



**TC03147**

**Appeal number: TC/2013/06424**

*INCOME TAX – whether reasonable excuse for late submission of tax return - Yes.*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**SUCHANT J. VARMA**

**Appellant**

**- and -**

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

**TRIBUNAL: PRESIDING MEMBER  
PETER R. SHEPPARD FCIS FCIB CTA  
AII**

The Tribunal determined the appeal on 4 December 2013 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 28 August 2013, and HMRC's Statement of Case submitted on 12 November 2013 with enclosures. The Tribunal wrote to the Appellant on 14 November 2013 indicating that if they wished to reply to HMRC's Statement of Case they should do so within 30 days. A reply dated 18 November 2013 was received and considered by the Tribunal.

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## DECISION

### 1. Introduction

5 This considers an appeal against a penalty of £100 levied by HMRC for the late submission of the appellant's individual tax return for the year ending 5 April 2012.

### 2. Legislation

Finance Act 2009 Schedule 55  
Taxes Management Act 1970, in particular Section 8

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### 3. Case law

Rowland v HMRC [2006] STC (SCD) 536  
Anthony Wood trading as Propaye v HMRC [2011] UKFTT 136 TC 001010

### 4. Facts

15 HMRC issued a notice to the appellant to file a self assessment tax return for the year 2011/12 on 6 April 2012. The return was required to be submitted at the latest by 31 January 2013.

The appellant submitted his return successfully online on 22 February 2013.

20 Under the terms of the Finance Act 2009 Schedule 55 a late filing payment penalty is chargeable where a taxpayer is late in submitting his self assessment tax return. An initial penalty of £100 is chargeable for failures lasting 3 months or under. There are further penalties for failures lasting for more than 3 months, 6 months and 12 months but they do not apply in this case.

Thus in the case of the appellant a late filing penalty of £100 is due.

25 An appeal against a late filing penalty will be successful if the appellant can establish that he had reasonable excuse for filing late

### 5. Appellant's submissions

30 On 11 March 2013 the appellant's agent John Cambell of Taxmatters Solutions Ltd wrote to HMRC setting out the names of five taxpayers and their Unique Trader reference numbers for whom he had submitted returns on 25 January 2013. He asked for the penalties not to be enforced.

6. The appellant's agent wrote to HMRC on 5 April 2013. The letter included the following:

35 "The late filing penalty was applied as a result of the SA100, which was filed electronically on 25<sup>th</sup> January, in some way not reaching the HMRC computer. As we explained in our letter of 11 March we have no explanation for it but it happened to

five of our clients which were all filed on the same day but at different times. By chance this filing was overseen by the client - he witnessed the return go to HMRC.

I am not clear if it is of any significance but none of these clients would have been liable to tax as their earnings were too low.....

5 We have had long discussions with the IT help desk but they were unable to see why the returns were lost.

Three of the clients concerned have now had their penalties cancelled.....”

7. On 8 May 2013 HMRC wrote to the appellant rejecting the appeal on the grounds that the return was received late and no reasonable excuse had been established. The  
10 agent’s explanation was not accepted.

8. In a letter to HMRC wrongly dated 12 April 2013 but received by HMRC on 22 May 2013 the appellant’s agent asked for the decision of 8 May 2013 to be reconsidered. The letter repeats the points made in the earlier letter.

9. The appellant’s agent wrote to HMRC on 3 June 2013. The letter was very similar  
15 to the above but included:

“One of the filings was overseen by the client - he witnessed the return go to HMRC and saw that it had been accepted.”

10. HMRC forwarded a Conclusion of review letter dated 18 July 2013 to the appellant. This included the following:

20 “The online return submitted, which was due by 30 January 2013 was received on 22 February 2013. Therefore it was late and a penalty was chargeable.

You explained your reasons for not filing on time, but in my view they do not amount to a reasonable excuse.

25 Unfortunately I am unable to comment on how other cases have been dealt with. Each case is considered on its merits. The due filing date for receipt of your online 2012 return was 31 January 2013. HMRC received your completed online return late on 22 March 2013. There was unreasonable delay in filing your 2012 self assessment tax return. HMRC would also not consider reliance on an agent to deal with your affairs as ground of reasonable excuse.”

30 The Tribunal notes that in other correspondence the date for the receipt of the return is given as 22 February 2013. This is supported by HMRC Submission details report which is included in the papers and clearly shows a date of 22 February 2013.

11. On 24 July 2013 the appellant’s agent wrote to HMRC. The letter includes the following:

5 “The original return was submitted on the 25<sup>th</sup> January and gave every indication of having been received by HMRC. The software would have been reloaded before each submission. Generally speaking if there is a problem with software, one closes it down and restarts the programme. Since the software was reloaded five times it is unlikely it gave rise to problems on each occasion.”

12. In the Notice of Appeal dated 28 August 2013 the appellant repeats some of the points made in his agent’s letters quoted above.

13. On 25 September 2013 the appellant’s agent wrote to the Tribunal. The letter included the following;

10 “The case is a mystery to us. On 25<sup>th</sup> January five submissions failed. By coincidence this taxpayer was present and witnessed the submission which appeared to go well as did the other four. The other four taxpayers have had their penalties quashed; only this taxpayer has been called to account. The similarities between all five taxpayers is startling. All were in a non-taxpaying position, all submitted on the same day, all sole  
15 traders etc.

The only discernible difference between this taxpayer and the other four is that he has a foreign name.

20 On 16<sup>th</sup> September HMRC was unable to receive “full payment submissions or employment payer submissions” but we found out about it almost by accident. We attempted to file one of these documents and were of the opinion it had gone through. It had not! We believe this to be a similar situation to 25<sup>th</sup> January.”

