



TC03491

Appeal number: TC/2013/06584

Income Tax – penalty for late return – whether notice to deliver return given to taxpayer when sent only to agent; reasonable excuse – whether HMRC website indicated that no return was needed – special circumstances.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MRS SHOSHANA PINE

Appellant

- and -

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

**TRIBUNAL: JUDGE CHARLES HELLIER
MR ANTHONY HUGHES**

Sitting in public at 45 Bedford Square WC1B on 19 March 2014

**Michael Weissbraun of Michael, Pasha & Co, Chartered Accountants for the
Appellant**

Paul Reeve, for the Respondents

DECISION

1. Mrs Pine lives in Israel. She is non-UK resident. She has income from UK property. Mr Weissbraun's firm, Michael, Pasha & Co, acts for her in the preparation of her UK tax returns.

2. For the year 2011/12 the effect of section 8 Taxes Management Acts 1970 was that if a taxpayer was required by notice given before 31 July 2013 to make a tax return, it had to be submitted by 31 January 2013 if it was submitted electronically. Mrs Pine's return for that year was submitted electronically on 21 March 2013.

3. Paragraph 3 schedule 55 FA 2009 makes a taxpayer liable to a penalty of £100 if her return is not submitted by the due date. HMRC regarded Mrs Pine's 2011/12 return as late and assessed Mrs Pine to a penalty of £100, against which she brings this appeal.

4. Before us Mr Weissbraun advanced two carefully considered arguments:

(i) first, that section 8 requires a person to submit a tax return only if he is so "required by notice given to him" by HMRC. Mr Weissbraun argues that such notice was not given to Mrs Pine.

(ii) second, that Mrs Pine had a reasonable excuse for any failure to deliver because that part of HMRC's website dealing with the making of returns gave the impression that she did not need to make a return.

Evidence and Factual findings

5. HMRC's records indicate that on 6 April 2012 they sent to Mrs Pine a letter which included the following "we are sending you this letter as you must, by law, send us ... your tax return ... [Y]ou must make sure we receive your tax return by ... 31 January 2013 if you file online." Mr Weissbraun accepted that such a letter had been sent and had been received at his firm's address. It was not suggested that it was received after 31 July 2012 and we find it was received before that date.

6. Mr Weissbraun showed us copies of Mrs Pine's tax returns for 2007/08 and 2008/09. Each of the these gave at the top of the front page Mrs Pine's address as "c/o Michael, Pasha & Co ..."; and the box at the foot of the return, asking that an X be put in it if the taxpayer's name and address was different from that of the start of the page, was left blank.

7. HMRC's records for Mrs Pine include an entry on 3 July 2012 "Communication Address changed from c/o Michael, Pasha & Co".

8. A printout apparently dated 14 November 2013 from HMRC's records Mrs Pine's communication address as c/o Michael, Pasha & Co

9. We noted that the 3 July entry was after the date of the 6 April 2013 letter. It therefore suggested that before then HMRC had received some form of communication indicating that correspondence for Mrs Pine could be sent to the firm. We do not however find that the address of the firm was at any time Mrs Pine's place of residence or business.

10. We understood that for 2011/12 Mrs Pine's taxable income fell below the personal allowances. As a result no income tax was due for that year.

Discussion.

(i) Was notice given to Mrs Pine requiring her to complete her return?

11. Section 8 TMA provides that a person may be required to make a return "by notice by a notice given to him" by HMRC.

12. The issue is whether notice was given to Mrs Pine by the delivery of the letter of the 6 April 2012 to Michael, Pasha & Co. There was no doubt in our minds that the terms of that letter required delivery of a return.

13. Section 115 (1) Taxes Management Act 1970 provides that a notice under the Taxes Acts may either be delivered to a person or left at her usual or last known place of residence.

14. This to our minds is a permissive provision. It says that the notice "may" be so delivered or sent. It does not require that only those methods be used. What is required by section 8 is that the obligation to make the return be brought to the notice of the taxpayer.

15. It seems to us that in relation to earlier tax years Mrs Pine appointed the firm as her agents to deal with HMRC, and that they remained her agents in 2013 for the purposes of dealing with her 2011/12 return.

16. We find that in these circumstances the delivery of the notice to the firm requiring the making of a return was for the purposes of section 8 the giving of notice to Mrs Pine, even though it was neither given to her physically nor delivered to her place of residence or last known place of residence. The nature of agency is that the agent is given authority to affect, or alter, the legal position of his principal: the receipt by the agent within the scope of his actual or apparent authority of notice may be treated as receipt by the principal. The giving of the letter to the firm brought the requirement in it to its notice, and because the firm was dealing within the scope of its actual authority from Mrs Pine, is to be treated as bringing it to her notice. It was therefore notice to her as required by section 8.

17. We discuss below the question of whether HMRC's website provided a reasonable excuse for Mrs Pine's failure to deliver her return on time. But there is also an argument that even though notice may have been given to her under section 8, that notice could be treated as having been revoked or countermanded by specific or general communications from HMRC. In the context of Mr Weissbraun's submissions

this raises the question as to whether the nature of the website sections could be so regarded.

18. There are two reasons why we reject such an argument. The first is that section 8B TMA contains specific provisions relating to the withdrawal of a notice under section 8, and in section 8B(4), requires notice of withdrawal to be given to the person originally required to make the return. This suggests that the legislation intends that duty placed upon the taxpayer by a notice under section 8 may be lifted only by a formal notice under section 8A. The second is that for the reasons which we discuss below, it does not seem to us that the website revoked or countermanded the notice given in the 6 April 2012 letter.

