



**TC05766**

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**Appeal number: TC/2013/02650**

*INCOME TAX – Whether reasonable excuse for late submission of self-assessment tax returns - No.*

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**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

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**PAUL FARRELL**

**Appellant**

**- and -**

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

**TRIBUNAL:    PRESIDING MEMBER  
                  PETER R. SHEPPARD FCIS FCIB CTA  
                  AIIT**

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**The Tribunal determined the appeal on 29 March 2017 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 8 April 2013, and HMRC's Statement of Case received by the Tribunal on 31 January 2017 with enclosures. The Tribunal wrote to the appellant on 1 February 2017 indicating that if he wished to reply to HMRC's Statement of Case he should do so within 30 days. No reply was received.**

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## DECISION

### 1. Introduction

5 This considers an appeal against a penalties totalling £1,300 imposed by the respondents (HMRC) under Paragraphs 3 and 4 of Schedule 55 Finance Act 2009 for the late filing by the appellant of his self-assessment (SA) tax returns for the tax year 2010-2011.

### 2. Legislation

Finance Act 2009 Schedule 55  
10 Taxes Management Act 1970, in particular Section 8(1D)

### 3. Case law

Crabtree v Hinchcliffe (Inspector of Taxes) [1971] 3 ALL ER 967  
Clarks of Hove Ltd v Bakers' Union [1979] 1 All ER 152  
15 Keith Donaldson v HMRC [2006] EWCA Civ 761  
Garnmoss Ltd trading as Parham Builders [2012] UKFTT 315 (TC)  
HMRC v Hok Ltd. [2012]UKUT 363 (TCC)  
International Transport Roth Gmbh v SSHD [2002] EWCA Civ 158  
Rowland v HMRC [2006] STC (SCD) 536  
20 David Collis [2011] UKFTT 588 (TC)

### 4. Facts

Schedule 55 of the Finance Act 2009 ("the Schedule") makes provision for the imposition by Her Majesty's Revenue and Customs ("HMRC") of penalties on  
25 taxpayers for the late filing of tax returns.

If a person fails to file an income tax return by the "penalty date" (the day after the "filing date" i.e. the date by which a return is required to be made or delivered to HMRC), paragraph 3 of the Schedule provides that the person is liable to a penalty of £100.

30 Paragraph 4 provides:

"(1) A person is liable to a penalty under this paragraph if (and only if)–

(a) The 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

35 (c) HMRC give notice to the person specifying the date from which the penalty is payable."

(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).

40 Paragraph 5 of the Schedule provides

(1) A person is liable to a penalty under this paragraph if (and only if) - the 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 –

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

The filing date for an individual tax return is determined by Section 8 (1D) of the Taxes Management Act 1970.

10 5. In this case in respect of the tax year ended 5 April 2011 HMRC issued a notice to file to the appellant on 6 April 2011. The filing date for a non-electronic return was 31 October 2011 whereas for an electronic return the filing date was 31 January 2012. The appellant failed to submit his tax return until 31 December 2012. As the return was not submitted by the latest filing date of 31 January 2012 HMRC issued a notice  
15 of penalty assessment on or around 14 February 2012 in the amount of £100. As the return had still not been received 3 months after the penalty date of 1 February 2012, HMRC issued a notice of daily penalty assessment of £900 on or around 7 August 2012, calculated at £10 per day for 90 days. As the return still had not been received 6  
20 months after the penalty date HMRC issued a notice of penalty assessment of £300 on or around 7 August 2012.

6. HMRC's approach to daily penalties was the subject of an appeal by Keith Donaldson which culminated in a decision of the Court of Appeal. The Tribunal has read that decision and considers that its conclusions whilst informative have negligible effect on the matters considered in this appeal save that the absence of the  
25 correct period for which the daily penalties have been assessed in the notice of assessment does not affect the validity of the notice.

### 7. Appellant's submissions

In the Notice of Appeal dated 8 April 2013 the appellant gives the following grounds of appeal:

30 "I normally use an accountant to do my tax returns but things are that bad (financially) I cannot afford to use him. This was the 1<sup>st</sup> time I have used self assessment online. Having thought I had registered I called up on the 20<sup>th</sup> January 2012 for my PIN.

I was informed that it would take 7 days. It never came. I called up on 20<sup>th</sup> of every  
35 month to be told it would be sent, but it never came. Eventually in the October one of the operatives informed me that I was not registered and that's why I did not have a PIN. So I re-reg and then the PIN came. As soon as it came I filled in the tax return. It wasn't until I received a letter that I realised I filled in the wrong year. Once I delved into the website I realised my mistake and corrected it. I feel I'm been harshly treated  
40 for what was a genuine mistake."

8. On 13 September 2012 the appellant appealed to HMRC against the penalties on the grounds that he didn't have an activation code; he usually used an accountant but

due to the building trade being as it is he could not afford to use him; he had made several telephone calls to have his code but at the date of writing he did not have it.

On 26 September 2012 HMRC refused to consider this appeal on the grounds that HMRC had still not received the appellant's tax return.

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On 30 January 2013 wrote to the appellant saying they did not agree the appellant had reasonable excuse because it took more than 3 months after appealing the penalties to submit the tax return.

10 The Tribunal considers this response ill considered. The appellant had appealed against the penalties because he said he had made several attempts to get an online activation PIN. This statement was recorded in the result of the appeal but was not responded to.

15 9. Unsurprisingly on 6 February 2013 the appellant requested a review. He wrote

“When I received the activation PIN I proceeded immediately to fill in my return. It wasn't until 2 months later when I got a letter saying that it wasn't done that I realised I filled in the wrong year! Records will show how early I filled in this year's tax returns. It was a simple error. I didn't realise that I had filled in the wrong year.”

