



TC05212

Appeal number: TC/2015/00107

*INCOME TAX – late filing of tax return – whether reasonable excuse – no
– appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Richard Foot

Appellant

- and -

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

TRIBUNAL: JUDGE DR K KHAN

The Tribunal determined this appeal on 25 April 2016 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 of 5 January 2015 and HMRC's Statement of Case 3 February 2016

DECISION

Introduction

5 1. This is an appeal against a penalty imposed under paragraph 3 of Schedule 55 Finance Act (FA) 2009 for the late filing of the individual tax return of the year ending 5 April 2011 and 2012.

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Background facts

10 2. The Return for the year ending 5 April 2011 was issued to the Appellant on 13 May 2015. The filing date was 20 August 2014 for both a non-electronic return and an electronic return.

15 3. The Appellant's non-electronic Return for 2011 was received on 8 February 2015 and as the Return was not received by the filing date HMRC issued a Notice of Penalty Assessment in the amount of £100.00.

20 4. The Return for the year ending 5 April 2012 was issued to the Appellant on 13 May 2014. The filing date was 20 August 2014 for both an electronic and non-electronic return. The Appellant's Return for the year 2012 was received on 8 January 2015. As the return was not received by the filing date HMRC issued a Notice of Penalty Assessment in the sum of £100.00.

Appellant's Submissions

25 5. The Appellant appealed the penalties for both years on the grounds that he was informed by HMRC that he did not have to make returns past the year 2007. He had received no information from HMRC indicating that he was required to complete a Self Assessment Return.

30 6. In a decision letter of 20 October 2014 his appeal was rejected and he was offered a review. The review was carried out in November 2014 It upheld HMRC's decision and explained that Tax Return forms for 2010-2011 and 2011-2012 were sent both to his home address on 13 May 2014 and allowed three months for completion given the returns were outside the normal cycle. The address was correct given there was no record of a change of address given to HMRC by the Appellant.

35 7. The Returns were sent in order to collect an under-payment of PAYE that arose in the years 2010-2011 to 2011-2012 as the under-payment was at a level that could not be collected through the tax code.

Appellant's submissions

8. The Appellant stated that all his tax liability was collected through the PAYE system and there was no correspondence in recent years indicating an underpayment of tax due to HMRC and there was nothing to indicate that he should complete a Self Assessment Tax Return.

9. He asserts that there was no correspondence to him indicating that he should complete a Tax Return.

HMRC's view

10. HMRC said that the Returns were late and the penalties were properly applied. The tax return and guidance clearly showed the filing and payment deadlines.

11. HMRC records show that tax calculations were issued for 2010-2011 and 2011-2012 tax years to the Appellant on 9 November 2012 along with a covering letter explaining how to make payment, which the Appellant confirmed he had received. The letter confirmed that if he did not pay the amount due or make arrangements with HMRC to pay then the amounts would be collected through Self-Assessment which required forms to be completed and returned to HMRC.

12. The Appellant did not respond to HMRC's letters but their records show that Tax Return forms were sent to the Appellant at his home address in May 2014 and there had been no change of his address record with HMRC and no correspondence was returned.

Conclusion

13. Under section 7 of the TMA 1970 there is a requirement for an individual to notify HMRC of the chargeability to income tax and capital gains tax. There are tax geared penalties for a failure to inform HMRC of this liability. Under section 8 of the TMA 1970 if HMRC issues a Notice to file which could either be a stand alone Notice or Notice in the form of a Tax Return, the individual must file a return in accordance with the law. Taken together, an individual has a legal obligation to file a tax return, notify a liability and to pay any tax due to HMRC. This is the basis of the Self-Assessment system.

14. Where a Tax Return is sent to a Taxpayer it is normally sent to their last known address. This was done and there is no indication that the Appellant had changed his address for correspondence. HMRC's records clearly show that Tax Return forms were sent to the Appellant in 2010-2011 and 2011-20112 at his home address allowing approximately three months for the return to be completed. There is no indication that any of the correspondence was returned. It is therefore a fair

assumption, on the balance of probabilities, that the relevant forms were provided to the Appellant and he was aware of a liability to tax.

15. The reason the Appellant was asked to complete tax returns was due to an under-payment of tax in 2010 – 2011 and 2011-2012. It would appear that HMRC wrote to the Appellant several times but did not receive a reply so the returns were sent out as a way of collecting the tax through the Self Assessment system.

16. There appears to have been some problems with coding since the Appellant received the benefit of ESC A19 which is an Extra Statutory Concession which allows HMRC to not collect certain liabilities in respect of income and capital gains where, for example, an employer has been operating an incorrect PAYE coding. The Appellant had the benefit of this concession for earlier years in 2009-2010 and made a further claim for concessionary treatment for 2010-2011 and 2011-2012, which were not given to the Appellant.

17. It seems reasonable to assume therefore that the Taxpayer was aware of his under-payment of tax and did in fact receive correspondence from HMRC.

18. In the circumstances, the Tribunal can come to only one conclusion which is that the appeal is dismissed and the penalty is upheld.

The Taxpayer has complained about the service he received from HMRC and should therefore be advised of the Complaints Procedure for dealing with those matters.

19. 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.

DR K KHAN
TRIBUNAL JUDGE

RELEASE DATE: 28 JUNE 2016