



**TC03180**

**Appeal number: TC/2013/06526**

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

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MARK A HOUGHTON**

**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 23 December 2013 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 9 September 2013, and HMRC's Statement of Case received on 28 October 2013 with enclosures. The Tribunal wrote to the Appellant on 28 October 2013 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 for the late filing by the appellant of its individual tax return for the tax year 2011 – 2012.

### 2. Legislation

Finance Act 2009 Schedule 55

Taxes Management Act 1970, in particular Section 8(1D)

### 10 3. Case law

Rowland v HMRC [2006] STC (SCD)536

Anthony Wood t/as Propave v HMRC [2011] UK FTT 136 (TC) TC 001010

### 4. Facts

15 The appellant was issued with a self-assessment tax return form for the year ending 5 April 2012 on 21 November 2012. The filing date for the return was 28 February 2013 for both an electronic or non-electronic return.

5. The appellant submitted a non-electronic return late on 23 April 2013.

20 6. As the return had not submitted by the filing date of 28 February 2013 HMRC issued a notice of penalty assessment on 5 March 2013 in the amount of £100.

### 7. Appellant's submissions

25 On 12 March 2013 the appellant completed a Self Assessment: Appeal against penalties for late filing and late payment, form SA370, on which he wrote "I do not agree with any of this. I'm not self-employed, chairman or a director of any business. I have an employer who pays my tax with yourselves. If any mistakes are made, they are on your part, not mine. I am seeking legal advice about this."

8. HMRC replied on 22 April 2013 by saying they could not consider the appeal because the return had not yet been received.

30 9. After the return was submitted on 23 April 2013 HMRC reviewed the appeal and wrote to the appellant on 3 July 2013 saying they did not accept that he had reasonable excuse for the late submission .The letter offered a review.

35 10. On 9 July 2013 the appellant completed a Request for a review of a decision, form SA634, on which he wrote "As I said before I am an employee and shouldn't have to fill in these forms, its Inland Revenue's mistake why as it took 5 years to get the correct code when this should have been sorted 2007 the amount I owe is well over what I can pay back all these mistakes and I am paying for your mistakes."

11. HMRC replied on 23 August 2013 giving their “Conclusion of review” and saying that they did not accept that the appellant had provided a reasonable excuse for failing to submit his return on time.

12. In his notice of appeal dated 9 September 2013 the appellant states:

5 “I’ve had to fill in six years of tax returns which I was never self-employed. I think the Inland Revenue has made a mistake and is now trying to get some money back, which I think is wrong especially going back 6 years it could total 1000s of pounds which is not fair on me because Inland Revenue issues me with the codes through my employer.”

### 10 **13. HMRC Submissions**

HMRC say that the appellant was issued with a self-assessment tax return form for the year ending 5 April 2012 on 21 November 2012. The filing date for the return was 28 February 2013 for both an electronic or non-electronic return. This was clearly stated on the front of the return.

15 HMRC say that once a taxpayer is issued with a personal tax return he is legally obliged to ensure that it is filed on or before its filing date. The appellant is not relieved from his filing obligation simply because he believes that he does not meet the criteria for inclusion in Self Assessment and did not receive any income from self employment during the period of the return.

20 HMRC say the appellant did not file his return by the filing date of 28 February 2013 therefore the penalty was correctly imposed in accordance with Paragraph 3 of Schedule 55 of the Finance Act 2009.

25 14. HMRC say that the appellant was issued with calculations of tax underpaid on 18 September 2011. These underpayments were for the years from 6 April 2008 to 5 April 2011 and totalled £2,583.80. This underpayment was carried forward to the tax calculation for the year ended 5 April 2012. A calculation for 2011-2012 was issued on 2 July 2012 with a total tax liability of £3,609.00.

30 15. The appellant telephoned to say he was unable to pay. As the appellant had insufficient income the underpayment could not be collected through his code. Number. On 19 March 2012 he was therefore requested to make a voluntary payment. The appellant did not take up this offer.

35 16. HMRC say that it was the appellant’s responsibility to ensure that his tax code was right, and that the correct deductions were made under PAYE from his income by carefully checking all documents received from his employer such as payslips, and his form P60 and P2 Notices of Coding received from HMRC.

### **17. Tribunal’s Observations**

The Tribunal’s has considered these submissions and comments as follows:

It is the appellant's responsibility to submit returns on time. As the return was submitted late under the terms of paragraph 3 of Schedule 55 of the Finance Act 2009 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) of the same Schedule 55.

5 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. The appellant has given no reasonable excuse for the late submission of the return except that he considers he should not have been sent a return because he is not self-employed. The Tribunal agrees with HMRC that once a  
10 taxpayer is issued with a personal tax return he is legally obliged to ensure that it is filed on or before its filing date. This is so even if a taxpayer considers that there are reasons why he should not have been issued with a return form. The appellant has given no reasonable excuse as to why he could not comply and submit a return on time nor has he given any reason that prevented him from submitting the return on  
15 time. Therefore the Tribunal considers no reasonable excuse has been established.

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 this case which would allow them to reduce the penalty and have concluded there are  
20 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 2011-2012. There are no special circumstances to allow reduction of the penalty. Therefore the appeal is dismissed.

25 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  
30 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

35 **PETER R. SHEPPARD**  
**TRIBUNAL PRESIDING MEMBER**

**RELEASE DATE: 24 December 2013**

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