



TC02268

Appeal number: TC/2012/03412

*Penalties and surcharges for late filing and payment of personal tax return
– whether there was a reasonable excuse lasting throughout the period of
default – held no – appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MARK COCHRANE

Appellant

- and -

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

TRIBUNAL: JUDGE JENNIFER BLEWITT

The Tribunal determined the appeal on 9 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 10 January 2012 and HMRC's Statement of Case submitted on 29 March 2012.

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DECISION

1. By Notice of Appeal dated 10 January 2012, Mr Cochrane (“the Appellant”) appealed against the first and second fixed penalties, £100 and £28.42 respectively, imposed under Section 93 (2) Taxes Management Act (“TMA”) 1970 for the late filing of his personal tax return for the year ended 5 April 2008. The Appellant also appealed against two surcharges in the sum of £6.42 each, imposed under Section 59C (2) and (3) TMA 1970 for the late payment of tax for the year ended 5 April 2008.

Background

2. A personal tax return for the relevant period was issued to the Appellant on 6 April 2008; the filing date was 31 October 2008 for a paper return or 31 January 2009 if the return was filed online.

3. HMRC issued a first £100 late filing penalty notice on or about 17 February 2009 and a second on or about 14 August 2009.

4. The Appellant’s return for the year ended 5 April 2008 was received by HMRC on 11 July 2011.

5. On 21 March 2012 the second late filing penalty, which was initially imposed in the sum of £100, was reduced to £28.42.

6. The Appellant’s tax liability for 2007/2008 was £5,077.30 and was amended on 21 March 2012 to £128.42, the due date being 31 January 2009. As a result of the late payment, HMRC issued two surcharge notices on or about 7 October 2011, both at 5% of the sum outstanding as at 28 February 2009 (the surcharge trigger date). The surcharges of £253.36 were amended to £6.42 on 21 March 2012.

Appeal

7. The Appellant appealed against the surcharges on 8 November 2011, following which HMRC offered an independent review of its decision. On 19 December 2011 the Appellant accepted the offer of an independent review in respect of the surcharges and also appealed against the late filing penalties.

8. By letter to the Appellant dated 9 January 2012 HMRC upheld the surcharges and late filing penalties.

9. The Appellant’s grounds of appeal, as set out in his Notice of Appeal to the Tribunal, can be summarised as follows: the Appellant works two jobs, both PAYE. He is also self-employed for one hour per week, excluding holidays. Every year since he began self-employed work, the Appellant has completed a tax return and either posted it or handed it in at the local tax office. On a number of occasions over the past five years the Appellant has received a letter from HMRC stating that his return was

not received. Each time, the Appellant has re-submitted the return as requested by HMRC. The Appellant cannot understand how his returns can be lost on so many occasions and on this occasion he received a letter stating that he had to pay a £500 penalty, which would be increased to £1000 if not paid.

10. Two letters from the Appellant to HMRC were included within the bundle of papers I received. Both were undated and the contents reiterated the grounds of appeal, however one letter provided further clarification of the Appellant's situation. The Appellant explained that following difficulties with his returns being lost, he hand delivered the returns and was told by the local tax office that the forms would be sent immediately to the correct department however they did not arrive until 6 weeks later. Since receiving the notice to resubmit his return, the Appellant did so immediately and contacted the telephone number on the notice to advise HMRC of this. The Appellant was told that the return would be processed within two weeks and he would thereafter receive a response. The Appellant then received a notice that he had underpaid in tax, which was not the case. The Appellant contacted HMRC and followed instructions to obtain from his local tax office the amount of tax he had paid during the tax periods in question; he did this the day that the surcharge notice was received but had to wait 8 days for his local tax office to provide the information. Following receipt of that information, the Appellant re-submitted the forms and telephoned HMRC to clarify if anything further was required. The Appellant was told that he would have to wait approximately 4 weeks until the forms were received and processed. Each year the Appellant has completed the required forms/returns and submitted them within the deadline. He is then told to resubmit the forms which leads to a surcharge, despite the fact that the original form was submitted on time.

