



**TC03740**

**Appeal number: TC/2014/01774**

*Income tax – individual tax return – penalty for late filing – whether reasonable excuse*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**NOLA ALFRED**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE WDF COVERDALE**

**The Tribunal determined the appeal on 13.06.2014 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 01.04.2014 v(with enclosures), HMRC's Statement of Case submitted on 01.05.2014 (with enclosures) and the Appellant's Reply dated 28.05.2014 (with enclosure).**

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## DECISION

1. The Tribunal decided that the Individual Tax Return Late Filing Penalty dated  
5 18.02.2014 was properly issued by the Respondents.

2. The appeal is dismissed.

3. The Tribunal found that the filing date for the appellant's non-electronic Return  
for the year 2012-2013 was 31.10.2014. The appellant attempted to file a paper  
Return on 11.07.2013 but it was returned to her by the Respondents because of a lack  
10 of clarity. She further attempted to file a paper Return on 29.08.2013 but it was again  
returned to her by the Respondents for review of her UK property.

4. The Tribunal is made aware that the Appellant made a further attempt at filing  
her Return on 24.03.2014 but it was again returned to her because the property pages  
were not completed and some information was incorrect. The Tribunal is also  
15 informed that at the date of preparation of the Respondent's Statement of Case  
(01.05.2014) a complete and valid Return had still not been received by the  
Respondents.

5. The Tribunal further found that there was no reasonable excuse for the failure to  
file the Return on time. In particular the rejection by the Respondents of two invalid  
20 Returns did not absolve the Appellant from her responsibility to file a valid return;  
there is no medical evidence of the Appellant's illness to confirm that it was of a  
nature or degree that would have prevented her from attending to her personal and  
business affairs immediately before the due date; it is noted that her illness did not  
prevent her from completing and submitting two Returns (albeit invalid) in July and  
25 August 2013; she had ample time, after the two rejections, to attend to the completion  
of a valid Return; there is no record of her contacting the Respondents for any help or  
advice regarding personal difficulties in completing the Return.

6. The appellant pleads hardship in her Notice of Appeal; that is not a ground for  
mitigating the penalty.

7. The test applied by the Tribunal in considering the matter of reasonable excuse  
30 is whether the exercise of reasonable foresight and of due diligence and a proper  
regard for the fact that the Return would become due on a particular date would not  
have avoided the default. The facts and chronology of events, set out in the Notice of  
Appeal and the Respondent's Statement of Case, disclose that such foresight and  
35 diligence by the Appellant would have avoided the default.

8. In so far as the Appellant may suggest that the imposition of the penalty is  
disproportionate, unjust or unfair, those arguments have already been disposed of by  
the Upper Tribunal in *HMRC v Hok* [2012] UKUT 363 (TCC) and *HMRC v Total  
Technology (Engineering) Ltd* [2012] UKUT 418 (TCC). In the former it was made  
40 clear that the First-tier Tribunal has no jurisdiction to determine the fairness of a  
penalty imposed by statute. It is plain from a perusal of the latter that a penalty of the

magnitude of that imposed in this case could not be described as disproportionate even if there were jurisdiction to deal with that argument.

5 9. 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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**WDF COVERDALE  
TRIBUNAL JUDGE**

**RELEASE DATE: 18 June 2014**