



**TC03575**

**Appeal number: TC/2013/09641**

*INCOME TAX - PAYE - penalty for late submission of Employer's annual return – whether there was a “reasonable excuse” – no – whether penalty disproportionate – no*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**WEST YORKSHIRE MS THERAPY CENTRE LTD      Appellant**

**- and -**

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

**TRIBUNAL: JUDGE JOANNA LYONS**

**The Tribunal determined the appeal on 11 April 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 19 December 2013 and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 27 January 2014.**

## DECISION

### Introduction

1. This is an appeal against penalties of £500 imposed for the late filing of the  
5 Employer's Annual return for the tax year 2012-13. The penalties were imposed in  
accordance with s98A(2) and (3) Taxes Management Act 1970.

2. Ms Joanne Goodwin appeals on behalf of the appellant company. ("the  
company")

### 10 The issues

3. The appellant appeals on the following grounds:

(1) there was a reasonable excuse for the late filing of the return and

(2) the penalty is disproportionate.

4. These grounds of appeal are opposed by HMRC,

### 15 The Law

#### *Obligation to file the return*

5. An employer has an obligation to file an Employer's Annual Return before 20  
May following the end of the tax year. Regulation 73(1) of the Income Tax (Pay As  
You Earn) Regulations 2003.

### 20 *Imposition of penalties*

6. If the return is not filed a penalty is payable in the sum of £100 per month for a  
firm with 50 employees or less s98A(2) and (3) Taxes Management Act 1970.  
("TMA")

7. The Tribunal may set aside the penalty "if it appears ..that no penalty has been  
25 incurred" s100B(2) TMA.

#### *Reasonable excuse*

8. A penalty may be set aside if the taxpayer can establish a "reasonable excuse"  
for the late filing of the return throughout the default period s118(2) TMA.

9. In the case of *Rowland v HMRC [2006] STC (SCD) 536* it was decided that a  
30 "reasonable excuse" was "a matter to be considered in the light of all the  
circumstances of the particular case"

10. The mere fact that responsibility has been delegated to a third party does not amount to a reasonable excuse. *Westbeach Apparel Uk Ltd v Her Majesty's Revenue and Customs* [2011] UKFTT 561.

11. The Tribunal can look behind act of delegation in order to determine whether the third party, themselves, has a reasonable excuse. *Customs & Excise Commissioners v Steptoe* [1992] STC 757.

#### *Proportionality*

12. In the case of *The commissioners for Her majesty's revenue and Customs and excise v Hok Limited* [2012] UKUT 363 (TCC) the Upper Tribunal considered the procedures adopted by HMRC for issuing of penalties imposed under s98A (above). It was decided that HMRC had acted lawfully in allowing penalties to accumulate for four months before issuing the first interim penalty.

13. The case also established that this Tribunal has no power to discharge penalties on the grounds of fairness. Mr Justice Warren commented at [58] of the judgement:

“in purporting to discharge the penalties on the grounds that their imposition was unfair the Tribunal was acting in excess of its jurisdiction”.

#### **The agreed facts**

14. The company operates as charity providing treatment for people with disabilities including Multiple sclerosis (“MS”). The company has limited financial resources and is reliant upon charitable donations. The company operates from business premises provided free of charge by Airedale Air Conditioning Limited (“Airedale”). Airedale also manages the company’s staff salaries including the filing the year end returns.

15. The company were due to file an Employer’s annual return (“the return”) for the tax year 2012-13. On 24 March HMRC sent the company an electronic reminder to file the return for the tax year 2012-13. A reminder letter was also sent on 28 April 2013.

16. Ms Goodwin delegated the task of completing the return to Airedale. She assumed that Airedale had filed the return before the due date.

17. The return was not filed by the due date. On 06 September the business premises of Airedale were destroyed by fire leading to the loss of all accounting records.

18. On 23 September HMRC issued a first interim late filing penalty of £400 for the period 20 May to 19 September 2013. The return was filed online on 03 October

2013. A final late filing penalty of £100 was imposed on 08 October 2013 for the default period 20 September to 03 October 2013.

## **The arguments**

### *Reasonable excuse*

5 19. Ms Goodwin states that she delegated the task of filing the return to Airdale and assumed that they had filed the return. She states that they have no means of establishing whether or not the return was filed as all Airdale's records were destroyed in the fire.

10 20. HMRC accept that the company relied on Airdale to file the return. However they submit that the mere fact of delegation to a third party does not amount to a reasonable excuse.

### *Proportionality and fairness*

15 21. Ms Goodwin submits that HMRC have acted unfairly in failing to warn the company that the return was outstanding at an earlier stage thereby avoiding the accumulation of penalties. She also submits that they are a small charity and this imposition of the penalty will have a substantial affect upon them and such that they may not be able to continue to operate.

20 22. HMRC state that there is no statutory obligation to issue a filing reminder. They submit that the penalty has been correctly issued in accordance with the legislation and this Tribunal has no power to cancel or reduce the penalty on the grounds of proportionality or fairness. In support of their case they refer to the decision in the case of *Hok Limited (above)*. They state that the penalty regime does not provide an exemption for charitable organisations.

## **Reasons for decision**

### *Reasonable excuse*

25 23. I accept that Ms Goodwin delegated the task of filing the return to Airdale and assumed that the return had been properly filed. However the mere fact of delegation to a third party does not, in itself, amount to a reasonable excuse as the responsibility for filing the return remains with company. *Westbeach Apparel Uk Ltd (above)*. In  
30 this case there is no evidence to show that Ms Goodwin supervised the actions of Airdale or sought confirmation from them that the return had been filed.

35 24. I accept that Airdale's records were destroyed in the fire and that they are unable to provide evidence regarding the filing the return. However the return was due to be filed online and any attempt to access the company's account would have been recorded electronically by HMRC. The uncontested evidence provided by HMRC shows that there was no attempt made to file the return at any time before

October 2013. I do not find that the fire prevented Airdale from filing the return as the fire occurred six months after the due date.

25. For these reasons I do not find that there is a reasonable excuse for the late submission of the return.

5 *Proportionality*

26. I accept that the company were unaware of the accumulation of penalties until they received the first penalty notice on 24 September. However the case of *Hok Limited (above)* has established that HMRC have acted lawfully in postponing the issue of the first penalty until four months after the due date. The penalty has been  
10 calculated correctly taking into account the period of the default and the number of employees.

27. I accept that this is a substantial penalty which may affect the viability of the charity. However there is no provision in the legislation for reducing the penalty on the grounds of financial hardship. This Tribunal is limited to considering the statutory  
15 grounds of appeal as set out above and has no inherent jurisdiction to discharge the penalty on the grounds of fairness, *Hok limited (above)*.

28. For these reasons there are no grounds upon which the Tribunal can set aside the penalty on the grounds of proportionality or fairness.

**Decision**

20 29. There was no reasonable excuse for the failure to submit the Employer's Annual return for the tax year 2012-13.

30. The penalty imposed was lawful and proportionate.

31. The appeal against the late filing penalties of £500, is dismissed.

**Right of appeal**

25 32. 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  
30 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

5

**JOANNA LYONS  
TRIBUNAL JUDGE**

**RELEASE DATE: 9 May 2014**

10