



TC03784

Appeal number: TC/2011/08056

PAYE – employer’s annual return – penalty for late submission – whether reasonable excuse

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

R & G HOMES LTD

Appellant

- and -

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

TRIBUNAL: JUDGE WDF COVERDALE

The Tribunal determined the appeal on 27.06.2014 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 03.10.2011 (with enclosures) and HMRC’s Statement of Case submitted on 29.11.2011 (with enclosures).

DECISION

5 1. The Tribunal decided that the Late Filing Penalty Notices dated 27.09.2010 and 01.11.2010 in the total sum of £600 were properly issued by the Respondents.

2. The appeal is dismissed.

3. The Tribunal has treated this appeal as against both Penalty Notices mentioned above notwithstanding that the Notice of Appeal only mentions the first Penalty Notice in the sum of £400.

10 4. The Tribunal found that the filing date for the Appellant's Employer Annual Return for the year 2009-2010 (forms P35 and P14) was 19.05.2010. The Return was delivered electronically on 22.10.2010 i.e. 156 days late.

5. The Tribunal further found that there was no reasonable excuse for the failure to file the Employer's Annual Return on time.

15 6. The Appellants were obliged to file an Employer's Annual Return for the year 2009-2010 because they had to maintain a form P11 for at least one employee during the tax year. The Appellants acknowledge that the failure to file the Return on time was a "genuine oversight". An oversight cannot amount to a reasonable excuse, nor the fact that the oversight was rectified promptly when it was discovered. Likewise an
20 unblemished filing history is not a reasonable excuse and the fact that the Appellant owed nothing for tax or National Insurance Contributions cannot be taken into account in terms of reasonable excuse or mitigation of the penalty.

7. The Respondents are not obliged to issue reminders to employers with regard to
25 overdue returns; notification of a penalty some months after the penalty began to accrue due was considered by the Upper Tribunal in the case of *Hok* mentioned in paragraph 11 below and was not considered to be inappropriate.

8. It is the responsibility of the Appellant, as an employer, to ensure that the regulations are followed and Employer Annual Returns are delivered to the Respondents by the legislative deadline. This responsibility cannot be transferred of
30 removed by the engaging of an accountant; successful submission of the Return remains the responsibility of the employer at all times.

9. Any criticism of the Respondents' conduct of correspondence after the default had occurred is not a matter that can be taken into account by the Tribunal when considering the circumstances leading to the default in filing the Annual return by
35 19.05.2010.

10. The test applied by the Tribunal in considering the matter of reasonable excuse is whether the exercise of reasonable foresight and due diligence and a proper regard for the fact that the Return would become due on a particular date would not have avoided the default. The facts and chronology of events, set out in the Notice of

Appeal and the Respondents' Statement of Case, disclose that such foresight and diligence would have avoided the default.

11. In so far as the Appellant argues that the imposition of the penalty is disproportionate, unjust or unfair these arguments have already been disposed of by the Upper Tribunal in *HMRC v Hok* [2012] UKUT 363 (TCC) and *HMRC v Total Technology (Engineering Limited)* [2012] UKUT 418 (TCC). In the former it was made clear that the First-tier Tribunal has no jurisdiction to determine the fairness of a penalty imposed by statute. It is plain from a perusal of the latter that a penalty of the magnitude of that imposed in this case could not be described as disproportionate even if there were jurisdiction to deal with the argument.

12. 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.

**WDF COVERDALE
TRIBUNAL JUDGE**

RELEASE DATE: 7 July 2014