



TC04686

Appeal number: TC/2015/00547

**INCOME TAX – LATE EMPLOYER RETURNS – WHETHER
REASONABLE EXCUSE DUE TO ILLNESS – YES – APPEAL
ALLOWED**

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

BARR BROTHERS

Appellant

- and -

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

TRIBUNAL:

**JUDGE K KHAN AND ANDREW
PERRIN FCA TRIBUNAL MEMBER**

The Tribunal sat in Belfast on 7 August 2015.

Appearing for the Appellant was John Barr.

**Appearing for HMRC was Maurice Chapman, Presenting Officer and
Mary Donnelly, Trainee Presenting Officer**

DECISION

Introduction

- 5 1. This is an appeal against penalties of £600.00 imposed under Section 98A (2) and (3) Taxes Management Act (TMA) 1970 for delayed filing of Employer's Annual Return for the tax year 2012-2013.

The Law

- 10 2. Regulation 73(1) the Income Tax (Pay As You Earn) Regulations 2003 and Paragraph 22 of Schedule 4 of the Social Security (Contributions) Regulations 2001 requires an employer to deliver a complete Employer's Annual Return which are called forms P35 and P14 before 20 May following the end of the tax year. The return must include specified information relating to relevant payments made during
15 the tax year to employees for whom they had to prepare or maintain deduction working sheets which are equivalent to payroll deduction records.

- 20 3. Regulation 205R the Income Tax (Pay As You Earn) Regulations 2003 requires the mandatory use of electronic communication by employers who must deliver their P35/P14 forms on-line using an approved method of communication. The returns for each employee must reach HMRC no later than 19 May following the end of the tax year. If the return is not received by the due date the employer is liable to a penalty.

- 25 4. Where an employer does not file their annual return on time they will be charged a penalty in accordance with Section 98A(2)(a) and (3) TMA 1970 the penalties are fixed at £100.00 per month for each branch of 50 employees and charged for the first 12 months if return is late.

- 30 5. Section 118(2) TMA 1970 provides statutory protection from a penalty if the employer had a reasonable excuse for failing to file their return on time. Whether or not there is a reasonable excuse is a matter to be considered in the light of all circumstances of the particular case.

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Relevant facts

- 40 6. (1) The Appellant was required to file an Employer's Annual Return (P35 and P14) for the year 2012-2013. The filing date for the return was 19 May 2013. From 2009-2010 onwards this had to be filed on-line. HMRC sent an electronic notification to the Appellant on 24 March 2013 reminding them to file their annual return for the year 2012-2013.

- 45 (2) HMRC sent the Appellant a late filing penalty notice on 23 September 2013 for £400.00 for the period 20 March 2011-19 September 2011.

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- (3) A second late filing penalty was sent to the Appellant on 22 November 2013 for £200.00 for the period 20 September 2013 to 19 November 2013.
- (4) The Appellant filed the P35 return for 2012-2013 on 19 November 2013.
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- (5) The Appellant appealed the penalties on 11 February 2014. They explained in their appeal that Mr Barr, who was responsible for the returns, had been ill and was not able to provide his accountant with the information to provide the end of year returns by 19 May 2013. It was explained that throughout the relevant period, Mr Barr had a life threatening operation and recuperation period.
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- (6) Mr Barr requested a review decision on 20 March 2014 and the review was concluded on 2 May 2014 and concluded that the decision to charge the penalty was correct.

20 **Appellant's submission**

7. On 24 January 2015 Mr John Barr notified the Tribunal of the grounds for his appeal as follows:
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- (1) He was responsible for preparing all materials to provide to his accountant for the preparation of the returns.
- (2) He had major surgery on his right arm impairment to his left arm which left him unable to complete the 2012-2013 annual return by the due date.
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- (3) The surgery which was conducted on his hand presented life threatening haemorrhages which required hospitalisation during the relevant period.
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- (4) He lost a number of family members and friends in the period between 24 April 2013 and 28 October 2013.
- (5) He is a carer for his 89 year old father and he is in receipt of income-support and other benefits.
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- (6) Due to illness in the relevant period he was not able to complete the returns and provide the relevant information to his accountant.
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HMRC's submission

8. (1) HMRC say that the Employer's Annual Return was due by 19 May 2013 and was not submitted until 19 November 2013 so the late filing penalties were correctly charged in accordance with the legislation.
- (2) The submission by the Appellant that they incurred extra accountancy costs in dealing with HMRC in the past was not a reasonable excuse.
- (3) The fact that John Barr had been suffering from various medical conditions since 2010 means that it would be reasonable to expect that, in such a situation, alternative arrangements or processes should have been put in place to ensure that Barr Brothers met their legal obligations to file their returns before the due date.
- (4) They do not accept that the loss of friends and family between 24 April 2013 and 28 October 2013 constitutes a reasonable excuse for late filing of the relevant return. The fact that Mr Barr cares for his father, receives no money and is in receipt of income-support and other benefits does not constitute a reasonable excuse.

Conclusion

9. The Tribunal allowed this appeal at the time of the hearing.
10. The combined illnesses of Mr Barr in this case was so serious that it prevented him from controlling his business affairs immediately before the deadline for the submission of the annual returns and therefore taken together constitute a reasonable excuse.
11. The Appellant had major surgery, was hospitalised, could not attend to the various tasks at hand in dealing with his tax affairs and combined with his obligations to his elderly father and his poor and uncertain income made this a very unusual situation. These illnesses and obligations would have taken a great deal of Mr Barr's time and attention during the period that the return was due. In addition the medical condition worsened over a period of time which meant that he was not capable of providing his accountant with the relevant information for preparing the returns.
12. The illnesses placed very great strain on the conduct of the taxpayer's affairs. A person in this situation would struggle enormously with their compliance obligation. HMRC accept that serious illness including life threatening illnesses can be a reasonable excuse. It is important that the taxpayer show that the illness was the cause of the delay in submitting the returns and that is the case with this Appellant.
13. The Appellant provided details including graphic photographs of his surgery and the state of his hand. It appears to be a very serious matter to the Tribunal and on

a balance of probabilities it was decided that considering all matters there was a reasonable excuse in the circumstances therefore the appeal is allowed.

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**TRIBUNAL JUDGE
K KHAN
RELEASE DATE: 29 OCTOBER 2015**