



TC03915

Appeal number: TC/2014/02780

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

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MALCOLM EVANS

Appellant

- and -

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

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

The Tribunal determined the appeal on 7 August 2014 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 16 May 2014, and HMRC's Statement of Case dated 17 June 2014 with enclosures. The Tribunal wrote to the Appellant on 19 June 2014 indicating that if he wished to reply to HMRC's Statement of Case they should do so within 30 days. No reply was received.

DECISION

1. Introduction

5 This considers an appeal against a penalty of £100 levied by the Respondents (HMRC) for the late filing by the Appellant of its individual tax return for the tax year 2012 – 2013.

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] All ER 152

Rowland v HMRC [2006] STC (SCD) 536

15 Anthony Wood t/as Propave v HMRC [2011] UK FTT 136 (TC)

4. Facts

20 The filing date for an individual tax return is determined by Section 8 (1D) of the Taxes Management Act 1970. For the period ended 5 April 2013 an electronic return must be filed by 31 January 2014.

5. In respect of the year 2012-2013 the Appellant failed to submit his individual tax return until 1 March 2014. As the return was not submitted by the filing date of 31 January 2014 issued a notice of penalty assessment on or around 18 February 2014 in the amount of £100.

25 6. Appellant's submissions

In a letter dated 1 March 2014 the Appellant appealed to HMRC against the Notice of penalty assessment. He said that he thought he had submitted his return online on 9 January 2014. He pointed to the fact that on 9 January 2014 he sent £1,457 to HMRC to meet the outstanding tax. However he checked his online account and found that 30 the document remained unsubmitted and HMRC had deducted the £100 penalty from the £1,457 deposit. The Appellant stated that he does not know what went wrong and had honestly thought he had submitted the return on 9 January 2014.

7. In a letter dated 18 March 2014 HMRC rejected the appeal and offered a review. A request for review of decision form SA634 completed by the Appellant was 35 received by HMRC on 26 Mar 2014. In the request the Appellant appreciated that the return was not transmitted on 9 January 2014 and was not submitted by the filing date, and that HMRC are within their rights under the law to issue a penalty.

40 He said that he feels from his actions the intent was to submit on the due date. HMRC acknowledge that he did access his self-assessment return on 9 January 2014 and forwarded the calculated tax shown to HMRC on that date.

He states “Please accept that my failure to transmit the document on 9 January 2014 was not a deliberate act but was just one of those silly things that happen from time to time.

5 This is not an excuse but at the time I was catching up with a lot of jobs that had to be completed before I left home for a period of three weeks. When I pressed the transmit button I considered it “job done” and naturally moved on to the next item on my list of things to do.

10 I believe in fairness and my record over the last 15 years has demonstrated that I am a person that submits self-assessments within the allotted time and pays his dues accordingly – normally without the intervention of HMRC. I therefore feel aggrieved that under the circumstances there has been no room for compassion or concession at HMRC. As a result I feel victimised and penalised for a simple mistake that could happen to anyone. A mistake that I didn’t know about until HMRC informed me of the late submission penalty. Under these circumstances I believe a little bit of
15 discretion could and should be used.

8. HMRC replied on 17 August 2014 saying that they did not accept that the circumstances that led to the failure by the Appellant to complete the return by the filing date constituted a reasonable excuse.

9. In his Notice of Appeal dated 16 May 2014 the Appellant repeats many of the
20 points made above and asks the question “If I had paid my dues why would I not send my self-assessment return? It is not logical and certainly does not make sense that I would knowingly do one thing and not the other.”

10. HMRC Submissions

25 HMRC say the Appellant has filed self-assessment returns online since 2007-2008 and they therefore consider he is experienced with the self-assessment system and the online filing process and that he was aware of the obligation to file his tax returns by the filing deadline.

30 HMRC say that from the information given by the Appellant it appears that he successfully completed the ‘View your calculation’ section of the online filing process. At the next stage of the online filing process the Appellant would have been able to print and save a copy of his 2012-2013 tax return prior to submission. The ‘Save your return’ section of the online filing process contains a prompt advising the operator to click the next button to ‘Submit your return’ It is this final step that the appellant failed to complete.

35 HMRC say that whilst they accept that the Appellant made an honest mistake nevertheless this cannot be regarded as a reasonable excuse for the failure to submit the return on time.

HMRC say they have no discretion in the level of the penalty which was imposed in accordance with Paragraph 3 of Schedule 55 of the Finance Act 2009.

HMRC have considered special reduction under (paragraph 16 Schedule 55 of the 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*). In their view there are no special circumstances which would allow them to reduce the penalty.

Tribunal’s Observations

The Tribunal has considered these submissions and comments as follows:

10 It is the Appellant’s responsibility to submit returns on time. The appellant has been filing his individual tax return on line since 2007-2008 and was aware of the annual deadline of 31 January and his obligation to send a return by that date. The return for the period 2012 -2013 was due to be submitted online by 31 January 2014, but it was submitted late on 1 March 2014. 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.

15 The Tribunal has no hesitation in accepting the Appellant’s contentions that he intended to submit the return on 9 January 2014 and that it does not make sense that he would knowingly make payment and not send the return. However the Appellant admits that having completed his return on line he made the simple mistake of omitting to press the final submit button.

20 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. In the Tribunal’s view this unfortunate simple omission by the appellant cannot establish a reasonable excuse for the failure to submit the return by the due date. It is a quick and simple process to check whether or not a return has
25 been submitted and the appellant could have done this at any time between 9 and 31 January 2014.

The Appellant feels victimised and penalised for a simple mistake that could happen to anyone. The Tribunal has some sympathy with the Appellant who previously had a good history of paying and submitting returns on time. He did make a simple mistake
30 that could be made by anyone but the Tribunal regularly sees examples of similar mistakes being made and the same penalty is applied.

16. 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
35 this case which would allow them to reduce the penalty and have concluded there are none. The Tribunal sees no reason to disagree.

17. 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 2012-2013. There are no special circumstances to
40 allow reduction of the penalty. Therefore the appeal is dismissed.

18. 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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PETER R. SHEPPARD
TRIBUNAL PRESIDING MEMBER

RELEASE DATE: 13 August 2014

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