



TC03481

Appeal number: TC/2013/09525

*INCOME TAX - penalty for late submission of Employer's annual return –
whether there was a “reasonable excuse” – no*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

IRAQ ENERGY LIMITED

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE JOANNA LYONS

The Tribunal determined the appeal on 25 March 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 16 December 2013, HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 27 January 2014 and the Appellant's Reply dated 21 February 2014.

DECISION

Introduction

- 5 1. This is an appeal against a penalty of £400 imposed for the late filing of the Employer's Annual return for the tax year 2012-13.
2. Mr Rakesh Wadhwa, of Tax Link accountants, appeals on behalf of the appelland company. ("the company")

10 The issue

3. The appelland appeals on the grounds that there was a reasonable excuse for the late filing of the return. This is opposed by HMRC,

The Law

4. In so far as it is relevant to this appeal the relevant law is set out below.

15 *Obligation to file the return*

5. An employer has an obligation to file an Employer's Annual Return on or before 20 May following the end of the tax year. Regulation 73(1) of the Income Tax (Pay As You Earn) Regulations 2003.

Imposition of penalty

- 20 6. If the return is not filed by the due date a penalty is payable in the sum of £100 per month for a firm with 50 employees or less. Section 98A (2) and (3) of the Taxes Management Act 1970 ("TMA").
7. Where the combined total of tax and NIC is £100 or less HMRC apply a concession and the penalty is limited to a minimum of £100.

25 *Powers of the Tribunal*

8. The Tribunal can set aside the penalty if it has been incorrectly applied.
Section 100B TMA

Reasonable excuse

- 30 9. The Tribunal can allow an appeal if the Employer has a "reasonable excuse" for the late submission of the return. Section 118(2) TMA.
10. In the case of *Rowland v HMRC [2006] STC (SCD) 536* it was decided that "reasonable excuse" was "a matter to be considered in the light of all the circumstances of the particular case".

Delegation to a third party

11. The mere fact that responsibility had been delegated to a third party does not amount to a reasonable excuse. *Westbeach Apparel Uk Ltd v Her Majesty's Revenue and Customs [2011] UKFTT 561*.

- 5 12. The Tribunal can look behind act of delegation in order to determine whether the third party, themselves, has a reasonable excuse. *Customs & Excise Commissioners v Steptoe [1992] STC 757*.

Burden of proof

- 10 13. HMRC has the burden of proving that the penalty has been incurred. The taxpayer has the burden of proving that there was a reasonable excuse. *Jussila v Finland (75053/01) [2006] ECHR 996*.

The agreed facts

14. The company was due to file an Employer's annual return for the tax year 2012-13. They instructed their agents, Tax Link accountants, to file the return on their
15 behalf.

15. In late April 2013 Tax Link installed new software in order to comply with the requirement for real time information ("RTI"). The migration of data to new software caused a disruption of computer records including PAYE reference numbers.

16. The employee responsible for filing the return provided a file note showing that
20 she had filed the return before the due date. However this employee has since left the company and has provided no further information regarding the filing process.

17. HMRC have no record of an attempt to file the return before the due date. A few days after 31 May HMRC sent an interim penalty notice to the company informing them that the return was outstanding and a penalty had been incurred. Mr
25 Wadhwa does not state when the interim penalty notice was brought to his attention. However he states that the return was filed as soon as he became aware of the default.

18. The return was filed online on 21 August 2013. A final late filing penalty of £400 was imposed on 26 August 2013 for the default period 20 May to 21 August 2013.

30 **The arguments**

The appellant's case

19. Mr Wadhwa submits that there was a reasonable excuse for the late submission of the return because :

- (1) Their records were compromised by the software changes and

(2) the filing clerk honestly and genuinely believed that the return had been filed before the due date.

20. Mr Wadhwa submits that he was not aware that a penalty had been incurred until August 2013 by which time the penalty had increased to £400.

5 21. In support of his case he relies upon the following decisions of the First Tier Tribunal. In particular he relies upon:

(1) *Consult solutions V Her Majesty's Revenue and Customs [2011] UKFTT 429* in which the Tribunal found that a late return was brought about by an internet error was a matter outside the appellant's control.

10 (2) *HMD Response International V HMRC 2011 UKFTT 472* in which the Tribunal found that a genuine and honest belief by the filing clerk amounted to a reasonable excuse.

The Respondent's case

15 22. HMRC accept that the accountants experienced software problems. However they submit that this does not amount to a reasonable excuse in the circumstances because the employee submitted the return before the due date and did not receive a message confirming receipt.

23. In support of their case they rely upon a number of First-tier Tribunal decisions in which the Tribunal found there to be no reasonable excuse.

20 **Reasons for decision**

24. I note the First Tier Tribunal decisions referred to by the parties on the issue of reasonable excuse. However the issue of reasonable excuse falls to be determined on all the facts of the particular case. Accordingly the Tribunal decisions quoted are of limited assistance in determining the issue of reasonable excuse on the facts of this case.

25 25. I accept that the company delegated the task of filing the return to their accountants. However the mere fact of delegation to a third party does not, in itself, amount to a reasonable excuse as the responsibility for filing the return remains with taxpayer. *Westbeach Apparel Uk Ltd (above)*.

30 26. I have considered whether Tax Link themselves had a reasonable excuse. I accept that their employee attempted to file the return before the due date as this evidence had not been disputed. However it would have been reasonable in the circumstances for the employee to have sought confirmation of receipt before assuming that the return had been successfully filed. There is no evidence to suggest that any such confirmation was sought or received.

35 27. I accept that the accountants encountered computer problems which brought about a loss of data. However in the event of such difficulties it would have been

reasonable for the Tax Link to have sought advice and assistance from HMRC. There is no evidence to show that any such advice was sought.

28. It is agreed that HMRC issued an interim penalty reminder to the company shortly after 31 May 2013. It would appear that the company did not immediately pass the reminder on to Tax Link as they did not become aware of the default until August 2013 by which time the penalty had escalated to £400. However this does not amount to a reasonable excuse for the continuing failure to file the return because the obligation to file the return remained with the company and, having been alerted to the default, it was their responsibility to make the necessary enquiries of their agents.

29. For these reasons I am not satisfied that there was a reasonable excuse for the late submission of the return throughout the period of the default.

Decision

30. There was no reasonable excuse for the failure to submit the Employer's Annual return for the tax year 2012-13.

31. The appeal against the final late filing penalty of £400, is dismissed.

Right of appeal

32. 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.

**JOANNA LYONS
TRIBUNAL JUDGE**

RELEASE DATE: 9 April 2014