



TC03774

Appeal number: TC/2011/08271

P35 Annual Return – fine for late filing – no proof of posting – no paper return issued by HMRC - filed online over 11 months late – two penalty notices issued – no reasonable excuse

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**CRAIG MURRAY
t/a SCIZZOR HANDZ**

Appellant

- and -

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

TRIBUNAL: JUDGE ALASTAIR J RANKIN

The Tribunal determined the appeal on 2 July 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 11 October 2011 (with enclosures), HMRC's Statement of Case submitted on 25 November 2011 (with enclosures) and the Appellant's Reply dated 22 December 2011 (with enclosures)

DECISION

1. This is an appeal against penalties totalling £1,100.00 for failure to file form P35
5 Employer Annual Return for the tax year 2009/10. The due filing date was 19 May 2010.
2. The reminder notification received by Mr Murray dated 29 January 2010 clearly stated that he must file the return on line and by 19 May 2010. A first penalty notification was issued on 27 September 2010 showing a penalty of £400.00 for the
10 period 20 May 2010 to 19 September 2010. A second penalty notification was issued on 24 January 2011 for a penalty of £400.00 for the period 20 September 2010 to 19 January 2011. An online return was submitted on 10 April 2011 as a result of which a further penalty notice was issued on 25 April 2011 for £300.00 for the period 20 January 2011 to 10 April 2011.
- 15 3. Mr Murray claims that he filed a paper return on forms sent by HMRC. However Mr Murray is unable to provide any proof of posting. It appears HMRC did grant a concession, for 2009/10 only, to allow an employer to file the P35 in paper format. However HMRC's records do not show that a paper return was issued to Mr Murray and HMRC has no record of receiving this paper return
- 20 4. Mr Murray claims he first became aware of any penalty being due on 26 March 2011 when his girlfriend found a letter dated 28 February 2011 from HMRC Debt Management. It appears this letter was handed to Mr Murray with other correspondence by the new proprietor of the business as Mr Murray had ceased trading at the end of February 2011. Mr Murray claims not to have received either the
25 first penalty notice or the second penalty notice but does not appear to have changed his address.

The Law

5. Regulation 73(1) of The Income Tax (Pay As You Earn) Regulations 2003 (the 2003 Regulations) and Paragraph 22 of Schedule 4 of the Social Security
30 (Contributions) Regulations 2001 require an employer to deliver a completed form P35 together with a form P14 for each employee before 20 May following the end of the tax year.
6. Regulation 205 of the 2003 Regulations makes it mandatory for each employer to file the form P35 electronically.
- 35 7. Sections 98A(2)(a) and (3) provide for the imposition of a fixed penalty of £100.00 for each batch or part batch of 50 employees for each month or part month the return is late.
- Section 118(2) of the 1970 Act provides statutory protection from a penalty if the employer had a reasonable excuse for failing to file their return on time. There is no
40 statutory definition of reasonable excuse.

The Decision

8. There is no statutory obligation on HMRC to advise employers that they have failed to file their P35 forms on time. It is necessary that HMRC is seen to be consistent in its approach.

5 9. In order to have the penalty assessments set aside it is necessary for Mr Murray to show a reasonable excuse.

10. The Notice of Penalty Determination clearly states that the employer has failed to make an end of year return. Even if this Notice was unclear the fact remains that the Appellant had not filed its P35 by the statutory deadline.

10 11. The Tribunal finds that no reasonable excuse has been submitted by Mr Murray.

12. While HMRC have not provided any reason why the penalty notice was not issued until 26 September, following the decision of the Upper Tier Tribunal in Hok Ltd the Tribunal has no jurisdiction to discharge or adjust a fixed penalty which is properly due because it thinks it is unfair.

15 13. The appeal is therefore dismissed.

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.

20

25

**ALASTAIR J RANKIN
TRIBUNAL JUDGE**

RELEASE DATE: 4 July 2014

30