



TC03138

Appeal number: TC/2012/02921

*Income Tax – late filing of returns – whether reasonable excuse for delay –
no – appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

REDLIN TRUST FUND

Appellant

- and -

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

Respondents

**TRIBUNAL: DR K KHAN
NICHOLAS DEE**

Sitting in public in Bedford Square, London on 14 October 2013.

The Appellant was represented by Linda and Derek Faint.

**Karen Weare, Senior Officer, instructed by the General Counsel and Solicitor to
HM Revenue and Customs, for the Respondents with Beverley Levy being an
observer.**

DECISION

The Appeal

1. This is an appeal against penalties of £500 imposed under s.98A(2) and (3) Taxes Management Act 1970 (“TMA 1970”) for the late filing of Employer’s Annual Return (P14s and P35) for the tax year 2010-2011.

Facts

2. The Redlin Trust Fund was required to file an Employer’s Annual Return for the year 2010-2011. The filing date for the Return was 19 May 2011. From 2009-2010 onwards this had to be filed online using an approved method of electronic communication.

3. HMRC sent an electronic reminder to Redlin Trust Fund on 13 February 2011. A late filing penalty notice was issued on 26 September 2011 for £400 for the period 20 May 2011 – 19 September 2011. The Return was filed online on 30 September 2011.

4. A further penalty notice was sent on 5 October 2012 for £100 for the period 20 September 2011 – 30 September 2011.

The Law

- (1) Regulation 73 of the Income Tax (PAYE) Regulations (SI 2003/2682) requires that P35s are filed before 20 May following the end of a tax year.
- (2) The TMA s.98A sets out the liability to fixed penalties for non-compliance. The taxpayer’s right of appeal against a penalty and the Tribunal’s powers are at TMA s.100B.
- (3) The legislation does not define a reasonable excuse in TMA s118(2). From reported cases, the Tribunal takes the view that it is an excuse which is likely to be reasonable when the taxpayer acts in the same manner as someone who seriously intends to honour their tax liabilities and obligations.

The Evidence

5. The Tribunal was provided with correspondence between the parties as well as a small ring binder of documents, legislation and authorities.

Appellant’s Submissions

6. The Appellant appealed on 30 September 2011 against the penalty. The following points were made:

- (1) That no reminders to file were provided by HMRC.
- (2) That it took four months for HMRC to advise of the error.
- (3) As soon as the penalty notification was received, the Return was filed.

7. In seeking a request for a review the Appellant stated:

5 “I cannot deny that I forgot to file the Return. This is relatively new to me
as I have just retired and have only just started to draw a pension from the
Trust Fund. What I feel is unjust is that it took the Revenue four months
to notify me incurring a penalty of £400 and a further £100 when I filed
10 the Return in total £500. I know that the Government is desperate for
money but I feel £500 is extremely harsh. I am willing to pay £100 which
would have been incurred if you had notified me sooner.”

8. The Appellant also objected to the online method of communication as they
were not fully conversant with the use of the Internet and indicated that the Trust
Fund was small and not an ongoing business and had an excellent history of dealing
15 with their responsibilities as an employer.

Respondents’ Submissions

- (1) That the responsibility for delivery of the completed Employer’s Annual
Return is on the employer and the Appellant had failed to operate the
PAYE scheme correctly. The Returns were received late and as a result
20 the penalty determinations have been correctly charged and issued under
s.98A TMA 1970.
- (2) There is no reasonable excuse in this case since there are normally no
unexpected or unusual events which were unforeseeable or beyond the
Appellant’s control which prevented them from complying with the
25 legislation.
- (3) The Tribunal has no power to look at whether the penalty is
disproportionate or unfair.
- (4) The Appellant has acknowledged (through Linda Faint) that the filings
were late and that the filing system was “relatively new” to her and this
30 may have resulted in her late filing.

Discussion and Conclusion

- (1) An excuse is likely to be reasonable where the taxpayer acts in a manner
similar to a person who seriously intends to honour their tax liabilities and
obligations. In this case, Linda Faint, acting for the taxpayer, confirmed
35 that she had forgotten to file the Return. There cannot be a reasonable
excuse if a taxpayer has simply forgotten to do something.

5 (2) The penalty is based on the lateness of the Return and while the taxpayer may well have intended to file on time, the law does not recognise an oversight or unfamiliarity with online filing as an excuse for a late filing. The responsibility for filing Returns lies with the employer in this case. The taxpayer filed their Returns online on 30 September 2011 which indicates that with some effort their unfamiliarity with online filing could have been conquered at an earlier date and which supports the view that the taxpayer simply forgot to file.

10 (3) It is understandable if a taxpayer feels aggrieved if HMRC have taken four months before serving a penalty notice. This however appears to be normal practice. It is clearly stated in the law that the Forms P35 should be with HMRC by 19 May 2011. It may well take a considerable time for HMRC to review their computer records once Returns have been submitted and to perform checks to see whether if those Returns have been filed by 19 May. It is important that penalty notices are sent to the correct taxpayers, which is to say those who are in fact late. It is understandable if this takes some time so it is equally understandable that taxpayers might feel aggrieved if their penalties increase during that time. A taxpayer who feels that the penalty is unfair may have redress through judicial review but not through this Tribunal.

25 (4) The penalties are calculated on a formula based on the date of receipt of the Return. The £100 fixed penalty is multiplied by the number of months from the due date to the date the Return is received. There is then a further multiplication exercise based on the number of employees. This is a standard calculation used in all cases and is applied to all employers who file Returns late. The amount of the penalty is set by legislation and applies to all taxpayers. The Tribunal can find nothing to suggest that the penalty of £500 was not applied in accordance with the law.

30 (5) The Appellant also states that they did not receive reminders for their end of year return. The Employer's Bulletins are published regularly online and the February edition explained in detail the employer's responsibilities around filing dates. The instructions on filing are clear and available also through HMRC website and various public information sites. The responsibility to file lies with the employer and HMRC cannot be held responsible for issuing reminders or failing to inform the employer of their responsibilities.

9. Accordingly the appeal is dismissed.

40 10. 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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DR K KHAN
TRIBUNAL JUDGE

RELEASE DATE: 12 December 2013

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