



**TC01658**

**Appeal number: TC/2011/05991**

*Penalty for late return – reasonable excuse throughout period of default –  
appeal dismissed*

**FIRST-TIER TRIBUNAL**

**TAX**

**MARK FOY**

**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 1 August 2011 and HMRC's Statement of Case submitted on 16 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 4 June 2010. The filing date was 31 October 2010 for a paper return or 31 January 2011 if filed online. The Appellant's return was received by HMRC on 6 May 2011. The penalty notice was issued on 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 1 August 2011 the Appellant appealed against the penalty imposed. The grounds of appeal relied upon are that the notification to complete a tax return for 2009/2010 was not received. The Appellant has submitted many tax returns over the years within the timeframe specified. HMRC state that they "usually" know when a tax return has not been delivered as it is returned by Royal Mail. The Appellant maintains that the return was not received and that this case falls outside of the category of "usual." HMRC have no evidence that this is not true; it is guessing, which is not a correct basis for fining people.

6. HMRC submits in its Statement of Case dated 16 September 2011 that the tax return was sent to the Appellant at the address shown on the Tribunals Service documentation. Undelivered correspondence is recorded by HMRC and there are no records to show that any mail addressed to the Appellant was returned undelivered; the document is therefore deemed to have been served. The Appellant has been registered for Self Assessment since 18 October 1996 and is therefore aware of the process and should have taken adequate steps to ensure that the return was submitted by the due date. In December, if a return has not been submitted, a reminder SA309A is issued alerting taxpayers to the obligation to file the return by 31 January; this would have reminded the Appellant of his responsibility to file the return. There is no record of the Appellant contacting HMRC prior to the issue of the penalty notice on

15 February 2011 and the Appellant then waited until 6 May 2011 before filing the return.

### **Decision**

5 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.

8. The Tribunal accepts that the tax return for 2009/2010 was not received by the Appellant. The Tribunal does not find that the fact that there are no records to show that any mail addressed to the Appellant was returned to HMRC undelivered assists in determining whether or not a reasonable excuse exists.

10 9. The Tribunal notes that the Appellant has been registered for Self Assessment since 18 October 1996; on the Appellant's own evidence he has submitted many returns over a number of years. The Tribunal finds as a fact that the Appellant was fully aware of the process and that the responsibility rested with the Appellant to ensure that all of his tax obligations are met. The Tribunal finds as a fact that  
15 Appellant's oversight does put his case into an unusual or exceptional category, such that would provide him with a reasonable excuse.

10. The Tribunal finds that the penalty imposed is in accordance with legislation and as such the Tribunal does not accept that there was an incorrect basis for the penalty.

20 11. The Tribunal notes that the Appellant did not file the return until 6 May 2011 despite the penalty notice being issued on 15 February 2011. In the absence of any explanation for this delay, the Tribunal finds as a fact that even if the non-receipt of the return could amount to reasonable excuse, it did not last throughout the period of the default.

25 12. The burden is on the Appellant to establish a reasonable excuse, on a balance of probabilities. The Tribunal finds that the Appellant has not discharged that burden.

13. The appeal is dismissed and penalty confirmed.

30 14. 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.

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

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