



**TC03785**

**Appeal number: TC/2011/07895**

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

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MILTON ANDREWS CONSULTING LTD**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE WDF COVERDALE**

**The Tribunal determined the appeal on 27.06.2014 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 06.10.2011 (with enclosures) and HMRC’s Statement of Case submitted on 17.11.2011 (with enclosures).**

## DECISION

1. The Tribunal decided that the Late Filing Penalty Notice dated 02.06.2011 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 filed online on 28.05.2011 i.e. nine days late.
4. The Tribunal further found that there was no reasonable excuse for the failure to file the Employer Annual Return on time.
5. The Tribunal found that a notification informing the Appellant of the legal requirement to file the P35 Annual Return was issued to the Appellant on or about 13.02.2011. The Appellant had filed the previous year's Return electronically (albeit one day late) and will therefore have been familiar with the procedure and the legal obligations with regard to filing.
6. Evidently the Appellant's agent failed to make the online submission before 19.05.2011. The responsibility for filing rests with the Appellant and any failure by an agent does not absolve the employer from the obligation to file the Annual Return in a timely manner.
7. The agent's lack of familiarity with computers does not amount to a reasonable excuse. It is a legal requirement to file Returns online: Regulation 205 to 205B of the Income Tax (PAYE) Regulations 2003.
8. The fact that the Appellant accounted for tax and National Insurance Contributions as required cannot mitigate their liability for a penalty imposed for the late filing of the Employer's Return.
9. The Respondents have no discretion in the matter of the penalty and there can be no mitigation based upon the number of days that the default lasted.
10. The test applied by the Tribunal in considering the matter of Reasonable excuse is whether the exercise of reasonable foresight and 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 Respondents' Statement of Case, disclose that such foresight and diligence would have avoided the default.
11. In so far as the Appellant argues that the imposition of the penalty is disproportionate, unjust or unfair these arguments have already been disposed of by the Upper Tribunal in *HMRC v Hok* [2012] UKUT 363 (TCC) and *HMRC v Total Technology (Engineering) Limited* [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.

5 12. 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  
10 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: 7 July 2014**