



TC03914

Appeal number: TC/2014/02754

INCOME TAX – submission of individual tax return was made late –No.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ANDREW LORIMER

Appellant

- and -

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

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

The Tribunal determined the appeal on 7 August 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 12 May 2014, and HMRC's Statement of Case dated 18 June 2014 with enclosures. The Tribunal wrote to the Appellant on 19 June 2014 indicating that if he wished to reply to HMRC's Statement of Case they should do so within 30 days. No reply was received.

DECISION

1. Introduction

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

2. Legislation

Finance Act 2009 Schedule 55

10 Taxes Management Act 1970, in particular Section 8(1D)

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

Rowland v HMRC [2006] STC (SCD) 536

15 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. For the period ended 5 April 2013 the filing date for a non-electronic return was 31 October 2013 the date for an electronic return was 31 January 2014.

5. In respect of the year 2012-2013 the Appellant filed a non-electronic return which was received by HMRC on 16 January 2014. On 22 January 2014 the appellant's agent submitted an electronic return which was accepted.

25 6. As the non-electronic return was not submitted by the filing date of 31 October 2013 HMRC issued a notice of penalty assessment on or around 18 February 2014 in the amount of £100.

7. Appellant's submissions

30 In a letter dated 28 January 2014 but not received by HMRC until 4 March 2014 the Appellant's agent, Seamus Clarke, appealed to HMRC against the Notice of penalty assessment. The grounds were that the tax return was submitted and accepted at 09.28 on 22 January 2014. The e-mail confirmation of the submission was attached.

35 In a letter dated 18 March 2014 HMRC rejected the appeal and offered a review. In their letter HMRC state "I do not agree that you have a reasonable excuse because if a paper return is filed late it is not possible to avoid a penalty by filing a further tax return online before 31 January. The first return to be registered on the SA computer system will be treated as the original return."

On 25 March 2014 the appellant wrote to HMRC Appeals and Review Unit. His letter includes the following points.

As I stated in my original appeal I mistakenly sent in a paper tax return not knowing that my representative would be filing my return online which he subsequently did within the allowed time.

5 I do agree that my paper return was filed late, however this was done in error and with no thought to gaining any financial advantage or further time to pay monies owed – it was a mistake. I feel it is very harsh to levy a fine when it is clear that this is a genuine error on my part for which I apologise. The subsequent return which was filed online was well within the end of January deadline and as such shows that this is an honest mistake and should not be penalised.

10 I would further add that this is the first time this has happened and in the past I've not been late at all with any returns. I would ask that you review this case and remove the penalty applied as I feel it is totally unjust and unfair in the extreme. Honest mistakes should not incur a financial penalty of this kind.

15 8. HMRC replied on 23 April 2014 saying that they did not accept that the filing of an electronic return by the due date of 31 January 2014 gave a reasonable excuse for the failure by the Appellant to file the paper return by the due date of 31 October 2013. The letter stated that the paper version of the tax return was the first tax return to be received. It was received on Thursday 16 January 2014. As the statutory filing date for paper returns was 31 October 2013 the penalty has been correctly applied. No
20 comment is made about the submission and acceptance of the electronic return on Wednesday 22 January 2014.

9. In the grounds of appeal in his Notice of Appeal dated 12 May 2014 the appellant repeats the points made in his letter of 25 March 2014

10. HMRC Submissions

25 HMRC say the Appellant has filed self-assessment returns since 2002-2003 and they therefore consider he is experienced with the self-assessment system and is fully aware of his tax obligations.

30 HMRC say that although they accept that the agent made an electronic submission on 22 January 2014, once the return was received the Self-Assessment system would not permit an electronic return to replace it, as such the electronic return could only be treated as an amendment.

35 They say that although the legislation does not explicitly state that a person can only make one return in response to a notice under Section 8 TMA 1970, the context suggests that this must be so. If a person has completed a declaration to the effect that a non-electronic return in the prescribed form is complete and correct and then a few days later purports to send an electronic return in response to the same notice, what are the grounds for asking to treat the first return as void? The legislation envisages that a taxpayer may amend their return (Section 9ZA TMA 1970) but an amendment
40 connotes a change or changes to the original return and not to the replacement of a non-electronic return by an electronic return.

HMRC say that although this may have been an honest mistake a failure has been made and in these circumstances HMRC have to be seen to be consistent in their approach.

5 They say that lack of communication between the appellant and his agent or having a previously good compliance record cannot be deemed as reasonable excuse for the failure.

HMRC say they have no discretion in the level of the penalty which was imposed in accordance with Schedule 55 of the Finance Act 2009.

10 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.

15 **Tribunal’s Observations**

The Tribunal has considered these submissions and comments as follows:

20 There is no statement from either party asserting that the contents of the two returns were in any way different. The Tribunal considers that if there was any difference one or both parties would have mentioned it. The Tribunal has therefore proceeded on the basis there was no difference in the content of the returns.

25 A paper return submitted by the appellant was apparently received by HMRC just six days before an electronic return was successfully filed by the appellant’s agent. It is the Tribunal’s view that although HMRC had recorded receipt of the paper return before the electronic return was submitted they had not processed the paper return. If they had processed it the agent should have been unable to submit and have accepted the electronic return. The fact the agent was able to successfully submit the electronic return shows that the paper one had not been processed by HMRC.

30 The Tribunal finds it difficult to accept HMRC’s assertion that the submission of the return electronically after submission of the paper return was done for the purpose of avoiding a penalty. The more likely explanation is that submitted by the appellant that this was a simple mistake being a result of a lack of communication between the appellant and his agent.

35 The return that appears to have been accepted by HMRC is the electronic one which was the second one received but was received within the deadline for submission of electronic returns. It could therefore be argued that no penalty is due because the first return which was accepted was received on time.

However the first return received was the paper one and although it was probably not processed or accepted by HMRC it was received after the deadline for a paper return. HMRC make submissions to say that the electronic submission can only be treated as

an amendment. However there has been no evidence to show that anything was amended, and yet the electronic return was accepted.

5 The purpose of the penalties is to encourage taxpayers to file their returns on time. In this case HMRC did get the information they required on time in electronic form but the taxpayer created confusion by mistakenly submitting a paper return shortly before that.

The Tribunal considers that as HMRC accepted the electronic return they cannot have also accepted the paper return. If the paper return has not been accepted then it has no standing.

10 It follows that as an electronic return has been submitted and accepted before the deadline for making electronic returns no penalty falls to be levied and the appeal is allowed.

15 16. 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. The Tribunal observes that the circumstances of this case could be described as exceptional, abnormal, or unusual. They are something out of the ordinary run of events. However as the appeal has been allowed it is not necessary for the Tribunal to
20 consider to what extent the appellant was culpable and what level of reduction should be applied to the penalty.

25 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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PETER R. SHEPPARD
TRIBUNAL PRESIDING MEMBER

RELEASE DATE: 13 August 2014

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