



**TC03425**

**Appeal number: TC/2013/09361**

*PAYE – Late lodging of employer’s annual return – Late intimation of failure to submit returns for previous years - No penalty notices issued for previous years so no appeal- dispute over extent of telephone contact with hmrc - Whether reasonable excuse - Yes – Appeal allowed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**HOGG JOINERY LTD**

**Appellants**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE NORMA BAIRD**

**The Tribunal determined the appeal on 28 February 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 5 December 2013 (with enclosures), HMRC’s Statement of Case submitted on 13 January 2014(with enclosures) and the appellants’ reply dated 11 February 2014.**

## DECISION

- 1 The appellants appeal against the decision of HMRC to impose penalties of  
£400, in terms of Section 98A (2) and (3) of the Taxes Management Act 1970,  
5 for late submission of the Employer's Annual Return for the tax year ending 5  
April 2013. The Annual Return was due to be filed online by 19<sup>th</sup> May 2013  
and was filed online on 17 September 2013. There is an ancillary issue in that in  
September 2013 the appellants received a telephone call from HMRC advising  
them that the Employer's Annual Returns for 2010-11, 2011-12 and 2012-13  
10 had not been received. HMRC say that the total amount of penalties outstanding  
is £2400 but the penalties for the earlier years have not been appealed against so  
their Statement of Case covers only the appeal against the penalty of £400 for  
the return for 2012-13 as this is the only subject of this appeal.
- 15 2. The appellants say that the return for 2012-13 and indeed those for the two earlier  
years were submitted online on time. They have two other businesses and their  
bookkeeper filed the returns for all three businesses at the same time and in the same  
way. They do not understand how two returns were received by HMRC and the other  
not. It was not until the third attempt that the return went through successfully. They  
20 say that the problems seem to have begun when the business changed from a  
partnership to a limited company. They question why they were not notified that the  
P35s had not been received until two years after the due date of the earliest one,  
especially when they have consistently paid the sums due on time. When they were  
told in September that the previous two returns were outstanding they tried to submit  
25 them at once but it took three attempts and a full morning on the phone with HMRC  
to submit them successfully. They say that they have spoken to many staff at HMRC  
all of whom agreed that the error had arisen at HMRC and that they should have been  
notified sooner.
- 30 3. The position of HMRC is that the fact that returns were filed for two other  
businesses is irrelevant. According to their records the appellants entered their PAYE  
online record on 28 August 2013 with no submission made. The appellants had been  
making submissions throughout 2013 and 2014 by the Real Time Information  
reporting process (RTI) and would have received acknowledgments if a submission  
35 had been received. 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  
returns on time. The Statement of Case does not deal properly with any of the issues  
raised by the appellants.
- 40 4. In reply to the Statement of Case the appellants say that they have not received any  
penalty notices for the two previous years and so could not appeal against them, There  
must be an overpayment sitting on their account since they were paying the tax  
without making returns. Indeed they had been told during one of their many and long  
telephone conversations with HMRC that there was an overpayment of £1888.36  
45 showing on the old partnership account. They note that HMRC claim that the  
appellants only made one telephone call to them and refer to telephone records  
produced which show ten calls from the business landline lasting 142 minutes in total.

There were also calls from personal numbers. Their bookkeeper for example called from her phone and mobile and received a couple of calls to these numbers. HMRC has also relied in the Statement of Case on a change of address notified by the appellants. The appellants say that their business has traded from the same address for  
5 over 20 years. On one occasion their bookkeeper asked HMRC to deliver an order of stationery to his home address because he was working temporarily from home. He did not ask them to amend the business address.

10 5. 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 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  
15 and having proper regard for his responsibilities under the Taxes Acts.

20 6. I am concerned at the attitude of HMRC in this case. I accept that the appellants tried to file their returns on time and that something went wrong. They had never been in default before, their previous returns all having been done on paper. Clearly there was a problem with the way their online submissions were set up but whether this was of their own doing or due to a problem at HMRC's end I am unable to say. I accept that they made the claimed number of phone calls to HMRC and reject the claim of HMRC that the appellants only contacted them once. I accept that the appellants took all reasonable steps to rectify the situation they found themselves in. I think it is  
25 extremely unsatisfactory that the appellants were told in 2013 that three returns in total had not been received. There is no explanation from HMRC for the delay in dealing with this or for the fact that despite having telephoned the appellants and told them that they owe penalties amounting to £2400 no penalty notices have been issued and the appellants have therefore had no opportunity to appeal against these  
30 penalties. I cannot dismiss the possibility, that the same problem caused the failure of submission of all three returns and that this problem may be the fault of HMRC as their staff appear to have accepted. The whole situation ought to have been investigated and explained. There ought to have been an explanation for the late intimation to the appellants of the failure of the previous attempted submissions and if  
35 the penalties for those years were to be relied upon Notices should have been issued from which the opportunity to appeal would have flowed. As things stand the appellants do not know what they actually owe. The overpayment on the account ought to have been at least acknowledged.

40 7. I accept that the appellants do not appear to dispute that the return for 2012-13 was not successfully filed in time but given the failure if HMRC to provide a clear explanation of events and to acknowledge the efforts made on the telephone to obtain information and assistance, I find that the appellants have in all the circumstances established that on the balance of probabilities they have a reasonable excuse for non-  
45 payment of the penalties.

8. I allow the appeal.

8. 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.

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**NORMA BAIRD**  
**TRIBUNAL JUDGE**

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**RELEASE DATE: 19 March 2014**

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