



**TC03693**

**Appeal number: TC/2013/02363**

*Construction Industry Scheme – return received two days late – previously advised to obtain proof of postage – no proof offered – no reasonable excuse*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**N K F SEYMOUR ELECTRICAL & PLUMBING                      Appellant**

**- and -**

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

**TRIBUNAL: JUDGE ALASTAIR J RANKIN**

**The Tribunal determined the appeal on 22 May 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 3 April 2013 (with enclosures) and HMRC’s Statement of Case submitted on 20 March 2014 (with enclosures).**

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## DECISION

5 1. The Appellant is appealing against a late filing penalty of £100.00 under the Construction Industry Scheme for the late filing of the November 2012 return received by HMRC on 21 December 2012.

10 2. The Appellant claims to have posted the return using a large letter first class stamp on Saturday 15 December 2012. Once posted it is out of his control as to how long it takes for delivery but other letters posted on the same day arrived on 17 December. The Appellant has produced no proof of posting.

15 3. Upon review by HMRC, the Review Officer advised the Appellant that he was sent a guidance letter dated on 3 October 2012 reminding him of his obligations as a contractor. This letter reminded the Appellant that the monthly return should be sent using the large letter postal rate, that ordinary first class post is insufficient and that proof of posting would be required in appeals relating to postal delay. The Appellant was further advised that the Post Office provides receipts free of charge showing the date of postage.

4. HMRC contend that the penalty may only be set aside if the Appellant had a reasonable excuse. No evidence of posting has been provided to date.

20 5. HMRC further contends that it is the responsibility of the Appellant to ensure the regulations are followed. This appeal does not contain anything which shows that something unexpected or unusual prevented the Appellant submitting the return on time.

25 6. In the case of *The Commissioners for Her Majesty's Revenue and Customs and Anthony Boshier* [2013] UKUT 0549 (TCC) the Upper Tier Tribunal held that the scheme of the legislation coupled with the right to apply for judicial review does not infringe a taxpayer's rights under the European Convention on Human Rights and the Human Rights Act 1998. The Tribunal also held that the penalties (subject to mitigation in any particular case) imposed by the regime in general are not  
30 disproportionate.

7. The Tribunal agrees with the views of Judge Colin Bishopp in the First Tier Tribunal case of *Energys Holdings UK Limited* [2010] UIKFTT 20 that 'it seems unlikely that a delay of only a day might ever, without more, amount to a reasonable excuse'.

35 8. Following the decision of the Upper Tier Tribunal in *Hok Ltd* the Tribunal has no jurisdiction to discharge or adjust a fixed penalty which is properly due because it thinks it is unfair.

9. Accordingly the appeal is dismissed and the penalty of £100.00 remains due for payment.

10. 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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**Alastair J Rankin**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 06 June 2014**

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