



TC03826

Appeal number: TC/2011/06816

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

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

PAUL RICHARD KIRKMAN

Appellant

- and -

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

TRIBUNAL: JUDGE WDF COVERDALE

The Tribunal determined the appeal on 17.07.2014 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 24.08.2011 (with enclosures), HMRC’s Statement of Case submitted on 18.10.2011 (with enclosures) and the Appellant’s Replies dated 16.11.2011 and 15.06.2014 (with enclosures).

DECISION

1. The Tribunal decided that the Late Filing Penalty Notice dated 15.02.2011 in the
5 sum of £500 was properly issued by the Respondents.

2. The appeal is dismissed.

3. 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 filed online on 11.10.2010 i.e. over four months late.

10 4. The Tribunal further found that there was no reasonable excuse for the late filing of the Employer Annual Return on time.

5. The Appellant says that telephone contact was made with the Respondents prior to the filing date (the date of the alleged call is not clear from the Appellant's written communications) and that advice was given that no Employer Annual Return was
15 required because all employees had ceased to be employed during the course of the tax year. The Respondents have no record of any such telephone call. The Tribunal finds that it is unlikely that such advice would be given by the Respondents, principally because such advice would clearly be incorrect. An Employer Annual Return was indeed required because there were two relevant employees and tax had
20 been due in respect of their employment. Termination of their employment during the year did not absolve the Appellant from the legal duty to file an Employer Annual return.

6. The Appellant was familiar with the submission of End of Year Returns, having been registered with the Respondent as an employer since 31.05.2007. The Tribunal
25 cannot accept that he or his agent were unfamiliar with the requirement to file an Employer Annual Return when they had two relevant employees.

7. The Respondents issued a P35N notification, reminding the Appellant of the need to file an Employer Annual Return, on 10.01.2010 and it would have been prudent for the Appellant to act upon this reminder in a timely manner before the
30 deadline of 19.05.2010.

8. The Tribunal is aware that there is no obligation upon the Respondents to issue reminders or indeed to issue Penalty Notices closer to the deadline date. The latter point (date of issue of Penalty Notices) was considered in the case of *HMRC v Hok*, which is mentioned in Paragraph 13 below, and the absence of any such obligation
35 was confirmed.

9. It is consistent with the recorded history that, in a telephone call to the Respondents on 11.10.2010, the Appellant's agent was advised that no penalty Notice had been issued: the Penalty Notice was not issued until 15.02.2011.

10. The Appellant has a history of timely submissions and evidently no tax or National Contributions were outstanding; these matters do not constitute reasonable excuse and do not permit any mitigation of the penalty in this case.

5 11. It is noted that the Respondents have no record of the Appellant availing himself of their facilities such as telephone helplines or Internet advice; it would appear that there is an abundance of such facilities which would have assisted the Appellant in organising his affairs so as to comply with his legal filing obligations.

10 12. 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 Respondents' Statement of Case, disclose that such foresight and diligence by the Appellant would have avoided the default.

15 13. 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* UKUT 363 (TCC) and *HMRC v Total Technology (Engineering) Limited* 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
20 magnitude of that imposed in this case could not be described as disproportionate even if the Tribunal had jurisdiction to deal with the issue.

25 14. 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: 22 July 2014