



TC05995

Appeal number: TC/2016/05038

Income tax - Schedules 55 and 56 Finance Act 2009 - fixed and daily penalties for late filing of self-assessment returns - penalties for late payment of tax - insufficiency of funds caused by recession - ongoing breaches over four years - whether reasonable excuse - no - appeal dismissed

FIRST-TIER TRIBUNAL

TAX

EAMON PETER MCMANUS

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE MICHAEL CONNELL
MEMBER JOHN WILSON**

**Sitting in public at Alexandra House, The Parsonage, Manchester on 12 May
2017**

**The Appellant in person
Mr Tony O'Grady, Officer of HMRC, for the Respondents**

DECISION

5 1. This is an appeal by Eamon Peter McManus (“the Appellant”) against a decision by the Respondents (“HMRC”) to impose late filing penalties under Schedule 55 of the Finance Act 2009 (“FA”) and late payment penalties under Schedule 56 FA for the tax years ending 5 April 2011, 2012, 2013 and 2014.

2. The total value of all of the penalties imposed in respect of the failures is £6,777 representing £4,920 late filing penalties and £1,857 representing the late payment penalties.

10 3. The penalties for late filing of a return can be summarised as follows:

- 15 i. A penalty of £100 is imposed under Paragraph 3 of Schedule 55 FA for the late filing of the Individual Tax Return.
- ii. If after a period of 3 months beginning with the penalty date the return remains outstanding, daily penalties up to a total of £900 are imposed under Paragraph 4 of Schedule 55 FA.
- iii. If after a period of 6 months beginning with the penalty date the return remains outstanding, a penalty of £300 is imposed under Paragraph 5 of Schedule 55 FA.
- 20 iv. If after a period of 12 months beginning with the penalty date the return remains outstanding, a penalty £300 is imposed under Paragraph 6 of Schedule 55 FA.

The above penalty regime for the late filing of income tax self-assessment returns was introduced in FA with effect from 6 April 2011 in respect of returns for 2010-11 and later years.

25 4. The penalties for late payment of tax are as follows:

- i. 30 days - 5% of the tax payable
- ii. 6 months – 5% of the tax payable (additional)
- iii. 12 months - 5% of the tax payable (additional)

30 The above penalty regime for the late payment of income tax was introduced by FA with effect from 6 April 2011 in relation to 2010-11 and later tax years.

5. Penalties were imposed, as set out in the table below.

| Date | Year | Description | Amount |
|------------------|--------------|--|---------------|
| 14 February 2016 | 2010 to 2011 | Late Filing Penalty under Schedule 55 FA | £100 |
| 10 April 2012 | 2010 to 2011 | 30 Days Late Payment Penalty under Schedule 56 FA 2009 | £85 |
| 4 September 2012 | 2010 to 2011 | 6 Months Late Payment Penalty under Schedule 56 FA 2009 | £85 |
| 19 February 2013 | 2010 to 2011 | 12 Months Late Payment Penalty under Schedule 56 FA 2009 | £85 |
| 12 February 2013 | 2011 to 2012 | Late Filing Penalty under Schedule 55 FA | £100 |
| 14 August 2013 | 2011 to 2012 | Daily Penalty under Schedule 55 FA 2009 | £900 |
| 14 August 2013 | 2011 to 2012 | 6 Month Late Filing Penalty under Schedule 55 FA 2009 | £300 |
| 25 February 2014 | 2011 to 2012 | 12 Month Late Filing Penalty for under Schedule 55 FA 2009 | £300 |
| 5 April 2016 | 2011 to 2012 | 30 Days Late Payment Penalty under Schedule 56 FA 2009 | £147 |
| 5 April 2016 | 2011 to 2012 | 6 Months Late Payment Penalty under Schedule 56 FA 2009 | £147 |
| 5 April 2016 | 2011 to 2012 | 12 months Late Payment Penalty under Schedule 56 FA 2009 | £147 |
| 18 February 2014 | 2012 to 2013 | Late Filing Penalty under Schedule 55 FA | £100 |
| 18 August 2014 | 2012 to 2013 | Daily Penalty under Schedule 55 FA 2009 | £900 |
| 18 August 2014 | 2012 to 2013 | 6 Months Late Filing Penalty under Schedule 55 FA 2009 | £300 |
| 5 April 2016 | 2012 to 2013 | 6 Months Late Filing Penalty under Schedule 55 FA 2009 | £10 |
| 24 February 2015 | 2012 to 2013 | 12 Months Late Filing Penalty under Schedule 55 FA 2009 | £300 |
| 5 April 2016 | 2012 to 2013 | 12 Months Late Filing Penalty under Schedule 55 FA 2009 | £10 |
| 5 April 2016 | 2012 to 2013 | 30 days Late Payment Penalty under Schedule 56 of FA 2009 | £310 |
| 5 April 2016 | 2012 to 2013 | 6 Months Late Payment Penalty under Schedule 56 of FA 2009 | £310 |

