



TC01887

Appeal number: TC/2011/08237

Income tax – penalty for late self-assessment tax return – taxpayer trying for almost four years to sort out his tax affairs – whether 2009-10 self-assessment Notice to File was delivered – no – whether Tribunal has jurisdiction to consider complaints about HMRC’s administrative failings – no - appeal allowed and penalty set aside.

**FIRST-TIER TRIBUNAL
TAX**

DAVID PREECE

Appellant

- and -

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

Respondents

TRIBUNAL: ANNE REDSTON (PRESIDING MEMBER)

The Tribunal determined the appeal on 13 February 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 received on 14 October 2011, HMRC’s Statement of Case submitted on 5 January 2012 and the Appellant’s Reply dated 31 January 2012.

DECISION

1. This is Mr Preece's appeal against a £100 penalty for late submission of his 2009-10 tax return.

5 2. The Tribunal allowed the appeal and set aside the penalty. .

The legislation

3. TMA s 8(1)(a) states that if a person is sent a Self Assessment ("SA") return, he is required to "make and deliver" this return to HMRC.

10 4. TMA s 8(1G) states that where a return is issued to a taxpayer after 31 October following the end of the tax year in question, the return must be delivered to HMRC "during the period of three months beginning with the date of the notice."

5. TMA s 93(2) says that a person who does not comply with the filing deadline "shall be liable to a penalty which shall be £100."

15 6. TMA s 100 states that the taxpayer may appeal the penalty; TMA s 93(8) sets out the powers of the Tribunal.

7. The Interpretation Act s 7 reads as follows:

20 Where an Act authorises or requires any document to be served by post (whether the expression "serve" or the expression "give" or "send" or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

The facts

25 8. At the end of March 2008, Mr Preece was made redundant. He asked HMRC to check whether his employer had deducted the correct tax from his redundancy pay, as he thought he had paid too much.

9. On 22 July 2008 HMRC replied, enclosing a P800 tax calculation which said Mr Preece owed HMRC £2,037.56 for 2006-07 and 2007-08.

30 10. HMRC said this shortfall was not due to Mr Preece's error but that "through no fault of [his] own, [the employer] did not take the correct amount of tax" from his salary. Mr Preece agreed with HMRC that he would repay this sum over a two year period by adjustments to his tax code.

35 11. On 24 January 2011, Mr Preece received a letter from HMRC saying "please pay the £2037.56 by 25 February 2011. We must receive full payment by this date." The letter attached a paying-in slip, pre-completed with the sum due, together with Mr Preece's name, address and tax reference number.

12. On 27 January 2011 Mr Preece replied, saying that he was very shocked to get this letter, and it had caused him and his family “worry and upset”. He explained he had been told the underpayment was to be deducted using his coding notice.

5 13. Mr Preece’s letter was treated as formal complaint by HMRC, and on 18 February 2011 Mr C Short, an HMRC “complaints handler” replied. He said:

10 “regarding the correspondence we issued to you on 24 January 2011. Firstly, I would like to apologise for any concern caused by the content of that letter on 24 January. On reviewing your tax records I can see that it should not have been issued...my colleague...did not carry out a full review of your record or the previous actions taken. I am sorry for this oversight.”

14. He continued:

15 “I can confirm that you paid too much tax in 2008-09. This is because, due to the [redundancy] payment being made at the start of that tax year, too much higher rate tax (40%) was deducted on that income. Even when taking into account your pension income, you did not receive the full benefit of the basic rate (20%) tax band for that year. The tax calculation will be issued separately.

20 The tax overpaid in 2008-09 was £3,874.13. When the outstanding underpayment of £2,037.56 is deducted, the total repayable amount is £1,836.57...There is therefore no need to include the under deduction in your 2010-11 and 2011-12 tax codes to collect the underpaid tax.”

15. Mr Short’s letter went on to say that during the tax year 2009-10, Mr Preece had become entitled to an age-related personal allowance. In order that HMRC could check whether he was entitled to the full age-related allowance, or a reduced amount, HMRC needed him to complete an SA return.

25 16. Mr Short says “I have arranged a 2009-10 SA tax return to be issued to you via our computer system. Once you have received that return, you will have 3 months from the date given on the tax return to complete and submit your return.”

17. Mr Preece subsequently spoke to Mr Short on the telephone, and Mr Short again confirmed that a 2009-10 paper SA return would be sent out.

30 18. In early April 2011, Mr Preece received a paper SA return to complete. He says, and I find as a fact, that he thought it was the 2009-10 return which Mr Short had said he was sending. It was, however, an SA return for 2010-11.

19. Mr Preece completed the return and submitted it online on 9 May 2011.

35 20. By Notice dated 7 June 2011, HMRC sent Mr Preece a penalty for not submitting the 2009-10 return.