11. HMRC submit that it is the Appellant's responsibility to ensure that he adheres to his legal obligation to file his personal tax returns by their filing dates. HMRC accept that where a reasonable excuse is shown throughout the period of default, an appeal will be successful.

12. HMRC records show that the Appellant contacted the self assessment helpline on 14 January 2009 stating that he had requested a duplicate paper return in December 2008, but one had not been received. The Appellant was advised that the 31 October 2008 deadline for submission of a paper return had passed but that the deadline for an online return had not. The Appellant explained that he had lost his password and username. HMRC advised the Appellant to contact the online services helpdesk for assistance.

13. The Appellant did not attempt to login to file the return online until 30 January 2009.

14. Although penalties were issued on 17 February 2009 and 4 August 2009, the Appellant did not contact HMRC until 23 June 2011 to request a duplicate form. The return for 2007/2008 was not received until 11 July 2011. When received, the return omitted details of the Appellant's employment and self-employment and consequently the return was sent back to the Appellant.

15. HMRC accept that the Appellant's employment income may have been taxed at source, however no details were provided to HMRC as the return was not received until 11 July 2011, and even then the employment details were missing.

16. On 21 March 2012 HMRC amended the Appellant's return, which was up to date in respect of PAYE payments, however the self assessment record was not. The Appellant had not calculated or paid his liability from self-employed income prior to the due date of 31 January 2009.

Discussion

17. I considered the submissions of both parties carefully. I was also provided with telephone records from HMRC which confirmed that the Appellant's partner had telephoned HMRC on 14 August 2008 to say that the return had been handed in to the local tax office but returned as missing. Again the return was completed and sent back, but not received. On 14 January 2009 the Appellant telephoned HMRC to state that he had requested a duplicate return in December 2008, which had not been received. The log confirms that the Appellant advised he could not use the online system as he had lost his password and username; he was advised to contact the online services helpdesk for assistance.

18. There is no reason to disbelieve the contents of the telephone records; I am satisfied that the Appellant had, as he asserted, returned his personal return prior to the due date, however it was not received. I am also satisfied that the Appellant had requested a duplicate return and until 14 January 2009 was attempting to rectify the situation.

19. I am bound by legislation which dictates that any reasonable excuse must last throughout the period of default. I therefore went on to consider this issue.

20. The Appellant makes no reference to any attempt made by him to submit the return online, which could have been done prior to the due date. HMRC have no records of any attempts made by the Appellant to submit the return online until 30 January 2009. The return was not successfully submitted at that point, and it is clear that, by his attempt to log in and submit the return on 30 January 2009, the Appellant was aware that it had not been submitted to HMRC.

21. The telephone records were unclear, but it appears that HMRC received a return on 23 January 2009, which refers to the return being "only employment page" and therefore a duplicate was issued to the Appellant. At this point therefore, if it is correct that a return was received, it would appear that the return was not complete and therefore would not be (and it appears was not) accepted by HMRC.

22. Thereafter, late filing penalties were issued to the Appellant in February and August 2009. The next record of contact between HMRC and the Appellant was a telephone call on 23 June 2011 in which the Appellant was advised to download a duplicate return.

23. The return was received on 11 July 2011 and returned to the Appellant on 21 July 2011 as incomplete.

24. Even giving the Appellant the benefit of doubt that he had filed a return prior to the due date and thereafter made attempts to submit a number of duplicates, no explanation is provided for the delay between January 2009 and June 2011. There is no reason to doubt that there may have been some delay caused by the Appellant obtaining information and forms from HMRC, however even on the Appellant's own account this did not amount to such a significant period as would account for the delay between a duplicate return being issued in January 2009 and submission of the return in July 2011. I note that even when the return was submitted in July 2011, it was incomplete and returned to the Appellant by HMRC. The Appellant had not paid (or calculated) the tax liability arising from his self-employed income prior to the payment deadline of 31 January 2009.

25. For those reasons, I find as a fact that there was no reasonable excuse which lasted throughout the period of default.

Decision

26. The appeal is dismissed and the late filing penalties and surcharges upheld.

27. 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.

**JENNIFER BLEWITT
TRIBUNAL JUDGE**

RELEASE DATE: 17 September 2012