



**TC02190**

**Appeal number: TC/2012/05001**

*Trust and Estate Tax Return – late filing of return – penalty – reasonable excuse - no*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**CHATSWORTH (BOURNEMOUTH) MANAGEMENT LIMITED      Appellant  
SINKING FUND**

**- and -**

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

**TRIBUNAL: JUDGE ALISON MCKENNA**

**The Tribunal determined the appeal on 7 August 2012 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 11 April 2012 (with enclosures), HMRC's Statement of Case submitted on 8 June 2012 (with enclosures) and the Appellant's Reply dated 22 June 2012.**

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## DECISION

1. This appeal concerns a fixed penalty of £100 imposed for the late filing of the Appellant's Tax return.

### **The Facts**

2. The Trust and Estate Tax Return was issued in April 2011 and advised that a paper return was due to be filed by 31 October 2011 or, if made electronically, that the return was due by 31 January 2012.
3. The return was received in paper form by HMRC on 25 November 2011. HMRC issued a penalty for late filing on 6 December 2011.

### **The Law**

4. Paragraph 3 of Schedule 55 of the Finance Act 2009 imposed a fixed penalty for late filing of a tax return for the tax year ending 2011.
5. Paragraph 23 of the Schedule provides that an appeal may be successful where the Tribunal is satisfied that there is a reasonable excuse for the late filing. A reasonable excuse is generally regarded as one involving events outside the tax payer's control and paragraph 23 of the Schedule also provides that an insufficiency of funds is not to be regarded as a reasonable excuse.

### **The Grounds of Appeal**

6. The Appellant's representative has submitted that he did not initially realise that a tax return was due as a result of erroneous advice from his agent. Further that he could not afford to purchase software to enable him to file on line and that he filed as soon as he realised that a paper return was due, apologising for the lateness. He feels that insufficient regard was had by HMRC to the previous exemplary management of the company's affairs.

7. The Appellant further submits that the fine is disproportionate in relation to the income of the company and that it should be reduced, or a warning letter issued, or suspended for a period of 2 – 3 years.

### **HMRC's Response**

8. In its Statement of Case, HMRC submitted that the Appellant had not shown that there was a reasonable excuse for the late filing because the reasonable person would have read the documents requiring the return and warning of penalties for late filing. HMRC further submits that it is the responsibility of the Appellant to ensure that returns and payments are made on time.

## **Conclusion**

9. I have considered the matters raised in this appeal carefully and conclude that I am not satisfied that there was a reasonable excuse for the late filing of the return. The receipt of erroneous advice from an adviser does not in my view constitute a reasonable excuse in circumstances where the tax payer has clearly been advised by HMRC of the filing date and the penalties for late filing.

10. The legislation does not permit me to reduce the fixed penalty in relation to the income of the company or to substitute the penalty with a warning letter. The lack of funds in the company is not to be regarded as a reasonable excuse within the terms of the legislation.

11. In all the circumstances I dismiss this appeal and confirm the £100 penalty.

12. 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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**ALISON MCKENNA  
TRIBUNAL JUDGE**

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**RELEASE DATE: 13 August 2012**