



**TC03741**

**Appeal number: TC/2011/06740**

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

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**PMO KITCHENS & BATHROOMS**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE WDF COVERDALE**

**The Tribunal determined the appeal on 13.06.2014 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 12.07.2011 (with enclosures) and HMRC’s Statement of Case submitted on 26.10.2011 (with enclosures).**

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## DECISION

1. The Tribunal admits the late appeal.
- 5 2. The Tribunal decided that the Late Filing Penalty Notices dated 27.09.2010, 24.01.2011 and 11.05.2011 were properly issued by the Respondents.
3. The appeal is dismissed.
4. 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. The Return was  
10 delivered electronically on 06.05.2011 i.e. nearly one year late.
5. 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 erroneous belief that he had no obligation to file a Return does not amount to a reasonable excuse: he had employed one employee until September 2009 and forms P35 and P14  
15 were, therefore, required for the 2009-2010 year to cover the period. He was obliged to render a complete Employer's Annual Return if he had to maintain a form P11 (working sheet) (or equivalent payroll deductions record) for any employee during the tax year. This applied regardless of whether he had to make any deductions of PAYE or National Insurance contributions from his employee during the year: Regulation  
20 73(1) the Income Tax (Pay As You Earn) Regulations 2003.
6. The Tribunal is made aware that the Appellant was late in returning his 2008-2009 Annual Return and that appropriate penalties were charged. He was therefore no stranger to the penalty regime.
7. Lack of funds is not pertinent to the issue of liability to pay a penalty for late  
25 submission of the Return. The underlying reason for the Appellant's lack of funds would appear to be the closure of his business but the Tribunal has no further information about this difficulty.
8. 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  
30 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.
9. In so far as the Appellant may suggest that the imposition of the penalty is  
35 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) Ltd* [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 that argument.

10. 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: 18 June 2014**