



TC01282

Appeal number: TC/2011/1543

**INCOME TAX – PENALTY FOR LATE FILING OF END OF YEAR
PAYE RETURN – *Whether Appellant had reasonable excuse for default –
Yes – Appeal Allowed.***

FIRST-TIER TRIBUNAL

TAX

CONSULT SOLUTIONS

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE AND CUSTOMS**

Respondents

TRIBUNAL: Michael Tildesley OBE (TRIBUNAL JUDGE)

The Tribunal determined the appeal on 21 June 2011 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 22 February 2011, and HMRC's Statement of Case submitted on 21 March 2011. The Appellant did not reply to the Statement of Case

DECISION

1. The Appellant appeals against the imposition of penalties in the total sum of £500 for its failure to submit an employer's annual return (P35) for the tax year ending 5 April 2010, which was required to be filed on line by 19 May 2010.

2. The Appellant filed its return on-line on 12 October 2010. HMRC has imposed a penalty of £400 for four months from 20 May 2010 to 19 September 2010, and a further penalty of £100 for the period 20 September 2010 to 19 October 2010. Under sections 98A(2) and (3) of the Taxes Management Act 1970, the Appellant was liable to a fixed penalty of £100 for each month or part month that it was in default with its return. Thus the total amount of penalties imposed was in accordance with the statutory requirements.

3. HMRC discharged the penalty of £100 for the period 20 September 2010 to 19 October 2010 in error. HMRC has indicated that it would not be seeking to re-instate that penalty

4. The Appellant stated that it had only been trading for eight months, and this was the first time that it had been required to file an end of year return on line. The Appellant had logged onto its account on 17 May 2010 and believed that it had submitted the return online. The Appellant did not discover that the return had not been received by HMRC until the issue of the penalty on 27 September 2010. The Appellant was unaware of the arrangement whereby HMRC acknowledged receipt of the return by sending an automatic message to the Appellant's e mail account. The Appellant was advised by HMRC that its on line return failed because of a systems or internet error. The Appellant pointed out that it had paid over the necessary tax one week prior to the filing date. The Appellant contended that it was being punished unfairly for an error which was not its fault.

5. HMRC contended that it offered considerable help to employers in respect of the filing of on-line returns which included the employer's bulletin, the annual employer's pack and the website. According to HMRC the Appellant should have known that the submission of its return on the 17 May 2010 was unsuccessful because it did not receive an electronic message confirming receipt. Finally HMRC pointed out that penalty notices were not reminders, and now sent out at specific times rather than after the tax payer had submitted a late return.

6. The Tribunal has limited jurisdiction in penalty Appeals which reflects the purpose of the legislation of ensuring that employers file their returns on time. The Tribunal has no power to mitigate the penalty. The Tribunal can either confirm the penalty or quash it if satisfied that the Appellant has a reasonable excuse for his failure. The Appellant has the obligation of satisfying the Tribunal on a balance of probabilities that it has a reasonable excuse for not filing the return on time.

7. In considering a reasonable excuse the Tribunal examines the actions of the Appellant from the perspective of a prudent employer exercising reasonable foresight and due diligence and having proper regard for its responsibilities under the Tax Acts.

8. The Tribunal is satisfied that the Appellant did make an on-line return on 17 May 2010 but for some reason unbeknown to the Appellant the return was rejected and not received by HMRC. The Appellant was unaware of the arrangement whereby HMRC acknowledged receipt of the return by sending an electronic message to the Appellant's e-mail account. The Appellant's lack of knowledge of the receipt arrangements was tempered by the facts that this was the first time that the Appellant had been required to submit end of year returns, and the first year of operation of the mandatory scheme for on-line filing¹. Although HMRC stated that its website provided detailed guidance the filing of on-line returns, its statement of case, however, was not explicit about whether the guidance explained about the receipting arrangements for on-line returns. The Appellant had met its obligations to collect and return the requisite tax, and submitted a new return in good time after discovering that the return on 17 May 2010 had not been received by HMRC.

9. The Tribunal considers that in the round the Appellant's actions were those of prudent employer exercising reasonable foresight and due diligence and having proper regard for its responsibilities under the Tax Acts. The explanation given by HMRC for the unsuccessful filing on the 17 May 2010 was that it was due to a systems or internet error which was beyond the Appellant's control. The Appellant's lack of knowledge of the receipting arrangements was understandable given that this was the first time that the Appellant had used the on-line facility for making returns. The Tribunal, having regard to all the circumstances, is satisfied that the Appellant has established a reasonable excuse for its failure to submit in time an employer's annual return (P35) for the tax year ending 5 April 2010.

10. The Tribunal allows the Appeal and discharges the penalty in the sum of £400. The Tribunal notes that HMRC was not pursuing the additional penalty of £100 imposed for the period 20 September 2010 to 19 October 2010.

11. 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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¹ Electronic filing was introduced in 2004/05 on a voluntary basis with small employers given an incentive to use the scheme. In August 2009 an amendment to the Regulations made on-line filing compulsory for the year 2009/10 and subsequent years.

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Michael Tildesley

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**MICHAEL TILDESLEY
TRIBUNAL JUDGE
RELEASE DATE: 30 JUNE 2011**

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