



TC02928

Appeal number: TC/2012/04958

*TYPE OF TAX – PAYE – late submission of annual Return of Class 1A
National Insurance contributions due Return of expenses and benefits -
Employer declaration (Form P11D(b) – whether scale of penalty is
reasonable , and whether penalty is unfair and should be reduced -
Decision of Upper Tribunal in Hok Ltd applies. Whether reasonable excuse
for late submission of return - No.*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

GIPPING PRESS LIMITED

Appellant

- and -

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

**TRIBUNAL: PRESIDING MEMBER PETER R. SHEPPARD
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The Tribunal determined the appeal on 22 August 2013 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 13 April 2012 with enclosures, and HMRC's Statement of Case submitted on 18 June 2013 with enclosures. The Tribunal wrote to the Appellant's representative on 25 June 2013 indicating that if they wished to reply to HMRC's Statement of Case they should do so within 30 days. No reply was received.

DECISION

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1. Introduction

This considers an appeal against a penalty of £400 levied by HMRC for the late filing by the appellant of its Return of Class 1A National Insurance contributions due
10 Return of expenses and benefits - Employer declaration (Form P11D(b)) for the year 2010 – 2011. By a direction of the Tribunal dated 30 April 2012 the appeal was stood over until 60 days after the issue of its decision by the Upper Tribunal (Tax & Chancery Chamber) in the matter of Hok Ltd. That decision was released on 23 October 2012.

15 2. Legislation

Income Tax (PAYE) Regulations 2003, in particular Regulations 85 to 87.

Social Security (Contributions) Regulations 2001 in particular Regulations 80 and 81.

3. Case law

HMRC v Hok Ltd. [2012] UKUT 363 (TCC)

20 4. Facts

Regulations 85 to 87 of Income Tax (PAYE) Regulations 2003 and Regulations 80 and 81 of Social Security (Contributions) Regulations 2001 require an employer to deliver to HMRC a complete Return of Class 1A National Insurance contributions due
25 Return of expenses and benefits - Employer declaration (Form P11D(b)) before 7 July following the end of the tax year. In respect of the year 2010-2011 on 10 April 2011 HMRC sent the appellant a form P11D (b) for completion. On 13 April 2011 the appellant filed its 2010-2011 P35 return which confirmed that a form P11d(b) was due. On 19 June 2011 HMRC sent the appellant a reminder. On 14 November 2011
30 HMRC sent the appellant a late filing penalty notice for £400 for the period 7 July 2011 to 6 November 2011. The appellant failed to submit Form P11D (b) until 19 April 2012.

5. The appellant's agent, Birley & Co. accountants, submits that £400 is an excessive penalty for a genuine error and should be reduced to nil.

6. The level of the penalty and whether it is unfair is covered in the decision of the
35 Upper Tribunal in the case of Hok Ltd. That decision also considers whether the jurisdiction of the First-tier Tribunal includes the ability to discharge a penalty on the grounds of unfairness. At Paragraph 36 of that decision it states "...the statutory provision relevant here, namely TMA s 100b, permits the tribunal to set aside a

penalty which has not in fact been incurred, or to correct a penalty which has been incurred but has been imposed in an incorrect amount, but it goes no further. it is plain that the First-tier Tribunal has no *statutory* power to discharge, or adjust a penalty because of a perception that it is unfair.”

5 7. The level of the penalties has been laid down by parliament. The only other consideration that falls within the jurisdiction of the First-tier Tribunal is whether or not the appellant has reasonable excuse for his failure as contemplated by the Social Security (Contributions) Regulations 2001 Regulation 81 (9).

10 8. The Appellant’s agent states that a P11D form and payment of the class 1a liability was posted in Ipswich on 30 June 2011 ie before 6 July 2011. A further copy was sent to HMRC’s Newcastle upon Tyne office on 20 November 2011 and a third copy to the same address on 8 February 2012. HMRC accept that a form P11D and payment were received prior to 6 July 2011 but a form P11D (b) was not submitted until 19 April 2012.

15 9. The Appellant’s agent also says a form P11D (b) was not submitted as it was not received. They say the form duplicates the information already provided on the Form P11D. In past years when a form P11D (b) form was received it was returned on time. HMRC point out that in fact the form P11D does not include details of the class 1a National Insurance contributions due. This information is required on a form P11D
20 (b) which is required from all employers completing a form P11D. HMRC point out that HMRC’s guidance on completion of form P11D confirms that as well as completing a Form P11D an employer is also required to submit Form P11D (b). They also say that a good past record of providing returns has no bearing on the penalty charged.

25 10. It appears to the Tribunal that the late return was an unfortunate and genuine error by the appellant. The form P11D and payment for 2010-2011 were made in time but the need to also submit a form P11D (b) was overlooked. No reason for this error was provided.

30 11. HMRC has applied the legislation correctly and calculated the amount of the penalties accurately for the periods 7 July 2011 to 6 November 2011 (£400). The appellant has not established a reasonable excuse for the late submission of the Return of Class 1A National Insurance contributions due Return of expenses and benefits - Employer declaration (Form P11D(b)) for the year 2010 – 2011. Therefore the appeal is dismissed.

35 12. 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
40 “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

**PETER R. SHEPPARD
TRIBUNAL PRESIDING MEMBER**

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RELEASE DATE: 30 September 2013