



**TC02270**

**Appeal number: TC/2012/02619**

*Appeal against penalty for late return – reasonable excuse – appeal allowed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**RAMONA THEURER**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE JENNIFER BLEWITT**

**The Tribunal determined the appeal on 9 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 January 2012, letter from the Appellant to HMRC and the Tribunal dated 22 July 2011, 31 August 2011 and 12 January 2012 and HMRC's Statement of Case submitted on 7 March 2012.**

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## DECISION

1. This is an appeal against a penalty in the sum of £100 imposed by HMRC under Sections 93 (2) and (4) Taxes Management Act 1970 for the late filing of the Appellant's personal tax return for the tax year ended 5 April 2010.
2. HMRC did not object to the late appeal.

### *Facts*

3. On 11 November 2010 a notice to file a tax return for the year ended 5 April 2010 ("the relevant year") was issued to the Appellant. The notice was returned as undelivered due to the fact it was not sent via airmail.
4. HMRC reissued the notice on 25 January 2011 via airmail, advising that the Appellant's 2009/2010 return remained outstanding.
5. The revised filing date for submission of the return was 2 May 2011. The return was received by HMRC on 17 October 2011.

### *Appeal*

6. The Appellant appealed to HMRC on 12 April 2011, indicating that German Tax returns had already been submitted and tax paid. The Appellant advised that her accountant was checking the UK position but as the return was not received on time she had not been able to file it.
7. A return was sent to the Appellant on 2 June 2011, along with advice as to how to file online.
8. On 22 July 2011 the Appellant advised HMRC by letter that four months of the relevant UK tax year still required checks to be made and the return would be filed as soon as possible. The Appellant also stated that HMRC were already aware of her self-employed income as a dentist between January and April 2010; she had received no other earnings. The return received on 2 June 2011 would be returned as soon as possible. It had been beyond the Appellant's control to file the return as it had not been received until HMRC's letter of 2 June 2011 and thereafter required checks to be made.
9. HMRC upheld the decision to impose a penalty by letter to the Appellant dated 8 August 2011. HMRC took the view that having promised to file the return as soon as possible, the reasonable excuse had ended as the return remained outstanding.
10. The Appellant provided the following information to HMRC by letter dated 31 August 2011:
  - HMRC had advised that a return would be received when the Appellant returned to Germany;

- The Appellant did not receive a return, but instead a penalty;
- The German tax year differs to that in the UK; due to the complexity the Appellant let her German tax advisor complete the UK return;
- The tax advisor had told the Appellant that she would have to pay tax once but that four months of the relevant year still required checks by the German authorities to ascertain whether tax was due in Germany or the UK;
- On 22 July the Appellant was advised by her tax advisor that a tax return was required to be filed in the UK;
- As the German tax advisor did not have sufficient knowledge of the UK tax system, the Appellant had to instruct a special UK tax advisor, who required time to complete the return;
- It was beyond the Appellant's control that the German tax authorities took so long to complete its investigation.

11. Following a review, HMRC confirmed that the penalty was upheld, although if the return was filed and the liability had been paid on time, the penalty may be reduced to nil.

12. The Appellant's grounds of appeal contained in her Notice of Appeal to the Tribunal can be summarised as follows:

- The return was not received by the Appellant until the end of June 2011, at which point HMRC stated that the penalty would be delayed until HMRC reached a decision;
- The German authorities took until 22 July 2011 to check the Appellant's return. HMRC were advised of the delay and the Appellant's new address, however no reply was received but a letter was sent to the old address advising that the reasonable excuse no longer existed;
- Usually 9 months is allowed to submit a return, however the Appellant only had from June 2011 when the return was received;
- The Appellant could not find a tax advisor in Germany who understood the UK tax system and she had to seek and instruct an advisor in the UK.

*Submissions of HMRC*

13. The default period from 2 May 2011 to 17 October 2011 was 168 days. HMRC accepted that the penalty had been suspended pending the outcome of the appeal.

14. A notice to file was sent via airmail on 25 January 2011 which advised that the due date was 3 months after the date of the notice and that a penalty would be imposed if the return was not submitted by the deadline.

15. The legislation under Section 8 Taxes Management Act 1970 requires that a return be delivered by the filing date.

16. The front of the return issued on 2 June 2011 advised that penalties would be imposed for late returns.

17. HMRC accepted that the Appellant had encountered delay with the German authorities until July 2011 however the return was not received until 17 October 2011.

18. HMRC accepted that its letter dated 8 August 2011 was sent to the wrong address however the Appellant's letter was not received until 28 July 2011 and not processed until 18 August 2011.

19. The Appellant could have submitted a provisional return and the actions of her agent did not provide the Appellant with a reasonable excuse.

#### Decision

20. The issue for the Tribunal to consider is whether a reasonable excuse for the late submission of the Appellant's return existed throughout the period of default.

21. There was no reason to doubt the veracity of the Appellant's assertion that she had not received a notice to file until June 2011. Furthermore, the information contained within the papers before me appeared to confirm that the German tax authorities had made enquiries which I accepted delayed the Appellant's ability to file a return in the UK. I found, in those circumstances, that the Appellant had a reasonable excuse until, at least, 22 July 2011.

22. Thereafter, the Appellant was advised that by her German tax advisor that a UK tax return was required, but that he was unable to assist. I read carefully the correspondence from the Appellant to both HMRC and the Tribunal from which it is apparent that although the Appellant has a good grasp of the English language, she would be unable to complete her own return without immense difficulty.

23. I accepted that the Appellant had, after 22 July 2011, made all efforts to instruct a UK tax advisor to file her return.

24. In my view, this is an unusual case which falls within an exceptional category. Any tax advisor in the UK would have to satisfy himself as to the German tax position and therein the Appellant encountered difficulties as she had with a German tax advisor who had little or no understanding of the UK tax system.

25. I found as a fact that these facts put this case into the rare category whereby the filing of a return, which in normal circumstances would not amount to a tax obligation of substantial complexity, involved the understanding of two wholly separate and distinct tax systems and was therefore a matter in which the Appellant, understandably required specialist assistance which cause delay.

26. Giving the benefit of doubt to the Appellant, I was satisfied that the delay was of reasonable length such as would be required in order for the return to be filed.

27. I found that there was a reasonable excuse lasting throughout the period of default and the appeal is allowed.

28. 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.

**JENNIFER BLEWITT  
TRIBUNAL JUDGE**

**RELEASE DATE: 17 September 2012**