



TC03170

Appeal number: TC/2013/01718

INCOME TAX - penalties for late payment of income tax due and late filing of self-assessment return – whether there was a “reasonable excuse” – yes

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MR ADRIANUS GOODALL

Appellant

- and -

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

TRIBUNAL: JUDGE JOANNA LYONS

The Tribunal determined the appeal on 11 September 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 Notice of Appeal dated 06 March 2013 and HMRC’s Statement of Case served on 26 April 2013 (with enclosures).

DECISION

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Introduction

1. This is an appeal against penalties relating to income tax due upon self assessment for the year 2010-11.

10 2. The penalties imposed were as follows:

(1) a penalty of £149, imposed on 26 June 2012, for the late payment of income tax due on self-assessment for the year 2010-11 and

(2) a penalty of £100, imposed on 29 May 2012, for the late filing of the return for the year 2010-11.

15 3. HMRC make no reference to the late filing penalty in their case summary. For the purposes of this appeal it is assumed that this appeal relates to both penalties.

4. The due date for return and payment of tax was 09 May 2012. The return was filed on 20 June 2012 and the income tax due was paid on 21 June 2012. The late payment penalty was calculated at the rate of five per cent of the outstanding tax due.

20 5. Mr Pat Ellis, of Nova business support LLP, appeals on behalf of the appellant.

The issues

6. Mr Ellis seeks permission to appeal out of time.

25 7. Mr Ellis appeals on the grounds that there was a reasonable excuse for late submission of the return and payment of tax due.

8. These matters are disputed by HMRC.

Out of time appeal

30 9. The late payment penalty was imposed on 26 June 2012 and the appellant was given 30 days to lodge an appeal with HMRC.

10. Mr Ellis first made representations to HMRC on 13 December 2012. He states that he did not appreciate that he was required to lodge an appeal as he assumed the penalties had been imposed in error.

35 11. Rule 5 (3) (a) the Tribunal procedure (First-tier Tribunal) (Tax chamber) Rules 2009 (“the rules”) permits the Tribunal to extend the time limit provided that it is fair and just to do so.

12. I am satisfied that it is in the interests of justice to permit the appeal to be made out of time. In making this decision I take into account that Mr Ellis was acting under a genuine misunderstanding and that HMRC were not prejudiced by the delay.

5 **The Law**

13. The paragraphs below provide a summary of the relevant law. Details of the applicable legislation and relevant case law are set out in the Appendix.

10 *Penalty for late submission of the return*

14. A penalty of £100 is payable if the return is submitted three months after the date of issue of the return. (Paragraph 3 Schedule 55 Finance Act 2009 “FA”)

Penalty for late payment of tax

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15. A first late payment penalty of five per cent of the outstanding tax due is payable if the tax remains unpaid 30 days after the due date. In this case the tax was due on 09 May 2012 and the trigger date for the imposition of the first penalty was 09 June 2012. (Paragraph 3 (2) Schedule 56 FA)

20 *Reasonable excuse*

16. The Tribunal has the power to allow an appeal against a penalty if there is a reasonable excuse for the late payment.

25 17. Reasonable excuse is not defined in legislation and falls to be determined upon all the circumstances of the case.

The facts

The agreed facts

30 18. Mr Goodall had filed Self assessment returns in the previous tax years. However he was made bankrupt and was consequently issued with a new unique tax reference number (“UTR”). HMRC allocated a new UTR to Mr Goodall’s account on 24 January 2012.

35 19. On 02 February 2012 Mr Goodall was issued with a notice to file a self-assessment return for the year 2010-11. The return was due to be filed on 09 May 2012 and the income tax due was payable on the same date.

20. A self- assessment return for the tax year 2011-12 was issued to Mr Goodall on 06 April 2012. The UTR was shown on both the returns.

40 21. The return was filed online on 20 June 2012 and the outstanding tax, amounting to £2,988.20, was paid on 21 June 2012.

The Contested facts

(a) The appellant's case

22. Mr Ellis states that that he was in a position to file his client's return from November 2011 onwards. However he was unable to file the return or pay the tax due as he did not receive the updated UTR from HMRC until June 2012, despite repeated
5 | requests.

