



TC03917

Appeal number: TC/2014/02936

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

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

GILES A CHITTY

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 12 August 2014 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 20 May 2014, and HMRC's Statement of Case dated 19 June 2014 with enclosures. The Tribunal wrote to the Appellant on 19 June 2014 indicating that if he wished to reply to HMRC's Statement of Case they should do so within 30 days. No reply was received.

DECISION

1. Introduction

5 This considers an appeal against a penalty of £100 levied by the Respondents (HMRC) for the late filing by the Appellant of its individual tax return for the tax year 2012 – 2013.

2. Preliminary matter

10 The Appellant's Notice of Appeal contained a request for permission to appeal to the Tribunal outside the relevant time limit. The date of the conclusion of HMRC's review was 25 April 2014 and this gave the appellant thirty days to appeal to the Tribunal. The thirty days therefore expired on 25 May 2014. The Notice of Appeal completed by the Appellant and dated 20 May 2014 was received by the Tribunal on 22 May 2014 and was therefore lodged within the time limit and so the request for permission to appeal out of time was unnecessary.

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3. Legislation

Finance Act 2009 Schedule 55

Taxes Management Act 1970, in particular Section 8(1D)

4. Case law

20 *Crabtree v Hinchcliffe (Inspector of Taxes)* [1971] 3 ALL ER 967

Clarks of Hove Ltd v Bakers' Union [1979] All ER 152

Rowland v HMRC [2006] STC (SCD) 536

Anthony Wood t/as Propave v HMRC [2011] UK FTT 136 (TC)

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5. Facts

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 2013 an electronic return must be filed by 31 January 2014.

30 6. In respect of the year 2012-2013 the Appellant failed to submit his individual tax return until 3 March 2014. As the return was not submitted by the filing date of 31 January 2014 HMRC issued a notice of penalty assessment on or around 18 February 2014 in the amount of £100.

7. The appellant appealed against the penalty stating as follows:

35 • The return is indeed late. I submitted my return online yesterday. However, in mitigation of the severity of my misdemeanour;

• I did write to you on 11 September 2013, explaining that I could not access my account online, asking how to proceed. I had no reply.

40 • I have had a long correspondence with your PSM team over a return check they made on my 2010-2011 return, which had implications for 2009-2010 and 2012-2013. I was often confused during this process.

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• I did pay more than the tax now calculated before 31 July 2013.

8. HMRC sent the appellant a decision letter dated 21 March 2014 rejecting his appeal and offering a review. The decision letter acknowledged the points made by the appellant but made no comment on them.

5 9. On 24 March 2014 the Appellant completed a Request for review of decision form SA634. He commented “I believe that an unexpected and unusual event during the whole period of overdueness, namely the non-answering of my letter referring to the return in question. While, and indeed because, the law does not define the word “reasonable” it is reasonable for a reasonable person to consider the non-answering of a letter pertaining to the submission of the return in question to be a reasonable excuse
10 for lateness.

10. On 25 April 2014 HMRC wrote to the Appellant giving the conclusion of their review which was that the decision to charge the penalty was correct. They commented “We do not appear to have received any correspondence from you regarding online filing problems. We did reply to your letter on 14 October 2013
15 regarding Foreign Tax Credit Relief given on your 2012/2013 US pension. You do not appear to have telephoned or written to us regarding this point again until your successful submission on 05/03/14.” The letter also stated “In your appeal you do not mention any additional steps taken to ensure the 12/13 was filed on time.” The letter also points out “you do not state, in the absence of a reply, how you were eventually
20 able to file the return. I do not agree that you have a reasonable excuse.”

11. Appellant’s further submissions

On 2 May 2014 the appellant wrote to HMRC. His letter included the following:

“While it is true that I did not take further steps to follow up the enquiry in my letter of 11 September, this was because I was awaiting a reply, which I thought would tell
25 me there was access to my account online. You do not appear to have received that letter. However, I did post it to you by First Class Mail and enclose herewith a copy of my file copy.

I have to admit that I sometimes find online sites difficult to penetrate and my own incompetence in this area could have been the reason I could not get into my account,
30 but this is precisely why I took the trouble to write to the PSM team, who have always proved helpful in the past.

12. In his Notice of Appeal dated 20 May 2014 the Appellant refers to his letter of 2 May 2014 and the copy of the letter dated 11 September 2013 enclosed with it. He
35 said “It points out that I did my best to get to the bottom of the matter, paid the penalty pending appeal and generally showed good will.

13. HMRC Submissions

40 HMRC say the Appellant has filed self-assessment returns online for the years 2009-2010, 2010-2011, and 2011-2012. They therefore consider he is experienced with the online filing process and that he was aware of the obligation to file his tax returns by the filing deadline.

14. HMRC say that their records demonstrate that the Appellant enrolled for Self Assessment Online Service on 16 July 2009 and activated the same on 26 August 2009. Therefore HMRC contend that the Appellant was in a position to file his 2012-2013 tax return online by 31 January 2014.

5 15. HMRC say that in the absence of a reply a prudent person, exercising reasonable foresight, and due diligence would have made further contact in advance of the due filing date.

16. HMRC say that the appellant did not demonstrate proper regard for his responsibilities under the Tax Acts and did not file the return until he received the late filing notification of 18 February 2014.
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17. HMRC say they have no discretion in the level of the penalty which was imposed in accordance with Paragraph 3 of Schedule 55 of the Finance Act 2009.

18. HMRC have considered special reduction under (paragraph 16 Schedule 55 of the Finance Act 2009). They say special circumstances must be “exceptional, abnormal or unusual” (*Crabtree v Hinchcliffe*) or “something out of the ordinary run of events” (*Clarks of Hove Ltd. v Bakers’ Union*). In their view there are no special circumstances which would allow them to reduce the penalty.
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19. Tribunal’s Observations

The Tribunal has considered these submissions and comments as follows:

20 It is the Appellant’s responsibility to submit returns on time. The appellant has been filing his individual tax return on line since 2009-2010 and so would be aware of the annual deadline of 31 January and his obligation to send a return by that date. The return for the period 2012 -2013 was due to be submitted online by 31 January 2014, but it was submitted late on 3 March 2014. A penalty of £100 is therefore due unless
25 the appellant can establish a reasonable excuse for the delay as referred to in Paragraph 23(1) Schedule 55 Finance Act 2009. 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.

20. The lack of a reply to the letter of 11 September 2013 may well have taken away
30 the appellant’s alternative to submit a non-electronic return by 31 October 2013 but the appellant was attempting to submit the return on line and the deadline for that was 31 January 2014. In the circumstances where the appellant was aware of the deadline of 31 January 2014 it is surprising that he admits that he made no attempt to contact HMRC to chase up a reply. The deadline was well over four months after the
35 Appellant’s letter.

21. The lack of a response by HMRC to a taxpayer’s letter could in some circumstances constitute a reasonable excuse for the failure to submit a return on time. However in a case where a follow up telephone call or letter has not been made over a period of over four months the Tribunal cannot accept that the appellant has
40 established he had reasonable excuse for the late submission of the return. HMRC say

5 that in the absence of a reply a prudent person, exercising reasonable foresight, and due diligence would have made further contact in advance of the due filing date; and the Tribunal agrees. The appellant is responsible for meeting the deadline for filing and should have been more pro-active in getting assistance to do so whether that be from HMRC or elsewhere.

10 21. 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 none. The Tribunal sees no reason to disagree.

22. 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 2012-2013. There are no special circumstances to allow reduction of the penalty. Therefore the appeal is dismissed.

15 23. 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
20 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

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

RELEASE DATE: 12 August 2014

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