



TC03786

Appeal number: TC/2011/09725

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

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

BARRY LOVELL

Appellant

- and -

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

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 16.11.2011 (with enclosures), HMRC’s Statement of Case submitted on 18.01.2012 (with enclosures) and the Appellant’s Reply dated 01.06.2014 (with enclosures).

DECISION

1. The late appeal is admitted.
- 5 2. The Tribunal decided that the Late Filing Penalty Notice dated 15.02.2011 in the sum of £600 was properly issued by the Respondents.
3. The appeal is dismissed.
4. 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
10 filed online on 03.11.2010 i.e. some 24 weeks late.
5. The Tribunal further found that there was no reasonable excuse for the failure to file the Employer Annual Return on time.
6. The Tribunal accepts that the Appellant's agent was registered and activated for
15 PAYE Online for Agents since January 2010 and that a Confirmation of authorisation code was issued by the Respondents with an expiry date of 21.05.2010. The Tribunal notes that the Appellant's agent alleges that the problem was in finishing the online procedure i.e. submitting the forms.
7. Ultimately responsibility for filing forms P35 and P14 rested with the
20 Appellant. Delegation to a third party does not absolve the Appellant from that responsibility. Liaison between the Appellant and his agent may have revealed that the agent was evidently having some problem and the Appellant would then have had the opportunity of personally intervening to resolve the matter and discharge his obligations to the Respondents. Furthermore the Return could, in fact, have been filed by the Appellant's agent before completion of the registration process.
- 25 8. There is very little evidence before the Tribunal that the Appellant's agent made attempts to contact the Respondents to complain about problems with the online submission of the Return. In the agent's Reply dated 01.06.2014 it is stated that by October 2010 he "was not making daily attempts but approximately weekly ones". Manuscript file notes submitted by the agent do not reflect weekly telephone or other
30 contact during a period of 24 weeks. The Respondents have no record of the agent contacting their online services helpdesk to report any problem.
9. The Tribunal cannot therefore, accept that there was an extensive problem with
35 online access to the Respondents for 24 weeks. The Respondents have not indicated any universal problem with their online service. The Tribunal concludes that, even if there was a problem with online filing, that problem did not continue throughout the period of default.
10. The outcome of any similar appeal by another client of the Appellant's agent can have no bearing on the Tribunal's decision in this case.

11. 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, the Respondents' Statement of Case and the Appellant's Reply, disclose that such foresight and diligence by the Appellant and his agent would have avoided the default.

12. In so far as the Appellant may suggest 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 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 that argument.

13. 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.

**WDF COVERDALE
TRIBUNAL JUDGE**

RELEASE DATE: 7 July 2014