



TC05419

Appeal number: TC/2016/03312

*INCOME TAX – Late filing of individual tax return – whether reasonable
excuse – no – appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

A SHAWARDI

Appellant

- and -

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

TRIBUNAL: JUDGE DR K KHAN

The Tribunal determined this appeal on 26 August 2016 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 13 June 2016 and HMRC's Statement of Case dated 24 June 2016.

DECISION

Introduction

- 5 1. The appeal includes an application by the Appellant to appeal out of time. The normal practice of the Tribunal in considering applications for extensions of time is to consider where the balance of prejudice would lie were an application to be granted or refused. In this case the Tribunal cannot see how the HMRC would suffer prejudice if the appeal was allowed to continue and therefore would hear this appeal.
- 10 2. The appeal concerns a penalty imposed under Paragraph 3 of Schedule 55 Finance Act (FA) 2009 for a late filing of the Individual Tax Return for the year ending 5 April 2015.
- 15 3. The filing date is determined by Section 8(1D) TMA 1970 which states that for the year ended 5 April 2015 a non-electronic return must be filed by 31 October 2015. and an electronic return by 31 January 2016. A late filing penalty is chargeable where a taxpayer is late in filing the Individual Tax Return.

Relevant facts

- 20 4. The notice to file a return for the year ending 5 April 2015 was issued to the Appellant on 6 April 2015. The filing date was 31 October 2015 for a non-electronic return and 31 January 2016 for an electronic return.
5. The Appellant's return for the year 2014-15 was received on 10 March 2016 and was processed on 11 March 2016. As the return was not received by the filing date, HMRC issued a Notice of Penalty Assessment on 17 February 2016 in the amount of £100.00.
- 25 6. On 12 May 2016 the Appellant's Agent, Ali and Ali Limited, appealed against the Penalty on the ground that the Appellant did not receive any request to file a tax return and was not issued a Unique Tax Reference (UTR) to file a return.
- 30 7. HMRC on 9 June 2016 rejected the appeal on the ground that it was made late. On 13 June 2016, the Appellant's Agent notified the Tribunal that the appeal was submitted in the time frame and there was no UTR number to file a return on-line.
8. HMRC say that Notice to File was issued to the Appellant at his address and there is no record of any mail being returned as undelivered from that address. They say that their records show that the Appellant telephoned HMRC on 24 April 2015 to query why he was required to complete a 2014-2015 return. A further call was made by the Appellant's Agent on 20 January 2016 requesting a UTR. The UTR was issued as requested. Despite this the 2014-2015 return was not filed until 10 March 2016 over seven weeks late.
9. The Appellant is a Director of A&S Recovery Limited and as a Director was required to complete a self-assessment tax return. He notified HMRC of his position

on 13 October 2015. The UTR was issued on 11 November 2014 following the registration for self-assessment as a Director. Further his UTR was shown clearly under Notice to File issued on 6 April 2015.

Conclusion

5 10. It is the Appellant's responsibility to submit their tax returns on time. In this case the tax returns were filed late and a Penalty of £100.00 is therefore due unless the Appellant can establish a reasonable excuse for the delay. A reasonable excuse is normally an unexpected or unusual event that is unforeseeable or beyond the tax payer's control and which prevents them from complying with their obligation to file
10 on time.

11. It is clear that the Appellant was advised by a firm of chartered accountants. However the primary responsibility for filing rests with the Appellant.

12. The Appellant has made two main points. The first is that he was not in possession of a UTR and therefore could not have filed the return and secondly
15 HMRC did not make a request to file a tax return.

13. It is mandatory for a company director to file a tax return with HMRC if a return has been issued. It is clear from the evidence presented by HMRC that a Notice to File was issued to the Appellant on 6 April 2015. A UTR was provided to the Appellant which explained that returns should be filed for the year 2014-2015 and
20 Penalties would be charge for tax returns received late. The UTR notification advised that the due date for the return was 31 January 2016.

14. In the HMRC on-line guidance "Do you need to complete a tax return?" it is stated that a company director, unless a director of a non-profit organisation, must complete a tax return.

25 15. In looking at the legislation there is no specific requirement in the TMA 1970 for a director to register for self-assessment if he or she has no further tax liability for the year. There is HMRC Manual EM4551 which states as follows:

30 "There is no requirement to notify chargeability where there is no liability to Income Tax or Capital Gains Tax or where sufficient tax has been deducted at source to meet the net liability for the year."

Therefore, it seems that if a director of a company has no further liability for a tax year and no self-assessment tax return has been issued by HMRC, then there appears to be no requirement for the director to notify chargeability or to file a tax return with HMRC for the year in question.

35 16. In this case however a tax return was issued by HMRC to the Appellant which means that there is an obligation to file a return. The Appellant is a Director of A&S Recovery Limited and therefore as a Director was required to complete a self-assessment tax return where a return was sent by HMRC.

17. The Tribunal therefore does not accept the first argument that the Appellant did not receive a request to file a tax return and was not required to file a return.

18. When a tax payer is registered for self-assessment or sets up a limited company he will automatically be sent a Unique Tax Reference number. Once registered for HMRC on-line services an e-mail is sent confirming log-in details and once the taxpayer is logged into the portal they will be presented with their UTR number.

19. It is quite clear that the taxpayer was registered and a UTR number was given according to the evidence submitted by HMRC. On 13 June 2016 the Appellant's Agent notified the Tribunal of the appeal and gave details of the UTR number in their possession. The Agent also telephoned HMRC on 20 January 2016 requesting the UTR number and this was issued accordingly. In spite of the UTR being with the Agents, the return was not filed until 10 March 2016, some seven weeks later.

20. The Appellant's UTR was clearly shown on the Notice to File which was issued on 6 April 2015.

21. The Tribunal therefore does not accept that the Appellant did not have his UTR number which prevented the filing of the self-assessment return.

22. In the circumstances therefore the Tribunal holds that the Appellant does not have a reasonable excuse.

23. One further point needs to be addressed.

24. 16(1) Schedule 55 (FA) 2009 allows HMRC to reduce a Penalty below the statutory minimum if they think it is right because of special circumstances. While "special circumstances" are not defined the court accepts that for circumstances to be special they must be "exceptional, abnormal or unusual or something out of the ordinary run of events". In this case HMRC considered the question of a special reduction but their view is that non-receipt of a Notice to File and UTR do not amount to special circumstances which allow HMRC to reduce the Penalty. The Tribunal accepts the appropriate considerations were taken into account.

25. For this reason the Tribunal finds that the late filing Penalty charge is in accordance with the legislation and there is no reasonable excuse for the Appellant's failure to file his tax return on time nor by the date the Penalty arose. Accordingly, the appeal is dismissed and the £100.00 for the late filing Penalty is confirmed.

26. 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
5 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.

DR K KHAN
TRIBUNAL JUDGE

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