



**TC03276**

**Appeal number: TC/2013/07115**

***PAYE – LATE LODGING OF EMPLOYER’S ANNUAL RETURN –  
AGENTS BELIEVED RETURN HAD BEEN SUCCESSFULLY FILED –  
WHETHER REASONABLE EXCUSE - NO – APPEAL DISMISSED***

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**PAINTBALL CHALLENGE LTD**

**Appellants**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE N A BAIRD**

**The Tribunal determined the appeal on 20 January 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 16 October 2013 (with enclosures), and HMRC’s Statement of Case submitted on 15 November 2013(with enclosures).**

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## DECISION

1 The appellants appeal against the decision of HMRC to impose a penalty of £100  
5 in terms of Section 98A (2) and (3) of the Taxes Management Act 1970, for late  
submission of the Employer's Annual Return for the tax year ending 5<sup>th</sup> April 2011.  
The Annual Return was to be filed online by 19<sup>th</sup> May 2011. It was filed online on 3  
October 2011. As the total duty shown on the return was less than £100 HMRC on 6  
October 2011 reduced the penalty from £400 to £100.

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2. The appellants agents say that the return was filed online on 19 May 2011. They  
had subsequently learned that it had been rejected by HMRC but had received no  
notification of this and were unaware of it until the penalty notice was received in  
September 2011. They were able to successfully file the return containing the same  
15 details in October.

3. HMRC note that the appellants had been filing returns online since the end of the  
2008 tax year so are clearly aware of their tax obligations. There is no record of a  
return being received from the appellants prior to October 2011. They say that when  
20 an attempt is made to file a return online one of two messages is sent – one  
confirming successful filing and the other rejecting it. In the absence of one or other  
of these messages it was unreasonable for the appellants or their agents to assume that  
the return had been successfully filed. They conclude that the appellants have not  
established that on a balance of probabilities there is a reasonable excuse for their  
25 failure to file their return on time.

4. I have given careful consideration to the evidence put before me. If a person is to  
rely on reasonable excuse, this must have existed for the whole of the period of  
default. A reasonable excuse is normally an unexpected or unusual event, either  
30 unforeseeable or beyond the person's control, which prevents him from complying  
with an obligation when he otherwise would have done. The matter has to be  
considered in the light of the actions of a reasonable prudent tax payer exercising  
foresight and due diligence and having proper regard for his responsibilities under the  
Taxes Act.

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5. The appellants were under an obligation to file their return on time and failed to do  
so. I accept that they tried to do it and had assumed that what they had sent had been  
received by HMRC but it seems to me to be reasonable when filing a return online to  
check that it has been received by HMRC. It is clear from the guidance that a message  
40 is sent. In these circumstances I find that the appellants have not established that they  
have a reasonable excuse for their failure to file the return on time..

6. I dismiss the appeal.

45 7. 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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**N A BAIRD  
TRIBUNAL JUDGE**

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**RELEASE DATE: 28 January 2014**