



**TC03777**

**Appeal number: TC/2011/07192**

**P35N – late filing penalty – no treasurer – no reasonable excuse**

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**SILEBY & DISTRICT CONSERVATIVE CLUB                      Appellant**

**- and -**

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

**TRIBUNAL: JUDGE ALASTAIR J RANKIN**

**The Tribunal determined the appeal on 2 July 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 4 September 2011 (with enclosures), HMRC's Statement of Case submitted on 24 October 2011 (with enclosures) and the Appellant's reply dated 11 November 2011**

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## DECISION

5 1. Sileby and District Conservative Club (the Club) is appealing against a penalty of £100.00 issued by HMRC on 15 February 2011 for the late filing of its End of Year Return form P35N for the tax year 2009/10.

10 2. The Club in its Notice of Appeal state that it ‘experienced serious problems with the Treasurer position and had 3 Treasurers all up to the time the end of year return was due. It was the 2<sup>nd</sup> Treasurer who finally paid her own accountant to file the end of year return as she had no accounting experience and was solely trying to help the club over a difficult time without a Treasurer’.

3. The P35N return was filed online on 8 June 2010. As this was after the deadline of 19 May 2010 the penalty notice was issued.

15 4. The then Treasurer of the Club wrote to HMRC on 30 March 2011 in response to having received the penalty notice requesting the penalty should be waived.

5. By letter dated 17 June 2011, over two months after having received the letter from the Club, HMRC advised the Club that it was unable to accept the appeal as it was not made within the time limit. The Club responded by filing its Notice of Appeal dated 4 September 2011, again outside the time limit allowed for an appeal.

20 6. HMRC in its Statement of Case has confirmed that the lateness of the appeal is not an issue in this instance.

### **The Law**

25 7. Regulations 73 of the Income Tax (PAYE) Regulations 2003 (the 2003 Regulations) and paragraph 22 of Schedule 4 of the Social Security (Contributions) Regulations 2001 impose a statutory obligation on an employer to make End of Year Returns by the due date.

8. Regulation 205 of the 2003 Regulations provides that an employer must use electronic communications to deliver its end of year return online.

30 9. Section 98A(2) and (3) provide for the imposition of a fixed penalty of £100.00 for each month or part month the return is late where, as with the Club, there are fewer than 50 employees.

10. Section 118(2) of the 1970 Act provides statutory protection from a penalty if the employer had a reasonable excuse for failing to file their return on time. There is no statutory definition of reasonable excuse.

### 35 **The Decision**

11. In order to have the penalty assessments set aside it is necessary for the Club to show a reasonable excuse.

12. The Tribunal finds that no reasonable excuse has been submitted by the Club for the failure to file return P35N. The duty lies clearly with the employer to file the return on time. The Club has been registered as an employer with HMRC since 17 March 2002.

5 13. In the view of the Tribunal the absence of a Treasurer is not a reasonable excuse. The Club knew from around 17 January 2010 that the form P35N had to be filed by 19 May 2010.

10 14. The Tribunal agrees with the views of Judge Colin Bishopp in the First Tier Tribunal case of Enersys Holdings UK Limited [2010] UIKFTT 20 that ‘it seems unlikely that a delay of only a day might ever, without more, amount to a reasonable excuse’.

15 15. Following the decision of the Upper Tier Tribunal in The Commissioners for Her Majesty’s Revenue and Customs and Hok Limited [2012] UKUT 363 (TCC) the Tribunal has no jurisdiction to discharge or adjust a fixed penalty which is properly due because it thinks it is unfair.

16. Accordingly the appeal is dismissed and the Club remains liable to pay the penalty of £100.00

20 17. 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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**ALASTAIR J RANKIN  
TRIBUNAL JUDGE**

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**RELEASE DATE: 4 July 2014**