



TC02506

Appeal number: TC/2012/07949

INCOME TAX - whether name of appellant incorrect on Notice to File self-assessment tax return – if so, whether this invalidates the Notice – TMA s 114 considered - self-assessment return filed late - whether reasonable excuse – appeal dismissed and penalty confirmed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

HAZEL BRENDA McGUINNESS

Appellant

- and -

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

TRIBUNAL: ANNE REDSTON (Presiding Member)

The Tribunal determined the appeal on 3 January 2013 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 Appellant’s letter of appeal dated 6 August 2012, HMRC’s Statement of Case submitted on 29 October 2012 (with enclosures) and the Appellant’s Reply received on 28 November 2012.

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DECISION

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1. This was Mrs McGuinness's appeal against a penalty of £100 for late submission of her 2010-11 self-assessment ("SA") tax return.

The issues in the case

10 2. The first issue was whether Mrs McGuinness should be allowed to make a late appeal.

3. If the answer to that question was yes, then the second issue was whether the Notice to File her SA return was invalid, because it had been issued in the name of Mrs B McGuinness when her name is Mrs Hazel Brenda McGuinness.

15 4. If the Notice was valid, the third issue is whether she had a reasonable excuse for its late submission.

The evidence

5. The Tribunal was provided with the correspondence between the parties, and between the parties and the Tribunal.

6. HMRC also provided copies of a number of documents, including:

20 (1) the SA Notes relating to Mrs McGuinness's SA return;

(2) the "SA Return Summary" in respect of Mrs McGuinness, for 1999-2000, 2009-10 and 2010-11, showing the name under which the returns were issued, the date of issue and the date the completed return was received. For 2010-11 and 2009-10 the SA Return Summary also give the Unique Taxpayer Reference ("UTR");

25 (3) a page headed "Individual Designatory details" in the name of Mrs B McGuinness, dated 19 October 2012 and showing Mrs McGuinness's date of birth, UTR number, NI number and other information;

30 (4) HMRC's PAYE record under the name "H B McGuinness", showing Mrs McGuinness's UTR and NI number;

(5) an extract from HMRC's central computer record under the name "H B McGuinness" which includes her UTR and NI number as well as other information.

The facts

35 7. On the basis of the evidence provided, the Tribunal found the following facts.

8. Mrs McGuinness's PAYE record is held under the name of H B McGuinness.

9. On 11 January 2000 an SA record was created under the name Mrs B McGuinness. It shows Mrs McGuinness's correct national insurance number and her date of birth.
10. An SA tax return under the name Mrs B McGuinness was issued for 1999-2000.
5 On 31 January 2001 Mrs McGuinness filed the return.
11. Mrs McGuinness's SA account was then dormant for a number of years as there was no requirement for her to complete SA returns.
12. On 9 July 2010 Mrs McGuinness called HMRC to inform them that she had commenced self-employment on 1 March 2010. The HMRC adviser amended Mrs
10 McGuinness's PAYE code for 2010-11, re-opened her SA account, gave her the telephone number of the HMRC helpline for the newly self-employed and issued a letter containing her UTR.
13. The UTR shown on the SA record is the same as that on the PAYE record and HMRC's central computer record. All three documents have Mrs McGuinness's date
15 of birth and address.
14. On the same day, 9 July 2010, an SA tax return was issued in the name of Mrs B McGuinness.
15. On 9 August 2010 Mrs McGuinness ceased self-employment. Her period of self-employment thus covered two tax years, 2009-10 and 2010-11
- 20 16. On 17 January 2011 Mrs McGuinness called HMRC. She told them she had made a loss during 2009-10 and that there would be no tax liability for that year. She again asked for her UTR (which was reissued to her) so she could complete her tax return which she said she would download from the internet.
17. On 31 January 2011 Mrs McGuinness filed her return online. The SA return
25 summary for 2009-10 is headed "Mrs B McGuinness".
18. Mrs McGuinness submitted accounts to HMRC before 5 April 2011. These showed that she had ceased her self-employment and suffered a loss.
19. On 6 April 2011 HMRC issued a 2010-11 Notice to File to Mrs B McGuinness.
20. At or around 14 February 2012, as the SA return had not been received by the
30 due date, HMRC issued a penalty to Mrs B McGuinness of £100.
21. Mrs McGuinness appealed the penalty on 27 February 2012 on the basis that "self-employment ceased – you were informed and a loss made." She made no reference to the name on either the Notice to File or the penalty notice.
22. On 2 April 2012 Mrs McGuinness filed the 2010-11 return online.
- 35 23. On 14 May 2012 HMRC rejected her appeal against the penalty.

