



TC01681

Appeal number: TC/2011/05605

P35 return—Penalty for late return (Taxes Management Act 1970 s.98A)—Reasonable excuse—Appeal dismissed

FIRST-TIER TRIBUNAL

TAX

CROYDON NORTH CONSERVATIVE ASSOCIATION Appellant

- and -

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

TRIBUNAL: J. BLEWITT (TRIBUNAL JUDGE)

The Tribunal determined the appeal on 17 November 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 16 July 2011 and HMRC's Statement of Case submitted on 23 August 2011.

DECISION

1. This is an appeal against a penalty totalling £800 imposed pursuant to Section 98
(2) Taxes Management Act 1970 (“TMA”) in respect of the late filing of the
5 Appellant’s P35 employer’s annual return (P35) for the year ending 5 April 2010.

The relevant legislation

2. Regulation 73(1) of the Income Tax (Pay As You Earn) Regulations 2003
imposes on an employer the obligation to deliver to HMRC a P35 return before the
20th day of May following the end of a tax year. Paragraph (10) of that regulation
10 provides that s.98A of the Taxes Management Act 1970 (the “TMA”) applies to
paragraph (1) of that regulation.

3. Section 98A of the TMA relevantly provides as follows:

15 *(2) Where this section applies in relation to a provision of
regulations, any person who fails to make a return in accordance
with the provision shall be liable—*

*(a) to a penalty or penalties of the relevant monthly amount for each
month (or part of a month) during which the failure continues, but
excluding any month after the twelfth or for which a penalty under
this paragraph has already been imposed, ...*

20 *(3) For the purposes of subsection (2)(a) above, the relevant monthly
amount in the case of a failure to make a return—*

*(a) where the number of persons in respect of whom particulars
should be included in the return is fifty or less, is £100, ...*

4. Section 100(1) of the TMA provides for HMRC to make a determination
25 imposing a penalty under s.98A of the TMA in such amount as it considers correct or
appropriate. Section 100B of the TMA provides for an appeal against the
determination of that penalty. Section 100B(2)(a) provides that in the case of a
penalty which is required to be of a particular amount, the Tribunal may:

30 *(i) if it appears ... that no penalty has been incurred, set the
determination aside,*

*(ii) if the amount determined appears ... to be correct, confirm the
determination, or*

*(iii) if the amount determined appears ... to be incorrect, increase or
reduce it to the correct amount.*

- 35 5. Section 118(2) of the TMA provides for reasonable excuse:

5 *For the purposes of this Act, a person shall be deemed not to have failed to do anything required to be done within a limited time if he did it within such further time, if any, as the Board or the tribunal or officer concerned may have allowed; and 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 it 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 had ceased.*

Facts

10 6. The filing date for the end of year return was 19 May 2010. The return was filed online on 30 March 2011. On 24 January 2011 a first interim penalty notice of £800 was issued, calculated from 20 May 2010 to 19 January 2011.

Submissions

15 7. The case for the Appellant as set out in the Notice of Appeal dated 16 July 2011 is as follows:

- 20 (a) The volunteer covering the post of Hon Treasurer had no experience of PAYE and believed that the form sent with the information pack when the PAYE scheme was opened was all that was required to complete the year end return;
- (b) The Appellant had only one part time employee for a short time prior to the last election;
- (c) It took HMRC 8 months to notify the Appellant that the correct procedure had not been followed;
- 25 (d) A penalty of £800 is totally unfair when a telephone call or letter explaining the issue would have solved the problem.

30 8. HMRC’s Statement of Case can be summarised as follows: employers have a legal obligation to operate PAYE on the payments made to employees if their earnings reach the National Insurance Lower Earnings Limit (“LEL”). An employer must complete and file an Employer Annual return if they have had to maintain a form P11 for at least one employee during the tax year. The Employer Annual return received by HMRC on 30 March 2011 confirmed that the Appellant had employed one worker during 2009-2010 who was paid an amount equal to or above the LEL. It is an employer’s responsibility to ensure that all regulations are followed. The P35PN issued to the Appellant on 24 January 2010 informed the Appellant that the
35 2009/2010 return had to be filed online by 19 May 2010 and warned of the consequences of late filing; there is no record of the P35PN being returned as undelivered. Ignorance of the legislation cannot be deemed a reasonable excuse. The form submitted by the Appellant (P38A) clearly stated “You must complete this form if you have answered “No” to Question 1 of the checklist on your form P35 Employer
40 Annual Report” which should have prompted the Appellant to seek help if clarification was required. The penalty was imposed in accordance with the

legislation. There is no obligation on HMRC to issue penalties in any particular pattern nor is there any obligation to issue reminders.

Decision

5 9. As to the total amount of the penalty, the Tribunal accepts that the penalties were charged in accordance with the legislation set out above and there is no power to mitigate the penalties which appear to be correct. The Tribunal found as a fact that the amount of the penalty could not be described as plainly unfair and therefore does not interfere with the penalties on grounds of proportionality.

10 10. The Tribunal finds that the Appellant is seeking to rely on his inexperience/ignorance as a reason for non-compliance with his obligations as a reasonable excuse for not submitting the correct return before the due date. The Tribunal is not satisfied that the Appellant has done everything that could reasonably be expected of a diligent taxpayer in the circumstances. Information is widely
15 available to taxpayers in need of advice and assistance. The Tribunal finds as a fact that ignorance cannot amount to a reasonable excuse.

11. It is accepted that the Appellant had only one part time employee for a short time prior to the last election, however the legislation is applicable to this case and this does not provide the Appellant with a reasonable excuse.

20 12. The Tribunal accepts the HMRC submission that there is no obligation on HMRC to issue reminders, and that penalty notices are not intended to serve as reminders. The Tribunal found as a fact that the period over which the Appellant was unaware of the accruing penalties does not provide it with a reasonable excuse.

25 13. The burden is on the Appellant to establish a reasonable excuse, on a balance of probabilities. The Tribunal finds that the Appellant has not discharged that burden.

14. The Tribunal confirms the penalties and dismisses the appeal.

30 15. 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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TRIBUNAL JUDGE
RELEASE DATE: 20 December 2011

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