



TC01774

Appeal number: TC/2011/05100

PENALTY – late submission of Employer’s Annual Return – whether a reasonable excuse has been shown for the late submission – on the evidence the employer tried unsuccessfully to submit a return on-line before the due date but was unaware that the attempt had been unsuccessful – the Tribunal accepted this as a reasonable excuse – appeal allowed

FIRST-TIER TRIBUNAL

TAX

SEND PROJECT

Appellant

- and -

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

Respondents

**TRIBUNAL: JOHN WALTERS QC (TRIBUNAL JUDGE)
GORDON MARJORAM**

Sitting in public in Nottingham on 6 January 2012

**Andrew Chester with Leanne Sutton, for the Appellant
There was no appearance by or on behalf of the Respondents**

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DECISION

1. This appeal was originally categorised as a default paper appeal, but an oral hearing was arranged at the request of the Appellant. A letter dated 21 December 2011 was received at the Tribunal Centre from the respondents (HMRC) stating that in the opinion of the writer (Martin Foster, Appeals and Reviews Unit) an oral presentation would not add anything to the Statement of Case dated 17 August 2011 and that therefore a Presenting Officer would not be attending and HMRC would rely on the Statement of Case.
2. The Appellant was represented by two of its directors, Andrew Chester and Leanne Sutton and in the circumstances the Tribunal proceeded with the hearing pursuant to rule 33 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009.
3. We heard oral evidence from Mr. Chester and Ms. Sutton and considered the Notice of Appeal, HMRC's Statement of Case, and other correspondence on our file and find facts as follows.
4. The Appellant is small charitable organization with two employees. The quarterly payments of PAYE tax are paid regularly and in full.
5. An end-of-year employer's annual return (P35) was submitted by Mr. Chester on behalf of the Appellant on-line successfully for the year 2008/09. However, for the year 2010/11, his evidence (which the Tribunal accepts) was that Mr. Chester attempted to submit the return on-line on 28 April 2010 (which would have been well in time) and Mr. Chester clicked the 'submit' button. Mr. Chester did not receive an acknowledgement of the submission (an email from HMRC) but this did not perturb him because he either forgot that such an email would be sent or did not know that a return could not be regarded as successfully submitted in the absence of such an email.
6. In fact the return was not successfully submitted, which Mr. Chester explained as due to the functioning of HMRC's automated submission system.
7. Mr. Chester first became aware of the fact that the submission had been unsuccessful when the Appellant received the first interim penalty notice (imposing a penalty of £400). This was issued by HMRC on 27 September. In response the Appellant successfully filed the return on-line and it was received by HMRC on 6 October 2010.
8. In these circumstances the Tribunal regards the Appellant as having remedied the matter without any unreasonable delay after he was first informed of the fact that his attempt to file the return on-line on 28 April 2010 had been unsuccessful.
9. On the basis of the evidence of Mr. Chester which the Tribunal accepted, the Tribunal found that the Appellant had had a reasonable excuse for its failure to file the P35 return for the year 2010/11 on time and that the failure was remedied without unreasonable delay after the excuse ended. On that basis we allowed the appeal.
10. Mr. Chester informed us that there was no notification on the submission page of HMRC's website used for the purposes of filing a P35 return on-line which indicates that a

person filing such a return must obtain an acknowledgement email from HMRC to be sure that the submission has been successful. Mr. Chester suggested that the website should be changed to correct this shortcoming and, on the basis of what Mr. Chester said, we would agree with him.

Right to apply for permission to appeal

11. This document contains full findings of fact and reasons for our decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Rules. 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.

JOHN WALTERS QC

TRIBUNAL JUDGE

RELEASE DATE: 24/01/2012

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