



TC03881

Appeal number: TC/2014/02800

Income tax – late filing self assessment return – notice to file issued – Government Gateway says no return issued – reasonable excuse – appeal successful

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

EDWARD JOSEPH SMITH

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE Alastair J Rankin

The Tribunal determined the appeal on 1 August 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 19 May 2014 (with enclosures) and HMRC's Statement of Case submitted on 9 June 2014 (with enclosures).

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DECISION

5 1. This is an appeal by Mr Edward Joseph Smith against a penalty of £100.00 for the late filing of his Self Assessment Tax return for the year ended 5 April 2013.

2. HMRC records indicate a notice to file for the year ending 5 April 2013 was issued to Mr Smith on 6 April 2013. The filing date was 31 October 2013 for a non-electronic return or 31 January 2014 for an electronic return. As at 9 June 2014 the return had still not been received.

10 3. HMRC issued a notice of penalty assessment on 18 February 2014 for £100.00.

4. On 3 March 2013 Mr Smith's agent appealed against the penalty on the basis that the Government Gateway clearly states that no tax return for the period ending 5 April 2013 has been issued and as Mr Smith was below the tax threshold no tax return was submitted on his behalf. By letter dated 25 March 2014 HMRC rejected this
15 appeal.

5. By letter dated 31 March 2014 Mr Smith's agent reiterated the same arguments contained in its letter dated 3 March. An Appeals Review Officer of HMRC by letter dated 13 May 2014 upheld the decision to impose the penalty on the grounds that the law required Mr Smith to deliver a tax return by certain dates and if not received then
20 a penalty is chargeable. The Appeals Review officer accepted that there was an error on the Government Gateway but pointed out that on the same page of the Gateway there was a question asking the taxpayer whether he needed to complete a tax return.

6. In his Notice of Appeal dated 19 May 2014 Mr Smith's agent reiterated the arguments contained in its previous correspondence and added that Mr Smith was
25 being penalised for an error by HMRC.

The Law

7. The filing date is determined by Section 8(1D) Taxes Management Act 1970 which states that an electronic return must be submitted on or before 31 January following the end of the tax year.

30 8. Paragraph 3 of Schedule 55 Finance Act 2009 provides for a penalty of £100.00 if the return is not received by the due date.

9. Paragraph 23(1) of Schedule 55 Finance Act 2009 provides that an appeal against a late filing penalty will be successful where the taxpayer shows that there is reasonable excuse.

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The Decision

10. There is no statutory definition of reasonable excuse. It is a matter to be considered in the light of all the circumstances of the particular case. Mr Smith has been filing his returns electronically since 2009/10. A Notice to File his return was
5 apparently issued to Mr Smith on 6 April 2013.

11. Mr Smith has however provided a reasonable excuse as to why he has not filed his return. He relied quite understandably on the information which he or his agent obtained from the Government Gateway.

12. The appeal is therefore allowed and the penalty of £100.00 is cancelled.

10 13. 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
15 “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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Alastair J Rankin
TRIBUNAL JUDGE

RELEASE DATE: 06 August 2014