



**TC03424**

**Appeal number: TC/2013/09440**

*PAYE – Late lodging of employer’s annual return- Agents believed return had been successfully filed – Delay by hmrc in issuing penalty notice - Whether reasonable excuse - No – Appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**KEITH DENNIS ASSOCIATES**

**Appellants**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE NORMA BAIRD**

**The Tribunal determined the appeal on 28 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 Notice of Appeal dated 9 December 2013 (with enclosures), HMRC’s Statement of Case submitted on 15 January 2014(with enclosures) and the appellants’ reply dated 4 February 2014.**

## DECISION

1 The appellants appeal against the decision of HMRC to impose penalties of £500  
5 in terms of Section 98A (2) and (3) of the Taxes Management Act 1970, for late submission of the Employer's Annual Return for the tax year ending 5 April 2013. The Annual Return was due to be filed online by 19<sup>th</sup> May 2013. According to HMRC it was filed online on 1 October 2013.

10 2. The position of the appellants is that the return was filed online by their agents on 18 April 2013. The agents had noted that it had been submitted and genuinely believed it had been. They and the appellants were unaware that it had not been received by HMRC until they received the first Penalty Notice in September 2013. They say that if they had been advised sooner that it had not been received they would  
15 have resubmitted it. They assume that an internet problem resulted in the non-receipt by HMRC of the return. In reply to the Statement of Case the agents reiterate that they believed the return had been submitted and would have remedied the problem earlier had they been told about it.

20 3. HMRC say that there is no record of a return having been submitted in April 2013 and no record of any problems with the PAYE online filing system at that time. They say that an acceptance or rejection message is sent and the absence of this should have alerted the agents that there was a problem. HMRC cite caselaw to support their contention that responsibility for filing an Employer's Annual Return cannot be  
25 delegated to an agent and that even an honest mistake by an agent cannot amount to a reasonable excuse for late filing. The responsibility to file in time lies with the employer. In response to the complaint by the agent that it took HMRC four months to advise them that the return had not been received HMRC say that they are under no obligation to issue reminders or to send out penalty notices any earlier than they do. In  
30 any event a reminder would have been issued in accordance with normal practice between 31 May and 6 June 2013. There is nothing to indicate that this letter was not properly delivered to the appellants.. HMRC conclude that the appellants have not established that on a balance of probabilities there is a reasonable excuse for their failure to file their return on time.

35 4. 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  
40 when he otherwise would have done. The matter has to be considered in the light of the actions of a reasonable prudent tax payer exercising foresight and due diligence and having proper regard for his responsibilities under the Taxes Acts.

45 5. The appellants' agents accept that they were charged with the task of submitting the return. This does not however absolve the appellants of responsibility. It does not seem unreasonable to assume that agents who are accountants and presumably experienced in making returns would be aware that a successful submission or

rejection message is received or would in any event take steps to ensure that the return had been received by HMRC. With regard to the delay in the issue of the Penalty Notice, in *HMRC v Hok Ltd [2012] UKUT 363 (TCC)* it was held that in purporting to discharge the penalties on the ground that their imposition was unfair the First-tier Tribunal was acting in excess of its jurisdiction and its decision was quashed. There is therefore no merit in these submissions.

6. I find having considered all the circumstances that the appellants have not established that they have a reasonable excuse for late filing and I dismiss the appeal.

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

**NORMA BAIRD  
TRIBUNAL JUDGE**

**RELEASE DATE: 19 March 2014**