

DECISION

1. The Appellant appeals against the imposition of penalties in the total sum of £400 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. Since August 2009 virtually all employers under an amendment to regulation 205 of the Income tax (PAYE) Regulations 2005 have been required to file on line the end of year return for 2009/10 and subsequent years. The amendment meant that the option of filing a paper return was no longer available to employers. In order to make an annual return on line, an employer must register to use HMRC PAYE Online for employer's service.

3. The Appellant has not registered to use the employer's service and as a result has failed to submit a return for the year ended 5 April 2010. HMRC has imposed a penalty of £400 for four months from 20 May 2010 to 19 September 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. HMRC has suspended penalties for the period from 19 September 2010 until this Appeal has been resolved.

4. The Appellant has put forward the following grounds of Appeal:

(1) The Appellant was a small congregation of around 50 people. No-one has any experience of an on-line taxation service. The Appellant has only been an employer for eight months when the penalty was imposed.

(2) The Church did not possess a computer. The Treasurer had to rely on his own computer when attempting to register to use the employer's service. The Treasurer's operating system was unable to deal with parts of the software supplied by HMRC to assist employers with the registration process.

(3) The Appellant would have provided a paper return but this was not permitted by HMRC. The Appellant considered HMRC's practice of insisting on electronic returns discriminatory, disproportionate inconsistent with the practices of other government departments.

5. 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.

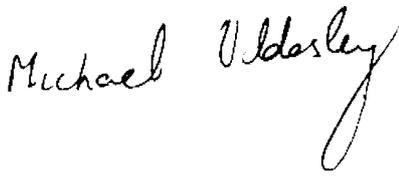
6. In considering a reasonable excuse the Tribunal examines the actions of the Appellant from the perspective of a prudent employer exercising reasonable foresight and due diligence and having proper regard for his responsibilities under the Tax Acts.

7. The Appellant's reason for not filing the return on time was essentially that it did not have the technical wherewithal to complete a return on-line. In February 2010 HMRC issued the Appellant with the Employer's Bulletin, which gave detailed information regarding on-line filing with the helpline numbers. The Bulletin also gave
5 guidance on the limited exemptions for employers from on line filing, and the procedures for making applications for exemption. The Appellant provided no evidence of any steps taken to seek the assistance of HMRC with on-line filing or whether it applied for exemption. The Tribunal considers that the Appellant has closed its mind to finding a solution to the problems posed by on-line filing, and
10 become entrenched in its view that HMRC's requirements were unreasonable.

8. The Tribunal finds that the actions of the Appellant were not those of prudent employer exercising reasonable foresight and due diligence and having proper regard for its responsibilities under the Tax Acts. A prudent employer would have availed itself of the help offered by HMRC in respect of on-line filing, and explored options
15 of seeking technical expertise outside the Congregation. The Tribunal holds that the Appellant did not have a reasonable excuse for not filing the end of year return by the required date.

9. The Tribunal dismisses the Appeal and confirms the penalty in the sum of £400. The Tribunal, however, is concerned about escalation of the dispute and the real possibility of more penalties against the Appellant. The Tribunal requests HMRC to take the initiative and help the Appellant to find a solution to its difficulties, and if the Appellant is co-operative to exercise restraint on the imposition of additional penalties.

10. 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)"
30 which accompanies and forms part of this decision notice.

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