| | | | |
|------------------|--------------|---|------|
| 5 April 2016 | 2012 to 2013 | 12 Months Late Payment Penalty under Schedule 56 of FA 2009 | £310 |
| 18 February 2015 | 2013 to 2014 | Late Filing Penalty under Schedule 55 FA | £100 |
| 14 August 2015 | 2013 to 2014 | Daily Penalty for under Schedule 55 FA 2009 | £900 |
| 14 August 2015 | 2013 to 2014 | 6 Months Late Filing Penalties under Schedule 55 FA 2009 | £300 |
| 23 February 2016 | 2013 to 2014 | 12 Months Late Filing Penalty under Schedule 55 FA 2009 | £300 |
| 5 April 2016 | 2013 to 2014 | 30 days Late Payment Penalty under Schedule 56 FA 2009 | £77 |
| 5 April 2016 | 2013 to 2014 | 6 Months Late Payment Penalty under Schedule 56 FA 2009 | £77 |
| 5 April 2016 | 2013 to 2014 | 12 Months Late Payment Penalty under Schedule 56 FA 2009 | £77 |

Points at issue

6. Whether Mr. McManus had a “reasonable excuse” for the late filing of each of the tax returns the tax years ending 5 April 2011, 2012, 2013 and 2014.

5 7. Whether Mr. McManus had a “reasonable excuse” for not paying his tax liability in full and on time for each of the tax years ending 5 April 2011, 2012, 2013 and 2014

8. Whether there are any “special circumstances”, by virtue of which the penalties ought to be reduced.

10 Legislation

9. The main legislation is detailed below

Section 8 Taxes Management Act (TMA) 1970 - Return of income

Section 59B TMA 1970 - Payment of income tax which determines the due date for payment of tax liability.

15 Paragraph 3 of Schedule 55 to the Finance Act (FA) 2009 - Late filing penalty

Paragraph 4 of Schedule 55 to the FA 2009 - Daily penalties

Paragraph 5 and 5(a) of Schedule 55 to the FA 2009 - 6 Months late filing penalty

Paragraph 6 and 6(a) of Schedule 55 to the FA 2009 - 12 Months late filing penalty

Paragraph 3(2) of Schedule 56 the FA 2009 - 30 Days late payment penalty

Paragraph 3(3) of Schedule 56 FA the 2009 - 6 Months late payment penalty

5 Paragraph 4 of Schedule 56 to the FA 2009 - 12 Months late payment penalty

Background

10. The Appellant has been in self-employment since the 2004 to 2005 tax year and has filed every return on time up to an including the 2009 to 2010 tax year.

10 11. As in the previous year, a notice to file a tax return for the tax year ending 5 April 2011 was issued to the Appellant on 6 April 2011. The filing date for a non-electronic return was 31 October 2011 or 31 January 2012 for an electronic return. The Appellant submitted an online return whereby the liability was automatically calculated by HMRC's computer system.

15 12. The return was received by HMRC on 31 March 2012, which was after the latest due date of 31 January 2012. A penalty was therefore charged for the late submission of the return under Schedule 55 FA.

13. The Appellant's tax liability for the tax year 2010 to 2011 was £1,702.28. The due date for this to have been paid to HMRC was £851.14 by 31 January 2011 and the remaining £851.14 by 31 July 2011.

