



TC03394

Appeal number: TC/2013/06848

*INCOME TAX – late filing penalties – employer’s return – reasonable
excuse – test filing – mistake or misunderstanding – appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

AGENTRONIC LIMITED

Appellants

- and -

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

Respondents

TRIBUNAL: JUDGE RICHARD J MANUELL

The Tribunal determined the appeal on 24 January 2014 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 4 October 2013 and HMRC’s Statement of Case dated 13 November 2013 (with enclosures).

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DECISION

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1. This determination has been prepared following the Appellants' 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 an application for permission to appeal to the Upper Tribunal to be considered.

2. The Tribunal decided that the Appellant had shown no reasonable excuse for the late filing of its Employer's Annual Returns (P35 and P14) for the years 2009-2010 and 2011-2012, which were due by 19 May 2010 and 19 May 2011 respectively (electronic). The returns were not received until 7 February 2011 and 26 September 2011 respectively. The Appellant has incurred late filing penalties of £1,400 in total.

3. The Appellant contends in summary through its agent that both P35s were filed in good time in May 2010 and May 2011 respectively. No email confirmation was received because HMRC held an outdated email address for the agent. When requested to resubmit the returns that was done. The agent had had similar experience of submissions being recorded as tests and the penalty notices were vacated, as was requested in this instance.

4. HMRC submitted that the Appellant had been registered under PAYE since 2002, so was or should have been familiar with the required procedures. The online account had been created in 2004 by their agent. Until 12 July 2013 the agent was for filing only and so HMRC could not discuss the Appellant's tax affairs with him. HMRC had no record of submissions prior to 7 February 2011 for the 2009-2010 return and 26 September 2011 for the 2010-2011 return. The Appellant's agent had produced no details and it seemed a coincidence that the sequence of events should be the same in two successive years.

5. The Appellant's agent's claim that each respective disputed electronic filing had taken place in time was vague and was unsupported by any evidence. It was in the Tribunal's view surprising that he was unable to state the exact date of each filing, nor able to produce a copy of the form as filed. If the Appellant or its agent had failed to notify HMRC of a current email address then of course that was not HMRC's fault. The Tribunal finds on the evidence before it that both filings were made late and were made on 7 February 2011 and 26 September 2011 respectively. There was not even any evidence that the agent had made a test submission, which although not a completed filing might have provided some support for the claims which have been made on the Appellant's behalf.

6. Even if the explanation provided might be taken to amount to a misunderstanding about the correct procedure which the Appellant or its agent did not discover for some time, that is not a reasonable excuse, i.e., in simple but unrestricted

terms, something unforeseeable, unexpected and beyond the Appellant's control. It was the Appellant's responsibility to ensure that each return was completed correctly and filed by the due date. No evidence was provided to show that HMRC had caused or contributed to any misunderstanding. Detailed guidance about the on line filing procedures is provided by HMRC. The change to exclusively electronic filing was extensively publicised by various means. The Appellant had in fact been registered for online filing for many years. There is no obligation in law for HMRC to issue reminders. The tribunal has no power to reduce penalties of this type in the absence of a reasonable excuse.

7. 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: 5 March 2014