24. On 7 June 2012 she asked for a review of HMRC's decision because:
- (1) HMRC had been provided with final accounts prior to 5 April 2011 and thus she was "under the impression she had fulfilled her obligation"; and
 - (2) the return had been issued under the wrong name.

5 25. On 11 July 2012 HMRC's review officer upheld the decision not to allow the appeal.

26. By letter dated 6 August 2012 Mrs McGuinness appealed to the Tribunal. The letter of appeal was received on 16 August 2012, which is outside the appeal time limit of 30 days.

10 **The late appeal**

27. When considering whether to give permission for a late appeal, The Tribunal must make its decision in the context of its overriding objective: to deal with cases fairly and justly.

15 28. Guidance on when and whether to allow a late appeal was given in *Advocate General for Scotland v General Commissioners for Aberdeen City* [2006] STC 1218 and *R (oao Cook) v General Commissioners of Income Tax* [2009] STC 1212.

20 29. I derive from those cases the principles that the Tribunal must conduct a balancing exercise, considering *inter alia* the reason for delay, and in particular whether it was intentional; how long the delay has lasted, the effect on either party if permission is allowed or refused and the merits of the case.

30. In this case Mrs McGuinness's delay was unintentional, and her appeal was only a few days after the deadline. If the Tribunal refused permission for the late appeal, she would suffer the prejudice of not having her case heard, but the prejudice to HMRC would be slight. Finally, Mrs McGuinness has an arguable case

25 31. The Tribunal therefore decided that it was in the interests of justice to give permission for Mrs McGuinness to make a late appeal.

The law

30 32. From 2010-11 onwards, penalties for late filing of SA tax returns are charged under Finance Act 2009, Schedule 55. Paragraph 23(1) states that a penalty will not arise if a person has a reasonable excuse for the failure.

33. Taxes Management Act 1970 ("TMA") s 8 sets out a person's obligations when a tax return has been issued:

Personal return

35 (1) For the purpose of establishing the amounts in which a person is chargeable to income tax and capital gains tax for a year of assessment, and the amount payable by him by way of income tax for

that year, he may be required by a notice given to him by an officer of the Board—

5 (a) to make and deliver to the officer...a return containing such information as may reasonably be required in pursuance of the notice, and

(b) to deliver with the return such accounts, statements and documents, relating to information contained in the return, as may reasonably be so required.

34. TMA s 114 deals with errors or omissions:

10 **Want of form or errors not to invalidate assessments, etc**

(1) An assessment or determination, warrant or other proceeding which purports to be made in pursuance of any provision of the Taxes Acts shall not be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of the Taxes Acts, and if the person or property charged or intended to be charged or affected thereby is designated therein according to common intent and understanding.

20 (2) An assessment or determination shall not be impeached or affected—

(a) by reason of a mistake therein as to—

(i) the name or surname of a person liable, or

(ii) the description of any profits or property, or

25 (iii) the amount of the tax charged, or

(b) by reason of any variance between the notice and the assessment or determination.

Mrs McGuinness's submissions

30 35. Mrs McGuinness submits that the 2010-11 Notice to File was issued to Mrs B McGuinness and not to Mrs H B McGuinness. She says that “a penalty cannot be levied on a person who does not exist”.

36. She states that HMRC have “made an error and are running two sets of records for myself but the one on which the penalty has been levied does not relate to myself.”

35 37. She also says that she had explained to HMRC on the phone that she had made a loss and had sent in a final account of her self-employed earnings. She therefore thought she had fulfilled her obligation to the tax authorities. She states that she had assumed, as a lay person, that “the reminders for the return of the form were an

oversight by a clearly incompetent department [which] had merely not noted my records correctly that a return was no longer necessary.”

HMRC’s submissions

5 38. HMRC say that filing the return is a statutory obligation and that Mrs McGuinness does not have a reasonable excuse for not filing by the due date.

