



**TC02204**

**Appeal number: TC/2011/09737**

*INCOME TAX –late filing of the self-assessment tax return – penalties under sections 93(2) and (4) Taxes Management Act 1970 – whether reasonable excuse*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**BRYAN CHARLES HOWARD**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE GUY BRANNAN**

**The Tribunal determined the appeal on 14 August 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 25 October 2011 (with enclosures), HMRC's Statement of Case submitted on 12 March 2012(with enclosures) and the Appellant's Reply dated 2 April 2012.**

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## DECISION

- 5 1. This is an appeal against two £100 penalties imposed under sections 93(2) and (4) Taxes Management Act 1970 ("TMA") respectively for the alleged late filing of a self-assessment tax return for the tax year ended 5 April 2010.

### **The facts**

2. The appellant is a retired civil servant.
- 10 3. HMRC's records show that on 4 June 2010 HMRC issued to the appellant a Notice to File. The Notice to File was issued because the appellant was in receipt of age-related allowances. The appellant states that he did not receive this document.
- 15 4. By way of explanation, section 8 (1) TMA provides that an officer of the Board may, by notice, require a taxpayer to make and deliver a tax return containing such information as may reasonably be required in pursuance of the notice. A Notice to File, is a notice sent to the taxpayer pursuant to this provision. It is part of the general system of self-assessment under which the primary responsibility for assessing and returning a taxpayer's tax liabilities falls on the taxpayer.
- 20 5. The filing date for the tax return required by the Notice to File was either 31 October 2010 (in respect of a paper return) or 31 January 2011 (in respect of an online return): section 8(1D) TMA.
- 25 6. The Notice to File is not itself a tax return but notifies the taxpayer that he/she must file either a paper or online return by the relevant deadline, failing which the taxpayer will be liable to an automatic late-filing penalty of £100. The specimen Notice to File for the tax year ended 5 April 2010, with which I was provided, states as follows:
- "We are sending you this notice rather than a paper tax return, but if you would like a paper tax return, please phone us on 0845 900 0404."
7. After discussing the deadlines for filing paper and online returns, the Notice to File sets out guidance in respect of filing online returns.
- 30 8. On 15 February 2011, HMRC, having not received a tax return for the year ended 5 April 2010, issued a first penalty notice to the appellant in the amount of £100 pursuant to section 93(2) TMA.
- 35 9. Section 93 (2) TMA provides that where a taxpayer has been required by a notice served under section 8 TMA to deliver a return and he fails to comply with the notice he shall be liable to a penalty of £100. Subsection (4) provides that if the taxpayer's failure to comply with the notice continues after a period of six months beginning with the filing date, the taxpayer is liable to a further penalty of £100.

10. On 26 February 2011, the appellant appealed against the imposition of the first late filing penalty. In his Notice of Appeal in respect of the first penalty notice, the appellant gave as his reason for the appeal:

"Form supplied was for Internet return – I have not got a computer!"

5 11. As I have noted in paragraph 6 above, the Notice to File gave a telephone number if the appellant preferred to file a paper return. It was not solely a document in respect of online returns.

12. Moreover, the appellant's reply suggests that he had, in fact, received the Notice to File. I find that it is more probable than not that HMRC did send this document as recorded in their electronic records and that the appellant received it.

13. HMRC issued a penalty appeal decision letter on 23 March 2011 and offered a review of the penalty. On 4 April 2011 the appellant requested a review. The appellant enclosed a copy of his coding notice for 2011/2012. He stated that:

15 "Your Form 2010 is also enclosed as I still do not know the amount of pension increase this year!

I feel I am owed an explanation of this continued chasing of me to fill in what seems irrelevant forms."

14. It is not clear what was meant by the appellant's reference to "Form 2010". HMRC suggested that this might be a reference to the Notice to File or to the tax return in respect of the year ended 5 April 2010. In their Statement of Case HMRC stated that they did not retain a copy of the appellant's enclosure, but, as we shall see, it seems that the return in respect of 5 April 2010 was sent back to the appellant at the conclusion of HMRC's review.

15. HMRC concluded its review on 15 June 2011 and their letter upheld their original penalty decision. The letter explained that the appellant had been asked to file a return because he was subject to a reduction in age related allowances. The letter specifically stated that the writer was returning the appellant's 09/10 return for completion and asked to complete it and send it to HMRC's office in Cardiff. It also directed him to a telephone number in case he needed advice.

30 16. On 20 June 2011 the appellant acknowledged receipt of HMRC's letter of 15 June. The appellant enclosed a cheque for £100, which I assume was in respect of the penalty charge. The appellant indicated his intention to appeal to this tribunal.

35 17. On 1 August 2011, the appellant telephoned HMRC. During that call he was advised that, although his return for the year ended 5 April 2011 had been received, his return for the year ended 5 April 2010 remained outstanding. A duplicate tax return was ordered for the appellant, even though a paper return for that year had already been returned to the appellant under cover of HMRC's letter of 15 June 2011.

18. A second penalty notice, pursuant to section 93(4) TMA, was issued to the appellant on 2 August 2011.

19. The appellant appealed the second penalty on 15 August 2011. The notice of appeal stated that the tax return had been delayed in the post and further stated: "Awaiting tax form ordered 2 weeks ago." In his reasons in support, the appellant stated:

5                                   "Halifax Bank failed to deduct tax 2010/2011 – item now settled.  
                                  However, tax year 2009/10 now being investigated. I now have  
                                  evidence that tax *was* deducted in 2009/10."

