



TC02452

Appeal number: TC/2012/07002

*INCOME TAX – penalty for late filing – whether Appellant filed before
deadline – whether confirmation from HMRC required – whether
reasonable excuse*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ROBERT FERGUS

Appellant

- and -

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

TRIBUNAL: JUDGE DR K KHAN

The Tribunal determined this Appeal on 30 November 2012 without a hearing and under the provisions of Rule 26 of the Tribunal Procedure First-tier Tribunal (Tax Chamber) Rules 2009 (default paper cases) after first having read the Notice of Appeal of 4 March 2012 and the HMRC Statement of Case of 18 September 2012

DECISION

Appeal

- 5 1. This is an appeal against the fixed penalty imposed under Section 93(2) Taxes Management Act (TMA) 1970 for the late filing of the personal tax return for year ending 5 April 2012.

Relevant Facts

10 2. The return for the year ending 5 April 2010 was issued on 6 April 2010. The filing date was 31 October 2010 for a paper return or 31 January 2010 if filed online.

3. The penalty notices were issued on 15 February 2011. A paper return was received on 27 July 2011. The return was processed on 12 August 2011 and showed a tax liability of £3,211.30

15 4. On 26 August 2011 HMRC received a letter from the Appellant advising he had entered a gross amount of interest from UK banks and building societies on the 2009/2010 return in error. As a consequence, HMRC amended the return on 6 September 2011 which reduced the 2009/2010 liability to £3,158.80.

5. The following correspondence is relevant.

(1) On 4 March 2011 the Appellant appealed against the penalty stating that

20 "I made my computer online return 10 days before 31 January 2011 and HMRC in fact responded informing me of the amount that was due in tax. I sent a cheque and a response to HMRC to settle the amount due for 2009-2010. I therefore do not consider I owe £100 for the late return of the 2009-2010".

(2) HMRC responded in writing on 23 March 2011 stating the following:

25 "I am sorry I cannot consider your appeal until your tax return has been received. Please send in your 2009-2010 tax return as soon as possible".

(3) The Appellant submitted a further letter on 31 March 2011 in which he stated:

30 "I do not understand the reason for this claim for late submission of the 2009-2010 return. I have just checked my website which records my personal assessments being submitted on 27 January 2011 at 9.41am".

(4) HMRC replied in writing on 13 March 2011 advising as follows:

35 "HMRC records show that your 2009-2010 self assessment tax return has not been received. This maybe because you didn't complete the final stage of online submission. If online submission was completed you would have received an email confirming that we had received your return. I am sorry but I cannot consider your appeal whilst the tax return is outstanding. Please can you

try to submit your return online again. If you are unable to do so, you can download and print a return from our website”.

(5) On 14 May 2012, the Appellant replied stating:

5 “ I have checked your statement of 26th and 27th which states tax 2009-2010 is £3,034.35 (already paid). The rest of the demand due is all related to matters transferred to the Tribunal”.

(6) HMRC replied in writing on 12 June 2010 advising as follows:

10 “The Tribunal service has notified HMRC of any application made by you. Your appeal against the 2009-2010 filing penalty is closed. To continue appeal you must contact the Tribunal service”.

6. On 12 July 2012, the Appeal was received by the Tribunal Service.

7. The Appellant requested a review which on 18 July 2011 stated:

15 “Your 2009-2010 tax returns is outstanding. Please now submit your return before 31 July 2011 to avoid a further penalty. When you complete an online return submission you should receive an on-screen confirmation that the submission process is 100% complete and that the transmission of the return was successful. You should also receive a separate email confirming that we have received your returns. You do not seem to have fully completed the process.”

20 8. It should be noted in this Appeal that we are concerned with one appeal regarding the January filing which we shall call the first penalty and not the second penalty which was cancelled on 25 August 2011 which was triggered on 31 July 2011.

Relevant legislation

25 9. Section 8 TMA 1970 states that where a person has sent a notice to file a return they are required to deliver a return by the filing date. For paper returns the date is 31 October and for online filing the date is 31 January.

