



**TC03328**

**Appeal number: TC/2013/05492**

***PAYE – SELF-ASSESSMENT – LATE FILING OF RETURN AND  
PAYMENT OF TAX – DIFFICULTIES WITH CHANGE OF AGENT -  
WHETHER REASONABLE EXCUSE - NO – APPEAL DISMISSED***

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**PAULINE GLANCY**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE BAIRD**

**The Tribunal determined the appeal on 3 February 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 13 August 2013 (with enclosures), HMRC's Statement of Case submitted on 23 September 2013 (with enclosures) and the appellant's reply dated 7 January 2014.**

## DECISION

1 The appellant appeals against the decision of HMRC to impose a penalty of £100  
5 under Paragraph 3 of Schedule 55 to the Finance Act 2009 for the late filing of her  
individual tax return and a first late payment penalty of £69 imposed under Paragraph  
3(2) of Schedule 56 to the Finance Act 2009 for the failure to pay tax on time, both  
for the year ending 5 April 2011. An electronic return was received by HMRC on 29  
10 March 2012 and the tax was paid on 4 May 2012. The notice of appeal was received  
late but allowed on application to the Tribunal.

2. In the notice of appeal the appellant's agent, Mr Smith, says that the appellant is a  
61 year-old careworker who had worked for two agencies in the tax year 2010-11, one  
of which had got her tax code wrong at the end of the tax year. She had been poorly  
15 advised by her previous agent. She has low earnings. Mr Smith says that he had  
accepted her as a client in February after her previous accountant had poorly advised  
her and failed to submit her return by the due date. It was only when he accepted her  
as a client that the appellant understood that she had to submit a return and had  
underpaid tax on her temporary work. Mr Smith says that he had to seek information  
20 from the appellant's previous employer, there had been delay by the previous  
accountant in getting the appellant's change of agent intimated and he had kept  
HMRC advised of the appellant's position.

3. The position of HMRC is that it was the responsibility of the appellant to ensure  
25 that her return was filed on time and her tax paid. This responsibility cannot be  
delegated to a third party. Her previous agent had submitted her return on 29 March  
2012 so it is reasonable to assume that they were still acting for her at that time.  
There has been no reasonable excuse offered as to why the return was not filed until  
that date. The appellant has been making self assessment returns since the tax year  
30 2008-09 and is experienced in the system. She registered for online filing on 21  
January 2010. According to HMRC records the Form 64-8 showing Mr Smith as the  
appellant's agent was received in May 2012 not December or February, the two dates  
given by Mr Smith. HMRC conclude that the appellant has not established that on a  
balance of probabilities there is a reasonable excuse for her failure to file her return  
35 or pay her tax on time.

4. 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 unforeseeable or beyond the person's control, which prevents him from  
40 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.

45 5. I have given careful consideration to all the evidence before me in this case. I  
accept that the appellant may have been reliant on her agent but the fact remains that  
the onus is on her to ensure that her tax obligations are met and it seems that at the

time the tax was due she was still using her previous agents, Garlyn & Co. In all the circumstances I find that no reasonable excuse has been established for the appellant's failure to file her return or pay her tax on time.

5 7. I dismiss the appeal.

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.

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**N A BAIRD  
TRIBUNAL JUDGE**

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**RELEASE DATE: 14 February 2014**