



TC03211

Appeal number: TC/2013/06236

*INCOME TAX – Regulation 80 determination – P46 employment
procedure – penalties – reasonable excuse – timely provision of information
– appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

CRUACHAN HOTEL

Appellant

- and -

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

TRIBUNAL: JUDGE RICHARD J MANUELL

The Tribunal determined the appeal on 22 November 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 22 August 2013, HMRC's Statement of Case dated 28 October 2013 (with enclosures) and the Reply dated 1 November 2013.

DECISION

1. This determination has been prepared following the Appellant's request for full findings following the promulgation of the standard short form determination usual in default paper appeals. In reality having heard no live evidence from either side there is little which the Tribunal can usefully add, nevertheless a full decision is required to enable a Notice of Appeal to be considered. It should however be noted that no supporting evidence for any of the Appellant's contentions discussed below was produced for the Tribunal to consider. It was the Appellant's responsibility to produce such evidence.

2. The Appellant appealed to the Tribunal against HMRC's decision in the form of a Notice of Regulation 80 Determination dated 8 February 2013, by which the Appellant was charged £813.47 for the year 2008/2009 and £650.17 for the year 2009/2010 in respect of tax due because of the Appellant's failure to operate PAYE/NIC properly for 8 named employees, i.e., a total of £1,463.64.

3. HMRC made a late request that the appeal be transferred to the basic category and given an oral hearing but that request was not supported by the Appellant. As HMRC failed to identify any particular reason for the transfer, such as an intention to call oral evidence, and given that the sum in issue is modest, the Tribunal declined to order a transfer to the basic category.

4. The Appellant contended in summary that it had provided all the information required by HMRC. The Appellant asserted that HMRC had been slow and had given contradictory information. According to the Appellant, HMRC had provided a list of employees for whom information was missing, then sent another list with 90% fewer employees. All information available was sent to HMRC. When the business was taken over in 2008 all information was passed to the Appellant's accountant. Some employees had left for unknown reasons and the Appellant was unable to get their details. The Appellant in its Reply stated that, of 32 employees for whom information was sought, eventually the list was narrowed to 8 employees who had left the company during the transition takeover period. The Appellant had done everything it could to comply. No evidence was produced to the Tribunal to support any of the Appellant's assertions.

5. HMRC gave a different and more detailed account, supported by documents produced to the Tribunal and copied to the Appellant, as was noted in the preamble to this determination. The Appellant had first been contacted on 8 July 2011 seeking help to identify 32 employees but no information was provided until a meeting with the Appellant on 15 February 2012. Ultimately information was provided for all except 8 employees. In the absence of further information, determinations were issued under regulation 80 of the Income Tax (PAYE) Regulations 2003 SI 2003/2682.

6. A detailed summary of the relevant legislation was provided to the Appellant by HMRC with the Statement of Case dated 28 October 2013 served on the Appellant and copied to the Tribunal. There was no dispute about the law and it will not assist the Appellant if the Tribunal were to set out the relevant legislation again in any detail

here. The key element is the Income Tax (PAYE) Regulations 2003 SI 2003/2682, where the duty on employers to provide information and the penalties are set out.

7. Section 118(2) of the Taxes Management Act 1970 in summary states that for the purposes of that Act, where a person had a reasonable excuse for not doing anything required to be done he shall be deemed not to have failed to do it unless the excuse ceased and, after the excuse ceased, he did it without unreasonable delay. It should be noted that there is no relevant statutory definition of “reasonable excuse”. The Appellant brought no cases to the Tribunal’s attention.

8. The Appellant made a series of assertions but produced no evidence of any kind to the Tribunal to support their claimed cooperation with HMRC, let alone to support the Appellant’s accusation of dilatoriness and confusion on HMRC’s part. The Tribunal infers from the nature of the Appellant’s business as hoteliers that there will be a significant level of staff of various kinds, with the probability of temporary staff for peak holiday seasons and a similar probability of high staff turnover, given the unskilled nature of much of the work, for example, maids, bar staff. The Appellant claimed that the missing information was during the transitional takeover period but it is obvious that the Appellant must take responsibility for keeping full and proper records for each employee, obtaining a P46 for each employee unable to furnish a P45. The Appellant was unable to demonstrate that it had complied with the relevant Regulations for the 8 employees in question, for example, by producing copies of the records held for those employees.

9. It follows that the BR code of 20% was correctly applied for the relevant 8 named employees when HMRC’s determination dated 8 February 2013 was raised. The Appellant has failed to show that the calculation of the tax due was incorrect or that it had any sustainable reason for resisting HMRC’s determination. The appeal is dismissed.

10. 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.

**RICHARD J MANUELL
TRIBUNAL JUDGE**

RELEASE DATE: 7 January 2014