



**TC05837**

**Appeal number: TC/2013/07466**

*INCOME TAX – penalty for failure to make returns- Whether reasonable excuse for late submission of self-assessment tax return-No*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**ROBERT LUCAS**

**Appellant**

**- and -**

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

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

**The Tribunal determined the appeal on 26 April 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 31 October 2013 and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 16 February 2017. The Tribunal wrote to the appellant on 16 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.**

## DECISION

5 1. The appellant is appealing against penalties totalling £590 that HMRC have imposed under Schedule 55 of the Finance Act 2009 (“Schedule 55”) for a failure to submit an annual self-assessment return 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 or around 12 February 2013.

10 (2) “Daily” penalties totalling £590 under paragraph 4 of Schedule 55 imposed on or around 7 August 2012. This penalty is calculated as £10 per day commencing 3 months after the penalty date. As the penalty date is the day after the return is due in this case 1 February 2013 the daily penalties commence 3 months later on 1 May 2013 and are imposed for each day the return remains outstanding for a maximum of 90 days. The return was not  
15 received by HMRC until 28 June 2013. 1 May 2013 to 28 June 2013 is 59 days.

The appellant has not appealed the late filing penalty of £100.

20 3. The appellant’s grounds for appealing against the penalties can be summarised as follows:

(1) He argues that he made a genuine mistake in that he genuinely believed he had completed and submitted the return electronically on 30<sup>th</sup> April 2013 but in fact he had failed to submit it. He argues this constitutes a “reasonable excuse” for his failure to submit the return on time.

25 (2) He complains that it took almost two months for HMRC to notify him of the error.

4. A self-assessment return form for the tax year ended 5 April 2012 was sent by HMRC to the appellant on 6 April 2012. The filing date was 31 October 2012 for a non-electronic return or 31 January 2013 for an electronic return.

30 5. HMRC received the appellant’s electronic return on 28 June 2013.

### 6. Appellant’s submissions

35 The appellant has made submissions in a letter to HMRC dated 30 June 2013, in a Request for a review of a decision form SA634 dated 15 August 2013; and in the Notice of Appeal to the Tribunal dated 31 October 2013. These documents all repeat the following submissions:

The appellant genuinely believed he had submitted his return online on the evening of 30 April 2013. It was only after receiving a letter from HMRC that he checked and realised it was only 95% complete. He submits it was a genuine mistake and an honest error and that it was his intention to submit the return that night as he had spent all  
40 evening completing it and did not want to incur any more penalties. He submits that

this honest and genuine mistake should be considered as providing him a reasonable excuse for submitting the return after 30 April 2013.

5 He submits that it took HMRC two months to notify him that he had not submitted his tax return which he considers too long. He considers that two weeks would be reasonable period particularly as during the two months daily penalties of £10 were accruing giving him a penalty of almost £600

**HMRC's submissions**

10 7. 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 2011-2012 tax return was filed by the legislative date.

15 8. HMRC say that when a return is completed successfully online a customer (which the Tribunal takes to mean a taxpayer) receives an on-screen message giving confirmation that the submission process is 100% complete and that the transmission of the return was successful should be received. A separate e-mail; confirming that HMRC has safely received the return should also be received.

9. HMRC say they have no way of knowing that a partly completed return is sat on the customer's account.

10. HMRC point out that the return was due by 31 January 2013. There is no requirement for them to issue reminders.

20 11. HMRC say "We all make mistakes. This was not a blameworthy one but the Act does not provide shelter for mistakes only for reasonable excuses. HMRC cannot say that this confusion was a reasonable excuse."

25 The Tribunal is aware that the wording of this submission is HMRC's adaptation of the wording used by Judge Hellier in the case of Garnmoss Ltd trading as Parham Builders which is set out more fully below.

30 12. In respect of reasonable excuse HMRC say Paragraph 23 of Schedule 55 of the Finance Act 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 reasonable delay after the excuse has ended.

The law specifies two situations that are not reasonable excuse:

(a) An insufficiency of funds, unless attributable to events outside the appellant's control.

