



TC03927

Appeal number: TC/2014/01127

Income tax – penalty for late filing of return – letter from HMRC indicating that Appellant had ‘at least three months to file return’ misinterpreted as meaning that the Appellant had longer than three months – whether a reasonable excuse – no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

LEE WILLIAMSON

Appellant

- and -

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

TRIBUNAL: JUDGE MICHAEL S CONNELL

The Tribunal determined the appeal on 30 May 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 notification of Appeal dated 24 February 2014, and HMRC’s Statement of Case received on 15 April 2014, the Appellant submitting no response.

DECISION

The Appeal

- 5 1. Mr Lee Williamson (“the Appellant”), appeals against the decision of HMRC dated 6 January 2014 and confirmed on 23 January 2014 after a review, to uphold a penalty of £100 charged for the Appellant’s failure to file his Self-Assessment tax return for the year ended 5 April 2012 with HMRC by the filing date.
2. The points at issue are:
- 10 (1) Whether the Appellant’s appeal ought to be considered by the Tribunal, given that it was made outside the relevant time limit.
- (2) Whether the Appellant had a reasonable excuse for his late filing of the tax return.
- 15 (3) Whether there are any special circumstances, by virtue of which the penalty ought to be reduced.

Background

- 20 3. On 3 September 2013, HMRC sent a notice to the Appellant, informing him that they would be sending him a letter telling him to complete a tax return, and that he would have ‘at least three months’ from the date of issue on the letter to send HMRC either an online or paper tax return.
- 25 4. On 4 September 2013, HMRC's Pension Schemes Services office wrote to the Appellant explaining why HMRC were asking him to make a tax return, and enclosing form SA 100 (the pro forma tax return). This form included a notice included the statement: "This notice requires you, by law, to make a return of your taxable income and capital gains, and any documents requested, for the year from 6 April 2011 to 5 April 2012."
- 30 5. On 17 December 2013, HMRC sent a "notice of penalty assessment" to the Appellant, charging him a penalty of £100 for his failure to submit his tax return for the year ended 5 April 2012 to HMRC by the filing date.
6. On 23 December 2013, the Appellant telephoned HMRC to ask for advice concerning which parts of form SA100 he needed to complete.
- 35 7. On 27 December 2013 HMRC received the return, completed by the Appellant, by post. They also received a form SA370, completed and signed by the Appellant and dated 23 December 2013, in which he appealed against the penalty.
8. On 6 January 2014, HMRC wrote to the Appellant, refusing his appeal on the basis that he did not have a reasonable excuse for being late in filing the return. The

letter also stated that the Appellant was entitled, should he so wish, to have this decision reviewed by an HMRC officer not previously involved in the matter.

9. In an undated letter, the Appellant wrote to HMRC to accept the offer of an HMRC review.

5 10. The requested review was carried out and the conclusion was that HMRC's decision to refuse the appeal should be upheld. HMRC stated that, if the Appellant disagreed with HMRC's conclusion, he could ask an independent Tribunal to decide the matter, by sending his appeal to the Tribunal within the following 30 days.

10 11. The Appellant then lodged an appeal with the Tribunal. His appeal was dated 24 February 2014, and was received in the post by HM Courts & Tribunals Service on 26 February 2014.

Appellant's contentions

15 12. The Appellant says that HMRC's notification dated 3 September 2013, informing him that he would receive a letter telling him to complete a tax return, stated that he would have at least 3 months from the date of issue on the letter in which to submit the return. No exact date was given in the notice to file, and therefore he reasonably inferred that he had longer than 3 months from the date of that notice in which to file the return.

20 13. The Appellant argues that the basis for the penalty was that he had not filed the return within 3 months. There is therefore a conflict between the basis on which the penalty was imposed and the wording of the original letter from HMRC of 3 September 2013. This conflict or ambiguity caused him to be misled as to the deadline for filing, given that he had never been required before to file a tax return with HMRC.

25 14. The Appellant says that his employer pays his tax through PAYE, and he had never seen or filled in a tax form before. He has not received any training, or any assistance from HMRC, in completing the return. He had only been asked to file the return because he had received a pay-out from a private pension. He had not previously been made aware that this would have any tax consequences.

30 15. He did not receive any reminders from HMRC that the filing deadline was approaching, but once prompted by receipt of the penalty notice, he immediately filed the return.

