



TC03884

Appeal number: TC/2014/02669

End of year form P35 – submitted late –partnership dissolved – first penalty notice issued after four months – no reasonable excuse

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

NORTHERN GAS & BOILER SERVICES

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE ALASTAIR J RANKIN

The Tribunal determined the appeal on 1 August 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 9 May 2014 (with enclosures) and HMRC's Statement of Case submitted on 10 June 2014 (with enclosures).

DECISION

1. This is an appeal by Northern Gas & Boiler Services (the Partnership) against a penalty of £500.00 for the late filing of the Employer's Annual Return Forms P35 and P14 for the tax year 2012/13.

2. The Partnership was registered as an employer until 30 September 2012. However it was required to file Forms P35 and P14 for the period 6 April 2012 to 30 September 2012 by 19 May 2013. From the tax year 2009/10 the Partnership has been required to file the forms on line.

3. HMRC sent the Partnership a notification to complete the forms on 15 March 2013. As no forms had been received HMRC issued a late filing penalty notice on 23 September 2013 for £400.00 in respect of the period 20 May 2013 to 19 September 2013 calculated at the rate of £100.00 per month.

4. The Partnership filed the forms on 9 October 2013 and HMRC issued a further late filing penalty notice on 14 October 2013 for £100.00 in respect of the period 20 September 2013 to 9 October 2013.

5. The Partnership's Accountant requested a review of the penalties on the basis that had a penalty notice been issued immediately the returns were late, the Partnership would have become aware of the situation at an earlier date and only incurred a penalty of £100.00.

6. A Review Officer of HMRC by letter dated 26 March 2014 upheld the decision to impose the penalties on the grounds that the Partnership had not complied with its legal obligation to file the returns. As a reminder was sent to the Partnership on 15 March 2013, over two months before the deadline, the Partnership should have been alerted at that time of the requirement to file the returns. The Officer maintained there is no obligation on HMRC to issue reminders or notify the Partnership that the forms had not been received. The Officer also maintained that a penalty notice is not a reminder, rather simply a notification summarising the amount of penalties outstanding on a given date.

7. The Partnership's accountants issued a Notice of Appeal dated 9 May 2014 arguing that HMRC impose a £100.00 penalty immediately a deadline is missed in self assessment situations and they should adopt the same position for employment returns. The Partnership was not appealing against a quite reasonable penalty of £100.00.

8. HMRC has not taken issue with the fact that the Notice of Appeal was received after the expiry of the 30 day time limit.

The Law

9. Regulation 73(1) of The Income Tax (Pay As You Earn) Regulations 2003 (the 2003 Regulations) and Paragraph 22 of Schedule 4 of the Social Security (Contributions) Regulations 2001 require an employer to deliver a completed form

P35 together with a form P14 for each employee before 20 May following the end of the tax year.

10. Regulation 205 of the 2003 Regulations makes it mandatory for each employer to file the form P35 electronically.

5 11. Sections 98A(2)(a) and (3) provide for the imposition of a fixed penalty of £100.00 for each batch or part batch of 50 employees for each month or part month the return is late.

10 12. Section 118(2) of the 1970 Act provides statutory protection from a penalty if the employer had a reasonable excuse for failing to file their return on time. There is no statutory definition of reasonable excuse.

The Decision

13. There is no statutory obligation on HMRC to advise employers that they have failed to file their P35 forms on time. It is necessary that HMRC is seen to be consistent in its approach.

15 14. In order to have the penalty assessments set aside it is necessary for the Partnership to show a reasonable excuse.

15. The Tribunal finds that no reasonable excuse has been submitted by or on behalf of the Partnership. HMRC sent a reminder to the Partnership over two months before the filing deadline.

20 16. Following the decision of the Upper Tier Tribunal in Hok Ltd the Tribunal has no jurisdiction to discharge or adjust a fixed penalty which is properly due because it thinks it is unfair.

17. The appeal is therefore dismissed.

18. The penalties totalling £500.00 remain due for payment by the Partnership.

25 19. 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
30 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

Alastair J Rankin
TRIBUNAL JUDGE

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RELEASE DATE: 06 August 2014

