



TC01501

Appeal number: TC/2011/04215

Income tax return—Penalty for late return (Taxes Management Act 1970 s.93(2))—Reasonable excuse—Appeal dismissed

FIRST-TIER TRIBUNAL

TAX

MR KEVIN CHATER

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE AND CUSTOMS**

Respondents

TRIBUNAL: Dr Christopher Staker (Tribunal Judge)

The Tribunal determined the appeal on 3 October 2011 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 27 May 2011, HMRC's Statement of Case dated 5 July 2011, and other papers in the case.

DECISION

Introduction

- 5 1. The Appellant appeals against a penalty of £100 imposed in respect of the late filing of his income tax return for the tax year 2009/10.

The relevant legislation

2. Section 8 of the TMA provides in relevant part as follows:

- 10 (1) For the purpose of establishing the amounts in which a person is chargeable to income tax and capital gains tax for a year of assessment, and the amount payable by him by way of income tax for that year, he may be required by a notice given to him by an officer of the Board—
- 15 (a) to make and deliver to the officer, a return containing such information as may reasonably be required in pursuance of the notice, and
- (b) to deliver with the return such accounts, statements and documents, relating to information contained in the return, as may reasonably be so required.
- ...
- 20 (1D) A return under this section for a year of assessment (Year 1) must be delivered—
- (a) in the case of a non-electronic return, on or before 31st October in Year 2, and
- 25 (b) in the case of an electronic return, on or before 31st January in Year 2.
- (1E) But subsection (1D) is subject to the following two exceptions.
- (1F) Exception 1 is that if a notice in respect of Year 1 is given after 31st July in Year 2 (but on or before 31st October), a return must be delivered—
- 30 (a) during the period of 3 months beginning with the date of the notice (for a non-electronic return), or
- (b) on or before 31st January (for an electronic return).
- (1G) Exception 2 is that if a notice in respect of Year 1 is given after 31st October in Year 2, a return (whether electronic or not) must be delivered during the period of 3 months beginning with the date of the notice.
- 35

...

3. Section 93 of the TMA states in relevant part as follows:

- (1) This section applies where—

- (a) any person (the taxpayer) has been required by a notice served under or for the purposes of section 8 or 8A of this Act (or either of those sections as extended by section 12 of this Act) to deliver any return, and
- 5 (b) he fails to comply with the notice.
- (2) The taxpayer shall be liable to a penalty which shall be £100.
- ...
- (4) If—
- 10 (a) the failure by the taxpayer to comply with the notice continues after the end of the period of six months beginning with the filing date, and
- (b) no application is made under subsection (3) above before the end of that period,
- 15 the taxpayer shall be liable to a further penalty which shall be £100.
- ...
- (6) No penalty shall be imposed under subsection (3) above in respect of a failure at any time after the failure has been remedied.
- 20 (7) If the taxpayer proves that the liability to tax shown in the return would not have exceeded a particular amount, the penalty under subsection (2) above, together with any penalty under subsection (4) above, shall not exceed that amount.
- (8) On an appeal against the determination under section 100 of this Act of a penalty under subsection (2) or (4) above that is notified to the tribunal, neither section 50(6) to (8) nor section 100B(2) of this Act shall apply but the tribunal may—
- 25 (a) if it appears that, throughout the period of default, the taxpayer had a reasonable excuse for not delivering the return, set the determination aside; or
- 30 (b) if it does not so appear, confirm the determination.
- (9) References in this section to a liability to tax which would have been shown in the return are references to an amount which, if a proper return had been delivered on the filing date, would have been payable by the taxpayer under section 59B of this Act for the year of assessment.
- 35 (10) In this section—
- “the filing date” in respect of a return for a year of assessment (Year 1) means—
- 40 (a) 31st January of Year 2, or
- (b) if the notice under section 8 or 8A was given after 31st October of Year 2, the last day of the period of three months beginning with the day on which the notice is given;

“the period of default”, in relation to any failure to deliver a return, means the period beginning with the filing date and ending with the day before that on which the return was delivered.

