



TC03912

Appeal number: TC/2014/01116

Penalty for late online filing of Employer's Annual Return - Appellant asserted that return filed - HMRC's records showed that correlation ID matched a return by an associated company - no correlation ID had been issued to Appellant - whether return filed - no - whether reasonable excuse for default - no - appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ACORN ACCOUNTANCY & TAXATION SERVICES LTD Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE MICHAEL S CONNELL

The Tribunal determined the appeal on 28 May 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 20 February 2014, and HMRC's Statement of Case prepared on 3 March 2014 and submitted on 19 March 2014, the Appellant submitting no response.

DECISION

The Appeal

- 5 1. Acorn Accountancy and Taxation services Ltd ('the Appellant') appeals against a £400 penalty imposed under Section 98A(2) & (3) Taxes Management Act 1970 for the late filing of the Employer's Annual return for tax year 2012-13.
2. The point at issue is whether or not the Appellant has a reasonable excuse for submitting the late return.

Background

- 10 3. Regulation 73(1) The Income Tax (Pay As You Earn) Regulations 2003 and Paragraph 22 of Schedule 4 of the Social Security (Contributions) Regulations 2001 requires an employer to deliver a complete Employer's Annual Return - forms P35 & P14's before 20 May following the end of the tax year. The return must include
15 specified information relating to relevant payments made during the tax year to employees for whom they had to prepare or maintain deduction working sheets (form P11 working sheet or equivalent payroll deductions record).
4. Regulation 205 The Income Tax (Pay As You Earn) Regulations 2003 requires the mandatory use of electronic communications by employers who must deliver their
20 P35/P14 forms online using an approved method of electronic communications for 2009-10 onwards.
5. The full return i.e. the P35 and a P14 for each employee must reach HMRC no later than 19 May following the end of the tax year. If the return is not received by the due date the employer is liable to a penalty.
- 25 6. Where the Employer does not file their annual return on time they will be charged a penalty in accordance with Section 98A(2)(a) & (3) Taxes Management Act (TMA) 1970.
7. Fixed penalties of £100 per month (or part month) for each batch (or part batch) of 50 employees are charged for the first 12 months the return is late.
- 30 8. Where the total duty (NICs/Tax) shown on the return is:
- equal to or more than the penalty amount, the employer is liable to the whole of the penalty amount.
 - more than £100 but less than the penalty amount, the employer is only liable to penalties in an amount equal to the total duty shown
35 on the return.
 - £100 or less, the employer is liable to a penalty of £100 only.
9. The Appellant was required to file an Employer Annual return (P35 & P14s) for the year 2012-13. The filing date for the return was 19 May 2013. From 2009-10

onwards this had to be filed online using an approved method of electronic communication.

10. HMRC sent a P35N electronic reminder to the Appellant on 24 March 2013.

5 11. HMRC sent a further AR1N Employer Annual Return reminder to the Appellant on 29 April 2013.

10 12. From 31 May 2013 over a five day period a P35 Interim Penalty Letter was issued to all employers who had not filed the Employer's Annual Return advising them that they had incurred a penalty and how they could avoid increasing it. This reminder also advised the employer "If you have already filed your return online, check you have submitted it correctly."

13. HMRC say that the Appellant did not file the P35 by 19 May 2013.

14. HMRC sent the Appellant a late filing penalty notice on 23 September 2013 for £400 for the period 20 May 2013 to 19 Sept 2013.

15 15. At the date HMRC prepared their statement of case and submission to the Tribunal for this appeal (3 March 2014), the Employer's Annual Return (P35 & P14s) for the year 2012-13 had not been filed.

16. On 25 October 2013, Martin Mooney, director of the Appellant company, appealed on behalf of the company against the penalties.

20 17. HMRC sent the Appellant a decision letter on 11 November 2013 rejecting their appeal and offering a review.