20. It is hard to reconcile the Appellant's assertion that he was awaiting a tax form which he had ordered two weeks before (presumably a reference to the return that was  
10 ordered in the telephone conversation of 1 August 2011), with a clear statement in HMRC's letter of 15 June 2011 that his return for the year ended 5 April 2010 was being enclosed in that letter. In any event, in my view, the appellant should have obtained and completed his tax return for that year at an earlier date e.g. when he received the first penalty notice. There seems no reason why he should leave it until  
15 August.

21. HMRC issued another appeal decision letter on 30 August 2011, offering a review. On 12 September 2011, the appellant requested an HMRC review of their decision. In that request, the appellant stated that the original HMRC request for a tax return for the year ended 5 April 2010 was not received. As I have found above, in my  
20 view, the taxpayer did receive a Notice to File in June 2010. The appellant stated that he was in the process of completing his tax return having recently received it. He pointed out that this was the first time he had been asked to complete a tax return.

22. HMRC concluded its review and notified the outcome to the appellant in a letter dated 13 October 2011. The review letter incorrectly stated that the Notice to File was  
25 received on 6 April 2010; in fact, the Notice to File was issued on 4 June 2010.

23. The appellant completed a Notice of Appeal on 25 October 2011 and thereby appealed to this tribunal. The appellant stated:

                                  "1. It is claimed that a self-assessment form was sent in [sic] 31Oct  
                                  2010. This was not received by me.  
30                                   2. I have been retired since November 1989 and have not been asked  
                                  for a tax return until Jan 2011 (within a few days of the end of the  
                                  month).  
                                  3. I have had my appeal upheld for a late return for 2010/2011 [the  
                                  appellant refers to cheque details].  
35                                   4. If the 2010/2011 late return has been found in my favour I suggest  
                                  that the 2009/2010 appeal should also be allowed."

24. As I have already found, a Notice to File was sent to the appellant in June 2010. There is nothing in the papers to indicate that anything was sent to the appellant in  
40 October 2010. In addition, there is nothing in the papers before me to indicate that the appellant appealed in respect of the tax year ended 5 April 2011. The only appeals that the appellant appears to have made are appeals against the first and second penalty determinations as noted above. Finally, whether the appellant's bank failed to

deduct tax is a question that has no relevance to the requirement that the appellant file a tax return for the year ended 5 April 2010.

25. In his reply to HMRC's Statement of Case the appellant stated:

5 "My defence for failing to file a tax return in 2009 [sic] is that since I retired in 1989 the Cardiff office [of HMRC] are aware of my income from civil service pensions, and all other incomes are taxed at source thus avoiding the need for tax returns.

10 In July 2008 I moved my ISA, took out a PEP and a "saver" account with the Halifax Bank. At no time was I advised to file a tax return by the Halifax and in 2009 the "saver" account was paid net so there was no outstanding tax deficit.

I maintain that a tax return for 2009 was unnecessary bureaucracy and the £100 fund should not be imposed.

15 For 2010 tax year I did not receive a form for completion until January 2011, after a period of more than 32 years of not requiring return. I think that a £100 fine was harsh.

At that stage I was unaware that the Halifax "saver" account had been paid gross. This outstanding tax has now been paid with a cheque for £491.43. I have now moved all Halifax monies to HSBC."

20 26. There seems to be some confusion in the appellant's mind between the tax years ended 5 April 2009 and 5 April 2010.

27. The appellant filed his paper return for the year ended 5 April 2010 with HMRC on 15 September 2011.

### **Decision**

25 28. In my view, as I have indicated, the appellant did receive a Notice to File in June 2010. He was, therefore, under an obligation to file a paper return by 31 October 2010 or an online return by 31 January 2011. He failed to do so. He did not file his return for the tax year ended 5 April 2010 until 15 September 2011.

30 29. It is a taxpayer's responsibility to file his tax returns on time. When a Notice to File is served it should be complied with. In my view, the appellant failed to observe his tax filing obligations. It may well be that he was under the impression that his investments were paid under the deduction of tax, but once a Notice to File has been served the appellant was under an obligation to file his tax return by the relevant dates (applicable in respect of paper and online returns) unless he had a reasonable excuse  
35 for failing to do so (section 93 (8) TMA).

40 30. There is nothing in the papers before me which indicates that the appellant had a reasonable excuse for failing to file his tax return for the year ended 5 April 2010. The errors made by Halifax Bank, cited by the appellant, are not, in my view, relevant to his obligation to file a return requested under section 8 TMA. Indeed, even though the appellant was informed about the nature of the Notice to File in HMRC's letter of 15

June 2011 he did not file his tax return for the year ended 5 April 2010 until 14 September 2011.

5 31. In my view, therefore, the two £100 penalties were correctly charged pursuant to section 93(2) and (4) TMA respectively. It follows, therefore, that the appeals against these penalties must be dismissed.

10 32. 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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**GUY BRANNAN  
TRIBUNAL JUDGE**

**RELEASE DATE: 21 August 2012**

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