



**TC03161**

**Appeal number: TC/2012/06949**

*Section 98A (2) and (3) Taxes Management Act 1970 - Employer's End of Year P35 return late - £300 penalty - Appellant's employee on maternity leave overlooked filing of P35 - whether reasonable excuse - no - Appeal not allowed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**NONSTOP INTERNATIONAL LIMITED**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE MICHAEL S CONNELL  
SUSAN STOTT**

**Sitting in public at Nottingham MJC Carrington Street Nottingham on 6  
August 2013**

**Mr Christopher Knapton, director of the Appellant company**

**Mr Philip Olborn, Officer of HM Revenue and Customs, for the Respondents**

## DECISION

### Decision under Appeal

- 5 1. This is an appeal by Nonstop International Limited against the £300 penalties, imposed for the late submission of the Employer's Annual Return (P35) under s 98A (2) and (3) Taxes Management Act 1970 for the tax year ending 5 April 2011.
2. An employer has a statutory obligation to make End of Year returns 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.
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3. In the case of an employer failing to make an End of Year return on time, s 98A (2) and (3) Taxes Management Act 1970 provides for a fixed penalty at £100 for each month (or part month) during which the failure continues for each batch (or part batch) of 50 employees. If the failure continues beyond 12 months a penalty can be imposed up to a maximum of the amount outstanding at 19 April i.e. it is a tax geared penalty.
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4. Regulation 205 to 205B of The Income Tax (Pay As You Earn) Regulations 2003 provides that an employer must use electronic communications to deliver their 2010/11 end of year return online.
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### The background facts

5. The filing date for the Appellant's 2010/11 return was the 19 May 2011. This had to be filed online. The return was filed online on 18 August 2011.
6. A penalty of £300 for the period 20 May 2010 to 18 August 2011 was issued on 8 February 2012
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### The Appellant's contentions

7. The Appellant's stated grounds of appeal in its request for a review by HMRC and in its notice of Appeal to the Tribunal (so far as relevant) were:
- i. "Our only employee, who also did the PAYE records was on maternity leave and told us that she had filed online in good time. She is still convinced that she filed the return correctly and we had no reason to doubt her. The directors were alerted to the non-filing when we had our annual audit of the end of the financial year in July 2011 and the accountants then immediately filed for us.
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- ii. This was our first year of trading and we export nearly all our production. We have been well supported by HMRC in dealing with import and export taxes and duties. At all times we believed that our filing was up to
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date. We relied on our employee and had no reason to doubt that all statutory filing obligations were complied with.

5           iii. We have been alerted to a potential problem encountered by early adopters of online filing in that the form did not actually submit due to it being a "practice" file. This is possibly where the error occurred. If so, this is a further reasonable excuse.

          iv. We did not receive any reminders.”

8. At the hearing Mr Knapton said that he had to accept that the P35 was late. He said that the employee who had responsibility for filing and who failed to file the P35 left to have a child. She was a director of the company and his daughter in law. She had a difficult birth and after that suffered a period of depression and was not herself. She believed that she had sent in the return, (although in fact the return had to be filed on line). Perhaps she should have delegated the task to someone else. The proprietors of the company were on a learning curve and it was just unfortunate that the P35 was overlooked.

#### HMRC's submission

9. Mr Oborn on behalf of HMRC said that there is no reasonable excuse for the late submission of the Employer's Return. HMRC submits that the action or inaction of an employee or agent does not relieve the employer from its legal obligation to ensure that its returns are filed on time. HMRC is not obliged to submit reminders and it would be unreasonable of the Appellant to expect HMRC to do so. The reasons given by Mr Knapton for the late filing did not amount to a reasonable excuse.

#### Conclusion

10. There is no definition in law of a reasonable excuse, which is a matter to be considered in the light of all the circumstances of the particular case. A reasonable excuse is normally an unexpected or unusual event, either unforeseeable or beyond a person's control, which prevents him from complying with an obligation. There were no such circumstances in this case

11. The Tribunal concludes that the penalty of £300 has been correctly imposed.

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.

**MICHAEL S CONNELL  
TRIBUNAL JUDGE**

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**RELEASE DATE: 17 December 2013**