



TC02892

Appeal number: TC/2012/09028

Penalty – Failure to lodge forms P11D (b) (relating to benefits in kind for years 2005-2009 inclusive) - Whether reasonable excuse – No for the years 2005-2008 – Reasonable excuse shown for the year 2009

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

RENOWN SERVICES (UK) LIMITED

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE MICHAEL S CONNELL
ROLAND PRESHO FCMA**

**Sitting in public at King's Court, Royal Quays, Earl Grey Way, North Shields
on 3 June 2013**

The Appellant did not attend and was not represented

**Mr Aidan Boal, instructed by the General Counsel and Solicitor to HM Revenue
and Customs, for the Respondents**

DECISION

1. This is an appeal by Renown Services (UK) Limited (“the Appellant”) against a
5 decision by HMRC to impose penalty charges for failing to submit forms P11D(b) for
the years 2005-06 to 2008-09 by the due dates for each year.

2. HMRC levied the following penalties :

	Penalty charge :	2005-06	£	947
		2006-07	£	1200
10		2007-08	£	1196
		2008-09	£	1773 (amended £1200)

3. The Appellant did not attend. The Clerk to the Tribunal telephoned the
Appellant and his representative, who confirmed that they were content for the appeal
to be heard in their absence.

15 **Background**

4. The background to this case is that during an enquiry into the Appellant’s
accounts for corporation tax purposes it was established that the director, Sean
Sullivan, had the use of a company vehicle. As there was no record of any forms
P11D or form P11D(b) being submitted by the Appellant, an enquiry into the possible
20 Car and Fuel Benefit liabilities was instigated. Car and Fuel Benefit liabilities did not
exist for 2009-10 onwards as the company vehicle was sold to the director Sean
Sullivan on 31 March 2009.

5. The enquiry into possible Class 1A NIC liabilities was opened on 8 August
2011. Based on benefit figures provided by the Appellant’s agent, G P Law, with their
25 letter of 9 January 2012 details of liabilities to Class 1A NIC for the years 2005-06 to
2008-09 were issued on 16 February 2012. The Class 1A NIC liabilities were agreed
by the Appellant’s agent in their letter of 1 March 2012.

6. Where an employee is in receipt of chargeable benefits an employer is required
by Regulation 80 Social Security (Contributions) Regulations 2001 (“SSCR
30 Regulations”) to submit a return of those benefits not later than 6 July following the
year concerned. Failure to submit such returns renders the employer liable to penalty
charges under Regulation 81 of SSCR Regulations.

7. Details of the Regulation 81 penalty changes were notified to the Appellant’s
agent in a letter of 12 April 2012. A formal penalty determination was issued on 28
35 June 2012. An appeal, supported by the Appellant’s representations, was submitted on
9 July 2012. A request for an internal review was also requested on 9 July 2012. The
internal review conclusion letter of 28 August 2012 varied HMRC’s decision by
capping the 2008-09 penalty charge at £1,200 (reduced from £1,773).

8. On 24 September 2012 the Appellant submitted an appeal to the Tribunal Service and detailed his grounds for appeal as :

- (a) In 2007 their previous agent (BLC Associates) failed to submit the company's CT Return which led to an HMRC enquiry.
- 5 (b) The enquiry, which had been ongoing for five years, covered personal accounts of the director and secretary.
- (c) The previous agent resigned in February 2009.
- (d) The company was unable to establish what the P11D position was regarding the motor vehicle.
- 10 (e) Company Returns for 2008, 2009 and 2010 were submitted late to Companies House owing to poor trading and lack of funds for accountant.
- (f) The previous agent who was paid to manage and advise the company was negligent.
- 15 (g) Burdening the company with penalties would threaten the trading position of the company.
- (h) In January 2009 Mr and Mrs Sullivan's daughter, a single mother with children aged two and four, was diagnosed with breast cancer. Mrs Sullivan, who used to assist with the running of the company was helping to care for the children, which meant that Mr Sullivan was having to run the company single-handedly. This meant that during the early part of 2009 Mr Sullivan was unable to give his full attention to the company's employer obligations.
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Legislation

- 9. Regulation 71(1) Social Security (Contributions) Regulation 2001 requires an employer who is liable to pay Class 1A NIC's must do so by 19 July following the end of the year in which the liable Benefits were provided.
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- 10. Regulation 80 Social Security (Contributions) Regulation 2001 requires the submission of form P11D(b) for Class 1A NIC purposes by the due date of 6 July following the end of the deduction year.
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- 11. Regulation 81 Social Security (Contributions) Regulation 2001 provides the legislation for the provision of a penalty for the failure to comply with this requirement in Regulation 80.
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- 12. Regulation 81(9) Social Security (Contributions) Regulation 2001 provides the legislation for the consideration of a "reasonable excuse" for a failure to submit form P11D(b).

