



**TC03656**

**Appeal number: TC/2014/00458**

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

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**DEREK RUFFELL**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE JOANNA LYONS**

**The Tribunal determined the appeal on 29 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 received on 17 January 2014, HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 25 March 2014 and the appellants response dated 04 April 2014.**

## DECISION

### Introduction

1. This is an appeal against a penalty of £300 imposed for the late filing of the Employer's Annual return for the tax year 2010-11. The penalty was imposed in accordance with s98A(2) & (3) Taxes Management Act 1970.

### The issues

2. Mr Ruffell seeks permission to appeal out of time.

3. Mr Ruffell appeals on the grounds that there was a reasonable excuse for the late filing of the return. This is disputed by HMRC.

### Extension of time

4. This penalty was imposed on 07 February 2012. The appeal against the penalty was due to be served on HMRC within 30 days of this date. Mr Ruffell appealed out of time on 09 August 2013.

5. Mr Ruffell submits that he did not receive the original penalty notice and was not aware of the penalty until he received HMRC's debt collection letter on 04 April 2013.

6. The Tribunal has the power to extend the time limit for lodging an appeal in accordance with Rule 5(3)(a) of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber Rules) 2009 ("the Rules"). When considering whether to permit an extension of time the Tribunal is required to apply the overriding objective Rule 2(1) "to deal with cases fairly and justly".

7. I am satisfied that Mr Ruffell did not receive the original penalty notice and contacted HMRC immediately upon receiving the debt collection letter in April 2014. Accordingly I find that it is in the interests of justice to permit the extension of time for lodging the appeal.

### The Law

#### *Obligation to file the return*

8. An employer has an obligation to file an Employer's Annual Return before 20 May following the end of the tax year. Regulation 73(1) of the Income Tax (Pay As You Earn) Regulations 2003. ("the PAYE regulations")

#### *Imposition of penalties*

9. If the return is not filed by the due date a penalty is payable in the sum of £100 per month for a firm with 50 employees or less s98A(2)&(3) Taxes Management Act 1970. ("TMA").

10. The Tribunal may set aside the penalty "if it appears ..that no penalty has been incurred" s100B(2) Taxes Management Act 1970 ("TMA").

### *Reasonable excuse*

11. A penalty may be set aside if the taxpayer can establish a “reasonable excuse” for the late filing of the return throughout the default period s118(2) TMA.

5 12. In the case of *Rowland v HMRC [2006] STC (SCD) 536* it was decided that a “reasonable excuse” was “a matter to be considered in the light of all the circumstances of the particular case”

13. 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 [2011] UKFTT*  
10 *561*.

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

### **The agreed facts**

15 15. Mr Ruffell was required to file an Employer’s annual return for the year 2010-11. The return was due to be filed on or before 19 May 2011.

16. Mr Ruffell had only one employee who ceased employment when the business closed on 31 December 2010. When closing the business Mr Ruffell paid the VAT and PAYE due.

20 17. On 12 February 2011 HMRC sent Mr Ruffell an electronic reminder to file the return for the tax year 2010-11. The return was not filed by the due date. The return was filed online on 08 August 2011.

18. The penalty of £300 was issued on 07 February 2012 for the default period 20 May to 08 August 2011.

### 25 **The arguments**

#### *The appellant’s case*

19. Mr Ruffell states that he was not aware of the online filing requirement as he employed a clerk to administer his tax affairs. After closing the business in December 2010 he left the country to go travelling. He did not receive the reminder issued in  
30 February 2011. He returned home briefly in August 2011 before resuming his travels. Whilst at home he filed the return online. He was not aware of the penalty until he received the debt collection letter from HMRC in April 2013.

#### *The Respondent’s case*

35 20. HMRC state that information regarding an Employer’s filing obligations is contained on their website. In support of their case they have provided a screenshot from the relevant page of their website. They also submit that reliance on a third party does not amount to a reasonable excuse.

### **Reasons for decision**

21. I accept that Mr Ruffell was not aware of the requirement to file the return as this task had been delegated to his filing clerk. However the responsibility for filing the return rests with Mr Ruffell, as the employer, and the mere fact of delegation to a third party does not amount to a reasonable excuse. (*Westbeach apparel* above).

22. I accept that Mr Ruffell paid the tax due upon the closure of the business. However the return remained due in accordance the PAYE Regulations and this requirement was set out on the relevant page of HMRC's website.

23. It is agreed that Mr Ruffell was abroad on the due date and did not receive the filing reminder in February 2011. However it would have been reasonable for him to have sought advice from HMRC regarding the closure of the business prior to his departure and there is no evidence that he did so.

24. For these reasons I do not find that there was a reasonable excuse for the late submission of the return throughout the period of the default.

### **Decision**

25. There was no reasonable excuse for the failure to submit the Employer's Annual return for the tax year 2010-11.

26. The appeal against the late filing penalty of £300, is dismissed.

### **Right of appeal**

27. 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.

**JOANNA LYONS  
TRIBUNAL JUDGE**

**RELEASE DATE: 30 May 2014**