



**TC03858**

**Appeal number: TC/2014/09399**

*Penalty for late online filing of Employers Annual Return - Appellant delegated task to bookkeeper who was 'not computer literate' - whether reasonable excuse - no - appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**THE BELL INN**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE MICHAEL S CONNELL**

**The Tribunal determined the appeal on 23 May 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 10 December 2013, HMRC's Statement of Case submitted on 16 January 2014, the Appellant submitting no response.**

## DECISION

### The Appeal

1. The Bell Inn, ('the Appellant') appeals against a £500 penalty imposed under Section 98A(2) & (3) Taxes Management Act 1970 for the late filing of the Employer's Annual return for tax year 2012-13.
2. The appeal has been made by Mr Glenn Williams who said in the original appeal letter to HMRC dated 29 October 2013 that his mother Mrs J Williams (the previous owner) has since retired on ill health.
3. The point at issue is whether or not the Appellant has a reasonable excuse for submitting the late return.

### Background

4. Regulation 73(1) The Income Tax (Pay As You Earn) Regulations 2003 and Paragraph 22 of Schedule 4 of the Social Security (Contributions) Regulation 2001 requires an employer to deliver a complete Employers Annual Return - forms P35 & P14's before 20 May following the end of the tax year. The return must include specified information relating to relevant payments made during the tax year to employees for whom they had to prepare or maintain deduction working sheets (form P11 working sheet or equivalent payroll deductions record).
5. Regulation 205 The Income Tax (Pay As You Earn) Regulations 2003 requires the mandatory use of electronic communications by employers who must deliver their P35/P14 forms online using an approved method of electronic communications for 2009-2010 onwards.
6. The full return i.e. the P35 and a P14 for each employee must reach HMRC no later than 19 May following the end of the tax year. If the return is not received by the due date the employer is liable to a penalty.
7. Where the Employer does not file their annual return on time they will be charged a penalty in accordance with Section 98A(2)(a) & (3) Taxes Management Act (TMA) 1970.
8. Fixed penalties of £100 per month (or part month) for each batch (or part batch) of 50 employees are charged for the first 12 months the return is late.
9. Where the total duty (NICs/Tax) shown on the return is:
- equal to or more than the penalty amount, the employer is liable to the whole of the penalty amount.
  - more than £100 but less than the penalty amount, the employer is only liable to penalties in an amount equal to the total duty shown on the return.
  - £100 or less, the employer is liable to a penalty of £100 only.

- 5 10. The Appellant was required to file an Employer Annual return (P35 & P14s) for the year 2012-13. The filing date for the return was 19 May 2013. From 2009-10 onwards this had to be filed online using an approved method of electronic communication.
11. HMRC sent a P35 electronic reminder to the Appellant on 24 March 2013.
12. HMRC sent a further AR1N reminder to the Appellant on 28 April 2013.
13. HMRC sent the Appellant a late filing penalty notice on 23 September 2013 for £400 for the period 20 May 2013 to 19 September 2013.
- 10 14. The Employer Annual return was filed online on 18 October 2013.
15. HMRC sent the Appellant a final late filing penalty notice on 23 October 2013 for £100 for the period 20 September 2013 to 18 October 2013.

#### The Appellant's contentions

- 15 16. On 29 October 2013 Mr Williams on behalf of the Appellant appealed against the penalties on the grounds that he thought his book-keeper was going to file the return for 2012-13 and he himself would take over doing the role from the introduction of Real Time Information (RTI) in April 2013. It was only when he received his first penalty notice that he realised he was supposed to file the return
- 20 17. On 13 November 2013 HMRC sent the Appellant a late appeal letter explaining that HMRC could not accept the appeal as it was outside of the 30 day period allowed. The letter offered the Appellant the option of applying to the Tribunal if they were not satisfied with this decision.
- 25 18. On 10 December 2013 Mr Williams on behalf of the Appellant notified an appeal to the Tribunal reiterating the previous reasons given in the original appeal letter. He said:

30 "I am appealing my penalties (£500) for late return of my annual return. The situation I found myself in at the start of 2012/13 year was a regular weekly visit by my bookkeeper (Mr J Thomas) who calculated the weekly wages and also completed the books manually. Mr Thomas is not very computer literate so I forced to do the wages on my computer myself with the impending RTI the following year.

35 I encouraged Mr Thomas to still calculate the wages and I would start to use the computer concurrently so as to check I was on the right track and our figures balanced. I believed he was going to complete the year and finish all the returns etc. for that year and I would then do it from the start of the New Year April 2013. It was not until I received my first penalty notice did I realise I was supposed to fill in a return, I asked Mr Thomas if he had done it and he stated he thought I was doing it. Mr Thomas had in fact stopped

40 keeping records part way through the year so I had to return the computer

records I had kept, I did this at my earliest opportunity and now do so on line on a regular basis.....”