20 14. The tax was not paid by the due date and therefore penalties have been applied under Schedule 56 FA. As the tax was not paid 30 days after the due date a 30 day late payment penalty was applied on 10 April 2012, and as the tax remained outstanding a 6 month late payment penalty was applied on 4 September 2012, and a 12 month late payment penalty was imposed on 19
25 February 2013.

15. The rate at which the penalty was charged, of £85, represents 5% of the tax remaining unpaid at each due date.

30 16. A tax return for the tax year ending 5 April 2012 was issued to the Appellant on 6 April 2012. The filing date for a non-electronic return was 31 October 2012 or 31 January 2013 for an electronic return.

35 17. As the return was not received by HMRC at the latest due date of 31 January 2013, a penalty was charged for the late submission of the return on 12 February 2013. Daily penalties were charged on 14 August 2013 for the continued failure to submit the return and at the 6 and 12 month anniversary of the due date penalties were applied, on 14 August 2013 and 25 February 2014 respectively.

5 18. The Appellant submitted a paper return to HMRC on 22 March 2016. The tax liability for the tax year 2011 to 2012 was £2,945.50. The due date for this to have been paid to HMRC was £851.14 by 31 January 2012, £851.14 by 31 July 2012 and the balancing payment of £1,243.22 was due to be paid by 31 January 2013.

19. The tax was not paid by the due date and therefore late payment penalties were applied.

10 20. As the tax was not paid 30 days after the due date a 30 day late payment penalty was applied on 5 April 2016, and as the tax remained outstanding 6 and 12 months after the due date a 6 month late payment penalty was applied on 5 April 2016 and a 12 month late payment penalty was imposed on 5 April 2016.

21. The rate at which the late payment penalties were charged at £147 represents 5% of the tax remaining unpaid at each due date.

15 22. A tax return for the tax year ending 5 April 2013 was issued to the Appellant on 6 April 2013. The filing date for a non-electronic return was 31 October 2013 or 31 January 2014 for an electronic return.

20 23. As the return was not received by HMRC at the latest due date of 31 January 2014, a penalty was charged for the late submission of the return on 18 February 2014. Daily penalties were charged on 18 August 2014 for the continued failure to submit the return and at the 6 and 12 month anniversary of the due date for the submission of the return penalties were applied on 18 August 2014 and 5 April 2016 and 24 February 2015 and 5 April 2016 respectively.

25 24. The Appellant submitted a paper return to HMRC on 22 March 2016. The tax liability for the tax year 2011 to 2012 was £6,219.69. The due date for this to have been paid to HMRC was £1,472.75 by 31 January 2013, £1,472.75 by 31 July 2013 and the balancing payment of £3,274.19 was due to be paid by 31 January 2014.

25. The tax was not paid by the due date and therefore late payment penalties were applied.

30 26. As the tax was not paid 30 days after the due date a 30 day late payment penalty was applied on 5 April 2016, and as the tax remained outstanding 6 and 12 months after the due date a 6 month late payment penalty was applied on 5 April 2016 and a 12 month late payment penalty was imposed on 5 April 2016.

35 27. The rate at which the late payment penalties were charged of £310 represents 5% of the tax remaining unpaid at each due date.

28. A tax return for the tax year ending 5 April 2014 was issued to the Appellant on 6 April 2014. The filing date for a non-electronic return was 31 October 2014 or 31 January 2015 for an electronic return.

29. As the return was not received by HMRC at the latest due date of 31 January 2015, a penalty was charged for the late submission of the return on 18 February 2015. Daily penalties were charged on 14 August 2015 for the continued failure to submit the return and at the 6 and 12 month anniversary of the due date penalties were applied, on 14 August 2015 and 23 February 2015 respectively.

30. The Appellant submitted a paper return to HMRC on 22 March 2016. The tax liability for the tax year 2013 to 2014 was £1,553.78. The due date for this to have been paid to HMRC was £776.89 by 31 January 2014 and £776.89 by 31 July 2014.

31. The tax was not paid by the due date and therefore late payment penalties were applied.

32. As the tax was not paid 30 days after the due date a 30 day late payment penalty was applied on 5 April 2016, and as the tax remained outstanding 6 and 12 months after the due date a 6 month late payment penalty was applied on 5 April 2016 and a 12 month late payment penalty was imposed on 5 April 2016.

