



TC01792

Appeal number: TC/2011/04386

Income tax return—Penalty for late return (Taxes Management Act 1970 s.93(2))—Reasonable excuse—Appeal dismissed

FIRST-TIER TRIBUNAL

TAX

MR ARTHUR HALL

Appellant

- and -

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

Respondents

TRIBUNAL: Dr Christopher Staker (Tribunal Judge)

The Tribunal determined the appeal on 20 January 2012 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 7 June 2011, HMRC's Statement of Case dated 27 June 2011, and other papers in the case.

DECISION

Introduction

- 5 1. The Appellant appeals against a penalty of £100 imposed in respect of the late filing of his income tax return for the tax year 2009/10.

The relevant legislation

2. Section 8 of the TMA provides in relevant part as follows:

- 10 (1) For the purpose of establishing the amounts in which a person is chargeable to income tax and capital gains tax for a year of assessment, and the amount payable by him by way of income tax for that year, he may be required by a notice given to him by an officer of the Board—
- 15 (a) to make and deliver to the officer, a return containing such information as may reasonably be required in pursuance of the notice, and
- (b) to deliver with the return such accounts, statements and documents, relating to information contained in the return, as may reasonably be so required.
- ...
- 20 (1D) A return under this section for a year of assessment (Year 1) must be delivered—
- (a) in the case of a non-electronic return, on or before 31st October in Year 2, and
- 25 (b) in the case of an electronic return, on or before 31st January in Year 2.
- (1E) But subsection (1D) is subject to the following two exceptions.
- (1F) Exception 1 is that if a notice in respect of Year 1 is given after 31st July in Year 2 (but on or before 31st October), a return must be delivered—
- 30 (a) during the period of 3 months beginning with the date of the notice (for a non-electronic return), or
- (b) on or before 31st January (for an electronic return).
- (1G) Exception 2 is that if a notice in respect of Year 1 is given after 31st October in Year 2, a return (whether electronic or not) must be delivered during the period of 3 months beginning with the date of the notice.
- 35

- ...
3. Section 93 of the TMA states in relevant part as follows:

- (1) This section applies where—

- (a) any person (the taxpayer) has been required by a notice served under or for the purposes of section 8 or 8A of this Act (or either of those sections as extended by section 12 of this Act) to deliver any return, and
- 5 (b) he fails to comply with the notice.
- (2) The taxpayer shall be liable to a penalty which shall be £100.
- ...
- (4) If—
- 10 (a) the failure by the taxpayer to comply with the notice continues after the end of the period of six months beginning with the filing date, and
- (b) no application is made under subsection (3) above before the end of that period,
- 15 the taxpayer shall be liable to a further penalty which shall be £100.
- ...
- (6) No penalty shall be imposed under subsection (3) above in respect of a failure at any time after the failure has been remedied.
- 20 (7) If the taxpayer proves that the liability to tax shown in the return would not have exceeded a particular amount, the penalty under subsection (2) above, together with any penalty under subsection (4) above, shall not exceed that amount.
- (8) On an appeal against the determination under section 100 of this Act of a penalty under subsection (2) or (4) above that is notified to the tribunal, neither section 50(6) to (8) nor section 100B(2) of this Act shall apply but the tribunal may—
- 25 (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
- 30 (b) if it does not so appear, confirm the determination.
- (9) References in this section to a liability to tax which would have been shown in the return are references to an amount which, if a proper return had been delivered on the filing date, would have been payable by the taxpayer under section 59B of this Act for the year of assessment.
- 35 (10) In this section—
- “the filing date” in respect of a return for a year of assessment (Year 1) means—
- 40 (a) 31st January of Year 2, or
- (b) if the notice under section 8 or 8A was given after 31st October of Year 2, the last day of the period of three months beginning with the day on which the notice is given;

“the period of default”, in relation to any failure to deliver a return, means the period beginning with the filing date and ending with the day before that on which the return was delivered.

