



TC03589

Appeal number: TC/2013/04028

INCOME TAX – individual tax return – special circumstances – no – reasonable excuse – whether reliance on a third party endorsed by HMRC amounted to reasonable excuse – no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

BARRY FOGARTY

Appellant

- and -

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

Respondent

TRIBUNAL: JUDGE JENNIFER TRIGGER

The Tribunal determined the appeal on 14 October 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 11 June 2013 and the Respondents' (HMRC) Statement of Case submitted on 18 July 2013 (with enclosures).

DECISION

1. This appeal is against the imposition on Mr Fogarty of a penalty of £100 for the late filing of an individual tax return (“the Return”) for the year ending 5 April 2012. The penalty was imposed in accordance with paragraph 3 of Schedule 55 to the Finance Act 2009 (“FA 2009”) which prescribes a fixed penalty of £100 if a Return is submitted after the filing date.

The facts

2. I found the following facts:
- On 6 April 2012 a notice to file for the year ended 5 April 2012 was issued to Mr Fogarty.
 - The Return Summary recorded that the filing date was 31 October 2012, for a paper tax return, or 31 January 2013, for an electronic tax return.
 - The Return was filed electronically for the tax year ended 5 April 2012. It was received by HMRC on 22 February 2013, this being after the deadline for the filing of an electronic return.
 - A fixed £100 penalty notice was issued to Mr Fogarty on 12 February 2013. Mr Fogarty appealed against the penalty on 25 February 2013, on the grounds that he was advised by the PAYE provider Paystream that he did not need to complete a return. Mr Fogarty relied on that advice and maintained that Paystream was a PAYE provider recommended by HMRC.
 - HMRC responded to Mr Fogarty on 21 March 2013 rejecting the appeal and offering to review the penalty decision.
 - After an unsuccessful review process, Mr Fogarty appealed to the Tribunal on 11 June 2013.

The appeal

3. The grounds of Mr Fogarty’s appeal were:
- “The reasons for the late filing being an unusual and unforeseen event are as follows.
- Unforeseen Event
- The PAYE provider told me that I did not need to complete a Self-Assessment form as they had already provided my tax returns to HMRC. The PAYE provider’s business is tax returns; they exist purely to deal

with tax matters with HMRC. Further, they have an arrangement with HMRC that allows them to claim expenses for clients. As such they are implicitly endorsed by HMRC as proficient in tax matters. How could I foresee that tax information by such a company would be incorrect?

5 Unusual Event

That the provision of in-correct tax information is unusual is implicit in HMRC endorsing the company through their arrangement over expenses. For if it was usual for the company to provide in-correct tax information, presumably HMRC would not enter into a tax arrangement with the company.”

4. It was accepted by HMRC and Mr Fogarty that Mr Fogarty had filed the Return on 22 February 2013 electronically which was after the due date of 31 January 2013.

5. Mr Fogarty argued that he had a reasonable excuse under paragraph 23 of Schedule 55 to the Finance Act 2009 and that he was relieved of his liability for the penalty imposed. It provides, in short, that a person liable to submit a return shall not be deemed to have failed to submit it if he has a reasonable excuse, as long as he submits the return within a reasonable time after the excuse ceased.

6. Certain matters are specifically excluded by the legislation from constituting a reasonable excuse.

7. Paragraph 23 of Schedule 55 Finance Act 2009 provides so far as is material:

“(1) Liability to a penalty under any paragraph of this Schedule does not arise in relation to a failure to make a return if the person satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that there is a reasonable excuse for the failure.

(2) For the purposes of subparagraph (1) –

(a) ...

(b) where the person relies on any other person to do anything, that is not a reasonable excuse unless he/she took reasonable care to avoid the failure, and

(c) where the person had a reasonable excuse for the failure but the excuse has ceased, he/she is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.”

8. I did not accept that Mr Fogarty had shown a reasonable excuse. Reliance on a third party is not a reasonable excuse. Mr Fogarty had not demonstrated that he took reasonable care to avoid the failure. In essence Mr Fogarty blames others for the late filing of the Return.

9. Mr Fogarty was told that a return had been submitted but the details of the inquiries made by Mr Fogarty to Paystream, in particular with regard to the increase

in his salary were obscure. Whether they were detailed discussions between Mr Fogarty and Paystream was just not known and it appeared to me that Mr Fogarty had relied on the simple assertion that a return had been made on his behalf. Mr Fogarty had been completing self-assessment tax returns annually since 8 October 1996. In my judgment he would have been aware of the responsibility to file the Return electronically on or before 31 January 2013. It did not appear that Mr Fogarty had sought the advice of HMRC despite there being a wealth of information in the public domain that was accessible to Mr Fogarty.

10. After the due date had passed, HMRC received on 11 February 2013 a letter from Mr Fogarty dated 29.01.2013. A note had been made by HMRC which recorded that Mr Fogarty did not believe he needed to complete a self-assessment return. Mr Fogarty had been in possession of a notice to file for the year ending 5 April 2012 since 6 April 2012. He had had ample opportunity to make adequate enquiries. I did not think that Mr Fogarty's last minute attempt to raise the matter with HMRC demonstrated that he had taken reasonable care to avoid the late filing of the Return. Furthermore I did not accept that Paystream were providers who were endorsed by HMRC. Firstly HMRC have denied that fact but secondly it seems to me highly improbable that HMRC would endorse any firm to provide tax advice to a taxpayer. The services provided by Paystream included at Folio 13 outlined their services. There is no suggestion of any special relationship between Paystream and HMRC as Mr Fogarty maintains. Any incorrect advice given by Paystream to Mr Fogarty is a matter between him and the company and does not make HMRC culpable in any way in my opinion on the facts as known.

11. I did not accept that there were any special circumstances under paragraph 16 of Schedule 55 of the Finance Act 2009. Special circumstances are not defined in the legislation but I did not consider that there was anything exceptional or abnormal or unusual in the facts as presented by Mr Fogarty which would cause HMRC to reduce the penalty. Mr Fogarty had received incorrect information but had taken no steps to satisfy himself that there was no responsibility on his part to file the Return. The responsibility was Mr Fogarty's alone and he had failed to take adequate care in the management of his tax affairs.

12. Accordingly the sum of £100 is payable by Mr Fogarty to HMRC.

13. 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 no 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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**JENNIFER TRIGGER
TRIBUNAL JUDGE**

RELEASE DATE: 15 May 2014

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