18. On 11 December 2013 the Appellant requested a review of HMRC's decision.

19. HMRC carried out a review and issued their review conclusion on 24 January 2014. The outcome of the review was that HMRC's decision should be upheld.

25 20. The Appellant's 2012-13 Employer's Annual Return remains outstanding despite the fact that the employer was prompted to file on 24 March 2013, 29 April 2013, 31 May 2013, 19 September 2013, 11 November 2013 and 24 January 2014.

The Appellant's contentions

30 21. On 20 February 2014, Mr Mooney notified an appeal on behalf of the company to the Tribunal saying:

"The Appellant's client submission list shows that the 2012-13 return was submitted. Acorn Accountancy & Taxation Services Ltd is at the top of the list ... if all others were submitted/received, why wasn't mine."

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Mr Mooney states that he finds it bizarre that all of the companies on his client list were accepted, except the return for the Appellant company.

5 22. Mr Mooney comments on HMRC's reference to the correlation ID against Acorn Accountancy & Taxation Services Ltd on the client list and that this referred to M Mooney and Co Ltd- another client on the list. Mr Mooney states that M Mooney and Co Ltd went into involuntary liquidation in June 2012 and therefore no P35 return was made for the company.

10 23. Mr Mooney states that using commercial software he filed the 2012-13 P35 return for his company, therefore his conclusion is that the mistake lies clearly with HMRC. Mr Mooney says that this software provider concludes that if he had done what HMRC is suggesting, an error message would have occurred.

HMRC's contentions

15 24. Regulation 73(1) The Income Tax (Pay As You Earn) Regulations 2003 and Paragraph 22 of Schedule 4 of the Social Security (Contributions) Regulations 2001 require the Appellant to deliver a complete 2012-13 Employer's Annual Return — forms P35 & P14's before 20 May 2013. For 2009-10 onwards, the Income Tax (Pay As You Earn) Regulations 2003 requires the mandatory use of electronic
20 communications by employers who must deliver their P35/P14 forms online using an approved method of electronic communications.

25. The Appellant is a firm of accountants and tax consultants and the PAYE scheme for this employer commenced on 1 July 2012.

25 26. Mr Mooney contends that he submitted his 2012-13 on time together with his other clients returns and that this is evidenced by the client list of end of year submissions that he made.

30 27. The client list that Mr Mooney provided does not provide evidence that a return for 2012-13 was successfully submitted for the Appellant company. Furthermore the correlation ID that is stated against the Appellant company on the list relates to another company on the list, M Mooney and Co Ltd. The Appellant's list clearly shows that identical correlation IDs are stated against M Mooney and Co Ltd and the Appellant company, Acorn Accountancy & Taxation Services Ltd. Mr Mooney argues that his previous company, M Mooney and Co Ltd, went into involuntary liquidation in June 2012 and therefore no P35 return was made.

35 28. Employers operating under the PAYE scheme in a particular year are required to file an Employer's Annual Return (P35) on or before 19 May after the end of the tax year regardless of when the scheme ceased during that year. In this case a 2012-13 Employer's Annual Return for M Mooney and Co Ltd was filed on 2 August 2012. The internet correlation ID relating to this transaction is
40 5310A29F753B43E18303E23124C8C702 and this is evidenced on HMRC's computer records for M Mooney and Co Ltd. Each time a submission is made online a

unique correlation ID is created. The information on the Appellant's list in relation to the correlation ID that is shown against 'Acorn Accountancy & Taxation Services Ltd' is incorrect.

29. Penalties continue to accrue when a return is outstanding.

5 30. The obligation to file an Employer's Annual Return is not dependant on having received a prompt or reminder to do so. When employers file their Employer Annual Return online HMRC receives the returns to be checked for errors and omissions after which the employer will get an acceptance or rejection message through the software or service they use as follows:

10 "If the return is successful, employers receive an online message stating the EOY Return has been processed and passed full validation."

