



**TC03743**

**Appeal number: TC/2011/07594**

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

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**WESTWISE IT LTD**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE WDF COVERDALE**

**The Tribunal determined the appeal on 13.06.2014 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 26.09.2011 (with enclosure) and HMRC’s Statement of Case submitted on 09.11.2011 (with enclosures).**

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## DECISION

5 1. The Tribunal decided that the Late Filing Penalty Notice dated 26.05.2011 in the sum of £100 was properly issued by the Respondents.

2. The appeal is dismissed.

3. The Tribunal found that the filing date for the Appellant's Employer Annual Return for the year 2010-2011 (forms P35 and P14) was 19.05.2011. The Return was delivered electronically on 23.05.2011 i.e. four days late.

10 4. The Tribunal further found that there was no reasonable excuse for the failure to file the Employer Annual Return on time.

5. The fact that the Return was only filed a few days late cannot mitigate the penalty, the authority for which is given by Statute namely S98A of the Taxes Management Act 1970.

15 6. Likewise the fact that the Appellant was up to date with his payments of tax and National Insurance contributions can have no bearing upon the penalty.

7. There is no obligation upon the Respondents to issue reminders in respect of the obligations of an employer. The electronic notification to complete an Employer Annual Return issued on 13.02.2011 will have served as a reminder to the Appellant to file his Return in a timely manner. Ignorance of the legislation cannot be deemed to be a reasonable excuse. A previous good compliance record is not a reasonable excuse.

8. 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 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.

9. In so far as the Appellant has suggested that the imposition of the penalty is disproportionate, unjust or unfair, those arguments have already been disposed of by the Upper 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 could not be described as disproportionate even if there were jurisdiction to deal with the argument.

10. 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: 16 June 2014**