



**TC03930**

**Appeal number: TC/2014/01295**

*Income tax – penalty for late filing of return – Appellant submitted information relating to income in a claim for a repayment and although HMRC required a return the Appellant assumed a return was unnecessary – whether a reasonable excuse – no – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**FIONA FISHER**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE MICHAEL S CONNELL**

**The Tribunal determined the appeal on 30 May 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 notification of Appeal dated 6 March 2014, and HMRC's Statement of Case received on 31 March 2014, the Appellant submitting no response.**

## DECISION

### The Appeal

1. Mrs Fiona Fisher (“the Appellant”), appeals against the decision of the HMRC, dated 19 November 2013 to impose a penalty of £100, under Paragraph 3 of Schedule 55 Finance Act (FA) 2009, for her failure to file an Individual Tax Return for the year ended 5 April 2012 with HMRC by the filing date.
2. The Appellant appealed HMRC’s decision made on 27 January 2014, outside the 30 day time limit within which to appeal the decision.
3. The points at issue are:
- i. Whether the Appellant’s appeal ought to be considered by the Tribunal, given that the Appellant’s appeal was made out of time.
  - ii. Whether the Appellant had a "reasonable excuse" for her late filing of her tax return.
  - iii. Whether there are any "special circumstances", by virtue of which the penalty ought to be reduced.

### Background

4. A notice requiring a tax return is issued to the taxpayer by HMRC which requires a return of information in order to establish the amounts in which a person is chargeable to income tax and capital gains tax for a year of assessment.
5. There are certain circumstances in which a taxpayer will always need to complete a Self-Assessment Tax return - for example if they are self-employed, a company director, a trustee, receiving foreign income.
6. In addition an employee or pensioner has to complete a Self-Assessment Tax Return if they get income from savings and investments of £10,000 or more. This information is shown on the HMRC website.
7. The Appellant was a company director and received dividends of £35,466.00 from UK companies. Therefore she was required to file a Self-Assessment Tax Return for the year 2011-12 in accordance with Section 8 Taxes Management Act 1970.
8. HMRC were not aware of the Appellant's requirement to file a 2011-12 Self-Assessment Tax Return until she submitted a form R40 on 18 July 2013 claiming repayment of tax deducted from saving and investments in excess of £10,000.
9. Based on the information shown on the R40, HMRC issued a 2011-12 Self-Assessment Tax Return to the Appellant on 6 August 2013.
10. The filing date is determined by Section 8(1G) TMA 1970, which states that if a notice in respect of Year 1 is given after 31 October in Year 2, a return (whether electronic or not) must be delivered during the period of 3 months beginning with the

date of the notice. In this case, the return for the year ended 5 April 2012 was issued on 6 August 2013; therefore the due filing date was 13 November 2013.

11. If the return is not received by the filing date a penalty of £100 is payable in accordance with Paragraph 3 Schedule 55 FA 2009. Both the 'filing date' and the 'penalty date' are defined at Paragraph 1(4) Schedule 55 FA 2009.

12. The Appellant's electronic return for the year 2011-12 was received on 29 November 2013.

13. HMRC issued a notice of penalty assessment on or around 19 November 2013 in the amount of £100.

14. In line with Paragraph 23(1) Schedule 55 FA 2009, an appeal against a late filing penalty will be successful where the taxpayer shows that there is a reasonable excuse for filing late.

15. There is no statutory definition of reasonable excuse, which "is a matter to be considered in the light of all the circumstances of the particular case" (*Rowland v HMRC* [2006] STC (SCD) 536 at paragraph 18). This was confirmed by the First-tier Tribunal, in *Anthony Wood trading as Propaye v HMRC* (2011 UK FTT 136 TC 001010). Although the decisions in these cases are not binding, HMRC's view is that the reasoning is relevant to this appeal.

16. A reasonable excuse is normally an unexpected or unusual event that is either unforeseeable or beyond the taxpayer's control, and which prevents them from complying with their obligation to file on time. A combination of unexpected and unforeseeable events may, when viewed together, be a reasonable excuse.

17. If the taxpayer could reasonably have foreseen the event, whether or not it is within their control, the taxpayer would be expected to take steps to meet their obligations. If there is a reasonable excuse it must exist throughout the failure period.

