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TC04497

Appeal number: TC/2015/02120

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INCOME TAX – late submission of individual tax return – Whether reasonable excuse for late submission of return – Yes.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

15

ZOE C BRENNAN

Appellant

- and -

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

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**TRIBUNAL: PRESIDING MEMBER
 PETER R. SHEPPARD FCIS FCIB CTA
 AHT**

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The Tribunal determined the appeal on 22 June 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 2 March 2015 with enclosures, and HMRC's Statement of Case received by the Tribunal on 1 April 2015 with enclosures. The Tribunal wrote to the Appellant on 22 April 2015 indicating that if she wished to reply to HMRC's Statement of Case she should do so within 30 days. A response was received and was also considered by the Tribunal.

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DECISION

1. Introduction

5 This considers an appeal against a penalty of £100 imposed by the Respondents (HMRC) under Paragraph 3 of Schedule 55 Finance Act 2009 for the late filing by the Appellant of her individual tax return for the tax year 2012 – 2013.

2. Legislation

Finance Act 2009 Schedule 55
Taxes Management Act 1970, in particular Section 8(1D) and Section XI paragraph
10 115.

3. Case law

Crabtree v Hinchcliffe (Inspector of Taxes) [1971] 3 ALL ER 967
Clarks of Hove Ltd v Bakers' Union [1979] All ER 152
15 Rowland v HMRC [2006] STC (SCD) 536
Anthony Wood t/as Propave v HMRC [2011] UK FTT 136 (TC)

4. Facts

20 The filing date for an individual tax return is determined by Section 8 (1D) of the Taxes Management Act 1970. In this case HMRC say the return was issued on 6 April 2013 and so the filing date was 31 October 2013 for a non-electronic return or 31 January 2014 for an electronic return.

25 5. In respect of the year 2012-2013 the Appellant failed to submit her individual tax return until it was submitted electronically on 22 October 2014. As the return was not submitted by the filing date of 31 January 2014 HMRC issued a notice of penalty assessment on or around 18 February 2014 in the amount of £100.

6. On 30 September 2014 HMRC issued a late filing penalty notice for the tax year 2012-13 in the sum of £900.

7. On 9 October 2014 the appellant wrote to HMRC saying

30 I received from you yesterday a letter dated 30/9/14 advising of a late penalty notice of £900 for the tax year 2012 13. I hereby appeal the same.

This is the first I have heard of a tax return for 2012-2013 being required.

35 I did not receive a letter advising that a tax return 2012-2013 should be filed nor did I receive any reminder. I am aware that when a tax return is not filed on time a letter is usually sent out advising of a £100 fine and subsequent daily rate of interest. I did not receive this either.

40 As mentioned above your letter advising of a £900 penalty is the very first I have heard from you regarding a 2012-2013 tax return, and as such the fine is totally unreasonable.

I did hear from you this year regarding a 2013-2014 tax return. As you will see from your records, that return was completed well within the deadline. Had I been aware that a 2012-2013 return was required, I would have done the same.

I telephoned the tax office yesterday upon receipt of the fine, such was my shock at having received the same. That call was logged and should show on your records. I was advised to put my appeal in writing.

5 As regards the tax year 2012-2013 for that period I was predominantly living overseas and not working. I did not therefore expect to receive a tax return, so it was no surprise that I didn't.

10 My only income for 2012-2013 was 3 months rental income. After the deduction of allowable expenses, mortgage interest etc. that income was well within my personal allowance. I was therefore, not mindful of any need to contact the Inland Revenue as I knew there was no tax due from me.

Should you still require me to file a 2012-2013 return I am happy to do so. I am not however happy to pay a £900 fine for the above mentioned reasons.

15 8. On 26 November HMRC responded saying that the result of the appeal was that they considered that the fact that the appellant was out of the country is not reasonable excuse and neither is the lack of a reminder. The letter offered a review

9. On 9 December 2014 the Appellant wrote a long letter to HMRC requesting a review and making additional points.

She said she considered her letter 9 October 2014 had been misread.

20 "The primary reason I did not complete the tax return,....., was that I did not receive a tax return nor any request to complete one. I was therefore totally unaware that I was required to complete a tax return, hence I did not do so.

