



TC02102

Appeal number: TC/2011/04093

Section 98A(2) and (3) Taxes Management Act 1970 – late submission of on-line Employer’s P35 End of Year return – no reasonable excuse – appeal not allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

C E S DEVELOPMENTS

Appellant

- and -

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

TRIBUNAL: JUDGE MICHAEL S CONNELL

The Tribunal determined the appeal on 9 January 2012 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 Appellants notice of appeal dated 24 May 2011 and HMRC’s statement of case submitted on 6 July 2011

DECISION

Decision

- 5 1. This is an appeal by C E S Developments (“the Appellant”) against a penalty of £100 imposed under s 98A (2) and (3) Taxes Management Act 1970 following the late submission of the Appellant Employer’s P35 Annual return for the tax year 2007-08.
- 10 2. An employer has a statutory obligation to deliver an Employer’s Annual return before the 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) Regulations 2001. If the full return does not reach HMRC by 19 May following the end of the tax year HMRC may impose a penalty. Interim penalties are charged under s 98A(2)(a) and (3) TMA where a return remains
15 outstanding after the due date. Penalties are fixed at £100 per month or part of a month during which the failure continues.
3. The filing date for the Appellant Employer’s P35 End of Year return was 19 May 2008. The return was filed on-line on 18 June 2008. The total liability on the return was £6,227.
- 20 4. On 7 July 2008 a final penalty notice of £100 was issued, calculated for the period 20 May 2008 to 18 June 2008.
- 25 5. On 11 April 2011 the Appellant appealed the penalty charge. The grounds of appeal were stated to be that a similar penalty imposed on an associate company had been cancelled when it was shown that the late return was due to postal delay. The Appellant said that the return had been posted in good time to arrive with HMRC before 19 May 2008 and that the problem would not happen in the future because the Appellant was now submitting returns on-line.
- 30 6. HMRC responded to the appeal advising that the appeal was outside the 30 days from the date the penalty notice was issued, and that consequently HMRC were unable to accept the appeal unless the Appellant had reasonable excuse for appealing late.
- 35 7. On 24 May 2011 the Appellant appealed to the Tribunals Service requesting permission to appeal out of time. The Appellant explained that its business location had changed, with the consequence that post had not reached the Appellant at its new address and this was possibly a reason for late notification of the appeal. The Appellant reiterated that its return had been posted in good time to reach HMRC by 19 May 2008 and that accordingly the return must have arrived late with HMRC due to postal delays. HMRC do not object to the Appellant’s application for late appeal.
- 40 8. When a person appeals against a penalty they are required to have a reasonable excuse which existed throughout the period of default. The law does not say what a

reasonable excuse is, but it is sometimes regarded as an exceptional event beyond the person's control which prevented the return from being filed by the due date. Severe illness or bereavement are often accepted as a reasonable excuse.

5 9. In this appeal the Appellant accepts that the returns were late and says that this was due to postal delays. However the Appellant filed its return on-line through the internet. HMRC's records indicate that the return was filed at 21.35pm on 18 June 2008 and that the Appellant did not submit a 2007-08 P35 paper return to HMRC.

10. It is the responsibility of an employer to ensure that its tax affairs are up to date and correct returns are submitted by the due date.

10 11. Taking all the facts and circumstances of this appeal into account the Tribunal finds that no reasonable excuse has been shown with regard to the delay in submitting the P35 Return. Accordingly the appeal is dismissed and the penalty confirmed in accordance with s 100 B(2)(a) TMA 1970.

15 12. 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
TRIBUNAL JUDGE**

RELEASE DATE: 14 June 2012

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