



TC02018

Appeal number: TC/2011/08607

Late filing of personal tax return; penalties; section (93A(2) and (4)) TMA; need ensure completion of the electronic filing procedure; on-line filing not completed; “reasonable excuse” under s.118(2) TMA not found.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ALASDAIR GARNSWORTHY

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE CHRISTOPHER HACKING

The Tribunal determined the appeal on 27 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 dated 21 September 2011; HMRC’s Statement of Case submitted on 12 December 2011 and the Appellant’s Reply dated 10 January 2012.

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DECISION

5 *The appeal*

1. This was an appeal against a decision of the Respondents, confirmed on review, to impose on the Appellant first and second fixed penalties of £100 each (total £200) by reason of the Appellant's failure to file his personal tax return by the due date.

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The facts

2. The facts can be simply stated. Mr Garnsworthy attempted to file his tax return for the tax year 2009-2010 by logging on to the Revenue's on-line system at 11.29pm on 31 January 2011, some 31 minutes before the expiry of the deadline for filing in this way.

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3. Unhappily for the Appellant he appears not to have sufficiently realised that at each stage of the filing an acknowledgement in the form of an alphanumeric reference is generated to indicate that that particular stage of the filing has been satisfactorily completed. This it seems led Mr Garnsworthy into error in that having received a calculation of the tax he was due to pay together with a submission receipt for that stage he assumed that the process had been completed. That was not the case. He had omitted the crucial final submission stage which, had it been completed, would have been signalled by a message reading "your tax return is 100% complete" at the progress bar at the top right hand of the computer display.

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4. If Mr Garnsworthy had made known to the Revenue his e-mail address he would also have received a confirmatory e-mail acknowledging the completed filing.

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5. Mr Garnsworthy had successfully filed his return electronically for the year 2008-2009 and, say the Revenue, ought to have been aware of the correct procedure, a procedure which the Revenue states has been well publicised both in its website and in other published materials..

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6. In the event the filing was not completed by the due date and therefore a penalty of £100 was imposed under section 93 (2) Taxes Management Act 1970 (TMA). The penalty notice was issued and received by the Appellant in February 2011. At that stage the Appellant could and, say the Revenue, should, have taken remedial action to submit his return without further prompting. In fact he did not do so despite having been requested so to do in subsequent correspondence in the course of this appeal.

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7. By reason of this further delay which extended up to the commencement of this appeal proceeding a further penalty notice was issued under section 93 (4) TMA, the filing being more than 6 months late.

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The Appellant's case

8. The Appellant in his Notice of Appeal and in subsequent correspondence asserts
5 that he has in fact completed his tax return and submitted the same

“prior to the final submission date and time of 31 January 2011 midnight. I was given
a submission receipt reference at the time of completion of the tax return – by
definition submission receipt ie a receipt acknowledging submission of the return and
10 the reference number allowing the reference to be made at a later date, if necessary.
I have furnished said submission receipt in its entirety to the Inland Revenue”

9. Mr Garnsworthy states that the system is “very confusing and against all proper
use of the English language”. This remark is directed to the use of the particular
15 words “submission receipt reference” which Mr Garnsworthy says could only
reasonably be understood to mean that the submission had been successfully
completed.

The legislation

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10. The legislation relevant to the matters which the Tribunal has to consider is
found in the TMA, the penalty charging provisions of which have already been
referred to.

25 11. Section 93 (8) TMA provides for an appeal against a penalty determination.
Where the appeal is notified to the Tribunal, if it appears to the Tribunal that the
taxpayer had a reasonable excuse throughout the period of default for not delivering
the return by the filing date the Tribunal may set aside the penalty. If there is no such
excuse it may confirm the penalty.

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12. Section 118 (2) TMA provides:

35 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 Commissioners
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 if he did it without unreasonable
delay after the excuse had ceased:

40 13. The expression “reasonable excuse is not defined in the tax legislation.
The Revenue interprets this to refer to a matter which is not within the control
of the taxpayer and which is exceptional in nature. The words are however
ordinary words and should in the view of the Tribunal be considered as such.
The limitations placed on them do not appear to be justified but the approach of
45 the Revenue in interpreting these words does represent a starting point for
understanding what might and what might not constitute a “reasonable excuse”.
It would perhaps be surprising if a matter within the Appellant’s control or
which was of an ordinary nature could be considered as a reasonable excuse.

Nevertheless each case has to be considered on its merits having regard to all of the relevant circumstances.

The Tribunals consideration of the appeal and decision

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14. The issues for the Tribunal to consider are:

- Was the tax return in fact filed with the Revenue by the due date?
- If the return was not so filed was there a reasonable excuse for the failure?
- 10 • In particular do the complexities of the Revenue's filing system afford the Appellant a reasonable excuse?

15. The Tribunal has no difficulty with respect to the first of the above issues. The Appellant clearly believed he had filed his return successfully. Equally clearly it is
15 apparent that he had not done so. The Tribunal finds therefore that the Appellant was in default of his filing obligations and as he continued to assert that he had in fact filed on time when he had not done so both the first and second penalties were quite properly imposed.

16. Mr Garnsworthy does not himself assert any "reasonable excuse" for his failure
20 to file as he does not recognise any such failure. That does not mean that the Tribunal cannot consider whether in the circumstances described by him he may not have what could be considered as a reasonable excuse for his failure to file on time.

17. The only matter to which Mr Garnsworthy adverts in his Notice of Appeal and in subsequent correspondence is what he says is the Revenue's misleading references
25 to submission of the return within the its electronic filing system. Whilst at first glance this may appear to be justified the Tribunal does not have any great sympathy with this. That the system could be simpler is perhaps a reasonable criticism of its design but self evidently the average user exercising reasonable care can and does manage to complete his/her return without undue difficulty and indeed so did Mr
30 Garnsworthy in the previous year.

18. That the Appellant did not fully appreciate that he had not completed the full filing of his return may well have something to do with the time of the filing. Allowing that it was open to Mr Garnsworthy to file either a paper or an electronic return at any date on or after 6 April 2010 he has perhaps only himself to blame if he
35 chooses to attempt a filing at 11.29pm on the last possible day. This allowed him no time to check that his filing was in order and if necessary to re-file.

19. The complexities of the Revenue system such as they are do not in the finding of the Tribunal afford a reasonable excuse for the Appellant's failure to file his return on time. In short Mr Garnsworthy got it wrong and had no time to correct his error. Had
40 he taken the simpler route of acknowledging this error and rectifying it immediately he would not have incurred a further penalty.

20. In all the circumstances the Tribunal finds that Mr Garnsworthy failed to submit his personal tax return on time and that the first and second fixed penalties totalling £200 are accordingly confirmed. No reasonable excuse for the failure has been established.

5 21. 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
10 “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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**CHRISTOPHER HACKING
TRIBUNAL JUDGE**

RELEASE DATE: 08 May 2012

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