



TC03788

Appeal number: TC/2014/01525

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

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

BISHOPS PRINTERS 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 14.03.2014 (with enclosures) and HMRC's Statement of Case submitted on 09.05.2014 (with enclosures).

DECISION

1. The late appeal is admitted.
2. The Tribunal decided that the Late Filing Penalty Notices dated 23.09.2013 and 04.03.2014 in the total sum of £4,200 were 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 2012-2013 (forms P35 and P14) was 19.05.2013. The Return was delivered electronically on 11.12.2013 i.e. over six months late.
5. The Tribunal further found that there was no reasonable excuse for the failure to file the Employer's Annual Return on time.
6. The Appellant maintains that the Return was indeed filed online on 09.04.2013. The Tribunal scrutinises the available evidence in order to ascertain what was successfully filed online and when.
7. It would appear that the following activities took place:
 - 1.) On 24.03.2013 the Respondents sent the Appellants a P35N which was an electronic notification reminding them to file the Return.
 - 2.) On 28.04 2013 a AR1N reminder was issued to the Appellants
 - 3.) After 19.05.2013 a P35 Penalty Letter was sent to the Appellant telling them that they had already incurred a penalty and that they needed to submit the Return by 19.06.2013 in order to avoid a larger penalty.
 - 4.) On 23.09.2013 the Respondents sent the Appellants a late filing penalty Notice for £2,000 based upon 214 employees.
 - 5.) On 11.12.2013 the Return was filed online and received by the Respondents; it showed 270 employees rather than 214.
 - 6.) On 04.03 2013 the Respondents sent the Appellant a late filing Penalty Notice for £2,200 for the period 20.09.2013 to 11.12.2013, the penalty amount being adjusted to take account of the increased number of employees.
8. Additional activities on the part of the Appellant were as follows:
 - 1.) On 09.04.2013 the Appellant submitted a P38A which is for reporting payments made by an employer during the tax year to employees for whom neither a form14 nor a form P38(S) has been completed. This was a "live" transmission.

- 2.) Also on 09.04.2013 the Appellant made two test submissions. A submission receipt was sent for one and a rejection message for the other.
- 3.) Another submission receipt provided by the Appellant is also dated 09.04.2013 and refers to an Employer Alignment Submission “HMRC-PAYE-RTI-EAS” which allows an employer and HMRC to align employee records before the employer joins RTI (Real Time Information).
9. No other relevant submission receipts have been provided by the Appellant. The Tribunal notes that both test and live submissions attract an email confirmation which is generic and states “If this was a test transmission remember you still need to send your actual Employer Annual Return using the live transmission in order for it to be processed”.
10. There is, therefore, no documentary evidence before the Tribunal to indicate that the Appellant achieved a live transmission of the Employer’s Annual Return on any date before 11.12.2013.
11. If the Appellant thought that the Return had been submitted correctly on 09.04.2013 the receipt of the AR1N reminder, issued by the Respondents on 28.04.2013, and the receipt of the P35 Penalty Letter, issued by the Respondents on 19.05.2013, should have alerted the Appellant that something was wrong and prompted them to take appropriate action or contact the Respondents’ online service desk for advice.
12. Even after the issue of a Penalty Notice on 23.09.2013 it was not until 11.12.2013 that the Appellant submitted a valid Return.
13. The Tribunal concludes that the Appellant and/or their agent failed properly to manage their electronic communications with the Respondents so as to file documentation electronically in a timely manner. The Tribunal makes a finding of fact that no Employer Annual Return for the year 2012-2013 was filed by the Appellant before 11.12.2013.
14. 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 diligence would have avoided the default.
15. In so far as the Appellant argues 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.

16. 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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