33. The rate at which the late payment penalties were charged of £77 represents 5% of the tax remaining unpaid at each due date

34. The Appellant wrote to HMRC on 26 April 2016, this letter was taken as an appeal against the late filing and late payment penalties for each of the tax years 2010-11, 2011-12, 2012-13 and 2013-14. The Appellant explained that he did not agree with the amount of the penalties and he did not have the means to pay the outstanding amount. He also said that he felt HMRC should have contacted him sooner.

35. HMRC rejected the Appellant's appeal against the late filing and late payment penalties on 18 May 2016 on the grounds he did not have a reasonable excuse for the late submission of the returns or for the late payment of tax.

36. The Appellant requested an HMRC Independent Review of the decision on 16 June 2016.

37. On 4 August 2016, HMRC wrote to the Appellant with the conclusion of the Review; this letter explained the due date for submission of returns and payment of tax was set in legislation and penalties would be charged unless there was a reasonable excuse for both failures.

38. The letter addressed the time it took for an HMRC inspector to talk to the Appellant, the pressure he was under and the insufficiency of funds. It did not accept that waiting for an Inspector to talk to him was a reasonable excuse for the failures. Further, the tax the tax liability was based on the entries he had put on his returns. It did not accept that shortage of funds was a reasonable excuse.

39. The letter also explained that, having considered the reasons given for the late submission of the returns and late payment, HMRC had considered if the

penalties could be reduced because of special circumstances and had concluded they could not.

40. The Tribunal received the Appellant's appeal on 22 September 2016.

Appellant's grounds of appeal.

5 41. In his Notice of appeal to the Tribunal the Appellant's initial grounds of appeal were that:

- i. He has never earned anything near the estimated sum on his 2010-11 tax return and challenges the amount.
- 10 ii. Due to a massive downturn in work following the financial crash of 2008, his business collapsed and he was under a lot of pressure to find work to cover his normal living expenses Various companies folded during this time leaving him with a negative outcome. He did not have the funds to pay the tax due. The situation continued throughout the tax years 2010-11, 2011-12, 2012-13 and 2013-14.
- 15 iii. He lost his house last year due to his business failing. He has accumulated large debts and now rents a home.
- 20 iv. It took HMRC five years to send an Inspector to speak to him about his tax affairs for the tax year 2010-11. Had an officer from HMRC visited him earlier, instead of sending letter after letter, which are mostly still unopened, then this could have been settled when the figures were more realistic and manageable.
- v. He asks that the penalties be waived to allow him to deal with the tax liability. He has no assets to speak of and is unable to obtain credit. If his proposal is not allowed he will need to declare himself bankrupt.

25 42. At the hearing, the Appellant explained that he had suffered an extremely difficult time financially from the onset of the recession in 2008 onwards. Prior to that he had worked with his brother as joint director and shareholder of a limited company undertaking building, electrical and plumbing work. They had operated a prosperous business. They had an accountant to deal with their returns.

30 43. When the company folded the Appellant's brother got his old job back but the Appellant had worked for Manchester City Council and that job was no longer there. He therefore had to carry on as a sole trader but found it extremely difficult. Work was hard to come by and many contractors and customers defaulted. He was left owing money to suppliers for materials, and eventually had
35 to sell his house to clear his debts.

44. The Appellant agreed in retrospect that the tax claimed by HMRC was correct. He confirmed that written off debts had been taken into account in arriving at his net income. He also agreed that he had received all the notices to

file tax returns. He brought with him to the hearing more than thirty unopened letters from HMRC, saying that he had just buried his head in the sand. He had finally filed the outstanding tax returns following a visit from an HMRC inspector in March 2016

5 45. He was no longer self-employed and was now employed and taxed under PAYE.

HMRC's Case

10 46. It is accepted that the onus is on HMRC to show default. Once HMRC have discharged that burden it is for the Appellant to provide a reasonable excuse for his failure to submit the returns to make payment of the tax due by the due dates.

47. The Appellant is not disputing either that the returns were submitted late to HMRC for each year or that payment of the tax due was late.

