



**TC03154**

**Appeal number: TC/2012/00311**

*Employer – late filing of returns – whether reasonable excuse – wrong advice  
by HMRC – appeal allowed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**LAWRENCE HOWARD**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE DR K KHAN**

**Sitting in Ashford, Kent on 8 October 2013.**

**The Appellant represented himself.**

**Karen Weare, Presenting Officer, instructed by the General Counsel and  
Solicitor to HM Revenue and Customs, for the Respondents.**

## DECISION

### Introduction

5 1. This is an appeal against the penalties imposed for the late submission of the Employer Annual Return for the tax year ending 5 April 2011.

2. An employer has statutory obligation to deliver their 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 returns i.e. the P35 and  
10 P14(s) do not reach HMRC by 19 May following the end of the tax year, HMRC will charge a penalty. The penalties are fixed at £100 for each month or part of a month during which the failure continues for each batch of 50 employees.

3. The legislation states that there is no obligation on HMRC to issue penalties in any particular pattern. However penalties are generally issued on the basis of a first,  
15 second and third interim penalty followed by final penalties.

### Facts

(1) If an employer is registered for the PAYE online service and the services has been activated, HMRC will automatically use it to send out PAYE notices which includes the notice to file an Employer Annual Return.

20 (2) HMRC records show that the online filing notification for the 2010-11 return was issued on 13 February 2011.

(3) The Employer Annual Return for 2010-11 was due to be filed online by 19 May 2011.

25 (4) The return was delivered electronically on 23 August 2011; the period of default being 96 days.

(5) On 26 August 2011 a final penalty notice for the amount of £400 was issued calculated from 20 May 2011 to 23 August 2011.

### Appellant's submission

30 4. The Appellant on 6 September 2011 made the following statement in his appeal against the penalties:

“I have tried to de-register as an employer and have spent countless on the telephone speaking to HMRC Advisers who refer me to other numbers and back to the Online-Solution.

35 After reminders from HMRC to pay monies due (which was not due) and to file of hear returns, I tried unsuccessfully to submit an End of Year Return for the 2010-2011 period.

After further demands for money, and time spent on the telephone to HMRC Advisers, I was advised to download the HMRC Basic Tools Programme which allowed me to file the End of Year Return for 2010-2011.

5 I have paid all money due and tried to the best of my ability, using the tools supplied and to make returns in a timely manner.

I have tried to fulfil my obligations as an Employer and feel that the tools supplied by HMRC are disjointed and that advice at times is woefully inadequate.

10 There has been no attempt to avoid tax payments or to deceive.”

### **HMRC's submissions**

- (1) The 2010-2011 Employer Annual Return due on 19 May 2011 was not delivered to HMRC until 23 August 2011.
- (2) The penalties are correctly charged in accordance with the law.
- 15 (3) HMRC have no records to substantiate the Appellant's claim that he spent countless hours on the phone to HMRC Advisers before being told to download the Basic Tools Update in order to file the returns or that he continually tried to close the Employer Scheme without success.
- (4) HMRC do not consider Appellant has a reasonable excuse throughout the period  
20 of default as it is his responsibility to ensure that the tax affairs are up-to-date and returns are submitted.

### **Conclusion**

- (1) This decision was given at the time of the hearing.
- (2) The taxpayer in this case was clearly trying to submit his forms and had great  
25 difficulty. HMRC gave unclear advice especially the advice given with regard to filings where there no employees. He was told that the scheme could not be closed down and to file nil returns until the year end. It appears that the scheme could have been closed down once notice was given that there were no employees. This scheme should have been closed and the taxpayer did not have  
30 to wait until year end to do so.
- (3) In the circumstances there was a reasonable excuse. This is a clear case of a taxpayer acting reasonably in trying to meet his statutory obligations.
5. Appeal allowed.
6. This document contains full findings of fact and reasons for the decision. Any  
35 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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**DR K KHAN  
TRIBUNAL JUDGE**

**RELEASE DATE: 16 December 2013**