



**TC01513**

**Appeal number: TC/2011/04214**

*P35 return—Penalty for late return (Taxes Management Act 1970 s.98A)—  
Reasonable excuse—Appeal dismissed*

**FIRST-TIER TRIBUNAL**

**TAX**

**CHRIS WILLIAMS SERVICES**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: Dr Christopher Staker (Tribunal Judge)**

**The Tribunal determined the appeal on 3 October 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 Notice of Appeal, HMRC's Statement of Case dated 27 July 2011, and other papers in the case.**

## DECISION

### Introduction

1. The Appellant appeals against penalties totalling £1,200 imposed in respect of the late filing of its P35 employer's annual return (P35) for the tax year 2008/09.

### The relevant legislation

2. Regulation 73(1) of the Income Tax (Pay As You Earn) Regulations 2003 imposes on an employer the obligation to deliver to HMRC a P35 return before the 20th day of May following the end of a tax year. Paragraph (10) of that regulation provides that s.98A of the Taxes Management Act 1970 (the "TMA") applies to paragraph (1) of that regulation.

3. Section 98A of the TMA relevantly provides as follows:

(2) Where this section applies in relation to a provision of regulations, any person who fails to make a return in accordance with the provision shall be liable—

(a) to a penalty or penalties of the relevant monthly amount for each month (or part of a month) during which the failure continues, but excluding any month after the twelfth or for which a penalty under this paragraph has already been imposed, ...

(3) For the purposes of subsection (2)(a) above, the relevant monthly amount in the case of a failure to make a return—

(a) where the number of persons in respect of whom particulars should be included in the return is fifty or less, is £100, ...

4. Section 100(1) of the TMA authorises HMRC to make a determination imposing a penalty under s.98A of the TMA in such amount as it considers correct or appropriate. Section 100B of the TMA provides for an appeal against the determination of such a penalty. Section 100B(2)(a) provides that in the case of a penalty which is required to be of a particular amount, the Tribunal may

(i) if it appears ... that no penalty has been incurred, set the determination aside,

(ii) if the amount determined appears ... to be correct, confirm the determination, or

(iii) if the amount determined appears ... to be incorrect, increase or reduce it to the correct amount.

5. Section 118(2) of the TMA provides as follows:

(2) For the purposes of this Act, a person shall be deemed not to have failed to do anything required to be done within a limited time if he did it within such further time, if any, as the Board or the tribunal or officer concerned may have allowed; and where a

5 person had a reasonable excuse for not doing anything required to be done he shall be deemed not to have failed to do it unless the excuse ceased and, after the excuse ceased, he shall be deemed not to have failed to do it if he did it without unreasonable delay after the excuse had ceased.

### **The arguments of the parties**

6. The Appellant's case as stated in the undated notice of appeal is as follows: "Individual dealing with the matter of P35 submissions had left the area. Problems were not picked up until 2010 when every effort was made to then comply with  
10 HMRC requests. This however proved problematic in itself appeared to take longer than usual to respond to correspondence causing yet greater delays".

7. The HMRC statement of case states amongst other matters as follows. The filing date for the P35 was 19 May 2009, and it was not filed until 28 February 2011. On 28 September 2009, a first interim penalty notice of £400 was issued in respect of the  
15 four months from 20 May 2009 to 19 September 2009. On 25 January 2010, a second interim penalty notice was issued in respect of the four months from 20 September 2009 to 19 January 2010. On 24 May 2010, a third interim penalty notice was issued in respect of the four months from 20 February 2010 to 19 May 2010. The Appellant did not appeal until after the deadline for so doing, but HMRC do not object to the  
20 late appeal. The penalties were correctly charged in accordance with the legislation. It is the responsibility of the employer to ensure that their tax affairs are up to date, and reliance on an employee cannot be a reasonable excuse. The employer should have adequate procedures in place to ensure that the P35 filing obligation is fulfilled. The Appellant has not shown any exceptional circumstance that could amount to a  
25 reasonable excuse.

### **The Tribunal's view**

8. The Tribunal notes that the Appellant has not disputed that the return was filed late on 28 February 2011. The Appellant has not sought to dispute the amount of the penalty, in the event that there is no reasonable excuse.

9. The only explanation provided by the Appellant as to what is claimed to amount  
30 to a reasonable excuse is that quoted in paragraph 6 above. The Appellant does not give any more specific details of the circumstances. Nor does the Appellant provide any evidence in support.

10. The Tribunal considers that this very brief and general statement contained in the  
35 notice of appeal, of itself cannot be sufficient to establish a reasonable excuse for the late filing of the P35, given especially that it was filed nearly 2 years late. The burden is on the Appellant to establish a reasonable excuse, on a balance of probabilities. The Tribunal finds that the Appellant has not discharged that burden.

**Conclusion**

11. Thus, under s.100B(2)(a)(ii) of the TMA, the Tribunal confirms the penalties and dismisses the appeal.

5 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  
10 “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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**DR CHRISTOPHER STAKER**

**TRIBUNAL JUDGE**

**RELEASE DATE: 20 OCTOBER 2011**