



TC03802

Appeal number: TC/2014/02221

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

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

FORMBY LAWN TENNIS CLUB

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE WDF COVERDALE

The Tribunal determined the appeal on 14.07.2014 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 25.04.2014 (with enclosure) and HMRC’s Statement of Case submitted on 20.05.2014 (with enclosures).

DECISION

1. The Tribunal admits the late appeal. The Late filing Penalty Notice issued by the Respondents was dated 28.01.2014 and the time for appealing was 30 days after this date; the Appellant appealed to the Respondents on 20.03.2014 which was 21 days late; it is apparent that the Appellant has found the online filing process challenging; the Tribunal will accept that this constitutes reasonable excuse for the lateness of the appeal in this case.
2. The Tribunal decided that the Late Filing Penalty Notice dated 28.01.2014 was 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 2012-2013 (forms P35 and P14) was 19.05.2013. The Return had not been submitted by the date of preparation of the Respondents' Statement of Case namely 20.05.2014 so by this date it was already 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.
6. The Appellant had been registered for online filing of Returns since 17.12.2009 and had previously filed three online Returns. They were, therefore, experienced with the process. If a password has been lost it is evidently a simple process to obtain a replacement password. In their appeal to the Respondents dated 20.03.2014 the Appellants indicated that they were "in the process of making the online submission" and "awaiting a password in the post as we couldn't find one". There is no explanation for the ten month delay in obtaining a replacement password.
7. The fact that the Appellant had only one employee during the 2013-2013 tax year and that the employee retired in June 2013 does not absolve the Appellant from the obligation to submit a Return.
8. The Respondent issued a P35N electronic reminder to the Appellant on 24.03.2013 and an AR1N reminder on 28.04.2013. There is no statutory obligation for the Respondents to issue reminders.
9. Neither timely payments of tax in the past nor shortage of funds to pay a penalty are matters that can be taken into account in assessing whether the Appellant should pay the penalty in this case. In the continuing absence of the Return the Respondents have properly observed that no mitigation of the fixed penalty can be considered.
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 and the Respondent's Statement of Case, disclose that such foresight and diligence by the Appellant would have avoided the default.

5 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) 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
10 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
15 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: 14th July 2014

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