10. Section 93(2) TMA 1970 states that where a person fails to deliver their return within the time limits they are liable to a penalty of £100.

30 11. Section 93(4) TMA 1970 states that if the return is outstanding for six months after the filing date they become liable for a second penalty of £100.

35 12. Section 93(8) TMA 1970 states that an appeal may be made against the penalty determination. Where the appeal is made, if it appears that the person has a reasonable excuse throughout the period of default for not delivering the return by the filing date, the Tribunal may set the penalty determination aside.

Submissions by the Appellant

13. In his Notice of Appeal the Appellant made the following points

(1) That he submitted his return online during the third week of January 2011. He had an immediate response on his computer screen stating that his taxes were underpaid.

5 (2) He states that the fact that he got a response from HMRC onscreen proves that they had received the tax return before 31 January 2011. The return was submitted on 27 January at 9.41am.

10 (3) The Appellant also says that he paid his tax underpayment under cover of his letter dated 28 January 2011, which followed his tax return which was also before the date for submitting his return. The payment of the underpayment of tax was also treated as received pursuant to his letter accompanying his tax return. He described it as an attachment to his Self Assessment Return.

HMRC's submissions

14. HMRC's records demonstrated that the Appellants 2009-2010 return was not submitted 27 January 2011. If the online filing process had been completed on 27
15 January 2011 and the return filed successfully and immediately, an electronic acknowledgement would have been issued to the Appellant. In addition if an email address was provided; an email confirmation from the gateway system would have been generated. In this instance it would appear that the Appellant followed the online filing process up to the "view your calculation" stage but did not complete the
20 process by submitting the returns. He then made payment in accordance with the amount shown in the calculation which was based on the figure that he had entered on the return.

15. If the Appellant believed that the return had been filed on 27 January 2011 HMRC contend that the first penalty notice issued on 15 February 2011 and the
25 numerous letters which followed would have made him fully aware that this was not the case.

16. HMRC acknowledged that the payment in the amount of £2,948 was received on 2 February 2011 and credited to the Appellant's Self Assessment account.

17. HMRC also explained that the Appellant had previously submitted online
30 returns and was familiar with the filing process. He had also previously submitted late returns.

Discussion

18. The Tribunal will allow this Appeal for the following reasons.

35 (1) The Appellant has been meticulous in his note keeping and record keeping. He gave the precise day of filing, time of the day and also it was clear that he had used the HMRC's computers to calculate his tax liability on the same day. He also paid the outstanding tax liability. It would seem odd that the Appellant would have gone online to make his filing and calculated his tax liability but not submitted his return. Further, he received replies which related
40 to his online filing which suggested to him, that the filing was completed. The

Tribunal is not prepared to accept that the error lay with the Appellant or his computer system. It is possible that the error lay with the HMRC's online computer facility dealing with online filing.

5 (2) The information provided to the Tribunal by the Appellant is copious and clear. The Tribunal cannot see any good reason or evidence for accepting the Respondents' assertion that the Appellant had not proceeded to the final stage of filing.

10 (3) The Appellant genuinely and honestly believed that he had completed the online filing and where a person honestly and genuinely believe they have made a successful filing that, to the Tribunal, would amount to a reasonable excuse until such time as the Tribunal has evidence which showed otherwise.

15 (4) The Tribunal is therefore happy to accept the Appellant's version of the facts and does not accept the Commissioners version that he had not proceeded to the final stage of filing and has not received a final acknowledgement that his returns have been properly filed.

(5) It is reasonable in the circumstances for the Appellant to believe that he had filed his returns and all the actions of the Appellant indicate that he was seriously intent upon filing his returns on time and made all efforts to file before the deadline.

20 (6) The Appeal is therefore allowed.

19. 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.

30 **DR K KHAN**
TRIBUNAL JUDGE

RELEASE DATE: 8 December 2012

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