



TC03975

Appeal number: TC/2014/02813

Income Tax – penalty for late filing of annual return – failed to tick terms and conditions box – no reasonable excuse

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**MISS PAMELA J NEWTON
t/a
PAMMYS CLEANING**

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE ALASTAIR J RANKIN

The Tribunal determined the appeal on 28 August 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 16 May 2014 (with enclosures) and HMRC's Statement of Case submitted on 30 June 2014 (with enclosures)

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DECISION

5 1. This is an appeal by Miss Pamela J Newton trading as Pammys Cleaning against a penalty assessment of £100.00 issued by HMRC on 18 February 2014 for the late filing of her annual tax return for the year ended 5 April 2013.

2. A Notice to file her annual return for the year ended 5 April 2013 was issued to Miss Newton by HMRC on 6 April 2013. The notice advised Miss Newton to file a non-electronic return by 31 October 2013 or an electronic return by 31 January 2014.
10 As no return was received by HMRC by 31 January 2014 the penalty assessment was issued on 18 February 2014. The return was filed electronically on 13 March 2014.

3. Miss Newton filed an appeal against penalties on 3 March 2014 using Form SA370 Appeal advising HMRC that 'I am not late with my tax return as I did it on line in January 2014'.

15 4. By letter dated 20 March 2014 HMRC advised Miss Newton that she did not have a reasonable excuse as according to their records the return was actually filed online on 13 March 2014.

5. Miss Newton on 27 March 2014 using Form SA634 requested a review on the basis that having checked her on line submission she discovered her return had not
20 been submitted as she did not tick the box for terms and conditions and as far as she was aware it had been submitted to HMRC.

6. By letter dated 24 April 2014 HMRC upheld the original penalty assessment as Miss Newton had not provided a reasonable excuse. HMRC accepted that Miss Newton had attempted to file her return online before the deadline but as she had
25 previously filed online she should have been aware that a submission receipt reference was not an indication that a return had been received or transmitted. Miss Newton should have been aware that she should have received on-screen confirmation that the submission process was 100% complete and also a separate email confirming that HMRC had safely received the return.

30 7. Miss Newton appealed to this Tribunal stating that when she filed online she did not wait for a reference number as she thought she had fully completed her return. Also she is not making enough profit from her business to be paying tax so she feels that a penalty is a bit extreme.

The Law

35 8. The filing date is determined by Section 8(1D) Taxes Management Act 1970 which states that a non-electronic return must be submitted on or before 31 October and an electronic return must be submitted on or before 31 January following the end of the tax year.

9. Paragraph 3 of Schedule 55 Finance Act 2009 provides for a penalty of £100.00 if the return is not received by the due date.

10. Paragraph 23(1) of Schedule 55 Finance Act 2009 provides that an appeal against a late filing penalty will be successful where the taxpayer shows that there is reasonable excuse.

The Decision

11. There is no statutory definition of reasonable excuse. It is a matter to be considered in the light of all the circumstances of the particular case. Miss Newton has been filing her returns electronically since 2010/11.

12. 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.

13. Accordingly the Tribunal rejects the appeal of Miss Newton as she had no reasonable excuse for not filing the return by the due date. Although Miss Newton's failure to tick the terms and conditions box may have been an honest mistake, a failure to follow the legal requirements has resulted and HMRC must be consistent in its approach to all taxpayers.

14. The penalty of £100.00 remains due for payment by Miss Newton.

15. 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.

ALASTAIR J RANKIN
TRIBUNAL JUDGE

RELEASE DATE: 2 September 2014