



TC03329

Appeal number: TC/2011/09621

***PAYE & CT – LATE LODGING OF EMPLOYER’S ANNUAL RETURN
AND CT RETURN– BOOKKEEPER OFF SICK – LACK OF FUNDS DUE
TO DOWNTURN IN BUSINESS DUE TO RECESSION – LACK OF
ACTION BY APPELLANTS - WHETHER REASONABLE EXCUSE -
NO – APPEAL DISMISSED***

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ZOKI UK LTD

Appellants

- and -

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

TRIBUNAL: JUDGE BAIRD

The Tribunal determined the appeal on 3 February 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 Notices of Appeal dated 9 November 2011 (with enclosures), and HMRC’s Statements of Case submitted on 19 January 2012(with enclosures).

DECISION

1 The appellants appeal against two decisions made by HMRC. The first is to
5 impose flat rate penalties of £1000 for each of the accounting periods ending 30 April
2008 and 2009 and tax related penalties for late filing of Company Tax (CT) returns
of £1567.30 for the 2008 accounting period and £1908.30 for 2009. The second
decision was to impose penalties of £1200, £700 and £300 respectively for the tax
10 years to 5 April 2008, 2010 and 2011 in terms of Section 98A (2) and (3) of the
Taxes Management Act 1970, for late submission of the Employer's Annual Return.
The Annual Returns were to be filed online by 19th May following the end of a tax
year. The returns were submitted on 1 May 2009, 7 December 2010 and 20 July 2011.

15 2. The grounds of appeal are the same in each appeal. The appellants say that at the
end of 2007 their bookkeeper had a mental breakdown which resulted in a lot of time
off. This coincided with a downturn in business due to the current recession. The
bookkeeper was at work sporadically and the appellants did not want to upset or
pressure her so the accounts and tax obligations got behind. They could not afford to
20 pay another bookkeeper and in any event any thought of this made their bookkeeper
anxious and worried that she would lose her job. The bookkeeper is now recovered
and the accounts and tax affairs are up to date. They say the amount of penalties is
daunting for a small company in the midst of a recession and they are struggling to
pay.

25 3. The position of HMRC is that it was the responsibility of the appellants to ensure
that their tax obligations were met. The CT guide is clear that if there is a difficulty in
filing the return on time HMRC should be warned in advance and an arrangement
may be reached. Estimated figures can be submitted to avoid penalties. Information
on this is widely available. The appellants could have avoided the tax-related
30 penalties by either submitting the returns on time or estimating and paying the tax
liability within 18 months of the end of the relevant accounting period. HMRC set
out their understanding of 'reasonable excuse' and say that the appeal does not
contain anything which shows that either something unforeseen delayed filing of the
returns or that the filing of the returns was outside the control of the company at any
35 time.

40 4. So far as the second appeal is concerned, again HMRC contend that the
responsibility for filing the returns lay with the employers and though they are
sympathetic with the circumstances of the bookkeeper there is no evidence that this
had a direct effect on the ability of the appellants to comply with their tax obligations.
The appellants registered as employers in 1996 and ought to be fully aware of their
obligations. They ought to have arranged their affairs so that the returns could be filed
on time. There is no record of the appellants advising HMRC of their difficulties or of
them seeking advice or an extension to the filing date. HMRC say, relative to both
45 appeals, that there is a Business Payment Support Service designed to meet the needs
of all businesses affected by the recession who have difficulty paying monies owed to
HMRC and details of this service is in the public domain. HMRC conclude that the

appellants have not established that on a balance of probabilities there is a reasonable excuse for their failures to meet their obligations

5 5. I have given careful consideration to the evidence before me. If a person is to rely
on reasonable excuse, this must have existed for the whole of the period of default. A
reasonable excuse is normally an unexpected or unusual event, either unforeseeable or
beyond the person's control, which prevents him from complying with an obligation
when he otherwise would have done. The matter has to be considered in the light of
10 the actions of a reasonable prudent tax payer exercising foresight and due diligence
and having proper regard for his responsibilities under the Taxes Act.

15 6. I accept that the appellants were put in a difficult position by the illness and
absence of their bookkeeper and that out of loyalty to her and a lack of funds they
chose not to employ a replacement but it seems that they simply allowed the penalties
to accrue and did nothing to avoid them. It seems there was no effort to contact
HMRC for advice on whether there were options available to them. The appellants
must have been aware that tax returns had not been done and if they were not they
ought to have been. If they did not want to trouble the bookkeeper they could have
sought information from HMRC. In all the circumstances I must agree with HMRC
20 that the appellants have not established that on the balance of probabilities they have a
reasonable excuse for their failure to meet their obligations under the Taxes Acts.

6. I dismiss both appeals.

25 7. 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
30 accompany a Decision from the First-tier Tribunal (Tax Chamber)" which
accompanies and forms part of this decision notice.

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**N A BAIRD
TRIBUNAL JUDGE**

RELEASE DATE: 14 February 2014

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