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10. On 19 March 2013 HMRC wrote to the appellant advising that the result of the review was that the HMRC's decision was upheld. They said “Our records show that you did not enrol to use the online service until 23 October 2012. You phoned HMRC on 11 April 2012 to say you had registered to use the online service in January 2012 but had not received your activation code. There was no record of your registration and you were advised to register again.

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11. On 3 May 2012 you completed an online CWF1 form. This form is to notify HMRC that you have commenced self employment and require a self assessment record. There is no record that you enrolled to use the online service at this time.

30 12. You enrolled to use the online service on 23 October 2012 and activated the service on 27 October 2012. You filed your 2011-2012 tax return online on 27 October 2012. The penalties for the late filing of your 2010-2011 tax return had already been charged at this stage.

### 13. HMRC's submissions

35 HMRC say that the appeal is not concerned with specialist or obscure areas of tax law. It is concerned with ordinary every day responsibilities of the appellant to ensure his 2010-2011 tax returns was filed by the due date.

14. HMRC records show that the appellant submitted his online SA return on 31 December 2012.

40 15. HMRC say that the SA return for the 2010-2011 year issued to the appellant clearly showed the due dates for filing the return online or in paper format.

16. HMRC say that when the appellant successfully submitted his return he would have received an on screen message confirming receipt. This message shows the year of the return and so the appellant should have been alerted to the fact that his submission had been for 2011-2012. HMRC point out that when the appellant filed his return online in the wrong tax year it was already nearly 9 months late and the penalties had already been charged correctly.

17. In respect of reasonable excuse HMRC say that they consider the actions of a 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 test is to determine what a reasonable taxpayer, in the position of the taxpayer, would have done.....". HMRC do not consider the mistakes made by the appellant provide reasonable excuse for the late submission of the return.

18. In respect of the penalty being unfair HMRC say for a penalty to be disproportionate it must be "not merely harsh but plainly unfair." They refer to the decision in International Transport Roth GmbH v SSHD.

19. HMRC have considered special reduction under (paragraph 16 Schedule 55 of the Finance Act 2009. They say special circumstances must be "exceptional, abnormal or unusual" (*Crabtree v Hinchcliffe*) or "something out of the ordinary run of events" (*Clarks of Hove Ltd. v Bakers' Union*). HMRC consider that there are no special circumstances which would allow them to reduce the penalty.

## 20. Tribunal's Observations

The Tribunal agrees with HMRC that it is the Appellant's responsibility to submit SA returns on time. The return for the periods 2010-2011 was due to be submitted by 31 January 2012 but it was submitted late on 31 December 2012. Penalties totalling £1,300 are therefore due unless the appellant can establish a reasonable excuse for the delay as referred to in Paragraph 23(1) Schedule 55 Finance Act 2009. A reasonable excuse is normally an unexpected or unusual event that is unforeseeable or beyond the taxpayer's control, and which prevents them from complying with their obligation to file on time.

21.. In respect of reasonable excuse the appellant made some genuine mistakes in that firstly he thought he had registered for self assessment online in January 2012 but in fact he had not. It was not until 9 months later that he was eventually registered. It was this delay which triggered the penalties. The return was due to be submitted by 31 January 2012 and it appears that the appellant was not sufficiently diligent in ensuring he was registered to file on line in sufficient time to meet that deadline.

22. In the case of Garnmoss Ltd trading as Parham Builders the Tribunal observed at paragraph 12 "*What is clear is that there was a muddle and a bona fide mistake was made. We all make mistakes. This was not a blameworthy one. But the Act does not provide shelter for mistakes, only for reasonable excuses. We cannot say that this confusion was a reasonable excuse.*"

The Tribunal considers that the appellant made mistakes which do not provide a reasonable excuse for his failure to submit his return by 31 January 2012. Much of the

appellant's activity in attempting to register and submit his return appears to have occurred after this date.

23. Unfortunately in this case the appellant made a further mistake in that he specified the wrong tax year in his online submission completing the 2010-2011 figures under the heading 2011-2012. However the penalties had already been triggered at this stage.

24. The appellant considers he is being harshly treated. The Tribunal points out that the level of the fines is laid down in legislation and the Tribunal has no power to amend them unless they are incorrectly imposed or they are inaccurately calculated.

10 In HMRC v Hok Ltd the Upper Tribunal at paragraph 36 said "...The statutory provision relevant here, namely TMA S100B, permits the Tribunal to set aside a penalty which has not in fact been incurred, or to correct a penalty which has been incurred but has been imposed in an incorrect amount, but it goes no further. In particular neither that provision, nor any other gives the Tribunal discretion to adjust a penalty of the kind imposed in this case, because of a perception that it is unfair, or for any similar reason. Pausing there, it is plain that the First-tier Tribunal has no *statutory* power to discharge, or adjust, a penalty because of the perception that it is unfair."

20 25. Paragraph 16 (1) of Schedule 55 Finance Act 2009 allows HMRC to reduce the penalty below the statutory minimum if they think it is right because of special circumstances. HMRC have considered whether there any special circumstances in this case which would allow them to reduce the penalty and have concluded there are none. The Tribunal sees no reason to disagree.

25 26. HMRC has applied the late filing penalties in accordance with legislation. The Appellant has not established a reasonable excuse for the late submission of his tax return for the period 2010-2011. There are no special circumstances to allow reduction of the penalty. Therefore the appeal against the late filing penalties of £1,300 is dismissed.

30 27. 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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**PETER R. SHEPPARD**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 31 MARCH 2017**