



TC02919

Appeal number: TC/2013/04180

INCOME TAX –penalty for late filing of Employer Annual return –was a lack of computer skills to do return online a reasonable excuse-no-appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**MR and MRS K BRADSHAW
t/a NORRIS GREEN POST OFFICE
- and -**

Appellant

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

Respondents

TRIBUNAL: JUDGE BARBARA KING

The Tribunal determined the appeal on 20 September 2013 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 13 June 2013 (with enclosures), HMRC's Statement of Case submitted on 24 July 2013 (with enclosures) the Appellant's Reply dated 6 August 2013(with enclosures) and the Respondents further letter dated 16 September 2013.

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DECISION

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The issue

1. The appellants appeals against the imposition of a penalty in the sum of £1,200 for the late submission of the employer's annual return (P35 and P14s) for the tax year ending 5 April 2011.
- 10 2. The appellants were required to file the return for the year 2010-11 by the 19 May 2011. HMRC received the return on 9 May 2012 which was twelve months, or parts thereof, late.

The law

- 15 3. Under 98A(2) and (3) of the Taxes management Act 1970, the appellants were liable to a fixed penalty of £100 for each month or part month that they were in default with their return. The penalty therefore amounted to £1,200.
4. The Tribunal has limited jurisdiction in penalty appeals. The Tribunal can either confirm the penalty or quash it if satisfied that the appellants either filed the return on time or that they have a reasonable excuse, throughout the period of the delay, for its default. The Tribunal has no power to mitigate the penalty.
- 20 5. The Upper Tribunal in *HMRC v Hok Ltd* [2012] UKUT 363 (TCC) re-affirmed the First Tier Tribunal's Limited jurisdiction in respect of penalty appeals and in particular emphasised that it had no statutory power to adjust a penalty on the grounds of fairness.
- 25 6. In considering a reasonable excuse the Tribunal examines the actions of the appellant from the perspective of a prudent employer exercising reasonable foresight and due diligence and having proper regard for his responsibilities under the Taxes Acts.

The evidence and findings

- 30 7. In his letter dated 2 May 2013 Mr Kevin Bradshaw stated that he believed that the year 2010-11 was the first year for which he had to submit returns on line. The Respondents ("HMRC") produce a computer screen print showing that the appellants filed on-line for the year 2009-10.

8. Mr Bradshaw states that
- 35 "After many hours of struggling with a computer and their workbook I completed the exercise and sent it to them."

9. HMRC have no record of any attempt to file a P35 and/or P14s for the year 2010-11, until the return was filed successfully on 9 May 2012.

5 10. Mr Bradshaw does not give the precise date of his attempt at filing and he has produced no printout, or receipt, to acknowledge any efforts he had made to file at some point in 2011.

11. On balance I find that he did not successfully file the employer annual return at of any time during 2011 and if Mr Bradshaw believed that he had been successful, I find that his mistaken belief was not reasonably held.

10 12. HMRC produce a record of a telephone conversation with the appellants on 21 December 2011, which records that

“..agent is going to resubmit P35 in the coming weeks but accepts penalty due.”

15 13. This would suggest that as at 21 December 2011 the appellants were aware that their P35 had not been submitted. In a letter written by Mr Bradshaw on 6 August 2013, he acknowledges that he received a penalty letter from HMRC dated 30 January 2012 but states he had not received an earlier letter dated 26 September 2011. It is not therefore clear what prompted Mr Bradshaw to make the telephone call noted on 21 December 2011. It does, however, suggest that even if Mr Bradshaw believed that he had carried out a successful filing earlier in 2011, by December 2011 he knew that
20 this was not the case.

14. Mr Bradshaw suggests that it was unreasonable to expect employers such as the appellant to carry out filing on line as the system is too complicated. I find that the appellant in this case had successfully carried out a filing on line for the year ended 5 April 2010. They instructed agents to file the return for the year ended 5 April 2012.
25 If the appellants had had difficulties in carrying out the filing for the year ended 5 April 2011, it would have been reasonable for them to seek assistance from an agent at an earlier date.

15. The onus of proving that they had a reasonable excuse lies on the appellants. . I find that they have failed to do so.

30 16. The penalty system is harsh but not manifestly unfair. The Tribunal has no power to mitigate the penalty or to accept the ‘offer’ of a part payment as set out in the Notice of Appeal and the subsequent letter of 6 August 2013.

Decision

35 17. The appeal is dismissed and the penalty of £1,200 is confirmed.

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.

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**BARBARA KING
TRIBUNAL JUDGE**

RELEASE DATE: 2 October 2013

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