



TC03960

Appeal number: TC/2011/01778

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

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**M & J DRILLING SERVICES LTD
(DIRECTORS PENSION SCHEME)
- and -**

Appellant

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

Respondents

TRIBUNAL: JUDGE WDF COVERDALE

The Tribunal determined the appeal on 21.04.2014 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 28.02.2011 with enclosures and HMRC’s Statement of Case submitted on 16.03.2011 (with enclosures).

DECISION

1. The Tribunal decided that the Late Filing Penalty Notices dated 27.09.2010 and
5 01.11.2010 in the sums of £400 and £100 respectively were 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
10 filed electronically on 19.10.2010 i.e.153 days late.

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

5. The Appellants' agents were experienced in the online submission of Employers' Annual Returns and should have been alerted, by the absence of an
15 acknowledgment, to their failure to submit the Appellant's Return in a timely manner.

6. The Respondent's practice on the occasion of a previous default by the Appellants or their agents has no bearing on the issues in this appeal.

7. 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
20 point (date of issue of Penalty Notices) was considered in the case of *HMRC v Hok*, which is mentioned in paragraph 9 below, and the absence of any such obligation was confirmed.

8. 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
25 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.

9. In so far as the Appellant may suggest that the imposition of the penalty is
30 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) Ltd* [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
35 magnitude of that imposed in this case could not be described as disproportionate even if there were jurisdiction to deal with the issue.

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.

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**WDF COVERDALE
TRIBUNAL JUDGE**

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RELEASE DATE: 27 August 2014