



TC03346

Appeal number: TC/2013/05093

Self-Assessment – failure to submit return – whether reasonable excuse since no returns provided by HMRC – no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

GRAHAM RIMMER

Appellant

- and -

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

**TRIBUNAL: JUDGE DR K KHAN
MS ELIZABETH BRIDGE**

Sitting in Reading on 26 November 2013

The Appellant was not represented and did not attend

J Ashworth, presenting Officer, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

Introduction

- 5 1. This is an appeal against a fixed penalty under section 55, paragraph 3 of the Finance Act 2009 for the late filing of a Self-Assessment Return.
2. A fixed penalty was imposed as the Appellant failed to file the 2010/2011 Self-Assessment Return by the due date 3 months after the issue of the return.
- 10 3. The point at issue is whether Mr Rimmer, the Appellant, had a reasonable excuse for the failure to submit his 2010/11 returns by the due date.

The Facts

- (1) On 1 December 2006, during the tax year 2006/07, the Appellant replaced his accountant, Mr Tuvey, as a director of GPR Bathroom & Plumbing Services Limited (“the Company”)
- 15 (2) On 17 January 2007 as part of an automatic Self-Assessment refinement process, to remove anyone who no longer needed to complete a self-assessment return, Mr Rimmer’s self-assessment record was closed. A letter of confirmation was sent to him, although the issue of the letter was not recorded on HMRC’s system. The letter simply indicated that a self-assessment return is
20 no longer required but advised that checks be made on HMRC’s website to see who needs to complete a return, or to tell HMRC if the circumstances change.
- (3) The employment page of the 2006/07 self-assessment tax return indicated that Mr Rimmer was not a director although he declared income from the Company.
- (4) An internet return was filed for 2007/08 on 14 January 2009. The Appellant
25 declared income from the Company but the return indicated he was not a director.
- (5) On 9 January 2009 the Appellant’s self-assessment record was updated to show that correspondence sent to his address had been returned undelivered. This meant that he received no further correspondence from HMRC. The notice to
30 file the 2008/09 return were therefore not issued but an unsolicited internet return was filed on 18 January 2010. That return showed he was a director of the Company.
- (6) On 10 January 2011 an unsolicited internet return for 2009/10 was filed. On 23
35 October 2012 the address on the Appellant’s self-assessment record was automatically amended. On 6 December 2012 a self-assessment return for 2010/11 was issued to the Appellant. The due date for the return was 13 March 2013. On 19 March 2013 a late filing penalty of £100 for the 2010/11 self-

assessment return was issued. On 27 March 2013 an internet self assessment return for 2010/11 was filed.

- 5 (7) On 26 March 2013 the Appellant's agent, Mr Tuvey, wrote to HMRC requesting that the penalty be cancelled as he had not received the notice issued in December 2012. In addition, as Mr Tuvey was not aware of the late issue of the return it had not been filed. This was treated as an appeal on the grounds of a reasonable excuse for failing to submit the return on time.
- 10 (8) On 15 May 2013 Mr Tuvey wrote to HMRC advising that Mr Rimmer had been told he no longer needed to complete a tax return, and neither Mr Rimmer nor his agent had received the tax return issued December 2012. He contended as the returns for that year would normally have been sent in April 2011 and one had not been received by that date they had no reason to believe a return was required.
- 15 (9) On review, the review officer stated that although Mr Rimmer had received the letter stating no further return would be issued he was also advised that he should contact HMRC straightaway if the circumstances changed. As a director, he is required to complete the self-assessment return and in the circumstances there was no reasonable excuse for failing to submit the return on time.
- 20 (10) Mr Tuvey indicated that HMRC could have used his address or checked Companies House for the address of the business and he also said that unsolicited returns were filed for 2008/09 and 2009/10 as tax was due for those years. As no additional tax was due in 2010/11 there was no need to submit a tax return.
- 25 (11) HMRC indicated that being a director is a criterion for self-assessment and as such Mr Rimmer was required to complete the self-assessment returns.
- (12) Mr Tuvey appealed to the Tribunal on behalf of Mr Rimmer on 26 July 2013.

