



TC03978

Appeal number: TC/2014/03379

Income Tax – penalty for late filing annual return – paper return – sent by post – not received by HMRC – penalty notice first indication of non-receipt – no reasonable excuse

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

GRAHAM HALL

Appellant

- and -

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

TRIBUNAL: JUDGE ALASTAIR J RANKIN

The Tribunal determined the appeal on 28 August 2014 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 16 June 2014 (with enclosures) and HMRC's Statement of Case submitted on 12 July 2014 (with enclosures) and the Appellant's Reply dated 21 July 2014.

DECISION

5 1. This is an appeal against a late filing penalty of £100.00 in respect of the tax year 2012/13.

2. On 6 April 2013 HMRC sent to Mr Hall a notice to file his tax return for the year ending 5 April 2013. The notice advised Mr Hall that he should file a non-electronic return on or before 31 October 2013 or an electronic return on or before 31 January 2014.

10 3. As no return was received by HMRC a penalty notice was issued on 18 February 2014.

4. Mr Hall filed his return electronically on 10 March 2014.

15 5. Mr Hall appealed against the penalty on 19 March 2014 advising HMRC that he did file his return but it had been lost. HMRC rejected the appeal by letter dated 25 March 2014 advising him that he had not provided a reasonable excuse.

20 6. Using form SA 634 dated 8 April 2014 Mr Hall requested a review of the decision stating that the tax return was sent to HMRC within the prescribed time limit. It was a paper submittal rather than on line as he had tried in previous years on line but the frustration/unreliability of it crashing had put him off this method and also he does not trust internet security. Mr Hall had no knowledge of any issue until the penalty notice arrived, he had received no reminders and had always settled any shortfall immediately. Mr Hall felt it unfair to penalise him when he had no knowledge that HMRC had not received his paperwork.

25 7. By letter dated 14 May 2014 an Appeals Review Officer upheld the penalty on the basis that HMRC had no record of a paper tax return for 2012/13 being received and Mr Hall had produced no evidence of posting the return.

30 8. In his Notice of Appeal to this Tribunal Mr Hall states that he sent in his tax return well within the allowed time period, his records over the previous 6 years indicate that he has always been compliant and he has always settled his account immediately. Mr Hall claims he was never informed that his tax return had not been received until he received the penalty notice. Previously he never sent his tax returns by recorded delivery so admittedly he had no evidence of having sent his tax return other than his previous record.

35 9. HMRC contend that the penalty has been imposed to promote the efficient operation of the taxation system, that Mr Hall has not offered any documentary evidence as to when he posted the return and that his previous returns were submitted online albeit by his then accountants.

10. Mr Hall in his Reply dated 21 July 2014 states that he had never previously submitted his returns online and that he had no idea that his then accountants had submitted his returns online.

The Law

5 11. The filing date is determined by Section 8(1D) Taxes Management Act 1970 which states that a non-electronic return must be delivered on or before 31 October and an electronic return must be submitted on or before 31 January following the end of the tax year.

10 12. Paragraph 3 of Schedule 55 Finance Act 2009 provides for a penalty of £100.00 if the return is not received by the due date.

13. Paragraph 23(1) of Schedule 55 Finance Act 2009 provides that an appeal against a late filing penalty will be successful where the taxpayer shows that there is reasonable excuse.

The Decision

15 14. There is no statutory definition of reasonable excuse. It is a matter to be considered in the light of all the circumstances of the particular case. Mr Hall has not provided any evidence of posting his return nor has he indicated even the approximate date of posting. If HMRC had received his paper tax return by 31 October 2013 the tax liabilities arising as a result of the information in the return would have appeared
20 in the Self Assessment Statement issued by HMRC in December 2013 or early January 2014. The lack of this information in the Statement should have alerted Mr Hall to the fact that his tax return had not been received by HMRC.

25 15. The Tribunal agrees with the views of Judge Colin Bishopp in the First Tier Tribunal case of Enersys Holdings UK Limited [2010] UKFTT 20 that 'it seems unlikely that a delay of only a day might ever, without more, amount to a reasonable excuse'.

16. Mr Hall has not provided any reasonable excuse as to why his tax return was not received by HMRC by the due date.

30 17. Following the decision of the Upper Tier Tribunal in Hok Ltd the Tribunal has no jurisdiction to discharge or adjust a fixed penalty which is properly due because it thinks it is unfair. There is no obligation on HMRC to remind taxpayers that their return is late.

18. The appeal is therefore dismissed and the penalty of £100.00 remains payable.

35 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 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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ALASTAIR J RANKIN
TRIBUNAL JUDGE

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RELEASE DATE: 2 September 2014