



TC03718

Appeal number: TC/2011/08605

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

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

NICHOLLS BASKER PARTNERS

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE WDF COVERDALE

The Tribunal determined the appeal on 09.06.2014 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 25.10.2011 (with enclosures) and HMRC’s Statement of Case submitted on 07.12.2011 (with enclosures).

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DECISION

- 5 1. The Tribunal decided that the Late Filing Penalty Notice dated 18.05.2011 in the sum of £1,200 was 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 2009-2010 (forms P35 and P14) was 19.05.2010. Forms P14 were filed online on 11.05.2010 but the Form P35 was not filed online until 13.05.2011 i.e. 10 nearly one year late.
4. The Tribunal further found that there was no reasonable excuse for the late filing of the Employer Annual Return on time.
5. The Appellant admits that he made a mistake with figures for the whole of 15 2009-2010 and consequently there was an overpayment of National Insurance Contributions. He attempted to rectify the error but was unsuccessful. He found the process time consuming and frustrating. He had personal problems and further admits that he "ignored the problem with the online submission".
6. The Appellant evidently believed that there may be no consequences of his 20 failure to submit the online Return because he had overpaid the Respondents so they were not out of pocket.
7. It was only when the Appellant employed an accountant that the filing of the Annual Return online was completed, approximately one year after the due date.
8. The Tribunal has noted that the Respondents sent a P35PN Employer 25 notification to the Appellant on 31.01.2010. This should have served as a reminder to attend to the Annual Return in a timely manner.
9. The Appellant did not communicate with the Respondents before 19.05.2010 to 30 indicate that he was having difficulties with the online submission. The Tribunal further notes that the Respondents publish information and advice about adhering to Employers' obligations but the Appellant never availed himself of such advisory services.
10. The Tribunal accepts the Respondent's argument that having all PAYE and 35 National Insurance deductions paid by the due date cannot provide a reasonable excuse for failing to file the End of Year Return by the statutory due date as provided by Regulation 73 of the Income Tax (PAYE) Regulations 2003 and paragraph 22 of Schedule 4 of the Social Security (Contributions) Regulations 2001.
11. 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. The facts and chronology of events, set out in the Notice of Appeal and the Respondent's Statement of case, disclose that such foresight and diligence by the Appellant would have avoided the default.

5 12. In so far as the Appellant argues that the imposition of the penalty is disproportionate, unjust or unfair, those arguments have 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 13. 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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**WDF COVERDALE
TRIBUNAL JUDGE**

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RELEASE DATE: 11 June 2014