



**TC01683**

**Appeal number: TC/2011/05693**

*Penalties. Reasonable excuse. Partnership. Failure by HMRC to provide software.*

**FIRST-TIER TRIBUNAL**

**TAX**

**MIKE'S NEWS**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: GERAINT JONES Q. C. (TRIBUNAL JUDGE)**

**The Tribunal determined the appeal on 21 November 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 21 July 2011 and HMRC's Statement of Case submitted on 11 September 2011.**

## DECISION

1. By a Notice of Appeal of 21 July 2011 the partnership, Mike's News, appeals against a penalty of £200 imposed in respect of the late filing of a partnership tax return. A partnership return for the year ended 5 April 2010 had to be filed, if on paper, by 31 October 2010 or, if online, by 31 January 2011. A paper return, was filed on 1 February 2011. On 15 February 2011 a penalty of £100 was imposed in respect of each partner.
2. The Notice of Appeal indicates that the partners were being assisted by an unpaid volunteer, a gentleman of 83 years of age, who attempted to file the partnership tax return, online, just prior to 31 January 2011. When he did so he found that the respondent had chosen to discriminate between taxpayers because, although it provided a comprehensive online filing facility for individual taxpayers, it had chosen not to do so in respect of partnerships. As Mr Woods points out in the Notice of Appeal, by the time that it was appreciated that no comprehensive online filing facility was provided, it was too late to make an on time online filing because, to set up an online filing facility requires both registration and a password as well as third-party software, given that the respondent chooses not to make a comprehensive online filing facility available to partnerships.
3. As the appellant was unable to file online, the partnership tax return was filed on paper, which, says the respondent, was received on 1 February 2011. It has not rejected that paper return and insisted on online filing. However, it has demanded a penalty for late filing.
4. The respondent has not pointed out, but could properly point out, that it is a statutory requirement that filing takes place online. If it is after 31 October in any year that is a proper point to make. However, there is no statutory requirement that the taxpayer should equip itself with the software with which to do so. The fact that the respondent chooses to desist from providing a comprehensive online filing facility, readily usable by people required to make an online filing, is not something provided for by Parliament. The provisions of section 12AA Taxes Management Act 1970 do not provide that the respondent can lawfully desist from providing a comprehensive online filing facility, leaving it to the taxpayer to find appropriate software, if that is possible, so as to effect the necessary filing.
5. The difficulty with the respondent's position is that it does provide a comprehensive online filing facility for individual taxpayers but it has chosen not to do so, so far as partnerships are concerned. It does not explain why it discriminates between taxpayers in that way. It does not explain why it fails to provide a comprehensive online filing facility for some but not for others.
6. As the appellant was prevented from filing online by the failure of the respondent to provide a comprehensive online filing facility, the partners did the next best thing and delivered a paper tax return by 1 February.

7. Thus this appeal raises two simple issues. The first is whether it is a reasonable excuse for failing to file a tax return on time, that the authority requiring that tax return to be filed, has failed to provide a comprehensive online filing facility readily available for use by those required to file online. For an excuse to be a "reasonable excuse" there are only two requirements. The first is that an excuse must be put forward. The second is that when viewed objectively, that excuse must be reasonable. If those two requirements are met, then a reasonable excuse exists.

8. It is important that two separate issues are not confused. The first issue is that the appellant has, by statute, an obligation to file online by a given date, if the paper filing deadline has not been met. Thus, the respondent establishes that there has been a default in this case.

9. The second and quite distinct issue is whether or not there exists a reasonable excuse for that failure. It must be a matter of judgement as to whether, when a public authority such as the respondent chooses to discriminate between taxpayers by providing a comprehensive online filing facility to some of them but then desisting from providing a necessary comprehensive online filing facility to others, knowing that thereby it will put impediments in the way of people who are required to make an online filing, that permits such persons to claim that they have a reasonable excuse for their failure.

10. As I have said above, there is no evidence and no explanation available to me from the respondent as to why it discriminates between taxpayers in that way. There is no evidence from the respondent to show that there is any impediment whatsoever to its providing the appropriate and necessary comprehensive online filing facility. Indeed, there is an irresistible inference that if it can provide a comprehensive online filing facility for individuals, it could, if it wished, also provide such a facility for a partnership.