35 (b) Reliance on another person to do anything, unless the person took reasonable care to avoid the failure.

There is no statutory definition of "reasonable excuse". Whether or not a person has 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.

5 HMRC’s view is that 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 decision depends on 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  
10 determine whether the conduct of the taxpayer can be regarded as conforming to that standard.

13. In respect of the level of the penalties HMRC say the penalties are not disproportionate. They say that in order for a national measure to be considered disproportionate it must be “not merely harsh but plainly unfair.” They refer to the  
15 decision in *International Transport Roth GmbH v SSHD*.

14. HMRC has 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 say the special circumstances must  
20 apply to the particular individual and not be general circumstances that apply to many taxpayers (*David Collis v HMRC*). HMRC consider that there are no special circumstances which would allow them to reduce the penalty.

#### 15. Discussion

Relevant statutory provisions are included as an Appendix to this decision.  
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16. In respect of the appellant’s letter of 30 June 2013 it is abundantly clear that the appellant tried to submit his return online on 30 April 2013. The Tribunal notes that it is thereby accepted that the return was late in that it was made after 31 January 2013 and that a £100 late filing penalty was due. This explains why that penalty was not  
30 included in the Notice of Appeal.

17. I therefore conclude that the tax return for the 2011-2012 tax year which should have been submitted electronically by 31 January 2013 was submitted late on or around 28 June 2013 and that a late filing penalty of £100 is due. Subject to considerations of “reasonable excuse” and “special circumstances” set out below, the  
35 subsequent daily penalties of £590 imposed by HMRC are due and have been calculated correctly.

In the case of *Garnmoss Ltd trading as Parham Builders* [2012] UKFTT 315 (TC) the Tribunal observed at paragraph 12

40 “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.”

18. In this case the Tribunal finds that the appellant input the figures for the appellant's 2011/2012 tax return on-line on 30 April 2013 but unfortunately made the simple mistake of failing to complete and finally submit them. It is that simple omission that led the appellant to believe that he had submitted a return online for 5 2011-2012 when in fact he had not. It was a most unfortunate slip but one which does not provide a reasonable excuse for the appellant's failure to submit his return on-time. The Tribunal considers that what happened in this case was a simple mistake. It was not something exceptional. Therefore the Tribunal is unable to find that there was a reasonable excuse for the failure to submit the return".

10 19. The appellant has suggested that the penalties charged are disproportionate. Following *HMRC v Anthony Bosher* [2013] UKUT 579 (TCC) I do not consider I have power to consider the proportionality of fixed penalties such as those charged in this appeal.

20. **Conclusion**

15 On 6 April 2012 a self-assessment tax return for the year ending 5 April 2012 was sent to the appellant. The filing date for the return was 31 October 2012 for a non-electronic return or 31 January 2013 for an electronic return. HMRC did not receive the completed appellant's electronic return until 28 June 2013.

20 21. The appellant accepts that he failed to submit his self-assessment return for the period 2011-2012 by the due date for returns submitted electronically of 31 January 2013 and has not appealed the late filing penalty of £100. In respect of the daily penalties for the further delay in submission the appellant has not established that he had a reasonable excuse for that further delay. HMRC has decided there are no special circumstances that would allow them to reduce the penalty and the Tribunal does not 25 consider that their decision is flawed. Therefore the appeal against the daily penalties totalling £590 is dismissed.

## **Application for permission to appeal**

This document contains a summary of the findings of fact and reasons for the decision. A party wishing to appeal against this decision must apply within 28 days 30 of the date of release of this decision to the Tribunal for full written findings and reasons. When these have been prepared, the Tribunal will send them to the parties and may publish them on its website and either party will have 56 days in which to appeal. 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 35 notice.

**PETER R. SHEPPARD  
TRIBUNAL JUDGE**

40 **RELEASE DATE: 05 MAY 2017**

## 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:

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(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)—

- 20 (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).

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

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25 (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)—

- 30 (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  
35 (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.

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

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(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—

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(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.

(3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to—

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(a) staying a penalty, and

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

5. 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.