48. Late filing penalties and late payment penalties for all the years in question are due in accordance with Schedules 55 and 56 FA.

15 49. Where a return is filed after the relevant deadline, a penalty is charged. The later a return is received, the more penalties are charged. The same applies with regard to the payment of tax due. This information was clearly shown on the notices to file issued to the Appellant in each year.

20 50. This appeal is not concerned with specialist or obscure areas of tax law. It is concerned with the ordinary every day responsibilities of the Appellant to ensure his tax returns were filed by the legislative date and payment made on time.

25 51. Self-assessment places a greater degree of responsibility on customers for their own tax affairs. This includes ensuring that HMRC receive payment of the correct amount of tax and National Insurance at the correct time. The tax guidance provided by HMRC and HMRC's website give plenty of warning about filing and payment deadlines. It is the customer's responsibility to make sure they meet the deadlines.

30 52. The Appellant has been making Self-Assessment tax returns for many years. Therefore, HMRC consider him to be experienced with the Self-Assessment system including the due dates for paper and online returns.

53. HMRC issued a notice to file a tax return for 2010-11 on 6 April 2011, which advised that the deadline for filing online was 31 January 2012. Therefore the Appellant had 9 months to complete and submit the tax return.

35 54. HMRC issued the Appellant a paper tax return for the 2011-12 tax year on 6 April 2012. The return advised that the due date for filing a paper return was 31 October 2012. Therefore he had 6 months to complete and file the tax return.

55. HMRC issued the Appellant a paper tax return for the 2012-13 tax year on 6 April 2013. The return advised that the due date for filing the return was 31 October 2013. Therefore he had 6 months to complete and file the return.

5 56. HMRC issued the Appellant a paper tax return for the year 2013-14 tax year on 6 April 2014. The return advised that the due date for filing a paper return was 31 October 2014. Therefore he had 6 months to complete and file the tax return.

10 57. The Appellant disagrees with the estimated taxes for 2010-11. HMRC contend that they have not altered the Appellant's estimated figures in his 2010-11 tax return and so the calculation of tax due is from figures entered into the return by the Appellant himself.

15 58. He states that if HMRC had contacted him earlier, instead of sending letter upon letter (most still unopened), then the matter could have been settled when the figures were more realistic and manageable. HMRC does not agree that waiting for an HMRC Inspector to talk to him regarding his tax affairs provides a reasonable excuse for failing to file the returns on time.

20 59. Pressure of work and shortage of funds are not reasonable excuses for the late filing of tax returns and late payment of tax due. A reasonable excuse is something that stops the taxpayer from meeting a tax obligation on time. It might be due to circumstances outside his control or a combination of events. Once the reasonable excuse has ended, the taxpayer must put things right without any unnecessary delay.

25 60. Where HMRC are satisfied that individual cannot pay a tax liability by the due date, a time to pay arrangement acceptable to HMRC may be agreed within 28 days of the due date depending on the circumstances of the case. HMRC explained in letters to the Appellant that he could contact the self-assessment payment helpline for advice, but he did not do so.

Conclusion

30 61. When a person appeals against a penalty they are required to have a reasonable excuse which existed for the whole period of the default. There is no definition in law of reasonable excuse, which is a matter to be considered in the light of all the circumstances of the particular case.

35 62. In considering whether the Appellant has a reasonable excuse for the default it is necessary to consider his actions from the perspective of a prudent tax-payer exercising reasonable foresight and due diligence and having proper regard for their responsibilities provided by legislation. A reasonable excuse is normally an unexpected or unusual event, either unforeseeable or beyond the person's control, which prevents him or her from complying with an obligation which otherwise would have been complied with.

40 63. The Appellant had been successfully filing tax returns since 2004-05 and would have been aware of the filing and payment deadlines.

5 64. We concur with HMRC's submissions as contained at paragraphs 46 – 60 above and agree that the late filing penalties have been charged in accordance with legislation. The Appellant has not shown a reasonable excuse either for the late filing of his returns or the late payment of tax due for each of the years in question.

65. The appeal is therefore dismissed and the late filing penalties confirmed.

10 66. 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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MICHAEL CONNELL
TRIBUNAL JUDGE

RELEASE DATE: 10 JULY 2017

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