



TC03962

Appeal number: TC/2014/02747

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

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

WESTMORELAND TRAVEL LTD

Appellant

- and -

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

TRIBUNAL: JUDGE WDF COVERDALE

The Tribunal determined the appeal on 21.08.2014 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 12.05.2014 (with enclosures), and HMRC’s Statement of Case submitted on 25.06.2014 (with enclosures).

DECISION

1. The Tribunal admits the late appeal.
- 5 2. The Tribunal decided that the Late Filing Penalty Notice dated 12.06,2014 in the (amended) sum of £141.00 was properly issued by the Respondents. The Tribunal acknowledges that the Respondents have properly mitigated the penalty to £141.00 being the amount of the duties on the form P11D(b) return.
3. The appeal is dismissed.
- 10 4. The Tribunal found that the filing date for the Appellant's form P11D(b) for the year 2012-2013 was 06.07.2013. The form P11D(b) was filed electronically on 16.05.2014 i.e. over ten months late.
5. The Tribunal further found that there was no reasonable excuse for the late filing of the form P11D(b).
- 15 6. Reliance upon an agent does not constitute a reasonable excuse for the Appellant's failure to file the form P11D(b) by the filing deadline. Legal responsibility for doing so rests upon the Appellant alone.
7. The Appellant has been submitting forms P11D and P11D(b) since at least 2006-2007 and is therefore an experienced employer who will have been aware of the filing process.
- 20 8. The Appellant maintains that the form P11D(b) was submitted to the Respondents electronically on 04.07.2013. In support of this submission a print-out of the form, which is alleged to have been sent on that date, has been produced by the Appellant and is Folio 10 enclosed with the Respondents' Statement of Case. The Tribunal notes that this document does indeed bear the date 04.07.2014 but the production of the print-out is not confirmation that it was filed on that date. As the Respondents observe in their Statement of Case, their online filing software allows for the user to print or save a copy of the return for their records prior to submission but the return still needs to be correctly submitted and received by the Respondents before it is deemed to have been validly delivered and the taxpayer's filing obligation met.
- 25 30 9. The Appellant has stated that they received a contemporary communication from the Respondents showing "Return submitted" but no evidence, by way of copy or print-out, has been produced.
10. The Appellant also argues that the Respondent's website does not generate email confirmations of receipt of forms P11D(b) but the Respondents observe that this is incorrect: after filing the P11D(b) online an acceptance or rejection message is issued via the software or service used and if the Respondents have been provided with an email address an email message is also sent. The Appellant has denied receipt of any such communication so they or their agent should have been alerted to the fact
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that something was wrong and submission protocols should have been checked or the Respondents' online services helpdesk should have been contacted for advice.

5 11. The Appellant has not replied to the Respondents' Statement of Case. The Tribunal makes a finding of fact that the form P11D(b) was not filed by the Appellant before 16.05.2014.

10 12. The Appellant produces to the Tribunal no further evidence or argument in support of its contention that there was a reasonable excuse for the failure to file the form P11D(b) on time. The exchange of correspondence set out in the letter of appeal does not disguise the fact that the form P11D(b) was submitted over ten months late and indeed six months after the Respondents issued a first Late Filing Penalty Notice.

15 13. The Tribunal is aware that there is no obligation upon the Respondents to issue reminders or indeed to issue Penalty Notices closer to the deadline date. The latter point (date of issue of Penalty Notices) was considered in the case of *Hok*, which is mentioned in paragraph 15 below, and the absence of any such obligation was confirmed.

20 14. 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 form P11D(b) 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 by the Appellant would have avoided the default.

25 15. In so far as the Appellant may suggest 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) 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 the Tribunal had jurisdiction to deal with the issue.

30 16. 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
35 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

**WDF COVERDALE
TRIBUNAL JUDGE**

40 **RELEASE DATE: 27 August 2014**