



TC03212

Appeal number: TC/2013/05043

*INCOME TAX – late filing penalties – employer’s return – reasonable
excuse – impact of electronic filing requirement – appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

BROADWAY GLASS COMPANY & GLASS CENTRE Appellant

- and -

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

TRIBUNAL: JUDGE RICHARD J MANUELL

The Tribunal determined the appeal on 28 October 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 25 July 2013 and HMRC’s Statement of Case dated 29 August 2013 (with enclosures).

DECISION

1. This determination has been prepared following the Appellant's request for full findings following the promulgation of the standard short form determination usual in default paper appeals. In reality having heard no live evidence from either side there is little which the Tribunal can usefully add, nevertheless a full decision is required to enable a Notice of Appeal to be considered.

2. The Tribunal decided that the Appellant had shown no reasonable excuse for the its failure to file by the prescribed electronic means its Employer's Annual Return (P35 and P14) for the year 2012-2013 which was due by 19 May 2013 (electronic). The Appellant filed a paper return on 22 April 2013. The Appellant incurred the fixed penalty of £100.

3. The Appellant contended in summary through its accountant that the requirement that returns should only be made by electronic means was in effect an abuse of power, unfair and unreasonable. The Appellant's accountant maintained that the effect was to require him to incur the expense of purchasing a computer for say £800.

4. A detailed summary of the relevant legislation with full extracts was provided to the Appellant by HMRC with the Statement of Case submitted on 29 August 2013 served on the Appellant and copied to the Tribunal. There was no dispute about the law and it will not assist the Appellant if the Tribunal were to set out the relevant legislation again in detail here.

5. The key section is 93(8) of the Taxes Management Act 1970 (as amended) ("TMA"):

On an appeal against the determination under section 100 of this Act of a penalty under subsection (2) or (4) above, neither section 50(6) to (8) nor section 100B(2) of this Act shall apply but the [First-tier Tribunal] may –

- (a) if it appears to them that, throughout the period of default, the taxpayer had a reasonable excuse for not delivering the return, set the determination aside; or
- (b) if it does not so appear to them, confirm the determination.

6. It should be noted (a) that there is no statutory definition of "reasonable excuse" in the TMA: see, e.g., section 118(2) where the same term is used, again undefined, and (b) that as the penalties applicable for failure to deliver a return are fixed in amount, the Tribunal's powers are restricted by TMA section 100(2)(a).

7. The explanation provided is not a reasonable excuse, i.e., in simple and unrestricted terms something unforeseeable, unexpected and beyond the Appellant's control. It was the Appellant's responsibility to ensure that the returns were completed correctly and by the due date, in accordance with the regulations. This meant that the Appellant if choosing to employ an agent had to select one able to comply with the current filing provisions. Exceptions are made for special cases (e.g., religious belief) but not simply on the grounds of alleged expense on the agent's part. The policy reason is, of course, that on line filing is cost effective and reduces demand on natural resources such as paper and transport. Detailed and clear guidance about the on line filing procedures was and is provided by HMRC. It was open to the Appellant to instruct an agent willing to comply with the on line filing requirements. The

Appellant's agent's declared unwillingness to comply was not a reasonable excuse for such non compliance. The fact that a paper return had been made is immaterial as only online filing was permissible for the Appellant.

8. The wider proportionality issue behind such penalties was decided in favour of HMRC by the Upper Tribunal in *Total Technology (Engineering) Ltd v Revenue and Customs Commissioners* [2012] UKUT 418 (TCC). In short, the harsh penalties are statutory, i.e., imposed by parliament for a permissible purpose and no greater than is needed to secure compliance with filing and payment obligations. The Tribunal has no power to reduce penalties of this type in the absence of a reasonable excuse.

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 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.

**RICHARD J MANUELL
TRIBUNAL JUDGE**

RELEASE DATE: 7 January 2014