



TC01587

Appeal number: TC/2011/04838

Penalties – late filing of personal return – alleged failure of HMRC online filing service – Appeal dismissed.

FIRST-TIER TRIBUNAL

TAX

ALAN LAVENDER

Appellant

- and -

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

Respondents

TRIBUNAL: LADY MITTING (TRIBUNAL JUDGE)

The Tribunal determined the appeal on Friday 28 October 2011 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 27 June 2011, HMRC's Statement of Case submitted on 11 August 2011 and the Appellant's Reply dated 1 September 2011.

DECISION

1. The Appellant, Mr Lavender, is appealing against a fixed penalty imposed under Section 93 (2) Tax Management Act 1970 for the late filing of his personal Tax Return for the year ending 5 April 2010.

2. The relevant Tax Return was issued on 6 April 2010 and the filing dates were 31 October 2010 for a paper Return and 31 January 2011 for online filing. The Return was received on the 15 February 2011.

3. Mr Lavender's appeal is being conducted by his accountants Messrs Hilton, Sharp and Clarke who contend that they attempted to submit the 2009/10 Tax Return online (along with several others) during the evening of Monday 31 January 2011 at around 8pm. However, the online filing service suddenly stopped working and they were unable to submit Mr Lavender's Return in time. The accountants go on to say that due to the technical problems that evening, they had a large number of tax returns to submit in the following days which coincided with a number of staff taking annual leave, making it impossible to submit the Return until 15 February. They further submit that the penalty for another of their clients who was penalised in similar circumstances has been withdrawn and that Mr Lavender should be treated in like fashion.

4. The Respondents' Review Officer made enquiries into the alleged system failure and an email in reply was produced to the Tribunal stating that there had been no problems with the system and further no reports of any issues with the third party Iris software. The Respondents further point out that Messrs Hilton, Sharp and Clarke had submitted Mr Lavender's 08/09 Return on precisely the same evening at 1906 hours.

5. There is no evidence before the Tribunal that there was in fact any failure of the Respondents' system and it would appear therefore that the difficulties may have been caused at the accountants' end although no proof of this has been submitted either. Unfortunately, if the filing of Returns is left until very much the last minute – i.e. 4 hours before the deadline expires – the taxpayer always runs the risk that some problem will arise to prevent submission which happened in this case. The Appellant's case is not helped by the fact that it was then over a fortnight before the Return was actually submitted. I appreciate that Mr Lavender's Return was one of a batch which the accountants were hoping to file online that evening but they only had 4 hours in which to submit them and it is hardly credible that it should then take another fortnight for the Returns, which were ready to go that evening, to actually be submitted.

6. The fact that another taxpayer's penalty may have been withdrawn is not really material to Mr Lavender's case and is not something which I take into account.

7. I find that there was no reasonable excuse for the late filing of the Return and in upholding the penalty, I dismiss the Appeal.

8. 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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TRIBUNAL JUDGE

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RELEASE DATE: 21 November 2011

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