a reasonable excuse or special  
circumstances.

### **The Tribunal's findings**

12. The due date for submission of the return was 31 January 2014 if filed  
electronically. HMRC contend, and provide evidence in support of the contention,  
25 and the Appellant has not sought to deny, that the return was filed online on 3 June  
2014. On the material before it, the Tribunal finds as a fact, on a balance of  
probability, that this is so. The Appellant does not suggest that the penalties have not  
been correctly calculated in accordance with the legislation. It follows that the return  
was late, and that as a matter of law the Appellant is liable to the penalties unless the  
30 Appellant has a reasonable excuse for the lateness, or unless HMRC consider that  
there are special circumstances justifying a reduction in the penalty.

13. It is well established that the burden is on the Appellant to establish the  
existence of circumstances amounting to a reasonable excuse, on a balance of  
probabilities.

35 14. The Appellant's case is essentially that he made a mistake, and did not realise  
that he was required to file a tax return. Regrettably, ignorance of the law is in  
principle not a reasonable excuse. Furthermore, under paragraph 23(2)(c) of Schedule  
55 to the Finance Act 2009, in order to have a reasonable excuse, the Appellant would  
need to establish that he filed the return without unreasonable delay after the  
40 reasonable excuse ceased. In other words, the reasonable excuse must have continued  
up until shortly before the time that the return was submitted. HMRC point out that it  
took the Appellant until 3 June 2014 to submit the return despite various reminders

both before and after the deadline. On the material before it considered as a whole, the Tribunal is not satisfied that the Appellant should reasonably have remained ignorant of his obligation to file the return until shortly before 3 June 2014. The Tribunal finds that he does not have a reasonable excuse.

5 15. Under paragraph 16(1) of Schedule 55 to the Finance Act 2009, HMRC may reduce the penalty if they “think it right because of special circumstances”. “Special” in this context has been understood to mean something “unusual or uncommon”: *Pervez v Revenue & Customs* [2014] UKFTT 436 (TC) at [19]; *Perrin v Revenue & Customs* [2014] UKFTT 488 (TC) at [137]-[138].

10 16. The Tribunal may reduce or cancel the penalty due to special circumstances only if the decision is “flawed when considered in the light of the principles applicable in proceedings for judicial review”: paragraph 22(3)(b) and (4) of Schedule 55 to the Finance Act 2009. In the present case, the possibility that there were  
15 “special circumstances” was not addressed in the HMRC decision of 24 March 2014 or the HMRC review decision of 5 June 2014 or the HMRC decision of 22 July 2014. In respect of the issue of whether there are special circumstances, a decision of HMRC will be flawed if it fails to consider the issue at all, and the Tribunal accordingly finds the decisions to be flawed.

17. The Tribunal may accordingly rely on paragraph 16 to the same extent as  
20 HMRC. However, paragraph 16(2)(a) expressly provides that “special circumstances” does not include “ability to pay”. In the context of provisions dealing with penalties for failure to make returns, “ability to pay” must mean an ability to pay the penalty. Accordingly, although the Tribunal has some sympathy for the Appellant in this respect, unfortunately the Appellant’s argument that the penalty amounts to a  
25 twelfth of his annual income cannot be a special circumstance.

18. The Tribunal finds that the other circumstances advanced by the Appellant do not amount to special circumstances.

### **Conclusion**

19. The appeal is therefore dismissed and the penalties totalling £440 are  
30 confirmed.

20. 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  
35 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.

**DR CHRISTOPHER STAKER  
TRIBUNAL JUDGE**

**RELEASE DATE: 31 December 2014**