



TC04012

Appeal number: TC/2011/07596

INCOME TAX – PAYE – employers end of year returns – late submission penalty – reasonable excuse – no – section 98A Taxes Management Act 1970

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MONK FISH MANAGEMENT LTD

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE NICHOLAS ALEKSANDER

The Tribunal determined the appeal on 15 September 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 26 September 2011 and HMRC's Statement of Case submitted on 9 November 2011.

DECISION

1. This is an appeal against £100 penalty imposed for late submission of an
5 Employer's Annual Return under section 98A Taxes Management Act 1970.

2. The Appellant, Monk Fish Management Limited ("Monk Fish"), registered with
HMRC as an employer in July 2010. At that time, it was sent by HMRC a letter with
a link to the "New Employer – getting started" guide on the Business Link website.
The guide included a recommendation to register for PAYE Online straightaway.
10 HMRC's employers bulletins for February and April 2011 included a diary, both of
which advised that 9 May 2011 was the last date to register for PAYE Online. On 13
February 2011, HMRC issued Monk Fish with a form 35PN. This is a formal notice
requiring Monk Fish to file its end of year PAYE returns online by 19 May 2011. It
warns that Monk Fish must register as soon as possible, as the registration process can
15 take several days to complete.

3. The log of the Government Gateway (the portal through which PAYE Online
operates) was included in the bundle of documents before me. It indicates that Monk
Fish did not apply to register with PAYE Online until 12 May 2011. HMRC state that
the activation code would have been sent for secure printing on 16 May 2011. The
20 Government Gateway log shows that Monk Fish logged in again on 19 May and there
was a failed attempt to submit a form. The Gateway log shows that it sent an
automatic e-mail reminder to Monk Fish on 30 May 2011 (this is sent 14 days before
the expiry of the activation code). The log then shows that Monk Fish logged in,
activated and successfully submitted the PAYE return on 31 May 2011.

4. It is not in dispute that the PAYE return was not submitted until 31 May 2011,
25 which is after the due date of 19 May 2011. A penalty of £100 is automatically due as
a result of the late submission (section 98A, Taxes Management Act 1970). However
HMRC (and on appeal, this Tribunal) have the power to discharge the penalty if
Monk Fish have a reasonable excuse for the delay, and that excuse subsisted
30 throughout the period of delay.

5. Monk Fish submit that they called the HMRC call centre to warn them that the
PAYE return would be late. The call centre advised that the process for registering
with PAYE Online could not be speeded up, and that Monk Fish should appeal if a
penalty was issued. Monk Fish requested a second activation code, and filed their
35 return as soon as the activation code was received. Any delay in filing was due to the
late receipt of the PAYE Online Activation Code.

6. HMRC submit that Monk Fish do not have a reasonable excuse for their delay in
submitting their PAYE return. They were warned several times to register with
PAYE Online well before the due date, as registration takes several days to complete.
40 The Employers Bulletins specifically state that the last date to register for PAYE
Online in time to be able to file by 19 May was 9 May 2011. As Monk Fish did not
apply for registration with PAYE Online until 12 May (only a week before the due
date), they cannot claim a reasonable excuse if the registration process was not

completed before the due date. HMRC note that there is no record on the Government Gateway log of Monk Fish requesting a second activation code.

5 7. It is not in dispute that Monk Fish filed its PAYE return after the due date of 19 May 2011. The sole issue before the Tribunal is whether Monk Fish have a reasonable excuse for the delay.

10 8. If Monk Fish had applied to register for PAYE Online well before 19 May 2011 (and in any event before 9 May 2011 - as recommended in the HMRC literature), but had only received their authentication code after 19 May, they may well have had a reasonable excuse for the delay, as they would have applied in good time before the due date for the authentication code, and the reason for the late filing would have been the undue delay by HMRC in processing their application.

9. However they only applied to register with PAYE Online on 12 May 2011, and this left insufficient time for their application to be processed by 19 May 2011.

15 10. Whilst I appreciate that the HMRC call centre may have suggested that Monk Fish appeal against any penalty for late filing, it is unclear whether they were merely informing Monk Fish of their rights to challenge any penalty, or whether they were advising that Monk Fish would succeed in demonstrating a reasonable excuse for the late filing. In particular I do not know if all the circumstances giving rise to the late receipt of the authentication code had been given to the call centre – not least the fact
20 that Monk Fish only applied for registration on 12 May. For this reason, I cannot accept that the advice of the call centre can be taken into account in determining whether Monk Fish had a reasonable excuse for their actions.

11. For these reasons the appeal is dismissed.

25 12. 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
30 “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

**NICHOLAS ALEKSANDER
TRIBUNAL JUDGE**

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RELEASE DATE: 15 September 2014

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