



**TC03206**

**Appeal number: TC/2013/04882**

*INCOME TAX- late filing of personal (self assessment) return; whether appeal made in time- no- but discretion exercised to allow the same; whether reasonable excuse for late filing of return –no.*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MR B THOMAS**

**Appellant**

**- and -**

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

**TRIBUNAL:    JUDGE CHRISTOPHER HACKING  
                  NOEL BARRETT**

**Sitting in public at Bradford on 25 October 2013**

**There was no appearance by or on behalf of the Appellant.**

**Miss Joanna Bartup, a Case Presentation Officer, appeared for the Respondents.**

## DECISION

5 1. This appeal concerns a penalty of £100 imposed on the Appellant as his self assessment tax return for the year 2011-12 was filed late.

2. The appeal itself was also late filed. The evidence of the Respondents is that the penalty was issued on 13 February 2013. The appeal in respect of the penalty was said to have been signed and dated 2 April 2013 and received by HMRC on 8 April 2013, 10 more than 30 days after the issue and receipt of the penalty notice.

3. Winterman Accountancy (Winterman), the Appellant's accountants who deal with Mr Thomas's tax affairs, contend that the appeal was in fact made within time but that for some reason (as to which they say they are unaware) the appeal was 15 returned to them and that it was necessary to refile this after the time limited for this purpose. They do not state when the original Notice of Appeal was served save that it was said to have been in time.

4. Neither Mr Thomas nor his accountants attended the appeal hearing. That is a 20 pity as a number of issues which were not clear to the Tribunal might have been cleared up in oral evidence. For example the matter of the delay in filing the appeal might have been explained. So too might have been the apparent problem which Winterman say they encountered in securing a Unique Tax Reference (UTR) for their client and which they say was causative of the delay in filing the return

25 5. In the circumstances the Tribunal was obliged to consider whether the hearing could properly proceed on the basis of its consideration of the papers before it and the submissions by HMRC. Mr Winterman in his letter to the Tribunal of 18 October 2013 stated that whilst he was unable to attend the hearing he wished the hearing to 30 continue in his absence. The Tribunal can only conclude that as the appointed representative of the Appellant this wish was expressed on his client's behalf.

6. Miss Bartup for HMRC consented to the appeal proceeding. The only matter 35 which the Tribunal was required to consider therefore was whether it was satisfied that it was able to decide the matter without hearing the Appellant or his representative in person. (See Rule 29 (1) The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009). The decision of the Tribunal was that the appeal should proceed as the matters on which the Appellant sought to rely had been identified in the correspondence in the appeal bundle and in particular in the above letter from 40 Winterman of 18 October 2013.

7. The circumstances concerning the apparent lateness of the appeal were not clear. The notes recorded by HMRC suggest that they only received notice of the 45 appointment of a new agent (assumed to be Winterman Accountancy) on 6 February 2013. It may well be (but this is no more than speculation) that an attempt to file was made by Winterman before it had recorded its interest on behalf of the Appellant. Whether there was some other formal defect in the Notice of Appeal which Mr

Winterman suggested had been filed in time or whether HMRC had simply not received the original could not be established. In all the circumstances it was the Tribunal's decision that permission to bring the appeal out of time (if indeed it was out of time) should be given.

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8. The Tribunal considered the basis of the Appellant's claim to have had a reasonable excuse for the late delivery of his self assessment return. That reason as expressed by Mr Winterman in the letter referred to above was that:

10 "The penalty had arisen because HM Revenue and Customs did not send the online codes fast enough in order for the return to be filed by 31 January 2013. The return was filed as soon as possible on 13 February 2013"

9. Mr Winterman added the following:

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"The taxpayer did not receive a notice to complete a return dated 6 April 2012. In fact he would not have been in the tax system if we had not sent in a R 40 for the 2010-11 period and later asked for a return to be completed. The notice was issued at a later date after my request"

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10. The evidence of the record concerning Mr Thomas's Self Assessment maintained by the Revenue suggests that the following sequence of events occurred:

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10.1 16/06/2011. An unsolicited tax return for the year 2010-11 was received. This is taken to be the filing referred to at the extract at paragraph 9 above of Mr Winterman's letter.

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10.2 06/02/2013. New Agent details were received. This is taken to refer to the formal appointment of Winterman Accountancy who, whatever they had done previously for the Appellant, appear not to have filed the required authorisation form 648 until this date, a date after the filing date for the return.

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10.3 17/04/2013. On this date the late appeal against the penalty was logged. The receipt date of the appeal of 08/04/2013 is noted.

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10.4 The further entries from May to August 2013 do appear to indicate a certain amount of confusion as to the filing of the late appeal. A further appeal was received on 08/05/2013 but as the original was itself out of time this is of little relevance.

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11. On the basis of the evidence before it and on the balance of probabilities the Tribunal finds that the Appellants tax return was filed on 13 February 2013. This finding is not disputed by the Appellant. That it was out of time is also not disputed by the Appellant.

12. The Appellant through its agent has advanced two matters as constituting a reasonable excuse for the delay in the filing. The first is the alleged delay by HMRC in issuing a UTR for Mr Thomas. Miss Bartup gave evidence to the effect that she believed that a return could be filed electronically without a UTR but even if that was not correct it is clear that Winterman would not have been in a position to file the return until after they had been recognised as the Appellant's authorised agent on 06/02/2013. The actual filing date supports the suggestion that it was this factor rather than anything to do with the UTR that caused the delay.

13. It is apparent to the Tribunal that Winterman dealt with the matter of their registration with HMRC and the filing of their clients tax return to the last moment, something which renders more probable a missed filing date. These matters cannot in the finding of the Tribunal amount to a reasonable excuse. They are matters which cannot be said to be unusual or unexpected nor are they matters which were outside the control of the Appellant or his agent.

12. The Appellant cannot rely on his agents default as a reasonable excuse as that is a matter which is specifically excluded as such by paragraph 23(2)(b) Schedule 55 Finance Act 2009. The paragraph provides as follows:

“(b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure”

There was no evidence at all from Mr Thomas who appears simply to have left the matter in the hands of his accountants and to whom he can no doubt look should he feel aggrieved at the manner in which they discharged their responsibilities to him.

13. The second matter asserted by Winterman as a reasonable excuse is that their client had not been issued with a return form for the tax year 2011-12. The HMRC records however indicate that a return form was sent to Mr Thomas on 06/04/2012. It is quite clear from the tenor of the correspondence from Winterman that they were aware of their client's need to file a return. The contention that a reasonable excuse could be made out on this footing is therefore not accepted by the Tribunal.

14. There is no statutory definition of what is or what is not, a reasonable excuse. HMRC suggest that it must generally be something which is unexpected and out of the taxpayer's control. Although this may well not be exhaustive of the possibilities the Tribunal finds that nothing which has been advanced by Winterman on their client's behalf could amount to a reasonable excuse.

15. Accordingly the Tribunal cannot allow this appeal and must confirm the penalty of £100

16. 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.

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**CHRISTOPHER HACKING**

**TRIBUNAL JUDGE**

**RELEASE DATE: 6 January 2014**

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