



**TC03711**

**Appeal number: TC/2011/07927**

*PAYE – employer’s annual return – penalty for late submission – whether reasonable excuse*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**JUDY HALL t/a THE ROYAL OAK**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE WDF COVERDALE**

**The Tribunal determined the appeal on 04.06.2014 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 27.09.2011 (with enclosures), HMRC’s Statement of Case submitted on 16.11.2011 (with enclosures) and the Appellant’s Reply dated 12.12.2011 (with enclosures).**

## DECISION

5 1. The Tribunal decided that Late Filing Penalty Notices dated 27.09.2010, 24.01.2011 and 30.05.2011 in the sum of £400 each were properly issued by the Respondents.

2. The appeal is dismissed.

10 3. The Tribunal found that the filing date for the Appellant's Employer Annual Return for the year 2009-2010 (forms P35 and P14) was 19.05.2010; a P35PN reminder was issued on 31.01.2010; the Return was filed online on 29.09.2011 showing a liability of £6,281.68.

15 4. The Tribunal further found that there was no reasonable excuse for the failure to file the Employer Annual Return on time. In particular it was the Appellant's responsibility to ensure that the Respondents had a correct address for the issue of correspondence; in so far as any correspondence has failed to reach her through being sent to the wrong address this does not amount to a reasonable excuse for late submission of the Return because it was a consequence of her own failure to notify a change of address.

20 5. The Respondents regularly issue Employer's Bulletins explaining in detail employers' responsibilities concerning filing dates. The Annual Employers Pack also explains what forms are needed and confirms the filing dates both for paper and online submissions. The Respondents' website contains instruction and guidance for online filing. There was, therefore, an abundance of information available to the Appellant to reinforce the advice and information necessary for her to comply with her obligations to the Respondents.

25 6. The Appellant's contention that she tried several times to submit a P35 online is contradicted by the Respondents' evidence that she only enrolled for online filing on 13.09.2011; she then successfully submitted the 2009-2010 Return on 29.09.2011 which was some fourteen months late.

30 7. The Appellant has said that she has had difficulty in obtaining forms and information from the Respondents; Online Help telephone numbers are publicised by the Respondents and there is an Orderline telephone number with which she could and should have persevered if she could not obtain manual P35 forms from her local tax office.

35 8. Regulation 205 of the Income Tax (Pay As You Earn) Regulations 2003 specifies the mandatory use of electronic communications by employers who must deliver their 2009-2010 P35 and P14 forms online. However the Respondents have advised that a manual P35 could be completed for less than five employees. The Appellant therefore had options available to her.

9. It is the responsibility of the employer to comply with her statutory obligations. The Appellant has failed to comply with those obligations.

10. In so far as the Appellant has sought to argue that the penalty in this case is unfair the Tribunal refers to the Upper Tribunal case of *HMRC v Hok* [2012] UKUT 363(TCC). Such an argument is unsustainable in this Tribunal: the Upper Tribunal made clear that although the Tribunal can set aside a penalty which has not properly been imposed there is no statutory power to discharge or adjust a penalty because of a perception that it is unfair.

11. In *Hok* consideration was also given to the question of whether there was any relevance in a contention that HMRC had failed promptly to issue Penalty Notices. The Upper Tribunal declined to make any finding that HMRC's practice had been unfair and this Tribunal will likewise decline to accept that the Appellant has in any way been prejudiced or treated unfairly.

12. 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.

**WDF COVERDALE  
TRIBUNAL JUDGE**

**RELEASE DATE: 11 June 2014**