16. The Appellant submits that, in all the circumstances, it is unreasonable for HMRC to impose the penalty, and it should therefore be cancelled.

35 HMRC's contentions

17. The letter giving the conclusions of HMRC's review was dated 23 January 2014. Under section 49G of the Taxes Management Act ("TMA") 1970, if the Appellant wished to notify his appeal to the Tribunal, he had to do so within the

period of 30 days starting with the date of that letter, i.e. by 21 February 2014. In the event, the Appellant's notice appeal of appeal to the Tribunal was dated 24 February 2014 and was received by HM Courts & Tribunals Service on 26 February 2014. There was an intervening weekend, and the Appellant's notice of appeal was given to the Tribunal 3 working days late. In the circumstances, and considering that the Appellant is unrepresented and apparently unfamiliar with these matters, HMRC does not raise any objection to his application for permission to appeal out of time.

18. HMRC accepts that this was the first occasion on which the Appellant had been required to file a tax return, and that as an employee taxed under PAYE, he could not be expected to be familiar with the legal obligations pertaining to Self-Assessment. HMRC accept that this should be taken into account in determining what is reasonable in his case.

19. The notice to file dated 4 September 2013 included the following statement, which was highlighted by placing it within a box:

15 **“Deadlines**

We must receive your tax return by these dates:

- If you are using a paper return - by 31 October 2012, (or 3 months after the date of this notice if that's later), or
- If you are filing a return online - by 31 January 2013, (or 3 months after the date of this notice if that's later).

If your return is late you will be charged a £100 penalty.”

20. Therefore, the deadline by which the Appellant had to submit the return to HMRC was 3 months after 4 September 2013, which was 4 December 2013, whether he chose to file the return in a paper format or online. HMRC therefore submits that the filing date given in the notice to file was in accordance with section 8(1G) of TMA 1970. The notice to file was sent to the Appellant's place of residence, and there is no evidence of any significant delay in the Appellant receiving the notice.

21. HMRC therefore submits that a valid notice under section 8 of TMA 1970 was given to the Appellant, requiring him to file the return by 4 December 2013. It is not disputed that the Appellant failed to file the return with HMRC by that date.

22. HMRC accepts that the filing date was not stated explicitly, either in the notice to file or in the covering letter dated 4 September 2013 that accompanied that notice. It had to be deduced from the information on "deadlines" that was given in the notice to file. Given the statement in the previous letter, dated 3 September 2013, that he would have at least 3 months to file the return, HMRC accepts that there may have been potential for some confusion for someone in the Appellant's circumstances.

23. HMRC submits that there was no incorrect or misleading information concerning the filing date given in any communication to the Appellant. It was not

reasonable for him to infer, from the statement made in HMRC's letter dated 3 September 2013, that he would have longer than 3 months from the date of the notice to file, in which to file the return. That letter was a standard one issued by HMRC to an individual who is being brought into the Self-Assessment regime, and is designed to cover different scenarios. For example, if the notice to file had been dated before 5 31 July 2012, then the Appellant would have had more than 3 months in which to file the return. The phrase "at least 3 months" is unambiguous. It might mean exactly 3 months (as was the case here), or more than 3 months, but certainly no less than 3 months. There was therefore no inconsistency between the letter of 3 September 2013 10 and the notice to file.

24. Notwithstanding the Appellant's inexperience in these matters, it is reasonable to expect him to have taken steps to ascertain exactly what the filing date was. HMRC therefore submits that a misunderstanding as to the filing date cannot provide the Appellant with a reasonable excuse for his failure to file the return with HMRC on 15 time.

25. The Appellant states that he "had not been made aware" that the pay-out he received from his private pension "was an issue for any tax". The Appellant has not put forward in evidence any documentation sent by his pension provider in connection with the payment in question, or anything else concerning any advice he may have 20 been given. Therefore HMRC is not able to comment on whether or not the Appellant was aware that the payment potentially had tax consequences. In any case, HMRC submits that ignorance on this point cannot constitute a reasonable excuse, because the position was made clear by HMRC's letter dated 4 September 2013, the opening paragraph of which stated:

25 "HMRC has become aware that during the year 2011/12 you made changes in the way that your pension fund had been invested. I have reason to believe that a payment has been made to you as a result of this transaction. Any such payment may be deemed to be an unauthorised payment from your pension scheme. Unauthorised payments are chargeable to tax by virtue of S 208 30 Finance Act 2004."

