



TC03803

Appeal number: TC/2014/01444

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

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

SW BATTEN & SONS

Appellant

- and -

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

TRIBUNAL: JUDGE WDF COVERDALE

The Tribunal determined the appeal on 14.07.2014 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 24.02.2014 and HMRC’s Statement of Case submitted on 14.05.2014 (with enclosures).

DECISION

5 1. The Tribunal admits the late appeal. Communication difficulties are the essence of the appeal and constitute reasonable excuse for the lateness of the appeal in this case.

2. The Tribunal decided that the late filing Penalty Notices dated 23.09.2013 and 10.10.2013 (as amended) in the total sum of £300 were properly issued by the Respondents.

10 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 filed online on 07.10.2013 i.e. over four months late.

15 5. The Tribunal further found that there was no reasonable excuse for the failure to file the Employer Annual Return on time.

20 6. The Appellant initially had difficulties in filing the Return but those difficulties were acknowledged by the Respondents by reducing the late filing penalties from £500 to £300. The difficulties were with the Basic PAYE Tools product and prevented the Appellant from filing the 2012-2013 Employer's Annual Return prior to 29.06.2013; on that date the Appellant was evidently given advice on how to remove their corrupted database and restore information from a backup.

25 7. No other difficulties with the Respondents' online service have specifically been identified by the Appellant either in their letter of appeal to the Respondents or in the Notice of Appeal to HM Courts and Tribunals Service. In particular there is no indication as to a reason for the failure to file the Return after 29.06.2013, when previous difficulties were resolved, and no indication as to why it took a further period of more than three months after that date to achieve the online filing.

30 8. 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.

35 9. 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 there were jurisdiction to deal with the issue.

10. 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**

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RELEASE DATE: 15 July 2014