



**TC03065**

**Appeal number: TC/2012/08834**

*INCOME TAX – late filing penalties – employer’s return – reasonable excuse – mistake or misunderstanding – changeover problems – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**RICHARD PATTERSON and STEPHEN BLAIR      Appellants  
t/a DIRTBUGGY NI**

**- and -**

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

**TRIBUNAL: JUDGE MANUELL**

**The Tribunal determined the appeal on 26 July 2013 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 18 July 2012 and HMRC’s Statement of Case submitted on 5 February 2013 (with enclosures).**

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## DECISION

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1. This determination has been prepared following the Appellants' request for full findings following the promulgation of the standard short form determination usual in default paper appeals. In reality having heard no live evidence from either side there is little which the Tribunal can usefully add, nevertheless a full decision is required to enable a Notice of Appeal to be considered.

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2. The Tribunal decided that the Appellants had shown no reasonable excuse for the late filing of their Employer's Annual Return which was due by 19 May 2012 (electronic). The return was not received until 12 June 2012. The penalty imposed was £100.

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3. The Appellants' accountants Pennybridge Accounting Ltd maintained that they had submitted the relevant return on 30 March 2012. They referred to a series of similar cases they had for their clients. The problem with their claim is that the acknowledgement sent by HMRC showed that the submission on 30 March 2012 was a test, and the Appellants were reminded that the return had to be sent "live" by 19 May 2012 and acknowledged as such. That effective live submission was not made until 12 June 2012. While no doubt the Appellants' accountants feel aggrieved, the onus was on them to comply with HMRC's well publicised and adequately explained electronic filing requirements. They were alerted to the failure of the 30 March 2012 attempted filing by the return reminder letter sent prior to 19 May 2012. The accountants' failure to follow the requirements is not a reasonable excuse.

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4. A detailed summary of the relevant legislation with full extracts was provided to the Appellants by HMRC with the Statement of Case submitted on 5 February 2013 served on the Appellants and copied to the Tribunal. There was no dispute about the law and it will not assist the Appellants if the Tribunal were to set out the relevant legislation again in detail here.

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5. The key section is 93(8) of the Taxes Management Act 1970 (as amended) ("TMA"):

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On an appeal against the determination under section 100 of this Act of a penalty under subsection (2) or (4) above, neither section 50(6) to (8) nor section 100B(2) of this Act shall apply but the [First-tier Tribunal] may –  
(a) if it appears to them that, throughout the period of default, the taxpayer had a reasonable excuse for not delivering the return, set the determination aside; or  
(b) if it does not so appear to them, confirm the determination.

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6. It should be noted (a) that there is no statutory definition of "reasonable excuse" in the TMA: see, e.g., section 118(2) where the same term is used, again undefined, and (b) that as the penalties applicable for failure to deliver a return are fixed in amount, the Tribunal's powers are restricted by TMA section 100(2)(a).

7. The Appellants' accountants admitted inadvertent failure to follow the filing requirements in time but the explanation provided (a mistake or misunderstanding which was not discovered for some time) is not a reasonable excuse, i.e., in simple but unrestricted summary, typically something unforeseeable, unexpected and beyond the Appellants' control. It was the Appellants' duty to ensure that the return was filed correctly and by the due date, if necessary obtaining further guidance from HMRC to do so, particularly in view of the advent of the new, on line filing procedures. No evidence was provided to show that HMRC had caused or contributed to the mistake or misunderstanding over the status of the "test" transmission. Detailed guidance about the on line filing procedures was and is provided by HMRC, and was heavily publicised in various ways before the changeover. There is no obligation in law for HMRC to issue reminders. The Tribunal while sympathetic to the Appellants' difficulties has no power to reduce penalties of this fixed type in the absence of proof of a reasonable excuse. The disproportionality argument must fail in the light of *Total Technology* [2012] UKUT 418 (TCC).

8. 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.

**MANUELL  
TRIBUNAL JUDGE**

**RELEASE DATE: 12 November 2013**