



TC03572

Appeal number: TC/2014/00014

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

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**MR ROBERT BOND
t/a B & B ELECTRICAL & DEVELOPMENT**

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE JOANNA LYONS

The Tribunal determined the appeal on 11 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 December 2013 and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 31 January 2014.

DECISION

Introduction

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. The penalty was imposed in accordance with s98A(2) and (3) Taxes Management Act 1970.
2. Mr Robert bond appeals on behalf of the business.

Out of time

3. The appeal was due to be filed on 23 October 2013 and the notice of appeal was lodged out of time on 21 November 2013.
4. In his appeal Mr Bond has not provided a specific reason the late appeal. However this case is complicated by the fact that the penalty was amended on 18 October 2013.
5. This Tribunal has the power to extend the time limit for lodging an appeal in accordance with Rule 5(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber Rules 2009) and the overriding objective Rule 2(1) "to deal with cases fairly and justly".
6. I am satisfied that it is in the interests of justice to extend the time limit to 21 November 2013 because Mr Bond challenged the penalty at an early stage and HMRC have not been prejudiced by the delay.

The issue

7. Mr Bond appeals on the grounds that there was a reasonable excuse for the late filing of the return. This is opposed by HMRC.

The Law

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

Obligation to file the return

9. 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

10. 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, s98A (2) and (3) of the Taxes Management Act 1970 ("TMA").

11. Where the combined total of tax and NIC is £100 or less it is the practice of HMRC to apply a concession such that the penalty is limited to £100.

Powers of the Tribunal

5 12. This Tribunal may set aside the penalty “if it appears ..that no penalty has been incurred” s100B(2) TMA.

Reasonable excuse

13. A penalty may be set aside if the taxpayer can establish a “reasonable excuse” for the late filing of the return throughout the default period s118(2) TMA.

10 14. In the case of *Rowland v HMRC [2006] STC (SCD) 536* it was decided that a “reasonable excuse” was “a matter to be considered in the light of all the circumstances of the particular case”

15 15. 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*.

16. 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

20 17. 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

25 18. About five years ago Mr Bond employed his son, Ashley Bond, as his apprentice. He engaged the service of Smartpayroll Solutions (“Smartpayroll”) to deal with the PAYE on his behalf.

30 19. In July 2012 Mr Bond ceased to employ his son. He wrote to Smartpayroll on 31 July 2012 to inform them that his son was no longer employed and that he would no longer require their services. He assumed that Smarpayroll had complied with all the necessary legal requirements. Smartpayroll did not inform him that the Employer’s Annual return was outstanding for the year 2012-13 and did not notify HMRC that they had ceased to act on his behalf.

35 20. On 24 March HMRC sent an email to Mr Bond reminding him that he was required to file a return for the year 2012-13. On 28 April 2013 HMRC sent a letter to Mr Bond’s address reminding him to file the return and warning him of the potential penalties.

21. The Employer's annual return for the year 2012-13 was due to be filed on 19 May 2013. The return was not filed by the due date.

22. On 31 May 2013 HMRC sent Mr Bond an interim penalty notice informing him that the return was outstanding. On 24 September HMRC issued a late filing penalty of £400 for the period 20 May to 19 September 2013.

23. The return was filed online on 15 October. As the total duty shown was less than £100 the penalty was reduced to £100 on 18 October 2013.

The arguments

The appellant's case

24. Mr Bond states that Smartpayroll led him to believe that they had complied with filing requirements. He relied upon this assurance in good faith and that this amounts to a reasonable excuse for the late filing of the return.

The Respondent's case

25. HMRC accept that Mr Bond relied upon Smartpayroll to file the return on time. However they submit that the mere fact of reliance upon a third party does not amount to a reasonable excuse. They also point out that Mr Bond was sent two reminders to file the return before the due date. These reminders were sent to Mr Bond and not to Smartpayroll.

Reasons for decision

26. I accept that Mr Bond relied upon Smartpayroll to manage the tax matters regarding the employment of his son. 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)*.

27. I accept that Smartpayroll did not specifically inform Mr Bond that he was required to file a return for the year 2012-13. It appears that this obligation could have been made clear to him when he terminated their services in July 2012. However I note that Mr Bond was issued with filing reminders on 21 March and 28 April 2013 which would have put him on notice that the return was due. In such circumstances it would have been reasonable for him to have made enquiries of Smartpayroll and/or HMRC regarding the filing of the return. However there is no evidence that he did so.

28. Mr Bond has not commented upon the interim penalty notice issued on 31 May. However the prompt submission of the return on 31 May would not have affected the level of the penalty which was reduced to the minimum of £100.

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 £100, is dismissed.

5 **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.

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**JOANNA LYONS
TRIBUNAL JUDGE**

RELEASE DATE: 7 May 2014

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