



**TC03537**

**Appeal number: TC/2014/00410**

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

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**CALL CENTRE WORKS LIMITED**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE JOANNA LYONS**

**The Tribunal determined the appeal on 04 April 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 January 2014, HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 10 February 2014 and the Appellant's Reply dated 03 March 2014.**

## DECISION

### Introduction

- 5 1. This is an appeal against a penalty of £100 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 appellant company ("the company").

### 10 The issue

3. The appellant 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 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 income tax and National insurance contributions (NIC) is less than the penalty imposed HMRC apply a concession such that the
- 25 penalty is limited to a minimum of £100.

### *Powers of the Tribunal*

8. The Tribunal can set aside the penalty if it has been incorrectly applied, s100 TMA.

### *Reasonable excuse*

- 30 9. The Tribunal can allow an appeal against a penalty if the Employer has a "reasonable excuse" for the late submission of the return s118(2) TMA.
10. There is no statutory definition of the term "reasonable excuse" 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 HMRC [2011] UKFTT 561*. 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*

12. 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**

13. 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 behalf.

14. 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 the disruption of computer records including PAYE reference numbers.

15. The employee responsible for filing the return provided a file note showing that she had filed the return before the due date. This employee has since left the company and has provided no further information regarding the filing process. A file note has not been provided.

16. 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.

17. The return remained outstanding four months after due date and on 23 September HMRC issued a penalty notice for £400 for the period 20 May 2013 to 19 September 2013.

18. The return was filed online on 09 October 2013. A final late filing penalty of £100 was imposed on 14 October 2013 for the default period 20 September to 09 October 2013.

19. The overall penalty was reduced to £430.56 to reflect the amount of tax due on the return. The penalty was later reduced in error to £100. HMRC have indicated that they do not intend to correct the error and confirm that the penalty is limited to £100.

## **The arguments**

### *The appellant's case*

20. Mr Wadhwa submits that there was a reasonable excuse for the late submission of the return because the filing clerk honestly believed that the return had been filed  
5 before the due date and their records were compromised by the software changes.

21. 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.

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

10 (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.

(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  
15 a reasonable excuse.

### *The Respondent's case*

23. 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 responsible for submitting the return did not receive a message  
20 confirming receipt.

24. 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.

## **Reasons for decision**

### *Reasonable excuse*

25. I take account of the First Tier Tribunal decisions referred to by the parties. However the issue of reasonable excuse falls to be determined on all the facts of the particular case. Accordingly the Tribunal decisions quoted were determined on their individual facts and do not assist me in determining the issue of reasonable excuse on the facts of this case.

30 26. I accept that the company delegated the task of filing the return to Tax Link 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)*.

35 27. I now go on to consider whether Tax Link had a reasonable excuse. I accept that the filing clerk 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

filing clerk 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 received.

5 28. 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 Tax Link to have sought advice and assistance from HMRC before the due date. There is no evidence to show that any such advice was sought.

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.

10 *Period of the default*

15 30. I accept that Mr Wadhwa did not receive the interim penalty notice sent on 31 May. I find that as a result of this he was not prompted to submit the return thereby limiting the default period to one month and the applicable penalty to £100. However in this case the prompt submission of the return would have had no affect upon the level of penalty imposed which has been limited to £100.

**Decision**

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

32. The appeal against the final late filing penalty of £100, is dismissed.

20 **Right of appeal**

25 33. 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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**JOANNA LYONS  
TRIBUNAL JUDGE**

**RELEASE DATE: 28 April 2014**