



TC05360

Appeal number: TC/2016/02437

***EMPLOYER ANNUAL RETURN – filed late – whether reasonable excuse –
no – appeal dismissed***

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Oasis Church Trust

Appellant

- and -

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

TRIBUNAL: JUDGE DR K KHAN

The Tribunal determined this appeal on 25 July 2016 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 29 April 2016 and HMRC's Statement of Case submitted on 24 May 2016.

DECISION

Introduction

- 5 1. This is an appeal against penalties of £1,200 imposed under Section 98A (2 and 3) Taxes Management Act 1970 (TMA) for the late filing of the Employer's annual Return for 2009-2010.
2. The point at issue is whether or not the Appellant has a reasonable excuse for the late filing.

10 The Law

3. An Employer has an obligation to file an End of Year Return on time. Section S.98A (2 and 3) TMA 1970 provides for a Fixed Penalty of £100 for each month (or part of a month) during which the failure continues for each batch (or part batch) of 50 employees. If the failure continues beyond twelve months, a Penalty can be
15 imposed up to a maximum of the amount outstanding at 19 April i.e. it is a tax year Penalty.

4. For 2009-2010 onwards, Regulation 205 of the Income Tax (Pay as You Earn) Regulations 2003 requires Employers to deliver their P35/P14 forms online using an approved method of electronic communication.

20 5. The Taxpayer can appeal a Penalty on the grounds of reasonable excuse. The relevant provisions are set out at S.118(2) TMA, which so far as is material to this appeal provides:

25 “...where a person had a reasonable excuse for not doing anything required to be done he shall be deemed not to have failed to do so unless the excuse ceased and, after the excuse ceased, he shall be deemed not to have failed to do it if he did it without unreasonable delay after the excuse has ceased”.

6. There is no statutory definition of a reasonable excuse which is normally taken to be an unexpected unusual event which is unforeseeable or beyond the Employer's control which prevents the Employer from complying with their obligations on time.

30 Relevant Facts

7. The Appellant was required to file an Employer annual Return (P35 and P14) for the year 2009-2010. The filing date for the Return was 19 May 2010. From 2009-2010 onwards this had to be filed online using an approved method of electronic communication.

35 8. HMRC sent a P35PN reminder to the Appellant on 10 January 2010. A Late Filing Penalty Notice was sent on 27 September for £400 for the period 20 May 2010-19 September 2010.

9. A second Late Filing Penalty Notice was sent on 24 January 2011 for £400 for the period 20 September 2010-19 January 2011. A final Late Filing Penalty Notice was sent on 30 May 2011 for £400 for the period 20 January 2011–19 May 2011.

5 10. On 18 September 2015, the Appellant’s agent, Tom Sydney, appealed against the Penalties, on the grounds that they had only just received the Penalty Notice. HMRC sent the Appellant a decision letter on 15 October 2015 rejecting the appeal and offering a review. On 3 March 2016 the Appellant appealed the Penalties again on receipt of the information that the Penalties were released for collection on 24 February 2016 saying “Will you explain the basis of your decision since you seem to
10 have ignored our and our client’s efforts to deliver the Return in 2010 and subsequently when requested by various HMRC officers”.

11. HMRC sent the Appellant a decision letter on 1 April 2016 rejecting the appeal as the P35 Return was still outstanding and offered a review. On 29 April 2016 the Appellant’s agents notified their appeal to the Tribunal and gave as their grounds.

15 “We have tried to file the 2009-2010 P35 twice by paper copies since the online system needed an authorisation code that had not arrived in time for the May filing. HMRC have not appeared to have read our arguments that we have tried all reasonable efforts to file the Return. HMRC have not confirmed why the Penalties have been firstly charged and then confirmed.”

20 **HMRC’s Submissions**

12. It is the responsibility of the Appellant as an employer to ensure the Regulations are followed and the Employer Annual Returns are delivered or filed by the legislative deadline. This responsibility cannot be transferred to a third party agent. Returns must be filed electronically.

25 13. The Appellant was required to file the Returns for the 2009-2010 year by 20 May 2010. The Returns were not filed and the Penalties were correctly charged in accordance with the legislation.

30 14. HMRC sent reminder letters to the Appellant on 25 October 2011 and again on 12 December 2011. The Appellant telephoned HMRC on 12 January 2012 stating they would try to locate the Return file and online.

15. A third reminder letter was sent to the Appellant on 27 April 2012 to which the Appellant advised that the Return was hand delivered to the local Tax Office. No date was provided as to when the Return was handed in.

