



TC01753

Appeal number: TC/2011/05215

*Section 98A (2) and (3) Taxes Management Act 1970 – inaccurate
Employer’s P35 End of Year return submitted late – no reasonable excuse –
appeal not allowed*

FIRST-TIER TRIBUNAL

TAX

CHATTHAS LTD

Appellant

- and -

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

Respondents

TRIBUNAL: MICHAEL S CONNELL (TRIBUNAL JUDGE)

The Tribunal determined the appeal on 18 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 6 July 2011 and HMRC’s Statement of Case submitted on 26 August 2011

DECISION

- 5 1. This is an appeal by the Appellant Company Chatthas Limited against penalties of £600 imposed under s 98A (2) and (3) Taxes Management Act 1970 following the late submission of the Employer's P35 Annual Return for the tax year ending 5 April 2009.
- 10 2. An employer has a statutory obligation to deliver a Employer Annual Return before 20 May following the end of a tax year in accordance with Regulation 73 of the Income Tax (PAYE) Regulations 2003 and paragraph 22 of Schedule 4 of the Social Security (Contributions) Regulations 2001. If the full Return does not reach HMRC by 19 May following the end of the tax year HMRC may impose a penalty. Interim penalties are charged under s 98A (2)(a) and (3) TMA where a
15 Return remains outstanding after the due date. The penalties are fixed at £100 per month or part of a month during which the failure continues.
- 20 3. The filing date for the Appellant's Employer's P35 End of Year Return was 19 May 2010. A nil Return was filed on 19 May 2010. On 22 September 2010 HMRC informed the Appellant by letter that the nil Return was incorrect as statements of £3,449.20 had been made during the tax year 2009-10. Payments had been made to HMRC on 6 August 2009, 1 December 2009 and 10 March 2010. P14s returned with the Appellant's P35 were for the two directors of the company. The two directors had been in the employment of the company the
25 previous year and P14s had been returned for them for that year.
4. On 27 September 2010 a first interim penalty notice of £400.00 was issued in respect of the months 20 May 2010 to 19 September 2010.
- 30 5. HMRC say that the Appellant had been charged late filing penalties for delays in submitting its Employer's End of Year Return in 2006-07 and therefore would have been aware of the consequences of not submitting a correct on time.
6. On 19 November 2010 the Return was filed on line.
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7. On 24 November 2010 a final penalty notice of £200 was issued, calculated for the two months 20 September 2010 and 19 November 2010.
- 40 8. HMRC wrote to the Appellant on 25 February 2011 with a statement of liability in the total sum of £600 representing the two penalties that had been issued. The Appellant appealed the penalties on 4 March 2011. Following receipt of a 64-8 authority for the agent to act on behalf of the Appellant HMRC responded to the appeal on 29 June 2011 advising that the appeal was received outside the 30 day limit from the date the penalty notice was issued.
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9. On 5 July 2011 the Appellant appealed to the Tribunal. HMRC do not object to the Appellant's application for a late appeal.

5 10. When a person appeals a penalty they are required to have a reasonable excuse must have existed throughout the entire period of default. There is no definition in law of 'reasonable excuse' which is a matter to be considered in the light of all the circumstances of the particular case. A reasonable excuse is normally regarded as an unexpected or unusual event, either unforeseeable or beyond a tax-payer's control, which prevents him from complying with his obligations when he would otherwise have done.

10 11. It is the responsibility of an employer to ensure that its tax affairs are up to date and correct Returns are submitted by the due date. Any excuse must exist throughout the entire period of default.

15 12. No explanation has been offered as to the reason for the incorrect P35 filed on 19 May 2010 and although the Appellant was unaware that the Return was incorrect until notified by HMRC on 22 September 2010 there was a further two month delay before an adjusted and correct P35 was refiled on 19 November 2010. Accordingly the Tribunal finds that the Appellant has not shown that a reasonable excuse existed throughout the entire period of the default. The appeal is accordingly dismissed and the penalty confirmed in accordance with s100B Taxes Management Act 1970.

20 13. 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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MICHAEL S CONNELL

35 **TRIBUNAL JUDGE**
RELEASE DATE: 17/01/2012