



TC03601

Appeal number: TC/2014/00541

***NATIONAL INSURANCE CONTRIBUTIONS – employee benefits -
Penalty for late filing of Employer’s annual Return – whether there was a
reasonable excuse for late return – yes in part***

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

LIFESCIENCE PRODUCTS LTD

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE JOANNA LYONS

The Tribunal determined the appeal on 22 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 21 January 2014 and HMRC’s Statement of Case (with enclosures) acknowledged by the Tribunal on 14 February 2014.

DECISION

Introduction

1. This is an appeal against a penalty of £300 imposed for the late filing of the Employer's Annual employee benefits return for the tax year 2012-13. The penalty was imposed in accordance with Regulation 81(2)(a) of the Social Security (contributions) Regulations 2001.

2. Mr JL Seccombe is the managing director of the company and appeals on its behalf.

The issue

3. Mr Seccombe appeals on the grounds that there was a reasonable excuse for the late filing of the return. This is opposed by HMRC.

The Law

4. In so far as it is relevant to this appeal the relevant law is set out below.

Obligation to file the return

5. An employer has an obligation to make a return on form P11D of all expenses and benefits paid to its employees unless these have been otherwise accounted for via the company's payroll system. The P11D is due to be filed before 07 July following the end of the year to which it relates. Regulation 85 Income tax (PAYE) Regulations 2003.

6. Where Class 1A National insurance contributions are payable the employer must also file a Form P11D (b) before 07 July. Regulation 80(1) Social Security (contributions) Regulations 2001. (SI2001/1004)

Imposition of penalty

7. If the return is not filed by the due date a penalty is payable in the sum of £100 per month, or part month, of the default period Regulation 81(2) Social Security (contributions) Regulations.

Powers of the Tribunal

8. This Tribunal may set aside the penalty if "it appears ..that no penalty has been incurred" s100B(2) TMA and Regulation 82(1) Social Security (contributions) Regulations.

Reasonable excuse

9. A penalty will not be chargeable if the employer has a “reasonable excuse” for the late filing of the return Regulation 81(9) Social Security (contributions) Regulations.

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

Burden of proof

- 10 11. HMRC has the burden of proving that the penalty has been incurred. The taxpayer has the burden of proving that there was a reasonable excuse. *Jussila v Finland (75053/01) [2006] ECHR 996*.

The agreed facts

- 15 12. The company filed the Employer’s annual P35 return on 17 April 2013. The return confirmed that forms P11D and P11D(b) were also due to be filed as employee benefits had been paid.

13. The P11D forms were received on 19 April. However the forms were rejected as incomplete and were returned to the company on 13 June 2013.

- 20 14. On 16 June 2013 HMRC sent the company a letter reminding them to file the return. The reminder was headed “P11D” in bold. The following words were contained in the body of letter “A P11D(b) Return of class 1A National insurance employer declaration will also be required for the year” These words were not in bold.

- 25 15. Mr Seccombe was abroad on business when this letter was received. His secretary read over the letter to him but omitted to include the letter (b) when reciting the contents of the letter. Mr Seccombe believed that the letter was referring to the P11D form he had returned to HMRC on 13 June.

16. The P11D(b) return was not submitted by the due date of 06 July. HMRC sent the company a P11D(b) interim penalty letter at the end of July 2013. The heading on the letter reads as follows

- 30 “outstanding expenses and benefits forms P11D and P11D(b): you need to act now to minimise or avoid penalties”

17. This letter was read to Mr Seccombe over the telephone as he was abroad. The letter prompted him to pay the relevant national insurance contributions but did not prompt him to file the P11D(b) return.

18. The P11D(b) was filed online on 02 October 2013.

The arguments

The appellant's case

19. Mr Seccombe submits that HMRC have adopted a confusing reporting method for the filing employee benefits returns. In particular he points out that

5 (1) The requirement for the P11D(b) was not clearly stated when submitting the online returns and

 (2) The P11D(b) was not sufficiently distinguished from the P11D forms which were submitted on time.

20. He states that the reminder letter of 16 June was confusing as it appeared to relate to the form P11D which he had recently submitted. He received the reminder letter in July but he assumed that this had been sent in error as the letter also referred to the P11D.
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The respondent's case

21. HMRC state that the company has been filing P11D(b) forms since 2006-07 and is familiar with the process. They accept that Mr Seccombe made an honest mistake. However they submit that the mistake was not reasonable in the circumstances.
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Reasons for decision

22. I accept that Mr Seccombe made a genuine mistake when filing the return. In particular I take into account that he filed the employer's annual return and P11D a month before the due date. I accept that the similar names on the forms contributed to this confusion.
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23. I find that the reminder notice of 16 June 2013 was confusing as the heading of the notice referred only to form P11D which been submitted on 13 June. The reference to P11D(b) return was buried in the wording of the letter and may not have been immediately obvious to Mr Seccombe or his secretary.
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24. I find that but for the confusing reminder letter Mr Seccombe would have been alerted to the outstanding return and would have had the opportunity to submit the return before the due date.

25. However I find that the warning letter of 22 July was clearer as it referred to the P11D(b) in bold. The contents of the letter were sufficiently clear to put Mr Seccombe on notice that the return was outstanding and if in doubt it would have been reasonable for him to have made enquiries of HMRC. Had such enquiries been made he would have had the opportunity to submit the return at an earlier stage thereby avoiding further penalties. I find that it would have been reasonable for Mr Seccombe to have filed the return within seven days of receiving the letter i.e., before 02 August.
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26. For these reasons I find that there was a reasonable excuse for the failure to submit the return between 07 July and 02 August 2013 but that there was no reasonable excuse for the continuing default between 02 August to 02 October 2013.

27. The penalties imposed amount to £100 for each month or part month of the default. As the default period is reduced from 12 weeks to 2 months the applicable penalty is reduced from £300 to £200.

Decision

5 28. There was a reasonable excuse for the failure to file the return between 07 July and 02 August 2013.

29. There was no reasonable excuse for the failure to submit the return between 03 August and 02 October 2013.

30. The appeal is allowed in part and the penalty is reduced from £300 to £200.

10 **Right of appeal**

31. 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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**JOANNA LYONS
TRIBUNAL JUDGE**

RELEASE DATE: 15 May 2014