



TC05186

Appeal number: TC/2015/06719

*INCOME TAX – late filing penalty – whether reasonable excuse – no –
appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

LINA CASWELL

Appellant

- and -

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

TRIBUNAL: JUDGE DR K KHAN

The Tribunal determined this appeal on 22 March 2016 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 of 11 November 2015 and HMRC's Statement of Case of 9 March 2015.

DECISION

Introduction

- 5 1. This is an appeal against a penalty imposed under Paragraph 3 of Schedule 55 Finance Act 2009 (FA 2009) for the late filing of the individual tax return for the year ending 5 April 2014.
- 10 2. The filing date is determined by Sections 8(1D) TMA 1970 which states that for the year ending 5 April 2014 a non-electronic return must be filed by 31 October 2014 and an electronic return by 31 January 2015. A late filing penalty is chargeable when a Taxpayer is late in filing their individual tax return unless they have a reasonable excuse for late filing.

15 Relevant facts

3. The Return to file for the year ending 5 April 2014 was issued to the Appellant on 6 April 2014. The Appellant's non electronic return for the year 2013-2014 was received on 11 November 2014 and was processed on 16 December. The Return was not received by the filing date and HMRC issued a Notice of Penalty Assessment on or around 16 December 2014 in the amount of £100.

The Appellant's submissions

- 25 4. The Appellant's agent appealed against the penalty stating that the constraints of HMRC's filing system prevented the Appellant's return from being submitted electronically.

- 30 5. In his letter of 7 January 2015 he stated the following;

35 "Given that we are unable to file our client's tax return electronically in 2012-2013 due to the constraints of HM Revenue and Customs system, it is reasonable for us to expect that HMRC's systems would be updated for 2013-2014 to take account of this known error in your system. Constraints in the HMRC's systems have been accepted as a reasonable excuse by the Tribunal in Eclipse Generic Ltd (TC/2012/08552).

40 Each year we incur increased costs as a result of having to submit our client's voluminous Tax Return by post. It would save us time and the increased cost of printing and postage if we could submit our client's Tax Return electronically; therefore it is incredibly frustrating that this option is not available to us.

45 We believe our client has a reasonable excuse for filing a paper Tax Return after 30 October 2014, as the constraints of the HM Revenue and Customs' system prevents our client's Tax Return from being submitted electronically."

6. On 19 March 2015 the Appellant's agents requested a review of HMRC's decision rejecting the appeal on the ground that it was not fair to penalise the Appellant for something completely outside of her control purely because HMRC had not updated their system to take account of a known error. The review was concluded on 25
5 March 2015 and upheld the decision of HMRC.

7. The Appellant made the point that it was wrong for her to be given less time to file her return due to inadequacies in the online system which have been known to HMRC for over three years. A late Appeal was made to the Tribunal on 11 November 2015.
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HMRC's submissions

8. HMRC says that the Return for 2013-2014 was not received until 11 November 2014 therefore a Late Filing Penalty should apply. They noted that the HMRC system
15 allowed for a maximum of 20 foreign dividend entries but the Appellant had more than that to enter. They pointed out that in the frequently asked questions section HMRC explained how to report income if there was insufficient space on the online returns. It is clearly stated that attachments can be sent detailing relevant information. They say that this is the same rule that applies to paper returns since returns do not
20 allow for an indefinite number of entries. It is stated on paper returns that a schedule can be attached giving relevant information in the event that there are not enough space on the return for the Taxpayer's needs.

9. They pointed out that on two previous occasions, the Taxpayer and her agent had
25 been given extensions to the filing date after the agent had used the same excuse for not filing on time.

10. For the 2010-2011 Return, the filing date was extended to 2 February 2012 after the agent had written to HMRC on 11 January 2012 stating that they had been unable
30 to file online because of an error message they had received. A Paper Return for 2010-2011 was submitted on 13 January 2012 but the filing date for the return was 31 October 2011. On that occasion, penalties were not charged as the filing date had been extended in the light of the agent's comments. Similarly for the 2012-2013 Return the late filing date was extended to 13 November 2013. The 2012-2013 paper Return
35 should have been received by 31 October 2013 but was received on 13 November 2013.

11. HMRC contends that it is not unreasonable to expect the Appellant to file a paper return by the filing date. This would have allowed the deadline to be met.
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12. HMRC also stated that they considered the special reduction provisions but there were no circumstances which would allow a reduction penalty in this case.

13. They therefore say that the Late Filing Penalty Charge is in accordance with the
45 legislation and there is no reasonable excuse.

Conclusion

14. The Tribunal is sympathetic to the arguments of the Appellant. Where a personal Tax Return cannot be filed online due to the great amount of information which has to be filed and which cannot be accommodated on the HMRC online service it would be sensible for a paper return to be delivered on or before 31 January following the end of the tax year to which the Return relates. In such a case, HMRC should accept that the Taxpayer has a reasonable excuse for failing to file a return after the normal 31 October deadline. However in this case the Appellant was familiar with the HMRC system having had extensions to the filing submission date in the previous two years on the grounds that they were unable to file their Returns online due to error messages received.

15. A reasonable and prudent Taxpayer wanting to meet their obligations under the Taxes Acts they should have approached the HMRC earlier and made arrangements for the submission of their Tax Returns with the necessary attachments to meet the requisite deadline. As HMRC explained it is not unreasonable to expect the Taxpayer to have filed paper returns by the filing date given that they were fully aware of the difficulties encountered with a large tax return being filed online. The online system for filing does not have a fault as such it is simply not possible to provide space for an infinite number of entries. It would also be unfair to those who file paper returns, who have to send a separate sheet for a large numbers of foreign dividend entries if those filing online were treated differently and given dispensation from the deadline date.

16. The Tribunal feels that while the Appellant has made a valid point with regard to online filings the history shows that the Appellant did not act reasonably in this case knowing full well there were difficulties with the online filing of their Returns in the past given the large number of dividend entries. The reasonable thing to do would have been to make a paper filing with all foreign dividend entries on time.

17. In this case, therefore, there is no reasonable excuse and the appeal is dismissed and the penalties upheld.

18. 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.

**DR K KHAN
TRIBUNAL JUDGE**

RELEASE DATE: 17 JUNE 2016

