



TC01518

Appeal number: TC/11/04217

Penalty Appeal: Section 98(2) Taxes Management Act (TMA)1970-£500 for late submission of P35-Appeal allowed.

Application to admit Appeal out of time; for readmission of Appeal under Section 98(2) TMA 1970-£400 for late submission of P35 previously withdrawn-Application refused.

FIRST-TIER TRIBUNAL

TAX

MR DAVID L CAVANAGH

Appellant

- and -

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

Respondents

TRIBUNAL JUDGE: Mrs G Pritchard, BL., MBA., WS

**Sitting in public at George House, 126 George Street, Edinburgh on Thursday
13 October 2011**

Mr David Cavanagh for the Appellant

Mr William Kelly, for the Respondents

DECISION

1. The Appellant had lodged two appeals in respect of penalties applied under TMA 1970 S98(2) (a) for failure to lodge a P35 for an employee for the tax year 2009/10. The first penalty had been for the period 19/5/2010-19/09/2010 in the sum of £400 being a penalty of £100 per month notified to the Appellant in February 2010.

2. The second penalty was for the period 19/09/2010-19/02/11 in the sum of £500 notified to the Appellant just days after the first penalty notification.

3. The Appellant appealed both. He later withdrew the first appeal acknowledging that he was late in submitting his P35 although all tax due had been paid. However he later wished to have the appeal reinstated but by then it was out of time. He therefore made application to the tribunal to admit that appeal.

4. His reason for appealing the second penalty was that if the first notification had been intimated timeously then the fault could have been rectified at once and no further penalty incurred. HMRC's guidance states that notification will be sent out "shortly" after 19 September in any year.

5. In respect of both matters, after some discussion on the merits of the appeal and of the application, and of consent, the Appeal against the imposition of the £500 penalty was allowed. The application for readmission of the appeal against the imposition of the £400 penalty was refused.

6. 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 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

MRS G PRITCHARD, BL., MBA., WS
TRIBUNAL JUDGE
RELEASE DATE: 21 OCTOBER 2011