



TC01707

Appeal number TC 2011/6631

**INCOME TAX – PENALTY FOR LATE FILING OF RETURN –
*Whether Appellant had reasonable excuse for default – No – Appeal
dismissed.***

FIRST-TIER TRIBUNAL

TAX

MR S WEBSTER

Appellant

- and -

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

Respondents

TRIBUNAL: MICHAEL TILDESLEY OBE

The Tribunal determined the appeal on 12 December 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 22 August 2011 and HMRC's Statement of Case submitted on 6 October 2011. The Appellant did not provide a reply.

DECISION

1. The Appellant appeals against the imposition of fixed penalties in the sum of £200 for the late filing of his personal tax return for the year ending 5 April 2010.
- 5 2. On 6 April 2010 HMRC issued the Appellant with a notice to file his 2009/10 tax return by 31 October 2010 for a paper return, and if online by 31 January 2011. The Appellant as on 6 October 2011 had not filed his return. The Appellant was, therefore, liable to pay a fixed penalty of £100 for not filing the return by 31 January 2011, and a further fixed penalty of £100 because the return was still outstanding as at 31 July 10 2011.
3. The Appellant contends that he has a reasonable excuse for not filing the tax return for the year ended 5 April 2010. The Appellant said that there was no need to make a return because he last worked on 8 July 2008. He filed his accounts for 2008/09 and received a tax rebate. Since ceasing work he has been in receipt of 15 pension credit. Finally he added he did not receive a return for 2009/2010.
4. HMRC contended that the Appellant was under a legal obligation to file a return in response to the notice to file which was issued to the Appellant on 6 April 2010. HMRC stated that the Appellant did not in his 2008/09 return indicate that his self employment had terminated. Also the Appellant ticked box 3 on his 2008/09 return, 20 which confirmed that he wanted any liabilities owing to be collected through his self assessment for 2009/10. HMRC pointed out that if he completed the return showing a nil liability, the fixed penalty would be reduced accordingly. HMRC reminded him of the possibility of a further fixed penalty of £100 if he did not submit the return by 31 July 2011.
- 25 5. The Tribunal has limited jurisdiction in penalty Appeals which reflects the purpose of the legislation of ensuring that tax payers file their returns on time. The Tribunal has no power to mitigate the penalty. The Tribunal can either confirm the penalty or quash it if satisfied that the Appellant has a reasonable excuse for his failure. If there is a reasonable excuse it must exist throughout the period of default. 30 The Appellant has the obligation of satisfying the Tribunal on a balance of probabilities that he has a reasonable excuse for not filing the return on time.
6. Reasonable excuse is not defined by statute. In considering a reasonable excuse the Tribunal examines the actions of the Appellant from the perspective of a prudent tax payer exercising reasonable foresight and due diligence and having proper regard 35 for his responsibilities under the Tax Acts.
7. The Tribunal is satisfied that the notice to file a return was issued to the Appellant on 6 April 2010 and that the notice was not returned as undelivered to HMRC. The Appellant states that he did not receive the tax return. He was silent on whether he received the notice to file. In those circumstances the Tribunal finds that 40 the Appellant received the notice to file in which case he was under a legal obligation to submit a return by the requisite date.

8. The Appellant's reason for not submitting a completed return for the year ended 5 April 2010 was misguided and worked to his detriment if his circumstances were such that his income was below the limit for paying tax. His obligation to submit a return flowed from the notice to file and was not dependent upon whether he was in employment. His failure to submit a return has resulted in him incurring another fixed penalty of £100. The Appellant would be wise to follow the advice of HMRC to submit a return as soon as possible which may result in a reduction in the penalties.

9. The Tribunal holds on the facts found that the Appellant has failed to provide a valid reason for not filing his return for the year ending 5 April 2010. The Tribunal is, therefore, satisfied that he does not have a reasonable excuse for his default with the result that his Appeal is dismissed and the fixed penalties of £200 are confirmed.

10. 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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MICHAEL TILDESLEY OBE
TRIBUNAL JUDGE
RELEASE DATE: 4 January 2012

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