



TC02634

Appeal number: TC/2012/06611

Income tax - late filing penalty – reasonable excuse

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MR G W WOOTTON

Appellant

- and -

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

TRIBUNAL: SIR STEPHEN OLIVER

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

1. Mr G W Wootton, the Appellant, appeals against the first and second fixed penalties imposed under Section 93 (2) (3) of Taxes Management Act (TMA) 1970 for the late filing of his personal tax returns for the years ending 5 April 2008, 5 April 2009, 5 April 2010. The Appeal is also against the late filing fixed penalty imposed under paragraph 3 of Schedule 55 Finance Act 2009 and the daily penalty imposed under paragraph 4 of Schedule 55 for the late filing of his personal tax return for year ended 5 April 2011.
2. The relevant returns were not filed until 3 May 2012.
3. Mr Wootton relies on the reasonable excuse defence that the penalty. He points out that his wife had died on 2 June 2009 following a period of illness. During that period he had devoted himself to caring for his wife and following her death he had suffered from a period of depression and a breakdown. He had only latterly been able to face up to dealing with such matters as outstanding tax returns. A doctor's certificate was submitted that confirmed Mr Wootton's medical condition following the death of his wife.
4. The strict application of the penalty regime and the calculation of the penalties is not disputed. The Appeal, as noted, is whether Mr Wootton can demonstrate that he had a reasonable excuse for being late in filing the appropriate personal tax returns.
5. HMRC claim that a reasonable excuse is normally an unexpected or unusual event that is either foreseeable or beyond the control of the person in question, being an event that prevents the person from complying with an obligation when he otherwise would have done so. If the tax payer in question could reasonably have foreseen the event, whether or not it is within his control, he can reasonably be expected to take steps to meet his obligation.
6. HMRC point out that Mr Wootton has been making self assessment returns since 1996/97. On that basis he is reasonably experienced with the self assessment system and with the relevant due filing dates. HMRC acknowledge that they would consider the serious illness of a close relative as providing a reasonable excuse for the late filing of a return where the situation of the illness takes up a great deal of the taxpayer's time and attention during the period from the filing date to the date when the return was received by HMRC. HMRC point out however that Mr Wootton had not filed his returns for the year ending 5 April 2008 until 9 May 2012, nor his returns for the years ending of 5 April 2009, 5 April 2010 and 5 April 2011 until 3 May 2012. HMRC would, as just observed, accept that the death of a partner or close relative close to a filing date may provide a reasonable excuse for late filing. However, a taxpayer is expected to file an outstanding return within a reasonable time. In the present case, the outstanding returns were filed so late that HMRC have taken the view that Mr Wootton had not submitted those returns within a reasonable time. In reaching this conclusion, HMRC take account of the fact that Mr Wootton experienced personal difficulties following the death of his wife. It is HMRC's case

that Mr Wootton has not presented evidence to establish that the illness was so serious that it prevented him from controlling his affairs or from filing his returns by the relevant due filing dates.

5 7. HMRC further observe that Mr Wootton has engaged an agent to assist him with his tax affairs since 2004. On that basis, they contend, it would have been reasonable to have expected Mr Wootton to have been in a position to submit his returns by each relevant filing date or at the very least well in advance of May 2012.

10 8. I have looked all the circumstances referred in the papers submitted to me. In common with HMRC I have considerable sympathy for Mr Wootton. Nonetheless I cannot fault HMRC's decision. It is reasonable to expect him to have taken whatever steps were required to file his self assessment returns by the due dates.

15 9. 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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**SIR STEPHEN OLIVER QC
TRIBUNAL JUDGE**

RELEASE DATE: 9 April 2013

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