



TC01656

Appeal number: TC/2011/04930

P35 return—Penalty for late return (Taxes Management Act 1970 s.98A)—Reasonable excuse—Appeal dismissed

FIRST-TIER TRIBUNAL

TAX

TESSA SCOTT

Appellant

- and -

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

Respondents

TRIBUNAL: J. BLEWITT (TRIBUNAL JUDGE)

The Tribunal determined the appeal on 24 November 2011 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 26 June 2011 and HMRC's Statement of Case submitted on 12 August 2011.

DECISION

1. This is an appeal against a penalty totalling £500 imposed pursuant to Section 98 (2) Taxes Management Act 1970 (“TMA”) in respect of the late filing of the Appellant’s P35 employer’s annual return (P35) for the tax year 2009/2010.

The relevant legislation

2. Regulation 73(1) of the Income Tax (Pay As You Earn) Regulations 2003 imposes on an employer the obligation to deliver to HMRC a P35 return before the 20th day of May following the end of a tax year. Paragraph (10) of that regulation provides that s.98A of the Taxes Management Act 1970 (the “TMA”) applies to paragraph (1) of that regulation.

3. Section 98A of the TMA relevantly provides as follows:

(2) *Where this section applies in relation to a provision of regulations, any person who fails to make a return in accordance with the provision shall be liable—*

(a) *to a penalty or penalties of the relevant monthly amount for each month (or part of a month) during which the failure continues, but excluding any month after the twelfth or for which a penalty under this paragraph has already been imposed, ...*

(3) *For the purposes of subsection (2)(a) above, the relevant monthly amount in the case of a failure to make a return—*

(a) *where the number of persons in respect of whom particulars should be included in the return is fifty or less, is £100, ...*

4. Section 100(1) of the TMA provides for HMRC to make a determination imposing a penalty under s.98A of the TMA in such amount as it considers correct or appropriate. Section 100B of the TMA provides for an appeal against the determination of that penalty. Section 100B(2)(a) provides that in the case of a penalty which is required to be of a particular amount, the Tribunal may:

(i) *if it appears ... that no penalty has been incurred, set the determination aside,*

(ii) *if the amount determined appears ... to be correct, confirm the determination, or*

(iii) *if the amount determined appears ... to be incorrect, increase or reduce it to the correct amount.*

5. Section 118(2) of the TMA provides for reasonable excuse:

5 *For the purposes of this Act, a person shall be deemed not to have failed to do anything required to be done within a limited time if he did it within such further time, if any, as the Board or the tribunal or officer concerned may have allowed; and where a person had a reasonable excuse for not doing anything required to be done he shall be deemed not to have failed to do it unless the excuse ceased and, after the excuse ceased, he shall be deemed not to have failed to do it if he did it without unreasonable delay after the excuse had ceased.*

Facts

10 6. The filing date for the end of year return was 19 May 2010. The return was filed online on 7 February 2011. A first penalty notice was issued on 27 September 2010 in the sum of £400 covering the period 20 May 2010 to 19 September 2010.

Submissions

15 7. The Appellant's Notice of Appeal dated 26 June 2011 refers to two letters which set out the grounds of appeal relied upon. A letter from the Appellant to HMRC dated 15 October 2010 stated that neither the Appellant nor her husband are experts in company tax, form, rules and regulations and "we have been blind to any subsequent letters which looked too complicated to understand and therefore they were not dealt with." The Appellant stated that the £400 penalty jolted her into action, although
20 further assistance was required to deal with the matter swiftly.

8. By letter dated 3 March 2011 from the Appellant to the Debt Management Department, the Appellant appealed against the £400 penalty. The Appellant wrote to HMRC in October 2010 and has since completed all relevant forms requested and paid all tax due. The Appellant's tax was dealt with by an agent, Nanny Tax, as the
25 Appellant employed only one employee for the period July 2009 to October 2009. The Appellant believed that all forms had been completed by the agent and since receiving the penalty, the Appellant worked with the agent to resolve all matters. The Appellant was genuinely unaware that the return was outstanding until October 2010.

9. A letter from the Appellant's agent to the Appellant dated 2 February 2011 was
30 also exhibited. The letter enclosed the P45 form and explained what action should be taken by the Appellant in respect of the P45. Confirmation was also given in the letter that the tax year end return for 09/10 would be dealt with by the agent and that HMRC are at liberty to charge penalties for late returns.

10. HMRC's Statement of Case dated 12 August 2011 can be summarised as follows:
35 HMRC's records confirm that a P35PN Employer Notification was issued to the Appellant on 31 January 2010. This form indicated that the return had to be filed online by 19 May 2010. The return was not received by HMRC until 7 February 2011. The penalties have been correctly charged in accordance with legislation. Reliance on an agent or 3rd party cannot constitute a reasonable excuse. The
40 responsibility rests with the taxpayer to ensure that all legislation and regulations are complied with; the responsibility cannot be transferred to an agent. The Appellant

employed one employee and registered as an employer; she was therefore aware of the requirement to fulfil her tax obligations. Information and assistance is available via the Internet, HMRC's helpline and public notices; the Appellant's lack of knowledge does not provide a reasonable excuse. It is accepted that PAYE deductions were paid, however the return was submitted in excess of 3 months of the penalty notice having been issued.

Decision

11. The Tribunal notes that the Appellant accepts that the return was filed late.

12. The sole issue for this Tribunal to determine is whether or not there was a reasonable excuse for the late submission of the return.

13. The Tribunal found as a fact that it is ultimately the responsibility of the Taxpayer to ensure that its obligations have been fulfilled. Reliance on an agent cannot absolve the Appellant of this responsibility and does not provide the Appellant with a reasonable excuse.

14. The Tribunal found as a fact that advice and assistance is widely available to the public. The Tribunal notes that a P35PN Employer Notification was issued to the Appellant on 31 January 2010 which indicated that the return had to be filed online by 19 May 2010. There is no evidence before the Tribunal that the Appellant sought assistance until after the due date for filing the return had expired. It is also accepted by the Appellant that "we have been blind to any subsequent letters which looked too complicated to understand and therefore they were not dealt with." The Tribunal notes that the return was not submitted until February 2011, a number of months after the penalty notice had been issued. The Tribunal found as a fact that the inexperience or lack of knowledge on the part of the Appellant did not amount to a reasonable excuse, particularly bearing in mind the delay in submitting the return after the Appellant became aware that the return was outstanding.

15. It is accepted that the Appellant employed one employee and that PAYE deductions were paid. The Tribunal found as a fact that this was a separate issue and did not negate the Appellant's responsibility to submit the End of Year return by the due date. The penalty relates to the late filing of the return and the Tribunal found as a fact that payment of monies due or the number of employees did not provide the Appellant with a reasonable excuse for the late submission of the return.

16. The Tribunal found as a fact that the penalties were charged in accordance with the legislation set out above and therefore has no power to mitigate the penalties which are correct.

17. The burden is on the Appellant to establish a reasonable excuse, on a balance of probabilities. The Tribunal finds that the Appellant has not discharged that burden.

18. The Tribunal confirms the penalties and dismisses the appeal.

19. 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.

10

TRIBUNAL JUDGE
RELEASE DATE:13/12/2011

15