



TC01418

Appeal number: TC/2011/1906

Penalty for late delivery of P35- reasonable excuse? Held: no.

FIRST-TIER TRIBUNAL

TAX

MANCHESTER ELECTRICAL LIMITED

Appellant

- and -

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

Respondents

TRIBUNAL: CHARLES HELLIER (TRIBUNAL JUDGE)

The Tribunal determined the appeal on 30 June 2011 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 Appellant's letter of appeal dated 25 February 2011, HMRC's Statement of Case submitted on 11 April 2011

DECISION

1. The Appellant appeals against penalties imposed for the late submission of a form P35 for the year to 5 April 2010.
- 5 2. The tribunal service received a case statement from HMRC on 12 April 2011, and on 14 April it notified the Appellant's agent that this had been received, that HMRC should have sent a copy to the agent, and that if the Appellant wished to provide a reply it should be submitted within 30 days. No reply appeared to have been received. As a result the only material available to the tribunal was HMRC's case statement, the
10 documents attached to it, and the earlier correspondence between the Appellant and the tribunal.
3. The Appellant did not suggest that the P35 had not been submitted late on 3 November 2010. That was over six months late. The Appellant did not contest that in such circumstances section 98(2)(a) Taxes Management Act 1970 permitted the
15 levying of penalties and that the penalties were £100 per month or part thereof for which the P35 was late. The thrust of the Appellant's submission was that in the circumstances the penalty should not be levied.
4. Section 118(2) Taxes Management Act 1970 however provides that if a taxpayer has a reasonable excuse for not doing something he is not to be treated as in default
20 unless the excuse ceases and it is not done in a reasonable time thereafter. The Appellant's submissions are in effect that it had a reasonable excuse for its delay. The issue before the tribunal was therefore whether, on the evidence available to it, the Appellant had a reasonable excuse for the delay.
5. In his letter to the tribunal of 25 February 2011 Mr Samuels, the Appellant's
25 agent, says that he "requested that this company be set up for PAYE in 2008 by telephone calls, correspondence, and completion of their own forms – in particular form CT41G." No telephone attendance notes, copies of correspondence or copies of forms were supplied to the tribunal with this letter or at any later date. A copy of the form CT41G was however appended to HMRC's case statement.
- 30 6. Mr Samuels then says that HMRC failed to register the company for PAYE and it was only when he communicated with another member of HMRC's staff in 2010 that registration was finally completed. Following that the P35 was submitted. Mr Samuels does not provide details of that communication.
7. In his letter to HMRC of 14 December 2010 Mr Samuels says that "despite
35 numerous requests since 2010 this company was not set up for PAYE purposes. According to Mike Savill Assistant Officer's letter dated 19 November 2010 form CT 41 G has no application to PAYE, yet according to DJ Stone CT Coordinator's letter dated 14 August 2008 a PAYE scheme can only be set up once the completed CT41G has been returned". He says that even when the CT41G was returned the company
40 was not set up for PAYE. No documentary evidence of these numerous requests was provided to the tribunal.

8. In his letter of 6 October and 12 November 2010 Mr Samuels repeats that he requested that the company be set up for PAYE between mid 2008 and early 2009.

9. the form CT41G submitted by the company contains only one section (question 8) relevant to PAYE:

5 “The company is requires to operate PAYE on all remuneration paid to employees including...directors

 Is PAYE already being operated YES NO

 If yes please give [the HMRC office] and reference number.”

10 10. The company ticked “NO” in answer to the first question.

11. Discussion

12. It was plain that Mr Samuels did not understand the words of question 8. The question did not ask if the company wished to be registered but whether it was operating PAYE. The company replied “NO”. That question and that response cannot
15 reasonably be taken as a request to get the company set up to operate the PAYE system with an employer’s reference, and other PAYE materials.

13. Nor does it seem that Mr Samuels understood the remark in the latter of 14 August 2008 which he quotes in his letter of 14 December 2010. That remark indicates that the PAYE framework would not be set up unless the CT41G was received, not that receipt of that form would cause it to be set up.
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14. In my view it is clear that Mr Samuels, having arranged the submission of the form CT41G in February 2009, could reasonably have then been expected to pursue the PAYE office of HMRC for the necessary materials over the following 12 months. There was no evidence that he did, and I conclude that he did not.

25 15. Mr Samuels’ failure to understand the nature of question 8 on the CT41G, and his failure to take steps to get the requisite materials from HMRC do not in my view give rise to a reasonable excuse for his failure to submit the company’s P35 on time.

16. Nor in my view does the mere fact that the company engaged Mr Samuels to deal with its PAYE compliance afford a reasonable excuse for its default in these
30 circumstances.

17. I find that there was not reasonable excuse for the default.

18. The appeal is dismissed.

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

5 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.

CHARLES HELLIER

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**TRIBUNAL JUDGE
RELEASE DATE: 26 AUGUST 2011**

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