



**TC04862**

**Appeal number: TC/2015/05519**

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**ADRIAN MARTIN**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE ANNE SCOTT, LLB, NP**

**The Tribunal determined the appeal on 29 January 2016 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 undated Notice of Appeal (with enclosures), received by HMRC on 2 November 2015 and HMRC's Statement of Case was acknowledged by the Tribunal on 9 November 2015.**

1. This is an appeal against a penalty of £100 imposed under paragraph 8, Schedule 55 Finance Act (SA) 2009 for the late filing of the contractor's Monthly Return for the period ending 5 April 2014.
2. The penalty was issued on 3 May 2014. No reply was received. On 2 April 2015 HMRC sent the appellant a Statement of Liability which included *inter alia* that penalty. Other penalties in that Statement of Liability have been discharged.
3. On 30 April 2015 the appellant's agent wrote to HMRC appealing against the penalties issued. On 18 May 2015 HMRC accepted the appeal in regard to the earlier penalties but confirmed the penalty which is the subject matter of this appeal.
4. The appellant's agent then sent an undated Notice of Appeal to HMCTS which was returned since the agent was not a legal representative. Ultimately a further undated Notice of Appeal with enclosures was received by HMCTS on 2 November 2015. HMRC do not object to the late admission of the appeal and in those circumstances the Tribunal allows the late admission of the appeal.

## **The grounds of appeal**

5. The Notice of Appeal states that “The Return was posted on the 16 April 2015, therefore (*sic*) this was posted in enough time to be received by the deadline which ISA (*sic*) the 19<sup>th</sup> of the month”.

6. It is not disputed that HMRC received the Return on 23 April 2014 and it was processed on 30 April 2014.

## **Discussion**

7. There is no dispute between the parties as to the relevant legislation. The only argument is that the appellant has a reasonable excuse for the late receipt of the Return since it was posted in good time. The Return was completed by the appellant’s agent and posted by her.

8. It may be that, in general, sending a return to HMRC on the 16<sup>th</sup> of the month for receipt by the 19<sup>th</sup> of the month would suffice although that is far from beyond doubt. However, undoubtedly that could not have been the case in April 2014. The reason for that is that the 19<sup>th</sup> was Easter Saturday and therefore for the Return to be received by the Revenue it would have had to have arrived by the day after posting. Not even first class postage is guaranteed to arrive the following day. Absolutely no evidence has been furnished as to the posting of this document and certainly no evidence that it was sent by first class mail.

9. There is no statutory definition of *reasonable excuse*. However, it is well established in the case law that the actions of the contractor (and those acting for him) should be considered from the prospective of a prudent person, exercising reasonable foresight and due diligence, and having proper regard for their responsibility under the Tax Acts. We do not find that it was prudent to consider that mail would be delivered within 24 hours. Accordingly we find that there is no *reasonable excuse* in these circumstances.

10. I also note that HMRC have considered whether to exercise its limited discretion to allow a “special reduction” because of special circumstances. I accept that HMRC did consider that by means of their internal review process. A conclusion reached was that no special circumstances existed. I can therefore only apply a reduction on account of special circumstances if I were to find that HMRC’s decision was flawed. I do not so find.

11. In all these circumstances the appeal fails and therefore the penalty of £100 is confirmed.

12. This document contains a summary of the findings of fact and reasons for the decision. A party wishing to appeal against this decision must apply within 28 days of the date of release of this decision to the Tribunal for full written findings and reasons. When these have been prepared, the Tribunal will send them to the parties and may publish them on its website and either party will have 56 days in which to appeal. 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.

**ANNE SCOTT  
TRIBUNAL JUDGE**

**RELEASE DATE: 4 FEBRUARY 2016**

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