



**TC03867**

**Appeal number: TC/2013/05295**

*Penalty for late filing of self-assessment return - Appellant abroad when attempting to file return - whether reasonable excuse - no - appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**AKHTAR KHAN**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE MICHAEL S CONNELL**

**The Tribunal determined the appeal on 23 May 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 7 August 2013, HMRC's Statement of Case submitted on 27 March 2013 and the Appellant's reply dated 24 April 2014.**

## DECISION

### The Appeal

1. Mr Akhtar Khan, ('the Appellant') appeals against a £100 penalty imposed under Paragraph 3 of Schedule 55 Finance Act (FA) 2009 for the late filing of his Individual Tax Return for the year ending 5 April 2012.
2. The point at issue is whether or not the Appellant has a reasonable excuse for making late payments.

### Background

3. An individual's self-assessment filing date is determined by s 8(1D) TMA 1970 et seq. which states that for the year ended 5 April 2012 a non-electronic return must be filed by 31 October 2012 and an electronic return by 31 January 2013. A late filing penalty is chargeable where a taxpayer is late in filing their Individual Tax return.
4. If the return is not received by the filing date a penalty of £100 is payable in accordance with Paragraph 3 Schedule 55 FA 2009.
5. If after a period of 3 months beginning with the penalty date the return remains outstanding daily penalties of £10 per day up to a period of 90 days are payable in accordance with Paragraph 4 Schedule 55 FA 2009.
6. If after a period of 6 months beginning with the penalty date the return remains outstanding a penalty is payable in accordance with Paragraph 5 Schedule 55 FA 2009; the penalty is the greater of 5% of any liability to tax which would have been shown on the return or £300.
7. If after a period of 12 months beginning with the penalty date the return remains outstanding a penalty is payable in accordance with Paragraph 6 Schedule 55 FA 2009; the penalty is the greater of 5% of any liability to tax which would have been shown on the return or £300.
8. A non-electronic return for the year ending 5 April 2012 was issued to the Appellant on 6 April 2012.
9. The filing date was 31 October 2012 for a non-electronic return or 31 January 2013 for an electronic return.
10. As a return was not received, HMRC issued a notice of penalty assessment on or around the 12 February 2013 in the amount of £100.
11. HMRC sent the Appellant a 30 day daily penalty reminder letter on 4 June 2013.
12. HMRC sent the Appellant a 60 day daily penalty reminder letter on 2 July 2013.

13. As the return had still not been received 3 months after the penalty date, HMRC issued a notice of daily penalty assessment on or around 14 August 2013 in the amount of £900, calculated at £10 per day for 90 days.

5 14. As the return had still not been received 6 months after the penalty date, HMRC issued a notice of penalty assessment on or around 14 August 2013 in the amount of £300.

15. The Appellant's non-electronic return for the year 2011-12 was received on 28 August 2013.

10 Appellant's contentions

16. The Appellant does not dispute that his return was late. He appeals the £100 fixed late filing penalty but not the later penalties.

15 17. The Appellant's grounds of appeal are that he was in Pakistan from 1 November 2012. Because he did not have an internet facility at home he had to go to an Internet Café, but, because of power cuts for more than 15 hours a day, he found it difficult to complete his Tax Return in one or two sittings. He thought he had completed the tax return on line on 26th January 2013 because when attempting an online submission, he found the wording on top of the printed form confusing. The form said "Do Not Submit" and as a result he thought that the return had reached HMRC. As a result he  
20 said that he did not know what to do.

18. The Appellant says that he had delayed submission of the return when in the UK, because he was going to Pakistan in November and was "very sure that I would be able to do it from there, but due to the reasons described above I was handicapped. Now, due to these problems I would be more careful in the future..."

25 19. The Appellant returned to the UK on 18 April 2013, after the 30 day late filing period expired and appealed the penalty (out of time) on 21 May 2013 by letter to HM Revenue & Customs.

20. HMRC replied on 11 July 2013 rejecting the appellant's grounds of appeal, and said that the appeal was out of time.

30 21. On 7 August 2013 the Appellant appealed to the Tribunal. The appeal included an application for permission to appeal out of time.

HMRC's contentions

35 22. Although the Appellant states he was out of the country until 18 April 2013 HMRC submits that a prudent taxpayer who has planned to be out of the country for a long period would have arrangements in place to ensure that their mail is checked regularly and that they are informed of important matters. In addition, even if the appeal period was extended, in this case to 30 days from the 18 April 2013, the appeal made on the 21 May 2013 would still have been late.

