



TC03514

Appeal number: TC/2014/00438

INCOME TAX - PAYE - Penalty for late submission of Employer's annual return – whether there was a “reasonable excuse” – yes in part

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

G REDFERN & SONS

Appellants

- and -

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

Respondents

TRIBUNAL: JUDGE JOANNA LYONS

The Tribunal determined the appeal on 02 April 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 15 January 2014 and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 14 February 2014.

DECISION

Introduction

- 5 1. This is an appeal against a penalty of £500 imposed for the late filing of the Employer's Annual return for the tax year 2012-13.
2. Mrs Amanda Redfern appeals on behalf of the business.

The issue

- 10 3. Mrs Redfern appeals on the grounds that there was a reasonable excuse for the late submission of the return. This is disputed by HMRC.

The Law

4. In so far as it is relevant to this appeal the relevant law is set out below.
5. An employer has an obligation to file an Employer's Annual Return on or "before 20th May following the end of the tax year". Regulation 73(1) of the Income Tax (Pay As You Earn) Regulations 2003.
- 15 6. If the return is not filed by the due date a penalty is payable in the sum of £100 per month, or part month, for an employer employing 50 employees or less, s98A of the Taxes Management Act 1970 ("TMA").
7. The Tribunal can set aside a penalty if it has been incorrectly applied, s100(1) TMA.
- 20 8. The Tribunal can set aside a penalty if the Employer has a "reasonable excuse" for the late submission of the return, s118(2) TMA.

The Facts

The agreed facts

- 25 9. Mrs Redfern was due to file the Employer's annual return for the tax year 2012-13. The return was due to be filed online by 19 May 2013. Mrs Redfern attempted to file the return on 13 May 2013.
10. During a five day period commencing 31 May 2013 HMRC sent out an interim penalty letter informing the business that the return was outstanding.
- 30 11. On 23 September HMRC issued a first interim penalty of £400 for the late filing of the return between 20 May and 19 September 2013.

12. The Employer's annual return was filed online on 08 October 2013. On 11 October 2013 HMRC issued a final late filing penalty of £100 for the period 20 September to 08 October.

The contested facts

5 13. Mrs Redfern submits that she filed the return in test mode on 13 May and genuinely believed that it had been received. In support of her case she has provided a copy of the return dated 13 May 2013. HMRC state that they have no record that the return was filed in test or live mode until 08 October.

10 14. Mrs Redfern also states that she did not receive the interim penalty letter of 31 May. HMRC state that the interim penalty letter was sent to the registered address of the business. They have not produced a copy of the letter sent.

Findings of fact

15 15. I accept that Mrs Redfern completed the return on 13 May as a dated copy of return has been provided. However I am not satisfied that the return was filed in live or test mode because Mrs Redfern has not provided confirmation of receipt and HMRC have no record any attempt to file the return.

16. I am satisfied on the balance of probabilities that Mrs Redfern did not receive the interim penalty letter of 31 May as it is likely that she would responded more promptly in order to avoid incurring further penalties.

20 **The arguments**

Filing of the return

25 17. Mrs Redfern submits that she filed the return before the due date and assumed that it had been correctly filed. HMRC submit that Mrs Redfern should not have assumed that the return had been successfully received as she was not issued with a receipt.

Failure to receive the interim penalty notice

30 18. Mrs Redfern states that she did not receive the interim penalty notice and was unaware of the default until 23 September. Accordingly she did not have the opportunity to submit the return at an earlier stage thereby avoiding the accumulation of further penalties.

19. HMRC state that it is their practice to issue an interim penalty notice but there is no statutory obligation to do so.

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Reasons for decision

Late submission of the return

20. I accept that Mrs Redfern acted in good faith and genuinely believed that the return had been filed. However I do not find that this amounts to a reasonable excuse
5 in the circumstances because it would have been reasonable in the circumstances to have obtained confirmation of receipt.

Failure to receive interim penalty letter.

21. I accept that there is no statutory requirement upon HMRC to issue an interim penalty letter. Nonetheless it is their practice to issue such letters with the aim of
10 alerting taxpayers to the build up of penalties. I am satisfied that had Mrs Redfern received the interim penalty letter she would have taken prompt steps to file the return before 19 June 2013 thereby avoiding additional penalties.

22. I find that this amounts to a reasonable excuse for the failure to submit the return between 20 June and 08 October 2013. The effect of this decision is to reduce
15 the default period from five months to one month and the penalty applicable from £500 to £100.

Decision

23. There was no reasonable excuse for the failure to submit the Employer's Annual return between 20 May and 19 June 2013.

20 24. There was a reasonable excuse for the failure to submit the Employer's Annual return between 20 June and 08 October 2013.

25. The appeal against the penalty of £400 is allowed in part and the penalty is reduced to £100.

Rights of appeal

25 26. 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
30 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.

**JOANNA LYONS
TRIBUNAL JUDGE**

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RELEASE DATE: 23 April 2014