



TC02598

Appeal number: TC/2012/02225

Income tax – late filing penalty – reasonable excuse

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MR DAVID GOULDEN

Appellant

- and -

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

TRIBUNAL: SIR STEPHEN OLIVER QC

The Tribunal determined the appeal on 22 November 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 17 January 2012 and HMRC's Statement of Case.

DECISION

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1. Mr David Goulden, the Appellant, appeals against the penalty imposed under Section 93(2) (4) of Taxes Management Act 2007 for the late filing of his personal tax return for the year ending 5 April 2010. (The appeal was lodged out of time; HMRC has no objection to the late application and I grant that application). By way of
10 background, Mr Goulden obtained a CIS Certificate and worked as a “crew” in the entertainments industry from some date in 2006. No tax was deducted at source. Consequently Mr Goulden became liable via the self assessment regime for any tax due. Mr Goulden has been completing self assessment tax returns since April 2006.

2. The facts of the present case are that the return was issued to Mr Goulden on 6
15 April 2010. The filing date was 31 October 2010 (if filed on paper) or 31 January 2011 (if filed on-line). A penalty was issued on or within a few days of 15 February 2011. A second penalty was issued on or within a few days of 2 August 2011. The return was received on 14 March 2012.

3. On 26 August 2011, Mr Goulden appealed against the penalty. He had, he
20 contended, tried to file on-line but had been unable to proceed as a code was required and he had not had one. He then proceeded to file a paper version of the form and sent it off. He said that he had a letter to say that the form had been sent back to him as it had been incomplete. He had, he said, never received this form. He then filled in the form a second time, in 2012, from scratch. HMRC wrote back to Mr Goulden on
25 19 September 2011 contending that the original return had been sent back to him in May 2010; they observed that it had not been returned to HMRC as “undelivered”.

4. Mr Goulden requested a review of HMRC’s decision, stating that he had sent the paperwork before the deadline and that several weeks had passed before he had received notification that HMRC had not received his self assessment form.

5. The review decision, issued on 23 November 2011, upheld the original decision. The reasons for upholding the original decision were, first, that the return that had been reissued on 30 August 2011 had still not been sent back to HMRC and that there was no record of any correspondence being returned to HMRC by the postal service. Second, a telephone call had been made on 11 October 2011, following which a
35 further return had been issued; but this return also remained outstanding. HMRC asked Mr Goulden to complete, sign and return those forms.

6. Mr Goulden, in his notice of appeal of 17 January 2012, explains that he finds dealing with all the correspondence from HMRC to be difficult. He reiterated that he had completed the “incomplete” return that had been sent back to him.

40 7. I read Mr Goulden’s grounds of appeal as being based on “reasonable excuse”.

8. HMRC observe that if a person is to rely on reasonable excuse, this must have existed for the whole of the period of default. A reasonable excuse is normally an unexpected or unusual event, either unforeseeable or beyond the person's control, which prevents him from complying with an obligation when he otherwise would have done. The matter has to be considered in the light of the actions of a reasonable prudent tax payer exercising foresight and due diligence and having proper regard for his responsibilities under the taxes act.

9. HMRC note that Mr Goulden's 2006/07 return had been due on 31 January 2008 but had not been filed as complete until 27 October 2008. Two late filing penalties had been issued; these had later been capped to nil as the processing of the return resulted in nil tax due by Mr Goulden. Mr Goulden's 2008/09 return had been due on 31 January 2010 but had not been filed as complete until 8 February 2011. Two late filing penalties had been issued and both of these had been paid.

10. Regarding Mr Goulden's personal tax return for the year ending 5 April 2010, HMRC note (and this is not disputed) that this had been received by HMRC in advance of the filing date but had been returned to Mr Goulden on 18 May 2010 (a fact which Mr Goulden denies) as the self employment pages had been missing. The consequence was that Mr Goulden received the first penalty notice for 2009/10 in February 2011. He then wrote to HMRC on 24 February requesting a 2009/10 self assessment return. HMRC wrote back to Mr Goulden, also 24 February 2011, requesting the outstanding return for 2009/10.

11. When Mr Goulden appealed the first penalty notice on 8 April 2010, the return remained outstanding and on 11 May 2011, the appeal was rejected as no reasonable excuse had been offered by Mr Goulden for the lateness. No further contact was made with Mr Goulden until the second penalty notice went out on or around 2 August 2011. Mr Goulden wrote to HMRC appealing the second penalty notice; but as the return was still outstanding, HMRC rejected that Appeal on 12 August 2011.

12. Then on 6 August 2011 a return was sent in; but this was not received in the correct format; this was because Mr Goulden had completed a 2010/11 return and had changed the date. That return had had to be sent back to Mr Goulden on 30 August 2011.

13. On 11 October 2011 Mr Goulden rang HMRC saying that he had still not received the 2009/10 return that had been sent back to him. A further 2009/10 return was sent to him with the employment pages and he was asked to complete and return that as soon as possible. On 26 October 2011, HMRC received a return from Mr Goulden. However, once again the return had to be sent back to Mr Goulden as the employment and self-employment pages were missing. On 7 February 2012, HMRC again received a return and again this had been sent back to Mr Goulden with a letter as the self employment information had been missing.

14. Finally, HMRC received the completed return on 14 March 2012.

15. HMRC do not dispute the fact that Mr Goulden attempted to submit a return for 2009/10. They say, however, that he failed to complete and submit a correct one with the correct employment/self employment pages. The question for me is whether Mr Goulden had a reasonable excuse in those circumstances. I do not think so. I note
5 that the returns had been sent back to Mr Goulden on each occasion and the reason why they had been returned had been clearly explained. There is no evidence that Mr Goulden sought any assistance in order to help him complete the form or any of them. There were lengthy gaps during which Mr Goulden took no action despite being made aware on several occasions that the returns he had been completing had been filled in
10 inaccurately. Indeed from 11 May 2011 until August 2011, Mr Goulden had taken no action despite receiving a rejection of his first appeal.

16. I note that, in a letter of 9 February 2011, Mr Goulden claimed to be confused as he does not run a business and cannot understand why he needs to complete self-assessment forms. In that letter he explains that he knows “zero” about the taxation
15 system and wishes to revert to PAYE status. (I note that HMRC have now ceased Mr Goulden’s self assessment record from 5 April 2011 as he now works as an employee under PAYE.)

17. I accept that Mr Goulden has had difficulties in properly complying with the self-assessment filing regime. I have looked at the circumstances, summarised above,
20 and have taken account of the exchanges of correspondence between Mr Goulden and HMRC. Mr Goulden, I observe, is not unfamiliar with the self-assessment regime, having been exposed to penalties in earlier years. The circumstances surrounding his failure to file a proper return fall short, in my view, of what can reasonably be expected of a tax payer in Mr Goulden’s shoes. He has not, in my view, established a
25 reasonable excuse.

18. For the reasons given above, I dismiss the appeal.

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
30 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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**SIR STEPHEN OLIVER QC
TRIBUNAL JUDGE**

RELEASE DATE: 11 March 2013

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