



TC02188

Appeal number: TC/2012/04250

Self Assessment - late return – reasonable excuse - no

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

PETER BREEN

Appellant

- and -

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

TRIBUNAL: JUDGE ALISON MCKENNA

The Tribunal determined the appeal on 7 August 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 March 2012 (with enclosures), HMRC's Statement of Case submitted on 1 May 2012 (with enclosures) and the Appellant not having submitted a Reply.

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DECISION

1. This appeal concerns the imposition of two £100 penalties for the late return by Mr Breen of his self assessment return for the year ended 5 April 2010.

The Facts

2. Mr Breen accepts that he returned the self assessment late.
3. The return for 2010/11 was issued in April 2010. It was due to be returned on 31 October 2010 if on paper and 31 January 2011 if filed on-line.
4. Mr Breen filed the return on line on 7 December 2012. HMRC issued penalty notices in February and December 2012, each at £100.

The Law

5. Section 93(2) of the Taxes Management Act 1970 provides for a person who fails to deliver their return on time to be liable to a penalty of £100. Section 93 (4) provides for a second penalty to be imposed if the return is still outstanding after six months.
6. The Tribunal may set aside the penalty if it is satisfied that there is a reasonable excuse for the late return. A reasonable excuse is generally interpreted to be one related to circumstances outside the tax payer's control. A reasonable excuse must apply throughout the period of default.

The Grounds of Appeal

7. Mr Breen appeals on the basis that, firstly, he was unwell and this prevented him from filing the return. Secondly, he intended to file it over the Christmas period 2001/12 but work commitments prevented this. Thirdly, that he found it difficult to file his return on line. He refers me to a decision of a differently constituted Tribunal with regard to an earlier year's penalties.

HMRC's Statement of Case

8. HMRC submits that, whilst sympathetic to the Appellant's health problems, they cannot be assumed to have pertained throughout the period of default in view of Mr Breen's reference to working over the Christmas period. Further that if he was able to work then presumably he was capable of attending to his tax affairs. Thirdly, that the decision of another First-tier Tribunal turns on its facts and does not bind me in this case.
9. HMRC submits that Mr Breen has not demonstrated a reasonable excuse throughout the period of default and invites me to dismiss the appeal.

Conclusion

10. I have considered the Appellant's submissions carefully but have concluded that he has not demonstrated a reasonable excuse for late filing throughout the period of default. He has advanced three different reasons for the late filing, but I am not
5 satisfied that any of them constituted a reasonable excuse for the ten month period in question. In the circumstances I dismiss the appeal and uphold the two £100 penalties.

11. 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
10 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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**ALISON MCKENNA
TRIBUNAL JUDGE**

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RELEASE DATE: 13 August 2012