



TC03202

Appeal number: TC/2012/04470

***TYPE OF TAX – PAYE – PENALTIES – LATE SUBMISSION OF EMPLOYERS’
ANNUAL RETURN (P35) – CESSATION OF DENTAL PRACTICE –
WHETHER REASONABLE EXCUSE OR UNFAIRNESS – NO – APPEAL
DISALLOWED***

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MR HESLOP

Appellant

- and -

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

**TRIBUNAL: JUDGE KENNETH MURE QC
MR LESLIE BROWN, LLB SOLICITOR**

Sitting in public at North Shields on 5 November 2013.

The Appellant in person.

The Respondents were represented by Mr Boal – Officer of HMRC.

DECISION

1. This appeal is against the imposition of penalties totalling £500 in respect of the late submission of the annual P35 form relating to PAYE liabilities in respect of the Appellant's Mr Heslop's, practice. This appeal was stayed pending the decision of the Upper Tribunal in *HMRC –v- Hok Limited* [2012] UKUT 363 (TCC).

2. Mr Heslop explained to us that he had been in practice as principal of a Dental Practice for many years. He personally had dealt with routine tax matters, including the submission of the P35 form annually. He wound up his practice in mid September 2010. He explained that he had settled all PAYE financial liabilities timeously, which was not in dispute. He spoke by telephone to a tax officer at HMRC's Cumbernauld Centre, who assured him that he had done all that he required to do. There was no specific reference to the P35 form for 2010/11, and Mr Heslop accepted that he had not raised it in time. No written acknowledgment or written record of the telephone call was produced or is likely to be available.

3. The P35 form was due by 19th May 2011 but was not submitted until October 2011. Mr Heslop was not aware of the failure until September 2011. He complained that he had relied on the assurances of the tax officer at Cumbernauld. He disputed received the electronic reminder form, copied at 16. In these circumstances he complained that the penalties were unfair.

4. We accepted Mr Heslop's account as accurate, apart perhaps from an uncertainty about receipt of the electronic notice. It may be that this was issued but innocently overlooked. Mr Heslop's tax record is impeccable. His error is innocent and unfortunate. However, it is trite law that it is the tax payer's responsibility to ensure compliance with *inter alia* the requirement to duly complete and submit a P35 form in respect of each Year in which a business trades. We accept that there was no specific reference to the P35 form in the telephone call to Cumbernauld.

5. With regret we do not think that there is a *reasonable excuse* or any resultant unfairness in the imposition of the penalty. We are confirmed in this view in light of the decision of the Upper Tribunal in *Hok*. For these reasons we dismiss the appeal and confirm the penalties.

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.

**KENNETH MURE QC
TRIBUNAL JUDGE**

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RELEASE DATE: 10 January 2014

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