



**TC03762**

**Appeal number: TC/2011/06730**

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

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MR DP WHITE t/a CHALKY’S WORKSHOP**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE WDF COVERDALE**

**The Tribunal determined the appeal on 23.06.2014 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 23.08.2011 (with enclosures), HMRC’s Statement of Case submitted on 19.10.2011 (with enclosures) and the Appellant’s Reply dated 08.11.2011.**

## DECISION

5 1. The Tribunal admits the late appeal. The stated reason for lateness relates to the timescale of the Appellant's awareness of the fact of default in compliance with statutory obligations. It would appear from the Respondent's Statement of Case that they do not take issue with the lateness of the Appeal.

2. The Tribunal decided that the Late Filing Penalty Notices dated 28.09.2009, 25.01.2010 and 24.05.2010 were properly issued by the Respondents.

10 3. The appeal is dismissed.

4. 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. The Return was filed on 19.07.2010 i.e. fourteen months late.

15 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 reliance upon his accountant has been considered carefully but it is concluded that it cannot, in this case, amount to a reasonable excuse.

20 6. It is argued on behalf of the Appellant that his accountant failed to deal with his correspondence from the Respondents. The Appellant's Reply dated 08.11.2011 mentions the common practice of using an accountant's address as the correspondence address for HMRC communications but it is admitted that this was not the case with the Appellant. It is said in the Notice of Appeal that the accountant would open HMRC correspondence before the Appellant saw it; in that case the Appellant must have forwarded HMRC letters to his accountant without opening them himself.

25 7. Had he opened those letters and perused their contents the Appellant would have been aware of the issue of a P35N reminder on 11.01.2009 and the issue of the three Penalty Notices mentioned in paragraph 2 above. The Return was filed nearly two months after the last Penalty Notice was sent.

30 8. There is no allegation that letters sent by the Respondents failed to reach the Appellant's address by normal postal deliveries.

35 9. It is acknowledged that the Appellant relied upon his accountant to deal with correspondence from the Respondents and that the Appellant had assumed that matters such as the submission of the Return would have received his accountant's attention but the issues in this appeal do not relate to any specialist or obscure areas of tax law: the problem was that the Appellant failed to open his post. If he had done so he would have been alerted to the need to act upon the P35N; the Penalty Notices would have alerted him, on an ongoing basis, that there was an unresolved problem that required urgent attention. The Appellant would then have been able to check with his accountant that he was dealing with such matters. This case can, therefore, be

distinguished from the case of *Mrs AM Rowland v The Commissioners for Her Majesty's Revenue and Customs* (2006).

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 have avoided the default. The facts and chronology of events, set out in the Notice of Appeal, the Respondent's Statement of Case and the Appellant's Reply, 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 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.

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: 26 June 2014**