



TC03976

Appeal number: TC/2014/03161

Employer's annual return form P11D(b) – failure to file by due date – filing attempted before due date – no acknowledgment – employer should have been alerted by lack of acknowledgment – filing electronically since 2005 – no reasonable excuse

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

REFINA 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 4 June 2014 (with enclosures) and HMRC's Statement of Case submitted on 30 June 2014 (with enclosures)

DECISION

- 5 1. This is an appeal by Refina Ltd (Refina) against a penalty of £800.00 for the late filing of the employer's annual return forms P11D(b) for the tax year 2012/13.
2. Refina was required to file a form P11D(b) for the tax year 2012/13 on or before 6 July 2013. HMRC sent Refina a P11D(b) electronic notification to file on 13 April 2013.
- 10 3. Refina filed form P35 electronically on 8 April 2013 incorrectly stating that form P11D(b) was not due. As a result no interim penalty was issued when form P35 was processed on 19 April 2013. HMRC wrote to Refina on 20 February 2014 as it appeared it had overpaid tax or national insurance. As a result form P11D(b) was filed electronically on 25 February 2014.
- 15 4. On 28 February 2014 HMRC issued a late filing penalty notice for £800.00 for the period 7 July 2013 to 25 February 2014.
5. By letter dated 12 March 2014 Refina appealed against the penalty stating that it submitted form P11D on 20 June 2013 and made payment of Class 1A national insurance based on this submission on 16 July 2013. Refina produced a screen shot which appeared to show that form P11D was submitted on 20 June 2013.
- 20 6. HMRC rejected the appeal by letter dated 31 March 2014 on the basis that no reasonable excuse had been provided as to why form P11D(b) was not filed until 25 February 2014.
- 25 7. Using form EMP634 dated 7 April 2014 Refina requested a review of the decision again stating that form P11D(b) had been submitted on 20 June 2013. By letter dated 8 May 2014 a Review Officer of HMRC upheld the penalty advising Refina that it may have logged on to the system on 20 June 2013 but records show it failed to proceed fully to the successful transmission stage. As Refina had filed on-line in the past it would have been familiar with the acceptance/rejection messages or emails it should have received.
- 30 8. In its Notice of Appeal to this Tribunal Refina appears to accept that it did not in fact file form P11D(b) on 20 June 2013 but if HMRC had queried the overpayment of tax or national insurance in July 2013 rather than February 2014 it would only have been one month late in filing the return thus incurring a penalty of £100.00 rather than £800.00.
- 35 9. HMRC contends that as Refina incorrectly completed form P35 indicating that form P11D(b) was not due, HMRC stopped issuing any further reminders or an interim penalty notice. As Refina had been submitting forms online since April 2005 it should have been alerted to the non-submission by the lack of an acknowledgment.

The Law

10. Regulation 85 of The Income Tax (Pay As You Earn) Regulations 2003 (the 2003 Regulations) and Regulations 80 and 81 of the Social Security (Contributions) Regulations 2001 require an employer to deliver a completed form P11D(b) on or
5 before 6 July following the end of the tax year.

11. The 2003 Regulations make it mandatory for each employer to file the form P11D(b) electronically.

12. The Taxes Management Act 1970 provides for the imposition of a fixed penalty of £100.00 for each month or part month the return is late.

10 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 no statutory definition of reasonable excuse.

The Decision

14. There is no statutory obligation on HMRC to advise employers that they have
15 failed to file their P11D(b) forms on time. It is necessary that HMRC is seen to be consistent in its approach.

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

16. The Tribunal finds that no reasonable excuse has been submitted by or on behalf
20 of Refina. It should have been alerted to the non-submission of the form P11D(b) by the lack of acknowledgment from HMRC by way of confirmatory email.

17. 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.

25 18. The appeal is therefore dismissed.

19. The penalty of £800.00 remains due for payment by Refina.

20. 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
30 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