5 4. Section 118(2) of the TMA provides as follows:

10 (2) For the purposes of this Act, a person shall be deemed not to have failed to do anything required to be done within a limited time if he did it within such further time, if any, as the Board or the tribunal or officer concerned may have allowed; and where a person had a reasonable excuse for not doing anything required to be done he shall be deemed not to have failed to do it unless the excuse ceased and, after the excuse ceased, he shall be deemed not to have failed to do it if he did it without unreasonable delay after the excuse had ceased.

15 **The arguments of the parties**

5. The Appellant’s case as stated in the notice of appeal includes the following. He has never completed or been asked to complete a tax return before, and the first he knew about it was when he received the penalty notice, whereupon he promptly filed the return. He had nothing to gain by not filing a return. Every year he completes a form P87, and no one told him that this year he had to complete a different form, or issued him with the correct document. HMRC contend that a tax return form was sent to him prior to the deadline, but he did not receive it. If he had received it, he would have returned it promptly as it is in his interests to do so, and he has always complied with HMRC requests. He could not know that he was required to complete a self-assessment return if his expenses exceeded £2,500. He was assured in a telephone call to HMRC that no penalty charge would be imposed. He has been made to feel like a criminal avoiding tax when he has done nothing wrong.

6. The HMRC statement of case states amongst other matters as follows. Self-assessment is based on voluntary compliance, and it is essential that taxpayers who comply with the rules feel confident that the system does not reward non-compliance. A notice to file a tax return for 2009/10 was issued to the Appellant on 6 April 2010. The filing date was 31 October 2010 for a paper return, or 31 January 2011 if filed online. A paper return was filed on 15 February 2011. The penalty was imposed in accordance with the legislation. The Appellant was sent the notice to file a tax return on 6 April 2011 because his previous 2008/09 tax return indicated that his travelling expenses exceeded £2,500. This was explained to the Appellant in a telephone conversation of 27 August 2009. The P87 form itself clearly states that that form can only be used if expenses do not exceed £2,500, and that otherwise a self-assessment tax return must be submitted. A P87 cannot be submitted online, and the Appellant would not have been advised that it could. However, self-assessment tax returns can be submitted online. The Appellant enrolled for the online service on 7 April 2010, and an activation code was sent the following day. He activated the service on 18 April 2010 and successfully logged in. He successfully logged in again on 20 April 2011 but did not submit an online return. He used his UTR to enrol.

The Tribunal's view

7. The Tribunal accepts the HMRC submission that the self-assessment scheme puts responsibility on the taxpayer to comply with their obligations to file a tax return. There are very large numbers of persons who are required to submit tax returns and make payments of tax, numbering perhaps in the millions. While HMRC may do its best to make the necessary information available to taxpayers in an understandable way, the system would become unworkable if every taxpayer were relieved of the obligation to pay tax until they received information from HMRC in a form convenient to them.

8. The Tribunal is satisfied that sufficient information is available to taxpayers in general to enable them to find out whether they are required to file a tax return, if they apply themselves diligently to obtaining that information.

9. The Appellant states that in previous years, he did not file a tax return but filed a form P87 form to claim tax relief in respect of employment expenses. The P87 form itself does clearly states that that form can only be used if expenses do not exceed £2,500, and that otherwise a self-assessment tax return is required.

10. There is furthermore evidence before the Tribunal, in the form of a printout from a HMRC telephone record database, that on 27 August 2009 he had telephone contact with HMRC, in which "TP [taxpayer] queried why he has to complete SA ITR's [income tax self-assessment returns] in future. Advised that expenses claimed exceeds £2500".

11. The Tribunal is in the circumstances satisfied that if the Appellant was acting diligently, he would have been aware that he was required to file the tax return for 2009/10 by the relevant due date, even if he did not receive the notice to file a tax return for 2009/10 that was issued to him on 6 April 2010.

12. The burden of proof is on the Appellant to establish that he has a reasonable excuse for the late payment of the tax throughout the period of default, for purposes of s.93(8) or 118(2) of the TMA. The Tribunal finds that the Appellant has not discharged that burden.

Conclusion

13. Thus, under s.100B(2)(a)(ii) of the TMA, the Tribunal confirms the penalty and dismisses the appeal.

14. 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 CHRISTOPHER STAKER
TRIBUNAL JUDGE
RELEASE DATE: 10 OCTOBER 2011