



TC03819

Appeal number: TC/2014/02307

Income tax – individual tax return – late filing penalty – whether reasonable excuse

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

BARRY MACE

Appellant

- and -

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

TRIBUNAL: JUDGE WDF COVERDALE

The Tribunal determined the appeal on 17.07.2014 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 17.04.2014 (with enclosures), HMRC's Statement of Case submitted on 05.06.2014 (with enclosures) and the Appellant's Reply dated 27.06.2014.

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DECISION

- 5 1. The Tribunal admits the late appeal (albeit with some hesitation bearing in mind that it is some 13 months late: Penalty Notice issued 12.02.2013, first appeal letter received by the Respondents dated 16.03.2014).
2. The Tribunal decided that the Individual Tax Return Late Filing Penalty Notice dated 12.02.2013 in respect of the year 2011-2012 in the sum of £100 was properly issued by the Respondents.
- 10 3. The appeal is dismissed.
4. The Tribunal found that the filing date for the Return was 31.10.2012 for a non-electronic return or 31.01.2013 for an electronic return. An electronic Return was received by the Respondents on 23.02.2013 i.e. 23 days late.
- 15 5. The Tribunal further found that there was no reasonable excuse for the late filing of the 2011-2012 Tax Return.
6. The Appellant has observed that he completed his Tax Return and saved it as a PDF file on 31.01.2013. It is clear that he did not proceed to submit it online on that date.
- 20 7. The Appellant has been unable to produce any acknowledgment of receipt of his Tax Return on 31.01.2013. A successful submission message would have been generated automatically if the Return had been received by the Respondents on that date.
- 25 8. The Respondents have proved that the Appellant did not submit his online Return before 23.02.2013: he made a successful submission on that date; it would not have been possible to make an online submission at that time if there had been a previous online submission because the Respondents' systems do not allow the successful submission of more than one Return for any one tax year. The Appellant's assumption that there had been a successful online submission on 31.01.2013 was, therefore, incorrect.
- 30 9. Paragraph 23(2) of Schedule 55 of the Finance Act 2009 provides that an insufficiency of funds is not a reasonable excuse and the fact that the Appellant's business is struggling is not a matter that can be taken into account by way of mitigation of the penalty in this case.
- 35 10. There are no special circumstances that would permit a Special Reduction in the penalty pursuant to Paragraph 16 of Schedule 55 of the Finance Act 2009.
11. The test applied by the Tribunal in considering the matter of reasonable excuse is whether the exercise of reasonable foresight and of due diligence and a proper regard for the fact that the Return would become due on a particular date would not have avoided the default. The facts and chronology of events, set out in the Notice of

Appeal and the Respondents' Statement of Case, disclose that such foresight and diligence by the Appellant would have avoided the default.

5 12. In so far as the Appellant may suggest that the imposition of the penalty is disproportionate, unjust or unfair, those arguments have already been disposed of by the Upper Tribunal in *HMRC v Hok* UKUT 363 (TCC) and *HMRC v Total Technology (Engineering) Limited* UKUT 418 (TCC). In the former it was made clear that the First-tier Tribunal has no jurisdiction to determine the fairness of a penalty imposed by statute. It is plain from a perusal of the latter that a penalty of the magnitude of that imposed in this case could not be described as
10 disproportionate even if the Tribunal had jurisdiction to deal with the issue.

13. 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
15 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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**WDF COVERDALE
TRIBUNAL JUDGE**

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RELEASE DATE: 21 July 2014