14. On 18 November 2013 the appellant’s agent wrote to the Tribunal. The letter made very similar points to those made in earlier correspondence. In respect of HMRC’s statement of case they note

25 15. “The section “reasonable excuse” states..... HMRC consider an unexpected or unusual event that is unforeseeable or beyond the taxpayer’s control, and which prevents them from complying with their obligation to file on time”

16. They “ask the Tribunal to consider the failure of the electronic submission on the 25<sup>th</sup> Jan as an unusual even which was unexpected and could not have been foreseen.”

30 **17. HMRC’s Submissions**

In their conclusion of review letter dated 18 July 2013 HMRC point out that “if a return is received late, a penalty is chargeable for late filing unless you have a reasonable excuse for not filing the return on time. You explained your reasons for not filing your return on time, but in my view they do not amount to reasonable  
35 excuse.”

HMRC say that “failure to hit the final submission button when filing the return online is not regarded as grounds of reasonable excuse for late filing of your return.”

The letter also states “I am unable to treat any one individual any differently to any other”.

18. HMRC strongly refute that the appellant has been treated differently because of his foreign name. They say each case is treated on its own merits HMRC abide by the standards laid down in Your Charter.

### 19. The Tribunals Observations

This appeal concerns a penalty levied on the appellant for the late submission of his Self assessment tax return. The level of the penalties has been laid down by parliament and the legislation relating to penalties has been properly and accurately applied by HMRC. The only other consideration that falls within the jurisdiction of the First-tier Tribunal is whether or not the appellant has reasonable excuse for the late payment.

20. The Tribunal notes that the first document that the appellant received in connection with completing a tax return for the year 6 April 2011 to 5 April 2012 was a Notice headed “Self Assessment, Notice to complete a tax return”. The second paragraph on the front page ( Page 1) of this document is headed “Deadlines for sending your tax return” it states as follows:

“You must make sure we receive your tax return by

- 31 October 2012 if you use paper (or three months after the date of this letter if that’s later)
- 31 January 2013 if you file online (or three months after the date of this letter if that’s later). If you owe less than £3,000 tax for 2011-12 we will try to collect it through your 2013-14 PAYE tax code if you have one. If you want us to do this you must file online by 30 December 2012.

21. HMRC say that “failure to hit the final submission button when filing the return online is not regarded as grounds of reasonable excuse for late filing of your return.”

The only evidence for this assertion is that HMRC did not receive the return. The appellant’s agent says that the return was submitted and accepted, as witnessed by the appellant but in common with four similar cases on the same day for some reason the submissions were not recorded by HMRC’s computer.

22. HMRC submit that they are unable to comment about how other cases have been dealt with. Each case is considered on its own merits. The appellant’s agent has named the other four taxpayers who have had their penalties cancelled. The agent has indicated with reasons as to why the other four cases are striking in similarity to the present case.

23. The Tribunal regrets that HMRC has chosen not to say what distinguishes the appellant’s case from the other four. It would have been entirely possible for them to do so without offending the principles of confidentiality.

24. The Tribunal wonders if the HMRC reviewer considered the case to be different on the incorrect belief that the return was not submitted until 22 March 2013 when in fact it was submitted, on 22 February 2013, see paragraph 9 above.

5 25. The Tribunal accepts the appellant's agent's submission that the five cases were strikingly similar. HMRC have made no submissions to challenge that statement. It therefore follows that as the other four taxpayer's were charged penalties which were subsequently quashed because reasonable excuse had been established, in the interests of fairness and of being even handed the penalty levied on the appellant should also be quashed.

10 26. The Tribunal therefore finds that on 25 January 2013 the appellant's agent submitted returns for five taxpayers all of whom were sole traders and whose income was such that no tax was payable. The appellant's return was one of the five. For some reason although the returns were sent electronically to HMRC and appeared to have been accepted receipt was not recorded by the HMRC computer. HMRC have  
15 quashed the penalty in respect of four of the taxpayers and the Tribunal considers that in view of the similarity of the cases the appellant's penalty should also be quashed. If reasonable excuse existed for the other four taxpayers it also existed for the appellant. HMRC have said nothing to demonstrate that the facts in the appellant's case are in any way different to the other four. The computer problems that resulted in the failure  
20 of the electronic submission were unexpected and unforeseen so the appellant has established a reasonable excuse. The appeal is therefore allowed.

25 27. Paragraph 9 of Schedule 56 of the Finance Act 2009 (Special Reduction) provides HMRC with discretion to reduce any penalty if they think it right to do so because of special circumstances. On the information held in this case HMRC did not consider there were any special circumstances which would allow them to reduce the penalty.

28. In the Tribunal's view had they not considered that the appellant had a reasonable excuse for the late payment then they would have overturned that decision.

30 29. The appellants agent had made HMRC aware that there were five similar late returns submitted by the same agent on the same day each for sole traders and each in respect of traders whose income was such that no tax was payable. The agent pointed out that HMRC had accepted that four of the five had established reasonable excuse for the failure.

35 30. In the Tribunal's view if HMRC were not prepared to accept that the fifth trader also had reasonable excuse for the late submission of the return in the interests of being fair and even handed they should have considered that there were special circumstances in this case.

40 31. HMRC applied the legislation correctly and calculated the amount of the penalties accurately as £100 as described in paragraph 4. above. However in the Tribunal's view the appellant has established that he had reasonable excuse for the late payment of the tax due. Therefore the appeal is allowed.

32. 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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**PETER R. SHEPPARD**  
**TRIBUNAL PRESIDING MEMBER**

**RELEASE DATE: 20 December 2013**

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