



**TC03719**

**Appeal number: TC/2011/08606**

*PAYE – employer’s annual return – penalty for late payment – whether reasonable excuse*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**LESLEY LOCKE**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE WDF COVERDALE**

**The Tribunal determined the appeal on 09.06.2014 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 04.07.2011 and HMRC’s Statement of Case submitted on 14.12.2011 (with enclosures).**

## DECISION

1. The late appeal is admitted by the Tribunal.
- 5 2. The Tribunal decided that the Late Filing Penalty Notice dated 09.09.2009 in the sum of £332 was properly issued by the Respondents.
3. The appeal is dismissed.
4. The Tribunal found that the filing date for the Appellant's Employer Annual Return for the year 2008-2009 (forms P35 and P14) was 19.05.2009. The Return was  
10 delivered on 20.08.2009 i.e. 93 days late.
5. The Tribunal further found that there was no reasonable excuse, throughout the whole period of default, for the failure to file the Employer Annual Return on time. In particular the Respondents have no record of an Employer Annual Return being received for the year ending 05.04.2009 from the Appellant prior to 20.08.2009;  
15 correspondence addressed to the Appellant was at all times sent to the correct address held by the Respondents.
6. The fact that the Appellant's employer scheme closed on 01.08.2009 had no bearing on her tax obligations for the 2008-2009 tax year which ended on 05.04.2009; this does not constitute reasonable excuse for the late filing of the 2008-2009  
20 Employer Annual Return.
7. Likewise the fact that the Appellant had accounted for tax and National Insurance liabilities has no bearing on the imposition of the penalty which was imposed solely because of the late filing of the Return.
8. The Appellant describes the failure to submit the Annual Return as "an honest  
25 mistake"; that is accepted by the Tribunal but it does not constitute a reasonable excuse for the late filing.
9. The test applied by the Tribunal in considering the matter of reasonable excuse is whether the exercise of reasonable foresight and of due diligence and a proper regard for the fact that the Return would become due on a particular date would not  
30 have avoided the default. The facts and chronology of events, set out in the Notice of Appeal and the Respondent's Statement of Case, disclose that such foresight and diligence by the Appellant would have avoided the default.
10. In so far as it is suggested that the imposition of the penalty is disproportionate, unjust or unfair, those arguments have already been disposed of by the Upper  
35 Tribunal in *HMRC v Hok* [2012] UKUT 363 (TCC) and *HMRC v Total Technology (Engineering) Ltd* [2012] UKUT 418 (TCC). In the former it was made clear that the First-tier Tribunal has no jurisdiction to determine the fairness of a penalty imposed by statute. It is plain from a perusal of the latter that a penalty of the magnitude of that imposed in this case (albeit nearly 100% of the total duty shown on the Return) could

not be described as disproportionate even if there were jurisdiction to deal with the argument.

11. 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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**WDF COVERDALE  
TRIBUNAL JUDGE**

**RELEASE DATE: 11 June 2014**