23. HMRC contends that no reasonable excuse has been provided as to why a late appeal should now be accepted
24. The Appellant has been making self-assessment returns since 1996-1997. HMRC therefore consider him to be experienced with the self-assessment system and fully aware of his tax obligations.
25. It is incumbent on taxpayers to make sure that they have adequate procedures in place to meet their tax obligations; this would include ensuring that appropriate arrangements are made should they decide to spend a significant period of time abroad.
26. Online filing software allows for the user to print or save a copy of the return for their records prior to submission, which the Appellant has done; however the return still needs to be correctly submitted and received by HMRC before it is deemed to have been validly delivered and the taxpayer's filing obligation met.
27. There is no record of a return being received for the year ending 5 April 2012 from the Appellant until a paper return was received by HMRC on 28 August 2013.
28. HMRC have no records to indicate that there were any problems with the SA online filing.
29. The Appellant states he thought the return had been filed on 26 January 2013 as the copy stated 'Do not send to HMRC'. However, the copy which the Appellant retained and subsequently sent to HMRC clearly says 'Not Submitted'.
30. After filing an SA return online, an acknowledgement message is issued via the software or service used and if HMRC has been provided with an email address an email message is also sent.
31. The fact that no acknowledgement was received (either via software or email) should have alerted the Appellant to the fact that something was wrong and prompted him to recheck submission protocols or contact HMRC online services helpdesk for help or advice; however he chose not to.
32. Although the Appellant states he is new to internet submissions, HMRC records show that he filed his previous years return online, albeit late. HMRC would therefore conclude that he was aware of the online filing procedures or at the very least would have known he would receive an acknowledgement if his return had been successfully filed.
33. The return was correctly issued and as such the Appellant was legally bound to complete and file it by the legislative deadlines; there is nothing within this appeal that would have relieved him of this obligation.
34. The front page of the return issued on the 6 April 2012 warned that a penalty would be charged if the return was received after the appropriate deadline.

35. Government Gateway records show that the Appellant registered for online filing on 18 April 2012, enrolled for the SA online service on 8 May 2012 and activated the same on 14 May 2012; as such the systems were in place so that his 2011-12 Self-Assessment return could have been filed online prior to his departure from the UK on 1 November 2012. In addition as a paper return was issued to the Appellant on 6 April 2012 he could have completed and filed it prior to 31 October 2012 deadline; however the Appellant chose without good reason to wait until he went abroad before attempting to file the return.
36. The penalty was imposed in accordance with legislation as the return was filed late. Although the Appellant states he did not receive the penalty notice until after he returned to the UK, HMRC submit that the legislative obligation placed on the Appellant to file his 2011-12 Self-Assessment Tax Return on time was not dependant on him receiving a reminder to do so or a penalty notice and so this cannot be deemed a reasonable excuse for the failure.
37. HMRC have no discretion in the calculation of the penalty amount as it is set in statute, Schedule 55 FA 2009 refers and all taxpayers who fail to submit their 2011-12 Self-Assessment return on time will be subject to penalty under this section.
38. In the case of *Hok Ltd v Revenue & Customs*, the Upper Tribunal found that HMRC's decision to charge Hok Ltd penalties for late filing of their Employer's Annual Return was correct and that the First-tier Tribunal acted beyond its jurisdiction in discharging the penalties. The First-tier Tribunal does not have the power to discharge or adjust a fixed penalty which is properly due because it thinks it is unfair. The decision of the Upper Tribunal creates a precedent and is binding on all cases where similar issues are raised.
39. Although the Upper Tribunal decision in relation to Hok Ltd related to penalties for the late filing of an Employer's Annual return, the £100 penalty charged in this case for late filing of the Self-Assessment Tax return is also a fixed penalty.
40. HMRC have to be seen to be consistent in their approach to all customers, particularly to those who comply with the regulations.
41. Paragraph 16(1) of Schedule 55 FA 2009 allows HMRC to reduce a penalty below the statutory minimum if they think it is right because of special circumstances. While 'special circumstances' are not defined, the courts accept that for circumstances to be special they 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*).
42. HMRC have considered special reduction but their view is that there are no special circumstances which would allow it to reduce the penalty.

### Conclusion

43. In the circumstances of the case, and in particular that the Appellant did not return from Pakistan until some considerable time after the imposition of the fixed late filing penalty the Tribunal allows the Appellant to bring the appeal out of time.

5 44. The onus of proof rests with HMRC to show that the penalty or penalties were correctly imposed. If so established, the onus then rests with the Appellant to demonstrate that there was reasonable excuse for late filing of his return. The standard of proof is the ordinary civil standard of the balance of probabilities.

10 45. There is no statutory definition of 'reasonable excuse', which is a matter to be considered in the light of all the circumstances of the particular case. A reasonable excuse is normally an unexpected or unusual event that is either unforeseeable or beyond the taxpayer's control, and which prevents them from complying with their obligation to pay on time. A combination of unexpected and foreseeable events may, when viewed together, be a reasonable excuse.

15 46. In this case there was no unexpected or unforeseeable event which caused the Appellant to delay submission of his SA return. Although the Appellant states he encountered difficulties in Pakistan due to power cuts this can have no bearing on the case as he also states he believed he had input the relevant information on 26 January 2013 prior to the legislative deadline and that HMRC had received the return.

47. Information about Self-Assessment, the completion of returns, return filing dates, acknowledgement messages, penalties and the online services helpdesk is well within the public domain and widely available via the Internet including HMRC's website.

20 48. A taxpayer acting in a reasonable manner to ensure that they adhered to their legislative obligations would make themselves aware of such information and act accordingly.

25 49. The Tribunal therefore finds that the late filing penalty charged is in accordance with legislation and there is no reasonable excuse for Mr Khan's failure to file his tax return on time. There are also no special circumstances which would allow the penalty to be reduced under Special Reduction. The appeal is accordingly dismissed and the £100 late filing penalty confirmed.

30 50. 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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**MICHAEL S CONNELL  
TRIBUNAL JUDGE**

**RELEASE DATE: 31 July 2014**

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