21. On 17 June 2011, Mr Preece called HMRC and spoke to a lady called Vicky. He said he was “puzzled as to why he had received a letter that carried a £100 fine.” In his evidence to the Tribunal, he recounts what happened:

29. He also says that:

“I feel very resentful that through no fault of ours, myself and my family are being put under unnecessary stress by the HMRC when all we want is to have this matter resolved so we can get on with our lives without this hanging over our heads.”

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HMRC’s submissions

30. HMRC say that although Mr Short’s letter of 18 February 2011 told Mr Preece he would receive a paper return, in fact “on checking our records it is clear that a Notice to File a tax return, not a paper return, was issued to the Appellant on 24 February 2011. HMRC say this was because “any records created during the 2009-10 tax year were issued a Notice to File a return online, not a paper tax return.”

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31. They further say that Mr Preece was told by Mr Short that an SA return had to be completed for 2009-10 and that “it was unreasonable for the appellant to hold the belief that his tax affairs were in order given the knowledge that a return for the 2009-10 year was required.”

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32. Finally, they submit that Mr Preece’s appeal “does not contain anything which shows that there was a reasonable excuse throughout the period of default in that something unforeseen or unexpected prevented the appellant from adhering to his legal obligation to submit a 2009-10 SA return, therefore the penalty has been correctly charged and is due and payable.”

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Discussion and decision

33. I first consider whether the Notice to File was sent out.

34. Mr Short told Mr Preece, both orally and in writing, that “I have arranged for a 2009-10 tax return to be issued to you.”

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35. However, HMRC say that, instead of a paper return, a Notice to File was issued. They say this was because “any records created during the 2009-10 tax year were issued a Notice to File a return online, not a paper tax return.”

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36. Assuming that this is the default setting of the HMRC computer, and given that Mr Preece’s SA record was set up during the 2009-10 tax year, I would have expected him to receive a Notice to file for 2010-11. In fact, it is clear he received a paper return for that year.

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37. This suggests that the default setting on the computer was overridden to allow the issue of a paper return. On the balance of probabilities, I find that, as a result of manual intervention, the wrong paper return was sent out – ie for 2010-11 instead of 2009-10.

38. Since a 2010-11 paper return was sent out by mistake, instead of a 2009-10 paper return, it is reasonable to assume that the computer continued to record that the

taxpayer had been notified of his obligation to file for 2009-10 – and that notification had been made by Notice to File, the computer’s default setting.

39. On the balance of probabilities, based on the evidence provided, I find that no 2009-10 Notice to File was issued and instead a 2010-11 paper return was issued.

5 40. If I were to be wrong in this, so that a 2009-10 Notice to File was in fact sent out as well as a 2010-11 paper return, that Notice is only deemed to be delivered in the ordinary course of post if that presumption is not rebutted (see the Interpretation Act s 7 set out earlier in this Decision).

10 41. Mr Preece’s evidence and submissions show him to be a transparently honest person who has consistently tried to pay the right amount of tax, and who has always sought to comply with his statutory obligations. There is no doubt that had he received the 2009-10 Notice, he would have returned it before the due date.

15 42. I thus find as a fact that if the Notice was sent out by HMRC, it was not delivered to Mr Preece, because he has rebutted the deeming provision in the Interpretation Act. As a result it was not validly served.

43. In summary, I find that on the balance of probabilities no Notice to File was sent out for 2009-10, and that even if the Notice was sent out, it was neither received, nor deemed to be received, by Mr Preece and was never served on him.

44. I thus allow the appeal and set aside the penalty.

20 **Mr Preece’s complaints about the way his affairs have been handled**

45. Mr Preece has been trying to sort out his tax affairs for almost four years. It has been an uphill and difficult task.

25 46. He was right to think that his employer had over-deducted the tax on his redundancy: when he asked HMRC to check this, they wrongly sought a further £2,000 of tax from his income, initially via his tax code and then in a single lump sum. It was only his letter questioning this that led HMRC to uncover their error and refund the overpayment. Mr Short’s letter resolving this part of the problem was, however, courteous, informative and thorough.

30 47. Mr Preece was also right to believe that a 2009-10 late filing penalty should not have been charged. Given the evidence provided, it is surprising that HMRC were not able to come to this conclusion themselves: this would have avoided the further stress placed on Mr Preece by the appeal, review and Tribunal processes.

35 48. However, this Tribunal has no jurisdiction over complaints against HMRC’s handling of a taxpayer’s affairs. It is also unable to reimburse financial costs (such as telephone calls) or compensate taxpayers for emotional stress.

49. Complaints and requests for compensation should be made in the first instance to HMRC themselves, and then to the Revenue Adjudicator. Detailed guidance is

provided on the HMRC website at <http://www.hmrc.gov.uk/complaints-appeals/how-to-complain/make-complaint.htm>.

50. 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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Anne Redston

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**TRIBUNAL PRESIDING MEMBER
RELEASE DATE: 13 March 2012**