



**TC05805**

**Appeal number: TC/2012/11026**

*INCOME TAX - – penalties for late submission of returns*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MICHAEL RYAN JONES**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE CHARLES HELLIER**

**The Tribunal determined the appeal on 10 April 2017 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 8 December 2012 (with enclosures), HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 30 January 2012 and the Appellant's email of 12 December 2012**

## DECISION

1. Mr Ryan has been assessed by HMRC to penalties totalling £1,300 imposed by HMRC under Schedule 55 Finance Act 2009 for a failure to submit his tax return for 2010/11 in time.
2. The penalties were:
  - (1) A £100 late filing penalty under para 3 Sch 55, being a penalty for submitting the return after the due date;
  - (2) A penalty of £900 under para 4 Sch 55, being £10 for each day the return was late after the date 3 months after it was due; and
  - (3) A penalty of £300 under para 5 Sch 55, being a penalty assessable if the failure to submit the return continues after 6 months after the due date.
3. It appears that Mr Ryan has paid £100. His Notice of Appeal does not specify which penalties he appeals against or their total amount. So I thought it fair to taken his appeal as being against all of them
4. The Appellant argues:
  - (1) That he had made numerous attempts to contact HMRC, by phone, email and letter but had received no, or no real response;
  - (2) He made every effort to reveal his income and to contact HMRC to see what he owed by way of tax. In particular:
    - (a) In 2010 and 2011 he made attempts to contact HMRC about his residence status and to declare his income. He received no reply;
    - (b) One form was returned after it had been submitted and marked “incomplete”
    - (c) In exasperation he appointed a UK agent , and sue to circumstance outside his control the agent failed to communicate with HMRC
  - (3) Where there is no means of communication with HMRC – even by email, since HMRC will not communicate that way – it is unfair to end up with a penalty for late submission;
  - (4) To be fined £1,200 for late submission when the return was submitted was simply unjustified;
5. HMRC argue that the return was late, and that the reason for the delay was administrative error by the agents appointed by Mr Ryan. That they say affords no excuse or special circumstance warranting any remission or abatement of the penalties.

## 6. Discussion

7. The provisions of the legislation are set out accurately in HMRC's Statement of Case. There is no need for me to repeat them here.

8. The evidence available to me to decide on the primary facts was limited to that  
5 in the documents before me. The Appellant did not make a Reply to HMRC's Statement of Case, so I had nothing before me other than Mr Ryan's email, the Notice of Appeal and the statement of case, and the documents which came with them to refute any *factual* assertions in the statement of case.

9. I find that the 2010/11 return was submitted electronically.

10. I find that the return was due on 31 January 2012, and was received by HMRC  
10 on 9 August 2012. It was therefore more than 6 months late.

11. I find that Mr Ryan had correspondence with HMRC in 2010 and 2011 in  
15 connection with an application to receive UK rental income without deduction of tax. As part of that correspondence Mr Ryan sent HMRC details of the amounts of his UK rental income for 2010/11.

12. I find that in the course of that correspondence HMRC returned a form to Mr Ryan saying that it was incomplete because he had not given details of his letting agent.

13. I accept that Mr Ryan wrote in hard copy, emailed and attempted to speak to  
20 HMRC by telephone in those years. I find that these attempts related to Mr Ryan's UK property income, his residence status and his application for gross payment.

14. I agree that HMRC's failure to email seems a little prissy – especially if the  
25 taxpayer authorises HMRC to communicate in a way which carries the risk that what HMRC convey to him may fall into other hands. I saw no evidence however that Mr Ryan had expressly given such authorisation.

15. There was no evidence that any of this correspondence related to the making of  
30 a tax return for 2010/11 and I therefore find that none of it did. Whilst I accept that Mr Ryan may have been unsure as to whether or not he had to submit a tax return and attempted to contact HMRC to check, the fact that a return was sent to him was sufficient to put him on notice that he had such an obligation until, and unless, he received advice or instruction from HMRC to the contrary. There was no indication that he received such advice.

16. I find that Mr Ryan appointed accountants to prepare and submit his tax return  
35 for 2010/11. I find that, with due care, he appointed them before the relevant deadline, and that they prepared the return before that deadline. But I find that "due to an administrative error, although the return was prepared online the submission button was not pressed".

17. I therefore find that the reason the return was late was because of an error by the accountants.

18. Whilst an error or mistake may be an excuse for the failure, the evidence before me does not disclose any reasons for the mistake. If it had been due, for example, to sudden illness that may have been a reasonable excuse. But as there was no such evidence I can only find that the mere fact of the error was not a reasonable excuse for the failure.

19. I find that Mr Ryan wrote to HMRC on 3 February 2012 acknowledging that the return deadline had been missed and seeking guidance. I find that Mr Ryan attempted to obtain further guidance but that getting through on the phone to the helpline was extremely difficult.

20. But I consider that the return could reasonably have been submitted shortly after that letter was sent even if the guidance was not available. It was then known that the button had not been pushed. It would be reasonable to remedy that error as soon as possible.

21. I therefore find no reasonable excuse existed in the period from the due date to the date of actual submission for the failure to submit the return.

22. There is nothing in these facts which appear to me to be special circumstance which could warrant any abatement under paragraph 16 Sch 55.

23. These finding mean that the requirements of the legislation for the imposition of a penalty are satisfied. The penalties were thus correctly imposed under the terms of the legislation.

24. There is, in Mr Ryan's submission that the penalties assessed on him were unfair in view of the fact that the return had been submitted, an argument that in terms of the Human Rights Act 1998 ("HRA") and the Convention the penalty is "disproportionate". But in my judgement, although they were harsh they were not, in view of the patent aim of the penalty regime to encourage the timely submission of returns, wholly unfair, and thus is not disproportionate in that sense.

### **Conclusion**

25. The penalties are affirmed. The appeal is dismissed.

### **Rights of Appeal**

26. 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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**CHARLES HELLIER**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 20 APRIL 2017**

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