25 I did of course mention in my letter of 9 October that I have been living out of the country. This is not a reason in itself for not having completed the tax return, but it goes to evidence the circumstances of the matter. I had previously notified you that I was living overseas, and had completed a non-resident landlord form. I received from you on 4 September 2012 a letter of approval to receive rental income with no tax deducted.

30 It states on that letter that if I do not receive a tax return, and think I may be liable to pay UK tax, I should tell you. I did not receive a tax return for 2012/13 and did not contact HMRC to request one because I knew I did not owe any tax. Tenants only moved into our property in February 2013. My income for 2012/13 was therefore approximately 2 months rental income at £1,600 per month, less the allowable deductions, falling well within my personal allowance.

35 I stated in my letter to you dated 9 October that I did not receive any reminders. I mention this NOT because I forgot to fill in a return and would have liked a reminder, but because in the absence of having received a return, I was totally unaware that I was required to complete one, and the absence of any reminders simply meant that I remained unaware that I was required to complete a tax return.

40 I understand that it is your standard procedure, when a tax return is not returned on time, to send a letter advising of the £100 fine and giving notification of a daily

penalty rate which will accrue. Again, I received no such letter. I was therefore still unaware that a tax return was required.”

The letter then repeated some of the points made in the appellant’s letter of 9 October 2014. It also included the following statements:

5 “I then received another letter from you dated 14 October advising of penalties totalling £300. I received this on 22 October and again immediately telephoned HMRC to enquire whether this was an additional penalty, or whether it was a reduction to the £900 penalty in the light of my letter of 9 October.

10 I was advised that this was an automatic letter advising of an additional £300 penalty due to my return now being 6 months late.....

Your letter to me dated 4 September regarding the non-resident landlord scheme was correctly addressed to me at Doha. This was the only letter I ever received from HMRC to that address.

15 I am of course unaware whether you properly issued to me any tax return, or reminders, or notification of penalties to that address, but nothing was ever received. It may be worthy of mention that the postal system in Doha is notoriously poor, and mail is not actually delivered to your door as it is in the UK, only to PO boxes. Hence the address I gave you was the PO Box address of my husband’s workplace. That said, although it would take a long time, mail would generally reach us there. I cannot
20 therefore comprehend how, if properly addressed and sent, I did not receive anything at all from you to put me on notice that a 2012/13 tax return was required.
.....

25 I also note that one of your own examples of a ‘reasonable excuse’ for not filing a return, as set out in SAM10090, is that the customer did not receive the return. This has very clearly been demonstrated above.

It seems rather unconscionable to enforce fines now totalling £1,300 when I was totally unaware that a tax return was required and had absolutely no notice that any of the fines would be forthcoming, compounded by the fact that no tax was actually due from me.”

30 10. On 27 January 2015 HMRC wrote to the Appellant giving the conclusion of their review which was that they had decided not to charge the daily and six month filing penalties of £600 and £300. They decided this because they said

35 “We did have post returned under our Returned Mail Service with Royal Mail on 21 May 2014, which set a signal on our system to prevent further correspondence being sent to that address. This meant the letters warning of further late filing penalties were not issued until we once more had a valid address from you in September 2014.”

However HMRC did not consider the appellant had reasonable excuse for filing the return late “as you had completed Self Assessment returns for the previous two years

and still had income from UK property in 2012-2013. You should have expected us to issue a notice to file a return, as you fulfilled the criteria for Self Assessment.

5 As we had your correct address in Qatar, you should have received both the notice to file issued on 6 April 2013 and a letter warning of a £100 late filing penalty issued in February 2014. The vagaries of the local postal service are not a reasonable excuse for assuming that no return was due for 2012-2013 and the £100 late filing penalty remains payable.”

11. Appellant’s further submissions

10 In the Notice of Appeal dated 2 March 2015 the appellant repeats the points made in her earlier letters

In an e-mail to the Tribunal dated 28 April 2015 in response to HMRC’s Statement of case the appellant states

15 “HMRC states that I had been making self assessments since 2010/11 due to being in receipt of income which was a continual source. That is incorrect, the rental income was not continuous

I received rental income for one year from 10/2010 to 10/2011 when we lived in Portugal for one year and let out our home. I then returned to UK and received no income.

20 I then moved to Doha in 08/12 and tenants moved into our property in 02/13. I completed form NRL at that time.....”

A copy of the letter from HMRC dated 4 September 2012 was submitted by the appellant.

