



TC03836

Appeal number: TC/2014/02556

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

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

CLARK LODGE LTD

Appellant

- and -

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

TRIBUNAL: JUDGE WDF COVERDALE

The Tribunal determined the appeal on 18.07.2014 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 08.05.2014 (with enclosures) and HMRC’s Statement of Case submitted on 30.05.2014 (with enclosures).

DECISION

1. The Tribunal decided that the Late Filing Penalty Notice dated 23.09.2013 in
5 the (reduced) sum of £100 was properly issued by the Respondents.

2. The appeal is dismissed.

3. The Tribunal found that the filing date for the Appellant's Employer Annual
Return for the year 2012-2013 (forms P35 and P14) was 19.05.2013. The Return was
filed electronically on 27.01.2014 i.e. some eight months late.

10 4. The Tribunal further found that there was no reasonable excuse for the late
filing of the Annual Return.

5. It has been noted that penalties in the total sum of £800 have already been
mitigated by the Respondents down to £100.

15 6. The Notice of Appeal is silent as to the Grounds for Appeal but it appears that
the Appellant's agent has argued that he was unaware that a PAYE scheme was not in
operation for the Appellant but such a scheme was registered on 01.07.2014. This
does not alter the fact that the Return should have been filed some six weeks
previously.

20 7. The fact that there was no liability to account for any tax or National Insurance
Contributions has no bearing on the matter of filing the Annual Return: there was an
obligation to file it in a timely manner whether any tax or National Insurance
Contributions were payable or not.

8. Likewise, the fact that the Respondents have suffered no loss as a result of the
late filing of the Return has no bearing on the matter in issue.

25 9. The Appellant had an employee and details of that employee's earnings had to
be disclosed on the Annual Return. Ignorance of legal obligations does not relieve an
employer from the duty to adhere to those obligations. The Tribunal is satisfied that
the Respondents have widely publicised the details of those obligations and the
Appellant should have been aware of the legal requirements. The mistake may have
30 been an honest one but this does not amount to a reasonable excuse.

10. The test applied by the Tribunal in considering the matter of reasonable excuse
is whether the exercise of reasonable foresight and of 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
35 Appeal and the Respondents' Statement of Case, disclose that such foresight and
diligence by the Appellant would have avoided the default.

11. In so far as the Appellant may suggest that the imposition of the penalty is
disproportionate, unjust or unfair, those arguments have already been disposed of by
the Upper Tribunal in *HMRC v Hok* UKUT 363 (TCC) and *HMRC v Total*

5 *Technology (Engineering) Limited* 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 the Tribunal had jurisdiction to deal with the issue.

10 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.

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**WDF COVERDALE
TRIBUNAL JUDGE**

RELEASE DATE: 23 July 2014

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