



TC03760

Appeal number: TC/2011/07574

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

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

TAMROY PRECISION ENGINEERING LTD

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE WDF COVERDALE

The Tribunal determined the appeal on 23.06.2014 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 30.08.2011 (with enclosures) and HMRC’s Statement of Case submitted on 07.11.2011 (with enclosures).

DECISION

1. The Tribunal decided that the Late Filing Penalty Notices dated 27.09.2010 and 22.03.2011 in the total sum of £900 were properly issued by the Respondents.
2. The appeal is dismissed.
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 07.02.2011 i.e. over eight months late.
4. The Tribunal further found that there was no reasonable excuse for the failure to file the Employer Annual Return on time.
5. Although the Appellant contends that the Respondents sent him a paper P35 and that he returned it to them by post on 24.04.2010 the Respondents deny ever sending such a document to him and they have no record of receiving it from the Appellant. It is likely that Respondents are correct in this respect because the Return had to be submitted online for the year in question and it would not be appropriate to send any paper copy by post in these circumstances.
6. It is acknowledged that the Respondent has evidently submitted his Returns in a timely manner in previous years and that he has found the requirement to file online challenging because he does not have computer skills. However the Respondents have issued directives about online filing since at least 2008 and the appellant has, therefore, had ample time to organise his affairs so as to ensure that online filing was achieved.
7. The Respondents' records indicate that a P35N Employer notification was issued to the Appellant on 24.01.2010; this should have served as a reminder of his obligation to file the Return electronically by 19.05.2010.
8. If the Penalty places the Appellant in financial difficulties this is not a matter that can be regarded as reasonable excuse. Likewise reliance upon a third party or bookkeeper does not constitute reasonable excuse.
9. 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 Respondents' Statement of Case, disclose that such foresight and diligence by the Appellant would have avoided the default.
10. A principal theme of the Appellant's appeal is that the Respondents sent him no reminder or indeed a Penalty Notice until 27.09.2010 when the first one was issued; this was over four months since penalties began to accrue and the first Penalty Notice was therefore in the sum of £400 i.e. four months at £100 per month. Likewise the

second Penalty Notice in the sum of £500 was issued retrospectively after the Return was eventually filed online. In so far as the Appellant argues that the Penalty regime operated by the Respondents is thereby unjust or unfair, that argument has already been disposed of by the Upper Tribunal in *HMRC v Hok* [2012] 363 (TCC) which made it clear that the First-tier Tribunal has no jurisdiction to determine the fairness of a penalty imposed by statute. Likewise any argument that the Penalty is disproportionate cannot be sustained in this Tribunal as a consequence of the Upper Tribunal's decision in *HMRC v Total Technology (Engineering) Ltd* [2012] 418 (TCC).

10 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

15 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

20

**WDF COVERDALE
TRIBUNAL JUDGE**

RELEASE DATE: 26 June 2014