



**TC04735**

**Appeal number: TC/2015/00091**

**Income Tax – failure to file employer return – whether reasonable excuse – No-  
Appeal dismissed.**

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

	<b>ANDREW MORRIS</b>	<b>Appellant</b>
	<b>- and -</b>	
	<b>THE COMMISSIONERS FOR HER MAJESTY'S REVENUE &amp; CUSTOMS</b>	<b>Respondents</b>

**TRIBUNAL: JUDGE DR. K KHAN**

**The Tribunal determined this appeal on 30 September 2015 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Statutory) Rules 2009 (default paper cases) having first read the Notice of Appeal of 29 December 2014 and HMRC's statement of case of 7 July 2015.**

## DECISION

### Introduction

- 5 1. This is an appeal against penalties of £400.00 imposed by HMRC under Section 98A(2)(a) and (3) Taxes Management Act 1970 (TMA 1970) in respect of a failure to file the Real Time Information (RTI) return reporting the final payments and deductions for tax year 2013-2014 before 20 May 2014.
- 10 2. Under the RTI employers submit payroll information to HMRC in real time. Reporting became compulsory for most employers on 5 April 2013. Employers using RTI are no longer required to submit forms P14 and P35.

### Facts

- 15 3. (1) HMRC sent RTI Pre-interim Penalty warning letters for 2013-14 tax year between 11 June and 16 June 2014 to all employers who had not submitted their final returns.
- 20 (2) HMRC sent Andrew Morris a notice of penalty determination of £400.00 on 6 October 2014 for the period 20 May 2014 to 19 September 2014. As of 7 July 2015 the taxpayer had not delivered a return reporting the final payments and deductions for tax year 2013-2014.
- 25 (3) The taxpayer's Agent Bedingham and Company appealed against the penalty on the grounds that although they had been submitting on-line monthly returns for employers HMRC website would not allow them to submit the outstanding returns.
- 30 (4) HMRC sent the taxpayer a decision letter on 3 December 2014 rejecting their late appeal on 29 December 2014 the Agents of the taxpayer notified the appeal to the tribunal giving their grounds as the following:
- 35 "Although we are submitting on-line monthly returns for employers, the HMRC website will not allow us to submit the outstanding return in question. They have contacted the helpline but have received no assistance whatsoever."
- 40 (5) HMRC made the following point:
- 45 "The taxpayer has not submitted their returns and a penalty was incurred pursuant to Section 98A (2) (a) and (3) TMA 1970. The penalty is a fixed penalty of £100.00 per month (or part month) for each batch 50 employees whose particulars should have been included ."

4. The records of HMRC show that an attempt was made to file the Full Payment Submission (FPS) on 12 May 2014 after the filing date of 19 April 2014. The submission failed and the Agents would have received a Failure Response message which would have stated “this submission cannot be accepted as the date of submission is after 19 April following the tax year to which it relates”.

5. Section 118(2) TMA 1970 provides that if a person had a reasonable excuse for not doing something which was required to be done within a time limit, he shall be deemed not to have failed to do it if he did it without reasonable delay after the excuse ceased.

6. While there is no definition of a reasonable excuse it is important to look at all of the facts surrounding the matter. Those facts must be construed from the perspective of a prudent person, exercising reasonable foresight and diligence, having proper regard to their responsibilities under the Tax Acts.

7. HMRC found that the taxpayer was late and there was no reasonable excuse.

## 20 **Conclusion**

8. On consideration of the evidence before the tribunal, it is possible that the Agent attempted in good faith to submit the returns on-line within the deadline but that this attempt was unsuccessful. The HMRC computers are designed to make it clear to taxpayers whether or not the submission of their return has been successful or not. The tribunal finds on a balance of probability that if an attempt was made by the Appellant to submit a return on-line within the deadline, it should have been apparent to the Appellant at the time that the attempt was unsuccessful. The tribunal therefore finds that the reasonable excuse for a late submission had not been established. It follows therefore that the penalty determination should be confirmed. The records which HMRC presented show that an attempt was made after the deadline date for the submission of the return which generated a message which indicated to the taxpayer that the submission was unsuccessful.

9. This document contains full findings of facts and reasons for the decision. Any party dissatisfied with the 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 no 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 and is the standard wording with the standard capitals.

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**TRIBUNAL JUDGE  
K KHAN**

**RELEASE DATE: 26 NOVEMBER 2015**

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