

[2016] UKFTT 592 (TC)



**TC05328**

**Appeal number: TC/2016/01849**

*INCOME TAX – late filing of individual tax return – whether reasonable  
excuse – no – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Mr S A Battu**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE DR K KHAN**

**The Tribunal determined this appeal on 27 June 2016 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 29 March 2016 and HMRC's Statement of Case dated 6 April 2016.**

## DECISION

### Introduction

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1. This is an appeal against a penalty imposed under Paragraph 3 of Schedule 56 Finance Act (FA) 2009 for the late filing of the Individual Tax Return for the year ending 5 April 2014. The penalty imposed is £100 in accordance with Paragraph 3 Schedule 55 FA 2009.

10 2. The filing date for the year ended 5 April 2014 for a non-electronic return is 21 October 2014 and for the electronic return is 31 January 2015. A Late Filing Penalty is chargeable where the Taxpayer is late in filing their Individual Tax Return.

15 3. Under Paragraph 23 (1) Schedule 55 FA 2009, an appeal against a Late Filing Penalty would be successful where the Taxpayer shows there is a reasonable excuse for late filing. If there is a reasonable excuse it must exist throughout the failure period. It is not a reasonable excuse if there is an insufficiency of funds or where the Appellant relies on another person to undertake tasks for which he is primarily responsible or when the Appellant had a reasonable excuse for the failure but the excuse has ceased and the failure is remedied without unreasonable delay after the  
20 excuse has ceased.

### 4. Facts

25 5. The Notice to File for the year ending 5 April 2014 was issued to the Appellant on 16 July 2015. As the Return was issued outside the normal cycle for the year the Appellant was given three months and seven days to complete and return it. The filing date was 25 November 2015 regardless of whether a non-electronic or electronic return was filed.

30 6. On the date for submission, a return had not been received. As a Return was not received by the filing date, HMRC issued a Notice of Penalty Assessment on 27 October 2015 in the amount of £100. As the Return has still not been received, daily penalties are accruing and further penalties may be charged.

### 7. The Appellant's submissions

35 8. On 17 November 2015 the Appellant appealed against the penalty on the grounds that he had never been self-employed. He explained that he was employed by a firm of solicitors as an administrative assistant until 12 September 2014. He had not received any Notice of Self-Assessment Late Return and has always paid tax under the PAYE system. HMRC rejected the Appellant's appeal and offered a review. On  
40 19 January 2016 he explained as part of his review that he did not understand why he was liable for tax and that to his knowledge he had not underpaid any tax liability. He said that if the Employer had not paid the tax to HMRC then they should be written to and asked for the outstanding tax.

9. The review was undertaken on 1 March 2016 and upheld HMRC's Penalty Assessment.

10. On 29 March 2016 the Appellant appealed to the Tribunal stating that his Employer should be written to about the outstanding tax. He confirmed that he had never been self-employed and had always been employed under PAYE.

11. HMRC carried out a review and concluded on 1 March that HMRC's penalty should be upheld. On 29 March 2016 the Appellant appealed to the Tribunal explaining that he should not be liable for any Late Filing fees and it was his understanding that he was sent a refund cheque of £269.39 on 12 March 2014 which may have been a mistake on the part of HMRC.

#### 12. **HMRC's submissions**

13. HMRC explained that the Appellant's PAYE tax records showed that he started employment with one company on 1 May 2012. His personal allowance was set against his earnings from that employer. On 12 September 2016 he started a second job but did not hand a form P45 to his new employers but rather completed a short checklist to establish his PAYE code. The information from the checklist indicated that this was the Appellant's first job since 6 April 2013 and his employers correctly gave him the benefit of a personal tax allowance using code 944L.

14. In 2014 HMRC carried out a routine annual review of the Appellant's tax liability for 2013 – 2014. A tax calculation was issued to the Appellant on 29 June 2014 giving details of his earnings and advising him that he was underpaid £471.60 as at 5 April 2014. It would appear that the Appellant claimed a second Personal Tax Allowance which was not due to him nor should have been set against his earnings. As a result, insufficient tax had been deducted from his income.

15. Where possible HMRC will recover PAYE and payment through the PAYE code number for the next full year i.e. 6 April 2015. However, the Appellant had changed employment and HMRC estimated that his earnings from employment for 2015-2016 would be below the tax threshold. This meant that the Appellant would not pay tax under PAYE and the underpayment of £471.60 could not be recovered through his PAYE code number.

16. In January 2015 HMRC wrote to the Appellant asking him to pay the amount he owed. There was no response. A further letter was sent on 12 April 2015. Both letters stated that if he did not pay the amount due or contact HMRC to make arrangements to pay, HMRC would issue a Tax Return to collect the tax due.

17. As the Appellant did not pay or contact HMRC he was issued with a Notice to File a 2013-2014 Return which was sent to him on 18 July 2015.

18. The Appellant stated he did not receive the PAYE tax calculation sent to him in June 2014 or the letters from HMRC. He did not receive the Notice to File a Notice sent to him in July 2015.

19. HMRC say that all forms were sent to the Appellant's address and had not been returned so it is a fair assumption that they would have been delivered to the Appellant at his address.

5 20. HMRC also confirm that there should be no special reduction of the penalty due to special circumstances in this case.

21. HMRC request the Tribunal to uphold the Late Filing Penalty.

22. **Conclusion**

10 23. It would appear that when the Appellant started work on 12 September 2013 and completed a checklist of information stating that it was his first job since 6 April 2013 and his employer correctly operated his tax coding and gave him the benefit of a Personal Allowance. However since this was not his first job since 6 April 2013 he had also received a Personal Allowance while working for his previous employers. This led to an insufficient tax being deducted from his income and an underpayment of £471.60.

15 24. HMRC issued tax calculations in 2014 and letters in 2015 which asked the Appellant to pay the amount which was owed and incorrectly overpaid by reason of two Personal Allowances being given in his tax coding. The letters indicated that if the payment was not made HMRC would rather issue a Tax Return to collect the tax due. Since there was no voluntary repayment of the tax due a Tax Return was sent to 20 the Appellant. This was sent to his normal address and it is a fair assumption that since this was not returned it was delivered to the Appellant.

25 25. While the Tribunal has sympathy with the Appellant and he reasonably believed his affairs were in order and all tax was collected through the PAYE system it is quite clear that he would receive letters and a tax calculation explaining that a repayment of 25 tax was necessary since he had claimed (perhaps inadvertently) two Personal Allowances in calculating his tax liability through the PAYE system. Further, the Appellant telephoned HMRC in November 2015 and was advised why the Tax Return had been issued and why he was asked to complete a Tax Return for 2013-2014.

30 26. The Appellant has provided no reasonable excuse for failing to submit a Tax Return on time and indeed the Return has not been submitted to the present time. In such a case, Late Filing Penalties are charged. In this case they were correctly charged.

35 27. The Tribunal acknowledges that the Appellant may have been initially confused by having to pay tax separate from the PAYE system when he thought that all tax due to HMRC would have been collected by his employer and paid over to HMRC.

28. On being informed that there was a problem he should have taken steps to make the repayment and/ or to complete the Tax Return provided. It is for this reason that the Appellant has failed in his duty and the Penalties were accordingly correctly applied. The Appeal is accordingly dismissed.

29. 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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**DR K KHAN  
TRIBUNAL JUDGE**

**RELEASE DATE: 08 AUGUST 2016**

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