



TC03008

Appeal number: TC/2012/04405

TYPE OF TAX – PAYE – late submission of Employer’s Annual Return – Whether there was reasonable excuse for late submission of return - No.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

PHARMA CONSULT (EUROPE) LIMITED

Appellant

- and -

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

Respondents

**TRIBUNAL: PRESIDING MEMBER
PETER R. SHEPPARD FCIS FCIB CTA
AIIT**

The Tribunal determined the appeal on 4 October 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 23 March 2012 with enclosures, and HMRC’s Statement of Case dated 13 June 2013 with enclosures. The Tribunal wrote to the Appellant on 19 June 2013 indicating that if they wished to reply to HMRC’s Statement of Case they should do so within 30 days. This deadline was subsequently extended to 16 August 2013. A reply dated 8 August 2013 was received and considered by the Tribunal.

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DECISION

1. Introduction

5 This considers an appeal against a penalty of £200 levied by HMRC for the late filing by the appellant of its Employer Annual Returns (forms P35 and P14) for the year 2010 – 2011. By a direction of the Tribunal dated 3 April 2012 the appeal was stood over until 60 days after the issue of its decision by the Upper Tribunal (Tax & Chancery Chamber) in the matter of Hok Ltd. That decision was released on 23 October 2012.

10 2. Legislation

Income Tax (PAYE) Regulations 2003, in particular Regulations 73 and 205.

Social Security (Contributions) Regulations 2001 in particular Schedule 4 Paragraph 22.

Taxes Management Act 1970, in particular Section 98A(2) and (3); Section 100; Section 100B; and Section 118 (2).

15 3. Case law

HMRC v Hok Ltd. [2012] UKUT 363 (TCC)

4. Facts

20 Regulation 73(1) of Income Tax (PAYE) Regulations 2003 and Paragraph 22 of Schedule 4 of Social Security (Contributions) Regulations 2001 require an employer to deliver to HMRC a complete Employer Annual Return (Forms P35 and P14) before 20 May following the end of the tax year. In respect of the year 2010-2011 the appellant failed to submit complete Forms P35 and P14 until 14 July 2011. On 26 September 2011 HMRC sent the appellant a late filing penalty notice for £200 for the period 20 May 2011 to 14 July 2011.

5. Appellant's submissions

25 The appellant's agent, Griffins Business Advisers LLP, appealed against the penalties. In letters to HMRC dated 9 August 2011 and 6 December 2011 they say the return was submitted on 28 March 2011 and the tax was paid on time.

30 In the appeal notice the appellant accepts that a payment made to a director was overlooked when preparing the Employer's Annual return and a nil return was submitted in error. When the appellant became aware of this error a correct return was submitted without delay. The remittance was made on time.

6. HMRC's submissions

HMRC say that the appellant submitted its Employer's Annual Return for 2010-2011 online but late on 14 July 2011. Therefore the penalty of £200 was correctly issued and calculated.

35 7. HMRC submit that what was submitted prior to the 19 May deadline day was a declaration that there was no return to make.

8. HMRC contend that although the appellant fulfilled its obligations under Regulation 69 of the Income Tax (Pay as You Earn) Regulations 2003 and paid the liabilities due this cannot provide a reasonable excuse for failing to file a complete end of year return by the statutory due date.

5 9. HMRC point out that it is the employer's responsibility to ensure that a complete and accurate return is submitted on time. HMRC issued an electronic reminder on 13 February 2011.

10. Tribunal's observations

10 The appellant has accepted that a payment made to a director was overlooked when preparing the Employer's Annual return and a nil return was submitted in error. The legislation requires that complete and accurate returns be submitted on time.

15 11. The level of the penalty and whether HMRC's failure to send a prompt reminder was unfair are all covered in the decision of the Upper Tribunal in the case of Hok Ltd. That decision also considers whether the jurisdiction of the First-tier Tribunal includes the ability to discharge a penalty on the grounds of unfairness. At Paragraph 36 of that decision it states
"...the statutory provision relevant here, namely TMA s 100b, permits the tribunal to set aside a penalty which has not in fact been incurred, or to correct a penalty which has been incurred but has been imposed in an incorrect amount, but it goes no further.
20 it is plain that the First-tier Tribunal has no *statutory* power to discharge, or adjust a penalty because of a perception that it is unfair."

12. The level of the penalties has been laid down by parliament. The only other consideration that falls within the jurisdiction of the First-tier Tribunal is whether or not the appellant has reasonable excuse for his failure as contemplated by the Taxes Management Act 1970 Section 118(2).

25 13. The appellant overlooked a payment and so submitted an incorrect return within the deadline. Unfortunately the error was not corrected until a few weeks after the deadline. The appellant's agent has given no reasonable excuse for overlooking a payment that should have been included on the return. HMRC has applied the legislation correctly and calculated the amount of the penalties accurately for the periods 20 May 2011 to 14 July 2011 (£200). That
30 being the case and as indicated in paragraph 7 above the Tribunal has no statutory power to discharge or adjust the penalty.

14. A genuine and regrettable oversight does not establish a reasonable excuse for the late submission of a complete and accurate Employer's Annual Return (Forms P35 and P14). The appeal is therefore dismissed.

35 15. 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-
40 tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

PETER R. SHEPPARD
TRIBUNAL PRESIDING MEMBER

RELEASE DATE: 25 October 2013