



TC03782

Appeal number: TC/2011/08159

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

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

PROSPECT HOUSE CARE HOME

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE WDF COVERDALE

The Tribunal determined the appeal on 27.06.2014 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 10.10.2011 (with enclosures) and HMRC’s Statement of Case submitted on 24.11.2011 (with enclosures).

DECISION

- 5 1. The Tribunal decided that the Late Filing Penalty Notices dated 27.09.2010 and 26.11.2010 in the total sum of £700 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 was 19.05.2010. The Return was filed online on 26.11.2010 i.e. over six months late.
- 10 4. The Tribunal further found that there was no reasonable excuse for the failure to file the Employer Annual Return on time.
5. A Return can only be filed online once. The fact that the Appellant's agent was able to file online on 23.11.2010 indicates that any previous attempt will have been unsuccessful.
- 15 6. The Appellant registered for online filing for the first time on 05.10.2010. This was already some four and a half months after the deadline for online filing. It is therefore not possible that the Appellant had previously filed its Return online. Any attempt at filing without having previously registered would have been met with rejection by the Respondents' systems.
- 20 7. There is no evidence before the Tribunal to indicate that the Respondents' systems were in any way faulty at material times.
8. It is unfortunate if the appellant has found the process of registering and filing online challenging but, as noted by the Appellants, information about PAYE including employer obligations, the completion of online Employer's Annual Returns, Return filing dates and penalties is well within the public domain and widely available via the internet including the Respondents' website, telephone helpline and public counters. Updates in the form of CD-ROMs are issued by the Respondents routinely throughout the year and are not representative of any system failures; in any case CD-ROM updates do not affect the employer's statutory obligation to file the annual return in a timely manner.
- 25 9. The fact that the Appellant had been able to print out information on a form P11 on 02.04.2009 does not indicate that the Annual Return had been submitted previously: form P11 is used to calculate the net pay for the employee and is not the employee end of year summary form.
- 30 10. The fact that the Appellant accounted for tax and National Insurance Contributions as required cannot mitigate their liability for a penalty imposed for the late filing of the Employer's Annual Return.
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11. If the Tribunal had identified any reasonable excuse for the Appellant's failure to file the Return on time such excuse could not have lasted for the whole period of default because the Appellant will have received the first penalty Notice on or about 27.09.2010 but still failed to file the Return for another two months.

5 12. The test applied by the Tribunal in considering the matter of reasonable excuse is whether the exercise of reasonable foresight and 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
10 diligence would have avoided the default.

13. In so far as the Appellant may argue that the imposition of the penalty is disproportionate, unjust or unfair these arguments have already been disposed of by the Upper Tribunal in *HMRC v Hok* [2012] UKUT 363 (TCC) and *HMRC v Total Technology (Engineering) Limited* [2012] UKUT 418 (TCC). In the former it was
15 made clear that the First-tier Tribunal has no jurisdiction to determine the fairness of a penalty imposed 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.

14. This document contains full findings of fact and reasons for the decision. Any
20 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)"
25 which accompanies and forms part of this decision notice.

**WDF COVERDALE
TRIBUNAL JUDGE**

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RELEASE DATE: 7 July 2014