



TC03465

Appeal number: TC/2013/06582

PAYE – Penalties for late filing of Annual Return – reasonable excuse – Appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

NORTHERN IRELAND DEAF YOUTH ASSOCIATION Appellant

- and -

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

**TRIBUNAL: JUDGE IAN W. HUDDLESTON
MS CELINE CORRIGAN**

Sitting in public at Bedford Street, Belfast on 24 January 2014

John Corbett, Officer for HMRC

**Mr M. Johnston and Stephen McWhinney officer of the Association for the
Appellant**

DECISION

Appeal

- 5 1. This is an Appeal against penalties which have been levied for the late filing of employers' annual returns for the tax years 2008/09, 2010/11 and 2011/12 in the total amount of £3,200. The issue before the Tribunal is twofold – firstly, whether to allow the hearing of the appeals (which technically are out of time) and, secondly, whether the Appellant can establish to the Tribunal's satisfaction reasonable excuse for the
10 failure to file the returns and pay the resultant tax. It should be noted that the Appellant is the subject of a current payment plan where it is committed to paying off outstanding PAYE and NIC liabilities over a period of time.

Appearances

- 15 2. HMRC was represented by Mr John Corbett. The NI Death Youth Association (the Appellant) was represented by two office bearers Mr M Johnson and Mr S McWhinney who were aided by a sign language interpreter, Ms R. Budd.

The Facts

- 20 3. The fundamental facts themselves are not in dispute. The NI Death Youth Association is an unincorporated association which operates a charitable function to support the young deaf community in Northern Ireland. Mr Johnston and Mr McWhinney as its current representatives accept that during the relevant tax years that the charity failed to account for PAYE and NIC contributions and equally failed to make its annual returns.

- 25 4. The reason why this circumstance came about was because the charity had employed a development officer during the relevant period. From the evidence presented to the Tribunal it certainly appears that that person was ill suited to the job and failed to undertake even the most basic administration – most of which related to his own income and NIC contributions and their return to HMRC. The compounding factor is that at the operative time, again from the evidence presented to us, it would
30 seem that there did not appear to be a governing body of trustees or other office bearers who could hold the individual to account and consequently he remained largely unsupervised throughout the relevant period. He did, however, leave in or around March 2012 after which the administrative chaos which he had left became apparent. It was at that point that Mr Johnston and others tried to (a) find records (b)
35 deal with the administrative issues which had arisen and (c) fundamentally re-establish the charity.

5. In effect the unincorporated association (which largely appears to have lapsed) was reenergised at that point.

6. The Appellant makes, fundamentally, three submissions.

- 40 • In terms of communication the Appellant makes the point that it had moved from Wilton House (its previous base) during the operative period and therefore did not

receive any communications or information regarding this issue until quite late in the day. The new office bearers were not therefore immediately aware of the issue;

- 5 • In terms of its ability to communicate with HMRC the Appellants say that given the impaired hearing disability which they suffer from it is actually quite hard to communicate with HMRC other than by way of email or written correspondence. That has not aided their approaches to HMRC in terms of establishing the issue or coming to a resolution;
- 10 • Finally, they assert that the defaults of the development officer in terms of his maladministration should be brought into account and further that those failures constitutes a reasonable excuse on the facts of the case.

HMRC's Case

15 7. HMRC say that reliance upon the previous employee is not sufficient to constitute reasonable excuse on the facts of the case. Simply put they say that there was basic maladministration on the part of the Appellant in terms of both the submission of the returns and payment of tax, that fundamentally that was the Appellant's responsibility and not that of its employee and further that there were clear failures in the supervision of that poorly performing employee.

Decision

20 7. As to the first issue, the late making of an appeal, the Tribunal finds that because of the change of address from Wilton House there is a strong possibility that the Appellant was not aware of its rights of appeal and that it should not be disadvantaged. To that extent we therefore extend the time limits to allow the appeals in respect of each of the penalty notices.

25 8. As to the question of the penalties themselves, therefore, as the Tribunal explained at the Hearing that is more difficult. What essentially the Appellant sought both in its correspondence with HMRC to date and at the appeal hearing, is mitigation of the penalties themselves. HMRC have considered that question previously and, upon review, determined that they would not apply mitigation.

30 9. The only question which appears before us, however, is, if on the facts of this case, there is reasonable excuse in the sense that are we satisfied that the Appellant has established on a balance of probabilities that it should be relieved of the penalties which have been applied on the facts of the case, taking into account all of the circumstances.

35 10. Whilst there is no actual definition of what constitutes reasonable excuse there are statutory provisions which indicate, in the negative, what cannot constitute reasonable excuse. In that regard the provisions of Section 71 (1) (a) VAT 1994 make it clear that reliance on another of itself is not sufficient.

40 12. The jurisdiction of this Tribunal is entirely statutory based therefore we can only operate within the confines that statutes impose on us. Whilst we had

tremendous sympathy with the Appellant's position regrettably we do not find that on the facts of the case reasonable excuse is made out. It was entirely unfortunate that the development officer in question remained unsupervised and, fundamentally, was someone who was not capable of performing the role for which he had been
5 employed. Nonetheless those faults do not lie at HMRC's door. Each tax payer regardless of its status (charitable or otherwise) has a statutory obligation to ensure it complies with the statutory obligations imposed on it for the accounting and payment of tax.

10 13. On the facts as we have found them we do not find that reliance on the development officer in the case is sufficient and we, therefore, find that reasonable excuse is not established and therefore dismiss the appeal.

15 14. Whilst it is outwith our remit we do, however, ask HMRC to consider the penalties in light of the fact that it is far from certain that the NI Death Youth Association (in its original form) actually ceased to exist at a given point and that the new entity is something which is completely separate. It would have been open to Mr Johnston and Mr McWhinney to walk away from the previous calamities and form effectively a new unincorporated association. They have chosen not to do that and to
20 that extent, therefore, it would certainly be a kind gesture on the part of HMRC if they were to assist in their endeavour to re-establish a worthwhile cause.

25 15. 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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35 **IAN HUDDLESTON**
TRIBUNAL JUDGE

RELEASE DATE: 2 April 2014