



TC04238

Appeal number: TC/2014/05662

Penalty for late filing of personal tax return – whether there was a reasonable excuse lasting throughout the period of default – held no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

STEPHEN TAYLOR

Appellant

- and -

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

TRIBUNAL: JUDGE JOHN N. DENT

The Tribunal determined the appeal on 17.12.2014 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 15.10.2014 (with enclosures), HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 30.10.2014, and emails from the Appellant's agent, Catherine Newman dated 10.11.2014 and 16.12.2014.

DECISION

1. By Notice of Appeal dated 15 October 2014, Mr Taylor (“the Appellant”) appealed against the fixed penalty of £100, imposed under Paragraph 3 of Schedule 55 Finance Act 2009 for the late filing of his individual tax return for the year ended 5 April 2013.

Background

2. A notice to file an individual tax return for the year ending 5 April 2013 was issued to the Appellant on 6 April 2013; the filing date was 31 October 2013 for a non-electronic return or 31 January 2014 if the return was filed online.

3. The Appellant’s return for the year ended 5 April 2013 was received by HMRC online on 6 February 2014

4. HMRC issued a £100 late filing penalty notice on 18 February 2014.

Appeal

5. On 7 February 2014 HMRC received a form from the Appellant stating that he was claiming that he had a reasonable excuse for failure to file online by 31 January 2014. He stated that he had been suffering from Crohn’s disease and that it had taken 5 months to get the correct medication. His business had suffered as a result. There was no mention of his agent having overlooked the submission of the return.

6. On 10 March 2014 HMRC rejected the appeal and offered a review.

7. On 16 April 2014 the appellant’s agent Catherine Newman wrote to HMRC stating that she had forgotten to file the Appellant’s return, and filed it as soon as she noticed on her PTP software list that it had been omitted. She cited personal problems which she had had, and said that the omission was entirely her fault.

8. On 21 August 2014 the Appellant, through Catherine Newman, requested a review stating that the Appellant had taken in his information to Mrs Newman on 18 January 2014, on time, but that reasonable excuse should cover a slip up by her, the agent. She identified some problems she had had with other clients, and said that her father in law had become ill, and that she had had to start picking up the children on Fridays as well as the other 4 days. She appealed to HMRC’s better nature.

9. On 3 October 2014 HMRC issued their review conclusion, the outcome of which was to confirm that the decision should be upheld.

10. On 15 October 2014 the Appellant appealed to the Tribunal, through Mrs Newman. Mrs Newman attached the opinion of Keith Gordon, a barrister, and an article by Nichola Ross-Martin dealing with reliance upon a third party.

11. HMRC submit that it is the Appellant’s responsibility to ensure that he adheres to his legal obligation to file his personal tax returns by their filing dates. They submit that reliance on an agent or third party does not constitute a reasonable excuse, and that an individual should take reasonable care to explain to a third party what they

require them to do, to set deadlines for the work and to make regular checks on progress.

12. HMRC further submit that in the case of *Schola UK Ltd [2011] UKFTT 130 (TC)* Judge Tildesley OBE stated

5 “The Appellant’s reason for not filing the return on time was essentially its agent made an honest mistake. The Appellant was bound by the actions of its agent and cannot avoid its responsibilities under the Tax Acts by transferring them to its agent. The agent’s mistake was that it did not check that it had received the
10 acknowledgement of receipt of the return which HMRC sends by e mail. The mistake could have been avoided if the agent had exercised proper care. The actions of the agent were not those of a prudent employer exercising reasonable foresight and due diligence with a proper regard for the responsibilities under the Tax Acts. The Tribunal, therefore, finds that the Appellant did not have a reasonable excuse for the late filing of the 2008/09 end of year return.”

15 *Discussion*

13. In considering a reasonable excuse the Tribunal examines the actions of the Appellant from the perspective of a prudent employer exercising reasonable foresight and due diligence and having proper regard for his responsibilities under the Tax Acts. The Appellant had entrusted the submission of the return to his agent Mrs
20 Newman. The Tribunal considered whether the illness of the agent’s father-in-law father, or the other pressures on the agent constituted a reasonable excuse which lasted throughout the period of default. The accountant was clearly able to file or make arrangements to file returns for all her other clients. She admitted that she had overlooked that of the Appellant. In the finding of the Tribunal the accountant had
25 made a mistake, which was not a result of her father-in-law’s illness or of the other pressures. Failure of the agent to meet her obligations to the Appellant might entitle the Appellant to some recourse against the agent, but in the Tribunal’s view, reliance on a third party such as an accountant cannot relieve the Appellant of his own duty to file his return on time

30 14. The Tribunal went on to consider whether the omission by the agent constituted a reasonable excuse which lasted throughout the period of default. The Tribunal found that the Appellant himself was fully aware of his responsibility to file a return. The ultimate responsibility for filing the return is with the individual, and leaving the filing in the hands of an agent does not absolve the taxpayer from responsibility if the
35 agent makes a mistake or overlooks the filing. Overlooking the filing of the return would not, in the finding of the Tribunal, afford the taxpayer a reasonable excuse, and likewise, such an omission by the agent cannot afford him reasonable excuse either. The agent made a mistake in not checking that all of the returns which she was due to file had been filed. She failed to make the necessary checks in the case of the
40 Appellant.

15. The Appellant has a responsibility to file a Return under Section 8 Taxes Management Act 1970. The Tribunal find that the Appellant does not have a reasonable excuse for the late filing. The late filing penalty is in accordance with the legislation and there are no special circumstances allowing the penalty to be reduced.

16. The Penalty is not disproportionate. The decision in the appeal to the Upper Tribunal in *Hok Limited [2012] UKUT 363 (TCC)* confirmed that the Tribunal could not discharge the penalty on the grounds of fairness. This Tribunal is bound by that decision.

5 *Decision*

17. For the reasons set out above, the appeal is dismissed and the late filing penalty of £100 is confirmed

18. 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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JOHN N. DENT
TRIBUNAL JUDGE

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RELEASE DATE: 7 January 2015

