



**TC01657**

**Appeal number: TC/2011/05977**

*Penalty for late return – reasonable excuse throughout period of default – return still outstanding at date of HMRC filing Statement of Case – appeal dismissed*

**FIRST-TIER TRIBUNAL**

**TAX**

**MARTIN IVENS**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: J. BLEWITT (TRIBUNAL JUDGE)**

**The Tribunal determined the appeal on 24 November 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 23 July 2011 and HMRC's Statement of Case submitted on 15 September 2011.**

## DECISION

1. This is an appeal against a fixed automatic penalty in the sum of £100 imposed under section 93 (2) Taxes Management Act 1970 for the late filing of the Appellant's individual Self Assessment tax return for the year ending 5 April 2010.

### Facts

2. The return for the year ending 5 April 2010 was issued to the Appellant on 6 April 2010. The filing date was 31 October 2010 for a paper return or 31 January 2011 if filed online. At the time of submitting its Statement of Case on 15 September 2011, HMRC had not received the Appellant's return. The penalty notice was issued on or about 15 February 2010.

### Legislation

3. Section 8 Taxes Management Act 1970 ("TMA") requires a person to deliver a return by the filing date where a notice to file has been sent. Where a return is not submitted by the due date, Section 93 (2) TMA 1970 provides that a person is liable for a penalty of £100.

4. A person may appeal against a penalty determination by virtue of Section 93 (8) TMA 1970. Where it appears to the Tribunal that there was a reasonable excuse throughout the period of default (that being the period from the filing date to the day before the return is submitted), the Tribunal has the power to set the penalty aside, otherwise the penalty may be confirmed.

### Submissions of the parties

5. By Notice of Appeal dated 21 July 2011 the Appellant appealed against the penalty imposed. The grounds of appeal relied upon are that the return, as always, was submitted on time with the correct postage. Given the amount of post lost, this should not be considered as proof that the return was not made. HMRC states that future evidence of postage "would be helpful"; certainly it would but that is not a requirement of submitting a return. HMRC's letter to the Appellant dated 19 July 2011 states that an appeal can be made within 30 days, but then threatens that a further penalty will be imposed on 31 July 2011 which does not allow for the appeal or 30 day period for "action to take".

6. HMRC submits in its Statement of Case dated 15 September 2011 that a letter sent to the Appellant on 24 March 2011 informed the Appellant that an appeal could not be considered until the return had been submitted; however no duplicate return was filed by the Appellant. In its formal decision letter dated 19 May 2011, HMRC again told the Appellant to complete the outstanding return. The review conclusion letter was issued to the Appellant on 19 July 2011; HMRC upheld the original decision as the return had still not been filed at that date. It was reiterated that a return was required by HMRC and the Appellant could contact HMRC to obtain a duplicate or assistance if required. At the date of writing the Statement of Case, HMRC's records confirm that the return had not been submitted. HMRC accepts that the

Appellant's past returns were submitted on time. The suggestion that proof of postage be obtained in the future was an attempt by the HMRC officer to assist the Appellant. The officer also indicated that a further penalty notice was due to be issued on 31 July 2011 and that this would be avoided if the Appellant submitted the return before 30 July 2011; this has no bearing on the 30 day period in which the Appellant could appeal the penalty to the Tribunals Service. The return was requested on a number of occasions; as at 17 August 2011 HMRC's Self Assessment system showed that the return had not been submitted.

### Decision

7. The issue for the Tribunal to determine is whether there was a reasonable excuse lasting throughout the period of default for the late submission of the return: (s98 (8)TMA 1970)

*“On an appeal against the determination...of a...the tribunal may—*

*(a) if it appears ... that, throughout the period of default, the taxpayer had a reasonable excuse for not delivering the return, set the determination aside; or*

*(b) if it does not so appear ..., confirm the determination.”*

8. The Tribunal accepts that the Appellant had submitted all returns on time in the past. The Tribunal finds as a fact that this does not assist on determining whether a reasonable excuse exists in this case and does not, of itself, provide the Appellant with a reasonable excuse.

9. The Tribunal accepts that evidence of postage is not a requirement of submitting a return.

10. The Tribunal considered HMRC's letter to the Appellant dated 19 July 2011 which states as follows:

*“To avoid a further penalty being issued on 31 July 2011 please sign and return the form declaring any income you have received...”*

*Action to take within 30 days of this letter*

- If you accept my conclusion, please write to let me know*
- If you do not agree...you can continue you appeal by sending it to the Tribunal Service...you must send your appeal to the Tribunal Service within 30 days...”*

11. The Tribunal finds as a fact that the letter clearly indicates that a further penalty can be avoided by the Appellant and that the 30 day limit relates to the appeal against the penalty that had already been issued to the Appellant. The Tribunal finds as a fact that this does not provide the Appellant with a reasonable excuse.

12. The Tribunal accepts that a return lost in the post can amount to a reasonable excuse. However the Tribunal must be satisfied that any such excuse lasts throughout the period of default. In this case, at the time of HMRC's Statement of Case being submitted, the Appellant had still not submitted a return. The Tribunal finds a fact that  
5 the Appellant was informed that a duplicate return was required on 24 March 2011, 19 May 2011 and 19 July 2011, yet no return was submitted. The Tribunal finds as a fact that the reasonable excuse does not therefore last throughout the period of default, on the basis that once it was known to the Appellant that the return had been lost in the post, no action was taken to remedy this. This cannot therefore provide the  
10 Appellant with a reasonable excuse during the continued period over which no duplicate return was submitted and during which the Appellant was aware that a return was required by HMRC.

13. The appeal is dismissed and penalty confirmed.

14. This document contains full findings of fact and reasons for the decision. Any  
15 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)"  
20 which accompanies and forms part of this decision notice.

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**TRIBUNAL JUDGE**  
**RELEASE DATE: 13/12/2011**

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