



**TC02646**

**Appeal number: TC/2013/00157**

***PENALTIES – late submission of tax return – Appellant’s misunderstanding of the date of the submission – reasonable excuse – no – appeal dismissed.***

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MICHAEL O’LOAN**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE LADY JUDITH MITTING**

**The Tribunal determined the appeal on 27 March 2013 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chambers) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 21 December 2012 (with enclosures), HMRC’s Statement of Case submitted on 23 January 2013 (with enclosures) and the Appellant’s Reply dated 20 February 2013 (with enclosures).**

## DECISION

1. The Appellant appeals against a penalty in the sum of £100 imposed pursuant to paragraph 3, Schedule 55 Finance Act 2009 for the late filing of his individual tax return for the year ending 5 April 2011.

2. By s.8(1G) Taxes Management Act 1970, a Return which is issued after 31 October must be filed within 3 months from the date of the issue of the Return. The Commissioners allow a further seven additional days to allow for delivery. The Return was issued on 8 March 2012. The due date for the filing of the Appellant's Return was therefore 15 June 2012.

3. The Return not having been filed by the due date, the Commissioners served a £100 penalty notice on the Appellant on 19 June 2012. On 2 July 2012, the Appellant lodged an appeal with the Commissioners. He was advised by letter dated 18 July 2012 that the appeal could not be considered until the Tax Return had been lodged. The Commissioners received the Return on 13 August 2012.

4. The gist of the Appellant's appeal both to the Commissioners and to the Tribunal was that he was given no clear indication of the due date for filing the Return and indeed was positively misled by the wording of the Notice which enclosed the Return.

5. The letter of 6 March 2012 to the Appellant advised him in the following terms:

“You will have at least 3 months from the date of issue shown on the Notice to send in your tax return ...”.

The Notice was dated 8 March 2012. The Appellant's argument is that he read this to mean that he had a minimum (not a maximum) of 3 months in which to submit the Return. No maximum period was specified and on no occasion was the Appellant told of the deadline of 15 June.

6. Relevant to consideration of the appeal is what other guidance the Appellant would have been given in relation to the return date. The Tax Return itself contains an instruction headed “deadlines”. It goes on to say that the Return must be received “... by 31 October 2011, or 3 months after the date of this Notice if that's later”. The Appellant would have received with the Return an instruction leaflet headed “How to fill in your Tax Return”. This also has a section headed “Filing deadline – Returns issued after 31 July 2011”. This instructed the Appellant that his filing deadline would be extended to “3 months after the date the Return is delivered to you ...”. The Commissioners' website would have informed the Appellant that if the Commissioners sent out the letter after 31 October (which they did in this case), “your payment date is usually due 3 months from the date of the letter”.

7. I do not accept the Appellant's contention that he was misadvised by the Commissioners or that the documentation was unclear. I note that the instruction on the Return itself states that the Return has to be filed *by* 31 October 2011 or 3 months after the date of this Notice if that's later. The use of the word *by* clearly indicates that that is the closing date. The Return has to be in by that date. It would be unreasonable for the Appellant to believe that the wording of the letter of 6 March gave him an open-ended period in which to file. The wording on that letter was

totally accurate. The Return was issued on 8 March 2012 and he was given until 15 June. If he had been in any doubt he should have taken further advice but in any event the wording on the Return would have made the position clear as would the wording within the instruction leaflet which accompanied it.

8. I do not find that the Appellant has a reasonable excuse for the late filing of his Return. He did not plead any special circumstances and I find none and the appeal is therefore dismissed.

9. 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.

**LADY JUDITH MITTING  
TRIBUNAL JUDGE**

**RELEASE DATE: 16 April 2013**