



**TC02645**

**Appeal number: TC/2012/7483**

***PENALTIES – failure to file Employer Annual Return – enforced and unforeseen administration of subsidiary company – illness of operational director – reasonable excuse – yes – appeal allowed***

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**TW CLARK HOLDINGS LTD**

**Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY'S  
REVENUE & CUSTOMS**

**Respondents**

**TRIBUNAL: JUDGE LADY JUDITH MITTING**

**The Tribunal determined the appeal on 27 March 2013 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chambers) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 25 July 2012 (with enclosures), HMRC's Statement of Case submitted on 25 January 2013 (with enclosures) and the Appellant's Reply dated 28 February 2013 (with enclosures).**

## DECISION

1. The Appellant appeals against a penalty of £900 imposed under s.98A(2) and (3) Taxes Management Act 1970 for the late filing of its Employer's Annual Return for the tax year 2010-2011.

2. The Return was due to be filed online by 19 May 2011. An electronic reminder had been sent to the company on 13 February 2011. When the Return had not been received a first penalty notice was issued on 26 September 2011. The Return still not having been received, a second penalty notice was issued on 30 January 2012. The Return was filed online on 31 January 2012.

3. The Appellant's representative explains that the sole activity of the Appellant Company was to hire out its assets to its 100% trading subsidiary TW Joinery and Shop Fittings Limited (TWCJ). It had no other business activities and when TWCJ went into administration in January 2011 the Appellant was no longer in a position to trade. The sole directors of the Appellant were a Mr and Mrs Clark. Mr Clark was signed off sick by his doctor in October 2010 and remained off sick for a considerable length of time. Copy sick notes were before me for all periods up to 31 October 2011. When the subsidiary company went into administration in January 2011, the administrators barred Mr and Mrs Clark from entering the business premises. From that date onwards they therefore had no access to their post or business e-mails. All post relating to the Appellant Company was diverted to the administrators of the subsidiary company. It was not until Mr Clark saw the penalty notice dated 30 January 2012 that he realised the Return was still outstanding and it was filed immediately the following day. Additionally, in previous years the P35 would have been submitted by the accounts staffs and Mr Clark expected the same to have happened whilst he was away sick. He was never aware that the Return had not been filed.

4. I accept the submission of HMRC that the Appellant was a limited company with directors and staff other than Mr Clark and that it remained the responsibility of the company, notwithstanding his illness, to deal with its statutory obligations. However, in purely practical terms, Mr Clark was the operational director. He was away sick throughout the entire period. The Appellant's post was being diverted to the administrators of a subsidiary company and was not therefore seen by Mr Clark. Mr Clark had no reason to believe that the staff had not completed the Return and as soon as he received the second penalty notice, thus realising that it had not gone in, he saw that it was filed within 24 hours. I find that due to this unusual combination of circumstances, the company did have a reasonable excuse for the failure to submit the Return and that the reasonable excuse continued until 30 January 2012 when the Return was immediately submitted. The appeal is therefore allowed.

5. 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.

**LADY JUDITH MITTING  
TRIBUNAL JUDGE**

**RELEASE DATE: 16 April 2013**