



**TC02921**

**Appeal number: TC/201301481**

*INCOME TAX – penalty for late filing of Employer Annual return – no reasonable excuse-appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**CHRISTOPHER DEVINE  
t/a DEVINE AND COMPANY**

**Appellant**

**- and -**

**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 17 June 2013 (with enclosures) and HMRC's Statement of Case submitted on 24 July 2013 (with enclosures).**

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## DECISION

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### **The issue**

1. The appellant appeals against the imposition of a penalty in the sum of £100 for the late submission of the employer's annual return (P35 and P14s) for the tax year ending 5 April 2011.
- 10 2. The appellant was required to file the return for the year 2010-11 by the 19 May 2011. HMRC received the return on 16 June 2011, one month late.
3. This appeal is late. Under rule 5 of the Tribunal Procedure (First-Tier Tribunal) (Tax Chamber) Rules 2009 I extend the time for filing the appeal so that the appeal is admitted.

### **The law**

4. Under 98A(2) and (3) of the Taxes Management Act 1970, an appellant is 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 £100.
5. The Tribunal has limited jurisdiction in penalty appeals. The Tribunal can either  
20 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.
6. The Upper Tribunal in *HMRC v Hok Ltd* [2012] UKUT 363 (TCC) re-affirmed  
25 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.
7. In considering a reasonable excuse the Tribunal examines the actions of the  
30 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**

8. The respondents ("HMRC") state that this penalty has been imposed for the late filing of an end of year return for the year 2010-11.
9. The appellant wrote a letter on 13 May 2013 indicating that he thought the  
35 penalty related to the non payment or late payment of some amount of PAYE.

10. By filing the return on 16 June 2011, the appellant has accepted that it was a return he had to file. He has given no reason why the return was filed late. He recalls a telephone call made in October 2011 when he believes that he was told he did not owe any outstanding tax at that time but I find that that does not account for the delay  
5 between 19 May 2011 and 16 June 2011.

11. HMRC state that the penalty notice was issued on 7 February 2012. The appellant states that he first realised there had been a penalty issued when he received a letter from HMRC dated 18 April 2013. Whether or not the appellant received the first penalty notice has no bearing on the outcome of this appeal. The issue of a  
10 penalty notice has not been the cause of the delay back in 2011.

12. The obligation is upon the appellant to set out the circumstances to substantiate a reasonable excuse. The appellant has not done so.

13. The penalty regime was brought in to encourage prompt filing. I find that the regime is harsh but not manifestly unfair. The legislation provides that a person who fails to make a return in time 'shall be liable' to a penalty. This is not a discretionary  
15 penalty.

14. The Tribunal notes that HMRC state that the appellant has again filed his end of year return late for the year 2011-12 but if there is an appeal against a penalty for that delay, it is not before this Tribunal.

20 **Decision**

15. The appeal is dismissed and the penalty of £100 is confirmed.

16. 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  
25 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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