



TC05562

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Appeal number: TC/2016/05114

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

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**FIRST-TIER TRIBUNAL
TAX CHAMBER**

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ALEXANDER PHILLIP WATTS

Appellant

- and -

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

**TRIBUNAL: PRESIDING MEMBER
PETER R. SHEPPARD FCIS FCIB CTA
AIIT**

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The Tribunal determined the appeal on 12 December 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 23 September 2016 with enclosure, and HMRC's Statement of Case received by the Tribunal on 26 October with enclosures. The Tribunal wrote to the Appellant on 31 October 2016 indicating that if he wished to reply to HMRC's Statement of Case they should do so within 30 days. No reply was received.

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DECISION

1. Introduction

5 This considers an appeal against a penalty of £100 imposed by the respondents (HMRC) under Paragraph 3 of Schedule 55 Finance Act 2009 for the late filing by the appellant of his individual tax return for the tax year 2014 – 2015.

2. Legislation

Finance Act 2009 Schedule 55

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

3. Case law

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

Clarks of Hove Ltd v Bakers' Union [1979] 1 All ER 152

Rowland v HMRC [2006] STC (SCD) 536

15 David Collis [2011] UKFTT 588 (TC)

4. Facts

20 The filing date for an individual tax return is determined by Section 8 (1D) of the Taxes Management Act 1970. In this case in respect of the tax year ended 5 April 2015 HMRC issued a notice to file to the appellant on 6 April 2015. A non-electronic return was required to be submitted by 31 October 2015 or an electronic return by 31 January 2016.

25 In respect of the year 2014-2015 the appellant failed to submit his non-electronic individual tax return until 27 January 2016. As the non-electronic return was not submitted by the filing date of 31 October 2015 HMRC issued a notice of penalty assessment on or around 17 February 2016 in the amount of £100 which was due to be paid by 18 March 2016. "To avoid additional fines" the appellant paid the penalty of £100 on 21 March 2016.

5. Appellant's submissions

30 In the Notice of Appeal dated 23 September 2016 the appellant gives the following grounds of appeal

"Self-Assessment was sent first class on 30 October 2015 (Please see certificate of posting for proof) this would *have* reached H.M. Revenue and Customs on 31st October 2015 meeting the deadline.

35 Almost four months had passed when I received a Penalty letter of £100 dated 17 February 2016. I appealed this *in a* letter dated 26th Feb 2016 with proof of posting of my self-assessment form.

I didn't get a reply from H.M. Revenue and Customs before the deadline of paying the £100 fine, so to avoid additional fines or charges I made payment of £100, online
40 on 21st March 2016

I received a letter from Joanne Devaney, HM Revenue & Customs assistant Officer dated 22nd March 2016 requesting information of the fine payment amount, bank sort code, bank account number and *the date* funds cleared my account.

I responded to Joanne Devaney, letter dated 5th April 2016, I received no reply!!!

I yet again wrote to HM Revenue and Customs, letter dated 29th July 2016 detailing all the above, plus copies of proof.

5 “Appeal against the penalty for sending in your 2014 to 2015 self assessment tax return late” standard template letter was sent to me from B.Patel Administrative officer dated 25th August 2016. After sending proof that I made the deadline and copies of Joanne Devaney letter where Joanne Devaney *requested* information of my banking details and proof of payment of the £100 fine indicates to me, a refund would occur. I assume B. Patel has not investigated thoroughly.
10 (Words in italics inserted by Tribunal)

6. HMRC’s submissions

HMRC say that the appeal is not concerned with specialist or obscure areas of tax law. It is concerned with ordinary every day responsibilities of the appellant to ensure
15 his 2014-2015 tax return was filed by the legislative date and payment made on time.

7. HMRC records show that the appellant completed an online self-assessment registration and that a record was automatically created on 8 January 2015.

8. HMRC records show that on 3 November 2015 supplementary income from property pages were received from the appellant. HMRC contends that the proof of
20 posting refers only to the supplementary pages.

9. HMRC records show that the supplementary income from property pages were returned to the appellant on 18 November 2015 with advice that the pages needed to be submitted with the appellant’s 2014-2015 tax return.

10. HMRC records show that the appellant submitted the full completed paper 2015-
25 2015 tax return on 10 January 2015.

11. HMRC contends that the supplementary property pages submitted by the appellant could not be considered as a full return of his income and therefore could not be accepted.

12. HMRC have considered special reduction under (paragraph 16 Schedule 55 of the
30 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*). HMRC consider that the appellant thought he had submitted his return on 30 October 2015 but had only submitted the UK property supplemental pages and these are not special circumstances. They also consider that
35 there are no other special circumstances which would allow them to reduce the penalty.

13. Tribunal’s Observations

The Tribunal agrees with HMRC that it is the Appellant’s responsibility to submit returns on time. The return for the period 2014-2015 was due to be submitted non-
40 electronically by 31 October 2015 or electronically by 31 January 2016, but it was

submitted late on 10 January 2016. A penalty of £100 is therefore due unless 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.

14. The Tribunal finds it significant that the appellant has made no comment on HMRC's submission that they returned the UK property supplemental pages to him on 18 November 2015 requesting the full return. In addition the appellant has offered no explanation of why he submitted the main part of his non electronic return late on 10 January 2016. The appellant was registered to submit returns online and could have done so in January 2016 and thereby submitted his return on time. The appellant has made no comment on why he did not do this but rather chose to submit a non electronic return in that month which was clearly after the deadline for non-electronic returns.

15. 15. The appellant is responsible for meeting the deadline for filing his tax return. Unfortunately it appears that some confusion occurred with the result that by the due date the appellant had submitted to HMRC only the UK property supplemental pages of the return and it was not until 10 January 2016 that the appellant submitted non-electronically the main part of his tax return to HMRC.

20. 22. 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.

25. 23. 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 2014-2015. There are no special circumstances to allow reduction of the penalty. Therefore the appeal against the late filing penalty of £100 is dismissed.

30. 24. 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.

PETER R. SHEPPARD
TRIBUNAL PRESIDING MEMBER

RELEASE DATE: 20 DECEMBER 2016