HMRC’s contentions

- 5 19. The Appellant has been filing P35 End of Year returns for several years. The company have filed returns on line since the 2009-10 tax year. It is therefore reasonable to expect that they are fully aware of :
- 10 a) the requirement to file a P35 End of year return by 19 May of each year and  
b) penalties that will be imposed by HMRC if that return is filed late.
- 20 20. HMRC issued notification to the Appellant that the P35 was required by 19 May 2013. On receipt of this notification HMRC would expect that at this point the employer would check who is responsible for the filing of the return and ensure that whoever is responsible is made aware of what action is required.
- 15 21. Each employer is responsible for dealing with and adhering to their obligation to ensure they file their returns by their due date — this obligation cannot be transferred to another person. Even if someone engages someone to assist with that obligation, the responsibility for submitting the P35 return rests with the employer.
- 20 22. Where a person has asked another person to do something on their behalf, that person is responsible for ensuring that the other person carries out the task. They cannot claim they had a reasonable excuse merely because they delegated the task to a third party and that third party failed to complete it.
- 25 23. HMRC expect an employer to take reasonable care to explain to the third party what they require them to do, to set deadlines for the work and to make regular checks on progress. Had Mr Williams taken such action the penalty could have been avoided. While this may have simply been a misunderstanding it is not acceptable as a reasonable excuse for cancelling the resulting late filing penalties. HMRC has to be fair to those employers who do file on time and penalise those who do not.
- 30 24. HMRC issued a further notice AR1 on 28 April 2013. It would appear that despite the issue of this further notice no action was taken by the Appellant in relation to the timely filing of a P35 return. HMRC contend that ample notification was given to the Appellant to ensure a P35 return was filed on time. If the Appellant chose to take no action on receiving these notices prior to the deadline then that is their choice to do so.
- 35 25. Mr Williams states in the original appeal letter that the book-keeper Mr Thomas was not very computer literate. If this was the case the employer could have obtained help from HMRC's ‘On line Services’ to assist with any difficulties faced with on line filing. There is no record of any contact made with HMRC to seek assistance with any aspect of filing the 2012-13 return. Despite being aware that their book-keeper was not computer literate Mr Williams took no action to ensure he was following the correct procedures in relation to PAYE matters.
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26. There had been a late filing penalty for the 2009-10 P35 return. However HMRC cancelled the £200 penalty on that occasion. That was the first year of compulsory on line filing for all small employers.

5 27. In each year from 2010-11 the Appellant has filed on line successfully and has done so on each occasion by the 19 May deadline.

28. A paper P35 was received for 2012-13 on 11 October 2013. The documentation had to be returned to the Appellant as it was incomplete and not in the correct format. It had no signature and no P14's attached. This was returned to the employer with a letter explaining the requirement to file on line. It would appear that the Appellant then took appropriate action and filed the return on line on 18 October 2013.

29. Mr Williams stated in the appeal letter to HMRC that the book-keeper had stopped keeping records part way through the year. He then had to use the computer records he kept. Failure to ensure proper records were being kept in order to file a P35 return to HMRC was the responsibility of the Appellant. HMRC argue that if the Appellant had taken action when reminder notices were sent to it on 24 March 2013 and 28 April 2013, the problem could have been discovered at an earlier date and remedial action taken.

30. Unfortunately failure to take any action until the penalty notice was issued on 23 September 2013 has resulted in the return being submitted five months late. The penalty is therefore £500.

### Conclusion

31. The onus of proof rests with HMRC to show that the penalty was correctly imposed. If so established, the onus then rests with the Appellant to demonstrate that there was reasonable excuse for late filing of its employers return. The standard of proof is the ordinary civil standard of the balance of probabilities.

32. There is no statutory definition of 'reasonable excuse', which is a matter to be considered in the light of all the circumstances of the particular case. A reasonable excuse is normally an unexpected or unusual event that is either unforeseeable or beyond the taxpayer's control, and which prevents them from complying with their obligation to pay on time. A combination of unexpected and unforeseeable events may, when viewed together, be a reasonable excuse.

33. A taxpayer acting in a reasonable manner would ensure that they adhered to their legislative obligations.

34. Mr Williams says that the book-keeper, Mr Thomas, was not very computer literate. As HMRC say where a person asks another person to do something on their behalf, they cannot claim they had a reasonable excuse because the task was delegated to a third party. The employer should have obtained help from HMRC's helpline to assist with any difficulties faced with on line filing. There is however no record of any contact made with HMRC to seek assistance.

5 35. HMRC issued a further reminder notice on 28 April 2013 but despite this no action was taken to ensure the timely filing of a P35 return. Ample notification was given to the Appellant to ensure a P35 return was filed on time.

36. The Tribunal therefore find that the late filing penalties charged are in accordance with legislation and there is no reasonable excuse for the Appellant's failure to file its Employers Annual return on time or throughout the failure period. HMRC ask that the appeal is dismissed and the £500 late filing penalties are confirmed

10 37. 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  
15 "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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**MICHAEL S CONNELL  
TRIBUNAL JUDGE**

**RELEASE DATE: 31 July 2014**

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