



**TC02334**

**Appeal number: TC/12/04857**

*Penalties for late PAYE annual return – whether appellant had reasonable excuse under Taxes Management Act 1970 Section 118(2) - No, whether penalty disproportionate - No. Appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**DOUGLAS DEVELOPMENTS (SCONE) LIMITED      Appellant**

**- and -**

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

**TRIBUNAL:      JUDGE PETER R SHEPPARD FCIS, FCIB, CTA  
KENNETH MURE QC**

**Sitting in public at George House, 126 George Street, Edinburgh on Monday  
15 October 2012**

**Ian R Douglas and John G Middleton for the Appellant**

**William Kelly, instructed by the General Counsel and Solicitor to HM Revenue  
and Customs, for the Respondents**

## DECISION

### Introduction

1. This concerns an appeal by Douglas Developments (Scone) Ltd against a decision of Her Majesty's Revenue and Customs to impose nine monthly penalties each of £100, totalling £900 for the late submission of a PAYE Annual return of relevant payments liable to deduction of tax (Forms P35 and P14) due before 20 May 2010. The return was eventually submitted on 8 February 2011 so the nine penalties were levied in each of the months June 2010 to February 2011 inclusive.
2. The Appellant is a building developer in the private sector, and is based in Blairgowrie, Perthshire.

### Legislation

3. Income Tax (Pay As You Earn) Regulations 2003 paragraph 73;  
Social Security (Regulations ) 2001 Schedule 4 Paragraph 22;
4. Taxes Management Act 1970 Section 98A.

### Facts

4. Mr Douglas did not dispute that the return had been submitted late nor did he dispute the calculation of the penalty. He considered that he had reasonable excuse for failing to forward the return on time. Alternatively he argued that as the return when submitted showed no tax was due a penalty of £900 for failing to submit a return was disproportionate or as he said "the punishment doesn't fit the crime."
5. The circumstances which he submitted gave rise to reasonable excuse were as follows - In November 2009 the company's book keepers who would have completed the return both gave notice of their retirement. Due to the recession the business of the company had declined rapidly in 2008 and 2009 to the extent that by the time new agents were appointed in the Spring of 2010 no staff were being employed and by then no sub-contract labour was being used either. Because no staff were being employed and no payroll function was being carried out the agents were unaware of the need to complete an annual PAYE return for 2009/10 due before 20 May 2010.
6. During the time of this change of book keepers/agents Mr Douglas was in the course of building a number of properties, the first of which had been completed. For this purpose he had arranged overdraft facilities with the Clydesdale Bank of £750,000. He was unexpectedly advised by the bank that these facilities would be cut to £250,000 and any further transactions stopped. He was therefore unable to build the other houses. In order to pay off outstanding amounts of £20,000 due to sub-contractors Mr Douglas had to borrow money from his daughter and use a VAT repayment of over £25,000 due to himself to pay her back. Separate from the company Mr Douglas was building a house for himself and the VAT repayment was due to him under the VAT DIY House builders scheme.

7. Ultimately Mr Douglas had to sign over his own house to the Bank and this is now up for sale. All of this put Mr Douglas under considerable pressure.

8. Mr Douglas did admit that he was unaware of the need to complete a return at a time when there were no employees or sub contractors being used and where no tax was due.

9. In respect of proportionality Mr Douglas expressed the view that a penalty of £900 for failing to provide a return where no tax was due is excessive.

10. Mr Kelly for the Respondents drew the Tribunal's attention to the legislation listed above. He explained that the return was due before 20 May 2010 but was not received until 8 February 2011. In such circumstances the legislation imposed a penalty of £100 per month for every month or part of a month delay.

11. In respect of Mr Douglas's statement that he was unaware of the requirement to file annual returns he pointed out that the need to file returns is well publicised. Every trader is forwarded an "Employers pack" each year which includes: guides, a CD Rom and a calendar showing dates returns are due. Mr Douglas accepted he had received this.

12. In respect of proportionality Mr Kelly argued that every country in the EU set out in legislation requirements for submission of tax returns and penalties for failure to do so. The level of penalties is set by each government including the UK. The penalties applied in this case follow that provided by legislation. The penalties for late submission of tax returns have been well publicised.

13. In the circumstances Mr Kelly acknowledged that Mr Douglas was under some pressure but he said the Respondents did not consider it such that would give the Appellant reasonable excuse for the failure.

## **Decision**

14. The Tribunal has some sympathy with the difficulties Mr. Douglas faced but observes that these mainly occurred in the period December 2009 to March 2010. By the Spring of 2010 new agents had been appointed and this was all before the due date for the annual return of 20 May 2010. Even though the Respondents issued a penalty notification on 27 September 2010 which should have prompted a response from the Appellant it was not until 8 February 2011 that the return was submitted.

15. In the circumstances the Tribunal concludes that the Appellant did not have a reasonable excuse for the late submission of the PAYE Annual return of relevant payments liable to deduction of tax (Forms P35 and P14) due before 20 May 2010.

16. In respect of the proportionality of the penalties, the penalties have been levied by the Respondents in accordance with those laid down by the government in legislation. Had a prompt response been made to the penalty notification of 27 September 2010 the total penalty would have been considerably less.

17. Thus the Appeal is dismissed.

18. 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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**PETER R SHEPPARD FCIS, FCIB, CTA  
TRIBUNAL JUDGE**

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**RELEASE DATE: 25 October 2012**