



**TC03716**

**Appeal number: TC/2011/08321**

*PAYE – employer’s annual return – penalty for late submission – whether reasonable excuse*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**FIONA MACHIN**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE WDF COVERDALE**

**The Tribunal determined the appeal on 09.06.2014 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 16.09.2011 and HMRC’s Statement of Case submitted on 25.11.2011 (with enclosures).**

## DECISION

5 1. The Tribunal decided that the Late Filing Penalty Notices dated 27.09.2010 and 09.11.2010 in the sums of £400 and £200 respectively were properly issued by the Respondents.

2. The appeal is dismissed.

10 3. The Tribunal found that the filing date for the Appellant's Employer Annual Return for the year 2009-2010 (forms P35 and P14) was 19.05.2010. The Return was filed online on 04.11.2010 i.e. some five and a half months late.

4. The Tribunal further found that there was no reasonable excuse for the failure to file the Employer Annual Return on time.

15 5. The Appellant has submitted, through her agent, that she relied upon her former agent to submit the Annual Return in a timely manner whereas this had been neglected. The Respondents have correctly observed that reliance on an agent or third party is not a reasonable excuse; in any case the appellant changed to her present agent in April 2010 (noted from page 3 of the Notice of Appeal) and this was, therefore prior to the filing date for the Return in question.

20 6. The Respondent's Statement of Case refers to the comprehensive guidance available to employers with regard to their end of year responsibilities and the process of completing an Annual Return is evidently not challenging.

7. An electronic P35PN (Notice to file) had been issued to the Appellant on 10.01.2010 and this should have served as a timely reminder of her obligations.

25 8. The test applied by the Tribunal in considering the matter of reasonable excuse is whether the exercise of reasonable foresight and of due diligence and a proper regard for the fact that the Return would become due on a particular date would not have avoided the default. The facts and chronology of events, set out in the Notice of Appeal and the Respondent's Statement of Case, disclose that such foresight and diligence by the Appellant would have avoided the default.

30 9. In so far as it is suggested that the imposition of the penalty is disproportionate, unjust or unfair, those arguments have already been disposed of by the Upper Tribunal in *HMRC v Hok* [2012] UKUT 363 (TCC) and *HMRC v Total Technology (Engineering) Ltd* [2012] UKUT 418 (TCC). In the former it was made clear that the First-tier Tribunal has no jurisdiction to determine the fairness of a penalty imposed  
35 by statute. It is plain from a perusal of the latter that a penalty of the magnitude of that imposed in this case could not be described as disproportionate even if there were jurisdiction to deal with the argument.

10. In correspondence the Appellant's agent has referred to a lack of reminders from the Respondents. In *Hok* consideration was also given to the penalty regime

operated by the Respondents with particular regard to the timing of the issue of penalty notices. While the practice and procedure had evidently changed nevertheless the Upper Tribunal did not make a finding that the earlier practice, which may have applied to the Appellant in this case, was unfair.

- 5 11. 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  
10 “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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**WDF COVERDALE  
TRIBUNAL JUDGE**

**RELEASE DATE: 11 June 2014**

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