



TC01520

Appeal number: TC/2011/04223

Tax – Late submission of Self-Assessment Return – Appellant no longer in self-employment – Was there a reasonable excuse – Under the circumstances, yes – Appeal allowed.

FIRST-TIER TRIBUNAL

TAX

NIGEL PICKLES

Appellant

- and -

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

Respondents

TRIBUNAL: LADY MITTING (TRIBUNAL JUDGE)

The Tribunal determined the appeal on 5 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 3 June 2011 and HMRC's Statement of Case submitted on 5 July 2011, the Appellant having lodged no Reply.

DECISION

1. Mr Pickles was appealing against a penalty of £100 issued on or around 15 February 2011 for the non submission of his Tax Return for the year ending 5 April 2010.

2. A personal tax return for the year ended 5 April 2010 was issued to Mr Pickles on 6 April 2010. The filing dates were 31 October 2010 for a paper Return and 31 January 2011 for online filing. The Return has never been submitted.

3. It was Mr Pickles' case that he had not been self-employed since taking up employment with the Royal Mail in November 2008 and he therefore had no self-employed income to declare in the Tax Return. He further contends that he had told the Respondents of his change of status "several times" including in the self-assessment Return which he submitted for the earlier year 2008/09, this Return itself being submitted late on 21 October 2010.

4. It was the Respondents' case that until they received the Return for 08/09, they had received no notification that Mr Pickles had ceased in self-employment. It was not therefore until 21 October 2010 that they received notification of this fact. They were therefore fully entitled to issue the Return in April 2010 and once issued, there was a legal liability upon Mr Pickles to return it, even if his assessable income was nil.

5. There is no evidence before me that the Respondents were informed of the cessation of self-employment until the submission of the 08/09 Return on 21 October 2010. I find as a fact that this was the first intimation which they received. I also accept that they were therefore fully entitled to issue a Return for 09/10 to Mr Pickles and that it should have been returned. Without more therefore the penalty would have been properly raised, unless that is Mr Pickles can provide a reasonable excuse for its non submission.

6. It has to be said that Mr Pickles hardly helped himself. Accepting, as I do, that he did not inform the Respondents of his new status other than in the 08/09 Return, he then delayed inordinately in submitting that Return. However, the earliest date upon which the 09/10 return was due to be submitted was 31 October 2010 if it were a paper return and later on 31 January 2011 if it were to be filed on line. By that date, Mr Pickles knew that his 08/09 Return had been submitted and that he had informed the Respondents on that Return that there was no self-employment. I therefore believe that he could reasonably have concluded that there was no need to file the Return as the Respondents had been informed that there was no assessable income. I find therefore that Mr Pickles did have a reasonable excuse for the non submission.

7. One point was raised by Mr Pickles in support of his case, that being that in relation to the 08/09 Return, he had incurred penalties of £200 for its late submission. Mr Pickles was later re-credited with this sum, his belief being that the penalties had been cancelled as an admission by the Respondents' that he had a reasonable excuse for failing to submit that Return on time. In reality the penalties were in fact capped

to nil when the Return, as eventually submitted, showed nil tax due. The only documentation before me to evidence the re-crediting of the penalties was a Self-Assessment Statement dated 20 February 2011. If that were the first intimation to Mr Pickles that his earlier penalty had been re-credited, it occurred after his Return for 09/10 was already due and could hardly therefore have been relied upon him. It may be that he received an earlier notification that the penalties were to be capped but of this there is no evidence in front of me. It is in fact in my view immaterial and goes no further in supporting Mr Pickles' case.

8. The Appeal is allowed.

10 9. 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
15 "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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TRIBUNAL JUDGE

RELEASE DATE: 25 OCTOBER 2011