



**TC04543**

**Appeal number: TC/2015/02567**

*PAYE – late submission of P35 form – penalties – (1) whether leave to appeal late appropriate – No – (2) whether “reasonable excuse” – No – Taxes Management Act 1970 and Income Tax (PAYE) Regulations 2003 – Appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**CAMPING-ON-TYNE**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE KENNETH MURE, QC  
MEMBER: MR ALBAN HOLDEN**

**Sitting in public at The Magistrates Court, Carlisle on Friday 10 July 2015**

**Appellant – not present or represented**

**Respondents – Mrs R Oliver, HMIT, Presenting Officer**

## DECISION

### Preliminary

1. In this appeal the respondents seek to recover penalties totalling £1200 from Mr Paul Easton, one of two partners of the appellant firm, which ceased to trade in about October 2012. The hearing was scheduled to start at 10.30am. By 10.45am the appellant had not appeared and no one was present to represent him. (Indeed at the conclusion of the hearing no one had arrived.) The notification of the hearing date and details and other papers had apparently been received. Our Clerk checked with the Tribunal administration, and so far as they were aware Mr Easton had been expected to attend. Our Clerk also telephoned the appellant's accountant and other personal numbers on the file, but without success. Having regard to the terms of Rule 33 of Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, it was considered appropriate and consistent with the interests of justice to hear the matter in the appellant's absence.

### Submissions

2. Mrs Oliver helpfully set out the background to this appeal. We also had the Notice of Appeal which sets out the appellant's Grounds for appeal. Mr Easton and his partner, Craig Cameron, had traded as Camping on Tyne until their business ceased in about October 2012. The partnership had failed to lodge its P35 for 2009/10, which was due on 19 May 2010 but was not received until 12 November 2014. Consequently it had incurred three penalties, each of £400 on 29 September 2010, 24 January 2011 and 30 May 2011. A total of £1200 remains due. Mr Easton and his accountant had made contact with the respondents about the outstanding tax affairs of the firm. It was explained that the other partner, Mr Cameron, had day-to-day responsibility for this although Mr Easton appreciated his joint and several liability as a partner in the firm. It was explained that Mr Cameron could not be contacted and the respondents also have not been able to trace him.

3. The appeal was not lodged until 11 February 2015, well beyond the statutory 30 day period. The respondents had not accepted it, and accordingly the matter of its late filing arose for the Tribunal to determine as an initial issue. Accordingly, Mrs Oliver addressed us firstly on the matter of our granting leave to appeal late. While HMRC were bound by whether or not there was a "reasonable excuse" for the delay in terms of Section 49(5) TMA, the Tribunal had a broader discretion. That, she argued, should be determined in light of the guidance of Morgan J in *Data Select Limited v HMRC* [2012] UKUT 187 (TCC), in which (para 34) the purpose of the time limit, the length of and any explanation for the delay, the consequences of extending and/or refusing an extension of time, were highlighted. This course had been followed by Judge Bishopp in *Leeds City Council v HMRC* [2014] UKUT 4350 (TCC). In the present case Mrs Oliver emphasised the need for finality after a very lengthy delay of four years. There was no satisfactory or sufficient explanation. The default of a partner was not adequate. Further, Mrs Oliver observed, the penalties had

been correctly charged and were outstanding. In these circumstances she urged us to refuse to allow the appeal to proceed.

4. Having been addressed by Mrs Oliver on this preliminary issue, we thought it appropriate, particularly given the absence of the appellant, to reserve our decision and hear meantime the respondents' argument on the substantive appeal against the imposition of the penalties. The Grounds for Appeal indicate that Mr Easton had attended to the sales side of the business, rather than its financial affairs, which he entrusted to his partner. Mr Easton claims that he was unaware of his partner's failures. On discovering them he had engaged an accountant and he had settled the firm's liabilities to HMRC. Only the penalty remained outstanding and Mr Easton considered it unfair that it should be recovered from him given that he had honoured the firm's liabilities personally and without contribution from his partner. The completion and submission of the P35 form had been his partner's responsibility, Mr Easton observed.

5. Mrs Oliver accepted that narrative as accurate. However unfortunate the partner's default was for Mr Easton, that did not amount to the necessary *reasonable excuse* to avoid the penalty. Mrs Oliver did note references at A12 to telephone calls between Mr Cameron and the respondents in 2011, but she was adamant that no P35 Return had been received. A *reasonable excuse*, she continued, required a factor which could not reasonably be expected or foreseen. Some practical reason for non-compliance was necessary. The circumstances as claimed by Mr Easton fell short of that standard. *Separatim*, any argument as to *unfairness* in this context could not be sustained: see *HMRC v Hok Limited* [2012] UKUT 363 (TCC) especially at para 58.

### **Conclusion**

6. We consider that Mrs Oliver succeeds on both heads of her argument. Firstly, we agree that it is inappropriate to grant leave to appeal late. The delay in appealing is inordinate. It is in excess of four years and there is a need for finality. All partners of a firm bear a shared responsibility in respect of its duties under the Taxes Acts. That responsibility cannot be avoided.

7. So far as the substantive argument in the appeal is concerned, the respondents must again succeed in our view. The defence set out in the Grounds for Appeal is the reliance by Mr Easton on his partner, and the partner's default. That is not a *reasonable excuse*. It may be that all other tax liabilities have been settled, and that by Mr Easton without contribution by his former partner. While we are sympathetic to his plight, it is a joint and several legal responsibility owed to HMRC, and which is unqualified. *Hok* explains the scope of the jurisdiction of this Tribunal: matters of fairness or equity cannot be considered in this context. In short while Mr Easton has a right of relief against his former partner – if he can be traced – he has no defence to the imposition of these penalties.

8. For these reasons we dismiss the appeal.

9. 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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**KENNETH MURE  
TRIBUNAL JUDGE**

**RELEASE DATE: 17 JULY 2015**

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