23. He refers to conversations with HMRC on 21 December 2011 and 19 January 2012 in which he attempted to obtain the UTR. He also refers to a telephone conversation dated 09 February 2012 which reads as follows :

10 *Mr Ellis HMRC rang re Mr Goodall's UTR. They do not have him as an ST so are getting this sorted.*

(b) The Respondent's case

24. HMRC accept that Mr Ellis contacted them on 21 December 2011 and 19
15 January 2012. However they state that Mr Ellis was informed of the new UTR in a telephone conversation of 24 January 2012. Their record of the telephone conversation contains the following information.

CALB agent who advised 6 4-8 sent as TP com'd s/e 1/4/10 advised set up post. BY ..UTR...

20 25. They state that this is a record of a telephone phone call in which Mr Ellis was given the UTR. They also submit that the UTR was shown on the notices to file sent to Mr Goodall on 09 February and 06 April 2012.

The Arguments

26. Mr Ellis maintains that he has a reasonable excuse due delays by HMRC in
25 providing him with the updated UTR.

27. HMRC maintain that the UTR was supplied in good time and that there is no reasonable excuse for the delay.

Findings

Findings of fact

30 28. I accept that Mr Ellis made several attempts to obtain the post bankruptcy UTR between November 2011 and January 2012. This evidence has not been disputed by HMRC.

29. I am not satisfied that the telephone call of 24 January 2012 necessarily implies that the UTR was given to Mr Ellis at that time because :

- 35 (1) this is not clearly stated in the note and
 (2) this interpretation is contradicted by the evidence of Mr Ellis and his telephone note dated 09 February 2012

30. I find that the telephone call of 09 February 2012 is likely to be accurate because it is consistent with Mr Ellis's recorded attempts to obtain the UTR number
40 on earlier occasions.

31. I accept the returns, bearing the UTR number, were sent to Mr Goodall on 02 February and 06 April 2012. However I also accept Mr Ellis's account that he did not become aware of the UTR number prior to June 2012.

5 32. I find that neither the return nor the payment could have been made without the UTR number and that Mr Ellis filed the returns as soon as he was able to do so.

Reasonable excuse

33. I accept that Mr Ellis could have done more to chase the UTR. However it appears that he acted reasonably and diligently in attempting to obtain the information required in order to file the return and pay the tax owing before the due date.

10 34. In all the circumstances I am satisfied that there was a reasonable excuse for the late filing of the return and late payment of tax due.

Decision

35. The Tribunal found that there was a reasonable excuse for the late filing of the return and the late payment of income tax due.

15 36. The appeal against the late filing penalty of £100, imposed on 29 May 2012, is allowed.

37. The appeal against the late payment penalty of £149, imposed on 26 June 2012, is allowed.

Right of appeal

20 38. 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
25 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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JOANNA LYONS

TRIBUNAL JUDGE

RELEASE DATE: 20 December 2013

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Liability for late filing penalty

Late submission of the return

10 Section 8 (1) Taxes Management Act 1970 (“TMA”) provides that “a taxpayer may be required by notice *to* “make and deliver on or before the day mentioned ...a return”.

Section 8 (1A) (b) TMA provides that “where the notice ..[to file the return] is given after the 31st of October next following the year..[the return is due on] the last day of the period of three months beginning with the day on which the notice was given”.

15 Paragraph 3 Schedule 55 Finance Act 2009 (“FA”) provides that a taxpayer who files a return after the due date is liable to a penalty of £100.

Liability for late payment penalties

20 Section 59B (3) TMA provides that the outstanding tax due on self assessment is payable “at the end of the period of three months beginning with the day on which the notice under Section 8 ..was given”.

Paragraph (1) (1) Schedule 56 FA provides that “a penalty is payable by a person where he fails to pay an amount of tax payable 30 days after the [due] date”.

Paragraph 3(2) Schedule 56 FA provides “a person is liable to a penalty of five per cent of the unpaid tax”.

25 **Reasonable excuse**

Paragraph 16 FA provides that “Liability to a penalty does not arise ... if the person satisfies the Tribunal that there is a reasonable excuse for the failure”.

30 There is no statutory definition of the term “reasonable excuse”. Case law has established that a reasonable excuse “is a matter to be considered in the light of all the circumstances of the particular case”. *Rowland v HMRC [2006] STC (SCD) 536*.