



TC02918

Appeal number: TC/2012/05924

*Late filing of P11D(b) – failure to ensure transmission of electronic filing –
use of inadequate software – reasonable excuse - appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

AGRIEMACH LIMITED

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE MALACHY CORNWELL- KELLY
MS ELIZABETH BRIDGE MA**

Sitting in public at 185 Dyke Road, Brighton on 16 August 2013

There was no appearance by or behalf of the appellant company

**Ms Gloria Orimoloye of HM Revenue and Customs Solicitor's Office for the
respondents**

DECISION

1. The appellant was not present or represented when the appeal was called on for hearing, but we were satisfied that the appellant had received notice of the hearing and, pursuant to Rule 33 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, we considered it in the interests of justice to proceed with the hearing in the appellant's absence. From the correspondence submitted by the appellant, and after hearing Ms Orimoloye's submission and reading the file prepared by HMRC, we reach the following conclusions.
2. This is an appeal against penalties of £400 imposed under Regulation 81(2)(a) of the Social Security Regulations 2001 for the late filing of the P11D(b) form for the tax year 2010-11. Under regulation 81(9), a penalty will not be chargeable if the employer in question has a reasonable excuse for the failure. The appellant was required to file form P11D(b) by 6 July 2011 in respect of class 1A National Insurance Contributions for the year 2010-11.
3. The appellant was sent the P11D(b) for completion on 10 April 2011 and the company's P35 return was filed online on 26 April 2011; when the P35 was filed online, it is apparent that the appellant thought that its P11D(b) composed online was likewise also duly filed, whereas it was required to be printed out and submitted in hard copy. That was not done, and on 19 June 2011 HMRC sent the appellant a reminder about the P11D(b), but no action was taken – the appellant thinking that the form had already been filed. The P11D(b) was finally filed online on 20 March 2012, but the class 1A contributions had been paid by the due date.
4. The error which occurred was that when it was due, and using the Basic PAYE Tools software which the appellant had, the P11D(b) could not be filed online and in the circumstances filing a hard copy was the only course open to the appellant and at that stage it was still permissible. The confusion appears to have arisen because when the documents were filed on 26 April 2011 two emails to the appellant from HMRC were generated which both said:-

Thank you for sending the PAYE end of year submission online.

The submission for reference 120/A32982 was successfully received on 26-04-2011. If this was a test transmission, remember you still need to send your actual Employer Annual Return using the live transmission in order for it to be processed.
5. After receiving the penalty under appeal on 14 November 2011, the appellant appealed against it on the grounds that (a) the error was innocent and payment had been made on time, (b) that HMRC's website did not make it clear whether or not returns had been submitted correctly and (c) that HMRC should have made the appellant aware before November that the filing had not been effective so that remedial action could have been taken. The appeal was stood over pending the decision of the Upper Tribunal in *Hok Limited v. RCC* [2012] UKUT 363 (TCC), which was delivered on 23 October 2012. That decision made it clear that HMRC are under no obligation to warn taxpayers that they are incurring penalties for late filing, thus removing one of the grounds of appeal, ground (c) in this case.

6. With regard to grounds (a) and (b), we have sympathy with the appellant in a busy office being caught out by the precise workings of the online filing system. In particular, the acknowledgment emails which we have quoted give the impression on a casual reading that the filing operation has been successful and that there is no more to be done. A careful reading of the email, however, does make it clear that the exercise just carried out by the taxpayer may need to be revisited if no definitive filing has been made, there being a test filing preceding the actual filing in which the completeness of what is filed is checked; the problem is that even if a filing is in order, the system does not (unlike the typical commercial order website) proceed at once to process it.
7. The evidence is, however, that HMRC’s website does indicate clearly that a filing is definitive when that stage has been reached, and that it does indicate after the test filing has been completed and it is confirmed that it has passed the validation checks that a further final submission is necessary. The difficulties in this case were compounded by the fact that the appellant was using software – basic PAYE Tools – which could not have been used for online filing of the P11D(b) in any event, and the form should therefore have been printed out and submitted in hard copy. On the basis of the evidence before us, therefore, we must conclude that the confusion apparently experienced by the appellant does not amount to a reasonable excuse and that the instructions for operating the system were adequate. The appeal must therefore be dismissed.
8. This document contains the full findings of fact and reasons for the decision. The appellant, not having been present or represented at the hearing of this appeal, may under Rule 38 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 apply in writing to the tribunal for the decision to be set aside; the application must be received by the tribunal no later than 28 days after the decision is sent to the appellant.
9. In addition, any party dissatisfied with this decision has a right to apply in writing 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 the tribunal no 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.

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MALACHY CORNWELL- KELLY

TRIBUNAL JUDGE

RELEASED: 03 October 2013