



**TC03977**

**Appeal number: TC/2014/03313**

**Income Tax – late filing of tax return – penalty imposed – awaiting online codes  
– previous submissions on time – paper return submitted after online filing date  
– no reasonable excuse**

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**BARRY ALVIN NEWMAN**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE ALASTAIR J RANKIN**

**The Tribunal determined the appeal on 28 August 2014 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 10 May 2014 (with enclosures) and HMRC's Statement of Case submitted on 1 July 2014 (with enclosures)**

## DECISION

5 1. This is an appeal by Mr Newman against a late filing penalty of £100.00 for the tax year 2012/13.

2. On 6 April 2013 HMRC issued a tax return for the tax year ending 5 April 2013. The return clearly showed that the filing date for a non-electronic return was on or before 31 October 2013 or for an electronic return on or before 31 January 2014.

10 3. As no return had been submitted by either due date HMRC issued a late filing penalty notice for £100.00 on 18 February 2014. A paper return was received by HMRC on 23 June 2014.

15 4. On 26 February 2014 Mr Newman submitted an appeal against penalties using form SA370 Appeal. The grounds for his appeal were that he had asked HMRC for the necessary information from HMRC to enable him to file his return but although HMRC had acknowledged his letter it had failed to supply the information.

5. By letter dated 11 March 2014 HMRC rejected the appeal as Mr Newman had not told HMRC why he had not sent his return in on time.

20 6. By letter dated 19 March 2014 Mr Newman stated that the reason for his appeal was that he had asked HMRC to supply him with his codes which he had forgotten but HMRC had failed to supply them.

7. By letter dated 11 April 2014 an Appeals Review Officer upheld the penalty and advised Mr Newman that as he had been filing online since 2006/7 he should be familiar with the process of filing online and if he needed a new User ID and password he should have contacted the Online Service Helpdesk.

25 8. In his Notice of Appeal to this Tribunal Mr Newman states that his appeal is simply because he asked for codes which he did not receive until 3 or 4 months later. He then states that he will submit his return as soon as he can but he cannot do so until he receives the codes.

### **The Law**

30 9. The filing date is determined by Section 8(1D) Taxes Management Act 1970 which states that an electronic return must be submitted on or before 31 January following the end of the tax year.

10. Paragraph 3 of Schedule 55 Finance Act 2009 provides for a penalty of £100.00 if the return is not received by the due date.

35 11. Paragraph 23(1) of Schedule 55 Finance Act 2009 provides that an appeal against a late filing penalty will be successful where the taxpayer shows that there is reasonable excuse.

## **The Decision**

12. There is no statutory definition of reasonable excuse. It is a matter to be considered in the light of all the circumstances of the particular case. Mr Newman has been filing his returns electronically since January 2009. A Tax Return was issued to Mr Newman on 6 April 2013. He had almost ten months during which he could have filed the return.

13. The Tribunal agrees with the views of Judge Colin Bishopp in the First Tier Tribunal case of Enersys Holdings UK Limited [2010] UKFTT 20 that ‘it seems unlikely that a delay of only a day might ever, without more, amount to a reasonable excuse’.

14. Mr Newman has not provided any reasonable excuse as to why he could not have filed the return earlier. His Notice of Appeal is contradictory in that he states that he ‘asked for codes which have still not arrived until 3 or 4 months later’ which implies he has received the codes but he then goes on to state that he cannot file his return ‘until receipt of the codes’. In any event Mr Newman has never indicated when he requested HMRC to send him new codes. Without a proper explanation the Tribunal cannot find any reasonable excuse for failing to file his return by the due date. As Mr Newman actually filed a paper return in June 2014 no reason has been offered as to why he could not have filed this paper return by 31 October 2013.

15. Following the decision of the Upper Tier Tribunal in Hok Ltd the Tribunal has no jurisdiction to discharge or adjust a fixed penalty which is properly due because it thinks it is unfair.

16. The appeal is therefore dismissed and the penalty of £100.00 remains payable.

17. 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.

**ALASTAIR J RANKIN**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 2 September 2014**