



TC03845

Appeal number: TC/2014/02506

Income tax – individual tax return – late filing penalty – whether reasonable excuse

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

SARAH KIDDELL

Appellant

- and -

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

TRIBUNAL: JUDGE WDF COVERDALE

The Tribunal determined the appeal on 18.07.2014 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 03.05.2014 (with enclosures) and HMRC's Statement of Case submitted on 30.05.2014 (with enclosures).

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DECISION

1. The Tribunal decided that the Individual Tax Return Late Filing Penalty Notice
5 dated 19.02.2014 in respect of the year 2012-2013 in the sum of £100 was properly issued by the Respondents.
2. The appeal is dismissed.
3. The Tribunal found that the filing date for the Return was 31.01.2014 for an
10 electronic Return. An electronic Return was received by the Respondents on 22.03.2014 i.e. some seven weeks late.
4. The Tribunal further found that there was no reasonable excuse for the late filing of the 2012-2013 Tax Return.
5. The Appellant admits to a “genuine error”: she thought that she had submitted
15 the Return, having paid the tax that was due, but had not in fact done so. She had the mistaken belief that a receipt for the payment of tax was the same as a receipt for the Return. Such an error does not amount to a reasonable excuse.
6. The fact that the Appellant had indeed paid the tax that was due does not mitigate the penalty that was properly imposed. Likewise the absence of any other default in 35 years is not a relevant matter.
- 20 7. The Tribunal does not accept that the design of the Respondents’ website is inadequate for the purpose of accepting online tax returns. The website automatically acknowledges receipt of Returns and the Appellant, as an experienced user of the website (having filed her returns online for the previous two years), should have realised that the absence of acknowledgment meant that she had not successfully
25 submitted her Return.
8. The test applied by the Tribunal in considering the matter of reasonable excuse is whether the exercise of reasonable foresight and of due diligence and a proper regard for the fact that the Return would become due on a particular date would not have avoided the default. The facts and chronology of events, set out in the Notice of
30 Appeal and the Respondents’ Statement of Case, disclose that such foresight and diligence by the Appellant would have avoided the default.
9. In so far as the Appellant may suggest that the imposition of the penalty is disproportionate, unjust or unfair, those arguments have already been disposed of by the Upper Tribunal in *HMRC v Hok* [2012] UKUT 363 (TCC) and *HMRC v Total Technology (Engineering) Limited* [2012] UKUT 418 (TCC). In the former it was made clear that the First-tier Tribunal has no jurisdiction to determine the fairness of a penalty imposed by statute. It is plain from a perusal of the latter that a penalty of the magnitude of that imposed in this case could not be described as disproportionate even if the Tribunal had jurisdiction to deal with the issue.

10. 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.

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**WDF COVERDALE
TRIBUNAL JUDGE**

RELEASE DATE: 25 July 2014

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