

[2016] UKFTT 603 (TC)



TC05340

Appeal number: TC/2016/02672

INCOME TAX – penalty for late submission of return – whether reasonable excuse

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

FGK Publisher

Appellant

- and -

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

**TRIBUNAL: JUDGE MARILYN MCKEEVER
MR IAN MENZIES-CONACHER**

Sitting in public at Fox Court, London on 18 August 2016

The Appellant in person

Mr A Khawar, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. *Introduction*

5 2. This is an appeal by Mr Ferenc Kocsis against a penalty of £100 for the late submission of his tax return for the tax year 2014-15.

3. There are two preliminary points. First, HMRC originally contended that the appeal was made out of time, but it was accepted that the appeal was in time and this point was not pursued. Secondly, the Appellant stated in the papers is “FGK Publishing”. This is Mr Kocsis’s business name, but the appeal relates to his personal
10 tax return.

4. *The facts*

5. HMRC issued a notice to file a tax return for the tax year ended 5 April 2015 to Mr Kocsis on 6 April 2015. The letter clearly stated that the recipient must complete
15 the return even if he did not owe any tax. It gave information about how to file online and how to obtain a paper return. It set out the deadlines for submitting the return and the penalties for late filing. In particular, it stated that a penalty of £100 would be charged if HMRC did not receive the return by the deadline. Mr Kocsis acknowledged at the hearing that he had received the letter.

20 6. Mr Kocsis did not submit his return by 31 January 2016, the due date.

7. Accordingly, HMRC issued a notice of penalty assessment on 17 February 2016 in the amount of £100, which Mr Kocsis paid on 16 March 2016.

8. Mr Kocsis created an online account with HMRC on 29 May 2014, but he did not apply for an activation code, required to use the online service, until 9 March
25 2016, well after the deadline for submitting the return. The activation code was issued on 10 March 2016 and Mr Kocsis filed his 2014-15 tax return online on 12 March 2016.

9. Mr Kocsis had no earnings for the year and had made a small loss on his business.

30 10. Mr Kocsis appealed against the penalty on 17 March 2016.

11. *The Law*

12. Where HMRC requires a person to submit a tax return under section 8 Taxes Management Act 1970, the recipient is obliged to submit the return, whether or not any tax is due.

35 13. If the return is not submitted by the filing date, in this case 31 January 2016, the taxpayer is liable to a penalty of £100 under schedule 55 Finance Act 2009. The taxpayer may appeal to the Tribunal on the grounds that the penalty is not due or that

there is a reasonable excuse for the failure to submit the return (paragraph 23 schedule 55 Finance Act 2009).

14. *The Appellant's submissions*

15. The Appellant did not receive his account activation code until 12 March 2016.

5 16. He did not have any earnings for the year and had made a small loss on his business. That is to say, he had no taxable income. He claimed Jobseeker's Allowance during the period.

17. *The Respondent's submissions*

10 18. The notice to file a tax return was issued to Mr Kocsis nine months before the due date and he had ample time to submit his return. The notice made it clear that it applied whether or not he had any income. The return was therefore due to be submitted online by 31 January 2016.

19. The return was not submitted by the due date and the penalty was properly chargeable.

15 20. Mr Kocsis did not have a reasonable excuse for his failure to file.

21. *Discussion*

20 22. The expression "reasonable excuse" does not have a statutory meaning, but it has been considered in many cases. In the case of *Rowland v HMRC* [2006] UKSPC the Special Commissioner said that whether there was a "reasonable excuse" had to be considered in the light of all the circumstances of the particular case. This was also the approach in *Wood v HMRC* [2011] UKFTT 136 (TC).

23. The test was expressed, in the VAT case of *The Clean Car Company v Commissioners of Customs and Excise* [1991]VATTR 234 as follows:

25 "*was what the taxpayer did a reasonable thing for a responsible trader conscious of and intending to comply with his obligations regarding tax, but having the experience and other relevant attributes of the taxpayer and placed in the situation that the taxpayer found himself at the relevant time, a reasonable thing to do?*"

30 24. Mr Kocsis pointed out that the Penalty Notice itself states that a taxpayer can have a reasonable excuse for late submission if he has not received his online activation code. However, that only applies where the taxpayer tried to get the activation code before the deadline.

25. HMRC's records show that Mr Kocsis did not try and obtain the activation code until well after the deadline, on 9 March 2016

35 26. We have taken all the circumstances of Mr Kocsis' case into account and considered whether what he did was reasonable by the standards of a conscientious

taxpayer in Mr Kocsis' position. In particular we have considered the fact that Mr Kocsis opened his online account in 2014 but took no further action until after he received the penalty notice, that he received the notice to complete a tax return many months before the due date and that the notice contained a statement that he must
5 make a return even if no tax was due and provided information about how to submit a tax return online or on paper, the due dates and the penalties for non-submission. Mr Kocsis provided us with no reason for his failure to submit the return in time.

27. *Decision*

28. We consider that the penalty was properly issued by HMRC and in all the
10 circumstances of the case, Mr Kocsis did not have a reasonable excuse for failing to submit his 2014-15 tax return on time.

29. Accordingly we dismiss the appeal.

30. This document contains full findings of fact and reasons for the decision. Any
15 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.

20

**MARILYN MCKEEVER
TRIBUNAL JUDGE**

25

RELEASE DATE: 23 AUGUST 2016