



TC03868

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Appeal number: TC/2011/07692

Return Form P35 – late filing penalty – confusion between taxpayer and agent – no reasonable excuse

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**FIRST-TIER TRIBUNAL
TAX CHAMBER**

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STRAWLAND LIMITED

Appellant

- and -

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

TRIBUNAL: JUDGE ALASTAIR J RANKIN

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The Tribunal determined the appeal on 29 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 28 September 2011 (with enclosures), HMRC's Statement of Case submitted on 14 November 2011 (with enclosures) and the Appellant's Reply dated 25 November 2011.

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DECISION

1. This is an appeal by Strawland Limited (Strawland) against the penalties imposed under Section 98A(2) and (3) Taxes Management Act 1970 following the late submission of the Employer's Annual Return Form P35 for the year 2009/10.

2. Return Form P35N was issued on 17 January 2010. The Return should have been filed electronically by 19 May 2010. A first interim penalty notice totalling £400.00 was issued on 27 September 2010. This resulted in the Return being filed electronically on 19 October 2010 which in turn resulted in HMRC issuing a further penalty notice on 1 November 2010 for £200.00

3. The Payroll Manager on behalf of Strawland by letter dated 15 November 2010 appealed against the penalty due to this being the first time the Return had been filed late and there being only one employee on the payroll. Also there had been confusion between Strawland and the Payroll Manager as each thought the other had filed the return.

4. HMRC rejected the appeal by letter dated 30 March 2011 and offered a review.

5. The Payroll Manager by letter dated 14 April 2010 accepted that the Return was late and a penalty was due but found it unreasonable to charge four months' penalties without prior notice. The Payroll Manager requested the penalty be reduced to £100.00

6. By letter dated 18 July 2011 HMRC, having reviewed the original decision upheld the penalty as no reasonable excuse had been put forward by Strawland.

7. By letter dated 2 August 2011 Strawland's accountants referred HMRC to the case of Leachman (t/a Whiteley and Leachman) v Revenue and Customs Commissioners. HMRC by letter dated 30 August 2011 advised Strawland that this case was determined by a First Tier Tribunal and the decision only bound the parties to that case.

8. The Notice of Appeal dated 28 September 2011 referred the Tribunal to two cases – Hok Limited v HMRC and HMD Response International v HMRC.

9. On the application of HMRC the appeal was stayed until the Upper Tier Tribunal issued its decision in the appeal by HMRC against the First Tier Tribunal decision in Hok Limited.

The Law

10. Regulation 73(1) of The Income Tax (Pay As You Earn) Regulations 2003 (the 2003 Regulations) and Paragraph 22 of Schedule 4 of the Social Security (Contributions) Regulations 2001 require an employer to deliver a completed form P35 together with a form P14 for each employee before 20 May following the end of the tax year.

11. Regulation 205 of the 2003 Regulations makes it mandatory for each employer to file the form P35 electronically.

12. Sections 98A(2)(a) and (3) of the 1970 Act provide for the imposition of a fixed penalty of £100.00 for each batch or part batch of 50 employees for each month or part month the return is late.

13. 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.

The Decision

14. There is no statutory obligation on HMRC to advise employers that they have failed to file their P35 forms on time. It is necessary that HMRC is seen to be consistent in its approach.

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

16. The Tribunal finds that no reasonable excuse has been submitted by Strawland. Confusion between the taxpayer and its agent is not a reasonable excuse. The legislation clearly imposes on the taxpayer the obligation to file the Return on time.

17. While HMRC have not provided any reason why the penalty notice was not issued until 27 September, following the decision of the Upper Tier Tribunal in Hok Ltd the Tribunal has no jurisdiction to discharge or adjust a fixed penalty which is properly due because it thinks it is unfair.

18. The appeal is therefore dismissed.

19. The penalties totalling £600.00 are confirmed as being due for payment by Strawland.

20. 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.

Alastair J Rankin
TRIBUNAL JUDGE

RELEASE DATE: 01 August 2014