5 4. Section 118(2) of the TMA provides as follows:

10 (2) For the purposes of this Act, a person shall be deemed not to have failed to do anything required to be done within a limited time if he did it within such further time, if any, as the Board or the tribunal or officer concerned may have allowed; and where a person had a reasonable excuse for not doing anything required to be done he shall be deemed not to have failed to do it unless the excuse ceased and, after the excuse ceased, he shall be deemed not to have failed to do it if he did it without unreasonable delay after the excuse had ceased.

15 **The arguments of the parties**

5. The Appellant’s case as stated in the notice of appeal and supporting documents includes the following. The Appellant says that he started the process to obtain a user ID and tax reference number from the Government Gateway site on 20 January 2011. He began completing his online self assessment return on 28 January 2011, but part way through the process, the on screen instructions informed him that he had no tax to pay. He states in his notice of appeal that he “Completed Online Return on receipt of Gateway User ID on 28/01/2011, well inside the 31/01/2011 deadline”. He adds that “Because I do not have any tax to pay, it seems excessive to fine me £100 for not paying it”.

25 6. The Appellant states a number of other matters, such as that he is 70 years old, that he panicked when his user ID for the online system did not arrive until 24 January 2011, and that he has done online returns for the previous two years.

30 7. The HMRC statement of case states that a return had still not been validly filed by the Appellant as at the date of filing the HMRC statement of case. Once a taxpayer is issued with a notice to file a tax return, there is an obligation to do so under TMA s.8. The Appellant was issued with a notice to file a tax return. This is because in his 2009/10 tax return he clearly indicated that he wished to have his tax liabilities treated under the self assessment scheme and not under the PAYE scheme. The Appellant activated the online service in 2009. On 25 January 2011 the Appellant contacted the online services helpdesk requesting a replacement user ID. This was sent on 26 January 2011. On 30 January 2011, the Appellant changed his password and successfully logged on to the system.

The Tribunal’s findings

40 8. On consideration of the evidence and arguments as a whole, the Tribunal is satisfied that the Appellant was required to file a tax return online by 31 January 2011 (the deadline for filing a paper return having passed) and that he did not do so.

9. It may be that the Appellant suggests that he ought not be required to file online returns. However, the Tribunal is satisfied that he was required to do so pursuant to s.8 TMA, having been issued with a notice to file a return. The evidence indicates that he did expressly request in his 2009/10 tax return that his tax liabilities be treated under the self assessment scheme. Furthermore, the evidence indicates that the Appellant was aware of the obligation to file a tax return. He says that he was concerned about the delay in receiving his user ID as the 31 January 2011 deadline approached. However, he did receive it in time to file an online return. Indeed, on 30 January 2011, the Appellant changed his password and successfully logged on to the system.

10. The reasons why the Appellant did not then file a return when he was logged on, on 30 January 2011, are unclear. He says that the system indicated to him part way through the process that he had no tax to pay. He does not as such say that he abandoned the process of filing online on 30 January 2011 once he received the notification that he had no tax to pay. This is perhaps implicit in his reply to the HMRC statement of case, dated 18 July 2011. He states in the reply that the HMRC contention that he has still not filed a tax return is “rebutted” by the evidence that he has no tax to pay.

11. In fact, even if the Appellant has no tax to pay, that would not relieve him of the obligation to file a tax return. It may be that he was under a mistaken impression to the contrary, but ignorance of the law is not in principle a reasonable excuse. The Tribunal takes into account that the Appellant is 70 years old. Nevertheless, on the evidence before it, the Tribunal is not persuaded that the Appellant, with due diligence, would not have been able to file his return online by 31 January 2011, and would not have been aware of his obligation to do so. Nor is there any explanation for the failure to file the return for so long even after the penalty notice was issued. The Tribunal finds that there is no reasonable excuse for the late filing.

12. Thus, under s.100B(2)(a)(ii) of the TMA, the Tribunal confirms the penalty and dismisses the appeal.

13. 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 CHRISTOPHER STAKER

TRIBUNAL JUDGE
RELEASE DATE: 31/01/2012