



TC01758

Appeal number:TC/2011/04390

Late filing of End of Year employers return by company; penalties; s.98A (2) and (3) TMA; “reasonable excuse” under s.118(2) TMA not found

FIRST-TIER TRIBUNAL

TAX

CARLTONE CONSULTANCY LIMITED

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE CHRISTOPHER HACKING

Determined 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 4 June 2011 and HMRC’s Statement of Case submitted on 5 July 2011.

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DECISION

1. This was an appeal against a decision confirmed on review imposing fixed penalties under Section 98A (2) and (3) Taxes Management Act 1970 (TMA) following the late submission of the Employers Annual End of Year Return for the tax year ending 5 April 2010.

2. The return was due to have been filed online by 19 May 2010. It was submitted late on 4 February 2011. A first interim penalty notice was issued on 27 September 2010 in the sum of £400 with a second such notice on 24 January 2011 again in the sum of £400. Finally a post-interim final penalty notice for £100 was issued on 9 February 2011 covering the period up to the date on which the return was filed.

3. HMRC's Statement of Case rehearses the relevant provisions of the tax legislation requiring a return to be submitted by companies including in particular the provisions for electronic filing of the annual End of Year return (P35). Also detailed in the HMRC Statement of Case are the provisions of Section 98A TMA dealing with the calculation of the fixed penalties payable when a return is filed late. These statutory provisions are not in issue between the parties.

4. The Appellant's case as stated in its Notice of Appeal complains that as the company's previous returns have been filed on time "*The Revenue are being too hard and it's inequitable to charge a penalty in the circumstances. The one off delay in the submission of the 2009/10 P35 was because the late finalisation of the accounts and hence the availability of the remuneration details. This will not occur again*"

5. In a letter written to the Revenue by the Appellant's agent SPW (UK) LLP, chartered accountants, dated 21 February 2010 and written in response to the first fixed penalty notice the agent seeks to appeal the penalty "*on the grounds that it is estimated and would prove excessive*" The letter goes on to explain that the agent's payroll department had filed the 2009/10 return online before the due date "*but unfortunately due to a technical problem the form did not go through. The form has now been filed online again*".

6. In the Appellant's request for an internal review by HMRC dated 31 March 2011 the agents state "*Due to an oversight the 2009/10 P35 was submitted shortly after 19-4-2011. A small amount of 2009/10 PAYE was paid in July 2010 due to an oversight. We consider that the Revenue have no firm grounds for charging the 2009/10 penalty*"

7. Section 118 (2) TMA allows for the penalty to be set aside where there is a reasonable excuse for the failure to file on time. What a "reasonable excuse" might be is not defined. The Revenue considers that any such reason would have to be something exceptional or out of the Appellant's control. The Tribunal does not accept that this approach is definitive. The words "reasonable excuse" are ordinary words to be construed accordingly. However the criteria proposed by the Revenue whilst neither definitive or exhaustive, do in the view of the tribunal, represent a reasonable starting position for considering what is and what is not a "reasonable excuse". It

seems unlikely that it was Parliament's intention that an employer could avoid his duty to file a return on time by reason only of some "ordinary" excuse nor does it seem likely that matters within the taxpayers control would generally found such an excuse.

5 8. In this appeal different and contradictory reasons have been advanced for the failure of which the most likely appears to be that the year end accounts were simply not finished in time for the P35 to have been completed. The accountants' contentions concerning late filing contradict this as they claim at one stage to have filed before the due date but say that for technical reasons the return was not effectively transmitted to
10 the Revenue. This account is itself apparently contradicted when they subsequently admit late filing "*due to an oversight*" although what that oversight was is not made clear. The tribunal finds that whichever of the different reasons advanced by the Appellant for the delay in filing is correct; none of those reasons constitute a "reasonable excuse" within the meaning of section. 118(2) TMA.

15 9. The penalties imposed are in accordance with the statutory scheme and are in the finding of the tribunal correct. The appeal must be dismissed.

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
20 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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CHRISTOPHER HACKING
TRIBUNAL JUDGE
RELEASE DATE: 17/01/2012

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