



**TC05807**

**Appeal number: TC/2012/8856**

*INCOME TAX – penalties for late submission of returns*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**WALI MOHAMMED**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE CHARLES HELLIER**

**The Tribunal determined the appeal on 12 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 14 September 2012 (with enclosures), HMRC's Statement of Case with enclosures acknowledged by the Tribunal on 30 January 2013 and MF Accountancy Services letter to the tribunal of 11 January 2013**

## DECISION

5 1. Mr Mohammed appeals against penalties totalling £240 imposed by HMRC under Schedule 55 Finance Act 2009 for a failure to submit his 2010/11 tax return in time.

2. The penalties were:

(1) A £100 late filing penalty under para 3 Sch 55, being a penalty for submitting the return after the due date; and

10 (2) A penalty of £140 under para 4 Sch 55, being £10 for each day the return was late after the date 3 months after it was due; and

3. The Appellant argues:

15 (1) that there were exceptional circumstances beyond the control of Mr Mohammed which prevented him from submitting his return on time: he had been detained by family commitments in Afghanistan; and

(2) that the return disclosed no tax liability for 2010/11 and thus no loss to HMRC arose from the late submission.

20 4. HMRC argue that: Mr Mohammed could and should have appointed someone to look after his tax affairs while he was away, or otherwise dealt timeously with his obligation to make the return on time.

### Discussion

5. The provisions of the legislation are set out accurately in HMRC's Statement of Case. There is no need for me to repeat them here.

25 6. The evidence available to me to decide on the primary facts was limited to that in the documents before me. The Appellant did not make a Reply to HMRC's Statement of Case, so I had nothing before me other than that and the Notice of Appeal and the documents which came with them from which to make any factual findings. That is particularly important because the onus of proving facts to displace the penalty rests on the Appellant.

30 7. I find that the return for 2010/11 was submitted electronically, was due on 31 January 2012 and was not received by HMRC until 14 May 2012. It was thus 3 ½ months late, and thus received 14 days after the date 3 months from the due date.

35 8. The appellant did not dispute the calculation of the penalties and there was nothing in the papers before me to cast any doubt on their computation. I conclude that they were correctly calculated and accordingly that, subject to any particular excusing provision of Sch55 or of the law more generally, the assessment of the penalties was authorised by Sch 55.

9. Sch55 contain only two provisions which could exempt Mr Mohammed from the penalty or reduce it. The first is if there was a reasonable excuse for the delay; the second relies upon there being “special circumstances”.

10. I find that Mr Mohammed’s wife and children live in Afghanistan.

5 11. I find that Mr Mohammed travelled to Afghanistan on 16 November 2011 intending to stay the with his family for four weeks until about 16 December 2011. If he had returned as originally intended he would have been able to arrange the submission of his return on time.

10 12. I find that as a result of some family problems and commitments he remained in Afghanistan until 10 May 2012 and filed his return some three days later.

15 13. The evidence before me does not explain the nature of the family problems and commitments. The evidence is insufficient for me to be able to conclude that those commitments and problems were such as to provide a reasonable excuse for not being able to return or to deal with his tax return. If, for example, Mr Mohammed’s wife and children had been seriously ill over the period from December to May, the concern which he would have experienced as a result could have been sufficient to provide a reasonable excuse for putting all other things from his mind; on the other hand if the commitments related to moving house or going on holiday, I would not be able to conclude that Mr Mohammed had a reasonable excuse.

20 14. In the absence of any detailed evidence I am not able to conclude that the reasons for Mr Mohammed’s continued absence from the UK provided a reasonable excuse for his delay.

15. I therefore conclude that there was no such excuse.

25 16. The same is the case in relation to special circumstances. There was insufficient evidence before me to conclude that the reasons for Mr Mohammed’s extended absence were special circumstances. I conclude that there were none.

17. Thus I consider that the provisions of Sch 55 permitted the assessment of the penalties.

30 18. These finding mean that the requirements of the legislation for the imposition of the penalties are satisfied. The penalties were thus correctly imposed under the terms of the legislation.

35 19. The effect of the Human Rights Act 1998 and the Convention can be such that the deprivation of a person’s property by charging a penalty may be disapplied. But such disapplication is possible only if the penalty, in the light of the aim it seeks to achieve, is disproportionate. The authorities show that this means not merely harsh but plainly unfair.

20. Mr Mohammed’s accountants raise the fact that there was no tax to pay: I take that as an argument that the penalties charged were disproportionate.. But the

penalties have the legitimate aim of encouraging the submission of tax returns on time. I do not consider that the penalties assessed are disproportionate as a means of encouraging the prompt submission of returns: they are somewhat harsh, but not in the circumstances plainly unfair.

5 **Conclusion**

21. The penalties are affirmed. The appeal is dismissed.

**Rights of Appeal**

22. 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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**CHARLES HELLIER  
TRIBUNAL JUDGE**

**RELEASE DATE: 20 APRIL 2017**

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