



**TC04375**

**Appeal number: TC/2014/05662**

*INCOME TAX – penalty for late filing of personal tax return –reliance on agent- did appellant take reasonable care to avoid the failure- yes- reasonable excuse –appeal allowed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**STEPHEN TAYLOR**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE KING**

**The Tribunal determined the appeal on 9 April 2015 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 15 October 2014 (with enclosures), HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 30 October 2014, emails from the Appellant's agent, Catherine Newman, dated 10 November 2014, 16 December 2014 and 4 February 2015 and the Upper Tribunal decision dated 3 February 2015**

## DECISION

- 5 1. This appeal is against a fixed penalty of £100 for the late filing of an individual tax return for the year ended 5 April 2013.
2. The appeal was first heard as a paper case on 17 December 2014 and the appeal was dismissed. The Upper Tribunal set aside that decision and allowed 28 days from 3 February 2015 for parties to make any further submissions.
- 10 3. Catherine Newham made representations by email on 4 February 2015. No further submission has been received from the respondents “HMRC”.

### **The Law**

4. Schedule 55 of the Finance Act 2009 deals with penalties for the late filing of tax returns. Paragraph 3 provides that liability to the fixed penalty of £100 arises on the day after the filing date.
- 15 5. The filing date in this case was 31 January 2014 for an electronic return. An electronic return was filed on 6 February 2014.
6. Paragraph 23(1) provides that if there is a reasonable excuse for the failure to file on time, the penalty does not arise. Paragraph 23(2)(b) further provides that where a taxpayer relies on another person to submit the return on time, who then fails to do so, this is not a reasonable excuse unless it is shown that the taxpayer took reasonable care to avoid the failure.
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### **Findings**

7. Mr Taylor was self employed and was required to file a tax return for the year ended 5 April 2013. He had employed an agent Catherine Newman (“Mrs Newman”) to file his tax returns since 2008 and he delivered his accounts to her at some point in January in each of the years he employed her. On no previous occasions had Mrs Newham made a late submission of his tax return.
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8. For the tax year ended 5 April 2013 Mr Taylor took his accounts to Mrs Newham on 18 January 2014. Mrs Newham has confirmed that submission of his accounts on that date would normally have allowed her sufficient time to complete and submit the tax return for Mr Taylor.
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9. Mrs Newham had a particularly busy time at the beginning of 2014 because her father in law became ill and eventually died in April 2014. This meant that Mrs Newham did not get as much support with her children, which she had previously found useful in January each year. Nevertheless she completed all the tax returns for her various clients and thought she had submitted them electronically to HMRC by the deadline of 31 January 2014. On 6 February 2014 Mrs Newham discovered that she had omitted to file the return for Mr Taylor.
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10. On balance I find that Mrs Newham had not informed Mr Taylor that she was under more pressure than normal in the days before 31 January 2014. He had delivered his accounts to her at a time which she had previously found acceptable. He thought he had employed a reliable person to submit his tax returns on his behalf and had no reason to suspect that she had failed to do so in January 2014. I therefore find that Mr Taylor had taken reasonable steps to avoid the failure.

11. Mrs Newham has stated that she does not expect her clients to make additional contact with her during her busy period in January each year, to check whether their returns have been submitted. Having failed on this occasion she may now be subject to clients wanting to check because her past record is now not flawless. She should also be aware that taking on new clients when under too much pressure is not necessarily the action of a reasonable person.

12. I find that Mr Taylor has a reasonable excuse for the late filing of his tax return for the year ended 5 April 2013. The appeal is allowed.

13. 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.

**BARBARA KING**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 27 April 2015**