



TC02979

Appeal number: TC/2012/02126

INCOME TAX: Employers Annual Return (P 35 & P 14); delay in submission, belief by Appellant that he had completed electronic filing; reasonable excuse – No;

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

IAN YUILLE MACINTYRE

Appellant

- and -

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

TRIBUNAL: JUDGE CHRISTOPHER HACKING

The Tribunal determined the appeal on 3 July 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 20 January 2012 together with related correspondence. The Tribunal also read HMRC's Statement of Case submitted on 24 April 2013 (with enclosures) and the Reply from the Appellant by letter dated 12 June 2013.

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DECISION

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1. The appeal relates to the filing of the Appellant's Employer's Annual Return (P 35 and P14(s)) for the year 2010-2011. The filing date for this return was 19 May 2011. It was in fact received online by HMRC on 26 September 2011. The penalty imposed was £500.

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2. The Appellant states in his Notice of Appeal that his is a small family business. He only became aware of the problem with his Employers Annual Return filing on dealing with an unrelated matter with the Revenue. Thereupon he promptly rectified the position by effecting a valid filing of the return.

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3. The Appellant says that he genuinely believed that he had successfully filed his return by the due date. The Revenue's filing system incorporates an acknowledgment on screen when the filing has been accepted and the failure to note the same should alert the party effecting the filing to a problem. Nevertheless the Tribunal accepts that Mr Macintyre acted in good faith and did indeed believe that he had filed as required.

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4. The Appellant also complains that the Revenue's practice of only advising of the default some months after the date for filing meant that penalties built up to a figure which was unreasonable. Had he been informed sooner of the problem he would have been able to rectify the position and minimize the penalty.

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5. The legislation by which penalties are imposed where the filing of the return is late does not admit to exceptions nor to any discretion save only where a "reasonable excuse" may be established for the delay in question.

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6. There is no statutory definition of the term "reasonable excuse" and accordingly those words must be taken to have their normal meaning. In this instance no claim beyond what appears to have been a simple error in the online filing is made as to the existence of a reasonable excuse. The error cannot itself be considered as a reasonable excuse as taxpayers are expected to file correctly and thereafter to receive the online confirmation as to the receipt of the filing. It is accepted that there was in this instance an honest mistake but that does not amount in law to a "reasonable excuse" which would generally involve some circumstance which was unforeseen and outside of the Appellant's control. Furthermore a "reasonable excuse" can only justify delay whilst the circumstances constituting the excuse continue to subsist..

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7. The Tribunal has no jurisdiction to set aside a penalty other than where a reasonable excuse is established. It has no general discretion in the matter. That this is so was confirmed in the recent Upper Tribunal decision of *HMRC and HOK Limited* [2012] UKUT 363 (TCC). It was decided in that case that the jurisdiction of the First-tier Tribunal does not extend to discharging a penalty on the grounds of fairness. Its powers are limited to the legislation which confers those powers and accordingly

where no “reasonable excuse” for the delay can be made out the penalty will be upheld.

8. The Revenue’s practice of advising default some months after the due date was also considered but it was accepted by the Upper Tribunal that this was not unfair.
5 Taxpayers are deemed to be aware of the consequences of delay in filing, the penalty regime having been well publicised.

9. For the above reasons the penalty must be confirmed and the appeal cannot be allowed.

10. This document contains full findings of fact and reasons for the decision. Any
10 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
15 “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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**CHRISTOPHER HACKING
TRIBUNAL JUDGE**

RELEASE DATE: 15 October 2013

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