



TC02191

Appeal number: TC/2012/05651

Self assessment – late paper return – timely electronic return for same period – question whether penalty due – yes – reasonable excuse for late return - no

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

GHARSAN DAJANI

Appellant

- and -

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

TRIBUNAL: JUDGE ALISON MCKENNA

The Tribunal determined the appeal on 7 August 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 2 May 2012 (with enclosures), HMRC's Statement of Case submitted on 14 June 2012 (with enclosures) and the Appellant's Reply dated 2 July 2012.

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DECISION

1. This appeal concerns the late submission of a paper return for the tax year ended
5 5 April 2011.

2. It is accepted by the Appellant that the paper return was made late, however, the
partnership's agent also made a timely electronic return for the same year. The
question for the Tribunal is therefore whether a penalty is due for the late paper return
in view of the subsequent on-line return being submitted on time. If a penalty is
10 lawfully due, then the question for the Tribunal is whether there was a reasonable
excuse for the late return justifying the cancellation of the penalty.

The Facts

3. HMRC issued a full tax return to the Appellant in April 2011. The filing date
was either 31 October 2011 (if returned on paper) or 31 January 2012 if made
15 electronically. HMRC received a paper return from the Appellant's agent on 13
December 2011 and issued a penalty of £100 in respect of the late paper return on 3
January 2012. It received an electronic return in January 2012.

The Law

4. Paragraph 1(3) of Schedule 55 to the Finance Act 2009 prescribes the relevant
20 filing date and penalty date for the return. Paragraph 1(4) defines the filing date as
the date on which the return is required to be delivered to HMRC. A completed
return contains a declaration that it is complete and correct.

5. Paragraph 23 of Schedule 55 to the 2009 Act provides that the Tribunal may set
aside a penalty where there is a reasonable excuse for late filing. A reasonable excuse
25 is generally interpreted as one that involves circumstances outside the tax payer's
control.

The Grounds of Appeal

6. The Appellant's agent originally submitted that the paper return had been
submitted due to an error. Later, it was suggested in correspondence that the paper
30 return was only intended to support a payment of tax. He submits that no penalty is
lawfully due.

7. In his Reply to the Statement of Case, the agent further submits that HMRC's
interpretation of the legislation is wrong and that it should treat the on-line return as
the valid one if asked to do so by the taxpayer.

HMRC's Statement of Case

8. It is not disputed that a subsequent on-line return was made by the Appellant.
However, HMRC submits that it may not treat the electronic return as the valid return

for the year because it was already in possession of the late-filed paper return containing the declaration that it is complete and correct.

5 9. HMRC further submits that the legislative framework requires a tax payer to opt for a paper or electronic return for the relevant year and that it is not permissible to submit a second on-line return in order to avoid a penalty for the late filing of a paper return. The second return did not differ from the first so should not be regarded as an amendment to it.

10. HMRC further submits that the paper return was filed late and that there is no reasonable excuse for this so that the penalty should be upheld.

10 **Conclusion**

11. I have considered the issues in this appeal very carefully.

12. I note that HMRC guidance SA12050 states:

If a paper tax return is filed late, it is not possible to avoid a penalty by filing a further tax return online before 31 January.

15 13. I accept HMRC's submission that tax payers must opt to file a paper or an on-line return and may not file both, except in cases of amendment. In all the circumstances I find that the paper return was validly made by the Appellant and received by HMRC on 13 December, which meant that it was late and a penalty was due. I do not accept the Appellant's argument that the on-line return should take
20 priority over the paper return, which had already (as I find) been validly made before the on-line return was submitted.

14. The Appellant has not advanced any argument as to reasonable excuse for late filing of the return other than that it was made by the agent in error or was not intended to constitute a return as such but merely to accompany a payment. I am not
25 satisfied that these are reasonable excuses.

15. In all the circumstances I dismiss the appeal and uphold the penalty of £100.

16. 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
30 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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**ALISON MCKENNA
TRIBUNAL JUDGE**

RELEASE DATE: 13 August 2012

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