



TC03259

Appeal number: TC/2012/03515

***PAYE – LATE LODGING OF EMPLOYER’S ANNUAL RETURN –
APPELLANTS BELIEVED IT HAD BEEN SUCCESSFULLY FILED-
FAILURE OF HMRC TO ADVISE APPEALLNTS SOONER THAT
RETURN NOT SUCCESSFULLY FILED - WHETHER REASONABLE
EXCUSE - NO – APPEAL DISMISSED***

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

QUALITY MEAT SCOTLAND

Appellants

- and -

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

Respondents

TRIBUNAL: JUDGE N A BAIRD

The Tribunal determined the appeal on 3 January 2014 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 February 2012 (with enclosures), and HMRC’s Statement of Case submitted on 6 June 2013(with enclosures).

DECISION

1 The appellants appeal against the decision of HMRC to impose penalties of £500
5 in terms of Section 98A (2) and (3) of the Taxes Management Act 1970, for late
submission of the Employer's Annual Return for the tax year ending 5th April 2011.
The Annual Return was to be filed online by 19th May 2011. It was filed online on 4
October 2011.

10 2. The appellants maintain that their return was submitted online on 6 April 2011.
They had received the Penalty Notice on 30 September 2011 and prior to that had
been unaware that the return had not been received. If they had been advised sooner
they could have remedied the situation and the penalty would not have been so high.
They do not think they should be penalised for some sort of computer system
15 communication failure.

3. The position of HMRC is that the return should have been submitted by 19 May
2011 and was not. They note that the appellants had in previous years filed
successfully online. They accept that 'a Movement form' was filed online on 6 April
20 2011 but not the return. HMRC explain the system for filing, pointing out in particular
that a message is sent if the return has been successfully processed and an e-mail
message also sent. Failure to receive either of these should have alerted the appellants
to the fact that the return had not been successfully submitted. Guidance on how to
check the status of a submission is available online. In response to the complaint
25 about the length of time taken to issue the penalty notice HMRC point out that they
are under no obligation to issue penalty notices and the level of penalty is set down in
statute. HMRC refer to the decision in *HMRC v Hok Ltd [2012] UKUT 363*. They
conclude that the appellants have not established that on a balance of probabilities
there is a reasonable excuse for their failure to file their return on time.

30 4. I have given careful consideration to the evidence before me. If a person is to rely
on reasonable excuse, this must have existed for the whole of the period of default. A
reasonable excuse is normally an unexpected or unusual event, either unforeseeable or
beyond the person's control, which prevents him from complying with an obligation
35 when he otherwise would have done. The matter has to be considered in the light of
the actions of a reasonable prudent tax payer exercising foresight and due diligence
and having proper regard for his responsibilities under the Taxes Act.

40 5. I accept that the appellants believed that they had filed their return but they had not.
It seems to me to be not unreasonable to have expected them to have taken some
action to check whether the return had been successfully submitted. I can understand
their annoyance that they were not made aware of the failure until September but on
the basis of the decision of the Upper Tribunal in *Hok* there is no merit in a
submission that a delay of four months by HMRC in issuing a penalty notice is
45 unreasonable or that they were under an obligation to reduce the penalty.

6. I find therefore that the appellants have not established that they have a reasonable excuse for late filing and I dismiss the appeal.

5 7. 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
10 accompany a Decision from the First-tier Tribunal (Tax Chamber)” which
accompanies and forms part of this decision notice.

15 **N A BAIRD**
TRIBUNAL JUDGE

RELEASE DATE: 20 January 2014