35 16. On 14 October 2015 the Agent, Tom Sydney, sent a letter to HMRC stating that they had only just received a 2009-2010 Penalty Notice. HMRC replied to the Appellant but no further reply was received from the Appellant or the Agent.

17. HMRC dispute that the Appellant had handed in the Return on time. In any event paper Returns were not an acceptable way to file the Return.

18. They also say that the Appellant has received its authorisation code but have still failed to file its 2009-2010 P35.

19. They say that the Penalty Notices issued to the Appellant on 27 September 2010, 24 January 2011 and 30 May 2011 would have explained the Penalties charged for the non-submission of the end of year P35. Further, the EMP51 forms issued to the Appellant on 15 October 2015 and 1 April 2016 explained the Penalties and stated that if no action was taken, HMRC would assume that they did not wish to appeal to the Tribunal Service and the Penalties would become payable. HMRC request the Tribunal to dismiss the appeal and confirm the Penalties since there is no reasonable excuse.

Conclusion

20. The onus of proof rests with HMRC to show that the Penalty was correctly imposed. If so established, the onus then rests with the Appellant to demonstrate that there was a reasonable excuse for late filing of the Return. The standard of proof is the ordinary civil standard of the balance of probabilities.

21. While there is no statutory definition of a “reasonable excuse”, it is a matter which is considered in the light of all circumstances of the particular case. A reasonable excuse is normally an unexpected or unusual event that is either unforeseeable or beyond the Taxpayer’s control, and which prevents them from complying with their obligations under the legislation.

22. In this case there are no unexpected or unforeseeable events which caused the Appellant to delay the submission of its Return. Where it is intended that an Agent files Returns on behalf of their client the Agent must complete HMRC’s online authorisation process. On completion of the process, HMRC would send a letter containing an authorisation code to the client. The client would present this code to the Agent to enable him/her to complete the online authorisation process. When the Agent receives the code it is required that they log onto HMRC’s Online Service to complete the authorisation process. The Appellant says it could not file the Returns electronically since the authorisation code issued by HMRC had not been received. They could not therefore meet the deadline and hand delivered paper Returns to HMRC Nottingham Enquiry Office. These paper Returns were not received by HMRC and, in any event, it was required that Returns be filed electronically. The Appellant says that the Returns were submitted for a second time to HMRC Solihull on 1 November 2011.

23. A Taxpayer wishing to comply with their obligations would have applied for an authorisation code in ample time to meet their filing obligations under the law. It appears that this was not done. The filing of paper Returns rather than the filing of Returns electronically is not an acceptable form of filing for the purposes of the law. The Tribunal would therefore discount the actions of the Appellant in seeking to file the Returns by hand.

24. There is a letter on file dated 19 May 2010 which is not on headed paper nor signed which has been provided by the Appellant's Agent, Tom Sydney, which is addressed to HMRC Nottingham. It states that they were unable to file the Returns online due to the late arrival of an authorisation code and therefore "we enclose forms
5 P35 and P14 for 2009/2010" which is provided as evidence of having hand delivered the Returns to the HMRC Nottingham office. Since the letter is not on headed paper, it is difficult to accept this as evidence that the Returns were submitted to HMRC Nottingham and, in any event, the filing of the Return in this way does not satisfy the legal requirement for the forms to be filed electronically. There is also a letter dated
10 20 November 2011 where the Appellant's Agent, in reply to HMRC's letter of 25 October 2011, submitted further copies of the P35 and P14 for 2009/10 to HMRC's office in Birmingham. The submission of these Returns in paper form will again not satisfy the requirements of the law. It seems strange that paper Returns would have been filed in November 2011 over one year past the filing date of 19 May 2010 and
15 after the authorisation code would have been received.

25. The 2009-2010 Returns have still not been filed.

26. In the circumstances, the Tribunal does not accept that there is a reasonable excuse for the late filing on the grounds that they had not received an authorisation code which would have enabled the Agent to make the filings.

20 27. It is necessary to consider the actions of the Appellant from the perspective of a prudent Taxpayer exercising reasonable foresight and due diligence and having proper regard to the responsibilities provided by legislation. It would have been evident to a reasonable Taxpayer that even if there was the possibility of a reasonable excuse based on the authorisation code not being received, that excuse would have ended at
25 the latest on 25 October 2011 when HMRC sent a reminder letter that the 2009-2010 P35 had not been filed and indeed continues not to have been filed up to the present time.

28. In conclusion the Tribunal finds that there is no reasonable excuse in this case and the appeal is accordingly dismissed and the Penalties are upheld.

30 29. This document contains full findings of facts 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
35 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

DR K KHAN
TRIBUNAL JUDGE

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RELEASE DATE: 8 SEPTEMBER 2016