39. They say that Mrs McGuinness had filed the earlier returns under the name “Mrs B McGuinness”. They have only one record which relates to her, and the various parts of their system show the same UTR, NI number, date of birth and address.

10 40. HMRC have also considered the legislation on special circumstances and do not consider that there are any circumstances which are “out of the ordinary run of events” – the definition given to the phrase “special circumstances” in *Clarks of Hove v Bakers’ Union* [1978] 1 WLR 1207.

Whether the Notice to File was validly issued

15 41. In order for a penalty to be levied for the late filing of a tax return, a person must first have been “required by a notice given to him” to complete the return.

42. Mrs McGuinness’ full name is Hazel Brenda McGuinness. The Notice to File was issued to “Mrs B McGuinness”. Although the surname was correct, the initial of the first of Mrs McGuinness’s forenames was omitted Mrs McGuinness therefore
20 submits that the Notice was invalid.

43. It is arguable that the omission of the initial “H” from the Notice does not constitute a mistake as to the name of the recipient, but HMRC have not sought to argue this point: they have accepted there was an error. The Tribunal has thus considered the matter on the basis that the Notice did contain a mistake as to Mrs
25 McGuinness’s name.

Statutory interpretation of TMA s 114

30 44. TMA s 114(1) states that “a mistake, defect or omission” does not invalidate “an assessment, determination, warrant or other proceeding” if the recipient has been “designated according to a common intent or understanding.” TMA s 114(2) applies only to assessments and determinations and is thus not relevant to the Notice.

45. A Notice to File is not an assessment, determination or warrant, so the first question is whether it is an “other proceeding”. There is no statutory definition of “proceeding” and so reference can be made to the dictionary definition.

35 46. The Oxford English Dictionary’s main definition¹ is that a “proceeding” means “the carrying on of an action or series of actions; action, course of action; conduct,

¹ The primary meaning is “a projecting part of the body”, but this is both “obsolete” and “rare”.

behaviour.” The secondary definition is “a particular action or course of action; a piece of conduct or behaviour.” This definition indicates that the word should be given a wide meaning.

47. I have also considered two rules of statutory construction. The first is the principle “*eiusdem generis*”, meaning that when a list of two or more specific descriptors is followed by a more general descriptor, the otherwise wide meaning of that general descriptor must be restricted to the class of the specific words that precede it.

48. In s 114(1) the words “other proceeding” follows “assessment, determination or warrant”. An assessment is similar, but not identical, to a determination – both set out a fiscal liability. If these were the only two words which came before “other proceeding”, it would be arguable that they form a “genus” or type, and that a narrow meaning should be ascribed to the term “other proceeding”, such that it could not encompass a Notice to File but would be limited to a type of document which set out a fiscal liability.

49. A warrant, however, has a different character. It is a legal document empowering a court official to enter premises and distrain goods (see, for example TMA s 61(2)) or to arrest and detain an individual. It is very different in type from an assessment or a determination. The meaning of “other proceeding” cannot therefore be limited to a document setting out a liability to tax.

50. The second rule of statutory construction is that an Act is to be read as a whole, so that an enactment within it is not to be treated as standing alone but is instead to be interpreted in its context as part of the Act. In *A-G v HRH Prince Ernest Augustus of Hanover* [1957] AC 436 at page 461 Viscount Simonds said that “words, and particularly general words, cannot be read in isolation; their colour and their content are derived from their context”.

51. The immediately preceding section, TMA s 113, reads as follows:

“Every assessment, determination of a penalty, duplicate, warrant, notice of assessment, of determination or of demand, or other document required to be used in assessing, charging, collecting and levying tax or determining a penalty shall be in accordance with the forms prescribed from time to time in that behalf by the Board, and a document in the form prescribed and supplied or approved by them shall be valid and effectual.”

52. TMA s 113 thus also refers to “assessment”, to “determination” (albeit limited to penalties), and to “warrant”, in the same sequence as in TMA s 114(1). In TMA s 114 the three terms “assessment, determination and warrant” are followed only by the term “other proceeding”, whereas in TMA s 113 the list continues with “notice of assessment, of determination or of demand, or other document required to be used in assessing, charging, collecting and levying tax or determining a penalty...”

53. It is thus reasonable to infer that by “other proceeding” the draftsman was using a shorthand for the list of documents set out in TMA s 113.

