



TC01926

Appeal number: TC/2011/06907

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

**FIRST-TIER TRIBUNAL
TAX**

MR PHILIP MAHER

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 filed 11 August 2011, HMRC's Statement of Case dated 12 October 2011, and other papers in the case.

DECISION

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.

5 2. The Appellant does not dispute that the tax return was filed late, and does not suggest that he would not be liable to the penalty if he had no reasonable excuse for the late filing.

3. The Appellant's case is stated in his notice of appeal as follows: "HMRC's computer system failed to work—Pin numbers never worked could not get on to the system even after phoning them and getting new pin numbers that never worked either".

4. The same contention is made in an undated letter from the Appellant to HMRC, included as folio 5 of the HMRC statement of case bundle, which states: "I was unable to use your online system to do my tax return as it would not let me use the Pin numbers I got off you".

5. The Appellant therefore in substance pins his case solely on the contention that he has a reasonable excuse for the late filing.

6. Section 93(1) and (2) of the Taxes Management Act 1970 (the "TMA") provides for a £100 penalty for the late filing of a tax return. However, section 93(8) of the TMA provides that on appeal to the Tribunal against such a penalty, 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

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

7. Section 118(2) of the TMA additionally provides as follows:

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.

8. In any appeal to the Tribunal against a late filing penalty, in which an appellant claims to have a reasonable excuse for the late filing, the burden of proof is on the appellant to prove, on a balance of probability, the existence of the circumstances amounting to a reasonable excuse.

9. The HMRC statement of case states by way of response to the Appellant's notice of appeal amongst other matters as follows. In order to use the HMRC online system to file a tax return, it is necessary for a user to register for the service first. Once a person has registered, HMRC sends the person by post a unique activation PIN. The system also provides the user with a user ID and asks for personal details and a password. The activation PIN has a lifespan of 28 days, and if not activated within this period a new one must be applied for. Once the account is activated, the activation PIN is no longer required. Once activated, the user ID and password are used to access the service. As a security precaution, if the activation code is entered incorrectly three times, the service enrolment is removed, and it is necessary for the customer to re-enrol and another activation PIN is sent. HMRC provides information in the public domain about how the system works.

10. The HMRC statement of case further states as follows. The Appellant requested an activation code on 25 January 2011, which would have been issued within a number of days. HMRC records show that there was no enrolment within 28 days. HMRC records show that the Appellant contacted the self-assessment helpline on 27 January 2011 regarding difficulties with the online filing, and that the Appellant was given the Electronic Business Unit/Online services helpline number. HMRC have no record of a call made to that unit regarding the difficulties encountered. The Appellant did not make further contact with HMRC about the matter until 9 May 2011, although he must have been aware the whole time that his tax return had still not been submitted.

11. The Tribunal considers that on the information provided by HMRC, it does appear, first, that the Appellant made efforts to file his return on time, albeit quite close to the deadline, and secondly, that he experienced problems when trying to use the online service. According to the HMRC information, he requested an activation code on 25 January 2011, and contacted the self-assessment helpline on 27 January 2011 stating that he was having difficulties with the online filing.

12. However, there are two points in the HMRC statement of case that are important. The first is the claim by HMRC that in the telephone call to the self-assessment helpline on 27 January 2011, the Appellant was given the telephone number of the Electronic Business Unit/Online services helpline, yet according to HMRC records, he never contacted this helpline. The second is the point that although the Appellant knew he was having difficulties, and must have known that his return had still not been filed, he did not make contact with HMRC again until 9 May 2011.

13. By a letter dated 20 October 2011, a copy of the HMRC statement of case was sent to the Appellant under cover of a letter from the Courts and Tribunals Service, informing him that he was entitled to reply to the HMRC statement of case within 30 days, and advising him to "ensure that you have sent all relevant documents to the Tribunal that you wish to be considered". Nothing further was received from the Appellant.

14. As stated above, the burden of proof is on the appellant to prove, on a balance of probability, the existence of the circumstances amounting to a reasonable excuse. It is

very unclear from the brief statement in the Appellant's notice of appeal exactly what was the nature and cause of the problem he was encountering in using the online system, other than that it related to PIN numbers not working. The points raised in the HMRC statement of case have been met with no response from the Appellant.

5 The Tribunal is simply unable to conclude on the information available to it that the Appellant was exercising reasonable due diligence to ensure that his tax return was filed on time, or that there are circumstances amounting to a reasonable excuse.

15. It follows that this appeal must be dismissed.

16. 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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DR CHRISTOPHER STAKER

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TRIBUNAL JUDGE

RELEASE DATE: 02 April 2012