



TC03775

Appeal number: TC/2011/07929

P35N – late filing penalties – accountants certain return had been filed – no proof – no reasonable excuse

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

VOICE TECHNOLOGY LTD

Appellant

- and -

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

TRIBUNAL: JUDGE ALASTAIR J RANKIN

The Tribunal determined the appeal on 2 July 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 submitted on 30 September 2011 (with enclosures), and HMRC's Statement of Case submitted on 22 November 2011 (with enclosures).

DECISION

5 1. Voice Technology Limited (Voice) is appealing against penalties totalling £500.00 issued by HMRC for the late filing of its End of Year Return form P35N for the tax year 2009/10.

2. The first interim penalty for £400.00 was issued on 27 September 2010 in respect of the period 20 May 2010 to 19 September 2010. Voice filed form P35N online on 11 October 2010 and on the same day its accountants wrote to HMRC
10 stating ‘we thought this had been filed but when we have had a look it doesn’t seem to have gone through.’

3. HMRC issued a final penalty for £100.00 on 20 October 2010 in respect of the period 20 September 2010 to 11 October 2010.

4. HMRC wrote to Voice’s accountants on 6 June 2011 advising that Voice did not
15 have a reasonable excuse for not sending the P35N on time.

5. The accountants replied by letter dated 14 June 2011 stating that Voice was certain that form P35N had been submitted ahead of the filing date and only upon receipt of the penalty notice some four months later became aware that the original filing of the form had been unsuccessful.

20 6. The accountants by letter dated 1 August 2011 stated that they felt the size of the penalty should not be determined by the number of months which it takes HMRC to process the forms.

7. In several letters HMRC explained to the accountants that issuing the first
25 interim penalty notice on 27 September 2010 was not intended to act as a reminder but it takes HMRC several months to process all the forms. HMRC wishes to ensure that penalty notices are not issued when the forms have in fact been received.

8. In its Notice of Appeal the accountants for Voice state that Voice ‘was certain
30 that the Return had been filed online by a representative agent and, therefore, was unaware that the filing of the Return had failed until the receipt of the late filing penalty notice some 4 months later.’

The Law

9. Regulations 73 of the Income Tax (PAYE) Regulations 2003 (the 2003
35 Regulations) and paragraph 22 of Schedule 4 of the Social Security (Contributions) Regulations 2001 impose a statutory obligation on an employer to make End of Year Returns by the due date.

10. Regulation 205 of the 2003 Regulations provides that an employer must use electronic communications to deliver its end of year return online.

11. Section 98A(2) and (3) provide for the imposition of a fixed penalty of £100.00 for each month or part month the return is late where, as with the Voice, there are fewer than 50 employees.

5 12. Section 118(2) of the 1970 Act provides statutory protection from a penalty if the employer had a reasonable excuse for failing to file their return on time. There is no statutory definition of reasonable excuse.

13. There is no statutory obligation on HMRC to issue reminders.

The Decision

10 14. In order to have the penalty assessments set aside it is necessary for Voice to show a reasonable excuse.

15 15. The Tribunal finds that no reasonable excuse has been submitted by Voice for the failure to file return P35N. The duty lies clearly with the employer to file the return on time. Voice appears to have relied on an agent to file its form. It is not clear whether this agent was in fact the firm of accountants but as Voice cannot pass the responsibility on to a third party it is irrelevant for the purposes of this appeal

20 16. In the view of the Tribunal the agent who filed the form P35N should have known that HMRC automatically issues an acknowledgment upon receipt of the form when filed online. HMRC state there is no evidence of any attempt to file form P35N before 11 October 2010. HMRC has no record of any agent other than the accountants acting for Voice.

17. The Tribunal agrees with the views of Judge Colin Bishopp in the First Tier Tribunal case of Enersys Holdings UK Limited [2010] UIKFTT 20 that ‘it seems unlikely that a delay of only a day might ever, without more, amount to a reasonable excuse’.

25 18. Following the decision of the Upper Tier Tribunal in The Commissioners for Her Majesty’s Revenue and Customs and Hok Limited [2012] UKUT 363 (TCC) the Tribunal has no jurisdiction to discharge or adjust a fixed penalty which is properly due because it thinks it is unfair.

30 19. Accordingly the appeal is dismissed and the Voice remains liable to pay the penalties totalling £500.00

35 20. 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.

**ALASTAIR J RANKIN
TRIBUNAL JUDGE**

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RELEASE DATE: 4 July 2014