



TC03918

Appeal number: TC/2014/03226

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

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

KIERON J. BILLINGS

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 12 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 5 June 2014, and HMRC's Statement of Case dated 23 June 2014 with enclosures. The Tribunal wrote to the Appellant on 26 June 2014 indicating that if he wished to reply to HMRC's Statement of Case they should do so within 30 days. A reply dated 18 July 2014 was received from the Appellant's agent.

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
15 Rowland v HMRC [2006] STC (SCD) 536
Anthony Wood t/as Propave v HMRC [2011] UK FTT 136 (TC)
Paintball Challenge Ltd. v HMRC [2014] UKFTT 0136 (TC)
Stewarton Polo Club Ltd. v HMRC [2011] UKFTT 668 (TC)
Life Property Management Ltd. (the Ironworks) v HMRC [2013] UKFTT 303 (TC)
20 Schola UK Ltd v HMRC [2011] UKFTT 130 (TC)
HMRC v Hok Ltd [2012] UKUT 363 (TCC)

4. Facts

25 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 the deadline for submission of a non-electronic return was 31 October 2013, the deadline for an electronic return was 31 January 2014.

30 5. In respect of the year 2012-2013 the Appellant failed to submit his individual tax return until an electronic return was filed on 28 February 2014. As the return was not submitted by the filing date of 31 January 2014 HMRC issued a notice of penalty assessment on 18 February 2014 in the amount of £100.

6. On 4 March 2014 the appellant's agent H. Stone & Co. Ltd. appealed against the penalty. The letter included the following:

35 On receiving this notice it has made us aware that despite entering our client's details on HMRC tax filing system, we forgot to submit the actual return.

The month of January is very hectic for us and although we do our utmost to ensure all necessary tax returns are submitted we have overlooked actually submitting our client's tax return to you.

40 They point out that the appellant did in fact pay the exact tax liability on time.

7. HMRC sent the appellant a decision letter dated 20 March 2014 rejecting his appeal and offering a review. The decision letter commented that HMRC cannot accept that an error by the appellant's agent cannot be accepted as a reasonable excuse.

8. On 1 April 2014 the Appellant’s agent wrote to HMRC requesting a review of the decision to impose a penalty. The letter included “...our above client relies on ourselves to prepare and submit his tax returns and for this particular year there was an oversight in our office, whereupon having prepared our clients 2013 tax return and entering the details on HMRC online filing service, we, due to an individual error, failed to submit it.” It also included “We do not feel it fair or reasonable to penalise our client for an obvious error on our part, (which we will be making arrangements to avoid this occurring in the future.) Furthermore this is the first time an error of this sort has occurred at our offices and we believe it can be classed as an unexpected or unusual event.”

9. On 13 May 2014 HMRC wrote to the Appellant giving the conclusion of their review which was that the decision to charge the penalty was correct. They comment “Reliance on an agent is not a reasonable excuse for failure to submit your return on time. It is a well established principle that the taxpayer bears the ultimate responsibility to ensure that all tax obligations are met. The legal obligation, as set out under Section 7 Part 2 TMA 1970 makes clear that the responsibility rests with the taxpayer and cannot be transferred to an agent acting on the taxpayer’s behalf. Your agent would also have been aware that he would have received a confirmation email had the return been successfully received on time by HMRC”

10. Appellant’s further submissions

In the Appellant’s Notice of Appeal dated 20 May 2014 the Appellant’s agent repeats a number of points made in earlier letters but also states.

“We feel it is unfair to penalise our client for a genuine honest error by ourselves in not actually submitting our client’s 2013 self-assessment return by the due date, despite the fact that we had put it on HMRC website and only required to be actually submitted.”

They also state “We note the remark in the letter from HMRC review officer that we should receive a confirmation email that the return had been successfully submitted, but even this is not automatic, you can receive a message from HMRC that because their computer system is busy it can take up to ten minutes for this submission to be acknowledged. Obviously at this time of year the system would have been busy and we would not be able to await confirmation every time, as we are under pressure to carry on working.”

11. On 18 July 2014 the Appellant’s agent responded to HMRC’s statement of case. He made similar observations to those made in earlier letters but also said

“We did confirm to him over the phone and in writing that we have submitted his tax return (as we believed this was the case), therefore we failed to see what other measures our client could reasonably be expected to make this year compared to previous years when the same procedures were in place and tax returns were submitted on time.”

12. HMRC Submissions

HMRC say the Appellant has been making self-assessment returns since 1996-1997. They therefore consider he is experienced with the self-assessment system and fully aware of his tax obligations.

In respect of submissions of returns HMRC say “If everything has been completed correctly, a successful submission message is then displayed on screen which includes the ‘Submission Receipt Reference Number’ and if HMRC has been provided with an email address an email message is also sent.

5 The fact that no successful submission message was received (either by software or email) should have alerted the user to the fact that something was wrong and prompted them to recheck submission protocols or contact HMRC online services helpdesk for help or advice;....”

10 13. HMRC also say “.....it is reasonable to expect that frequent/ experienced users of the self-assessment online filing system, such as in this case, would have adequate systems in place to ensure that the acknowledgement message has been received for one return before the filing of a further return;....”

15 14. HMRC say “Although this may have been an honest mistake, a failure has been made and in these circumstances HMRC have to be seen as consistent in our approach

15. HMRC quote a number of cases in support of their contentions, these are listed above at paragraph 3.

16. 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.

20 17. 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.

25 18. **Tribunal’s Observations**

The Tribunal has considered these submissions and comments as follows:

30 It is the Appellant’s responsibility to submit returns on time. The return for the period 2012 -2013 was due to be submitted online by 31 January 2014, but it was submitted late on 28 February 2014. The appellant’s agent accepts that they submitted it late due to an oversight. 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. 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.

35 19. *In Paintball Challenge Ltd. v HMRC* Judge Norma Baird states “The appellants were under an obligation to file their return on time and failed to do so. I accept that they tried to do it and had assumed that what they had sent had been received by HMRC but it seems to me to be reasonable when filing a return online to check that it has been received by HMRC. It is clear from the guidance that a message is sent. In
40 these circumstances I find that the appellants have not established that they have a reasonable excuse for their failure to file the return on time”.

20. In the Tribunal's view a very similar thing has happened in this case. The difference being that it is the appellant's agent that failed to check that their submission on behalf of the appellant had been received.

21. In *Schola UK Ltd v HMRC* Judge Michael Tildesley OBE states at paragraph 7. "The Appellant's reason for not filing the return on time was essentially its agent made an honest mistake. The Appellant was bound by the actions of its agent and cannot avoid its responsibilities under the Tax Acts by transferring them to its agent. The agent's mistake was that it did not check that it had received the acknowledgement of receipt of the return which HMRC sends by e mail. The mistake could have been avoided if the agent had exercised proper care. The actions of the agent were not those of a prudent employer exercising reasonable foresight and due diligence with a proper regard for the responsibilities under the Tax Acts. The Tribunal, therefore, finds that the Appellant did not have a reasonable excuse for the late filing of the 2008/09 end of year return."

22. In the Tribunal's view in this case the Appellant's agent made an honest mistake. Judge Tildesley's comments are appropriate to this case. This Tribunal therefore considers that the appellant has not established reasonable excuse for the late filing of its 2012-2013 return.

21. 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 none. The Tribunal sees no reason to disagree.

22. HMRC has applied the late filing penalty of £100 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 allow reduction of the penalty. Therefore the appeal is dismissed.

23. 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.

PETER R. SHEPPARD
TRIBUNAL PRESIDING MEMBER

RELEASE DATE: 12 August 2014