



**TC03090**

**Appeal number: TC/2012/04374**

*PAYE – Electronic submission of P35 form – whether completed successfully – No – whether reasonable excuse for failure – No – Appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MICHAEL YOUNG PLUMBING & HEATING  
ENGINEERS LTD**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE KENNETH MURE, QC  
HELEN M DUNN, LLB**

**Sitting in Wellington House, Wellington Street, Glasgow on 15 November 2013**

**Appellant – Mr Michael Young, Director**

**Respondents – Mrs L McGuigan, Officer of HMRC**

## DECISION

5 1. This appeal relates to a penalty of £400 imposed in respect of the taxpayer's failure to file electronically his P35 form for 2010/11. The due filing date was 19 May 2011. The issue was whether it had been successfully filed electronically by that date and, if not, whether the taxpayer had a *reasonable excuse*.

10 2. Mrs McGuigan agreed to introduce the matter. She referred us to the requirement on an employer in terms of the PAYE Regulations (no 73) to file the P35 timeously. Otherwise a penalty fell due unless it was shown that a *reasonable excuse* existed throughout the period of default. Having regard to the Grounds of Appeal (p15 of the Bundle) no acceptable evidence had been produced to HMRC to confirm  
15 successful electronic submission and there was no basis in their view to establish a *reasonable excuse*. The imposition of the penalty had been the subject of review, and the original decision was upheld.

20 3. Mrs McGuigan explained that HMRC's system generated an electronic response to indicate whether a P35 form had been filed successfully. Additionally, if HMRC had an email address for the taxpayer, a separate email confirming successful filing would be issued. She referred us to p20/21 of the Bundle, guidance issued by HMRC for on-line filing. This has been well publicised not only on HMRC's website but also in official bulletins issued to employers.

25 4. Mrs McGuigan noted also electronic records produced by the appellant at p3-5 of the Bundle. She mentioned that the reference "Step 8 Completed" recorded in entries 619 and 626 were not generated by HMRC. (It would appear that they originate from the Sage system used by the appellant in its computer.) She did not  
30 accept as evidence of successful submission the records at lines 626/627 which purport to relate to the P35 form.

5. We then heard evidence from both Mr Young and a friend of his, Mr Paterson, who had in fact attempted to file the Return.

35 6. Mr Young explained that while he carried out some limited activities on his business' computer, he had asked his friend, Mr Paterson to file the P35. He had been present when Mr Paterson attempted to do this. The first Year when the P35 had to be filed electronically was 2009/10, when Mr Paterson undertook this. Mr Young  
40 stressed specifically that he had no recollection of any acknowledgement or email about the filing of that Return, which apparently had been completed successfully.

7. Mr Young only became aware that the 2010/11 Return had not been filed successfully in September 2011 following on the issuing of the first penalty notice. He then instructed a firm of CAs to appeal the decision. He stressed that all his tax  
45 liabilities had been settled and that the lodging of the P35 did not affect this.

8. Mr Young then gave evidence. He worked for many years as an accountant with British Steel and more recently has acted as company secretary to two concerns. He is reasonably IT conversant.

9. He had assisted the appellant to file on-line the P35 form for the previous Year.  
5 He agreed to undertake this also for 2010/11. Mr Paterson had filed on-line P35's for the two companies for which he acted, apparently successfully.

10. Mr Paterson did not recall an email in May 2011 confirming that the P35 had been successfully filed, but certainly there had been no response to the effect that it had been rejected. He admitted candidly that he would not have been looking for any message confirming successful filing, but he did acknowledge that he knew a message would be sent if the submission was rejected. He was not aware whether or not HMRC had an email address for the appellant company in May 2011. (Mr Young was similarly unaware of this.)

11. Mr Paterson could not assist the Tribunal by explaining the significance of the reference "Step 8 completed" where it appears on the computer record extracts (p3-5 of the Bundle). He considered that it might relate to the Sage accountancy package used in the appellant's business.

12. The accounts of both Mr Young and Mr Paterson were not cross-examined or challenged in any detail. We accepted their accounts as credible. Significantly  
20 neither could indicate categorically that they checked for the receipt of any confirmation from HMRC's computer that the on-line filing had been successful.

13. In conclusion Mrs McGuigan submitted that there was no evidence of the P35 Return having been submitted and accepted. There had been no response apparently by HMRC. She noted the terms of the internal emails at p20 of the Bundle.

14. No *reasonable excuse* had been demonstrated she asserted. That would have to exist throughout the period of failure. Specifically reliance on a third party, such as Mr Paterson, was not a reasonable excuse. Mr Paterson had accepted candidly that he did not look for any response confirming receipt of the P35 form. Accordingly she invited us to dismiss the appeal.

15. Mr Young stressed that both he and Mr Paterson genuinely believed that the P35 had been filed successfully. There was no incentive not to file the document as it did not affect the matter of tax liability. Mr Paterson had apparently filed it successfully in the previous year.

### **Decision**

16. We agree with Mrs McGuigan that there is no satisfactory evidence of the P35 having been filed on-line successfully. Mr Young relied on his friend, Mr Paterson, to carry this out. Mr Paterson no doubt considered that he had succeeded, but he accepted, fairly and candidly, that he had not checked for the electronic acknowledgement from HMRC. This aspect, in our view, had been well publicised.  
40 Mr Paterson had filed a few other P35s without apparent difficulty. We found both

Mr Young and Mr Paterson entirely credible and responsible witnesses: the difficulty is that their evidence did not extend to confirm the receipt of the necessary acknowledgement. We do not consider that there is a *reasonable excuse* in the circumstances of this case. HMRC's guidance is, we consider, clear-cut. There is no suggestion that any investigation was made by Mr Young until he received the Notice of Penalty. Even then no P35 was submitted.

17. While we are sympathetic to Mr Young, we consider that in the whole circumstances the Penalty should be confirmed and we dismiss the appeal.

18. 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.

**KENNETH MURE, QC**

**TRIBUNAL JUDGE**

**RELEASE DATE: 27 November 2013**