



TC02907

Appeal number: TC/2012/02279

Income tax - Appeal against penalty for late electronic filing of annual PAYE return - Additional penalty charged for non-payment of the original penalty following a four-month delay by HMRC in notifying the Appellant of the initial failure to file - Appeal allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

D. J. PORTER

Appellant

- and -

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

**TRIBUNAL: JUDGE HOWARD M. NOWLAN
JANE SHILAKER**

Sitting in public at 30-31 Friar Street, Reading on 27 August 2013

The Appellant in person

Mrs. G Carwardine of HMRC on behalf of the Respondents

DECISION

1. This was a simple Appeal in which the Appellant appealed against the imposition of a £400 penalty for the late on-line filing of his P.35 annual PAYE return for the period 2010/2011, imposed and thus increased by the fact that HMRC did not notify the Appellant of the failure to file for four months, then followed subsequently by the imposition of an additional £100 penalty, for an additional delay into the next month before the eventual filing of the return. Once the Appellant realised that the return had not been filed, and notwithstanding that he had appealed against the penalties, he paid the £500, albeit that HMRC had indicated that he could defer paying if he wished until the outcome of the Appeal was known.

2. The relevant PAYE return was required to be filed, and had in the past always been filed promptly, because the Appellant, a surveyor, employed his wife to deal with his bookkeeping. In that capacity, it was his wife who had always filed the required PAYE returns, and when they were filed in paper form no errors or delays had arisen. On being required to file the return material to this Appeal on-line, the Appellant's wife sought to effect the filing on-line approximately two months prior to the final due date for the filing, but she had difficulty in operating the HMRC website. As printouts from HMRC duly confirmed, she sought to log onto the website on a number of occasions, and she eventually thought that she had succeeded in submitting the return. In the Appellant's written grounds for appealing, the Appellant indicated that his wife had then telephoned HMRC and spoken to someone called Elana who had indicated that the relevant information had duly been received by HMRC. At the hearing, the Appellant mentioned that this had in fact been confirmed in two telephone calls.

3. It transpired that although the Appellant's wife had managed to log onto the relevant website (duly confirmed by HMRC's printout) and although the required information had been duly received by HMRC (confirmed by the telephone calls), such that she concluded that she had succeeded in making the relevant return, she had apparently not pressed some required button or ticked some required box, such that the actual submission had not been made.

4. Since the return had not in fact been formally submitted, the penalty notice was sent to the Appellant four months after the due date for filing, with the result that the penalty demanded amounted to four payments of the monthly £100 penalty, plus shortly after that a further penalty of £100 in respect of the following month.

5. The Appellant contended both that he had a reasonable excuse for the late filing in the first place, and that it was unacceptable that no notification was made of the late filing for at least four months, such that the penalty was greatly increased.

6. HMRC's evidence before us confirmed that the Appellant's wife had duly logged onto HMRC's computer on the occasions indicated by the Appellant. HMRC did not challenge the Appellant's claim that his wife had duly spoken to Elana and

been told that the relevant information had been received. HMRC did suggest during the hearing that when a taxpayer logged onto the web-site to file a PAYE return, they would be sent an e-mail that would indicate either that the return had been satisfactorily filed or that there had been some failure to file. HMRC conceded, however, that they could not establish that such an e-mail had actually been sent in this case and the Appellant believed that none had been received. Other information in the papers that we were given indicated that the e-mails were sent when satisfactory filings had been made, but did not indicate that e-mails were sent when efforts had been made to file, but those efforts had not for some reason succeeded. Whatever the position, we were certainly not satisfied that the Appellant had received an e-mail that indicated that the filing had not been satisfactorily made.

7. Our unhesitating decision is that since the Appellant's wife had made numerous efforts to effect the filing well in advance of the due date, and since she had phoned up HMRC and been told, very misleadingly, that the relevant information had duly been received, the Appellant had a reasonable excuse for the fact that some error had occurred, and that the return had in the event not been formally submitted.

8. Accordingly we decide that the full penalty of £500 should not have been imposed and that HMRC should refund the penalty that has been paid by the Appellant.

Right of Appeal

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.

HOWARD M. NOWLAN
TRIBUNAL JUDGE

RELEASE DATE: 03 October 2013