



TC03964

Appeal number: TC/2014/03257

Income tax – individual tax return late filing penalty - whether reasonable excuse

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MALGORZATA KOSMOWSKA

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE WDF COVERDALE

The Tribunal determined the appeal on 21.08.2014 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 11.06.2014 (with enclosures), HMRC's Statement of Case submitted on 01.07.2014 (with enclosures) and the Appellant's Reply dated 31.07.2014 (with enclosure).

DECISION

1. The Tribunal decided that the Individual Tax Return Late Filing Penalty Notice
5 dated 18.02.2014 in respect of the year 2012-2013 in the sum of £100 was properly issued by the Respondents.

2. The appeal is dismissed.

3. The Tribunal found that the filing date for the Appellant's electronic return for
10 the year 2012-2013 was 31.01.2014. The return was received electronically by the Respondents on 24.04.2014 i.e. over 11 weeks late.

4. The Tribunal further found that there was no reasonable excuse for the late filing of the return.

5. The Appellant contends that she successfully submitted her 2012-2013 return on
15 28.01.2014 and that the Respondents' website confirmed that she owed no tax so they must have received the return at that time. She says that there must be a glitch or system error with the Respondents' online service.

6. The Respondents have been able to confirm that the Appellant accessed their
20 online service on 28.01.2014. However there is no evidence that she made a successful submission of her return; if she had done so she would have received an electronic receipt but she has been unable to produce any evidence of having received such a receipt or email acknowledgment from the Respondents.

7. The appellant was evidently assisted, on 28.01.2014, by Shun To who has
25 written a letter dated 08.05.2014 in which there is some explanation of the procedure adopted on 28.01.2014. It is confirmed that the whole procedure was very simple. It is alleged that they got a message saying that the return had been sent but, as stated above the Appellant has been unable to provide any evidence of this. It is significant that Shun To says that "Then we were taken to view and save the summary".

8. The Respondents have produced an extract from their Online Services Self
30 Assessment demonstrator which shows the screens that the Appellant would see when attempting to file her return online. There are eight sections, of which 6 to 8 are pertinent:

a) Section 6 ("View your calculation") instructs the user to "click the 'Next' button at the bottom of the page to save then submit your return";

35 b) Section 7 ("Save your return") invites the user then to save and print off their tax return and click the 'Next' button in order to proceed to "Submit your return";

c) Section 8 ("Submit your return – tax return receipt") leads to completion of the 12 digit User ID and password and finally to online submission of the return.

The submission is followed by a successful submission message.

9. Shun To refers to the final step taken on 28.01.2014 as being “view and save the summary”. It is apparent that this must refer to Section 7 of the above process and not Section 8. The Appellant and Shun To have evidently gone as far as the penultimate step in online filing but the absence of any acknowledgment or receipt from the Respondents proves, to the Tribunal’s satisfaction, that they did not take the final step of actual electronic transmission of the return. Shun To is mistaken in saying that they received a message indicating that the return had been sent.

10. The Appellant is no stranger to online filing of tax returns, having done so for the three preceding years. If she thought that she and Shun To had been successful in online filing on 28.01.2014 she should have been alerted to the fact that something was wrong by the absence of the acknowledgment that she will have received in previous years.

11. The Tribunal notes that the Respondents have no records to indicate that there were any problems with the Self Assessment online filing system. The Tribunal concludes that the Appellant’s failure to complete the online filing process was user error.

12. The Appellant has submitted a document from Leo Tsau dated 30th July which purports to identify potential problems with system errors. However Leo Tsau admits that “I do not pretend to be an expert” so the expressed opinions are of limited assistance to the Tribunal.

13. The Tribunal has considered whether any Special Reduction in the penalty can be applied pursuant to Paragraph 9 of Schedule 56 of the Finance Act 2009. There is no evidence of any special circumstances that would justify a reduction of the penalty below the statutory minimum.

14. The test applied by the Tribunal in considering the matter of reasonable excuse is whether the exercise of reasonable foresight and of due diligence and a proper regard for the fact that the Return would become due on a particular date would not have avoided the default. The facts and chronology of events, set out in the Notice of Appeal and the Respondents’ Statement of Case, disclose that such foresight and diligence by the Appellant would have avoided the default.

15. In so far as the Appellant may suggest that the imposition of the penalty is disproportionate, unjust or unfair, those arguments have already been disposed of by the Upper Tribunal in *HMRC v Hok* [2012] UKUT 363 (TCC) and *HMRC v Total Technology (Engineering) Limited* [2012] UKUT 418 (TCC). In the former it was made clear that the First-tier Tribunal has no jurisdiction to determine the fairness of a penalty imposed by statute. It is plain from a perusal of the latter that a penalty of the magnitude of that imposed in this case could not be described as disproportionate even if the Tribunal had jurisdiction to deal with the issue.

16. 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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**WDF COVERDALE
TRIBUNAL JUDGE**

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RELEASE DATE: 27 August 2014