



**TC04738**

**Appeal number: TC2013/01162**

*Income Tax – late penalty – whether reasonable excuse – no – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

	<b>Cheryl Noble</b>	<b>Appellant</b>
	<b>- and -</b>	
	<b>HMRC</b>	<b>Respondents</b>

**TRIBUNAL: JUDGE DR K KHAN**

**The Tribunal determined this appeal on 30 September 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 8 February 2013 and the HMRC’s Statement of Case submitted on 22 July 2015.**

## DECISION

### Introduction

- 5 1. This is an appeal against a penalty imposed under Paragraph 3 of  
Schedule 55 Finance Act (FA) 2009 for the late filing of the individual Tax  
Return for the year ending 5 April 2011.
- 10 2. The filing date for the year ending 5 April 2011 for non-electronic  
returns is 31 October 2011 and for electronic returns by 31 January 2012. The  
late filing is charged when a taxpayer is late in the filing of their tax return. If  
the return is not received by the filing date a penalty of £100 is payable in  
accordance with Paragraph 3 Schedule 55 FA 2009.
- 15 3. In line with Paragraph 23(1) Schedule 55 2009, an appeal against a late  
penalty will be successful when a taxpayer shows there is a reasonable excuse  
for the late filing.

### 20 Background Facts

1. The Notice to File for the year ending 5 April 2011 was issued to the  
Appellant on 12 January 2012.
- 25 2. The filing date was 19 April 2012 for a non-electronic return or 19 April  
2012 for an electronic return.
3. The Appellant's non-electronic return for the year 2010-2011 was  
received on 18 December 2012 which is approximately eight months late. The  
30 return was therefore not received by the filing date and HMRC issued a Notice  
of Penalty Assessment on or around 24 April 2012 in the amount of £100.
4. On 24 May 2012 the Appellant's agents Bradshaw, Johnson and  
35 Blackwell appealed against the penalty on the grounds that a reply or  
acknowledgement was never received to their letter of 6 December 2011 which  
enclosed the SA-1 Registering for Self-Employment.
5. HMRC did not have the Appellant's authority to deal with her agent and  
sent a reply on 5 July 2012 acknowledging their letter but advising that the  
40 appeal could not be considered until the 2010-2011 return was received. The  
return was requested on 4 August 2012 and the penalty suspended. A signed  
letter of authority (form 64-8) was requested for her agents.
6. The 2010-2011 return was not received by 4 August 2012 and a further  
45 letter was sent by HMRC on 14 September 2012 requesting that the appeal  
could not be considered until the return was received and the form 64-8  
appointing her agents was also received. On 15 November 2012

HMRC rejected the appeal and offered a review. As the return was outstanding six months after the penalty date became due a Notice of Penalty Assessment in the sum of £1200 was issued on 23 October 2012 and an appeal was made by the Appellant.

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7. The Appellant indicated that she had not received the Notice to File and a further Notice to File was issued by HMRC.

8. The appeal was late in that it was after the statutory 30-day period.

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9. The Appellant's agents requested a review on 14 December. No grounds were given and the penalty was upheld. HMRC explained that they had no written authority to deal with the Appellant's agents and that the Notice to File was issued to the Appellant and had not been returned to HMRC.

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10. On 8 February 2013 an appeal was lodged where the Appellant explained that they had a reasonable excuse and attached a copy of their letter of 27 August 2010 together with a completed and signed 64-8 form.

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#### **HMRC's submissions**

1. HMRC made the following points;

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1) that the agent's, Bradshaw, Johnson and Blackwell were aware that a return for the 2010-2011 period was required since they completed the Form SA1, In addition a partnership return for Mr and Mrs Noble, for whom the agents also acted, was completed and submitted on 6 January 2012.

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2) HMRC say they wrote to the Appellant on 5 and 14 September 2014 to advise that the appeal could not be considered as the 2010-2011 return was outstanding and they suspended collection of the penalty at that point. Further they pointed out that there was no filing authority, in the form of a completed form 64-8, which appointed their agents to act on their behalf.

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2. The completed 2010-2011 return was received by HMRC on 18 December and following a review letter of 31 January 2013 the agents wrote to HMRC stating that acknowledgement of the letter of 6 December (registration of self-employment) was never received and refuted HMRC's assertion that a valid authority in the form of a signed 64-8 form was not provided. They presented a signed form on 16 August 2010.

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3. In response to the Appellant's assertion that she had not received a Notice to File, HMRC accepted that the first indication that the taxpayer was required to complete a self-assessment return for 2011-2012 was 4 July 2012

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when HMRC wrote to advise that a tax return was outstanding. HMRC wrote to the taxpayer and her agent on 20 February 2013 to amend the filing date from 19 April 2012 to 11 October 2012 which was some three months after the 4 July date. Further, since a return was received on 18 December it was still received late and the £100 penalty was correctly charged. HMRC agreed to cancel the daily penalties and the six month filing penalty as the return was received before the penalties became due.

4. The Appellant says that an authority letter was given to HMRC appointing the agents but HMRC say that no such letter was held on the taxpayer's self-assessment record.

5. HMRC also say that even if there was a lack of acknowledgement of the taxpayer's letter on 6 December 2011, both she and her agent had sufficient notification that a return was due and had submitted a partnership return on 6 January 2012 as well as the form SA1 and therefore should have been aware that a return was due.

6. HMRC does not consider that there are any special circumstances in this case which would allow a reduction of the penalty.

### **Conclusion**

1. The appeal is dismissed.

2. The Appellant's main point is that their agent had not received a reply or acknowledgement of their letter of 6 December 2011 but, in the Tribunal's view, the reason this was not received was because HMRC did not hold any written authority to deal with the agents with regard to the taxpayer's affairs. HMRC only received authority from the taxpayer appointing the agent in October 2012.

3. HMRC made the point that the form SA1 was received by the taxpayer and a self-assessment tax record was set up on 4 January 2012. They say that their Notice to File for the 2010-2011 tax year was sent to the taxpayer's personal address on 12 January 2012. There is no indication that the mail was returned and the correspondence was sent to the correct address.

40 While the Tribunal sympathises with the difficulties experienced by the taxpayer, on a balance of probabilities, the Tribunal has accepted HMRC's version of events. The fact remains that the completed tax return was due on 19 April 2012 (changed to 11 October) but was delivered on 18 December 2012. It was therefore late and the penalty was correctly applied.

45 4. It is the Tribunal's view that the HMRC acted fairly in extending the filing date for the 2010-2011 return from 19 April to 11 October 2012 and

provided a further three months and cancelled the daily penalties and the six month Late Filing penalty.

5. The Tribunal agrees that there are no special circumstances for a reduction of the penalty and therefore upholds the £100 Filing Penalty.

6. This document contains full findings of facts and reasons for the decision. Any party dissatisfied with the 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 fifty six days after this decision is sent to that party. The parties are referred to “Guideline to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

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**TRIBUNAL JUDGE  
K KHAN**

**RELEASE DATE:**

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