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12. HMRC’s Further Submissions

HMRC say that Self Assessment is based on voluntary compliance. Taxpayers who are within the self-assessment system must file their returns by the due date and pay the tax they owe by the date specified in law.

30 13. Notice to file for the year ending 5 April 2013 was issued to the appellant on 6 April 2013. They say that the 2012-2013 return was sent to the address as shown on HMRC’s records at the time and therefore under the Taxes Management Act Part XI section 115 is deemed to have been served. They say the return has not been sent back to them.

35 14. HMRC have considered special reduction under (paragraph 16 Schedule 55 of the Finance Act 2009. They say special circumstances must be “exceptional, abnormal or unusual” (*Crabtree v Hinchcliffe*) or “something out of the ordinary run of events” (*Clarks of Hove Ltd. v Bakers’ Union*). In their view there are no special circumstances which would allow them to reduce the penalty.

40 15. Tribunal’s Observations

The Tribunal agrees with HMRC that it is the Appellant's responsibility to submit returns on time. The return for the period 2012-2013 was due to be submitted by 31 January 2014, but it was submitted late on 22 October 2014. A penalty of £100 is therefore due unless the appellant can establish a reasonable excuse for the delay as referred to in Paragraph 23(1) Schedule 55 Finance Act 2009. A reasonable excuse is normally an unexpected or unusual event that is unforeseeable or beyond the taxpayer's control, and which prevents them from complying with their obligation to file on time.

16. The Tribunal notes that HMRC's statement of case is silent on the matter of the letter they issued to the appellant on 4 September 2012. Having received that letter in Qatar the Tribunal can understand that the appellant would consider the onus was on her to contact HMRC if she thought she was due to pay UK tax. As she considered she was not due to pay tax and as she had not received a tax return or any reminders or penalty notices she took no further action until she received a tax return for the following year which she completed on time.

17. The Tribunal considers that whilst there may be an onus upon the appellant to submit a return, a person can only declare that which he or she knows or believes ought to be declared. If the state of mind of the appellant is that there is nothing to declare that can in appropriate circumstances amount to a reasonable excuse.

18. In these circumstances the Tribunal accepts that the appellant had received nothing to suggest a return was required. She was aware that no tax was due because her income was well within the personal allowance. She knew from the letter of 4 September 2012 she had to notify HMRC if she thought she was liable to pay tax. She knew that no tax was due to be paid so no notification was required. When she did complete her tax return for 2012-2013 it showed no tax was due.

19. It is clear that HMRC accept that the appellant did not receive correspondence in the period 21 May 2014 to September 2014. 21 May 2014 is the date HMRC became aware that post was not being received. The dates of the letters returned to HMRC must have been before that date. The £100 penalty notice HMRC state was issued on or around 18 February 2014 but they do not provide to the Tribunal a copy of the actual notice or even a sample of a notice so the Tribunal has been unable to verify the date of the notice, the correctness of it or the address it was sent to. The Tribunal does note that a statement of account issued by HMRC to the appellant on 27 January 2015 shows the penalty as dated 27 March 2014. This is only a few weeks before the mail was returned to HMRC and must create real doubt that the penalty notice was received by the appellant. In addition HMRC only provide a sample of a tax return so the tribunal has no evidence of the address the return was issued to.

20. The Tribunal accepts the appellant's argument that following the 4 September 2012 letter from HMRC she was not expecting to receive a tax return and although one was sent to her at an address not specified by HMRC she did not receive the return. None receipt of mail is something beyond the taxpayer's control

21. The Tribunal accepts that in these circumstances the appellant had reasonable excuse for not submitting her return for 2012-2013 on time

5 22. Paragraph 16 (1) of Schedule 55 Finance Act 2009 allows HMRC to reduce the penalty below the statutory minimum if they think it is right because of special circumstances. HMRC have considered whether there any special circumstances in this case which would allow them to reduce the penalty and have concluded there are none. Had the Tribunal not found that the appellant has a reasonable excuse for the failure to submit her 2012-2013 tax return they would have given serious consideration to whether there were special circumstances in this case.

10 23. The appellant has established a reasonable excuse for the late submission of her individual tax return for the period 2012-2013. Therefore the appeal is allowed.

15 24. 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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**PETER R. SHEPPARD
TRIBUNAL JUDGE**

RELEASE DATE: 25 June 2015