



**TC03926**

**Appeal number: TC/2014/03059**

*TYPE OF TAX – PAYE – late submission of Employer’s Annual Return – whether there was reasonable excuse for late appeal to HMRC - No.*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**ELAINE MARIAN WILKINS & KELLY MARIE OLDERSHAW      Appellant**  
**t/a GET YOUR LIFE BACK**

**- and -**

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

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

The Tribunal determined the appeal on 12 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 28 May 2014, and HMRC’s Statement of Case submitted on 24 June 2014 with enclosures. The Tribunal wrote to the Appellant on 25 June 2014 indicating that if they wished to reply to HMRC’s Statement of Case they should do so within 30 days. A reply dated 22 July 2014 was received from the Appellants’ agent.

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## DECISION

### 1. Introduction

This considers an appeal against penalties totalling £800 levied by HMRC for the late filing by the Appellant of its Employer Annual Returns (forms P35 and P14) for the year 2012 – 2013.

2. 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.

3. In respect of the year 2012-13 the appellant failed to submit Forms P35 and P14 by 19 May 2013. On 23 September 2013 HMRC sent the appellant a first interim penalty notice for £400 for the period 20 May 2013 to 19 September 2013. On 27 January 2014 HMRC sent the appellant a second interim penalty notice for £400 for the period 20 September 2013 to 19 January 2014

### 4. Preliminary Matter.

In respect of the penalty notice dated 23 September 2013 if it is wished to appeal against the penalty then that appeal should be lodged with HMRC within 30 days, that is by 23 October 2013. Similarly in respect of the penalty notice dated 27 January 2014 an appeal should be lodged with HMRC within 30 days, that is by 26 February 2014. The appellants' agent wrote to HMRC on 2 April 2014 saying "We reply to your Penalty Determination dated 27 January 2014. We enclose a copy of a letter already sent to the Inspector dated 27 November 2013. Accordingly could you please cancel the Penalty Determination.

5. HMRC took this letter as an appeal against the Penalty notice. On 29 April 2014 HMRC replied to the agent saying:

"I am not accepting your appeal because I consider you do not have a reasonable excuse for sending it late. This is because you state the scheme ceased July 2012, this was during the 2012-2013 tax year and our records show that payments were made during this time. Therefore if there was any PAYE liability between 6 April 2012 and 5 April 2013 there was a legal requirement to submit P35 return on or before 19 May.

In this instance the employer has no reasonable grounds to appeal against the penalties imposed. To date your clients P35 remains outstanding."

The letter advises that if it is wished to appeal HMRC's decision to the Tribunal this should be done by 29 May 2014. Hence the Appellant's agent lodged a Notice of Appeal electronically on 28 May 2014.

### 6. Tribunal's observations

There are two penalty notifications to consider, they are dated 23 September 2013 and 27 January 2014.

### 7. The penalty dated 23 September 2013.

The penalty notice was sent to Elaine Wilkins at her last known address but she had changed address so she did not receive it. The appellant's agent at the time was TaxAssist would also have been notified of the penalty but they took no action and did not pass on the information

to the new agent Kingston Smith LLP when they were appointed in November 2013. By that time the 23 October 2013 deadline for appealing had passed. Neither the appellant nor TaxAssist has offered any explanation as to why no appeal was made within the deadline. Neither has the appellant explained why Elaine Wilkins did not notify HMRC of her change of address. Kingston Smith LLP have provided some of the background history. It would seem that the partnership began to break up in 2012 but continued until 31 July 2012. In that year Kelly Oldershaw left the country suddenly and filed for bankruptcy. Elaine Wilkins was in distress at the break up and formed a new company Chrysalis Ltd. There is no evidence that this affected Elaine Wilkins in such a way that she was unable to advise HMRC of her change of address. Kingston Smith LLP has submitted that they tried to contact HMRC on the matter but could get no answers. This might be true but the deadline had already passed when on 27 November 2013 they first wrote to HMRC. Thus the appellant has given no reasonable excuse for lodging the appeal late.

**8. The Penalty dated 27 January 2014**

This was received by the Appellant's agent, Kingston Smith LLP, and they were advised that they had 30 days in which to appeal. They thought that this notice was an error as the partnership had long since ceased. They needed to appeal by 26 February 2014 but did not do so until they wrote a letter to HMRC on 2 April 2014 applying for the penalty determination to be cancelled. The Tribunal accepts that the agent tried and failed on many occasions to contact HMRC for the purpose of discussing the situation. However the agent was aware of the deadline and could easily have met that deadline by sending a letter similar to the one sent on 2 April 2014 on or before the 30 day deadline. The agent has not provided a reasonable excuse as to why that course of action was not taken. They made the fatal assumption that the notice was an error and therefore failed to give it sufficient attention.

9. HMRC have objected to the appeal against the penalties being made late. Neither the Appellant nor either of their agents has established a reasonable excuse for either of the late Appeals. It follows that the Tribunal must refuse the request for the appeal to be made out of time.

10. 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.

**PETER R. SHEPPARD  
TRIBUNAL PRESIDING MEMBER**

**RELEASE DATE: 14 August 2014**