



**TC03811**

**Appeal number: TC/2014/02374**

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

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**HENRY BAKER**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE WDF COVERDALE**

**The Tribunal determined the appeal on 17.07.2014 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 29.04.2014 (with enclosures) and HMRC's Statement of Case submitted on 16.05.2014 (with enclosures).**

## DECISION

- 5 1. The Tribunal decided that the Individual Tax Return Late Filing Penalty dated 18.02.2014 in respect of the year 2012-2013 in the sum of £100 was properly issued by the Respondents.
2. The appeal is dismissed.
- 10 3. The Tribunal found that the filing date for the Return was 31.10.2013 for a non-electronic return or 31.01.2014 for an electronic return. An electronic return was received by the Respondents on 14.03.2014 i.e. 42 days late.
4. The Tribunal further found that there was no reasonable excuse for the late filing of the 2012-2013 Tax Return.
- 15 5. A Notice to file the Return was issued by the Respondents on 06.04.2013, giving the Appellant ample time to make arrangements to submit his Return
6. It is noted that the Respondents have no record of an electronic return having been received from the Appellant prior to 14.03.2014. The Appellant says that he encountered problems with the online filing process on 31.01.2014; he evidently waited until the last possible day to attempt electronic filing. He had filed his returns  
20 online since 2007-2008 and he will have known that a successful submission is acknowledged by the Respondents electronically; the absence of such an acknowledgment put him on notice that any attempted electronic submission on 31.01.2014 had failed.
7. The Appellant did not thereafter persevere in his attempts to achieve an online  
25 submission. Indeed, even after he will have received the Penalty Notice on or shortly after 18.02.2014 he still waited nearly one month before making a further attempt.
8. The Tribunal has also noted that the Respondents evidently have no records to indicate any significant system failures on 31.01.2014. There is also no record of the Appellant contacting the Respondents on or about that date to report any problem.
- 30 9. The fact that the Appellant paid the tax that was due on his Return promptly on 31.01.2014 does not assist him in this appeal which relates to the filing of the Return, not the payment of tax.
- 35 10. The test applied by the Tribunal in considering the matter of reasonable excuse 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 Respondents' Statement of Case, disclose that such foresight and diligence by the Appellant would have avoided the default.

11. 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* UKUT 363 (TCC) and *HMRC v Total Technology (Engineering) Limited* UKUT 418 (TCC). In the former it was made clear  
5 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 the Tribunal had jurisdiction to deal with the issue.

12. This document contains full findings of fact and reasons for the decision. Any  
10 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  
15 “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

**WDF COVERDALE  
TRIBUNAL JUDGE**

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**RELEASE DATE: 18 July 2014**