31. Where an email address is held HMRC issue a message stating:

15 "The submission for [your PAYE reference] was successfully received on [date]. If this was a test transmission, remember you still need to send your actual Employer Annual Return using the live transmission in order for it to be processed."

32. If the return is rejected, employers receive the following online advice:

20 "your message will highlight the area(s) of your return that have led to its rejection."

33. HMRC contend that the absence of such messages and an email confirmation should have alerted this employer to the fact that the return had not been received.
25 Given that the Appellant company is a firm of accountants and tax consultants, HMRC would expect them to have considerable expertise in the field of making PAYE submissions and of the responsibility placed upon employers to fulfil their PAYE obligations.

34. Section 118(2) TMA 1970 provides statutory protection from a penalty if the
30 employer had a reasonable excuse for failing to file their return on time. HMRC consider a reasonable excuse is normally an unexpected or unusual event that is either unforeseeable or beyond the employer's control, and which prevents the employer from complying with their obligation to file on time. A combination of unexpected and unforeseeable events may, when viewed together, be a reasonable excuse.

35. HMRC's view is that the actions of the employer should be considered from the
35 perspective of a prudent person, exercising reasonable foresight and due diligence, having proper regard for their responsibilities under the Tax Acts. If the employer could reasonably have foreseen the event, whether or not it is within their control, HMRC would expect them to take steps to meet their obligations. If there is a
40 reasonable excuse it must exist throughout the failure period.

36. HMRC contend that the Appellant has not provided a reasonable excuse for the filing failures and that the penalties have been correctly charged in accordance with the legislation. HMRC have to be seen to be consistent in their approach to all their customers, particularly to those who comply with the regulations. The penalties were correctly charged in accordance with the legislation because the Appellant failed to file the 2012-13 Employer Annual Return by the filing deadlines.

Conclusion

37. The onus of proof rests with HMRC to show that the penalty was correctly imposed. If so established, the onus then rests with the Appellant to demonstrate that there was reasonable excuse for late filing of its Employer's return. The standard of proof is the ordinary civil standard of the balance of probabilities.

38. There is no statutory definition of 'reasonable excuse', which is a matter to be considered in the light of all the circumstances of the particular case. A reasonable excuse is normally an unexpected or unusual event that is either unforeseeable or beyond the taxpayer's control, and which prevents them from complying with their obligation to pay on time. A combination of unexpected and unforeseeable events may, when viewed together, be a reasonable excuse.

39. A taxpayer acting in a reasonable manner would ensure that they adhered to their legislative obligations.

40. As HMRC say, the client list that Mr Mooney provided does not on its own provide evidence that a return for 2012-13 was successfully submitted for the Appellant Company. Furthermore as HMRC say, the correlation ID that is stated against the Appellant company on the list relates to another company on the list, M Mooney and Co Ltd. Separate submissions cannot be allocated the same correlation ID. However the Appellant's list shows that identical correlation IDs are stated against M Mooney and Co Ltd and the Appellant company. Mr Mooney says that his previous company, M Mooney and Co Ltd, went into involuntary liquidation in June 2012 and therefore no P35 return was made. The clear inference is that the Appellant has made a mistake in wrongly identifying the correlation ID for M Mooney and Co as relating to a successful submission by the Appellant company, when in fact a submission has not been made.

41. A copy of HMRC's Statement of case was sent by HMRC to the Appellant on 14 March 2014. The Appellant has therefore had the opportunity of replying and saying why it considers HMRC's conclusions to be incorrect. No response has been received and the inference must be therefore, that the Appellant accepts the rationale of HMRC's submissions, even if it may not accept its decision.

42. The Tribunal finds that the Appellant does not have a reasonable excuse for the late submission of its late Employer's annual return for 2011-12 and that the late filing penalties charged are in accordance with legislation.

43. The appeal is dismissed and the £400 late filing penalties are confirmed

44. 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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**MICHAEL S CONNELL
TRIBUNAL JUDGE**

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RELEASE DATE: 13 August 2014

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