



TC04700

Appeal number: TC/2015/03768

Income Tax - late filing of self-assessment return - whether reasonable excuse – yes - appeal allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

	MRS V A TODD (in her capacity as trustee of The RC Spring Will Trust)	Appellant
	- and -	
	HER MAJESTY'S REVENUE AND CUSTOMS	Respondents

TRIBUNAL: JUDGE DR K KHAN

The Tribunal determined this appeal on 2 October 2015 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 June 2015 and HMRC's Statement of Case submitted on 28 July 2015.

DECISION

Introduction

- 5 1. This is an appeal against an assessment issued by the Respondents dated 6 January 2015 to charge a penalty of £100.00 in respect of the late filing of the self-assessment return for the RC Spring Will Trust for the year ending 5 April 2014.

10 Relevant facts and background

(1) The Appellant received the Notice on 6 April 2014 which required her to submit a Trust and Estate Self-Assessment tax return for the year 6 April 2013 to 5 April 2014. Paper tax returns should be filed by the 31 October 2014 and the electronic return should have been filed by 31 January 2015.

(2) HCML, Chartered Accountants (herein after referred to as Haynes & Company), who act on behalf of the Appellant posted a form 64-8 (authorising your Agent) to HMRC giving power to act on behalf of the Appellant. They say they sent the form by post because of a malfunction on the HMRC website which meant they were unable to request authorisation to act electronically. They posted the forms to an address supplied by a previous agent, which the HMRC say was the wrong address.

(2) On 2 January 2015, Haynes and Company state that they queried the lack of response from HMRC who advised that the form 64-8 had not been received. On 6 January 2015 HMRC received the completed 2013-2014 Self-Assessment Tax Return by post sent by Haynes & Company. The relevant 64-8 was attached with a covering letter advising that they had no access to the website to submit the return electronically. On 6 January 2015, HMRC sent a penalty notice to the Appellant for £100.00 for her failure to submit a return to HMRC by the filing date . The Appellant appealed against the penalty.

(3) On 10 March 2015, HMRC wrote refusing the appeal on the basis that there was no reasonable excuse for the late filing. In their cover letter, HMRC stated that “You’re required to buy commercial software to complete an online return”.

(4) A review was conducted which upheld HMRC’s decision.

(5) An appeal was lodged at the tribunal on 15 June 2015. The points made in the Notice is that Haynes and Company thought that without their authorisation being recorded on the HMRC systems

they would be unable to make online submissions and they did not have access to third party software.

The Respondent's Contentions

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(1) HMRC submit that the Appellant was a "Relevant" trustee and therefore someone to whom HMRC could issue tax returns under section 8A Taxes, Management Act TMA 1970 (TMA 1970). They also say that the Appellant failed to file the returns required and was potentially liable to a late fining penalty under Schedule 55 to the Finance Act 2009 (FA 2009).

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(2) The Appellant had complied with Notices to file returns in the previous six years and there was therefore familiar with the requirements to submit tax returns to HMRC and potential penalty consequences for failing to do so. The procedure for filing is clearly laid out in the Notice to File.

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(3) With regard to Haynes & Company, who say that they didn't have access to commercial software to be able to file online therefore had no option but to submit a paper return, this is not a reasonable excuse.

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(3) HMRC say that there were no special circumstances in this case which would make it appropriate for them to exercise discretion under paragraph 16 of Schedule 55 to FA 2009.

Conclusion

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(4) The appeal is allowed. The taxpayer engaged a professional firm to file their returns who acted reasonably in the circumstances. They were seeking to be compliant with their obligations to file returns but felt unable to do so due to a malfunction of HMRC's website. The Tribunal is willing to accept the statement as true from the professional advisors.

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(5) They were unable to file their 64-8 Agent Authorisation form online. Had the online authorisation been filed, Haynes & Company would have been able to obtain a software package to do the necessary filings within time. They have indicated that they were willing to do so. The fact that the authorisation was not filed meant that it took an alternative course of submitting a paper return together with a paper version of the 64-8 authorisation form.

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(6) The taxpayer has acted entirely reasonably in the circumstances and was seeking to be compliant with their obligations in law.

(7) For this reason and the fact that the HMRC electronic system did not properly function allow the taxpayer to obtain authorisation to act on behalf of their client in time means that the appeal is allowed.

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2. This document contains full findings of facts 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 the Tribunal no later than fifty six days after the 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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TRIBUNAL JUDGE K KHAN
RELEASE DATE: 09 DECEMBER 2015

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