



TC03742

Appeal number: TC/2011/05445

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

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MJ FIELD SIPP (BRIAN & JOAN PERRY ACCOUNT) Appellant

- and -

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

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 11.07.2011 (with enclosures), HMRC’s Statement of Case submitted on 12.10.2011 (with enclosures) and the Appellant’s Reply dated 19.10.2011 .

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DECISION

1. The Tribunal admits this appeal out of time.
- 5 2. The Tribunal decided that the Late Filing Penalty Notices dated 27.09.2010 and 01.11.2010 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 27.10.2010 i.e. some five months late.
5. The Tribunal further found that there was no reasonable excuse for the failure to file the Employer annual Return on time.
6. The Appellant complains that no form P35 was received from the Respondents and that they were consequently unaware of the need to complete it. It is apparent that
15 the Respondents did not issue Forms P35 for the year 2009-2010. The Tribunal notes that the Appellant's employer scheme had been in operation since 01.01.1999 and that End of Year Returns had been filed previously; they will, therefore have been fully aware of the need to file a Return by 19.05.2010. The need to file online in 2010 had been well publicised by the Respondents since 2002.
- 20 7. Reliance upon another person cannot be classified as a reasonable excuse.
8. The facts that all tax and National Insurance contributions had been made and that there has been no tax loss to the Respondents are not pertinent to the issues in this appeal.
9. The Tribunal is aware that the Appellant has a poor record with regard to filing
25 Annual Returns on time. The Respondents are under no obligation to issue reminders to employers.
10. 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.
11. In so far as the Appellant may suggest that the imposition of the penalty is disproportionate, unjust or unfair, those arguments have already been disposed of by
35 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 the argument.

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.

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**WDF COVERDALE
TRIBUNAL JUDGE**

RELEASE DATE: 18 June 2014