



TC03712

Appeal number: TC/2011/08208

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

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MICHAEL MORRIS

Appellant

- and -

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

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 12.10.2011 (with enclosures), HMRC’s Statement of Case submitted on 25.11.2011 (with enclosures) and the Appellant’s Reply dated 19.12.2011.

DECISION

1. The Tribunal decided that the Late Filing Penalty Notices dated 28.09.2009 and
5 17.11.2009 in the total sum of £600 were properly issued by the Respondents.

2. The appeal is dismissed.

3. The Tribunal found that the filing date for the Appellant's Employer Annual Return for the year 2008-2009 (forms P35 and P14) was 19.05.2009; a P35N reminder was issued on 11.01.2009; the Return was filed online on 12.11.2009.

10 4. The Tribunal further found that there was no reasonable excuse for the failure to file the Employer Annual Return on time. In particular the Appellant's honest belief that, because his one employee left his employment part way through the tax year, he did not need to file an end of year Return, did not absolve him from the legal requirement to file such a Return pursuant to Regulation 73 of the Income Tax
15 (PAYE) Regulations 2003 and Paragraph 22 of Schedule 4 of the Social Security (Contributions) Regulations 2001.

5. It is the responsibility of the employer to ensure that all obligations are met and ignorance cannot amount to a reasonable excuse for failing to comply with such obligations. The fact that the Appellant submitted the employee's P45 and believed
20 that all PAYE matters were dealt with does not amount to a reasonable excuse even though he advised the Respondents on 01.09.2008 that his employee finished work on 31.08.2008.

6. It is noted that the Appellant had been registered as an employer since 01.10.1996 so he will have been aware of, and familiar with, his obligation to comply
25 with employer obligations. He had successfully filed Returns online since the tax year ending 05.04.2006.

7. The receipt by the appellant of the P35N will have served as a reminder that the Annual Return needed to be submitted.

8. There is no evidence that the appellant has suffered an unexpected or unusual
30 event, either unforeseeable or beyond his control, which prevented him from complying with an obligation which he otherwise would have done. The test applied by the Tribunal in considering the matter of reasonable excuse is whether the exercise of reasonable foresight and of due diligence and a proper regard for the fact that the Return would become due on a particular date would not have avoided the default.
35 The facts and chronology of events, set out in the Notice of Appeal and in the Respondents' Statement of Case, discloses that such foresight and diligence would have avoided the default.

9. The Appellant submits, in his Notice of Appeal, that the penalty is unfair and disproportionate, representing 60% of the total tax and National Insurance
40 contributions paid for the employee in the tax year in question. Those arguments have

5 already been disposed of by the Upper Tribunal in *HMRC v Hok* [2012] UKUT 363 (TCC) and *HMRC v Total Technology (Engineering) Limited* [2012] UKUT 418 (TCC). In the former it was made clear that the First-tier Tribunal has no jurisdiction to determine the fairness of a penalty imposed by statute. It is plain from a perusal of the latter that a penalty of the magnitude of that imposed in this case could not be described as disproportionate even if there were jurisdiction to deal with the argument.

10 10. 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 (one of the issues raised by the Appellant in the present appeal). 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 in this respect.

15 11. 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.

25 **WDF COVERDALE
TRIBUNAL JUDGE**

RELEASE DATE: 11 June 2014