



**TC03731**

**Appeal number: TC/2014/00985**

*Employer Annual Return – filed on time – P11Ds filed late – agent’s oversight – liability cannot be passed to agent – alleged non-receipt of interim penalty notice*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**TRADE TEC SERVICES LTD**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE ALASTAIR J RANKIN**

**The Tribunal determined the appeal on 26 May 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 14 February 2014 (with enclosures) and HMRC’s Statement of Case (with enclosures).**

## DECISION

1. The Appellant company was required under Regulation 81(2)(a) of the Social Security Regulations 2001 to file online a Form P11D for the year ended 5 April 2013 by 6 July 2013. Although the Employer's Annual Return was filed within date on 10 May 2013 the P11D was not filed until 14 November 2013.

2. The correctly filed Employer's Annual Return clearly showed that completed forms P11D were required so the Appellant company was aware of the requirement to file these forms.

3. HMRC sent the Appellant company an electronic notification to file on 15 April 2013. HMRC claims to have sent a filing reminder on 16 June 2013 and as the P11Ds had not been received an interim penalty letter issued after 19 July 2013. The interim penalty letter advised the Appellant company that it had already incurred a penalty and needed to submit the P11Ds by 6 August 2013 in order to avoid a larger penalty.

4. A firm of chartered accountants on behalf of the Appellant company had submitted the Employer's Annual Return. By letter dated 19 March 2014 it vehemently denies that the Appellant company received the reminder dated 16 June 2013. The chartered accountants also deny that the Appellant company received the interim penalty letter.

5. The computer record produced by HMRC appears to show that the filing reminder letter was issued on 16 June 2013 but does not appear to show that the interim penalty letter was issued. However HMRC in its Statement of Case maintain that both the filing reminder letter dated 16 June 2013 and the interim penalty notice would have been sent to the Appellant company at the address used since 2006 and still used by the Appellant company. HMRC has no record of any correspondence addressed to the Appellant company being returned as undelivered.

6. A Notice of Penalty Determination was issued by HMRC on 11 November 2013 imposing a penalty of £400.00 calculated on the basis of there being fewer than 50 employees at the rate of £100.00 for each month that the P11Ds were late. Upon receipt of the P11Ds on 14 November 2011 HMRC issued a further penalty determination of £100.00 as a result of a further part of a month passing between 11 November 2013 and 14 November 2014.

7. HMRC maintains that the Appellant company has been registered as an employer for many years and would regard it as being an experienced employer fully aware of its obligations including the need to file both the Employer's Annual return and P11Ds.

8. The Appellant company appeals against the imposition of the penalties on the basis that the omission to file the P11Ds was a simple mistake by its agent, that it has an unblemished record, that the P11Ds were submitted as soon as the penalty notice was received and that all tax payments were made on time with no loss to HMRC.

9. It is the responsibility of the Appellant company to ensure the P11Ds are filed by the due date. It cannot pass the responsibility to its agent. This Tribunal agrees with the decision of Judge Dr Christopher Staker in a First Tier Tribunal case *Stewarton Polo Club Ltd v Revenue & Customs* [2011] UKFTT 668 (TC) where he states at paragraph 14:

‘The Tribunal accepts that in cases where highly specialised advice is required, a taxpayer may have no choice but to rely on the advice of a specialist. However, in cases where no specialist advice is required, the Tribunal does not consider that a taxpayer can be absolved of personal responsibility to file returns and pay taxes on time through reliance on a specialist.’

10. This Tribunal considers that completion of P11Ds does not require highly specialised advice.

11. Judge Staker continued at paragraph 17:

‘The Tribunal considers that the obligation to ensure that the return is filed on time is on the Appellant. If the Appellant uses an agent such as an accountant, the Appellant is in general under an obligation to ensure that the agent files the return on time. Failure of the agent to meet his or her obligations to the Appellant might entitle the Appellant to some recourse against the agent, but in the Tribunal’s view reliance on a third party such as an accountant cannot relieve the Appellant of its own obligation to file the P35 on time. The Tribunal does not accept that the bare fact that responsibility had been entrusted by the appellant to a third party of itself amounts to a reasonable excuse.’

12. Although the *Stewarton Polo Club* case related to forms P35, this Tribunal considers the same obligations apply to filing P11Ds.

13. HMRC maintain that there is no obligation on it to issue reminders or to notify employers that P11Ds had not been received prior to issuing a penalty notice and that there is no statutory obligation on it to issue penalty notices closer to the filing deadline.

14. The Tribunal accepts that it is the legal responsibility of the Appellant company to file the P11Ds on time and it cannot pass that responsibility to its agent. The Tribunal also accepts that, unfortunately, there is no obligation on HMRC to issue late filing penalty notices immediately after the due date.

15. In the case of *The Commissioners for Her Majesty’s Revenue and Customs and Anthony Boshier* [2013] UKUT 0549 (TCC) the Upper Tier Tribunal held that the scheme of the legislation coupled with the right to apply for judicial review does not infringe a taxpayer’s rights under the European Convention on Human Rights and the Human Rights Act 1998. The Tribunal also held that the penalties (subject to mitigation in any particular case) imposed by the regime in general are not disproportionate.

16. Although the case of Boshier concerned the Construction Industry Scheme this Tribunal considers the same principles apply to filing P11Ds.

5 17. Following the decision of the Upper Tribunal in Hok Ltd the Tribunal has no jurisdiction to discharge or adjust a fixed penalty which is properly due because it thinks it is unfair.

18. The Appellant company has not produced any reasonable excuse for the late submission of the P11Ds. As the P11Ds were between four and five months late the total penalties were correctly assessed at £500.00

10 19. The Appeal is therefore dismissed and the penalties totalling £500.00 remain due for payment.

15 20. 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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**ALASTAIR J RANKIN  
TRIBUNAL JUDGE**

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**RELEASE DATE: 11 June 2014**