



**TC06948**

**Appeal number: TC/2018/03173**

*INCOME TAX – penalty for failure to file employment intermediaries  
return on time – illness – whether reasonable excuse – no*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**RAYMENT RECRUITMENT LIMITED**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE ANNE FAIRPO**

**The Tribunal determined the appeal on 12 September 2019 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 30 April 2018 (with enclosures) and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 10 July 2018.**

## DECISION

### Introduction

1. This is an appeal against a penalty of £500, issued under s98(1)(b) Taxes Management Act 1970 on 8 November 2017, for a failure to file an employment intermediaries return on time.

### Appellant's case

2. The appellant (Rayment)'s grounds of appeal are, in summary:

(1) They attempted to file the return on Friday, November 3, 2017 but the information would not go through on HMRC's website. They called HMRC to explain the problem and were advised to keep trying and to send the information as soon as possible. They tried several more times on that day but did not succeed in sending the information. No details were taken of the HMRC individual spoken to.

(2) The person who was responsible for filing the return was away from work, ill, on November 6 and 7, 2017 and did not work on November 8, 2017. The return was filed as soon as she returned to work on November 9, 2017. The individual concerned suffered from pneumonia some months earlier, and had been hospitalised as a result of that at the time, and so was working minimal hours at the time. Evidence of the pneumonia was provided to HMRC. The illness on November 6 and 7, 2017 was related to the earlier pneumonia.

3. Rayment submitted that "a couple of days sick is a reasonable excuse as filing would have been completed on time had the HMRC website allowed it to go through".

4. Rayment also noted that they no longer take on self-employment individuals and so do not use the service any more.

### HMRC's case

5. HMRC made the following submissions, in summary:

(1) Rayment had enrolled in the employment intermediaries services in August 2015 and so should be expected to be aware of their filing obligations in respect of the service.

(2) No evidence has been provided as to the reported difficulties with filing online on 3 November 2017. HMRC have not been able to locate any telephone contact with Rayment on that date although, if only generic advice was given, HMRC's call records would not have included any information as to the caller.

(3) HMRC's digital services have no record of Rayment logging into the service on 3 November 2017. The records show that Rayment logged in on 31 October 2017, twice on 2 November 2017 and again on 7 November 2017. However, those records do not show what Rayment may have done, or attempted to do, once logged in.

(4) There were two further days after November 3, 2017, in which the return could have been filed on time.

(5) For illness to be a reasonable excuse for failure to file a return on time, the illness must be so serious as to prevent the employer from controlling the business immediately before the filing deadline up to the date on which the return was filed.

(6) The illness suffered by the individual who filed the return was neither sudden nor unexpected as it had been ongoing for some months. Where an illness is long term and ongoing, employers are expected to take action to ensure that their tax affairs are dealt with in a timely manner.

(7) An employer bears the ultimate responsibility for ensuring that tax obligations are met; those obligations cannot be transferred to another person acting on the employer's behalf. Appropriate procedures should be put in place to ensure tax obligations are met.

(8) The actions of Rayment need to be considered from the perspective of a prudent person otherwise in the position of Rayment, exercising reasonable foresight and due diligence, with proper regard to their tax responsibilities.

(9) If there is a reasonable excuse, it must exist throughout the failure period, which was 6 November 2017 to 9 November 2017.

6. HMRC submitted that Rayment did not have a reasonable excuse for the failure to file the relevant return on time.

### **Discussion**

7. It is not disputed that the relevant return was filed late. It should have been filed on 5 October 2017. It is not disputed that the return was filed four days late, on 9 November 2017 and that the penalty was properly issued. The issue to be decided is whether Rayment has a reasonable excuse for the failure to file the return on time.

8. The test of whether something is a "reasonable excuse" for the late filing of a tax return is not set out in statute but, in my view, the test set out in *Clean Car Company* [1991] VTTR 234 should be applied:

"a reasonable excuse should be judged by the standards of reasonableness which one would expect to be exhibited by a taxpayer who had a responsible attitude to his duties as a taxpayer, but who in other respects shared such attributes of the particular appellant as the tribunal considered relevant to the situation being considered"

9. In addition, a reasonable excuse must exist throughout the period of default, with the return being filed as soon as reasonably possible once the reasonable excuse has ceased.

10. Rayment have argued, in effect, that there is a two-part reason for their failure to file the return on time: they were unable to submit the information on HMRC's

systems on November 3, and the relevant staff member was not in the office to file the return on November 6, 7 and 8, 2017.

11. However, they have not explained why they did not attempt to file the return on November 4 or 5, 2017, when it would have been filed in time. I appreciate that these were weekend days, but the relevant HMRC systems are accessible at weekends and no explanation has been put forward as to why the return could not have been filed in time on one of those two dates. Applying the *Clean Car* test above, I consider that a prudent taxpayer would have made arrangements to submit the relevant return at the weekend, having been unable to file it on the Friday, in order to meet the relevant deadline.

12. Even if the individual who was generally responsible for submitting the return was not available at the weekend (whether because of illness or for some other reason), I consider that (again applying *Clean Car*) Rayment should have made arrangements, or otherwise had procedures in place, to ensure that someone else (such as another employee) to file the return on time.

13. I note from their grounds of appeal that Rayment may have believed that, because the filing deadline was on a Sunday (November 5, 2017) that the deadline was in fact the following working day, November 6, as their grounds of appeal state that the report was due to be filed by November 6, 2017.

14. If this was not a typographical error, and they believed that the return was in fact due on the Monday, that was a mistaken belief on the part of Rayment.

15. I agree with the decision of the First-tier Tribunal in the case of *Garmoss* [2012] UKFTT 315 (TC) which concluded that:

16. “What is clear is that there was a muddle and a bona fide mistake was made. We all make mistakes. This was not a blameworthy one. But the Act does not provide shelter for mistakes, only for reasonable excuses. We cannot say that this confusion was a reasonable excuse.....”

17. Although *Garmoss* related to a failure to pay VAT on time, I consider that the same principle can be applied when considering whether there is a reasonable excuse for the late filing of employment intermediary returns. Accordingly, if the reason that Rayment did not explain why the return was not filed over the weekend was that they believed that it was not due at that time, that mistaken belief also does not provide them with a reasonable excuse.

18. Accordingly, I find that Rayment has not established a reasonable excuse for the failure to file the return on time.

## **Conclusion**

19. The appeal is dismissed and the penalty upheld in full.

20. 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.

**ANNE FAIRPO  
TRIBUNAL JUDGE**

**RELEASE DATE: 28 JANUARY 2019**