Legislation

- 30 (1) Section 8, paragraph 1D of the Taxes Management Act 1970 requires a person to submit a return for a year of assessment on or before 31 October of the following year of assessment or 31 January of the following in the case of an electronic return.
- (2) Paragraph 1G of Section 8 Taxes Management Act 1970 provides for the time limit to be extended, to three months after the service of the notice where notice is given after 31 October in the subsequent year of assessment.
- 35 (3) Schedule 55 of the Finance Act 2009 provides for a penalty to be charged for failure to make or deliver a return under s.8 (1D) of the Taxes Management Act 1970.

- (4) Schedule 55, paragraph 23 allows for a person not to be liable to a penalty where they are able to satisfy HMRC or the Tribunal that they have a reasonable excuse for the failure to submit the return.

Appellant's submissions

5 4. The Appellant makes the following points in his Notice of Appeal of 26 July 2013.

- (1) The decision is not fair;
- (2) HMRC contend that they sent a notice to file a tax return for 2010/11 in December but this was not received. Without receiving the notice the Appellant was unaware that the tax return was required. Given that no return was received there was no reason to believe that there is an obligation to file the return.
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- (3) In the circumstances it is unreasonable to impose a penalty and in any event the return was filed on 19 March 2013.
- (4) HMRC are very poor at communicating in this matter.

HMRC's submissions

- (1) It is not in dispute that the Appellant was sent a letter in 2007 advising that he no longer was required to complete a self-assessment return.
- (2) There is nothing in HMRC's records to suggest that the Appellant contacted HMRC to find out why he continued to receive returns, contrary to the notification that he should not file returns. In addition, he completed and sent the returns back to HMRC.
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- (3) Since correspondence addressed to the Appellant was returned as undelivered in 2009 HMRC say that this was the reason returns were not issued in 2008/09 or 2009/10. The letter advising that no returns were required was sent in 2007.
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- (4) HMRC's website makes it clear that a taxpayer is required to complete a self-assessment return if he is a director. The Appellant's accountant would have been aware of this position.
- (5) The Tribunal has no jurisdiction to look at the fairness of a penalty.

Discussion and Conclusion

30 5. A taxpayer is normally contacted by HMRC each April if they think the taxpayer is required to complete and file a tax return. If the tax return is sent to a taxpayer by HMRC then it must be completed. Even if a return is not issued there is an obligation to notify HMRC if one has a tax liability in order that a return can be issued. A company director is required to complete a tax return.

6. If a taxpayer completes a tax return it must reach HMRC by midnight on 31 October. However, if filing online, the date is extended to midnight on 31 January.

7. A taxpayer incurs a penalty of £100 even if one day late.

5 8. While in this case it is understandable that the Appellant did not initially receive a tax return and then received the tax return late, there was an obligation to file returns because of his position as a director of the Company.

10 9. Self-assessment is a system for dealing with tax returns and claims. HMRC are not always able to identify those parties who need a tax return so there is an underlying obligation on taxpayers to notify chargeability. Any person who has not been required to complete a tax return, but who nonetheless has profits or chargeable gains on which tax is due must notify HMRC that they are liable to tax. A taxpayer is liable to a financial penalty if they fail to notify this chargeability. There is nothing to indicate that the taxpayer contacted HMRC with regard to his liability. Further, for 15 2008/09 and 2009/10 the Appellant provided unsolicited returns to HMRC. The fact that the taxpayer did not receive a return is not a reason not a file a return.

20 10. HMRC public information makes clear that if a person does not currently complete a tax return and their circumstances change then they need to inform HMRC. If they are not sure they need to complete a return there is a self-assessment helpline provided to answer taxpayer queries. This would inform the taxpayer whether they need to file a return or whether the tax can be paid in some other way. There is no evidence that the taxpayer undertook any of these tasks.

25 11. While the Tribunal understands the Appellant's view, there was an obligation to file a return and this was not done on time. His accountant should have been aware of this position and should have advised his client accordingly or contacted the helpline for information. This was not done.

12. In the circumstances the appeal is dismissed.

30 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 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

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**TRIBUNAL JUDGE
RELEASE DATE: 12 February 2014**