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TC04477

Appeal number: TC/2015/01912

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PAYE – late submission of Employer’s Annual Return – Whether reasonable excuse for late submission of return - No.

15 **FIRST-TIER TRIBUNAL
TAX CHAMBER**

PAUL DAVIES T/A THE SPORTS HATCH SPECIALISTS Appellant

- and -

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

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**TRIBUNAL: PRESIDING MEMBER
PETER R. SHEPPARD FCIS FCIB CTA
AIIT**

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The Tribunal determined the appeal on 12 June 2015 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 16 February 2015 with enclosures, and HMRC’s Statement of Case received by the Tribunal on 7 April 2015 with enclosures. The Tribunal wrote to the Appellant on 16 April 2015 indicating that if they wished to reply to HMRC’s Statement of Case they should do so within 30 days. No reply was received.

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DECISION

1. Introduction

5 This considers an appeal against a penalty of £500 imposed by HMRC under Section 98A(2) & (3) Taxes Management Act 1970 for the late filing by the appellant of its Employer Annual Returns (forms P35 and P14) for the year 2011 – 2012.

2. Preliminary Matter

10 HMRC refused to accept the appellant's appeal on the grounds that it was made outside the time limit. The date of the final penalty notice was 12 October 2012 so as the time limit for appealing is 30 days the appeal should have been made by 11 November 2012. However the appeal was not made until over 2 years later on 8 December 2014. The appellant took the penalty notice as a reminder of an amount due and did not realise that an appeal could be made. The Tribunal has decided that
15 despite the lateness of the appeal it will nevertheless consider it.

3. Legislation

Income Tax (PAYE) Regulations 2003, in particular Regulations 73 and 205.
Social Security (Contributions) Regulations 2001 in particular Schedule 4 Paragraph
22.
20 Taxes Management Act 1970, in particular Section 98A(2) and (3); Section 100;
Section 100B; and Section 118 (2).

4. Case law

HMRC v Hok Ltd. [2012] UKUT 363 (TCC)
25 Rowland v HMRC [2006] STC (SCD) 536
Anthony Wood T/as Propave v HMRC (2011) UKFTT 136 TC001010

5. Facts

30 Regulation 73(1) of Income Tax (PAYE) Regulations 2003 and Paragraph 22 of Schedule 4 of Social Security (Contributions) Regulations 2001 require an employer to deliver to HMRC a complete Employer Annual Return (Forms P35 and P14) before 20 May following the end of the tax year. In respect of the year 2011-2012 the appellant failed to submit Forms P35 and P14 until 9 October 2012. On 3 October 2012 HMRC sent the appellant a late filing penalty notice for £400 for the 4 month
35 period 20 May 2012 to 19 September 2012. On 12 October 2012 HMRC sent the appellant a second late filing penalty notice for £100 for the period 20 September 2012 to 9 October 2012.

6. HMRC has applied the legislation correctly and calculated the amount of the penalties accurately for the periods 20 May 2012 to 19 September 2012 (£400) and 20
40 September 2012 to 9 October 2012 (£100).

7. Having established that the penalties have been applied correctly and calculated accurately the only other consideration that falls within the jurisdiction of the First-tier Tribunal is whether or not the appellant has reasonable excuse for his failure as contemplated by the Taxes Management Act 1970 Section 118(2).

5 8. On 8 December 2014 the appellant's agent, H.B. Mistry & Co. Ltd., chartered accountants, wrote to HMRC appealing against the £500 penalty. They wrote

“... The last employee of the company was the book-keeper who left on 1st Dec 2011, and our client was under the impression all payroll formalities were dealt with by the book-keeper.

10 Unfortunately, when it was realised that the matter was not dealt with, we were instructed to file the outstanding documents. We did this on 8th October 2012. All the taxes were paid on time.

The PAYE scheme was formally closed on 5th April 2013.

15 We trust you will discharge the penalty on the grounds of assurances received by our client from the book-keeper that all PAYE matters were dealt with correctly.”

9. In a reply dated 7 January 2015 HMRC refused to accept the appeal on the grounds that it was not made within the time limit and no reasonable excuse had been given as to why it was late. However the writer also made the following comment

20 “I appreciate that the payroll formalities were dealt with by the book-keeper and were assured all PAYE matters were dealt with correctly, however it is the overall responsibility of the employer as a whole to ensure the Return is submitted timeously.”

The letter pointed out that the appellant had the right to appeal to an independent tribunal, and gave details of how to do this.

25 10. In the Notice of Appeal the appellant's agent H.B. Mistry & Co. Ltd., chartered accountants states

11. “Mr. Paul Davies is a sole trader t/as The Sports Hatch Specialists. He de-registered for PAYE on 5th April 2013 – P35 was filed on time and tax paid.

30 12. 2011/2012 – P35 was filed late, as book keeper dealing with the accounts left the company, assuring Mr. Davies all matters were dealt with. Paul Davies received penalty notice on 3 October 2012. He instructed us to file the outstanding P35 documents for 2011/2012. This was done on 8th Oct 2012.

Paul Davies treated the penalty notices as a reminder not realising an appeal was also required to be made.

35 No previous reminders were issued by HMRC, or any phonecalls received.”

13. In their submissions HMRC say that they accept that the appellant's book-keeper left on 1 December 2011. They observe that the 2011-2012 P35 reminder was not issued via the internet until 25 March 2012. As such the appellant's book-keeper could not have filed the 2011-2012 P35.

5 14. HMRC contend that responsibility for delivery of the completed Employer's Annual Return form lies squarely on the shoulders of the employer. Whilst the employer may devolve the task to an employee it is the employer who remains ultimately responsible.

15. **Tribunal's observations**

10 The Tribunal observes that there is no doubt that the return was filed late therefore a penalty arises unless the appellant had reasonable excuse for the failure. The appellant's agent submits that the assurances given to the appellant by its book-keeper led the appellant to believe all PAYE matters were up to date and this provides the appellant with a reasonable excuse. The Tribunal disagrees for two reasons. Firstly the
15 Tribunal agrees with HMRC that the filing of the return was the responsibility of the Employer. Secondly the return was due 19 May 2012 and the book keeper had left more than 6 months earlier. It was therefore accurate for him to say in December 2011 that all PAYE matters were up to date but that statement cannot continue to be relied upon as time passes. Whilst employed by the appellant the book keeper was not in a
20 position to file the 2011-2012 return. Once the book-keeper had left the filing of the return and dealing with communications from HMRC remained the responsibility of the employer. The Tribunal notes the decision in Rowland v HMRC but although the appellant had relied on the book-keeper to file previous returns they could not rely on the book keeper to file a return due more than 6 months after he had left.

25 16. The tribunal considers that the appellant has not established a reasonable excuse for the late submission of the Employer's Annual Return (Forms P35 and P14). Therefore the appeal is dismissed.

17. 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
30 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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**PETER R. SHEPPARD
TRIBUNAL JUDGE**

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