



TC06615

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Appeal number: TC/2016/01693

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INCOME TAX – Appeal against daily penalties totalling £900 for the non-submission of self-assessment tax returns for 2011-2012. Not contested by HMRC therefore appeal allowed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

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ANTONY MARK ANDREW HUGHES

Appellant

- and -

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

Respondent

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

Sitting in public at The Law Courts, Bodhyfryd, Wrexham on 10 July 2018.

The appellant in person.

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Helen Roberts for the respondent

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DECISION

1. Introduction

5 In the bundle of papers presented to the Tribunal was a Notice of Appeal form T240 TS Tax Apl. It was dated 11 March 2016. The form was found to be incomplete and inaccurate . In Section 3 headed “Details of the decision(s) you are appealing” against the question at (b) “Is the tax a Direct Tax or an Indirect Tax?” the appellant had indicated indirect tax.

10 Against the question “Is the appeal against a penalty or surcharge?” The appellant had indicated that it was such an appeal.

The box requiring insertion of the amount of the penalty or surcharge had been left blank by the appellant.

Against the question “Has there been a Review by HMRC ?” the appellant answered “Yes”.

15 Against the question “Has the period for a Review ended?” the appellant answered “Yes”.

In the box requiring the insertion of the Date of HMRC notice of conclusions of review the appellant had inserted “24/4/2016”.

20 Also included in the bundle was a copy of a Form SA370 Self-Assessment: Appeal against penalties for late filing and late payment. This was dated 8 November 2015. The form had also been inaccurately completed as it stated it was an appeal against a 12 months late filing penalty of £900 dated 27 October 2015.

25 HMRC had responded to this on 4 January 2016. Their response confirmed the penalties .It stated that they did not consider that the appellant had reasonable excuse because he could have used estimated figures. The review did not mention whether or not HMRC had considered special circumstances.

30 The appellant completed a form SA634 requesting a review of the decision dated 4 January 2016. HMRC’s review was contained in their letter of 24 April 2016 which was included in the bundle. The appellant had made an annotation to the effect that although the letter bore the date 24 April 2016 he had received it on 7 March 2016. The appellant said that this explains why his Notice of Appeal is dated 11 March 2016.

35 The letter showed that HMRC had taken the request for a review as an appeal against the 3 months daily penalties of £900 which they had imposed on 27 October 2015. The letter confirmed the decision of 4 January 2016. The copy of the letter provided to the Tribunal consists of pages 1 and 3. Page 2 was not provided.

HMRC submission.

HMRC indicated at the outset that they would not contest the daily penalties as they could not prove they had given supplied the appellant with a notice of the penalty including the details required by Paragraph 4 of Schedule 55 of The Finance Act 2009.

Appellant's submissions

5 The Appellant considered that he had reasonable excuse for the non-submission of his tax return for 2011/2012. He said that on 13 January 2013 his car was broken into and a lap top and a large number of papers including copy VAT invoices, manual records and Sage back up CDs stolen. This was reported to the police, crime reference P006856.

10 On 16 January 2013 he had had a VAT verification visit from HMRC. The officer Haydn Williams removed a large amount of the remaining papers he had. These had been retained for some time. In January 2015 he received notification to file the returns for 2011-12 by 28 April 2015. He tried to recover the documents from HMRC. After some time a small quantity of papers were returned and HMRC accept that they cannot trace the remainder nor can they show they ever sent them back to the appellant.

The appellant said that in many telephone calls to HMRC he does not recall being advised to estimate returns until the result of the review.

Tribunal's observations

15 It was clear from statements given by the appellant that he had been confused as to whether the appeal concerned indirect tax or direct tax. Document he had provided to HMRC for indirect tax purposes had not been returned to him with the result that he had not completed his direct tax return. He confirmed that he had intended to appeal against the daily penalties.

20 The Tribunal considers that the Notice of Appeal was intended by the appellant as being an appeal against the daily penalties totalling £900 which HMRC had levied on the appellant for his continued failure to submit his self-assessment tax return for the tax year 2011/2012. The penalty being a penalty of £10 for each day the return remains outstanding during a period of 90 days beginning with the penalty date specified to the appellant by HMRC. HMRC had taken it as such.

25 As HMRC stated that they would not be contesting the daily penalties. The appeal is allowed.

30 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: JULY 24, 2018

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Note

- 5 i) The appeal lasted for well over an hour and at the appellant's request HMRC presented their case first. They gave details of a number of penalties they had levied on the appellant for the tax periods 2011/2012, 2012/2013 and 2013/2014. They had wrongly assumed that the appeal was against all of these penalties. They said they would not be contesting any of the daily penalties levied in each of the three tax years, a total of £2,700. It came as some surprise to them when it was revealed that the Notice of Appeal only concerned their review decision dated 24 April 2016 which only covered the 10 £900 daily penalties for tax year 2011/2012. The appellant was also surprised by this as he thought he had appealed against the daily penalties for all three tax years.
- ii) In the circumstances the Tribunal thought it would be helpful to note some of the details given by the parties in case further appeals are made.
- 15 iii) The penalties levied by HMRC which total £4,500.00 are shown in the table below. In the course of detailing these penalties HMRC referred to Schedule 55 of the Taxes Management Act 2009 and in particular paragraphs 3 to 6 which detail the penalties. They did not refer to paragraphs 1 (3) and 17 (3) which might affect the 6 month and 12 month late filing penalties.

