



**TC03744**

**Appeal number: TC/2013/07433**

*Late return penalties – P35 & P14 – IT failure claimed – reasonable excuse for late returns – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**LONDON SCHOOL OF ECONOMICS**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE MALACHY CORNWELL-KELLY  
MR JOHN ROBINSON**

**Sitting in public at 45 Bedford Square, London on 11 June 2014**

**Mr Ben Hancock for the taxpayer**

**Mr John Corbett of HMRC Belfast for the Crown**

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## DECISION

5 1 This appeal is against a late filing penalty of £10,200 imposed for the late  
submission of P35 and P14 end of year returns for 2012-13. The due date for the  
returns was 19 May 2013, but they were not received until 26 June 2013. The issue in  
the appeal is whether the taxpayer had reasonable excuse for the lateness of the  
returns. In addition to the usual documentary evidence, we received oral evidence  
10 from Mr Ben Hancock, LSE's HR Manager for Pay & Pensions who also represented  
the appellant, and Mr S Harris, the Director of HR at LSE. The case for the appellant  
was presented very clearly and helpfully.

### *Legislation*

15 2 The Taxes Management Act 1970 provides:-

#### **118 Interpretation.**

(2) For the purposes of this Act, a person shall be deemed not to have failed  
to do anything required to be done within a limited time if he did it within  
such further time, if any, as the Board or the tribunal or officer concerned  
20 may have allowed; and where a person had a reasonable excuse for not doing  
anything required to be done he shall be deemed not to have failed to do it  
unless the excuse ceased and, after the excuse ceased, he shall be deemed not  
to have failed to do it if he did it without unreasonable delay after the excuse  
had ceased.

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### *Facts*

3 We were shown screen prints of the appellant's Electronic Data Interface (EDI)  
archive detailing the files which had been transmitted to HMRC in the previous six  
months. The EDI was used only for transmissions to HMRC and to no other  
30 destination; all the transmissions recorded had been received by HMRC and  
acknowledged by email, save the two under appeal shown as being sent on 1 May  
2013.

4 The receipt of these latter two had not been acknowledged and HMRC records were  
shown to us indicating that they had not been received. No enquiry had been made of  
35 HMRC about the absence of an acknowledgment, although acknowledgements of  
documents transmitted electronically were routinely given. On the other hand, there  
had been no rejection message from HMRC either. On 25 June, HMRC contacted the  
appellant to say that the return had been received, and it was then immediately sent  
and received the next day.

40 5 Mr Hancock said that his team comprised some twelve people of whom the person  
responsible for sending these returns was the Payroll Manager, someone of seven  
years' experience in the post, though he or she was not in court to give evidence.  
Fundamentally, Mr Hancock's case was that the situation had been one of IT failure,  
though no technical evidence was adduced in support of that proposition. Tentatively,  
45 Mr Hancock conceded that the problem might have been one of human error.

6 Our attention was drawn to HMRC's published guidance on the electronic filing of  
returns. At <http://www.hmrc.gov.uk/payerti/end-of-year/from-bau-to-rti.htm> it was  
stated that if a return had been sent successfully there would either be an email

confirmation or an equivalent message on software 9004; if the return was rejected, there would be a message indicating why, sent by email similarly. The guidance concluded:

5 If you do not receive either an acceptance or rejection response, please contact HMRC's Online Services Helpdesk.

7 The same message was conveyed by HMRC's Employer Bulletin issue 43 dated February 2013 under the heading in bold type: 'Making sure your return is accepted'.

8 Our attention was also drawn to further guidance by HMRC on penalties for late returns at <http://www.hmrc.gov.uk/payerti/end-of-year/payepenalties/annual-return-late.htm>. Here, it was stated that:-  
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HMRC will remind you at various times that your return is due or overdue:

- Just before the end of the tax year, an initial notification is issued about the need to submit your return
- If your return has not been received by the end of April, a reminder is issued
- 15 • Where a return remains outstanding after 19 May [the due date], HMRC will write to you (and your authorised agent) advising that a penalty may have already been incurred and that the return must be with HMRC by 19 June in order to avoid further penalties.

#### *Conclusions*

20 9 There is no legal obligation on HMRC to send any of these notices to a taxpayer but, having established an expectation that they will be sent, the sending or otherwise of them may be relevant to the issue of reasonable excuse and we therefore examined whether that could have been a factor in this case. Mr Hancock was adamant that none of these reminders had in fact been sent, so – assuming that to be the case – the question of causation arises: would it have made a difference if they had been sent?  
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10 The first reminder promised would have been sent in early April – 'just before the end of the tax year'; clearly, that had no impact on the situation since the returns were prepared and ready by 1 May in any event. The second reminder – 'if your return has not been received by the end of April' – would have arrived in early May; if it had,  
30 the appellant's reaction would probably have been 'well, we have already sent our return in on 1 May', so the matter is no further forward. If the third reminder had not been sent, the appellant would still be in the position in which it has ended up, because the reminder is only sent 'when a penalty may have already been incurred' i.e. after 19 May.

35 11 We say 'ended up', because the initial penalty of two months' fine – £20,400 – was reduced before the hearing to the penalty for one month, £10,200. We understand that this may have been in recognition that the reminder promised in the third bullet point cited above was not in fact sent, or at least that HMRC could not be sure that it had been sent.

40 12 This analysis leaves us with the appellant's failure to check why there had been neither a rejection nor an acknowledgment of the end of year returns which LSE thought had been sent on 1 May. Even without HMRC's published guidance on this, our conclusion is that a reasonably prudent taxpayer, bearing in mind the stiff penalties liable to be incurred, would want to be sure that a return had got through the system and been received by HMRC. It is clear that no such check or query was  
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attempted and we must therefore find that there was no reasonable excuse for the failure in question.

13 Mr Hancock argued that this was a case of IT failure and, while we have no positive evidence that this was so, it is not improbable that that was what indeed  
5 occurred. That is not, as we have explained, the essential issue which was whether in all the circumstances the appellant acted reasonably. It is unfortunate that this is against a background of a blameless record in discharging tax obligations and of the appellant having put the matter right as soon as it became aware of it. But given the failure to query the lack of a response from HMRC the appeal cannot succeed, and the  
10 penalty of £10,200 must be confirmed – though HMRC may however wish to consider mitigating it.

*Further appeal rights*

14 This document contains the full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply in writing for permission to  
15 appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by the tribunal no 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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**MALACHY CORNWELL-KELLY  
TRIBUNAL JUDGE**

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**RELEASE DATE: 19 June 2014**

