



TC02229

Appeal number: TC/2012/03962

Self Assessment – fixed penalty for late return – reasonable excuse - no

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

TREVOR FOXTON

Appellant

- and -

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

TRIBUNAL: JUDGE ALISON MCKENNA

The Tribunal determined the appeal on 6 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 3 March 2012 (with enclosures), HMRC's Statement of Case submitted on 4 April 2012 (with enclosures) and the Appellant's Reply dated 20 April 2012.

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DECISION

5 1. This matter concerns the fixed penalty of £100 imposed on Mr Foxton due to the late filing of his self assessment tax return for the tax year 2010 – 2011.

The Facts

2. Mr Foxton's return for the 2010 - 11 tax year was due to be filed on 31 October 2011 (if a paper return) or 31 January 2012 (if filed on line). A paper return was received by HMRC on 21 November 2011. The notice of penalty assessment was issued on or a few days after 6 December 2012.

The Law

3. Paragraph 3 of Schedule 55 of the Finance Act 2009 imposed a fixed penalty for late filing of a personal tax return for the tax year ending 2011.

4. Paragraph 23 of the Schedule provides that an appeal may be successful where the Tribunal is satisfied that there is a reasonable excuse for the late filing. A reasonable excuse is generally regarded as one involving events outside the tax payer's control.

The Grounds of Appeal

5. Mr Foxton's representative wrote to HMRC in December 2011 stating that he had known that the tax return was late when he filed it but had asked for it to be returned if there was a problem so that his client could then file it on line and not incur a penalty. He has reiterated the view in both the Grounds of Appeal and his Reply to HMRC's Statement of Case that HMRC should have sent the tax return back to him as he had asked it to do if it could not be accepted without penalty.

HMRC's Response

6. HMRC concluded that it was not possible for the representative to ask for a paper return to be sent back in order to avoid a penalty. HMRC upheld the imposition of the penalty on review.

7. In its Statement of Case, HMRC pointed out that the tax payer has a legal obligation to file on time and that the system should not give advantage to those who fail to do so. The legislative framework does not allow a tax payer to have two attempts at filing in order to avoid a penalty. HMRC's view is that it is legally obliged to accept a return that is sent to it and that it cannot enter into informal agreements of the type envisaged by the Appellant's representative.

Conclusion

8. Having considered the papers carefully in this matter I find that the fixed penalty was imposed in accordance with the legislation and that Mr Foxton has not advanced a reasonable excuse for her late filing of the return. In all the circumstances,
5 I dismiss this appeal and confirm the £100 penalty.

9. 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
10 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: 29 August 2012

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