



TC02978

Appeal number: TC/2012/06519

***PENALTY imposed for the late submission of the employer annual return-
appellant's agent claimed that return had been submitted online before the
due date but was unable to produce a successful submission notice – appeal
dismissed –agent failed to resubmit the return until 6 June 2012 and the
appellant had no reasonable excuse for the late submission of the return***

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

A and J HOWELLS

Appellant

- and -

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

TRIBUNAL: JUDGE SANDY RADFORD

The Tribunal determined the appeal on 7 May 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 11 June 2012 (with enclosures) and HMRC's Statement of Case submitted on 29 January 2013 (with enclosures).

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DECISION

1. This is an appeal against the penalty of £1200 imposed by HMRC for the late submission of the employer annual return for tax year 2010/11.

Background and facts

2. The return was due on or before 19 May 2011. It was filed online on 6 June 2012.

3. A notice imposing a penalty of £400 was sent to the appellant on 26 September 2011.

4. On 15 October 2011 the appellant's agent acknowledged the notice and appealed the penalty on the grounds that she had submitted the return online on 16 May 2011. However the agent was unable to support this with a successful submission notice.

5. The Tribunal checked all the papers submitted by the agent but although it appeared that the agent had started the process of submission it was not completed and it appeared that the agent had been timed out before a successful submission was made.

6. When a successful return is submitted the operator receives an email acknowledging successful receipt of the return but the appellant's agent was unable to produce this as she had not received it due to her failure to make a successful submission.

7. HMRC sent the agent a letter on 12 January 2012 rejecting the appeal.

8. No request for a review was made within the permitted time scale so HMRC sent a letter on 19 March 2012 informing the appellant that as HMRC had not received any further correspondence since its rejection of the appeal, the appeal was now treated as settled.

9. HMRC sent the appellant a final late penalty notice on 28 May 2012 for £800 for the period from 20 September 2011 to 19 May 2012.

10. Although the agent was sent a rejection of its appeal on 12 January 2012, the agent did not try to rectify the situation until a return was successfully submitted on 6 June 2012.

Legislation

11. Regulation 73 of the Income Tax (PAYE) Regulations 2003 states:

(1) Before 20th May following the end of a tax year, an employer must deliver to the Inland Revenue a return containing the following information.

- (2) The information is—
- (a) the tax year to which the return relates,
 - 5 (b) the total amount of the relevant payments made by the employer during the tax year to all employees in respect of whom the employer was required at any time during that year to prepare or maintain deductions working sheets, and
 - (c) the total net tax deducted in relation to those payments.
- (3) The return must be supported by the following information in respect of each of the
- 10 employees mentioned in paragraph (2)(b).
- (4) The supporting information is—
- (a) the employee's name,
 - 15 (b) the employee's address, if known,
 - (c) either—
 - (i) the employee's national insurance number, or
 - (ii) if that number is not known, the employee's date of birth, if known, and sex,
 - (d) the employee's code,
 - 20 (e) the tax year to which the return relates,
 - (f) the total amount of the relevant payments made by the employer to the employee during that tax year, and
 - (g) the total net tax deducted in relation to those payments.
- 25 (5) Paragraphs (2)(c) and (4)(g) are subject to regulation 64(7) (trade disputes).
- (6) If an employee was taken into employment after the beginning of the tax year, the employer must also provide the total amounts of—
- 30 (a) any amounts required by regulation 43(9), 52(11), 53(3) or 61(3) to be treated as relevant payments made by the employer to the employee during the tax year,
 - (b) any amounts treated as tax deducted by the employer by any of those regulations,
 - (c) the sum of the figures given under sub-paragraph (a) of this paragraph and paragraph (4)(f),
 - 35 (d) the sum of the figures given under sub-paragraph (b) of this paragraph and paragraph (4)(g).
- (7) The return must include—
- 40 (a) a statement and declaration containing a list of all deductions working sheets which the employer was required to prepare or maintain at any time during that tax year; and
 - (b) a certificate showing—
 - (i) the total net tax deducted or the total net tax repaid in the case of each employee, and
 - 45 (ii) the total net tax deducted or repaid in respect of all the employees, during that tax year.
- (8) The statement and declaration and the certificate must be—
- 50 (a) signed by the employer, or
 - (b) if the employer is a body corporate, signed either by the secretary or by a director.

(9) Paragraph (8) is subject to regulation 211(5) (authentication in approved manner if return sent electronically).

5 (10) Section 98A of TMA(1) (special penalties in case of certain returns) applies to paragraph (1).
12.

Appellant's submissions

13. The agent submitted that her belief was that the return had been successfully submitted online on 16 May 2011.

10 **HMRC's submissions**

14. HMRC contended that an agent submitting multiple returns should have been aware that if the return is successfully submitted an email from HMRC acknowledging a successful submission would be received.

15 15. HMRC submitted that the penalty had been imposed in accordance with the legislation and HMRC did not have the discretion not to charge the penalty.

16. HMRC submitted that it was the appellant's responsibility to ensure that the return was correctly submitted by the due date. Although the appellant had relied on his agent it was still the appellant's primary responsibility to make sure that the agent had carried out the requested task.

20 **Findings**

17. The Tribunal found that the appellant was primarily responsible for ensuring that the correct return was made by the due date.

18. The Tribunal found that the appellant should have insisted on the agent trying again to submit the return as soon as the first penalty notice was received.

25 19. The Tribunal found that at the same time as appealing the agent ought to have submitted the return again.

20. The Tribunal found that despite the rejection of its appeal the agent did not make another attempt to submit the return until it was successfully submitted on 6 June 2012.

30 21. The Tribunal found that the agent ought to have been aware that if the return is successfully submitted, an email from HMRC acknowledging a successful submission would be received.

22. The Tribunal found that penalty notices had been correctly issued to the appellant.

35 23. The Tribunal found that the appellant had no reasonable excuse for the late filing of the return and the penalty is hereby confirmed.

Decision

24. The appeal is dismissed.

25. 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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**SANDY RADFORD
TRIBUNAL JUDGE**

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RELEASE DATE: 15 October 2013