



TC05249

Appeal number: TC/2016/00101

*INCOME TAX – Employer Annual Return – late filing – whether
reasonable excuse - no – appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Mortgage Port Ltd.

Appellant

- and -

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

TRIBUNAL: JUDGE DR K KHAN

The Tribunal determined this appeal on 20 June 2016 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 10 December 2015 and HMRC's Statement of Case of 1 February 2016.

DECISION

Introduction

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1. This is an appeal against three penalties totalling £1200 imposed under Section 98A (2) and (3) Taxes Management Act 1970 (TMA) for the late filing of Employer Annual Return for 2011/2012.

10 2. As the appeal has been filed late and there has been no objection by HMRC to the late filing the Tribunal believes that the Appellant should be given an opportunity to make the case on the grounds of fairness and therefore the appeal should proceed.

The Law

15 2. Regulation 73(1) of 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 which are called forms P35 and P14 before 20 May following the end of the tax year. The return must include specified information relating to relevant payments made during the tax year to employees for whom they had to prepare or maintain deduction working
20 sheets which are equivalent to payroll deduction records.

3. Regulation 205R the Income Tax (Pay as You Earn) Regulations 2003 requires the mandatory use of electronic communication by employers who must deliver their P35/P14 forms online using an approved method of communication. The returns for each employee must reach HMRC no later than 19 May following the end of the tax
25 year. If the return is not received by the due date the employer is liable to pay a penalty.

4. Where an employer does not file their annual return on time they will be charged a penalty in accordance with Section 98A(2)(a) and (3) TMA 1970. The penalties are fixed at £100.00 per month for each branch of 50 employees and charged
30 for the first 12 months if return is late.

5. Section 118(2) TMA 1970 provides statutory protection from a penalty if the employer had a reasonable excuse for failing to file their return on time. Whether or not there is a reasonable excuse is a matter to be considered in the light of all circumstances of the particular case.

35 From 2013, the P35 and P14 forms are no longer required to be filed.

The Facts

3. The Appellant was required to file an Employer Annual Return (P35 and P14) for the year 2011/2012. The filing date for the return was 19 May 2012. This filing had to be done electronically.

5 4. HMRC sent a P35 electronic notification to the Appellant on 25 March 2012 and a reminder was sent on 29 April 2012. A Late Filing Penalty Notice was sent on 24 September 2012 for £400.00 for the period 20 May 2012 to 19 September 2012.

10 5. A second Late Filing Penalty was sent on 28 January 2013 for £400.00 for the period 20 September 2012 to 19 January 2013. A third Late Filing Penalty was sent on 3 May 2013 for £400.00 for the period 20 January 2013 to 29 April 2013.

6. The total penalty was therefore £1200.00. The Employer Annual Return was filed online on 29 April 2013.

7. The Appellant does not dispute that the returns were filed late.

15 Appellant's submission

8. The Appellant in their appeal stated that HMRC had given other Taxpayers a grace period in the transfer from paper submissions to online submissions. It was felt that online submissions would be quick, easy and convenient for all employers going forward.

20 9. The Appellant explained that their previous submissions were made on time and the late filing in this case was a "one off event". They provided screen prints which showed the process date for their filing and they felt that there was no reason why these would not reach HMRC on time.

25 HMRC's submissions

10. The returns were due by 19 May 2012 and were not submitted to HMRC until 29 April 2013 thus giving rise to a late filing penalty which was correctly charged in accordance with the legislation. HMRC say that they are unaware of cases where penalties were discharged during the period of grace in the transfer from P35 paper submissions to online submissions. They note that the filing for the Appellant in the year of transition to online filing (2009-2010) was successfully submitted on 19 May 2010. They say there may have been cases which were settled by HMRC in other matters but this should not impact on the facts of this case. Each case has to be determined on its own merits. In this case given that the Appellant was an experienced filer and, as such, fully aware of the deadlines for filing their P35 return and the penalties for non-compliance. They should not therefore be exonerated from the penalties in this case.

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11. As regards the screen prints which were provided, HMRC do not accept them as evidence of the successful filing by the Appellant for the two 2011-2012 periods.

12. The Penalty Notices issued to the Appellant on 24 September 2012 and 28 January 2013 were correctly issued and they should have alerted the Appellant to the fact that any earlier filings they may have made had been unsuccessful.

Conclusion

13. Section 118(2) TMA 1970 provides statutory protection from a penalty if the employer had a reasonable excuse for failing to file their return on time. HMRC consider a reasonable excuse as 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 obligations to file on time. The Tribunal is not bound by this narrow definition when a combination of unexpected and unforeseeable events may, when viewed together, be a reasonable excuse.

14. The Tribunal would normally look at the employer's actions from the perspective of a prudent person, exercising reasonable foresight and due diligence, having proper regard to their responsibilities under the Tax Acts. If the employer could reasonably have foreseen the event, whether or not in their control, one would expect them to take steps to meet their obligation. If there is a reasonable excuse then it must exist throughout the failure period.

15. HMRC contend that the Appellant has not provided a reasonable excuse for the filing failure and that the penalties have been correctly charged in accordance with the legislation. The Tribunal does not dispute that position. Once HMRC have correctly shown that the penalties were correctly imposed, it is up to the Appellant to demonstrate that they had a reasonable excuse for the late filing of the return. The standard of proof is the ordinary civil standard of the balance of probabilities. In this case, the Tribunal accepts that the Appellant does not have a reasonable excuse for the late submission of the returns and that the Filing Penalties were charged in accordance with the legislation.

16. The Appellant was an experienced filer who knew the deadline dates and the consequences for not filing on time. The fact that other Taxpayers may have been treated differently is not an excuse. It is the employer's responsibility to ensure that a return is submitted on time. There is sufficient guidance on the HMRC website regarding the actions that an employer should take when dealing with returns and there are also guidelines available through contacting the Employer's Helpline.

17. While the Tribunal has sympathy with the Appellant for an administrative oversight which can be made by any business, the Appellant accepts that the returns were late. This may have been a one off event, as the Appellant has indicated but

nevertheless the Tribunal has limited power of mitigation in dealing with matters other than where there is a reasonable excuse.

18. Considering all the circumstances, the appeal is dismissed and the penalties are upheld.

5 19. 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
10 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.

15 **DR K KHAN**
TRIBUNAL JUDGE

RELEASE DATE: 13 JULY 2016

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