



TC03078

Appeal number: TC/2012/03063

PAYE – incorrect declaration – penalty –no reasonable excuse.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

SEGHILL RUGBY FOOTBALL CLUB

Appellant

- and -

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

**TRIBUNAL: JUDGE RICHARD BARLOW
WARREN SNOWDON**

Sitting in public at North Shields on 22 October 2013.

John Atherton treasurer and Sheila Burgess secretary for the Appellant

Rosalind Oliver presenting officer for the Respondents

DECISION

1. The appellant is an unincorporated rugby union club which has one employee.
5 It was required to submit an employer's annual return of PAYE for 2010/11 by 19 May 2011 and that return was required to be in two separate forms known as P35 and P14s. A P14 is required for each employee and the P35 is a composite return for all employees but as the appellant only has one employee the information is effectively the same.

10 2. In fact the appellant only submitted the P14 on time and omitted to submit its P35 until after it had received a notice of the penalties of £300 for its non-submission.

3. It was not in dispute that the appellant had failed to submit the P35 or that the P14 included all the information the respondents actually needed but the rules make it clear that both forms are required and that a penalty is due unless the taxpayer can
15 show that it had a reasonable excuse for the a late submission.

4. The Tribunal has sympathy for certain points made by the appellant. The first is that it is onerous to expect an organisation like the appellant to make its returns on-line. The second is that if the respondents had acted more quickly to warn them that the other form was needed the penalty would have been smaller. The third is that the
20 respondents had shown themselves to be incompetent by sending a letter to the appellant without a full address, which the Royal Mail had misdirected via Norwich, and which had therefore been delayed, although we find that had no effect on the amount of the penalty.

5. The legislature has decided that all such returns must be made on-line and
25 although that is arguably unreasonably onerous for a small organisation we are powerless to remedy it.

6. The Upper Tribunal decided in a case called *Hok* that, on the facts of that case, the delay which gave rise to an increased penalty is not a ground for allowing an appeal. It seems that there may be scope to argue for such a reduction if it can be
30 shown that the delay was deliberately created so as to increase the penalty. The appellant were not in a position to allege that.

7. An indication of incompetence on the part of the respondents which has not given rise to an increased penalty is also not a ground for reducing the penalty.

8. We also questioned why the respondents' could not have programmed their
35 computer, when it acknowledged receipt of P14s, to warn a taxpayer who had not also submitted a P35 that one was still required; or vice versa. Naturally Mrs Oliver was unable to answer that question and although we consider it pertinent to raise it we do not consider that it provides the appellant with an answer to the penalty because the literature and publicity provided to the appellant made it clear that both the forms are
40 required.

9. The only defence available to the appellant would be its argument that it had a reasonable excuse for the failure to submit the P35.

10. The facts so far as that is concerned are that the appellant only puts forward human error as an excuse. Illness of a key member of staff or the secretary which placed the responsibility for making the return on someone unfamiliar with the task might amount to a reasonable excuse but nothing of that sort was put forward. It is particularly pertinent to note that the appellant had made several returns in the past in the form of P14 and P 35 declarations and as we understand it at least one of those was an on-line declaration. An error, without more, is not a reasonable excuse.

11. Regrettably therefore we find there is no reasonable excuse and the appeal is dismissed. It is presumably no comfort for the appellant and certainly not for the general body of taxpayers that the respondents have probably incurred costs in excess of £300 in pursuing this penalty.

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

13.

RICHARD BARLOW
TRIBUNAL JUDGE

RELEASE DATE: 25 November 2013