The Respondents contentions

13. Mr Boal for the Respondents said that the Appellant did not dispute that the use of a company vehicle in the years 2005-06 to 2008-09 inclusive did warrant liabilities to Fuel and Car Benefit charges for those years, nor did the Appellant dispute that forms P11D(b) should have been submitted after the end of each deduction year (2005-06 to 2008-09 inclusive). The resulting Benefit charges and Class 1A NIC liabilities have been agreed and accepted by the Appellant's agent.

14. The relevant due dates are :

Year	Submit P11D	Pay Class 1A NIC
2005-06	6 July 2006	19 July 2006
2006-07	6 July 2007	19 July 2007
2007-08	6 July 2008	19 July 2008
2008-09	6 July 2009	19 July 2009

15. In considering the appeal against the penalty charges, Regulation 81(9) of SSCR Regulations provides :

“for the purposes of this Regulation, a person shall be deemed not to have failed to have done anything required to be done within a limited time if he : -

- a) did it within such further time as the Board allowed, or
b) had a reasonable excuse for the failure and if that excuse ceased, did it without unreasonable delay after that excuse ceased.”

16. Whilst a “reasonable excuse” is not defined in legislation, Mr Boal submitted that it should be an unexpected or unusual event which was unforeseen and beyond the Appellant's control. Also a “reasonable excuse” should exist throughout the whole of the period of failure.

17. The due dates (based on Regulations 71 and 80 SSCR Regulations) for the failure periods for each year commenced as follows :

- 2005-06 failure from 20 July 2006
2006-07 failure from 20 July 2007
2007-08 failure from 20 July 2008
2008-09 failure from 20 July 2009

18. Mr Boal said that the failure to submit forms P11D(b) was established during enquiries into the Appellant's CT Returns and accounts, but unfortunately it had not been possible to establish the exact date on which the Benefit failure was rectified. In the absence of precise details of the failure periods involved, Mr Boal asked the Tribunal to consider the following :

(a) In a letter of 3 July 2012 the Appellant detailed domestic and personal problems beginning in January 2009 until February 2011.

(b) The problems from January 2009 would have a direct effect on the failure to submit the form P11D(b) for the year 2008-09 (due 19 July 2009) but not the earlier years.

(c) With regard to 2008-09 only the Respondents would be prepared to accept that the personal problems of the Appellant subsequent to January 2009 would rank as a "reasonable excuse" for whatever failure period existed after 20 July 2009.

19. Mr Boal said that "ignorance" on the part of the Appellant of its responsibilities and reliance on an agent should not constitute a "reasonable excuse" for the purposes of Regulation 81(9) SSCR Regulations and pointed out that employer packs are issued each February to employers, detailing their obligations for End of Year Returns, Forms P11D etc. It is expected that a reasonable and prudent employer would take reasonable care to read and follow such guidance, which is also available on HMRC's website. Mr Boal also suggested that where a third party has been appointed to undertake certain tasks, it does not remove the employer's responsibilities to ensure that that third party carries out such tasks. The Appellant cannot simply appoint an agent and subsequently deny responsibility for their tax obligations as an employer.

20. The legal obligation to submit forms P11D(b) lays with the Appellant under Regulations 71 and 80 SSCR Regulations and remains their obligation regardless of the fact that they may have delegated the task of submitting such forms to their agent.

21. Whilst it is not a statutory requirement for HMRC to issue an annual form P11D(b), Mr Boal confirmed that HMRC had received no notification that directors of the company were in receipt of Benefits in Kind.

Conclusion

22. The Tribunal accept that the Appellant had a "reasonable excuse" owing to personal problems for the failure to submit a form P11D(b) for 2008-09 by the due date of 19 July 2009 under Regulation 81 (9) of the SSCR Regulations.

23. Taking all the circumstances into account, the Decision of the Tribunal is that the appeals against the penalty charges for the years 2005-06, 2006-07 and 2007-08 are dismissed, and the penalties confirmed. There was no "reasonable excuse" for the failure to submit forms P11D(b) for those years. Neither the Appellant's ignorance of their legal obligations to file forms P11D(b) nor the failings of their appointed agent amounted to a "reasonable excuse" for the purposes of Regulation 81 (9) of the SSCR Regulations. However, the penalty charge of £1,200.00 for 2008-09 is discharged on

the basis that the Appellant failed to submit the 2008-09 form P11D(b) by 19 July 2009 owing to personal problems and circumstances which existed from January 2009, and that such problems and circumstances constituted a “reasonable excuse” under Regulation 81 (9) of the SSCR Regulations.

5 24. 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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**MICHAEL S CONNELL
TRIBUNAL JUDGE**

RELEASE DATE: 20 September 2013