



TC01882

Appeal number: TC/2011/06172

TYPE OF TAX – Income Tax – PAYE – Employer’s Annual Return (P35) – Return lodged seven months’ late – Whether ‘reasonable excuse’ – No – Section 118 TMA 1970 - Appeal dismissed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

NEW YATT MOTORS LTD

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE MR K N MURE QC

The Tribunal determined the appeal on 29 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 8 August 2011 and HMRC’s Statement of Case submitted on 14 September 2011.

DECISION

Introduction

1. This is an appeal against the imposition of penalties of £700 for the late lodging of the Employer's Annual Return (P35) form for 2009/10. It was due to be filed on-line by 19 May 2010 but was not in fact so received until 14 December 2010.

2. A preliminary issue arises in that this appeal was lodged outside the statutory time-limit. However, it was not exceptionally late (it is dated 24 May 2011 and was received shortly after) and having regard to that and the explanation narrated in the Note of Appeal, I consider that it is in the interests of justice that the Appeal should proceed.

3. The Appellant did not seek an oral hearing and the Appeal proceeded on the basis of the Bundle of papers submitted to me. The *findings of fact* set out these aspects which appear not to be contentious, and I have proceeded on the hypothesis that they are, indeed, accurate. Essentially, the Appellant submits that it had a 'reasonable excuse' for the late lodging of the Return and, further, the penalty is disproportionate.

The Law

4. Where an employer is late lodging an Annual Return for purposes of PAYE, a liability of £100 is imposed for each month or part month while the failure continues; Section 98A Taxes Management Act 1970. Where there is a 'reasonable excuse' for the purposes for Section 118(2) TMA, the penalty may be discharged.

The facts

5. The taxpayer is a small garage business with two or three employees. The father of its director, now elderly, manages its book-keeping. He is in his 70's and whilst a competent book-keeper, he is not expert at IT. 2009/10 was the first Year in which the P35 form required to be filed on-line.

6. The P35 form was issued on 17 January 2010 and had to be filed on-line by 19 May 2010. It was not received by HMRC until 14 December 2010, almost seven months' late.

7. A first interim penalty notice for £400 was issued on 27 September 2010 and a final penalty notice for £300 was issued on 17 December 2010.

8. The taxpayer was unaware that the Return had not been filed timeously until 17 December 2010 when it received the second penalty notice. The taxpayer had attempted to file the Return earlier and believed that this had been achieved satisfactorily. However, the Return had not been accepted by HMRC.

9. The reason for the failure arose from a space left in front of an employee's name. The taxpayer's said book-keeper had experienced technical difficulties when using the on-line filing system. When filing is completed successfully an acceptance message is sent to the taxpayer.

10. The taxpayer has to date paid its tax liabilities promptly.

Submissions

11. Although the taxpayer does not say so in terms it argues essentially that there is a *reasonable excuse* for the late lodging of the Return. Its book-keeper was unfamiliar with the system of on-line filing. He experienced a genuine technical difficulty. Further, there was in the taxpayer's view an unreasonable delay in advising of the default. Additionally, to date the taxpayer has an excellent tax compliance record.

12. *Separatim*, the taxpayer submits that the penalty of £700 is disproportionate in amount.

13. HMRC argues in reply that the definition of *reasonable excuse* is limited and does not extend to the present circumstances. It would require some unexpected or unusual event. It is the taxpayer's responsibility to comply with the legal requirements of on-line filing. In the present case there were no exceptional factors excusing the delay.

Decision

14. While the Tribunal has sympathy for a taxpayer who has, it appears, an excellent tax compliance record, and whose book-keeper did experience genuine technical difficulties with the newly introduced electronic filing system, the responsibility of completing this satisfactorily rests with the taxpayer. It is noted that this system, when used correctly, provides an 'acceptance' message.

15. For these reasons the Tribunal considers that the circumstances outlined, while unfortunate, do not provide a *reasonable excuse* for the purposes of Section 118 (2) TMA 1970. Further, the amount of the penalty, *viz* £100 per month, has not been shown to be disproportionate.

16. Accordingly, the Appeal is dismissed and the Penalty Notice is confirmed.

17. 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.

TRIBUNAL JUDGE

RELEASE DATE: 12 March 2012