



TC03729

Appeal number: TC/2014/00958

Employer Annual Return – late filing – problems with online submission – previous return late – paper returns submitted and rejected – no action until after first penalty notice issued – no reasonable excuse

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

FIELD LTD

Appellant

- and -

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

TRIBUNAL: JUDGE ALASTAIR J RANKIN

The Tribunal determined the appeal on 26 May 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 13 February 2014 (with enclosures) and HMRC's Statement of Case (with enclosures) submitted on 19 March 2014.

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DECISION

1. The Appellant company was required to file online an Employer Annual Return Forms P35 and P14 for the year 2012/13 by 19 May 2013. The return was filed online on 27 November 2013.

2. HMRC sent the Appellant company electronic reminders on 24 March 2013 and 28 April 2013. These reminders clearly stated that the Return must be filed online by 19 May. In late May or early June HMRC sent a further reminder advising that it may have already incurred a penalty for failure to file by the due date and advising that it should file the Return by 19 June in order to avoid the penalty increasing.

3. HMRC issued a late filing penalty notice on 23 September 2013 for £400.00 for the period 20 May 2013 to 19 September 2013. Following the online filing of the Return on 27 November 2013 HMRC issued a final late filing penalty notice on 2 December for £300.00 for the period 20 September 2013 to 27 November 2013.

4. The Notice of Appeal states that the amount of the penalty the subject of the appeal is £400.00. However as the two penalty notices for £400.00 and £300.00 relate to the same default the Tribunal is assuming that the Appellant company is appealing against both penalty notices. In addition, if the Tribunal allowed the appeal against the penalty of £400.00 the further penalty of £300.00 would automatically be removed as it could only be valid if the original penalty notice for £400.00 was valid.

5. The Appellant company claims to have had problems submitting the Return online and to have spoken with HMRC on many occasions. However no dates for the telephone conversations have been submitted and HMRC has no record of any contact having been made.

6. The Appellant company has been submitting its returns online since May 2005 though not always on time.

7. HMRC's records indicate that the Appellant company did not log onto the Government Gateway through which online returns are sent until 18 June 2013. Although a paper Return was submitted dated 18 June 2013 it was returned by HMRC on 10 July 2013 as it was incorrect. The paper return was re-submitted dated 19 July 2013 but was returned by HMRC on 30 July 2013 as the wrong forms had been included with the return.

8. It appears the Appellant company took no further action until 7 October 2013 when it requested a new User ID. This would have been shortly after receipt of the first penalty notice for £400.00.

9. The Appellant company in its Notice of Appeal states that it feels 'the problems [it has] had is not just down to one company and several other book keepers and accountants in the area have had problems [and feels] this is a result of programs not

the mis management of small companies using the programs and in the light of this the penalties should be cancelled’.

5 10. In the case of The Commissioners for Her Majesty’s Revenue and Customs and Anthony Boshier [2013] UKUT 0549 (TCC) the Upper Tier Tribunal held that the scheme of the legislation coupled with the right to apply for judicial review does not infringe a taxpayer’s rights under the European Convention on Human Rights and the Human Rights Act 1998. The Tribunal also held that the penalties (subject to mitigation in any particular case) imposed by the regime in general are not disproportionate.

10 11. The Tribunal agrees with the views of Judge Colin Bishopp in the First Tier Tribunal case of Enersys Holdings UK Limited [2010] UIKFTT 20 that ‘it seems unlikely that a delay of only a day might ever, without more, amount to a reasonable excuse’

15 12. The Appellant company has not produced any reasonable excuse for the late submission of the Return.

13. The Appeal is therefore dismissed and the penalties totalling £700.00 remain due for payment.

20 14. 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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30 **ALASTAIR J RANKIN**
TRIBUNAL JUDGE

RELEASE DATE: 11 June 2014