



TC03011

Appeal number: TC/2012/05188

TYPE OF TAX – PAYE – late submission of Employer’s Annual Return – whether scale of penalty is reasonable, and whether penalty is unfair and should be reduced - Decision of Upper Tribunal in Hok Ltd applies. Whether reasonable excuse for late submission of return - No.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

GANTHOLME CO LIMITED

Appellant

- and -

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

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

The Tribunal determined the appeal on 28 August 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 25 April 2012 with enclosures, and HMRC’s Statement of Case submitted on 21 June 2013 with enclosures. The Tribunal wrote to the Appellant on 1 July 2013 indicating that if they wished to reply to HMRC’s Statement of Case they should do so within 30 days. No reply was received.

DECISION

1. Introduction

5 This considers an appeal against a penalty of £600 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 9 May 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
10 October 2012.

2. Legislation

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

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

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

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 Forms P35 and P14 until 8 November 2011. On 26
25 September 2011 HMRC sent the appellant a late filing penalty notice for £400 for the
4 month period 20 May 2011 to 19 September 2011. On 11 November 2011 HMRC
sent the appellant a final late filing penalty notice for £200 for the period 20
September 2011 to 8 November 2011.

5. In the Notice of Appeal and correspondence provided the appellant says that on 7
30 April 2011, ie well in time, they attempted to file the Employers Annual Return and
were not aware it had not gone through. The appellant filed a P38A on that date to
accompany the P35 and this was successful.

6. They say older members of the public find working online particularly difficult
and stressful. They did not know to expect a response message.

35 7. The appellant says they acted in good faith and that there is ample evidence to
show there was no intent file in a tardy manner. They say they have always filed and
paid on time in the past and in the light of that HMRC is being unnecessarily harsh.

8. They say they found it almost impossible to get help on the telephone. They complain that it took such a long time for HMRC to notify them of the failure.

5 9. HMRC say that as soon as they receive an Employer's Annual Return online it is checked against the HMRC quality standard. A message is issued usually within one minute, letting the filer know whether HMRC has accepted or rejected the return. If accepted an acceptance message to acknowledge a submission will be generated. They say the absence of a message should have alerted the appellant that the submission had not gone through.

10 10. HMRC point out that there is a wealth of guidance on their website about submission and completion of forms. They say the fact that a mistake was made when submitting the return cannot be considered a reasonable excuse

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 20 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. 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."

25 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).

30 13. The appellant's error whilst attempting to submit a return on time is most unfortunate especially for a taxpayer who has previously had an excellent record for filing and paying on time. In these circumstances it is understandable that the appellant finds HMRC's actions harsh. HMRC has applied the legislation correctly and calculated the amount of the penalties accurately for the periods 20 May 2011 to 19 September 2011 (£400) and 20 September 2011 to 8 November 2011 (£200). As indicated in paragraph 9 above the Tribunal has no statutory power to adjust the penalty.

35 14. The Tribunal accepts that the appellant acted in good faith and had no intention to submit the P35 form late. Unfortunately a simple error whilst attempting to file a return on an unfamiliar system does not establish a reasonable excuse for the late submission of the Employer's Annual Return (Forms P35 and P14). The absence of an acceptance message following submission should have alerted the appellant to the possibility that the submission had not gone through. The appeal is therefore 40 dismissed.

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-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

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PETER R. SHEPPARD
TRIBUNAL PRESIDING MEMBER

RELEASE DATE: 24 October 2013

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