26. As regards the Appellant's statement that he not received any training or any assistance from HMRC to complete the return, HMRC submits that this cannot constitute a reasonable excuse for filing late. Assistance from HMRC was available to the Appellant had he sought it, and indeed he did telephone on 23 December 2013 for 35 HMRC's guidance on which parts of the return were relevant to him.

27. As regards the Appellant's comment that he did not receive any reminders from HMRC that the filing deadline was approaching, HMRC is not required by statute to issue any such reminders. Whilst reminders to file returns are sometimes sent, HMRC submits that it is not reasonable to expect it to do so in all cases, and the absence of 40 any reminder in the Appellant's case cannot provide him with a reasonable excuse.

28. As regards the Appellant's comment that he immediately filed the return once he had been prompted by receipt of the penalty notice, HMRC submits that this is of

no relevance to the question of whether he had a reasonable excuse for having failed to file it, at the point in time when liability to the penalty arose.

29. In view of the foregoing, HMRC submits that the Appellant has not established that he had any "reasonable excuse" for his failure to submit the return to HMRC by the filing date.

30. HMRC has also considered whether there are any "special circumstances" in the Appellant's case, which would make it appropriate for them to exercise their discretion, under paragraph 16 of Schedule 55 to FA 2009, to reduce the penalty.

31. HMRC submits that the fact this was the first occasion on which the Appellant had been required to file a tax return cannot be considered a "special circumstance". Neither can the manner in which the Appellant was informed of this requirement and the reasons for it. Such matters fall within the ordinary and regular business of HMRC, as it carries out the functions conferred on it by statute.

32. None of the other grounds of appeal put forward by the Appellant, as considered above, would amount to "special circumstances". Likewise, HMRC is not aware of any other circumstances pertaining to the Appellant that are out of the ordinary, and that might constitute "special circumstances" for the purposes of the legislation.

33. HMRC therefore submits that there are no "special circumstances" in the Appellant's case, on the basis of which the penalty should be reduced.

20 Conclusion

34. With regard to the Appellant's application for permission to appeal out of time and having considered the circumstances, in particular that the Appellant would have been unfamiliar with the filing of a tax return and that HMRC does not raise any objection, the Tribunal grants the application.

35. With regard to the substantive issues, the onus of proof rests with HMRC to show that the penalty was correctly imposed. If so established, the onus then rests with the Appellant to demonstrate that there was reasonable excuse for late filing of his return. The standard of proof is the ordinary civil standard of the balance of probabilities. The Appellant must therefore show that he has a reasonable excuse for the late filing of his income tax return for the year ended 5 April 2012 with HMRC by the filing date.

36. On 3 September 2013 the Appellant received a letter from HMRC saying that he would receive a notice to file a tax return and that he would therefore have "at least three months" from the date of issue on the letter in which to submit the return. No exact date was given in the notice to file, and therefore he reasonably inferred that he had longer than three months from the date of that notice, in which to file the return.

37. On 4 September the Appellant duly received the notice from HMRC saying that if he used a paper return he had to file the return "by 31 October 2012, (or 3 months after the date of this notice if that was later)", (which it was not.) He therefore had

5 until 4 December 2013 to file the return. The notice in itself was unequivocal. The date by which to file was made quite clear and could not be said to have been ambiguous. Although only the previous day, the Appellant had received a letter to say that he had at least three months to file the return, read together, HMRC's letter and notice were strictly speaking not ambiguous.

10 38. If there had been any doubt in the Appellant's mind about the filing date, someone in his position, taking reasonable care, would have made further enquiries of HMRC. A contact telephone number for HMRC was given in the notice to file. The importance of being certain of what was the filing date would have been readily apparent to a person taking reasonable care in reading the notice to file, because the notice clearly warned of penalties that would be charged for late filing. There is no evidence that the Appellant sought any such clarification.

15 39. The Tribunal concludes that the Appellant has not shown a reasonable excuse for the late filing of his Self-Assessment return for the year end 5 April 2012 and the appeal is accordingly dismissed and the surcharge confirmed.

20 40. 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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**MICHAEL S CONNELL
TRIBUNAL JUDGE**

RELEASE DATE: 18 August 2014

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