



**TC03961**

**Appeal number: TC/2014/02424**

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

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**A3 ARCHITECTURE LONDON LTD**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE WDF COVERDALE**

**The Tribunal determined the appeal on 21.08.2014 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 01.05.2014 (with enclosures), and HMRC’s Statement of Case submitted on 02.06.2014 (with enclosures).**

## DECISION

1. The Tribunal decided that the Late Filing Penalty Notices dated 23.09.2013 and 15.10.2013 in the sums of £400 and £100 respectively 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 2012-2013 (forms P35 and P14) was 19.05.2013. The Return was filed electronically on 10.10.2013 i.e. over four months late.
4. The Tribunal further found that there was no reasonable excuse for the late filing of the Annual Return.
5. Any error by the Appellant's agent does not constitute reasonable excuse. Responsibility for filing the Return on time was ultimately the responsibility of the Appellant itself. The Tribunal adopts the wording of Judge Dr C Staker in *The Cove Fish & Chip Restaurant Ltd v HMRC* [2011] UKFTT 625 (TC) when he said:

"The Tribunal considers that the obligation to ensure that the return is filed on time is on the appellant. If the appellant uses an agent such as a bookkeeper, the appellant is in general under an obligation to ensure that the agent files the return on time. Failure of the agent to meet his or her obligations to the appellant might entitle the appellant to some recourse against the agent but in the Tribunal's view reliance on a third party such as a bookkeeper cannot relieve the appellant of its own obligation to file the P35 on time. The Tribunal does not accept that the bare fact that responsibility had been entrusted by the appellant to a third party of itself amounts to a reasonable excuse."
6. The Notice of Appeal does not, in fact, refer to any omission by the Appellant's agent: it states that "We admit to our error for late filing of Employer Annual Return P35" and "I missed the deadline for filing ..." and "I was not fully aware of my obligation/duty to complete Employer Annual Return by 19<sup>th</sup> May ...".
7. Ignorance of the legislation is not a reasonable excuse. The Tribunal notes that a P35N electronic reminder was sent to the Appellant on 24.03.2013 and an Employer Annual Return Reminder (AR1N) was sent to the Appellant on 28.04.2013. The Appellant will, therefore, have been aware of its statutory obligations.
8. The allegation that the Appellant was not aware of the correct figures for insertion in the Return, first raised in the appeal to the Respondents, is not repeated in the appeal to the Tribunal.
9. The size of the Appellant Company is not relevant to the issues in this appeal; likewise lack of funds to pay the penalty is not a reasonable excuse.
10. Apart from addressing the matter of reasonable excuse the Respondents have no discretion in the matter calculation of the penalty which is set in Statute.

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 and the Respondents' Statement of Case, disclose that such foresight and diligence by the Appellant 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) 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 the Tribunal had jurisdiction to deal with the issue.

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: 27 August 2014**