



TC05804

Appeal number: TC/2012/10720

INCOME TAX – penalties for late submission of returns

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

JOANNE FIRTH

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 20 November 2012 (with enclosures), and HMRC's Statement of Case with enclosures acknowledged by the Tribunal on 23 January 2013.

DECISION

5 1. Mrs Firth appeals against penalties totalling £1,200 imposed by HMRC under Schedule 55 Finance Act 2009 for the failure to submit his 2010/11 tax return 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;

10 (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 £100 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. The Appellant argues:

(1) That the return could not be submitted without a “UTR” number;

15 (2) On 26 April 2012 her agents wrote to HMRC requesting a UTR number;

(3) No reply was received

(4) In May 2012 a penalty notice was received which contained a UTR number and which thus permitted the return to be submitted;

(5) The return showed zero tax payable;

20 (6) In these circumstances the penalties were not appropriate: no tax was due and the delay was attributable to HMRC’s inefficiency.

4. HMRC argue that:

(1) Mrs Firth appointed her accountants to act for her in April 2012 when the return was already 2 months late;

25 (2) Mrs Firth had been submitting returns since 2007 and would have had a record of her UTR number which she could have given to her accountants.

Discussion

5. 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.

30 6. The evidence available to me to decide on the primary facts was limited to that 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 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 or to make any findings of fact..

7. I find that the return for 2010/11 was submitted electronically, was due on 31 January 2012 and was not received by HMRC until 31 August 2012. It was thus 7 months late.
8. I find that the return showed that no tax was due.
- 5 9. I find that Mrs Firth's agents were not appointed until April 2012. No reason for the delay between January and April 2012 was offered, I find that there was none.
10. I therefore find that in that period there was no reasonable excuse for the delay.
11. I find that the Appellant's accountants wrote to HMRC on 28 April requesting a UTR and that HMRC did not reply.
- 10 12. I find that the Appellant had been submitting tax returns since 2007 and that it is likely that she had a record of her UTR number.
13. I consider that it would have been reasonable for Mrs Firth to give her accountants copies of previous return and her UTR number.
14. I consider that it would have been reasonable for the accountants to have asked
15 Mrs Firth for her UTR number. Indeed it seems to me that a proper check on the return they had been asked to complete would involve comparing it against the previous year's return, and that they could reasonably have been expected to have found in Mrs Firth's papers the UTR number.
15. I therefore consider that HMRC's failure to provide a UTR number was not a
20 excuse, and so could not be a reasonable excuse, for Mrs Firth's failure to submit a tax return in the period from 26 April until 31 August 2012.
16. I therefore find that Mrs Firth had no reasonable excuse for her failure in the period from the due date until 31 August 2012. In particular I consider that the fact that no tax was due is not a reasonable excuse for the failure to deliver a return.
- 25 17. These were not in my view special circumstances justifying any reduction, deferral or abatement of the penalties.
18. These findings 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.
- 30 19. The Appellant's argument that the penalties were "inappropriate" raises a question as to whether the penalties were "disproportionate" as that word is understood in the context of Human Rights Act 1998 ("HRA") and the Convention. If they were then it might be argued that they should be disapplied.
20. I do not however consider that the penalties assessed are disproportionate as a
35 means of encouraging the prompt submission of returns: they are somewhat harsh, but not in the circumstances plainly unfair.

Conclusion

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

Rights of Appeal

22. This document contains full findings of fact and reasons for the decision. Any
5 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
10 “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