



**TC01714**

**Appeal number: TC/2011/05168**

*Section 98A (2) and (3) Taxes Management Act 1970 – Employer’ End of  
Year return P35 late – reasonable excuse – appeal allowed in part]*

**FIRST-TIER TRIBUNAL**

**TAX**

**SUZANNE MARSHALL t/a FRIDAY FIELD STABLES      Appellant**

**- and -**

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

**TRIBUNAL: MICHAEL S CONNELL (TRIBUNAL JUDGE)**

**The Tribunal determined the appeal on 9 November 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 21 May 2011 and HMRC’s Statement of Case submitted on 26 September 2011.**

## DECISION

### 5 Decision under Appeal

1. This is an appeal by Suzanne Marshall t/a Friday Field Stables against the £500 penalty imposed for the late submission of the Employer's Annual Return (P35) under s 98A (2) and (3) Taxes Management Act 1970 for the tax year ending 5 April 2010.

2. An employer has a statutory obligation to make End of Year returns before 20 May following the end of a tax year in accordance with Regulation 73 of the Income Tax (PAYE) Regulations 2003 and paragraph 22 of Schedule 4 of the Social Security (Contributions) Regulation 2001.

3. In the case of an employer failing to make an End of Year return on time s 98A (2) and (3) Taxes Management Act 1970 provides for a fixed penalty at £100 for each month (or part month) during which the failure continues for each batch (or part batch) of 50 employees. If the failure continues beyond 12 months a penalty can be imposed up to a maximum of the amount outstanding at 19 April i.e. it is a tax geared penalty.

4. Regulations 205 to 205B of The Income Tax (Pay As You Earn) Regulations 2003 provides that an employer must use electronic communications to deliver their 2009/10 end of year return online.

#### The background facts

5.(i) The filing date for the Appellant's 2009/10 return was the 19 May 2010. This had to be filed online.

5.(ii) A first interim penalty of £400 for the period 20 May 2010 to 19 September 2010 was issued on 27 September 2010.

5.(iii) The 2009/10 return was filed on 13 October 2010.

5.(iv) A final penalty of £100 was issued on 21 October 2010 in respect of the period 20 September 2010 to 13 October 2010.

### 30 The Appeal

5. The Appellant says that so far as she is aware the Employer's End of Year return was filed electronically on time. It appears that because of an error relating to details concerning a previous employee, the return was not accepted, but that the Appellant was unaware of this. HMRC website guidance states that an acceptance or rejection message will be sent when the return is submitted. The Appellant says that neither an acceptance nor a rejection message was received and she was unaware that there was any problem with the return. The Appellant accepts that a mistake was made but says

she was unaware of this and appeals against the extent of the penalty, saying that she would be prepared to pay a penalty of £100. Her main concern was that the penalty of £400 was not imposed until 27 September 2010, a further penalty issued on 21 October 2010 and that there has been no explanation why HMRC waited four months to issue the penalty when, if a monthly penalty had been imposed and notified promptly, the mistake would have been flagged up and therefore corrected much sooner than it was. She says that the first penalty notification was not received until the second week of October 2010.

6. HMRC say that the penalties are issued in September in order to give HMRC time to process all returns, electronic or otherwise and resolve any exceptions arising in relation to returns that have been made, which they say helps to reduce the risk of issuing penalties where returns have been submitted on time but HMRC have not had the time to fully process them, or those who had already told HMRC they had no return to make. HMRC say that the penalty is not and should not be seen as a reminder and that there is no statutory timetable for HMRC to follow when issuing penalty notices.

### Conclusion

7. When a person appeals against a penalty they are required to have a reasonable excuse which existed for the whole period of the default. There is no definition in law of reasonable excuse, which is a matter to be considered in the light of all the circumstances of the particular case. A reasonable excuse is normally an unexpected or unusual event, either unforeseeable or beyond the person's control, which prevents him or her from complying with an obligation which otherwise would have been complied with.

8. The Tribunal takes the view that in the particular circumstances of this matter the events when viewed together constitute a reasonable excuse. The Appellant exercised reasonable prudence and due diligence, having proper regard for her responsibilities under the Taxes Act with regard to filing of the Employer's End of Year return.

9. The Appellant filed an incorrect return and therefore a £100 penalty in respect of the failure to file the return by 19 May 2010 is properly payable. However in all the circumstances of this appeal, and in particular given that the Appellant was not notified that an incorrect return had been submitted, she has shown a reasonable excuse which existed throughout the period of default and therefore no further penalty should be payable. The appeal is therefore allowed in part.

10. A £100 penalty is payable for late submission of the Employer's Annual Return.

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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**MICHAEL S CONNELL**

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**TRIBUNAL JUDGE**  
**RELEASE DATE: 4 January 2012**