



TC03274

Appeal number: TC/2013/07211

***PAYE – SELF-ASSESSMENT – LATE FILING OF RETURN –
ACCOUNTANTS HAD PROBLEMS WITH THEIR SOFTWARE WHEN
TRYING TO FILE ONLINE – NO EVIDENCE OF THIS - APPELLANT
SAYS NOT HIS FAULT- WHETHER REASONABLE EXCUSE - NO –
APPEAL DISMISSED***

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MICHAEL FRYSTAL

Appellant

- and -

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

TRIBUNAL: JUDGE N A BAIRD

The Tribunal determined the appeal on 20 January 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 15 October 2013 (with enclosures), and HMRC's Statement of Case submitted on 7 November 2013(with enclosures).

DECISION

1 The appellant appeals against the decision of HMRC to impose a penalty of £100
5 under Paragraph 3 of Schedule 55 to the Finance Act 2009 for the late filing of his individual tax return for the year ending 5 April 2012. An electronic return was received by HMRC on 15 March 2013.

10 2. In the Notice of Appeal the appellant's accountants say that they had technical problems while filing on 31 January 2013 but had not received an error message. When requesting a review they submitted that HMRC's website lists technical problems during the preparation of an online return as a reasonable excuse for lateness.

15 3. The position of HMRC is that the accountants had not provided any evidence of their problems and indeed no details. There is advice on HMRC's website about how such problems can be evidenced. HMRC say too that the accountants in their professional capacity would have been familiar with the self-assessment process and
20 would know that a receipt and reference number is issued when the filing of a return is successful. The appellant had submitted that he did not have the money to pay the penalty and in any event the failure to file on time was not his fault. HMRC say that lack of funds cannot constitute a reasonable excuse and the appellant's responsibility
25 to file his return on time cannot be delegated to a third party. HMRC conclude that the appellant had not established that on a balance of probabilities there is a reasonable excuse for his failure to pay his tax on time.

4. If a person is to rely on reasonable excuse, this must have existed for the whole of the period of default. A reasonable excuse is normally an unexpected or unusual
30 event, either unforeseeable or beyond the person's control, which prevents him from complying with an obligation when he otherwise would have done. The matter has to be considered in the light of the actions of a reasonable prudent tax payer exercising foresight and due diligence and having proper regard for his responsibilities under the Taxes Act.

35 5. I agree with the submissions of HMRC in this case. It is not unreasonable to take the view that accountants dealing with PAYE will be aware that a receipt and reference number are issued when a tax return is successfully filed and that some evidence of a claimed technical fault would be required. Taking account of all the
40 circumstances I find that the appellant has not established that he has a reasonable excuse for his failure to file his return on time.

6. I dismiss the appeal.

45 7. 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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**N A BAIRD
TRIBUNAL JUDGE**

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RELEASE DATE: 28 January 2014