



**TC03179**

**Appeal number: TC/2013/07170**

*INCOME TAX – late submission of individual tax return – Whether reasonable excuse for late submission of return - No.*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MARTIN C. BEEVERS**

**Appellant**

**- and -**

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

**TRIBUNAL: PRESIDING MEMBER  
PETER R. SHEPPARD FCIS FCIB CTA  
AIIT**

The Tribunal determined the appeal on 23 December 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 28 September 2013, and HMRC's Statement of Case received on 11 November 2013 with enclosures. The Tribunal wrote to the Appellant on 11 November 2013 indicating that if he wished to reply to HMRC's Statement of Case they should do so within 30 days. A reply dated 17 November 2013 was received and considered by the Tribunal.

## DECISION

### 1. Introduction

5 This considers an appeal against a penalty of £100 levied by the respondents for the late filing by the appellant of its individual tax return for the tax year 2011 – 2012.

### 2. Legislation

Finance Act 2009 Schedule 55  
Taxes Management Act 1970, in particular Section 8(1D)

### 10 3. Case law

Rowland v HMRC [2006] STC (SCD)536  
Anthony Wood t/as Propave v HMRC [2011] UK FTT 136 (TC) TC 001010

### 4. Facts

15 The filing date for an individual tax return is determined by Section 8 (1D) of the Taxes Management Act 1970. For the period ended 5 April 2012 an electronic return must be filed by 31 January 2013.

5. It appears that for some reason HMRC cancelled the User ID and password used by the appellant in submitting past returns. On 28 January 2013 it was confirmed that  
20 the appellant did not have the necessary details to enable him to file his return. It was agreed to defer the filing date for the 2011-2012 return to 15 February 2013 to allow for receipt of the password and for the activation process to take place.

6. In respect of the year 2011-2012 the appellant failed to submit his individual tax return until 2 May 2013. As the return was not submitted by the revised filing date of  
25 15 February 2013 HMRC issued a notice of penalty assessment on 19 February 2013 in the amount of £100.

### 7. Appellant's submissions

In a letter dated 28 February 2013 the appellant appealed to HMRC against the Notice  
30 of penalty assessment. He pointed out the difficulties that had occurred over the User ID and password and that the filing date had been deferred to 15 February 2013. He said that he had completed his return online on 12 February 2013.

8. HMRC replied on 17 April 2013 by saying they could not consider the appeal because the return had not yet been received.

9. After the return was submitted on 2 May 2013 HMRC reviewed the appeal and  
35 wrote to the appellant on 19 June 2013 saying they did not accept that he had reasonable excuse for the late submission because he did not attempt to submit his tax return on 12 February 2013. The letter offered a review.

10. On 13 July 2013 the appellant wrote to HMRC asking for a review. The letter included the following:

5 “I contend that I did fully complete the tax return on 12 February and believed that I had submitted it. It became clear when I checked after receiving the penalty notice that, having completed the return I did not fully complete the submission. It is an easy mistake to make and I believe that HMRC is aware that this is what happened.”

11. HMRC replied on 30 August 2013 saying that they did not accept that the mistake made by the appellant constituted a reasonable excuse.

12. In his notice of appeal dated 28 September 2013 the appellant states:

10 “I believe HMRC’s decision is unjust because in their letter of 19 June 2013 their main point was that following an extension of the deadline to 15 February 2013 due to HMRC error: quote “...you did not attempt to submit your tax return on 12 February 2013.” This is categorically incorrect as, in their letter of 30 August 2013, they accept that I did complete the return on that date but made a mistake, after fully completing  
15 the return, in not pressing the final submit button.

I contend that the process of fully completing the return except for pressing the submit button does constitute an attempt to submit it because I was unaware that it had not been transmitted. Note that my appeal dated 28 February was made in the belief that it had been received by HMRC.

20 13. In a letter dated 17 November 2013 the appellant makes similar points.

#### 14. HMRC Submissions

HMRC say the appellant has filed self-assessment returns online since 2007-2008 and is therefore experienced with the self-assessment system and the online filing process and therefore he was aware of the obligation to file her tax returns by the filing  
25 deadline.

15. HMRC say the appellant has confirmed that he was in receipt of the user ID and password on 12 February 2013 and that he did attempt to file his return on that date. However he did not proceed to submit the return on that date. They say that whilst filing there is a constant reminder on the top right hand side of the screen advising of progress as a percentage. On successfully filing the tax return the on screen message  
30 will show “100% successful” and a submission receipt reference number for the tax return is shown. The filer also receives an e-mail from HMRC advising that their records have been updated. When the appellant did not receive the prompt that he had been 100% successful and in the absence of an e-mail he should have been aware that  
35 his tax return had not been fully submitted.

16. HMRC say that whilst they accept that the appellant made an honest mistake nevertheless this cannot be regarded as a reasonable excuse for the failure to submit the return on time.

17. HMRC say the penalty was correctly imposed in accordance with Paragraph 3 of Schedule 55 of the Finance Act 2009.

### 18. Tribunal's Observations

The Tribunal's has considered these submissions and comments as follows:

5 It is the appellant's responsibility to submit returns on time. The appellant has been  
filing his individual tax return online since 2007-2008 and was aware of the annual  
deadline of 31 January and his obligation to send a return by that date. The return for  
the period 2011 -2012 was due to be submitted online by 31 January 2013, later  
extended to 15 February 2013, but it was submitted late on 2 May 2013. A penalty of  
10 £100 is therefore due unless the appellant can establish a reasonable excuse for the  
delay as referred to in Paragraph 23(1) Schedule 55 Finance Act 2009.

19. The appellant admits that having completed his return electronically he made the  
simple mistake of omitting to press the final submit button.

15 20. A reasonable excuse is normally an unexpected or unusual event that is  
unforeseeable or beyond the taxpayer's control, and which prevents them from  
complying with their obligation to file on time. In the Tribunal's view this unfortunate  
simple omission by the appellant cannot establish a reasonable excuse for the failure  
to submit the return by the due date. It is a quick and simple process to check whether  
or not a return has been submitted and the appellant could have done this on 13, 14 or  
20 15 February 2013.

16. Paragraph 16 (1) of Schedule 55 Finance Act 2009 allows HMRC to reduce the  
penalty below the statutory minimum if they think it is right because of special  
circumstances. HMRC have considered whether there any special circumstances in  
this case which would allow them to reduce the penalty and have concluded there are  
25 none. The Tribunal sees no reason to disagree.

17. HMRC has applied the late filing penalty in accordance with legislation. The  
appellant has not established a reasonable excuse for the late submission of his  
individual tax return for the period 2011-2012. There are no special circumstances to  
allow reduction of the penalty. Therefore the appeal is dismissed.

30 18. 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  
35 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)"  
which accompanies and forms part of this decision notice.

**PETER R. SHEPPARD**  
**TRIBUNAL PRESIDING MEMBER**

40 **RELEASE DATE: 23 December 2013**