



TC03234

Appeal number: TC/2012/03367

***PAYE – LATE LODGING OF EMPLOYER’S ANNUAL RETURN – PART
FILED IN TIME - SYSTEM NOT PROPERLY SET UP TO DEAL WITH
FORM P35 - WHETHER REASONABLE EXCUSE - NO – APPEAL
DISMISSED***

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

E-WAREHOUSE LTD

Appellants

- and -

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

Respondents

TRIBUNAL: JUDGE N A BAIRD

The Tribunal determined the appeal on 3 January 2014 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 12 January 2012 (with enclosures), and HMRC’s Statement of Case submitted on 6 June 2013(with enclosures).

DECISION

1 The appellants appeal against the decision of HMRC to impose penalties of £400
5 in terms of Section 98A (2) and (3) of the Taxes Management Act 1970, for late
submission of the Employer's Annual Return for the tax year ending 5th April 2011.
The Annual Return was to be filed online by 19th May 2011. It was filed online on 12
September 2011.

10 2. The appellants had submitted part of the return in time on 12 April 2011 but not the
P35. They say that they are prepared to pay £100 being the penalty for the first month
the return was late but they do not feel that they are responsible for the delay that
occurred after that. They had had problems with their system which required
assistance from HMRC.

15 3. The position of HMRC is that the return should have been submitted by 19 May
2011 and was not. The appellants had filed the return for the previous year online and
so were aware of the system but in any event Employers' Bulletins are issued
regularly setting out the relevant dates for filing and instructions and guidance are
20 available online. HMRC explain the system for filing, pointing out in particular that a
message is sent if the return is has not been successfully filed. In the absence of a
message confirming successful acceptance it was unreasonable for the appellants to
assume the return had been successfully filed. According to HMRC's records the
appellants contacted them on 1 August 2011 to report a filing problem. This required
25 the resetting of their employer forms 'suite' for 2011. It appears that this was problem
was fixed by 12 August. HMRC say that there is nothing in their records to suggest
any intimation of any filing problem prior to 1 August 2011. They conclude that the
appellants have not established that on a balance of probabilities there is a reasonable
excuse for their failure to file their return on time.

30 4. I have given careful consideration to the evidence before me. If a person is to rely
on reasonable excuse, this must have existed for the whole of the period of default. A
reasonable excuse is normally an unexpected or unusual event, either unforeseeable or
beyond the person's control, which prevents him from complying with an obligation
35 when he otherwise would have done. The matter has to be considered in the light of
the actions of a reasonable prudent tax payer exercising foresight and due diligence
and having proper regard for his responsibilities under the Taxes Act.

40 5. The appellants did not file their complete return in time so the penalty was
properly charged. There is a letter from them dated 20 September in which they say
that when they were advised that the Form 35 was missing they tried to file it but
their system was not set up to do it so had to ask HMRC for assistance. They say that
'eventually' the system was set up and that they were told by HMRC that a note
45 would be put on their file detailing the problems they had had in case a penalty notice
was sent out. There are no dates given on this letter so I must assume that it was 1
August that the appellants first contacted HMRC. The appellants do say that HMRC
wrote to advise them that the return had not been successfully filed. In any event the

fact that they did not have a system set up to file successfully online cannot be seen as a reasonable excuse. I appreciate that if people are not used to online filing they may not realise that an acknowledgment of successful filing is sent but the fact is that there is a legal obligation to file online in time and instructions and advice are widely available. Although HMRC did not issue a penalty notice until September 2011 and appear to have contacted the appellants prior to August, I would mention the decision in *HMRC v Hok Ltd* [2012] UKUT 363 (TCC) in which it was held that in purporting to discharge the penalties on the ground that their imposition was unfair the First-tier Tribunal was acting in excess of its jurisdiction and its decision was quashed. On the basis of Hok there is no merit in a submission that a delay of four months by HMRC in issuing a penalty notice is unreasonable.

6. I find therefore that the appellants have not established that they have a reasonable excuse for late filing and I dismiss the appeal.

7. 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.

**N A BAIRD
TRIBUNAL JUDGE**

RELEASE DATE: 14 January 2014