18. In addition, Paragraph 23(2) Schedule 55 FA 2009 states:

- where the Appellant relies on any other person to do anything, that is not a reasonable excuse unless the Appellant took reasonable care to avoid the failure, and
- where the Appellant had a reasonable excuse for the failure but the excuse has ceased, the Appellant is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

Appellant's contentions

19. On 27 January 2014, the Appellant's authorised agent submitted an appeal against the penalty. The grounds for appeal were stated as:

5 “Our client voluntarily submitted a repayment claim which identified that she had dividend income exceeding £10,000. Our client had not been requested by HM Revenue & Customs to submit a self-assessment Tax Return and our client was due a tax repayment of £894.58 in respect of the year ended 5 April 2012.

10 You subsequently wrote to our client on 7 August 2013 enclosing a self-assessment Tax Return for the year ended 5 April 2012 as you wished her to resubmit her repayment claim on a full self-assessment Tax Return basis. The Tax Return was recorded on your system on 30 November 2013 and the overpayment of £894.58 confirmed. As the Return information simply confirmed the information you already had I would be obliged if you could remove the late filing penalty of £100 under the circumstances and repay this to our client in due course.

15 We note that you have requested a Tax Return for the year ended 5 April 2013 although we indicated in an earlier letter that the dividend income was of a one-off nature and that our client would not have any taxable income during the tax year ended 5 April 2013. Regardless of this fact, we have submitted our client's Tax Return for the year ended 5 April 2013 confirming nil income and we would be most obliged if you could confirm you no longer require Tax Returns to be prepared by our client in future unless her circumstances change.”

20. HMRC responded to the Appellant and her agent on 5 February 2014 advising as follows:

25 “Your appeal against the 2011-12 late filing penalty was made outside of the statutory time limit. HMRC can only accept a late appeal if there is a reasonable excuse for the delay.

30 If you think you have a reasonable excuse, please write to us explaining the reasons why you did not submit an appeal on time. You should also explain why you did not file your return on time.

You have the right to apply to the Tribunals Service for permission to make a late appeal.”

35 21. On 17 February 2014, HMRC received a further letter from the agent which stated:

40 “I refer to our original letter appealing the late filing penalty for the tax year ended 5 April 2012 dated 27 January 2012. I also refer to your reply of 5 February 2014 denying our client’s appeal on the grounds that it was late and that you would only accept a late appeal if there were grounds for a reasonable excuse.

45 We therefore enclose our original letter and wish to make it clear that the contents of that letter and the circumstances outlined therein are our grounds for requesting a late appeal against the 2011-12 penalty on the basis of reasonable excuse.”

22. HMRC responded to the Appellant on 28 February 2014 advising as follows:

“We still cannot accept your appeal. You have the right to apply to the Tribunals Service for permission to make a late appeal and you should do so by 30 March 2014.”

- 5 23. On 6 March 2014, the Appellant submitted an appeal to the Tribunal in which the Appellant said that the delay in filing the tax return was due to her agent thinking that they had already submitted this and had claimed a repayment.

HMRC’s contentions

- 10 24. HMRC objects to the late appeal because the Notice of Penalty Determination was issued on 19 November 2013, clearly stating that any appeal should be made in writing within 30 days of the date of the penalty determination. No appeal was submitted by the Appellant or her agent until 27 January 2014.

- 15 25. Undelivered correspondence is recorded by HMRC and there are no records held to show that the penalty notice was returned undelivered. Therefore, the penalty determination was deemed to have been received within the ordinary course of post-delivery in line with Section 7 of the Interpretation Act 1978.

26. HMRC contends that no reasonable excuse has been provided as to why a late appeal should now be accepted

- 20 27. Where a the tax return is issued after 31 October following the tax year to which the tax return relates, and failure to notify does not apply, the filing date is three months from the date of issue in accordance with Section 8 (1G) Taxes Management Act 1970.

- 25 28. The following information was shown on page one of the 2011-12 Self-Assessment Tax Return issued to the Appellant on 6 August 2013:

**“Deadlines**

We must receive your tax return by these dates:

- 30 If you are using a paper return — by 31 October 2012 (or 3 months after the date of this notice if that's later) or

If you are filing a return online — by 31 January 2013 (or 3 months after the date of this notice if that's later.

If your return is late you will be charged a £100 penalty.”

- 35 29. Therefore, HMRC maintain that the Appellant was aware of the due filing date for her 2011-12 Self-Assessment Tax Return and the consequences of late filing well in advance of 13 November 2013. However, she chose to disregard that information and waited until 29 November 2013 to file the same.

