



TC03973

Appeal number: TC/2011/02374

Employer's Annual Return P35 – failure to file by due date – company changed name during tax year – HMRC software unable to accept change of name – return ultimately filed using old company name – P60s issued to staff with old company name – no reasonable excuse

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

SENTRICARE EAST MIDS LTD

Appellant

- and -

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

TRIBUNAL: JUDGE ALASTAIR J RANKIN

The Tribunal determined the appeal on 28 August 2014 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 Notice of Appeal dated 23 December 2010 (with enclosures), HMRC's Statement of Case submitted on 20 April 2011 (with enclosures) and the Appellant's Reply received on 9 May 2011.

DECISION

1. This is an appeal by Sentricare East Mids Ltd (Sentricare) against a penalty of
5 £600.00 for the late filing of their Employer's Annual Return for the tax year 2008/9.
The appeal was stayed pending the decision of the Upper Tribunal in the case of Hok
Ltd. This appeal was heard on 9 July 2012 and the decision is now reported at
reference [2012] UKUT 363 (TCC).

2. The 2008/9 return had to be filed electronically by 19 May 2009 in order to
10 avoid a penalty. The return was actually filed on 6 July 2009 when 127 P14 forms
were submitted. As a result HMRC issued a penalty notice for £600.00 on 9 July 2009
calculated at the rate of £300.00 for each month or part month the return was late.

3. Agents for Sentricare first contacted HMRC by telephone on 3 March 2010
15 regarding the penalty. They were advised to put their case in writing. By letter dated 3
May 2010 the agents advised that the reason why the return was late was purely due
to several technical issues with the HMRC online service. These technical issues were
raised with the HMRC Online Help desk and were the subject of a complaint to the
Online Complaints Manager.

4. By letter dated 18 June 2010 HMRC advised the agents that they needed to
20 explain why the appeal was not made within the 30 day specified time limit. The
agents replied by letter dated 25 June 2010 advising that Sentricare did not receive the
penalty notice and was not expecting a notice based on the information provided by
the Online Complaints Manager.

5. It appears the technical issues raised by the agent were initially of a general
25 nature and only became specific to Sentricare when it became clear that the problem
could not be solved before the filing deadline. However HMRC by letter dated 19
August 2010 accepted that Sentricare had a reasonable excuse for not making the
appeal within the 30 day period.

6. The appeal itself was rejected by HMRC by letter dated 11 October 2010 as the
30 agent had been advised by telephone on 4 June 2009 that it must submit the return, the
agent had advised during another telephone conversation on 15 June 2009 that it
would submit the return but did not actually do so until 6 July 2009. By a further letter
dated 12 October 2010 HMRC stated that had the return been filed on 4 June 2009
HMRC would probably have accepted that there was a reasonable excuse for late
35 filing until that time.

7. The technical issue preventing Sentricare from filing the return was that during
2008/9 it had changed its name but the HMRC software did not allow the change of
name to be carried through with the result that the P60s generated by the HMRC
software showed the name of the employer under the previous name rather than
40 Sentricare.

8. The agent asked HMRC to carry out a review. The decision of the Appeals Review Officer was dated 2 December 2010. The Officer rejected the penalty appeal as the reasons outlined for the late filing of the return did not constitute a reasonable excuse. The Officer noted that when the return was filed on 6 July 2009 the P60s were
5 generated using the old company name and there was no reason given as to why the return could not have been filed by the due date of 19 May 2009.

9. The grounds of appeal to this Tribunal are that there was a reasonable excuse for the late filing as the HMRC software did not allow for the company name to be changed. While HMRC would have accepted the return with the then incorrect name
10 of the company issuing the P60s in the wrong name would have confused the employees.

The Law

10. Regulation 73(1) of The Income Tax (Pay As You Earn) Regulations 2003 (the 2003 Regulations) and Paragraph 22 of Schedule 4 of the Social Security
15 (Contributions) Regulations 2001 require an employer to deliver a completed form P35 together with a form P14 for each employee before 20 May following the end of the tax year.

11. Regulation 205 of the 2003 Regulations makes it mandatory for each employer to file the form P35 electronically.

20 12. Sections 98A(2)(a) and (3) provide for the imposition of a fixed penalty of £100.00 for each batch or part batch of 50 employees for each month or part month the return is late.

13. Section 118(2) of the 1970 Act provides statutory protection from a penalty if the employer had a reasonable excuse for failing to file their return on time. There is
25 no statutory definition of reasonable excuse.

The Decision

14. It is necessary that HMRC is seen to be consistent in its approach.

15. In order to have the penalty assessment set aside it is necessary for Sentricare to show a reasonable excuse.

30 16. While there appears to have been some confusion between the agent and HMRC concerning the technical problem and in particular whether any extension of time to file had been granted it is clear that on 4 June 2009 HMRC advised the agent to file the return with the incorrect name of the company. The agent did not do so until 6 July 2009.

35 17. The reason why the agent did not file the return was that the P60s issued to the staff of Sentricare would show the former name of the company. This could easily have been resolved by Sentricare attaching to each P60 a short note explaining that

the P60 had been issued showing the former name of the company due to a problem with HMRC's software.

5 18. As the return was ultimately filed under the former name of the company and no explanation has been provided by Sentricare or its agent why it decided to file the return on 6 July 2009 no reasonable excuse has been forthcoming from Sentricare or its agent within the requirements of section 118(2) of the 1970 Act.

19. Following the decision of the Upper Tier Tribunal in Hok Ltd the Tribunal has no jurisdiction to discharge or adjust a fixed penalty which is properly due because it thinks it is unfair.

10 20. The appeal is therefore dismissed.

21. The penalty of £600.00 remains due for payment by Sentricare.

15 22. 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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ALASTAIR J RANKIN
TRIBUNAL JUDGE

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RELEASE DATE: 2 September 2014