



TC03235

Appeal number: TC/2012/03510

***PAYE – LATE LODGING OF EMPLOYER’S ANNUAL RETURN –
PROBLEMS WITH NEW SOFTWARE – DELAY BY HMRC IN ISSUING
A REMINDER - WHETHER REASONABLE EXCUSE - NO – APPEAL
DISMISSED***

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

KAND SERVICES 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 22 February 2012 (with enclosures), and HMRC’s Statement of Case submitted on 5 June 2013(with enclosures).

DECISION

1 The appellants appeal against the decision of HMRC to impose penalties of £200
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 5 April 2011.
The Annual Return was to be filed online by 19 May 2011. It was filed online on 13
July 2011.

10 2. The appellants say that they had problems with changing their software from IRIS
to Sage. They say that for a period of two months they were unaware that the return
was overdue. They submit that HMRC was legally obliged to notify them that the
return was overdue. They have no history of filing late. The penalty should be
15 waived. They rely on the decision of the First-tier Tribunal in HMD Response
International to support their submission that it is unfair that HMRC do not send
penalty notices out until months after the return is due.

3. The position of HMRC is that the appellants accept that the return was late and
were using third-party software for which HMRC have no responsibility and no
20 support network. The obligation was on the appellants to file their return on time and
there is no legal obligation on HMRC to issue reminders or indeed penalty notices.
Decisions of the First-tier Tribunal do not set precedents. HMRC rely on the decision
in *HMRC v Hok Ltd [2012] UKUT 363*. They point out that in February 2011 they
issued a reminder to the appellants that the return had to be filed online by 19 May.
25 They say too that the return for 2008-9 had been filed late. HMRC 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.

4. . If a person is to rely on reasonable excuse, this must have existed for the whole of
30 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 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
35 Taxes Act.

5. I have given consideration to all the evidence before me. The return was filed late
and HMRC cannot be said to have had any responsibility for that. They had sent a
reminder in February so the appellants were aware that the return would be due. The
40 fact that they were changing their software and had problems with that does not
constitute an excuse for late filing. They were under an obligation to file their return
on time. It is the case that there is no obligation on HMRC to issue reminders and on
the basis of the decision of the Upper Tribunal in *Hok* there is no merit in a
submission that a delay of four months by HMRC in issuing a penalty notice is
45 unreasonable or that they were under an obligation to reduce the penalty. I find that
the appellants have not established that they have a reasonable excuse for late filing.

6. The appeal is dismissed.

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: 16 January 2014