



TC02688

Appeal number: TC/2012/07195

INCOME TAX – penalty – paragraph 3 Schedule 55 Finance Act 2009 – late return for the income tax year ended 5 April 2011 – trustee return – online filing after 31 October 2011 – need to purchase commercially available software – whether reasonable excuse: no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**TRUSTEE OF THE GEORGIA VICKERY, FRANKI Appellants
and MIA SETTLEMENT**

- and -

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

**TRIBUNAL: JUDGE GUY BRANNAN
RICHARD THOMAS**

Sitting in public at Bedford Square, London on 11 January 2013

The Appellant did not appear and was not represented

Mr Mulholland, HMRC, for the Respondents

DECISION

1. This is an appeal against the imposition of a £100 penalty imposed pursuant to paragraph 3 Schedule 55 Finance Act 2009 ("FA 2009") brought by the trustee of the Georgia Vickery, Franki and Mia Settlement ("the trustee" or "the appellant").

2. The appellant did not appear at the hearing and was not represented. Having satisfied ourselves that the appellant had been duly notified of the hearing, we decided that it was in the interests of justice for the hearing to proceed.

10 The facts

3. We find the following facts.

4. On 6 April 2010 a Trust and Estate Tax Return for the year ended 5 April 2010 was issued to the trustee. The front of the return contained the following guidance:

"We have sent you this paper form to fill in, but you can also file a tax return online using our Internet service (using third-party commercial software).

Make sure the tax return, and any documents we ask for, reach us by:

- **31 October 2010** if you want us to calculate the trust or estate's tax or if you file a **paper** tax return, or both, or
- **31 January 2011** if you file a return **online**."

5. A paper return for the tax year ended 5 April 2010 was received by HMRC on 18 February 2011, i.e. over three months after the deadline for filing paper returns of 31 October 2010.

6. A fixed £100 penalty notice was issued to the trustee on 28 February 2011. The trustee appealed against a penalty on 10 March 2011 on the basis that no liability arose for the year ended 5 April 2010.

7. On 5 April 2011 HMRC wrote to the trustee reducing the penalty to nil because no tax was due. The letter specifically pointed out that if the trustee wished to file a paper return it had to be received by 31 October 2011. The letter continued:

"Please note the penalty legislation has changed for 2010/11. If you wish to send a paper Return this **must** be received by **31 October 2011**. Please see attached penalty guidance for further information.

If you wish to file the Trust Return online please note that this can be done using **3rd party software** which you will need to purchase."

The words in bold are as shown on the letter: they are not the Tribunal's emphasis.

8. A paper Trust and Estate Tax Return for the year ended 5 April 2011 was issued to the trustee on 6 April 2011. The guidance on the front page of the return stated as follows:

5 "We have sent you this paper form to fill in, but you can also file the tax return online using our Internet service (you will need to use commercial software which you may have to buy).

Make sure the tax return, and any documents we ask for, reach us by:

- 10 • **31 October 2011** if you want **us** to calculate the trust or estate's tax or if you file a **paper** tax return, or both, or
- **31 January 2012** if you file the return **online**."

9. The appellant's paper return for the year ended 5 April 2011 was received on 20 December 2011 i.e. after the deadline for paper returns of 31 October 2011.

15 10. A penalty notice of £100 was issued to the trustee on 3 January 2012 and an appeal against a penalty was received by HMRC on 18 January 2012.

11. After an unsuccessful review process, in which the appellant's accountants corresponded with HMRC, the appellant appealed to this tribunal on 20 July 2012. The grounds for appeal, drafted by the appellant's accountants, were as follows:

20 "We tried to file the return online well before what we believe was the deadline. It then transpired that the Revenue feel that we should have to purchase commercial software to enable us to do this. We feel strongly that this is a failure by the Revenue. We obviously did not know this is going to be a problem until we tried to do it by which time it would have gone past the paper filing deadline. We have since
25 appealed the penalty copies of letters enclosed. Our final letter of 9 July 2012 was asking the Revenue to review this case again as it is going to take up the Revenue's time, our time doing the tribunal application and will cost the taxpayers more money than cancelling the £100 fine. We had not heard from the Revenue so we tried to ring the
30 Revenue on the phone number on the letter dated 2 July 2012 and this was the self-assessment helpline. We felt it needed to be a more significant Department so we rang agents dedicated section for guidance. They gave us a trust number. First attempt here left us in a queue. Then call went dead. Second phone call we found out a letter
35 (dated 13 July 2012) was on the way to us telling us to continue with appeal. Surely this is a waste of everyone's time. We agree if we tried to file it late then fair comment. But due to the software issue, this should be reviewed and the penalty cancelled as the Revenue is wasting taxpayers' money."

40 **The legislation**

12. Section 8A Taxes Management Act 1970 ("TMA") provides, so far as material:

5 "(1) For the purpose of establishing the amounts in which the relevant trustees of a settlement, and the settlors and beneficiaries, are chargeable to income tax and capital gains tax for a year of assessment, and the amount payable by him by way of income tax for that year, an officer of the Board may by a notice given to any relevant trustee require the trustee—

 (a) to make and deliver to the officer. . . , a return containing such information as may reasonably be required in pursuance of the notice, and

10 (b) to deliver with the return such accounts, statements and documents, relating to information contained in the return, as may reasonably be so required;

 and a notice may be given to any one trustee or separate notices may be given to each trustee or to such trustees as the officer thinks fit.

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 (1B) A return under this section for a year of assessment (Year 1) must be delivered—

 (a) in the case of a non-electronic return, on or before 31st October in Year 2, and

20 (b) in the case of an electronic return, on or before 31st January in Year 2."

13. Pursuant to paragraphs 1 to 3 Schedule 55 FA 2009, the failure to submit a paper Trusts and Estate return by 31 October 2011 or an online return by 31 January 2011 results in a £100 penalty.

25 14. Paragraph 23 of Schedule 55 provides:

 "(1) Liability to a penalty under any paragraph of this Schedule does not arise in relation to a failure to make a return if P satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that there is a reasonable excuse for the failure.

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 (2) For the purposes of sub-paragraph (1)—

 (a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside P's control,

35 (b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and

 (c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased."

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Discussion

15. There is no dispute about the facts in this case. The appellant does not contest that they did not file a paper tax return by the deadline for filing of a paper return (31 October 2011) and it is accepted that the appellant did not file the return online by the
5 31 January 2012 deadline. The appellant's return was, therefore, late.

16. Instead, the appellant's argument is that, because the return could not be filed without purchasing third-party software, the appellant had a reasonable excuse within the meaning of paragraph 23 Schedule 55 FA 2009.

17. We reject the appellant's contention.

10 18. The returns for the tax year ended 5 April 2010 and 5 April 2011 made it perfectly clear that, in order to file online, the appellant may have to purchase third-party software. The appellant was not compelled to file online. Instead, the appellant could have filed a paper return by 31 October 2011. In our view the requirement to purchase third-party software if the appellant opted to file online cannot be a
15 reasonable excuse (see also decisions of this tribunal in *Brian Peck and Jennifer Wilson (Partnership) v HMRC* [2011] UKFTT 859 (TC), *Alfa Biuro Partnership v HMRC* [2012] UKFTT 598 (TC) and *Caroline McKendrick v HMRC* [2012] UKFTT 376 (TC)).

19. Accordingly, the appellants did not have a reasonable excuse within the
20 meaning of paragraph 23 Schedule 55 FA 2009 and this appeal must be dismissed.

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
25 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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**GUY BRANNAN
TRIBUNAL JUDGE**

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RELEASE DATE: 1 May 2013