



**TC02230**

**Appeal number: TC/2012/04023**

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

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**DEREK EVANS SETTLEMENT**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE ALISON MCKENNA**

**The Tribunal determined the appeal on 6 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 12 March 2012 (with enclosures), HMRC's Statement of Case submitted on 15 May 2012 (with enclosures) and the Appellant not having filed a Reply.**

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## DECISION

5 1. This appeal concerns a fixed penalty of £100 imposed on the Appellant trustees for the late filing of the Tax return for the Derek Evans Settlement.

### **The Facts**

2. The Trust and Estate Tax Return for the period 2010/11 was issued in April 2011 and advised that a paper return was due to be filed by 31 October 2011 or, if made electronically, the return was due by 31 January 2012.

10 3. The trust return was signed and dated 28 October 2011. It was received in paper form by HMRC on 1 November 2011. HMRC issued a penalty for late filing on 13 December 2011.

### **The Law**

15 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.  
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### **The Grounds of Appeal**

6. The trust's representative has submitted consistently that the return was posted on 28 October (a Friday) with the expectation that it would have been received by HMRC on Monday 31 October 2011. It is submitted that late delivery by the post office constitutes a reasonable excuse for late filing and that the penalty should accordingly be cancelled. It is further submitted that the trust assets have now been distributed so it cannot pay the penalty.  
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### **HMRC's Response**

30 7. HMRC rejected the Appellant's arguments on review and upheld the penalty by letter dated 31 January 2012.

8. In its Statement of Case, HMRC submitted that the trust had not shown that there was a reasonable excuse for the late filing because the reasonable person would have allowed sufficient time for the return to reach HMRC. The post office does not guarantee next day delivery for ordinary first class post and it is the responsibility of the trustee to ensure that returns and payments are made on time.  
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## **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. I have seen no evidence (such as a certificate of posting) that the return was posted  
5 when the Appellant says it was, but as HMRC has not raised any issue about this I am prepared to assume that this was so. However, it does not seem to me to be the action of a reasonable and prudent tax payer to post a return on the very last day before a deadline, especially with an intervening weekend. It was, in my view, reasonably foreseeable in such circumstances that the return might be received late by HMRC  
10 and a penalty incurred. The lack of funds in the trust is not to be regarded as a reasonable excuse within the terms of the legislation.

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

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  
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 “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: 29 August 2012**