



TC01328

Appeal number: TC/2011/01869

Reasonable excuse.

FIRST-TIER TRIBUNAL

TAX

TOWER PERKINS PRODUCTS AND SERVICES LIMITED Appellant

- and -

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

Respondents

**TRIBUNAL: GERAINT JONES Q.C. (TRIBUNAL JUDGE)
ANTHONY HUGHES ESQ (TRIBUNAL MEMBER)**

The Tribunal determined the appeal on 07 July 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 03 March 2011 and HMRC's Statement of Case submitted on 05 April 2011.

DECISION

1. The by its Notice of Appeal the appellant appeals against penalties totalling £1000 imposed by HMRC for the late filing of an employer's annual return, P35. The return should have been filed by the 19 May 2009 but was not in fact submitted until 10 March 2010.
2. Despite this being a penalty case where the onus of proof is upon HMRC, it does not need to prove the alleged defaults because they are admitted.
3. This is a case where the appellant says that there was a reasonable excuse for the late filing and so the penalties should be set aside. Misleadingly HMRC contended in its letter of 27 October 2010 that for the appellant to demonstrate that there was a reasonable excuse, it would have to show that there was an exceptional event beyond its control which prevented it from sending the return on time. As a proposition of law, that is plainly wrong. The words "reasonable excuse" are ordinary English words in everyday usage. By reference to the definition section in the Taxes Management Act 1970 it can be seen that Parliament has not chosen to give them a statutorily defined meaning. Thus they must bear their plain and ordinary meaning without the gloss that HMRC unjustifiably seeks to place upon those ordinary words. It is easy to think of circumstances that might give rise to a reasonable excuse being demonstrated but which come nowhere near to amounting to an exceptional circumstance.
4. The appellant entrusted its filing responsibilities to J. Joseph & Co, Accountants and Tax Consultants. The correspondence from that firm leaves us in little doubt that Mr Akhaney is an elderly sole practitioner. Indeed, in a later letter he describes himself as "elderly".
5. By Mr Akhaney's letter of 5 October 2010 he says that the delay occurred because he was taken into hospital on or about the 19 May 2009, on an emergency basis, with a broken hip prosthesis, which resulted in corrective surgery being undertaken on the 26 May 2009. In the Grounds of Appeal he revises those dates.
6. In his later letter of 26 November 2010 Mr Akhaney describes himself as "an elderly man" and says that the operation that he had in May 2010 did not go well and that he did not return to work for several months. He points out that this is a case in which there has been no loss to the revenue.
7. HMRC undertook a Review and by its letter of 7 February 2011 decided to uphold the penalties. In the letter, it is said that "*Reliance on an agent or third party is not a reasonable excuse.*" Even if strictly correct (which we doubt) that misses the point and, as a bald statement, is inaccurate. There can be no doubt that if a person holds a genuine and honest belief that something has been done and therefore desists from doing it again until such time as he is made aware of the fact that that thing has not been done, that is capable of amounting to a reasonable excuse, at least until the time that the person discovers that the thing which he thought had been done, had not in fact been done. There is a very clear inference that that is the factual situation with which we are dealing so far as the appellant (personally) is concerned.

8. We are in no doubt that if an appellant entrusts a task to its accountant and honestly and genuinely believes that that task has been completed, that appellant may demonstrate a reasonable excuse up until the time when it is made known to the appellant that the relevant task has not in fact been undertaken. The situation would be quite different if the appellant was aware that its accountant or other agent had failed to undertake the task that he was expected to undertake.

9. In the Grounds of Appeal further details are given concerning Mr Akhaney and his hospitalisation. In the Grounds of Appeal he says that he had had a hip replacement in April 2008 and that it is now known that damage to the prosthesis took place in about November 2008, but was not diagnosed until the 14 May 2009. He says that this resulted in an operation being performed on the 19 May 2009 at Watford General Hospital and he gives the hospital case reference. He makes the point that he could not return to work for three months thereafter. He also goes on to say that the delay was extended or compounded by the death of a Mr Ewa, in Poland, in June or July 2009.

10. It has been contended that when those events are put together they constitute a reasonable excuse for the identified delay in respect of the entire period of default. We cannot agree with that view of this case. Nonetheless, we accept that, given that the appellant had perfectly properly left it to its agent to file its P35 on or before the 19 May 2010, an unforeseen sudden hospitalisation of that agent, a sole practitioner, is capable of amounting to a reasonable excuse (when those words are given their ordinary and natural meaning) during the period when that sole practitioner was unable to attend to his normal business activities and did not communicate the fact that he had not made the necessary filing to his client. We have no doubt that during that time the appellant genuinely and honestly believed that the filing had been attended to.

11. Nonetheless, we find that that reasonable excuse must have come to an end when Mr Akhaney was able to and did return to work. At that stage, although the appellant may still have held an honest and genuine belief that its filing had been undertaken, its agent, who knew that the filing had not been undertaken, could and should have undertaken the necessary filing. At that stage the agent's knowledge is to be imputed to his principal because he was conducting his business normally. In our judgment no such imputation can be justified whilst the agent (a sole practitioner) is not able to attend to his business affairs.

12. In our judgement, the reasonable excuse that we have identified lasted until 30 August 2009 which means that the penalty is reduced from £1000 to £600.

13. 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.

Order.

The appeal is allowed in part and the penalty is reduced from £1000 to £600.

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TRIBUNAL JUDGE
RELEASE DATE: 15 JULY 2011

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