



TC02524

Appeal number: TC/2012/2937

INCOME TAX – penalty for late delivery of return – appeal allowed – evidence of posting accepted – s 7 Interpretation Act – held: return received on time.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

THE TRUSTEE OF THE DE BRITTON SETTLEMENT Appellant

- and -

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

TRIBUNAL: JUDGE CHARLES HELLIER

The Tribunal determined the appeal on 8 January 2013 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 8 February 2012 (with enclosures), HMRC's Statement of Case submitted on 23 March 2012 (with enclosures), the Appellant's Reply dated 5 April 2012 and the appellants letter of 9 August 2012 provided in accordance with the tribunal's direction of 25 July 2012.

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DECISION

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1. The trustee of the DE Britton Settlement appeals against a penalty of £100 assessed by HMRC under Sch 55 FA 2009. HMRC say that the trustee's return for 2010/11 was not filed in time and that the trustee has no reasonable excuse for the failure.

10 2. There is no dispute that, if the return was received after the filing date, and the taxpayer has no reasonable excuse for the failure to file on time, a penalty arises under Sch 55 and that its amount is £100.

3. By virtue of section 8A(1B) Taxes Management Act 1970 ("TMA") the trustee was required to deliver a tax return by 31 October 2011 for the year 2010-11.

15 4. In the notice of appeal the trustee's agent, Mr Woodland, says that the return was posted in plenty of time for it to be received on 31 October 2011. Mr Woodland says:

"I have not received any evidence from the Inland Revenue that the return was delivered late, during a period in which they would have received thousands of returns..",

20 he suggests that the return could have arrived on time but not been recorded because of the volume of mail.

25 5. These concerns are not addressed in HMRC's statement of case. That merely asserts that the "Paper return was received 2 November 2011.", and "The return was logged in accordance with instructions at SAM 120520 and 120650 (HMRC documents which are attached and explain HMRC's practice in relation to returns found in HMRC's post box on 1st November and their assertion that a late electronic return cannot be superceded by a later, but timeous, electronic one).

30 6. On reading the notice of appeal, HMRC's statement of case, and the appellant's reply, I directed that the Appellant should write to the tribunal with any evidence it wished to offer as to the date of posting. That Mr Woodland did and on receipt his letter was sent to HMRC for their comments. None were received.

7. In that letter Mr Woodland says that he visited the trustee on 24 October 2011 to review and sign the return and would have posted the return on 26th October at the Telford Town Centre Post office. He enclosed a copy of his diary.

35 8. I accept this evidence. I find that the return was posted on Wednesday 26 October 2011. It seems likely to me that the letter would have been stamped with a first class stamp.

9. Section 7 Interpretation Act 1978 provides:

5 “Where an Act authorises or requires any document to be sent by post (whether the expression “serve” or the expression “give” or “send” or any other expression is used) then unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document, and unless the contrary is proved, to have been effected at the time the letter would have been delivered in the ordinary course of post.”

10. Section 115(2) TMA provides that:

10 “ Any notice or other document to be given sent or delivered under the Taxes Acts may be served by post...”

11. As a result the deeming provisions of section 7 apply.

12. In my view a first class letter would “in the ordinary course of post” be delivered on the following day; there may be occasions when that does not occur but they are not “in the ordinary course of post”. In any event a letter posted on a Wednesday 26th would in my judgement in the ordinary course be received by Friday 28th.

13. As a result because I have found that the trustee’s return was so posted as mentioned in that section it must, “unless the contrary is proved”, be treated as received on Friday 28 October.

20 14. If the TMA could not have been read as so authorising the delivery of a return then as a factual matter it seems to me that it would be likely that a letter posted on a Wednesday from Telford would arrive on Friday 28th, unless there was evidence to show it had not been so delivered.

25 15. HMRC have produced no evidence of the date of delivery. The Statement of case bears no name: it cannot be read as the statement by any particular person that the return was in fact delivered. Even if it bore a name there is no indication as to how the writer knew the return was delivered on 2 November, no account is given of personal experience of the system, no date stamped letter is produced, no log of receipts is produced, and there is no statement from the supervisor of the receiving office.

30 16. Given that the grounds of appeal raised clearly a contention that the return had been received on time, the failure to address that issue cannot weigh in HMRC’s favour in addressing the question of whether the return was in fact received on time. Nor can their failure to respond to the Appellant’s evidence of posting. I find that “the contrary “ is not proved.

17. I find that the return was received on 28 October 2011.

18. The return was not late. No penalty arises. The appeal is allowed.

19. There is no need to address the question of reasonable excuse, but if, on the evidence before me, the return had in fact been late, I would have found that the appellant had a reasonable excuse.

Right of Appeal

5 20. 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
10 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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**CHARLES HELLIER
TRIBUNAL JUDGE**

RELEASE DATE: 7 February 2013