



TC03895

Appeal number: TC/2014/02745

TYPE OF TAX – PAYE – whether reasonable excuse for late appeal – No.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

SOMES CREATION LTD

Appellant

- and -

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

**TRIBUNAL: PRESIDING MEMBER
PETER R. SHEPPARD FCIS FCIB CTA AIIT**

The Tribunal determined the appeal on 7 August 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 13 May 2014, and HMRC's Statement of Case submitted on 13 June 2014 with enclosures. The Tribunal wrote to the Appellant on 18 June 2014 indicating that if they wished to reply to HMRC's Statement of Case they should do so within 30 days. No reply was received.

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DECISION

1. Introduction

5 This considers an appeal against a penalty of £1,200 levied by HMRC for the late filing by the appellant of its Employer Annual Returns (forms P35 and P14) for the year 2010 – 2011; and against a penalty of £200 for the late filing by the appellant of its Employer Annual Returns (forms P35 and P14) for the year 2011 – 2012.

2. Legislation

10 Income Tax (PAYE) Regulations 2003, in particular Regulations 73 and 205.

Social Security (Contributions) Regulations 2001 in particular Schedule 4 Paragraph 22.

Taxes Management Act 1970, in particular Section 98A(2) and (3); Section 100; Section 100B; and Section 118 (2).

15 3. Case law

HMRC v Hok Ltd. [2012] UKUT 363 (TCC)

4. Facts

20 Regulation 73(1) of Income Tax (PAYE) Regulations 2003 and Paragraph 22 of Schedule 4 of Social Security (Contributions) Regulations 2001 require an employer to deliver to HMRC a complete Employer Annual Return (Forms P35 and P14) before 20 May following the end of the tax year. In respect of the year 2010-2011 the appellant failed to submit Forms P35 and P14 until 8 August 2012. In respect of the year 2011-2012 the appellant submitted the returns on line on 16 July 2012

5. The Penalties

25 Three Penalty determinations for 2010-2011 each for £400 were issued by HMRC on 26 September 2011, 30 January 2012, and 28 May 2012. The penalty determination for 2011-2012 for £200 was issued on 19 July 2012. It was clearly stated on each Notice of Penalty Determination that any appeal should be made in writing within 30 days of the date of issue shown on the Notice. Thus appeals should have been lodged
30 by 26 October 2011, 29 February 2012, 27 June 2012, and 18 August 2012 respectively.

6. Late Appeal

In fact the appellant lodged no appeal with HMRC until 28 February 2014. These are a minimum of just over 18 months late and a maximum of over 27 months late. On 14
35 April 2014 HMRC rejected that appeal on the grounds that the appellant had no reasonable excuse for sending the appeal late.

The Notice of Appeal to the Tribunal dated 13 May 2014 includes a request for permission to appeal outside the normal time limits

HMRC has objected to the late appeal and ask the Tribunal to refuse the request for a late appeal to be considered.

- 5 The appellant has stated that the reasons for the late appeal are that the notices were not received and that they have reasonable excuse “due to ill health in the family – mother, wife, daughter and myself have been in and out of hospital.”

HMRC say that the Notices were issued to the correct address and none has been returned undelivered.

10 **7. Discussion**

The Tribunal notes that the appeal has been lodged very late. Whilst the Tribunal accepts that mail can go astray, even if correctly addressed, it considers that it is stretching credibility to argue that four separate Notices of Penalty determination all went astray.

- 15 In respect of the reasonable excuse due to ill health the appellant merely makes the statement set out above and offers no details of how severe the illnesses were and the duration of periods spent in hospital. The appellant has submitted no medical evidence in support of the assertion.

20 In the circumstances the appellant has established no reasonable excuse for making an appeal between over 18 and 27 months late. The Tribunal therefore refuses the request to accept the appeal outside the normal time limits.

- 25 8. 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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PETER R. SHEPPARD
TRIBUNAL PRESIDING MEMBER

RELEASE DATE: 8th August 2014

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