



TC01927

Appeal number: TC/2011/06760

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

**FIRST-TIER TRIBUNAL
TAX**

MR JOHN BENTLEY

Appellant

- and -

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

Respondents

TRIBUNAL: Dr Christopher Staker (Tribunal Judge)

The Tribunal determined the appeal on 24 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 Notice of Appeal dated 27 August 2011, HMRC's Statement of Case dated 14 October 2011, and other papers in the case.

DECISION

1. The Appellant appeals against a penalty of £93.49 imposed in respect of the late filing of his income tax return for the tax year 2009/10. The penalty for late filing of a return is normally £100, but the penalty in this case has been capped at the amount of actual tax liability for the year.

2. The Appellant apparently does not dispute that the tax return was filed late, and does not suggest that he would not be liable to the penalty if he had no reasonable excuse for the late filing. It appears to be common ground that the deadline for filing was 31 January 2011, and that the return was filed on 3 February 2011, such that it was 3 days late.

3. The Appellant's case is as follows. He has paid his taxes on time all his working life. He is an old age pensioner living purely from his pension. His tax returns have always been completed by his accountant and this was the first year that he had to handle them himself due to rising living costs and decline in his financial status. He did not for one minute think that there would be a problem in attending the HMRC office on 31 January 2011 in order to complete the return. He chose to attend in person, to make sure that it was completed correctly with the help of the staff, thus eliminating any errors. He cannot afford the fine.

4. The Appellant therefore in substance pins his case solely on the contention that he has a reasonable excuse for the late filing.

5. 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:

- (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.

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

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 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.

7. 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 the circumstances amounting to a reasonable excuse.

5 8. The HMRC statement of case states by way of response to the Appellant's notice of appeal amongst other matters as follows. The Appellant's excuse appears to be that he could not complete his tax return by 31 January 2011 because he was unable to make an appointment at the local HMRC enquiry centre on 31 January 2011 and could only be accommodated on the next available date of 3 February 2011. However, a prudent taxpayer would have appreciated that such appointments, especially on the filing deadline of 31 January would be pre-booked and therefore
10 unobtainable at short notice on one of HMRC's busiest days. The Appellant should have acted sooner and made the necessary arrangements at an earlier date.

9. As stated above, the burden is on the appellant to prove, on a balance of probability, the existence of circumstances amounting to a reasonable excuse. Although it is not clear, it appears implicit from the HMRC submissions that the local
15 HMRC enquiry centre does offer a service by which taxpayers can attend in person and file their tax return at the office with the assistance of HMRC staff. Although HMRC contends that a prudent taxpayer would have appreciated that an appointment on 31 January would unobtainable at short notice, there is no evidence about what publicity material is issued by HMRC in relation to this service, or what advice is
20 given about how far in advance appointments need to be booked. It is unclear when the Appellant sought to make the appointment. However, it does not appear to be in dispute that he did, prior to the deadline, seek to make an appointment, and that he did take the first available appointment which was on 3 February 2011, and that he did file the return on that date. The Tribunal is satisfied on the evidence that he would
25 have accepted an appointment and have filed the return by 31 January 2011 if an appointment had been available on or before that date. The return was thus 3 days late, due not to his own conduct but due to HMRC's unavailability.

10. It may well be that the Appellant would be precluded from invoking a reasonable excuse if he sought to make an appointment at much shorter notice than HMRC
30 publicity material indicated was the requisite notice period. However, there is no evidence of when the request for an appointment was made, or of what would have been an appropriate notice period. On the very limited evidence before the Tribunal in this case, it is unable to conclude that the Appellant acted unreasonably in not trying to make an appointment earlier, or in waiting for such an appointment before
35 filing the return. On the limited evidence provided, the Tribunal is satisfied that there is a reasonable excuse for the late filing.

11. It follows that this appeal is allowed.

12. 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
40 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.

5

DR CHRISTOPHER STAKER

TRIBUNAL JUDGE

RELEASE DATE: 02 April 2012

10