



TC03484

Appeal number: TC/2014/00111

*INCOME TAX - penalty for late submission of Employer's annual return
- whether there was a "reasonable excuse" - no*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

HELSEBY GOLF CLUB

Appellant

- and -

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

TRIBUNAL: JUDGE JOANNA LYONS

The Tribunal determined the appeal on 25 March 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 13 January 2013, HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 03 February 2014 and the Appellant's Reply dated 28 February 2014 (with enclosures).

DECISION

Introduction

- 5 1. This is an appeal against a penalty of £400 imposed for the late filing of the Employer's Annual return for the tax year 2012-13.
2. Mr J Butler is the treasurer of the club appeals on its behalf.

The issue

- 10 3. The appellant appeals on the grounds that there was a reasonable excuse for the late filing of the return. This is opposed by HMRC,

The Law

4. In so far as it is relevant to this appeal the law is set out below.

Obligation to file the return

- 15 5. An employer has an obligation to file an Employer's Annual Return "before 20 May following the end of a tax year" in accordance with Regulation 73(1) of the Income Tax (Pay As You Earn) Regulations 2003.

Imposition of penalty

- 20 6. If the return is not filed on time a penalty is payable in the sum of £100 per month for a firm with 50 employees or less. S98A (2) and (3) of the Taxes Management Act 1970 ("TMA").

Powers of the Tribunal

- 25 7. The Tribunal can set aside the penalty if no penalty has been incurred. Section 100B TMA

Reasonable excuse

8. The Tribunal can allow an appeal if the taxpayer has a "reasonable excuse" for the late submission of the return. Section 118(2) TMA.
9. In the case of *Rowland v HMRC [2006] STC (SCD) 536* it was decided that
30 "reasonable excuse" was

a matter to be considered in the light of all the circumstances of the particular case

Delegation to a third party

10. The mere fact that responsibility had been delegated to a third party does not amount to a reasonable excuse. *Westbeach Apparel Uk Ltd v HMRC commissioners [2011] UKFTT 561.*

- 5 11. The Tribunal can look behind act of delegation in order to determine whether the third party, themselves, has a reasonable excuse. *Customs & Excise Commissioners v Steptoe [1992] STC 757*

The Facts

The agreed facts

- 10 12. The club was due to file an Employer's annual return, P35, for the tax year 2012-13.

13. On 24 March 2013 the club was issued with an electronic notice to file the return. An additional reminder was sent on 28 April 2013.

- 15 14. Mr Butler followed the year end procedure before the due date using his payroll software. He was unaware that the P35 return had not been filed.

15. The return was filed online on 30 August 2013. A penalty of £400 was issued on 04 September 2013 for the default period 20 May to 30 August 2013.

The contested facts

- 20 16. Mr Butler states that he did not become aware that the return was outstanding until late August whereupon he took immediate steps to file the return. He does not specifically comment upon the correspondence referred to by HMRC, however he states that he became aware that the return was outstanding in August 2013.

- 25 17. In their letter of review dated 04 December 2013, HMRC state that they sent an interim penalty notice to the company shortly after 31 May 2013. The letter contained the following paragraph

“if you do not file your return we... may charge a late filing penalty. For each month or part month that your return is late you would be charged £100 for every 50 employees you have”.

- 30 18. Mr Butler responded to this letter stating that no return had been filed as no tax had been paid. Following further clarification HMRC sent a letter to Mr Butler in August confirming that a return was required. These letters have not been reproduced.

Findings of fact

- 35 19. I am satisfied that HMRC sent an interim penalty notice to the company in June 2013. I am further satisfied that this was followed by correspondence between the appellant and HMRC culminating in a final letter in August 2013.

20. I make these findings because :

(1) this account is fully detailed in HMRC's review letter of 04 December 2013 which was sent to the appellant for their response;

(2) the appellant does not taken issue with this account and

5 (3) the explanation accounts for the delay in submitting the return between June and August.

The arguments

The appellant's case

10 21. Mr Butler submits that the failure to submit the return on time arose out of a genuine error occasioned by a misunderstanding of the filing process. He was unaware that the return had not been filed until August whereupon he took immediate steps to rectify the default. He states that the club has a good record of filing returns on time and has supplied copies of the club's filing records.

The Respondent's case

15 22. HMRC accept that this was a genuine misunderstanding. However they submit that this does not amount to a reasonable excuse as Mr Butler was not issued with confirmation of receipt for the transaction. They point out that club was issued with an interim penalty letter at the beginning of June and had the opportunity to rectify the default at that stage.

20 Reasons for decision

23. I accept that Mr Butler made a genuine mistake when completing his year end accounts. However I find that it would have been reasonable for him to have obtained successful confirmation of receipt of the return before assuming that it had been successfully filed.

25 24. I accept that Mr Butler had successfully filed returns in previous years and that there was no intention to avoid payment of the tax due. However this explanation does not amount to a reasonable excuse for the failure. This Tribunal has no power to mitigate the penalty.

30 25. I accept that Mr Butler did not realise that he was required to file the return until this was eventually confirmed by HMRC in August. However I find that he had the opportunity to rectify the default in June 2013 as HMRC notified him that penalties were being incurred.

26. For these reasons I am not satisfied that there is a reasonable excuse for the late submission of the return throughout the period of the default.

35 Decision

27. There was no reasonable excuse for the late submission of the Employer's Annual return for the tax year 2012-13.

28. The appeal against the late filing penalty of £400 is dismissed.

Rights of appeal

29. 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
5 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.

10

**JOANNA LYONS
TRIBUNAL JUDGE**

15

RELEASE DATE: 9 April 2014