19. We conclude that for the purposes of section 8, notice was given to Mrs Pine to deliver a return as a result of the letter dated 6 April 2012.

20. Thus her return was due to be made by 31 January 2013, and was late. As a result unless Mrs Pine has a reasonable excuse for the late delivery, or there were special circumstances, she will be liable for the penalty.

(ii) Reasonable excuse.

21. Paragraph 23 Schedule 55 FA 2009 says that if a person has a reasonable excuse for a failure, the failure may be ignored, but provides that for these purposes where the person "relies on any other person to do anything that is not a reasonable excuse unless [the person] took reasonable care to avoid the failure."

22. It seems to us not to make any difference whether it was Mrs Pine herself who looked at the website or Michael, Pasha & Co. That is because what the website communicated to Michael, Pasha & Co in the scope of their actual authority was to be treated as communication to Mrs Pine. Thus, if one could reasonably conclude from the website that the instruction given in the notice to deliver a return could be ignored then, (i) if it was Mrs Pine who looked at the website she would have taken reasonable care to avoid any failure, and (ii) if it was Michael Pasha and Co who looked at it, their reliance on it would afford a reasonable excuse for Mrs Pine's failure.

23. We accept that, even though notice had been given requiring the making of a return, it is possible that if a taxpayer (directly or through her agent) was given an assurance (through the website or otherwise) that a return was not required to be made, the taxpayer could have a reasonable excuse for the failure to comply with the notice.

24. The website pages dealing with the completion tax returns are headed "Who needs to complete a tax return?". They start with sections: "You're self-employed.", "You're a company director ...", and "Your annual income is £100,000 or more", all of which convey the message that a tax return would be needed. None of those applied to Mrs Pine. There is then a section "You have income from savings, investments and property" where (after discussion of the position of a person with PAYE income which is irrelevant to Mrs Pine's circumstances) the following appears:

"If you don't pay tax through a PAYE code you'll need to complete a tax return if all of the following apply:

you have income to declare for example from savings, ... rental income from land or property,

5 your total income exceeds your total allowances and reliefs.

you have tax to pay on this income."

25. Since Mrs Pine's income did not exceed her personal allowances this paragraph does not give the impression that she would be required by this section to complete a tax return. We note however that this section says when a tax return is needed, not when it is not: it does not say "you won't have to fill in a return if you don't fall within these headings."; closely read it leaves open the possibility that for other reasons a taxpayer who did not fall within its ambit might still have to, or wish to, complete a return: so read it does not say "no income, no return.". Nor does it say "no tax liability, no return".

15 26. The next sections of the web page concerned those who needed to claim expenses, those receiving child benefit, those with overseas income and those with CGT to pay. None of these indicated that Mrs Pine had to complete a tax return.

27. Then came this section:

"You've lived or worked abroad or aren't domiciled in the UK

20 "Residency is a complex issue. Follow the link below to find out more about your residency status, the remittance basis and what to do next.

"You may need to complete a tax return if you're:

not resident in the UK

not ordinarily resident in the UK

25 not domiciled in the UK and claim the "remittance basis"

dual resident of the UK and another country

"Find out more about residence when moving in or out of the UK [this was a link within the website]."

28. This section to our minds gives the impression that Mrs Pine might have to complete a return but might not. It says "may".

29. Finally at the end of this part of the website there was a section (which may reflect the provisions of section 8B TMA 1970):

"If you don't think you need a tax return

35 "If *HMRC has asked you to complete a tax return* [added emphasis] and you've checked the information above and think you don't need one, call the Self Assessment Helpline. They will tell you whether you still need to complete a tax return."

30. Mr Weissbraun says that nowhere in this part of the website does it say that you have to complete her return if you have been given notice to do so. We agree. We find the omission of a statement that you have to fill in a tax return if you have been sent a notice makes this section of the website confusing.

5 31. But to our minds that confusion, leaving aside for the moment the last paragraph of the section, does not deliver the message that Mrs Pine did *not* have to deliver a return, but the message that it was not completely clear whether a return was required.

32. It seems to us that if reading the earlier sections conveyed to a taxpayer who had received a return notice that she did not have to deliver a return, that taxpayer would not conclude that she could ignore the notice without first phoning the self-assessment helpline. That is the message of the last section.

33. Thus in our view a taxpayer who had received a return notice and was confused or uncertain about the effect of the earlier paragraphs would not reasonably conclude that no return was required unless clarity had first been obtained from the Helpline.

15 34. If Mrs Pine or her advisers had derived the conclusion from the first and main part of the relevant section that no return was due or that it was uncertain that a return was due, they could not reasonably conclude that the website overrode the notice that had been received without considering the last section (“If you don’t think you need a tax return”). That to our minds makes clear that if you have had a notice to complete a return, and have doubts about whether you need to do so - or you are clear that the earlier paragraphs do not require you to complete a return – you will only be absolved of the obligation if you contact the HelpLine and are told that you do not need to do so..

25 35. We therefore conclude that the website did not afford a reasonable excuse to a person in Mrs Pine’s position for a failure to deliver return.

(iii) Special Circumstances

36. Mr Weissbraun did not rely on their having been special circumstances which justified a reduction of the penalty. There was no evidence that HMRC considered the issue. However we saw no evidence of any circumstances which were peculiar to this taxpayer which justified any reduction in the penalty on these grounds.

Disposal

37. We dismiss the appeal

Rights of Appeal

38. 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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CHARLES HELLIER
TRIBUNAL JUDGE

RELEASE DATE: 16 April 2014

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