



**TC01680**

**Appeal number: TC/2011/05645**

*Form P11D (b)—Penalty for late return—Appeal dismissed*

**FIRST-TIER TRIBUNAL**

**TAX**

**ROWLAND MAY LTD**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: J. BLEWITT (TRIBUNAL JUDGE)**

**The Tribunal determined the appeal on 17 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 19 July 2011, HMRC's Statement of Case submitted on 30 August 2011.**

## DECISION

1. This is an appeal against penalties totalling £900 imposed as a result of the late submission of Form P11D (b) for the tax year 2009/2010.

### 5 Facts

2. The filing date for the Form P11D (b) was 6 July 2010. The P35 return was filed online on 17 May 2010 with the declaration at section 6 ticked to state that no P11D or P11D (b) returns were due. On 23 March 2011 two P11D's were received by HMRC. A P11D (b) was issued for completion on 25 March 2011 and received by  
10 HMRC on 19 April 2011 for £1,061.89. A penalty notice in the sum of £900 was issued on 20 April 2011 for the period 7 July 2010 to 9 March 2011.

### Legislation

3. Regulation 80 of the Social Security Regulations 2001 provides for a P11D (b) to be submitted no later than 6 July following the end of the tax year.

15 4. Regulation 81 (2) (a) provides that:

*Any person who fails to make a return referred to in paragraph (1) by the date which applies to him under regulation 71(1), 72(2) or 73(2), may be liable—*

(a) *within 6 years after the date of that failure, to a penalty of the relevant monthly amount for each month (or part of a month) during which the failure continues but  
20 excluding any month after the twelfth, or for which a penalty under this paragraph has already been imposed;*

5. The amount of the penalties is set by Regulation 81 (4) (a):

*For the purposes of paragraph (2), “the relevant monthly amount” in the case of a failure to make a return is—*

25 (a) *where the number of earners in respect of whom particulars of the amount of any Class 1A contribution payable should be included in the return is 50 or less, £100;*

6. Reasonable excuse is found at Regulation 81 (9):

30 *For the purposes of this regulation a person shall be deemed not to have failed to have done anything required to be done within a limited time if he—*

(a) *did it within such further time as the Board allowed; or*

(b) *had a reasonable excuse for the failure and if that excuse ceased, did it without unreasonable delay after that excuse ceased.*

7. The powers of the Tribunal are found in section 100B of Taxes Management Act 1970:

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

5 *(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.*

### **Submissions**

10 8. By Notice of Appeal dated 19 July 2011, the Appellant appealed against the penalties imposed. The grounds relied upon by the Appellant in support of its appeal are set out in a letter dated 13 May 2011 and can be summarised as follows:

(a) The Appellant has always filed its returns on time over many years of business;

15 (b) Three years ago the two brothers who were directors of the Appellant Company fell out and the split became increasingly acrimonious with the end result that one was purchased out of the company during 2010;

(c) The remaining director and shareholder has, since the buyout and before, had significant difficulties locating missing paperwork;

20 (d) His time over the past three years has been spent keeping the company functioning properly at a time when disputes were constant and the full administrative workload fell on him alone;

(e) As a result, the Appellant was unable to access and produce the information required to complete the P11D;

25 (f) The potential penalty represents approximately 84% of the Class 1A National Insurance Contributions liability for the year.

9. HMRC's Statement of Case can be summarised as follows: HMRC query why the Appellant was not aware at 17 May 2010 when the P35 was completed, that a P11D and P11D (b) were required. The Appellant could have contacted HMRC for  
30 advice when he was unable to locate the required information prior to 6 July 2010. Legislation is designed to treat all taxpayers fairly and equally; it is the taxpayer's responsibility to ensure that the legislation is correctly followed. The penalty charged has been correctly calculated in accordance with legislation.

### **Decision**

35 10. The issue for the Tribunal to determine is whether there is a reasonable excuse lasting the period of the default. The Tribunal is sympathetic to the difficulties experienced by the Appellant, however case law has made clear that in assessing the

issue of reasonable excuse, the responsibility rests with the taxpayer to ensure that its tax obligations are met.

5 11. The Tribunal notes that there was a significant period of time during which the Appellant could have contacted HMRC to discuss the difficulties he was facing and the issue of missing information. In the absence of any attempt by the Appellant to seek to resolve his difficulties, the Tribunal does not consider that it acted as a prudent and diligent employer seeking to comply with its statutory obligations.

10 12. The Tribunal accepts that the Appellant has always filed its returns on time over many years of business, however this does not provide the Appellant with a reasonable excuse for the late submission of the P11D (b) form.

15 13. The penalties imposed are set in accordance with the legislation and therefore the fact that the penalty represents approximately 84% of the Class 1A National Insurance Contributions liability for the year does not constitute a reasonable excuse. The amount of the penalty appears to be correct; in such circumstances the Tribunal cannot mitigate the penalty.

14. The appeal is dismissed and penalty confirmed.

20 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.

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**TRIBUNAL JUDGE**  
**RELEASE DATE: 20 December 2011**

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