



TC02713

Appeal number: TC/2012/05660

*PAYE – late filing of P35 Returns – Appellant’s “lack of knowledge” –
reasonable excuse – proportionality – appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ITCHEN SASH WINDOW RENOVATION LTD Appellant

- and -

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

TRIBUNAL: JUDGE LADY JUDITH MITTING

The Tribunal determined the appeal on 3 April 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 9 May 2012 (with enclosures) and HMRC’s Statement of Case submitted on 4 February 2013.

DECISION

1. The Appellant appeals against two penalties, each in the sum of £1,200. The penalties were issued for the late filing of the Employer Annual Returns for the tax years 2008-2009 and 2009-2010 respectively. The returns were each due no later than 19 May following the end of the year in question. Both returns were eventually filed online on 16 May 2011.

2. By letter dated 13 March 2012, the Appellant sought a review of the penalties pleading that:

(i) it had not been able to file the returns due to lack of knowledge and an inability to understand the HMRC Guidance;

(ii) since filing the returns the company now has a bookkeeper in place and the returns are being filed on time; and

(iii) the penalties are disproportionate to the error made.

In its notice of appeal to the Tribunal, the company merely stated as its grounds for appeal that it was wrong to penalise a small company £2,400 for not filing two P35 returns and in any event the amount was disproportionate as £2,400 was more than what the company paid to one employee per month. The Appellant did not respond to the statement of case.

3. In response, HMRC contend that information about the completion of returns and due dates was widely available and well within the public domain.

4. I do not accept that the Appellant has a reasonable excuse for its failure to file either of the returns. The public notices and communications to taxpayers are not only detailed and clear in their instructions, but they also give contact details for any enquiries which an employer might have. The Appellant was well aware of its liability to submit returns and it had done so for previous years. Even if the employer was having difficulties in understanding how it should proceed with the online filing, it was always open to it to have phoned one of the helplines. To let the matter run for two complete years is entirely unreasonable. Neither do I accept that the penalties are disproportionate. The base penalty is £100 per month. One only got to the final figure of £2,400 because the Appellant failed to comply for two whole years, and this despite having three penalty notices served on it in each of the two years. The Appellant would therefore have been well aware of the fact that the penalties were mounting up by the accumulation of penalty notices it was receiving.

5. The Appellant does not have a reasonable excuse for its failure to file its return in either year. The penalties imposed are reasonable, fair and proportionate. The appeal is dismissed.

6. 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: 17 May 2013