



TC01284

Appeal number: TC/2011/1494

**INCOME TAX – PENALTY FOR LATE FILING OF END OF YEAR
PAYE RETURN – *Whether Appellant had reasonable excuse for default –
No – Appeal dismissed.***

FIRST-TIER TRIBUNAL

TAX

RFL CONSULTANTS LIMITED

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 15 February 2011, and HMRC's Statement of Case submitted on 16 March 2011. The Appellant did not reply to the Statement of Case

DECISION

1. The Appellant appeals against the imposition of penalty in the total sum of £479.57 for its failure to submit an employer's annual return (P35) for the tax year
5 ending 5 April 2010, which was required to be filed on line by 19 May 2010.

2. The Appellant filed its return on 11 October 2010 showing a liability of £479.57. 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. The Appellant was liable to a penalty for a £500 for the late filing of
10 its return. HMRC mitigated the penalty to the total tax due on the return which was £479.57.

3. 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
15 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.

4. 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.
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5. The Appellant's reasons for its default were that HMRC should have informed the Appellant that its return was late, and that its default was because of illness. The Tribunal understands that the illness was high blood pressure in April 2010.

6. The Tribunal finds that the illness did not constitute a reasonable excuse because the timing of the illness did not correspond to the period of default. The Appellant was made aware of the requirement to file the end of year return by 19 May 2010 by HMRC on 1 January 2010. In those circumstances the Appellant was not entitled to put the responsibility on HMRC to remind it that its return was late. The Tribunal is
25 satisfied that the Appellant's actions were not those of a prudent employer exercising reasonable foresight and due diligence and having proper regard for its responsibilities under the Tax Acts.
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7. The Tribunal holds that the Appellant did not have a reasonable excuse. The Tribunal dismisses the Appeal and confirms the penalty in the sum of £479.57.

8. 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
35 "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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Michael Tildesley

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