



TC03260

Appeal number: TC/2012/03595

**PAYE – LATE LODGING OF EMPLOYER’S ANNUAL RETURN –
APPELLANTS BELIEVED THEY HAD FILED IT BUT THEY HAD NOT --
FAILURE OF HMRC TO ADVISE APPELLANTS SOONER THAT RETURN
NOT FILED – AMOUNT OF PENALTY DISPROPORTIONATE -
WHETHER REASONABLE EXCUSE - NO – APPEAL DISMISSED**

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MICHAEL DABB DESIGN SERVICES LTD Appellants

- and -

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

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 Notices of Appeal dated 21 February 2012 and 7 February 2013(with enclosures), HMRC’s Statement of Case submitted on 1 November 2013(with enclosures) and the appellants’ reply dated 2 December 2013.

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 2
October 2011.

10 2. I have before me considerable correspondence between Mr Dabb on behalf of the
appellants and HMRC. The reply to the Statement of Case reiterates all that Mr Dabb
had previously said. He concedes that he forgot to submit the Employer's Annual
Return. He thought he had done as he had always done in previous years but he had
15 been busy looking for a new job having been made redundant just prior to the time he
would normally be dealing with the return. Mr Dabb complains that the reference
numbers on the Penalty Notices were confusing. He complains of difficulties
contacting HMRC with no consistency in the department or personnel dealing with
his queries. He says he has spent a lot of money trying to speak to them on the phone.
20 He takes a very dim view of HMRC in general and on the system of charging
penalties, saying that he considers it to be 'nothing more than a money-making
scheme operated by HMRC and sanctioned by the current government'. He complains
about the practice of HMRC not to issue penalty notices until 4 months after the
return is due, saying this is done deliberately to increase their revenue and the amount
25 of the penalty is disproportionate to the 'offence' committed. He points out that this
was the first time he had failed to submit his return on time.

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
30 successfully online but take the view that it was incumbent on them to have a system
in place to ensure that their tax obligations were met and being too busy or forgetting
does not constitute a reasonable excuse for failure to file on time. In response to the
complaint about the length of time taken to issue the penalty notice HMRC point out
that they are under no obligation to issue reminders or penalty notices and the level of
penalty is set down in statute. They rely on the decision in *HMRC v Hok Ltd [2012]*
35 *UKUT 363* and say that they must be consistent in their approach to all customers.
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.

4. I have given careful consideration to the evidence before me. Mr Dabb has made
40 his feelings very clear and has diligently pursued his appeal. His anger at not being
made aware until September that the return had not been filed is perhaps not
unreasonable but I am bound by the decision in *Hok* in which the Upper Tribunal
found that the First-tier Tribunal does not have the power to discharge or reduce a
penalty properly due on the basis that it is unfair.

45 5. I accept that the appellants believed that they had filed their return but they had not.
Mr Dabb criticises HMRC's definition of a reasonable excuse. There is no absolute

definition of a reasonable excuse. Each case has to be looked at on its own merits taking account of all the circumstances. The criteria that are adopted by HMRC and the courts have been developed through long practice and caselaw. If a person is to rely on reasonable excuse, this must have existed for the whole of the period of default. In cases such as this the starting point is that there is a legal obligation on an employer to submit the Annual Return in time, A reminder that the Return is due to be filed in May is normally sent out in February and HMRC's assertion that one was sent to the appellants on 13 February 2011 is not disputed. 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 when he otherwise would have done. There has to be a benchmark and it is that the matter is considered on the basis of a reasonable prudent tax payer exercising foresight and due diligence and having proper regard for his responsibilities under the Taxes Acts. Mr Dabb 's position is that he made a mistake, the failure to file was due to human error and this must constitute reasonable excuse. Many people do of course forget to file returns or pay their tax on time but such a mistake is a breach of their legal obligations and such a breach generally results in a financial penalty. Rarely would simply forgetting give rise to a reasonable excuse. There will be circumstances where simply forgetting to file because of extraneous factors such as bereavement give rise to a reasonable excuse but in this case the explanation given is that Mr Dabb believed he had filed the return but had not and that this belief persisted until he received the penalty notice. I accept that he may have had other things on his mind but regrettably I must take the view that his failure to realise over so many months that he had not met his obligation to file the return in the erroneous belief that he had filed it does not give rise to a reasonable excuse.

6.I dismiss the appeal.

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

**N A BAIRD
TRIBUNAL JUDGE**

RELEASE DATE: 20 January 2014