



Appeal number: TC/2011/04946

Self-assessment late filing penalty – taxpayer submitted return before deadline but without capital gains tax pages – return sent back by HMRC – return resubmitted, again without capital gains pages – return filed late – no reasonable excuse – penalty upheld.

FIRST-TIER TRIBUNAL

TAX

GEOFFREY GEORGE TWINN

Appellant

- and -

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

Respondents

TRIBUNAL: ANNE REDSTON (PRESIDING MEMBER)

The Tribunal determined the appeal on 7 November 2011 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 24 June 2011 and HMRC's Statement of Case submitted on 12 September 2011.

DECISION

1. This was Mr Twinn's appeal against a £100 penalty for late filing of his 2009-10 self-assessment ("SA") tax return.
2. The issues in the case are:
- (1) whether Mr Twinn submitted his SA return late; and if so
 - (2) whether he had a reasonable excuse for not submitting his return by the due date.
3. The Tribunal rejected the appeal and confirmed the penalty.
4. There was a further dispute between the parties as to whether Mr Twinn's appeal was out of time. In their Statement of Case, HMRC agreed to accept his late appeal.

The statutory provisions

5. Taxes Management Act 1970 ("TMA") s 8(1)(a) reads as follows:

Personal return

- (1) For the purpose of establishing the amounts in which a person is chargeable to income tax and capital gains tax for a year of assessment, [and the amount payable by him by way of income tax for that year, he may be required by a notice given to him by an officer of the Board—
- (a) to make and deliver to the officer a return containing such information as may reasonably be required in pursuance of the notice, and
- (b) to deliver with the return such accounts, statements and documents, relating to information contained in the return, as may reasonably be so required.
- ...
- (1D) A return under this section for a year of assessment (Year 1) must be delivered—
- (a) in the case of a non-electronic return, on or before 31st October in Year 2, and
- (b) in the case of an electronic return, on or before 31st January in Year 2.

6. TMA s 93 states that a person who has been issued with an SA tax return and fails to send it back by the due date is liable to a penalty of £100.

7. TMA s 118(2) states that:

5 “For the purposes of this Act, a person shall be deemed not to have failed to do anything required to be done within a limited time if he did it within such further time, if any, as the Board or the tribunal or officer concerned may have allowed; and where a person had a reasonable excuse for not doing anything required to be done he shall be deemed [not to have failed to do it unless the excuse ceased and, after the excuse ceased, he shall be deemed]5 not to have failed to do it if he did it without unreasonable delay after the excuse had ceased.”

10 **The evidence**

8. The Tribunal was provide with some of the correspondence between the parties, together with the parties’ submissions and HMRC’s 2009-10 SA return summary.

The facts

9. On the basis of the evidence provided, I find the following facts.

15 10. On 6 April 2010 HMRC issued Mr Twinn with an SA return. Mr Twinn says he noticed that the return “differed from that which [he] had received in previous years”. The Tribunal was not informed of how it “differed”.

20 11. Mr Twinn said that he was “not in a position to deal with this until the month of September”. He called HMRC on 20 September 2010. HMRC sent him another SA return on the same day.

12. On 12 and 13 October 2010 Mr Twinn spoke to HMRC. On 13 October, HMRC issued him with the capital gains tax and self-employment pages of the SA return.

25 13. On 21 October 2010 Mr Twinn posted the return, which was received by HMRC on 26 October. Included in the return was information that Mr Twinn had disposed of a property in France in January 2010. No capital gains tax pages were attached.

30 14. On 6 January 2011, HMRC sent the return back to Mr Twinn along with a covering letter (which neither party included in the evidence submitted to the Tribunal). Mr Twinn says that the letter warned him that a penalty might be imposed for late filing, but that he could file by internet before 31 January 2011. HMRC say that they enclosed capital gains tax pages and the related guidance notes and advised Mr Twinn that he could use estimated numbers if necessary.

35 15. On 23 January 2011 Mr Twinn wrote to HMRC. This letter also was not provided to the Tribunal. In his letter of appeal to HMRC, Mr Twinn says that “not having the wherewithal to buy a computer my letter of this date to HMRC clearly shows wish to appeal against any penalty.”

16. On 14 February 2011 Mr Twinn’s SA return was received by HMRC, but it did not include the capital gains tax pages.

17. On 15 February 2011, HMRC issued a penalty of £100 for late submission of the return.

18. Mr Twinn's return was submitted online on 2 June 2011. HMRC have not processed this return as "they are engaged in ongoing correspondence with the trustee, Begbie Traynor."

HMRC's submissions

19. HMRC say that the return submitted on 26 October 2010 was "unsatisfactory" as it included information about a property disposal but Mr Twinn had not completed the capital gains pages.

20. They say that their standard operating procedure when an unsatisfactory return is received before the filing deadline, is to send the return back with an explanation as to why it was unsatisfactory and to extend the filing deadline by 21 days. If the return is then filed by the extended deadline, no penalty is charged.

21. After HMRC had sent the return submitted in October 2010 back to Mr Twinn on 6 January 2011, it was not resubmitted until 14 February 2011, more than a month later. Furthermore, this resubmitted return also did not include the capital gains pages and so was still "unsatisfactory".

