



TC04744

Appeal number: TC-2015/03630

Income Tax - P35 and P14 return - penalty for late filing - reasonable excuse - appeal dismissed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

	COMMIC INTERNATIONAL	Appellant
	- and -	
	THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS	Respondents

TRIBUNAL: JUDGE K KHAN

The Tribunal determined this decision on 21 September 2015 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases) having read the Notice of Appeal on the 1 April 2015 and HMRC's Statement of Case submitted on 9 July 2015.

DECISION

Introduction

- 5 1. This is an appeal against penalties of £1200 imposed under section
98(2) & (3) Taxes Management Act 1970 (TMA 1970) for the late filing of the
Employer's Annual Return for the tax year 2010-2011.

The relevant legislation

- 10 (1) Regulation 73(1) the Income Tax (Pay As You Earn) Regulations
2003 and Paragraph 22 of Schedule 4 of the Social Security
(Contributions) Regulation 2001 requires an employer to deliver a
15 complete Employer Annual Return – forms P35 and P14 - before 20
May following the end of the tax year. The return must include
information relevant to employees for whom they have had to
prepare or maintain deduction working sheets and payroll deduction
records. Where the employer does not file the Annual Return on
20 time they will be charged a penalty in accordance with Section 98A
(2) (a) and (3) TMA 1970. It is possible for the taxpayer to appeal
against these penalties. Paragraph section 11A (2) TMA 1970
provides statutory protection from a penalty if the employer had a
reasonable excuse for failing to file their return on time.

25 Relevant facts and submissions

- (1) The Appellant was required to file an Employer Annual Return (P35
and P14) for the year 2010-2011. The filing date for the return was
30 19 May 2011. The filings had to be done in accordance with an
approved method of electronic communication.
- (2) The Appellant filed the annual return on 30 October 2013. The
returns were therefore late.
- 35 (3) HMRC sent an electronic reminder to the Appellant on 13 February
and issued a late filing penalty on 6 February 2012 for £800 for the
period 20 May 2011 – 19 January 2012. A second late filing penalty
on 28 May 2012 for £400 for the period 20 January 2012-19 May
40 2012 was also issued.
- (4) The Appellant in a letter dated 14 August 2015 stated that they had
filed their returns on time on 4 July 2011. They provided a printout
showing a filing was made on that day. The Appellant also made the
45 following points:

1. "I do remember filing it for the year 2010 also and do not understand how or why it has received when it has been unsuccessfully filed in previous years without a problem."

5 2. "The first notification I had that there was an issue was via HMRC letter in September 2012."

10 3. "The accountant Mr Koriala filed the documents on my behalf."

4. The Appellant explained that the penalties had caused a lot of stress and the payment of the penalties would present financial difficulties.

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(5) HMRC rejected the Appellant's grounds of appeal on 8 May.

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(6) On 6 June 2015 the Appellant filed an appeal to the Tribunal, their stated grounds of appeal were:-

25 1. "The first penalty of £800 is unfairly imposed as I did correctly file the return on time."

30 2. "Both penalties are unfair and excessive and I cannot afford to pay these."

3. The company heard nothing from HMRC until September 2012 and was unaware there was a problem at the time.

35 4. The accountant confirmed that he had done the filings.

5. The Appellants say that they have followed instructions and advice provided by HMRC and contacted HMRC in time to deal with this matter.

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(7) The appeal was filed late but accepted.

(8) HMRC says that the Appellant did not file the return until 30 October

45 2013 so the late filing penalties were correctly charged in accordance with legislation.

(9) They said that the Appellant had been registered as an employer for number of years and had been filing returns since the tax year ending 5 April 2008. They therefore knew their obligations in law and that penalties which would be imposed for late filing.

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(10) HMRC further state that the Appellant were properly informed through notices of the filing date and the notices were issued in accordance with the law. They received no confirmation from the Appellant's accountant that their filings had been completed and the records do not show any communication by the taxpayer to authorise the accountant to act on behalf of the company (completion of a 64-8 form).

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(11) The HMRC records show that only one attempt was made to do the online filings and this was on 30 October 2013.

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Conclusions

(1) The appeal is dismissed. There is no reasonable excuse and there is no evidence presented by the Appellant to show that they had filed or attempted to file the returns by the due date.

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(2) While the Tribunal sympathises with the Appellant's lack of funds and his argument that the penalty appears to be excessive these are not reasonable excuses for the purposes of the appeal. There is nothing to show that the accountants made the necessary filings other than an attempt to do so past the due date.

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In the circumstances, the appeal is dismissed and the penalty upheld.

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2. This document contains full findings of facts and reasons for the decision. Any party dissatisfied with the decision has a right to appeal 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 fifty six days after this decision is sent to that party. The parties are referred to "guideline to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

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TRIBUNAL JUDGE K KHAN
RELEASE DATE: 09 DECEMBER 2015

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