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30. Late filing penalties for the year ended 5 April 2012 are due in accordance with Schedule 55 Finance Act 2009, even if a customer has no tax to pay, has already paid all the tax due or is due a refund.
- 5 31. In the appeal to the Tribunal, the agent has stated that the late filing of the Appellant's 2011-12 tax return was due to confusion as they thought they had already submitted this when claiming the refund. However, a letter dated 7 August 2013 was issued to the Appellant with her 2011-12 Self-Assessment Tax Return explaining that she was required to complete the same as her dividend income exceeded £10,000.
- 10 32. HMRC maintain that following receipt of that letter and the 2011-12 Self-Assessment Tax Return it was unreasonable for the Appellant to believe that she had fully complied with her tax obligations for the year ended 5 April 2012.
33. HMRC acknowledge that a repayment of tax was made to the Appellant on 3 December 2013. This was after her 2011-12 Self-Assessment Tax Return had been filed and her tax liability for that year had been fully established.
- 15 34. The Appellant was required to file her tax return on or before 13 November 2013 and failed to do so. That failure was not negated by the fact that a repayment was subsequently calculated based on the information provided in the tax return.
- 20 35. The Appellant's 2012-13 Self-Assessment Tax Return was filed online on 25 January 2014. The information provided in the same demonstrated that the Appellant was not a company director or in receipt of dividends in the year ended 5 April 2013. Therefore, HMRC will not issue tax returns for the years 2013-14 onwards. However, it is the responsibility of the Appellant to notify HMRC promptly of any change in her circumstances.
- 25 36. In this case, the Appellant failed to file her 2011-12 tax return by the due filing date and had not demonstrated that an unexpected, unusual event which was unforeseeable or beyond her control prevented her from doing so. Therefore, a late filing penalty has been correctly charged in accordance with Paragraph 3 of Schedule 55 Finance Act (FA) 2009.
- 30 37. Paragraph 16(1) allows HMRC to reduce a penalty below the statutory minimum if they think it is right because of special circumstances. While 'special circumstances' are not defined the courts accept that for circumstances to be special they must be 'exceptional, abnormal or unusual' (*Crabtree v Hinchcliffe*) or 'something out of the ordinary run of events' (*Clarks of Hove Ltd v Bakers' Union*).
- 35 38. HMRC have considered special reduction but their view is that there are no special circumstances which would allow them to reduce the penalty
39. HMRC submits that the onus is on the Appellant to prove that she had a reasonable excuse for her late filing of the return and that, on the balance of probabilities, the Appellant has not discharged this burden of proof

## Conclusion

40. With regard to the Appellant's application for permission to appeal out of time and having considered the circumstances, including the potential merits of the appeal, the Tribunal grants the application.

5 41. With regard to the substantive issues, the onus of proof rests with HMRC to  
show that the penalty was correctly imposed. That has, in the Tribunal's view, been  
established, and so the onus rests with the Appellant to demonstrate that there was  
reasonable excuse for late filing of her return. The standard of proof is the ordinary  
10 civil standard of the balance of probabilities. The Appellant must therefore show that  
she has a reasonable excuse for the late filing of her income tax return for the year  
ended 5 April 2012 with HMRC by the filing date.

42. In essence the Appellant's grounds of appeal are that she voluntarily submitted  
a repayment claim which identified that she had dividend income exceeding £10,000  
and was due a tax repayment of £894.58 in respect of the year ended 5 April 2012.  
15 HMRC asked her to submit her repayment claim on a full self-assessment Tax Return  
basis which was due by 13 November 2013 but received by HMRC 30 November  
2013. The overpayment claim of £894.58 was subsequently confirmed. The Appellant  
says that as the Return information simply confirmed the information already received  
the late filing penalty of £100 should not have been imposed.

20 43. A repayment of tax was made to the Appellant, but this was after her 2011-12  
Self-Assessment Tax Return had been filed. As HMRC say, the Appellant's failure to  
file a tax return by the due date cannot be excused by the fact that information was  
provided prior to the actual tax return. It was not until the Appellant's return had been  
filed that her tax liability for the 2011-12 year had been fully established.

25 44. The Appellant was required to file her tax return on or before 13 November  
2013 and failed to do so. It was unreasonable for her, or her agent, to believe that she  
had fully complied with her tax obligations for the year ended 5 April 2012, simply  
because a repayment claim had been submitted. The Appellant had been specifically  
30 asked to file a Return and was provided with information regarding 'the deadline' for  
filing as shown on page one of the Return. This made it clear that the Return had to be  
filed by a given date. Although a repayment claim supported by calculations had  
already been made, that did not negate the obligation to file the return

45. The appeal is accordingly dismissed and the surcharge confirmed.

35 46. 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)"  
40 which accompanies and forms part of this decision notice.

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**MICHAEL S CONNELL  
TRIBUNAL JUDGE**

**RELEASE DATE: 18 August 2014**

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