



TC02076

Appeal number: TC/2011/04143

*Section 98A(2) and (3) Taxes Management Act 1970 – late Employer’s P35
End of Year Return – Appellant thought Return had been filed on-line –
further delays despite reminders – no reasonable excuse*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**HEAVY WOOLLEN BRANCH CLUB & INSTITUTE UNION Appellant
LIMITED
- and -**

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

TRIBUNAL: JUDGE MICHAEL S CONNELL

The Tribunal determined the appeal on 9 January 2012 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 24 May 2011 and HMRC’s Statement of Case submitted on 7 July 2011

DECISION

1. This is an appeal by the Appellant company, Heavy Woollen District Branch
5 CIU Limited (“the Appellant”) against penalties of £400.00 imposed under s 98A(2)
and (3) Taxes Management Act 1970 following the late submission of the Appellant
Employer’s P35 Annual return for the tax year ending 5 April 2010.

2. An employer has a statutory obligation to deliver an Employer’s Annual return
before the 20 May following the end of a tax year in accordance with Regulation 73
10 of the Income Tax (PAYE) Regulations 2003. If the full return does not reach HMRC
by 19 May following the end of the tax year HMRC may impose a penalty. Interim
penalties are charged under s 98A(2)(a) and (3) TMA where a return remains
outstanding after the due date. Penalties are fixed at £100 per month or part of a
month during which the failure continues.

3. Regulation 205-205B of the Income Tax (PAYE) Regulations 2003 provides
15 that an employer must use electronic communications to deliver their 2009-10
Employer’s Annual return on-line.

Factual background

4. A P35 PN “Notification to Complete form P35 Employer’s Annual return” was
20 issued to the Appellant on 10 January 2010.

5. The Employer’s Annual return for 2009-2010 was due to be filed on-line by 19
May 2010.

6. On 27 September 2010 the Employer’s return had not been received and a first
interim penalty notice of £400.00 was issued, which was calculated for the four
25 months 20 May 2010 to 19 September 2010. The issue of further penalties was
suspended pending determination of this appeal.

7. On 25 October 2010 the Appellant responded in writing to the penalty notice
saying that on 20 May 2010, with his granddaughter’s assistance, having “received
notification to use the PAYE for employers on-line service”, he activated this
30 immediately and, with his daughter’s help, completed (so far as he was aware) the
Annual return. The Appellant said that he is 73 years of age and works only a few
hours a week as secretary for the Appellant company, which has a turnover of less
than £20,000.00 and that his yearly salary is £2,080.00 on which he pays tax of
£416.00. He says he honestly thought that he had successfully filed the P35 return
35 online.

8. On 24 December 2010 HMRC advised the Appellant that the penalty was
overdue and that the P35 had still not been received. The Appellant’s letter of 25
October 2010 was treated as an appeal and, on 15 March 2011, HMRC advised once
again that the P35 return had not been delivered and that further penalties may be
40 charged. HMRC advised that, if the Appellant had difficulty filing by internet, they

should contact HMRC's internet filing helpline. HMRC also said that, if payment for the penalty and the return was not received within 10 days of that letter, further recovery action could be taken.

5 9. On 10 February 2011 the Appellant formally appealed HMRC's decision, saying he thought that the return had been submitted online on 20 May 2010 and, in a further request for a review of HMRC's decision on 24 March 2011, reiterated his belief that the return had been filed, adding that he was not notified until four months after the filing date that the return had not been received.

10 10. HMRC's review conclusion letter upholding the original decision was issued on 5 May 2011, and again the Appellant was advised that the return had still not been submitted.

11. The Appellant appealed to the Tribunal Service on 24 May 2011, again reiterating his belief that the P35 return had been filed online on 20 May 2010 and that he could not "afford to lose £400.00 which is a big part of my salary".

15 **HMRC's submissions**

20 12. HMRC say that the Appellant has been registered as an employer for many years and is considered to be an experienced employer, fully aware of its tax obligations. As at 7 July 2011, being the date HMRC statement of case was submitted to the Tribunal Service, the Appellant's P35 return had still not been delivered.

13. HMRC also say that there is no record of an Employer's Annual return having been received for the year ending 5 April 2010 and say that it is the responsibility of the Appellant as an employer to ensure that the regulations are followed and the Employer Annual returns delivered to HMRC by the legislative deadline.

25 14. The Government first announced in 2002 that small employers would be required to file on-line by 2010. HMRC also say that they have issued various communications to employers in more recent times informing them of the changes. For example, there were articles in the Employer Bulletin from April 2008 right up to April 2011. HMRC also issued a letter direct to employers in November 2008,
30 November 2009 and a similar letter was issued in November 2010 providing further information.

35 15. The P35 PN issued to the Appellant company on 10 January 2010 clearly informed the Appellant that the 2009-10 Employer's Annual return had to be filed on-line by 19 May 2010 and explained how this could be achieved. The document also warned of the consequences if the return was filed late. HMRC submit that information about PAYE, including completion of Employer's Annual returns on-line, return filing dates, penalties and other related matters are well within the public domain and widely available via the internet, including HMRC's website, telephone helpline and public counters. HMRC therefore contend that, with all this information,
40 the Appellant had ample opportunity to prepare for on-line filing thus ensuring compliance with their legal obligations.

16. HMRC say that, after filing the Employer's Annual return on-line, an acceptance or rejection message is issued through the software or service used and, if HMRC have been provided with an e-mail address, an e-mail message is also sent; as no message was received, it should have alerted the Appellant to the fact that something was wrong and prompted it to re-check submission protocols or contact HMRC for help or advice.

17. Finally, HMRC submit that if the Appellant believed the return had been filed on time the penalty determination issued on 27 September 2010 should have served to alert him to the fact that the return had not in fact been successfully filed. There were also numerous reminder letters from 24 December 2010 to 5 May 2010, which would have made the Appellant fully aware that the return had not been filed.

Conclusion

18. When a penalty is appealed, an Appellant is required to have a reasonable excuse which must have existed throughout the entire period of default. There is no definition in law of 'reasonable excuse', which is a matter to be considered in the light of all the circumstances of a particular case. A reasonable excuse is normally regarded as an unexpected or unusual event, either unforeseeable or beyond the taxpayer's control which prevents him from complying with his obligations. It is the responsibility of an employer to ensure that his tax affairs are up to date and correct returns are submitted by the due dates.

19. The Appellant offers no explanation for the fact that the Employer's P35 Annual return had still not been delivered despite the issue of a penalty notice and numerous subsequent reminders by HMRC. The Appellant's grounds of appeal are that he thought the return had been filed on-line on 20 May 2010. Although the Appellant was inexperienced in on-line filing, there was sufficient opportunity to prepare for this between January 2010 and the deadline filing date in order to ensure that the Appellant adhered to its legal obligation. Once it became apparent that the return had not been filed on-line, the Appellant should have filed the return without further delay. There has been no exceptional event beyond the Appellant's control of circumstances which prevented the return from being filed by the due date. Completion and delivery of the Employer's Annual return was entirely within the control of the Appellant and nothing exceptional prevented it from doing so by the filing date.

20. In all the circumstances, the Tribunal find that the Appellant has shown no reasonable excuse throughout the period of default and accordingly the appeal is dismissed. The penalty determination of £400.00 is confirmed.

21. This document contains full findings of fact and reasons for the decision. Any
5 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
10 “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)”
which accompanies and forms part of this decision notice.

MICHAEL S CONNELL
TRIBUNAL JUDGE

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RELEASE DATE: 14 June 2012