11. The next consideration is whether, when viewed objectively, that excuse is a reasonable one. The mere fact that the respondent chooses not to make such a comprehensive online filing facility available to all partnerships does not, in my judgement, inform the assessment of whether the appellant's excuse can be considered, when viewed objectively, to be reasonable. In my judgement the essential consideration is whether it was reasonable, from an objective viewpoint, for this appellant to fail to file online in circumstances where the respondent failed to make an online filing facility available to the appellant. It can be put another way. Is it reasonable to require this appellant to undertake the task of searching out and paying for third-party software, if available, which it may or may not have the skill and ability to deploy. I do not consider it remotely reasonable that the respondent should proceed in that way absent express authority from Parliament that it can and should do so. Upon my perusal of the relevant statute, there is no statutory basis for the respondent failing to provide a comprehensive online filing facility and/or providing that the respondent can require an appellant to search out and purchase software, if available, to allow an appellant to file on line. Indeed, that further pre-supposes that any such person or partnership has the technical skill and knowledge to manipulate such software in such a way as to persuade it to allow online filing.

12. It is my judgement that it is not objectively reasonable for the respondent to impose that burden upon a taxpayer, especially when it discriminates between different categories of taxpayer by providing a comprehensive online filing facility to some, but not for others.

5 13. I next have to consider whether the statutory requirement for online filing carries  
with it an implied statutory obligation upon a taxpayer to equip itself with the means  
(both in terms of materials and skills) by which to make an online filing. I reject that  
notion for a very simple reason. It is this. Quite regardless of what software a taxpayer  
10 might purchase from a third-party supplier, it would be quite useless unless and until  
the respondent has put in place at least a substantial part of the online filing facility. In  
other words, online filing relies overwhelmingly upon the respondent making the  
necessary technical or electronic wizardry available. Thus, in my judgement, it cannot  
15 properly be said that Parliament has impliedly required a taxpayer to provide an  
unspecified part of that wizardry, leaving it to the respondent to provide only such  
part as it might choose to provide. If Parliament had intended so to provide, it needs to  
have done so in very plain terms. It has not. Thus we arrive at a situation where the  
respondent has simply chosen to impose a burden upon certain categories of taxpayer,  
but not others. In my judgement it is entirely reasonable for a taxpayer who is  
discriminated against in that way, to say that by reason of the lack of a comprehensive  
20 online filing facility being provided by the respondent, it has a reasonable excuse for  
failing to make such a filing.

14. The appellant in the instant case will, no doubt, by reason of its experience to  
date, choose to file a paper return by the 31 October in each tax year rather than trying  
to rely upon the respondent's deficient online filing facility. However, for the  
25 purposes of this appeal, the appellant did not know that it would be faced with an  
inability to file online, by reason of the respondents failure as identified above, and so  
it is my judgement that it has a reasonable excuse for failing to file a paper return by  
31 October.

15. The second basis upon which the appeal succeeds is that in my judgement the  
30 appellant establishes that it has an excuse for its failure to file online by 1 February.  
The "reasonable excuse" is that the authority requiring it to file online had failed to  
make available a suitable and comprehensive online filing facility for use by the  
appellant. The appellant was sent a blank partnership tax return form on 6 April 2010  
which refers to filing over the Internet and then, parenthetically, comments that  
35 somebody seeking to file online "*will need to use commercial software which you  
may have to buy.*" If a partnership intends to file online, being aware that that is  
something that can be done by 31 January in each year, and the filing is left until close  
to that date, the brief statement on the tax return, which may not have been read until  
that time (if at all), does nothing to assist.

40 16. As the appellant found itself frustrated from being able to file online, by reason of  
the respondent's failure to provide a comprehensive online filing facility, the appellant  
did the next best thing and forthwith sent in a paper tax return. The respondent has  
accepted it. Accordingly, this appeal must succeed on the basis that the appellant has a  
reasonable excuse for being late, that is, that having intended to file online but then

5 being frustrated from so doing by the respondent's failure to provide a comprehensive  
online filing facility, it found itself with insufficient time to send a paper filing by 31  
January 2011. In my judgement HMRC cannot rely upon the period prior to 1  
February 2011 given that it has accepted the paper filing and thereby waived the  
requirement for the partnership return, if filed after 31 October 2010, to be filed  
online.

10 17. 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.

15 Decision.

Appeal allowed.

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**TRIBUNAL JUDGE**  
**RELEASE DATE: 19 DECEMBER 2011**

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