



TC02221

Appeal number: TC/2012/00618

Income Tax – Late submission of Returns for 2009 and 2010 – Limited guidance on 2009 Return form – Penalties – Whether “reasonable excuse” – Yes, in respect of 2009 Return – Section 93 Taxes Management Act 1970 – Appeal allowed in part

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MR R W EADIE

Appellant

- and -

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

TRIBUNAL: JUDGE KENNETH MURE, QC

The Tribunal determined the Appeal on 28 August 2012 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2012 (Default Paper Cases) having first read the Notice of Appeal submitted in December 2011, the Statement of Case submitted on behalf of HMRC, and related papers.

DECISION

1. This Appeal was originally set down for an oral hearing. However, Parties are
5 now content that it should proceed on the basis of the papers. The facts so far as
material, do not appear to be in dispute.

2. The Appeal is against the imposition of two £100 penalties for the late
submission of Tax Returns for 2009 and 2010. Both of these were due to be
submitted by 29 July 2011, being three months after the date of issue. They were both
10 signed by the taxpayer on 18 August and received by HMRC on 23 August 2011,
each being just over three weeks late.

3. In his Grounds of Appeal the taxpayer submits that he has been taxed under the
PAYE system for about 50 years, that he has always paid whatever tax was due by
him, and that previous Returns represented a mere formality. He believed that all tax
15 due for both Years had been deducted under PAYE, although he now accepts that
further sums were due to HMRC. The Returns, the taxpayer complains, were issued
at a late stage. He considers the penalties in respect of both Years to be unreasonable.

4. The problem arose because for the two Years in question liability to tax at 40%
was due but the taxpayer's employers deducted tax at only the basic 20% rate. On
20 29 April 2011 HMRC issued Returns for both Years to be completed by the taxpayer,
which were due to be returned within three months, viz by 29 July 2011.

5. It is acknowledged by HMRC that the Return for 2009 did not in its guidance
provide the correct information about the due date for completion and submission.
Unlike the Return for 2010 there is no reference to the three month period following
25 the date of notice, when later.

6. The issue for the Tribunal to consider is whether in respect of each of the Years
the taxpayer had a *reasonable excuse* for the late submission of the Returns for the
purposes of Section 93(8) Taxes Management Act 1970. *Reasonable excuse* is
nowhere exhaustively defined, but there is helpful case-law guidance, and in
30 particular recently from Judge Mosedale in *B & J Shopfitting Services* [2010]
UKFTT 1 78 (TC). While an exceptional or unexpected factor beyond the taxpayer's
control will usually suffice, reasonable excuse is not restricted to such circumstances.
Where the taxpayer has behaved as a reasonable person, mindful of his own
responsibilities as a taxpayer, should, that may qualify. The nature and quality of any
35 advice given by HMRC will be relevant too.

7. In the present case I consider it significant that the instructions on the 2009
Return did not specify the three month period for completion and submission.
(Statement of Case paras 5 and 16). The date of submission of both Returns was late,
but only marginally so: the delay was only just over three weeks. Curiously, the
40 taxpayer does not appear to found on this: there is no reference to this in the Grounds
of Appeal (except, perhaps, the penultimate paragraph) nor is there any record of
complaint about the lack of guidance elsewhere in the papers, so far as I can see.

5 However, and particularly given that the Returns were only about three weeks late, I am reluctant to exclude this as being a contributory factor to the short delay. It would seem manifestly unfair to disregard it in relation to the 2009 Return. Where guidance is given by HMRC, it is reasonable to assume that a responsible taxpayer is likely to have regard to it and to rely on its sufficiency.

10 8. HMRC (para 16 of the Statement of Case) seem to argue that notwithstanding the guidance on the Returns the responsibility for ascertaining the correct date remained with the taxpayer. I respectfully disagree. The guidance for the 2009 Return admittedly was limited and inadequate. A reasonable taxpayer, and a layman, would have been entitled to rely on it. Given particularly that this is a case of a short delay, it is not unrealistic to infer that the absence of complete information may have contributed to that delay. I note and agree with Judge Mosedale's comments at paras 15 and 16 of her Decision in *B & J Shopfitting Services*.

15 9. For these reasons the Appeal is allowed but only in respect of the £100 penalty for late submission of the 2009 Return. The penalty in respect of the 2010 Return (on which full guidance is given) is confirmed.

20 10. 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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**KENNETH MURE QC,
TRIBUNAL JUDGE**

RELEASE DATE: 28 August 2012

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