



TC02067

Appeal number: TC/2011/06977

INCOME TAX; self assessment return; penalty determination; failure to file on time; “reasonable excuse” S.93(8) TMA; reasonable belief that online filing had been successful held not to constitute “reasonable excuse”

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ANDREW JAMES MILES

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY’S Respondents
REVENUE & CUSTOMS**

TRIBUNAL: JUDGE CHRISTOPHER HACKING

**Sitting in public at Kings Court, 5A New Walk, Leicester LE1 6TE on 27
January 2012.**

The Appellant appeared in person

**Mr Martin Foster a case presentation officer of HM Revenue and Customs, for
the Respondents**

DECISION

The decision appealed

1. This was an appeal against a decision confirmed on review on 11 August 2011 imposing a penalty of £100 by reason of the late delivery of the Appellant's self assessment tax return.

2. A notice to file requiring a return for the year ending 5 April 2010 was issued to the Appellant on 6 April 2010. The filing date for a paper return was 31 October 2010 or 31 January 2011 if filed online.

3. The Appellant's return was filed in paper form on 27 April 2011 and a penalty notice was issued on or about 15 February 2011 in the sum of £100.

The Appellant's arguments

4. In correspondence with the Revenue and at the hearing of this appeal the Appellant advanced two matters for consideration.

5. First the Appellant contended that he had in fact done "everything that I thought I needed to do to make a submission"

6. Secondly the Appellant contended that if his submission had not been successfully transmitted to the Revenue the fact that he reasonably believed that it had been so afforded him a "reasonable excuse"

7. In his Notice of Appeal the Appellant states

"My argument is that I went on the Government Direct site with the intention of making an on-line submission, on or around 30th December 2010. I input all the information, and the site calculated my tax, and enabled me to download a PDF file of my submission for my records. I had done everything I thought that I needed to do to make a submission, the site appeared to have accepted my submission, and my understanding and belief at the time was that I had made a submission"

8. When the Appellant received the penalty notice he realised that his filing had not been successful he subsequently filed a paper return in the form of the printed PDF referred to above which he duly signed. Because this was a paper filing for which the last filing date permitted was 31 October 2010 the default period for the Appellant's filing was 178 days.

9. The following statement in relation to the second contention advanced by the Appellant appears in his Notice of Appeal:

"The law requires that I must have a reasonable excuse for not making a return up to the point in time when I did so. It is clear from the above account of events, that I did have a reasonable excuse, which was that up to the point that I submitted the signed printed copy of the PDF file I received from the web-site I believed that I had made a submission, and ha no reason to think otherwise"

The law

10. The law is quite clear. Section 8 Taxes Management Act (TMA) provides that where a person is sent a notice to file they are required to deliver a return by the filing date. There is no dispute by the Appellant that in this case the relevant
5 date was 31 January 2011 as the filing was to have been online.

11. Section 93(2) TMA provides that where a person fails to deliver a return within the time limited for so doing he/she will be liable to a penalty of £100.

12. Section 93(8) TMA allows an appeal to be made against a penalty determination. If it appears to a tribunal that the person concerned had a
10 “reasonable excuse throughout the period of default” for not delivering the return by the filing date, the tribunal may set the penalty determination aside. If it is not so satisfied it may confirm the penalty determination.

13. Other provisions generally relevant to the filing of tax returns appear in the Revenue’s statement of case and are not in dispute between the parties.

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The Tribunals consideration of the appeal

As to the filing

14. In this matter the Appellant appears to have now accepted (or so he indicated at the hearing of the appeal) that despite what he considers his best
20 efforts the submission of his self assessment return online was not successful. The reason it was not successful was that the Appellant had failed to take a final and crucial step in the filing process which involved responding to a “Submit” instruction icon. It is surprising that he failed to do this as he has successfully filed on line previously and should have been aware of the need to do this.

25 15. The Revenue states that it goes to some trouble both in its published materials and in the online instructions to those using its filing service to make clear the steps necessary to achieve a successful filing including the final “submit” step. In particular it is well publicised that when a filing has been successful a notification of that fact will be sent online and, if an e-mail address
30 has been furnished by the taxpayer to the Revenue, an e-mail acknowledging the filing will be sent. The absence of such a notification and/or e-mail acknowledgment should put a taxpayer on notice that all is not well. Mr Miles as a user of the system in the past should, in the view of the Revenue, a view shared by the tribunal, have been aware of this.

35 16. Doing all a taxpayer thinks he/she needs to do to effect an online filing does not discharge the statutory obligation to file the return by the due date. What is required is that a completed return is effectively communicated by the due date. In this respect the Tribunal finds that the Appellant failed and any suggestion that he did enough to satisfy the statutory requirement to file is
40 rejected.

As to “reasonable excuse”

17. The expression “reasonable excuse” is not defined in the tax legislation. The Revenue suggests that such an excuse should be something outside the tax payer’s control and be exceptional in nature. The words “reasonable excuse” are however ordinary words and should be given their ordinary meaning. This may well extend beyond the limitations suggested by the Revenue to include other circumstances.

18. The Appellant invites the Tribunal to consider that his honest belief that he had filed online successfully before 31 January 2011 amounts to a “reasonable excuse”. That is a proposition which the Tribunal rejects as manifestly contrary to the whole purpose of the legislation. If it were open to a taxpayer to do no more than to assert that he/she thought that they had done something which was required statutorily when they had not in fact done so, the floodgates to tax avoidance would truly be opened. The Tribunal does not doubt Mr Miles’ sincere belief that he had filed his tax return. However thinking that one has done something is not enough. A belief that the return had been filed, however sincerely held, cannot by itself, in the finding of the Tribunal, amount to a reasonable excuse.

19. In so finding the Tribunal does not dismiss the possibility that a reasonable belief that a filing has been successfully effected coupled with other facts or circumstances might amount to a “reasonable excuse” for the failure. By itself however a belief as to the success of a filing cannot amount to a “reasonable excuse”.

Decision

20. For the above reasons this appeal must be dismissed and the penalty determination confirmed.

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 “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

**CHRISTOPHER HACKING
TRIBUNAL JUDGE**

RELEASE DATE: 14 JUNE 2012