Tax Year 2011/2012	Date of Penalty	Amount
Late Filing Penalty	5 May 2015	£100.00
Daily Penalty	27 October 2015	£900.00
6 month late filing penalty	3 November 2015	£300.00
12 month late filing penalty	Not levied	
Tax Year 2012/2013		
Late Filing Penalty	5 May 2015	£100.00
Daily Penalty	27 October 2015	£900.00
6 month late filing penalty	3 November 2015	£300.00
12 month late filing penalty	3 May 2016	£300.00
Tax year 2013/2014		
Late Filing Penalty		£100.00

Daily Penalty		£900.00
6 month late filing penalty		£300.00
12 month late filing penalty		£300.00

- iv) In respect of 2011/12 the Tribunal noted that HMRC had not levied a 12 month penalty although they were entitled to do so. Mrs. Roberts advised that in preparing for the case she had also noted that omission. Her checks had confirmed that no penalty had been levied but she was unable to explain why.
- v) In respect of the daily penalties of £900 in respect of the tax year 2012/2013 the bundle included a copy of a Form SA370 Self-Assessment: Appeal against penalties for late filing and late payment which had been sent to HMRC by the appellant. This was dated 8 November 2015. This form had also been inaccurately completed as it stated it was an appeal against a 6 months late filing penalty of £900 dated 27 October 2015.
- vi) It appears that HMRC had responded to this on 29 December 2015 because in the bundle before the Tribunal there was a copy of a form SA634 requesting a review of the decision dated 29 December 2015 which had also been completed by the appellant on 8 January 2016.
- vii) There was no letter of response by HMRC to this document and at the hearing Mrs. Roberts could not explain why the request for a review had remained unanswered.
- viii) In respect of the daily penalties of £900 levied for the non-submission of a return for the tax year 2013/2014 the bundle contained no appeal by the appellant to either HMRC or the Tribunal.
- ix) The appellant pointed out that some of the penalties had been levied after the date of his Notice of Appeal dated 11 March 2016

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x) Case law

The following cases were either included in the bundle of papers or referred to by the parties:

- Christopher Ryan v HMRC [2012] UKUT 9 (TCC)
 Keith Donaldson v HMRC [2016] EWCA Civ 761
 The Clean Car Company Ltd v Customs and Excise. [1991] VATTR 234
 HMRC v Hok Ltd [2012] UKUT 363 (TCC)
 Rowland v HMRC [2006] STC (SCD) 536

35 The Tribunal was also aware of the decision in
 D R Sudall v HMRC [2017] UKFTT 404 (TC)

xi) Legislation

5 Schedule 55 of the Finance Act 2009 (“the Schedule”) makes provision for the imposition by Her Majesty’s Revenue and Customs (“HMRC”) of penalties on taxpayers for the late filing of tax returns.

If a person fails to file an income tax return by the “penalty date” (the day after the “filing date” i.e. the date by which a return is required to be made or delivered to HMRC), paragraph 3 of the Schedule provides that the person is liable to a penalty of £100.

10 Paragraph 4 of the Schedule provides:

“(1) A person is liable to a penalty under this paragraph if (and only if)–

(a) The failure continues after the end of the period of 3 months beginning with the penalty date,

(b) HMRC decide that such a penalty should be payable, and

15 (c) HMRC give notice to the person specifying the date from which the penalty is payable.”

(2) The penalty under this paragraph is £10 for each day that the failure continues during the period of 90 days beginning with the date specified in the notice given under subparagraph (1)(c).

20 Paragraph 5 of the Schedule provides

(1) A person is liable to a penalty under this paragraph if (and only if) - the failure continues after the end of the period of 6 months beginning with the penalty date.

(2) The penalty under this paragraph is the greater of –

25 (a) 5% of any liability to tax which would have been shown in the return in question, and

(b) £300

Paragraph 6 of the Schedule provides

30 (1) A person is liable to a penalty under this paragraph if (and only if) - the failure continues after the end of the period of 12 months beginning with the penalty date.....

(5) In any other casethe penalty under this paragraph is the greater of –

(a) 5% of any liability to tax which would have been shown in the return in question, and

35 (b) £300

Paragraph 1(3) of the Schedule states

“If a person’s failure falls within more than one paragraph of this Schedule, a person is liable to a penalty under each of those paragraphs (but this is subject to paragraph 17 (3)).”

- 5 Paragraph 17 (3) states “Where a person is liable for a penalty under more than one paragraph of this Schedule which is determined by reference to a liability to tax, the aggregate of the amounts of those penalties must not exceed [the relevant percentage] of the liability to tax

Paragraph 17 (4) states “The relevant percentage is

- 10 (a)....
(b)....
(ba)...
(c) In all other cases 100%.

- 15 The filing date for an individual tax return is determined by Section 8 (1D) of the Taxes Management Act 1970.

xii) Appellant’s submissions

20 The appellant argued that the reasonable excuse that he argued for tax year 2011/2012 also applied to tax years 2012/2013 and 2013/2014. The Tribunal pointed out that the papers that were taken by HMRC in January 2013 and the lap top and papers were stolen the same month. The lack of availability of those items could not be argued to give the appellant a reasonable excuse for the non-submission of his return for the tax year ending 5 April 2014.

xiii) HMRC’s submissions

25 In respect of reasonable excuse HMRC quoted from the cases of Rowland and The Clean Car Company. HMRC said the appellant has no reasonable excuse for the late submission of his returns. He should have completed estimated returns.

xiv) HMRC made no comment on Special Reduction.