54. If this is correct, then an SA tax return would be an “other proceeding” as it is a “document required to be used in assessing...tax”. A Notice to File takes the place of an SA return for those who are expected to file online. If it is correct that an SA return is an “other proceeding”, then it must also be correct that a Notice to File such a return falls within TMA s 114(1).

55. Other decisions of this Tribunal provide support for this conclusion. In *Mander Pension Trustees Ltd v R&C Commrs* [2012] SFTD 322 at [56], the Tribunal (Judge Mosedale and Mr Collard) held that a Notice of withdrawal of approval from a pension scheme was an “other proceeding” within the meaning of TMA s 114(1). In *UK Co v R&C Commrs* [2011] SFTD 72, the Tribunal (Judges Kempster and Demack) held at [91] that the term “other proceeding” was wide enough to encompass a Notice of enquiry into a corporation tax return.

56. I find, in conformity with those decisions and taking into account the statutory context as well as the wide dictionary definition, that a Notice to File an SA return is an “other proceeding” and so within the scope of TMA s 114(1).

Application to this case

57. TMA s 114(1) only operates to save a Notice issued in an incorrect name if the person has been “designated according to a common intent or understanding.”

58. On the evidence in this case, Mrs McGuinness had already filed two returns issued under the name “Mrs B McGuinness”; the same National Insurance number was on these SA returns as was on her PAYE records. HMRC have only one central record for Mrs Gallagher which connects, via the UTR and NI numbers, to both her PAYE and her SA records.

59. I thus find that the designation “Mrs B McGuinness” was commonly understood by both Mrs McGuinness and HMRC as referring to the same person as Mrs H B McGuinness.

60. As a result, TMA s 114(1) operates and the Notice to File was validly issued.

The validity of the penalty notice

61. The penalty notice was also addressed to Mrs B Gallagher. Although Mrs Gallagher has not explicitly argued that this notice was invalid, for completeness I deal with that point.

62. First, the penalty notice is saved by TMA s 114(1) for the same reasons as the Notice to File.

63. Secondly, it is also saved by TMA s 114(2). That subsection applies to assessments and determinations, and so encompasses penalty notices. The subsection is broader than subsection (1) in that it is not subject to the condition that the document must have been “designated according to a common intent or understanding”.

Reasonable excuse

64. The legislation does not define a reasonable excuse. This Tribunal has held that “an excuse is likely to be reasonable where the taxpayer acts in the same way as someone who seriously intends to honour their tax liabilities and obligations would act,” see *B&J Shopfitting Services v R&C Commrs* [2010] UKFTT 78 (TC) at [14]

65. Mrs McGuinness argues that as a layperson she reasonably have thought that there was no need to file a 2010-11 return, because on 17 January 2011 she had informed HMRC she had made a loss and she had subsequently filed her accounts.

66. However, on 6 April 2011 HMRC issued her with Notice to File for 2010-11. Mrs McGuinness thought this was an oversight by “a clearly incompetent department” and wrongly assumed she did not need to complete a return. She received filing reminders from HMRC, which she ignored.

67. In my judgment, a reasonable response to the receipt of the Notice to File would have been to call HMRC and ask if they had made a mistake. Simply assuming that the Notice had been issued in error, and ignoring not only the Notice but the subsequent reminders, is not the action of someone who “seriously intends to honour their tax liabilities and obligations”.

68. I find that there is no reasonable excuse for the late filing of Mrs McGuinness’s return.

Special circumstances

69. HMRC have considered whether there are “special circumstances” in this case, and decided that there are not. The Tribunal can only change an HMRC decision not to reduce the penalty on the grounds of “special circumstances” if the Tribunal thinks that HMRC’s decision was “flawed”. The meaning of “flawed” must be interpreted in the light of judicial review principles.

70. In my judgment, applying the normal principles of judicial review, the HMRC decision is not flawed. Even were it to be flawed, so that I were able to consider the “special circumstances” rules, I would have found, on the facts of this case, that there were no grounds for a reduction under those provisions.

Decision

71. As a result of the above analysis, I dismiss the appeal and confirm the penalty.

Appeal rights

5 72. 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.

10 73. 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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**ANNE REDSTON
TRIBUNAL PRESIDING MEMBER**

RELEASE DATE: 31st January 2013

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