



TC02914

Appeal number: TC/2012/00325

INCOME TAX: Employers Annual Return (forms P35 and P14); failure to file on time; problems with registering for electronic filing; tribunal's right to set penalty aside on grounds of "fairness"; jurisdiction of the tribunal.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ROY HARRIS

Appellant

- and -

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

TRIBUNAL: JUDGE CHRISTOPHER HACKING

The Tribunal determined the appeal on 11 April 2013 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 17 December 2011 together with associated correspondence from the Appellant's agent Rea Associates. It has also noted a further Notice of Appeal dated 22 February 2013 and in particular the Grounds of Appeal as therein stated. The Tribunal has read HMRC's Statement of Case submitted on 28 January 2013 (with enclosures).

DECISION

- 5 1. This appeal relates to the filing of the Appellant's Employer's Annual Return (P 35 and P14(s)) for the year 2010-2011. The filing date for this return was 19 May 2011. It was in fact filed and received online by HMRC on 21 June 2011.
2. A late filing penalty of £200 was imposed under section 98A(2)(a) & (3) Taxes Management Act 1970 being a penalty of £100 per month or part month during which the failure to file continues.
- 10 3. The Appellant had instructed its agent Rea Associates to undertake the filing on its behalf. Rea Associates experienced difficulty with registering with HMRC for online filing for its unincorporated clients (online filing for limited companies having been required for some time before the 2010-2011 tax year). It only achieved registration for online services on 24 May 2011, 4 days after the deadline for the filing
15 of the Appellant's Employers Annual Return.
4. Mr Harris and his agent blame the difficulties they say were experienced in the registration process for the delay although it is noted that it took another month after registration for the filing to be completed.
- 20 5. The Tribunal does not doubt that there will from time to time be occasions when the process of effecting either registration as an agent or the filing of documents on an online system will be frustrated by technical or other reasons. This is more likely to occur in the early days following the introduction of a new filing system. However the Revenue had publicised its plans well in advance and it was open to agents to attend to the matter of registering on behalf of their clients well before the commencement
25 date for the new system. Rea Associates did not do this and as a result they were unable in time to resolve the problems which arose and so missed the filing deadline for their client's Employers Annual Return.
- 30 6. Whilst the Tribunal does not doubt that the process of registration may well have been delayed by reason of the sort of difficulties to which reference is made in the appeal papers and hence the filing of the Employers Annual Return was late, it is unclear precisely what those problems were. No detailed or specific evidence was adduced as to the precise nature of the problems. Other agents were clearly able to effect timely filings on their clients' behalf. The Tribunal would need to be satisfied on the evidence before it that the problems were of such a nature as could not have
35 been avoided and which were outside the control of the Appellant or his agent before it would be prepared to consider that there was, in this case, a reasonable excuse for the delay.
- 40 7. There is no statutory definition of the expression "reasonable excuse". Those words must therefore be construed as having their normal meaning. It is suggested, at least as a starting point, that these words would exclude circumstances which were avoidable by the exercise of due diligence as well as being outside the reasonable control of the party concerned.

8. In this case the Appellant’s agent does appear to have left his registration to a late date which did not allow him to rectify the problems which arose and which might well be expected to arise when implementing a new system or procedure. There was no explanation as to why, even when the agent had registered, it took a further 4 weeks to effect the filing. It is acknowledged that communications with the Revenue are not always easy particularly at or around key dates such as May 19 when filing “traffic” is high but this cannot explain the further delay in this case.

9. It is clear that the Appellant considers that the strict application of the penalty regime is unfair in the circumstances of this appeal. The question of whether “fairness” in this more general sense is a matter which the Tribunal can take into account in its decision making is one which arose in the recently decided case of *HMRC and HOK Limited* [2012]UKUT 363 (TCC). It was decided in that case that the jurisdiction of the First-tier Tax Tribunal does not extend to discharging a penalty on the grounds of fairness. Its powers are limited to the legislation which confers those powers and accordingly where no “reasonable excuse” for the delay can be made out the penalty will be upheld.

10. The appeal was stayed for some time pending the decision in the case of *HOK* referred to above. However it has to be said that in the particular circumstances of this appeal *HOK* is perhaps of less relevance than the fact that the Appellant at no stage explained exactly what problems he or his agent had with the registration and filing process which caused such a considerable delay. Had there been evidence before the Tribunal that the problems experienced were due to difficulties with the Revenue’s systems and that despite every effort to ensure that the deadline was met it could not be achieved the Tribunal would have been prepared to consider this as a reasonable excuse. The fact that others appear to have been able to access the system and file on time suggests that this is unlikely to have been the problem.

11. Even if there had been a problem with the agent’s own system which could be shown to have been truly unforeseen and beyond its reasonable control this too could provide a possible reasonable excuse although it has to be assumed that leaving registration and/or filing to the last few days before the deadline unreasonably exposes the taxpayer to the inevitable problems that can arise, particularly when dealing with what is a new system. The Revenue itself advised in its publications concerning electronic filing that taxpayers should not leave this to the last week.

12. For the above reasons the penalty must be confirmed and the appeal cannot be allowed.

**CHRISTOPHER S HACKING
TRIBUNAL JUDGE**

RELEASE DATE: 29 July 2013