



**TC02922**

**Appeal number: TC/2013/04191**

*INCOME TAX – penalty for late filing of Employer Annual return –was a lack of computer skills to do return online a reasonable excuse-no-appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Mrs C KELLY t/a GERRARDS NEWSAGENT**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE BARBARA KING**

**The Tribunal determined the appeal on 20 September 2013 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 June 2013 (with enclosures) and HMRC's Statement of Case submitted on 26 July 2013 (with enclosures).**

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## DECISION

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### The issue

1. The appellant appeals against the imposition of a penalty in the sum of £700 for the late submission of the employer's annual return (P35 and P14s) for the tax year ending 5 April 2012.

2. The appellant was required to file the return for the year 2011-12 by the 19 May 2012. The respondents ("HMRC") received the return on 10 December 2012 which was seven months, or parts thereof, late.

3. This appeal is late. Under rule 5 of the Tribunal Procedure (First-Tier Tribunal) (Tax Chamber) Rules 2009 I extend the time for filing the appeal so that the appeal is admitted.

### The law

4. Under 98A(2) and (3) of the Taxes Management Act 1970, the appellant was liable to a fixed penalty of £100 for each month or part month that she was in default with her return. The penalty therefore amounted to £700.

5. The Tribunal has limited jurisdiction in penalty appeals. The Tribunal can either confirm the penalty or quash it if satisfied that the appellants either filed the return on time or that they have a reasonable excuse, throughout the period of the delay, for its default. The Tribunal has no power to mitigate the penalty.

6. The Upper Tribunal in *HMRC v Hok Ltd* [2012] UKUT 363 (TCC) re-affirmed the First Tier Tribunal's Limited jurisdiction in respect of penalty appeals and in particular emphasised that it had no statutory power to adjust a penalty on the grounds of fairness.

7. In considering a reasonable excuse the Tribunal examines the actions of the appellant from the perspective of a prudent employer exercising reasonable foresight and due diligence and having proper regard for his responsibilities under the Taxes Acts.

### The evidence and findings

8. The appellant, Mrs Kelly has had previously had problems submitting her end of year returns, even before it became compulsory to submit them on line. For the year 2005-06 she had delay but it was accepted that she a reasonable excuse.

9. NAAP Accountants Ltd (“NAAP”) wrote a letter to the respondents (“HMRC”) dated 28 January 2013 on behalf of the appellant Mrs Kelly. NAAP stated that they had tried to submit P14s and a P35 on behalf of Mrs Kelly but were told that these had already been submitted.

5 10. It is not clear from this who submitted the P35 and P14s on 10 December 2012 but the suggestion in a later letter from NAAP is that Mrs Kelly had previously instructed accountants.

11. If an appellant has instructed an agent then the appellant can only have a reasonable excuse if the agents would have had a reasonable excuse but no reason has  
10 been put forward for the delay on the part of the earlier accountants.

12. I do not find that ‘age’ by itself amounts to an excuse for failing to carry out a duty. If Mrs Kelly is unable to use a computer she must have known this for some time and I consider it would have been reasonable for her to instruct agents early to enable them to deal with her filing.

15 13. There is a suggestion that Mrs Kelly is suffering from distress, but it is not made clear whether this has only been brought on by the suggestion of penalties being imposed. I do not find that this amounts to an excuse for delaying filing in the first place.

14. NAAP state in a letter dated 17 June 2013 that one of Mrs Kelly’s employees has just returned to work after a serious illness. No dates are given for this and on  
20 balance I am not satisfied that the illness of the employee has contributed to the delay in filing the end of year returns for 2011-12.

15. The obligation is upon the appellant to set out the circumstances to substantiate a reasonable excuse. The appellant has not done so.

25 16. The penalty regime was brought in to encourage prompt filing. The penalty system is harsh but not manifestly unfair. The legislation provides that a person who fails to make a return in time ‘shall be liable’ to a penalty. This is not a discretionary penalty.

17. The Tribunal has no power to mitigate the penalty because the appellant is an  
30 elderly lady, or because she is distressed.

### **Decision**

18. The appeal is dismissed and the penalty of £700 is confirmed.

19. 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  
35 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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**BARBARA KING  
TRIBUNAL JUDGE**

**RELEASE DATE: 2 October 2013**

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