



**TC02925**

**Appeal number: TC/2013/04262**

*INCOME TAX – penalty for late filing of Employer Annual return –are penalties unfair? - no- reasonable excuse-no-appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**L&L LEICESTER LIMITED**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE BARBARA KING**

The Tribunal determined the appeal on 20 September 2013 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 18 June 2013 (with enclosures), HMRC's Statement of Case submitted on 25 July 2013 (with enclosures) and the Appellant's Reply dated 31 July 2013 (with enclosures) .

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## DECISION

### The issue

- 5 1. The appellant appeals against the imposition of a penalty in the sum of £900 for the late submission of the employer's annual return (P35 and P14s) for the tax year ending 5 April 2011.
2. The appellant was required to file the return for the year 2010-11 by the 19 May 2011. The respondents ("HMRC") state that they received the return on 13 February  
10 2012 which was nine months, or parts thereof, late.

### The law

3. Under 98A(2) and (3) of the Taxes Management Act 1970, the appellant was liable to a fixed penalty of £100 for each month or part month that it was in default with its return. The penalty therefore amounted to £900.
- 15 4. The Tribunal has limited jurisdiction in penalty appeals. The Tribunal can either confirm the penalty or quash it if satisfied that the appellants either filed the return on time or that they have a reasonable excuse, throughout the period of the delay, for its default. The Tribunal has no power to mitigate the penalty.
5. The Upper Tribunal in *HMRC v Hok Ltd* [2012] UKUT 363 (TCC) re-affirmed  
20 the First Tier Tribunal's Limited jurisdiction in respect of penalty appeals and in particular emphasised that it had no statutory power to adjust a penalty on the grounds of fairness.
6. In considering a reasonable excuse the Tribunal examines the actions of the  
25 appellant from the perspective of a prudent employer exercising reasonable foresight and due diligence and having proper regard for his responsibilities under the Taxes Acts.

### The evidence and findings

7. The appellant company, in its appeal to the respondents ("HMRC"), wrote on  
30 22 April 2013 that it had submitted a P35 on 30 April 2012. I find that this date cannot be correct. It is even later than the date which HMRC give as the date they received the return.
8. In its Notice of Appeal to the Tribunal the appellant states that it did submit a P35 but it was not processed properly by HMRC. No precise date is given for this alleged submission and no printout, or receipt, to acknowledge the submission has  
35 been sent in to the Tribunal.
9. HMRC have supplied a print out which they state summarises the submissions and attempts at submissions by the appellant. This records a complete submission of

P35 and P14s on 13 February 2012, for the year ended 5 April 2011, and on 3 April 2012 for the year ending 5 April 2012.

10. On balance I find that the date on which a successful submission of the end of year return for 2010-11 was 13 February 2012. It was therefore nine months late.

5 11. Has the appellant shown reasonable excuse? The appellant company have sent a print out of an article, dated 19 March 2012, from 'accountingweb.co.uk' which they believe supports their appeal. The appellant submits that the article refers to the submission of test and live submissions and to messages of 'receipt' which are not clear.

10 12. It would appear that the appellant is alleging that they must have attempted a submission and then been confused by the reply message sent to them.

13. The obligation is upon the appellant to set out the circumstances to substantiate a reasonable excuse. The appellant has not done so. I find that the appellant has not produced any message and has not therefore proved that they were confused by it. I  
15 find that they have not shown a reasonable excuse for any mistaken belief which they may have had that they had filed their return well before 13 February 2012.

14. The article goes on to refer to the case of *Hok* referred to in paragraph 5 above. The Upper Tribunal decision in *Hok* was released on 23 October 2012, after the article dated 19 March 2012. The decision of Judge Geraint Jones has been  
20 overturned.

15. The penalty regime was brought in to encourage prompt filing. The penalty system is harsh but not manifestly unfair. The Tribunal has no power to mitigate the penalty.

### **Decision**

25 16. The appeal is dismissed and the penalty of £900 is confirmed.

17. 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  
30 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.

35 **BARBARA KING**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 2 October 2013**