22. They further say that Mr Twinn has been making SA returns since 1996-97, when SA was introduced; he has had late filing penalties in the past. As a result they submit that he is familiar with the SA system and the penalty regime.

23. They say he has no reasonable excuse for the late submission.

Mr Twinn's submissions

24. Mr Twinn provided the Tribunal with a summary of communications between himself and HMRC; these emphasise his clear intention to appeal the penalty on the basis that he had submitted the paper return before the deadline of 31 October 2010. He did not make any submissions about the capital gains pages.

25. As recorded earlier in this Decision, when responding to HMRC's letter of 6 January 2011, Mr Twinn said he did not have "the wherewithal to buy a computer".

Discussion and decision

The law

26. There is no dispute that Mr Twinn was required to submit an SA return for 2009-10, and that he had been provided with a Notice to this effect in April 2010.

27. TMA s 8 says that the SA return is for "the purpose of establishing the amounts in which a person is chargeable to income tax and capital gains tax for a year of

assessment”, and the recipient is thus required to deliver “a return containing such information as may reasonably be required in pursuance of the notice.”

28. The statute thus requires SA taxpayers to provide, as part of the return, the information necessary for HMRC to establish their income and capital gains liabilities.

29. The case law authorities are clear that when a taxpayer submits an incomplete return, he has not fulfilled his statutory obligation. For example, in *Cox v Poole General Comrs and the IRC* [1990] STC 122 the taxpayer submitted pre-SA returns and completed some of the boxes by writing “information to follow”. In the High Court, Vinelott J said (at [449])

“In my judgment what has to be completed is the return...it seems to me clear that a document which contains an expression of an intention to add to it subsequently is not a complete answer to the obligation, be it under the notice itself or under s 8...”

30. Similarly, in my judgment, a taxpayer who submits a return which includes information relating to the disposal of a property, but without providing the detail required to calculate the capital gains position, has not given a “complete answer” to his SA return obligation.

31. A taxpayer who does not possess all the detailed information necessary to give a final calculation at the filing date, should complete the return using estimates: see *Dunk v Havant General Commissioners and Commissioners of Inland Revenue* [1976] 51 TC 519, affirmed by the Court of Appeal in *Alexander v General Commissioners for Wallington* [1993] 65 TC 777.

Application to Mr Twinn

32. When Mr Twinn submitted his return on 26 October 2010, he informed HMRC that he had disposed of a property in France in January 2010 but did not attach any capital gains tax pages.

33. HMRC say that Mr Twinn needed to complete these pages and that, on the facts of his case, a return submitted without capital gains tax pages was incomplete and “unsatisfactory”. Mr Twinn has not sought to dispute this.

34. I agree with HMRC. Although Mr Twinn had submitted his return by the paper filing date of 31 October 2010, it was not a complete return and so did not satisfy his filing obligation.

35. On 6 January 2011, HMRC sent the return back to Mr Twinn for him to complete the capital gains tax pages. Under the statutory provisions, Mr Twinn could have resubmitted his return online before 31 January 2011; had he done so, he would not have incurred a penalty for late filing.

36. Furthermore, HMRC say in their Statement of Case that Mr Twinn would have been given a further 21 days to refile the return with the capital gains pages completed.

5 37. I read this as meaning that, had Mr Twinn sent back the paper return by 27 January 2011, there would have been no penalty, even though one would normally have been due under TMA s 93. In other words, Mr Twinn would have been protected from a penalty by the operation of TMA s 118(2):

10 “a person shall be deemed not to have failed to do anything required to be done within a limited time if he did it within such further time, if any, as the Board or the tribunal or officer concerned may have allowed...”

38. The Tribunal was not provided with the letter of 6 January 2011, and it is unclear whether Mr Twinn was informed of this extended deadline. Although he was given the opportunity of commenting on HMRC’s Statement of Case (including the reference to this deadline) by way of Reply, but made no further submissions.

15 39. Had Mr Twinn responded to the letter of 6 January by submitting a complete return, the issue of whether he had been told of the extended deadline might have been material to a reasonable excuse defence.

20 40. Whether or not Mr Twinn was informed of this concessionary treatment is, however, academic, as when he sent the return back on 14 February 2011, the capital gains tax pages were not attached. It was thus still incomplete.

41. The return was not filed until 2 June 2011. HMRC say that this has not yet been processed as “they are engaged in ongoing correspondence with the trustee, Begbie Traynor.” They have not explicitly said that this return included the capital gains pages.

25 42. There is no doubt that the return was delivered late.

43. A late return can escape a penalty if there is a reasonable excuse for the lateness. Mr Twinn has said only that he does not have “the wherewithal to buy a computer”.

30 44. This provides an explanation (although it would not constitute a reasonable excuse) as to why he did not file the return online; it does not explain why he failed to send back the capital gains pages either by the paper filing deadline, or with the resubmitted return. No other excuse for the delay has been provided to the Tribunal.

45. As a result I find that Mr Twinn has no reasonable excuse for the late submission.

46. I dismiss the appeal and confirm the penalty of £100.

35 47. 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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Anne Redston

TRIBUNAL PRESIDING MEMBER
RELEASE DATE: 20 January 2012

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