



TC02083

Appeal number: TC/2011/09895

Penalty. Statutory maximum.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

NATALIYA GEYKO-BISSON

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE GERAINT JONES Q. C.

The Tribunal determined the appeal on 06 June 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 18 October 2011 and HMRC's Statement of Case submitted on 23 January 2012.

DECISION

1. By her Notice of Appeal the appellant has appealed against a £100 penalty which the respondent says is due as a result of her failing to file a tax return for 2009/2010, by 31 January 2011. In fact, it seems that a second penalty notice was sent to the appellant for a further sum of £100. Although this is not specifically dealt with in the Notice of Appeal, it is something that is dealt with by the respondent in its Statement of Case and I consider it proper that I should deal with that aspect as well. It is plain from the Notice of Appeal that the appellant wishes to challenge and appeal in respect of the totality of the two late filing penalties, totalling £200, although she has mentioned £100 only.

2. The relevant facts are not easy to discern from either the Notice of Appeal and/or the Statement of Case. Neither party to the appeal has filed any evidence by way of witness statements. I have had to do my best to glean the facts from the rather unsatisfactory material made available to me.

3. The respondent asserts that on a date that it cannot specify, but on or after 15 February 2011, it issued a first penalty notice of a sum of £100 to the appellant. On a subsequent date which it is equally unable to specify, the respondent says that it issued a second penalty notice in a further sum of £100.

4. The Grounds of Appeal contained in the Notice of Appeal assert that the appellant was a modestly paid employee of Devon County Council who, on occasions, was entitled to mileage expenses because she had to travel, on a temporary basis, to a council office in Newton Abbot, using her own vehicle. The fact that she was in receipt of such expenses seems to have excited the interest of the respondent who then required her to fill in a full tax return notwithstanding that ordinarily she was accustomed to having her tax affairs dealt with under the PAYE system.

5. The Grounds of Appeal are difficult to follow but I must make allowances as it appears that English may not be the appellant's first language.

6. The appellant seems to say that she did receive a notice requiring her to send in a tax return but that she was somewhat baffled by this given that her tax affairs were dealt with through the PAYE system. She says that she certainly did not intend to break any rules and was baffled because the notice that she received did not explain what section or sections she was required to fill in. She asserts that she did not receive the employment section. That latter assertion gains some support from the respondent's letter of 7 September 2011, which, although referring to the 2010/2011 tax return, indicates that for the 2010/2011 tax return, pages 2 – 6 were missing but were then enclosed under cover of that letter. It may well be that that simply replicated what had happened in 2009/2010.

7. The appellant says that she filled in her tax return "*when I received another notification, but it was wrong and they sent it to me back to correct*" That may well refer to the tax return which appears to have been returned under cover of the

letter of 7 September 2011 (albeit that no copy has been appended to the papers made available to me).

5 8. The appellant does not specifically assert that she did in fact file her 2009/2010 tax return within the due time, that is, by not later than 31 January 2011. Thus, it does appear that this is a case in which penalties are applicable.

10 9. However, section 93(7) Taxes Management Act 1970 (as amended by the Finance Act 1994, schedule 19) provided that a penalty will not exceed the particular amount that would have been paid had the tax return been submitted. Given that the appellant was subject to PAYE, that provision must be read as referring to such amount, if any, as would have been additionally payable upon the submission of the tax return.

15 10. The appellant contends that the penalty is disproportionate because had her tax return been filed timeously, the additional amount of tax would have been £15.80. In its Statement of Case the respondent does not dissent from that proposition. Although it might say that it has not done so because as at 19 September 2011 it continued to contend that the 2009/2010 return remained outstanding. Whether that remained the position when the Statement of Case was prepared, I do not know, save to the extent that the appellant asserts in her Notice of Appeal dated 18 October 2011, that she had sent in her 2009/2010 return, which postdates the September 2011 letter.

20 11. I can take into account that given that the appellant was incurring motor expenses travelling only temporarily to her employer's outpost but was receiving a mileage allowance in respect thereof, any additional tax is likely to have been extremely modest.

25 12. When I put together the fact that any additional tax was likely to be very modest; the appellant's assertion that it was £15.80; and the fact that the respondent does not dissent from that proposition, I think I can properly arrive at the conclusion that the penalty under section 93(7) of the 1970 Act, must be capped at that amount.

13. Accordingly, the appeal is allowed in part, and the late filing penalty or penalties in respect of 2009/2010 are capped at £15.80.

30 14. 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
35 "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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Decision.

The appeal is allowed in part.

- 5 The total penalties for late filing in respect of the tax return for the year 2009/2010 are capped at £15.80.

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**GERAINT JONES QC
TRIBUNAL JUDGE**

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RELEASE DATE: 18 June 2012

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