



TC02189

Appeal number: TC/2012/04195

Self Assessment - late return – reasonable excuse - no

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

BELINDA COLE

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 15 March 2012 (with enclosures), HMRC's Statement of Case submitted on 25 April 2012 (with enclosures) and the Appellant not having submitted a Reply.

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DECISION

1. This appeal concerns the imposition of a £100 penalty for the late return by Ms
5 Coles of her self assessment return for the year ended 5 April 2010.

The Facts

2. Ms Cole accepts that she returned the self assessment late.

3. The return for 2010/11 was issued in August 2011. As it was issued outside of
the normal tax cycle, there was a three month deadline and it was due to be returned
10 by 28 November 2011. This was stated on the return form itself.

4. Ms Cole filed the return on line on 15 March 2012. HMRC issued a penalty
notice on 6 December 2011.

The Law

5. Section 93(2) of the Taxes Management Act 1970 provides for a person who
15 fails to deliver their return on time to be liable to a penalty of £100.

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.

The Grounds of Appeal

7. Ms Cole appeals on the basis that she received two letters from HMRC together
20 (the notice in respect of the year ended 2010 and a separate notice in respect of the
year ended 2011) in August 2011. She submits that it was reasonable for her to
assume that they both related to the second tax year so that she would not need to
comply until January 2012 at the latest. She did not realise that the documents related
25 to two different tax years until January 2012.

8. Ms Cole submits that the confusion caused by HMRC by sending her two
documents relating to separate tax years together constitutes a reasonable excuse for
the late return justifying the cancellation of the penalty. She points out that she pays
her tax by PAYE and so had no reason to expect to receive two tax returns. She
30 points to the fact that her confusion is demonstrated by the fact that she initially
appealed against the imposition of a penalty for late return of the 2011 tax year, which
she thought had been imposed erroneously.

HMRC's Statement of Case

9. HMRC submits that the reasonable tax payer reads the documents sent to him or
35 her. Further that there is a legal requirement to comply with the notices served and
that a mis-reading of documents does not constitute a reasonable excuse for late filing.

10. HMRC also submits that it did not (and could not have) sent the two years' returns in the same envelope because its records show that the 2009/10 tax return was issued on the 21 August 2011, whereas the 2010/11 return was not issued until 25 August 2011.

5 **Conclusion**

11. I have considered the Appellant's submissions carefully but have concluded that the mis-reading of documents cannot constitute a reasonable excuse for late filing of a tax return. Ms Cole may reasonably be expected to take a prudent approach to the management of her affairs and as such to read and comply with official
10 correspondence from HMRC. In the circumstances I do not need to resolve the disputed question of whether the two years' returns arrived in the same envelope or not, but even if they did, I do not accept that any resulting confusion constitutes a reasonable excuse for late filing.

12. In the circumstances I dismiss the appeal and uphold the £100 penalty.

13. 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
15 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
20 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

25 **ALISON MCKENNA**
TRIBUNAL JUDGE

RELEASE DATE: 13 August 2012

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