



TC01814

Appeal number: TC/2011/06904

Income tax return—Penalty for late return (Taxes Management Act 1970 s.93(2))—Reasonable excuse—Appeal dismissed

FIRST-TIER TRIBUNAL

TAX

MR FREDERICK McLARNON

Appellant

- and -

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

Respondents

TRIBUNAL: Dr Christopher Staker (Tribunal Judge)

The Tribunal determined the appeal on 26 January 2012 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 undated Notice of Appeal, HMRC's Statement of Case dated 20 October 2011, and other papers in the case.

DECISION

1. The Appellant appeals against a penalty of £100 imposed in respect of the late filing of his income tax return for the tax year 2009/10.

5 2. Section 93(1) and (2) of the Taxes Management Act 1970 (the “TMA”) provides for a £100 penalty for the late filing of a tax return. However, section 93(8) of the TMA provides that on appeal to the Tribunal against such a penalty, the Tribunal may:

10 (a) if it appears that, throughout the period of default, the taxpayer had a reasonable excuse for not delivering the return, set the determination aside; or

(b) if it does not so appear, confirm the determination.

3. Section 118(2) of the TMA additionally provides as follows:

15 For the purposes of this Act, a person shall be deemed not to have failed to do anything required to be done within a limited time if he did it within such further time, if any, as the Board or the tribunal or officer concerned may have allowed; and where a person had a reasonable excuse for not doing anything required to be done he shall be deemed not to have failed to do it unless the
20 excuse ceased and, after the excuse ceased, he shall be deemed not to have failed to do it if he did it without unreasonable delay after the excuse had ceased.

4. The Appellant does not appear to dispute that the tax return was filed late, and does not appear to suggest that he would not be liable to the penalty if he had no
25 reasonable excuse for the late filing.

5. The Appellant’s notice of appeal is quite unclear as to what the Appellant contends are the facts of this case.

6. The material facts as set out in the HMRC statement of case are as follows. The due date for filing the return was 31 October 2010 for a paper return, or 31 January
30 2011 if filed online. As at the date of filing the HMRC statement of case (20 October 2011), the Appellant had still not filed the return. The Appellant has been making self assessment returns as a self-employed groundworker since 2001/02. His 2008/09 return did not show a cessation for that source, so a 2009/10 notice to file was issued on 6 April 2010. Where a person is sent a notice to file they are required to deliver a
35 return by the due date in accordance with s.8 of the TMA. In the absence of the return, HMRC is unable to establish the amount of tax which may have been overpaid or underpaid in that year.

7. The Appellant had an opportunity to file a reply to the HMRC statement of case in which he could have contradicted any of the above facts stated by HMRC, but did
40 not avail himself of that opportunity.

8. The grounds as stated in the Appellant's notice of appeal are difficult to discern. There are references to him being on sick benefit, and a statement that "I sent paper work 2009 2010 must have got lost in post". However, a letter from his accountants dated 23 May 2011 seeks to appeal against the penalty on health grounds, stating that the Appellant "is quite sickly" and "has been in poor health for some time". A letter dated 10 May 2010 from a specialist in rheumatology, apparently to the Appellant's GP, suggests that he has "likely gout", and requests that medication be prescribed. That letter states that the Appellant had swelling of his hands and high inflammatory markers, that the specialist felt that he had inflammatory arthritis, that he could not make a fist, and that the specialist would see him "in a few months".

9. HMRC submits that illness will only be a reasonable excuse where an illness is so serious that it prevents a taxpayer from filing a return immediately before the deadline and from that date until the return is received. HMRC further submits that where illness involves a lengthy convalescence a taxpayer should normally make arrangements for completing a tax return on time. HMRC notes that the Appellant has since the deadline instituted these appeal proceedings yet still has not filed his tax return.

10. In any appeal to the Tribunal against a late filing penalty, in which an appellant claims to have a reasonable excuse for the late filing, the burden of proof is on the appellant to prove, on a balance of probability, the existence of circumstances amounting to a reasonable excuse.

11. The Tribunal is struck by the fact that, at the date of filing of the HMRC statement of case on 20 October 2011, the return had still not been filed. The Appellant managed to institute appeal proceedings against the penalty notice. The Appellant had filed tax returns in numerous years prior to 2009/2010. There is nothing to suggest that there was anything other than the cited health reasons why filing a return should have presented any particular difficulty in 2009/10. The Appellant had accountants acting for him in support of an appeal against the penalty notice. It is quite unclear why the accountants could not also have been instructed to prepare and file the return itself. While there is evidence from a specialist doctor, what is said in the letter falls short of establishing that any health issues would have made it unreasonable, throughout the period of default, for the Appellant to have been expected to have met his obligation to file a tax return. The letter from the doctor does not support the claim made in the accountant's letter that the Appellant was not "in the frame of mind or position to be able to complete the tax return".

12. The Tribunal is sympathetic to the health problems that the Appellant has been experiencing. However, health issues cannot relieve a taxpayer of the obligation to file a tax return for a period of many months unless those health issues genuinely made it unreasonable throughout that period for the Appellant to be expected to meet that obligation. Unfortunately, the evidence provided falls short of establishing this. With some regret, the Tribunal finds that it must dismiss this appeal.

13. The appeal is dismissed.

14. 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.

10

DR CHRISTOPHER STAKER

TRIBUNAL JUDGE
RELEASE DATE: 8 February 2012