



**TC01721**

**Appeal number TC 2011/6583**

**INCOME TAX – PENALTY FOR LATE FILING OF RETURN –  
*Whether Appellant had reasonable excuse for default – No – Appeal  
dismissed.***

**FIRST-TIER TRIBUNAL**

**TAX**

**MR O TOSUM**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: MICHAEL TILDESLEY OBE**

**The Tribunal determined the appeal on 12 December 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 19 August 2011 and HMRC's Statement of Case submitted on 4 October 2011. The Appellant did not provide a reply.**

## DECISION

1. The Appellant appeals against the imposition of a fixed penalty in the sum of £100 for the late filing of his personal tax return for the year ending 5 April 2010.
- 5 2. On 6 April 2010 HMRC issued the Appellant with a notice to file his 2009/10 tax return by 31 October 2010 for a paper return, and if online by 31 January 2011. On 21 March 2011 the Appellant filed a paper return. The Appellant was, therefore, liable to pay a fixed penalty of £100 for not filing the return by 31 October 2010.
- 10 3. The Appellant originally contended that he had filed his return by the due date and was not liable to the fixed penalty. The Appellant, however, accepted that he had provided an incomplete return which was sent back to him. The Appellant supplied a completed return on 21 March 2011 which was late. The Appellant stated that it was an oversight on his part and his accountant for submitting an incomplete return. The Appellant had struggled from December 2010 because of the downturn in the economy. A penalty of £100 created severe financial pressures for him as he was on a tight budget.
- 15 4. The Tribunal has limited jurisdiction in penalty Appeals which reflects the purpose of the legislation of ensuring that tax payers file their returns on time. The Tribunal has no power to mitigate the penalty. The Tribunal can either confirm the penalty or quash it if satisfied that the Appellant has a reasonable excuse for his failure. If there is a reasonable excuse it must exist throughout the period of default. The Appellant has the obligation of satisfying the Tribunal on a balance of probabilities that he has a reasonable excuse for not filing the return on time.
- 20 5. Reasonable excuse is not defined by statute. In considering a reasonable excuse the Tribunal examines the actions of the Appellant from the perspective of a prudent tax payer exercising reasonable foresight and due diligence and having proper regard for his responsibilities under the Taxes Acts.
- 25 6. The Appellant accepts that he sent an incomplete return which did not fulfil the requirements of section 8 of the Taxes Management 1970. The Tribunal finds that the return was filed on 21 March 2011 which was after the filing date for a paper return, and, therefore, late.
- 30 7. The question, therefore, is whether the Appellant had a reasonable excuse for the late delivery of the return. The Appellant's reasons of an oversight and difficult financial circumstances do not constitute a reasonable excuse. A prudent tax payer would have been aware of his responsibilities to provide a return with the required information. The financial pressures of paying a penalty of a £100 would have been avoided if he had submitted a completed return on time.
- 35 8. The Tribunal dismisses the Appeal and confirms the fixed penalty of £100.
- 40 9. 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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**MICHAEL TILDESLEY OBE  
TRIBUNAL JUDGE  
RELEASE DATE: 5 January 2012**

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