



**TC03566**

**Appeal number: TC/2012/07589**

*INCOME TAX - penalty for late filing self assessment return – whether the appellant is liable for the penalty – yes - whether there was a “reasonable excuse” – no – whether there were special circumstances – no*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**KHALID PERVEZ**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE JOANNA LYONS**

**The Tribunal determined the appeal on 19 November 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 01 August 2012, HMRC’s Statement of Case (with enclosures) acknowledged by the Tribunal on 24 September 2012 and the Appellant’s Reply dated 08 October 2012.**



## DECISION

### Introduction

- 5     1.     This is an appeal against a penalty of £100 imposed for the late filing of the self-assessment income tax return for the tax year 2010-11. The penalty was imposed in accordance with Paragraph 3 Schedule 55 Finance Act 2009.

### The issues

2.     Mr Pervez appeals on the following grounds:
- 10        (1)     He is not liable for the penalty;
- (2)     There was a reasonable excuse for the late submission of the return.
3.     These matters are disputed by HMRC.

### The facts

#### *The agreed facts*

- 15     4.     On 21 April 2011 Mr Pervez was issued with a notice to file a self-assessment return for the tax year 2010-11. The return was due to be filed on 31 January 2012 and was filed online on 12 March 2012. Mr Pervez did not incur any tax liability for the year 2010-11 consequently the return filed was a “nil return”.

#### *The contested facts*

- 20                    (a) *The appellant’s case*

5.     Mr Pervez states that he was unable to file the return online before the due date as he encountered difficulties obtaining online authorisation for his Unique taxpayer reference number (“UTR”). He does not assert that he attempted to contact HMRC via the helpline before the due date regarding these filing difficulties. In support of his
- 25     case he has provided a copy of an undated e-mail from HMRC rejecting his UTR number.

6.     Mr Pervez asserts that the return was completed on 20 February 2012 but could not be filed on that date. In support of his case he has provided a print out showing that the return was 95% completed on 20 February 2012.

- 30                    (b) *The respondent’s case*

7.     HMRC state that they have no record of any attempt by Mr Pervez to register his UTR prior to 06 March 2012. On 06 March he was issued with an activation code in the post which enabled him to submit the return on 12 March 2012.



### *Findings of fact*

8. I am satisfied that Mr Pervez attempted to validate his UTR online before the due date but was unable to do so. I am also satisfied that he was unable to submit his partially completed return on 20 February. I make these findings because Mr Pervez has provided documentary evidence in support of his case.

### **Liability for the penalty**

#### *The law*

9. HMRC may notify a taxpayer that they are required to file a self assessment return. The return is due to be filed by 31 January next following the year of assessment, Sections 8(1) and 8(1A) Taxes Management Act 1970 ("TMA"). A penalty of £100 is payable if the return is filed after the due date, Paragraph 3 Schedule 55 Finance Act 2009 ("FA").

#### *The arguments*

10. Mr Pervez submits that he is not liable for the penalty there was no liability to tax upon filing the return. HMRC submit that the liability to tax remains despite the failure to file the return.

#### *Reasons for decision*

11. There is no provision in the legislation for the penalty to be reduced or cancelled in the event of a nil return. The return was filed after the due date and the fixed rate penalty of £100 was correctly applied in accordance with Paragraph 3 Schedule 55 FA. Accordingly I am satisfied that the penalty was lawfully incurred.

### **Reasonable excuse**

#### *The law*

12. A taxpayer is not liable for a penalty if he can satisfy the Tribunal that there is a "reasonable excuse for the failure". Paragraph 23(1) Schedule 55 FA

13. There is no statutory definition of the term "reasonable excuse". Case law has established that a reasonable excuse "is a matter to be considered in the light of all the circumstances of the particular case". *Rowland v HMRC [2006] STC (SCD) 536*.

#### *The arguments*

14. Mr Pervez submits that HMRC have frustrated his attempts to file online and that this amounts to a reasonable excuse for the late submission of the return.

15. HMRC submit that Mr Pervez was not prevented from filing his return before the due date.



### *Reasons for decision*

16. I accept that Mr Pervez encountered technical problems in filing his online return as outlined above. However in the event of such difficulties it would have been  
5 reasonable for him to have sought to resolve these problems by contacting the HMRC helpline before the due date. There is no evidence to suggest that he did this.

17. The attempted submission of the return on 20 February 2012 occurred after the due date and accordingly cannot provide an excuse for the late submission of the return.

10 18. For these reasons I do not find that there was a reasonable excuse for the late submission of the return.

### **Special circumstances**

#### *The law*

19. HMRC may reduce the penalty if they “think it right because of special  
15 circumstances”. Paragraph 16(1) Schedule 55 FA. In the case of *Crabtree V Hinchcliffe (inspector of Taxes) [1971] 3 All ER 967* the word “special” was defined to be something “unusual or uncommon”.

20. The Tribunal may reduce or cancel the penalty due to special circumstances only if the decision is “flawed”. In this context the word “flawed” means “flawed  
20 when considered in the light of the principles applicable in proceedings for judicial review”. Paragraph 22 (3)(b) and(4) Schedule 55 FA

### *Reasons for decision*

21. HMRC have decided not to reduce or cancel this penalty due to special circumstances. I do not find this decision to be flawed as there are no unusual or  
25 uncommon features of the case. The fact that there was a “nil return” is not an unusual or uncommon feature of the case.

### **Decision**

22. The appellant is liable for the penalty.

23. There is no reasonable excuse for the late filing of the return.

30 24. The appeal against the late filing penalty of £100, is dismissed.



**Rights of appeal**

25. 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  
5 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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**JOANNA LYONS  
TRIBUNAL JUDGE**

**RELEASE DATE: 6 May 2014**