



**TC05409**

**Appeal number: TC/2016/01550**

*Income tax – self-assessment – return filed late - penalty – whether reasonable excuse – no – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MRS WENDY DUDENEY**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE ANNE SCOTT**

**The Tribunal determined the appeal on 7 October 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 received by the Tribunal on 14 March 2016 (with enclosures) and HMRC's Statement of Case which was acknowledged by the Tribunal on 23 August 2016.**

## DECISION

### Introduction and background

1. This was an appeal against a penalty for late filing of the appellant's self-  
5 assessment tax return for the 2013-14 tax year. That penalty was imposed under  
paragraph 3 of Schedule 55 Finance Act 2009 and amounts to £100.

2. Originally the appeal had been in respect not only of this penalty of £100 but  
also a £900 daily penalty, a £300 six month penalty and a £300 12 month penalty.  
Those penalties totalling £1,500 have been cancelled by the respondent ("HMRC")  
10 because the penalty notices were sent to the appellant's previous address, HMRC  
having failed to update their records.

3. The return for the year ended 5 April 2014 was issued to the appellant on  
6 April 2014 by HMRC. In terms of Section 8 Taxes Management Act 1970  
("Section 8 TMA") the filing date was 31 October 2014 for a non-electronic return or  
15 31 January 2015 for an electronic return. The non-electronic return for that year was  
received on 21 January 2016 and was processed on 29 January 2016.

4. As the return was not received by the filing date, HMRC issued a Notice of  
Penalty Assessment on or around 18 February 2015 in the amount of £100.

5. On 1 May 2015 the appellant appealed against the penalties on the grounds that  
20 she did not require to submit a tax return as she had been informed that she did not  
need to do one any more, she only earned £30-£70 per week and did not even pay tax,  
the penalty was unfair and since she was on a very low wage, it was a lot of money  
for her to find. In the Notice of Appeal she explained that she had misunderstood a  
letter from HMRC to her dated 15 December 2009. The relevant extracts from that  
25 letter read:

"We have looked at your last Tax Return and do not propose to send you returns in the future ...  
You should contact us if you start to receive any new taxable income or gains".

### Discussion and Decision

6. The appellant now accepts that she misunderstood the letter. Of course, in fact  
30 she was sent a return by HMRC in April 2014. Any taxpayer who receives a return is  
required to submit it timeously and that is made explicit on the face of the tax return.

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

8. Was there any reasonable excuse? *Rowland v HMRC*<sup>1</sup> at paragraph 18 makes it  
35 clear that a reasonable excuse "is a matter to be considered in the light of all the circumstances of

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<sup>1</sup> 2006 STC (SCD) 536

the particular case”. I agree with Judge Tildesley in *Schola UK Limited v HMRC*<sup>2</sup> at para 6 where he states:-

5 “In considering a reasonable excuse the Tribunal examines the actions of the Appellant from the perspective of a prudent employer exercising reasonable foresight and due diligence and having proper regard for his responsibilities under the Tax Acts”.

The same principle applies to all taxpayers, whether employers or not. It would have been prudent to have submitted the return timeously in compliance with the provisions of Section 8 TMA.

9. There is no definition in the legislation of a “reasonable excuse”. Although the case was not cited I agree with the Tribunal in *Garnmoss Ltd t/a Parham Builders v HMRC*<sup>3</sup> at paragraph 12 where it is stated:

“What is clear is that there was a muddle and a *bona fide* mistake was made. We all make mistakes. This was not a blameworthy one. But the Act does not provide shelter from mistakes, only for reasonable excuses. We cannot say that this confusion was a reasonable excuse ...”.

15 That case concerned a failure to pay VAT on time but the same principles apply in this case.

10. The appellant indicated that, at an unspecified date, she had gone through a period of depression and emotional distress and at that time she had found the letter dated 15 December 2009 and concluded that she did not need to be sending HMRC tax returns because she was not paying enough tax.

11. I find that that letter is written in clear terms and applies only to a change in circumstances and her requirement to choose to send in a tax return, even if HMRC did not send her one, if there was any change. In this case, HMRC sent her a tax return which she did require to submit. I accept that it was a genuine mistake but it does not amount to a reasonable excuse.

12. The appellant has advanced no other submissions which offer any reasonable excuse for the late filing of the return.

13. Paragraph 16 of Schedule 56 Finance Act 2009 allows HMRC to reduce the penalty below the statutory minimum if they think it is right to do so because of special circumstances. HMRC have confirmed that they did consider whether there were any special circumstances in this case and concluded that there are none. I find no reason to disagree.

14. The appeal is therefore dismissed and the £100 late filing penalty is confirmed.

15. 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

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<sup>2</sup> [2011] UKFTT 130 (TC)

<sup>3</sup> 2012 UKFTT 315 (TC)

5 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.

10 **JUDGE SCOTT**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 12 OCTOBER 2016**