



**TC03787**

**Appeal number: TC/2011/08132**

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

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**AURUM HEALTHCARE LTD**

**Appellant**

**- and -**

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

**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 11.10.2011 (with enclosures) and HMRC’s Statement of Case submitted on 21.11.2011 (with enclosures).**

## DECISION

5 1. The Tribunal decided that the Late Filing Penalty Notice dated 02.06.2011 in the sum of £100 was 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 2010-2011 (forms P35 and P14) was 19.05.2011. The Return was filed online on 30.05.2011 i.e. eleven days late.

10 4. The Tribunal further found that there was no reasonable excuse for the failure to file the Employer Annual Return on time. In particular an honest mistake made by the Appellant with regard to the online submission of the Return does not amount to a reasonable excuse.

15 5. The Tribunal accepts that the Appellant attempted to file their 2010-2011 Return on 27.04.2011. The Appellant assumed that the filing had been successful but it is clear that the online submission was in test mode and not live. The Appellant took no further action until 30.05.2011 when the absence of a successful online filing became apparent; it is accepted that the Appellant then acted promptly to file online successfully but by this time it was eleven days late.

20 6. The Respondents have observed that after the test submission on 27.04.2011 the Appellant will have received an on-screen message advising that the actual Return should then be filed. Furthermore the Appellant will have received an email confirming receipt of 'a' submission but also explaining that if it was a test submission the actual end of year Return still remained to be sent.

25 7. There is no evidence before the Tribunal to indicate that the Respondents systems were in any way faulty at material times.

30 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 Respondents' Statement of Case disclose that such foresight and diligence would have avoided the default.

35 9. 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 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.

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10. 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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**WDF COVERDALE  
TRIBUNAL JUDGE**

**RELEASE DATE: 7 July 2014**

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