



TC04713

Appeal number: TC/2014/05020

**Income tax – Late filing of employer annual return – whether reasonable
excuse – no – appeal dismissed**

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

	ONE CALL SOLUTIONS LTD.	Appellant
	- and -	
	Her Majesty's Revenue and Customs	Respondents

TRIBUNAL: JUDGE DR K KHAN

The Tribunal determined this appeal on 15 October 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 8 September 2014 and the HMRC's Statement of Case submitted on 18 November 2014.

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DECISION

Introduction

5 1. This is an appeal against penalties of £800 imposed under

Section 98A (2) and (3) Taxes Management Act (TMA) 1970 for the late

filing of the Employer's Annual Return for the 2012-2013 tax year.

10 **The Law**

(1) Regulation 73 of the Income Tax PAYE

(ITPAYE) Regulations 2003 and Paragraph 22 of Schedule 4 of

the Social Security (Contributions) Regulation 2001 require an

15 employer to deliver a completed Employer Annual Return form

P35 and P14 before 20 May following the end of the tax year.

(2) The return must include certain specified information relating to payments made during the tax year to employees.

5 (3) Regulation 2005 of the Income Tax (PAYE) Regulations 2003 requires a mandatory use of electronic communications by employers delivering the P35 and P14 forms online. The P35 (which gives aggregate tax details for all employees) and a P14 in respect of each employee has to be filed.

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(4) If the relevant returns are not received by the due date the employer is liable to a penalty.

(5) Under Section 118(2) TMA 1970, a penalty can be excused if the employer had a reasonable excuse for failing to file their return on time. While there is no statutory definition of a reasonable excuse it is necessary to look at all of the facts from

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the point of view of a prudent person, exercising reasonable foresight and due diligence and having proper regard to their responsibilities under the Taxes Acts.

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Facts

(1) The Appellant was required to file the Employer Annual Return (P35 and P14) for the year 2012-2013. The filing date for the return was 19 May 2013. HMRC sent to the Appellant an electronic notification to file on 24 March 2013. As a return had not been filed HMRC sent the Appellant a filing reminder on 28 April 2013.

(2) Since the returns were still outstanding on 19 May 2013 the Appellant became liable for a late penalty. A late

filing penalty Notice was issued on 23 September 2013 for £400 for the period 20 May 2013 to 19 September 2013. A second late penalty notice was sent to the Appellant on 27 January 2014 for £400 for the period 20 September 2013 to 19 January 2014. The Employer Annual Return filed online on 14 July 2014.

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Submissions

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- (1) The Appellant, through their agent Rock and River Ltd, appealed against the penalty and stated that all “our year ends were filed on the same day in 2013 and there could be no reason this failed, although we had experienced Gateway problems with submissions all through the day”.

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(2) They explained that on checking their payroll system for the year end 2013 they could see the electronic submission still showing as outstanding and re-submitted the P35. They explained that they had no reasons to believe that the original submission on May 13 had not gone through the electronic system. They admitted examples of “unsuccessful” submissions received that day which proved that there were problems with the HMRC web system and they had not received a failure notice for this particular client. The assumption being that they had successfully filed.

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(3) The Appellant says that the Penalty Notice was the first they knew that there was a problem with their filings, if the Penalty Notice had been received sooner it would have prompted a quicker response and highlighted the

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fact that HMRC appear not to have received their submissions on May 13. Their filing history suggests that they never failed to submit returns on time and the reason for the failure in this case could have been HMRC's computer systems on the day.

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(4) The late appeal was finally accepted. They maintain that their returns were submitted by the time limit.

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(5) They say that the Penalty Notice for September 13 was not received and January 14 Notice was received in February. This prompted a contact with HMRC who advised that the P35 return had not been received.

(6) Further, a routine audit on 14 July 2014 found that the P35 for 2012-2013 was still outstanding and they re-submitted at that point.

5 (7) This means that until receipt of the Penalty Notice issued in January 2014 the Appellants say that they were not aware that previous returns had not been filed on time. The problem may have been HMRC's online filing system which led to the submissions failing.

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HMRC'S submissions

15 (8) Once an Employer Annual Return is filed an acceptance or rejection notice is issued by the software or service used and if HMRC have been provided with an email

address an email message is also sent. If the user thought the return had been submitted but received no confirmatory message they should have alerted HMRC that something was wrong and prompted them to re-check submission protocols or sought advice. This was not done. HMRC say it was their word against the Appellant's but the Appellants have provided no evidence to show a successful submission was made on May 13th and HMRC have no records to substantiate their claim.

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- (9) They say that by the Agent's own submissions when they checked their payroll system in July 2014 it was apparent that the electronic submission was still outstanding which confirmed that the return was not submitted in May 2013.

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(10) HMRC say that the unsuccessful submission messages which were provided by the Appellant stated that although a submission was received it could not be accepted as it failed data checks which showed that something was wrong with the information input by the user rather than a problem with the online filing system.

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(11) It is possible that the particular software programme used (Payroll Manager) may have had problems and this is not something for which HMRC can provide support.

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(12) The legislation places the responsibility of submitting valid returns by 19 May on the shoulders of the Employer. Where the Employer has asked an Agent to perform that task, it remains the responsibility of the Employer to make a successful submission of the return.

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Where a person has asked another person to do something

on their behalf they cannot claim they have a reasonable excuse merely because they delegated the task to a third party and the third party failed to complete the task.

5 Finally, there is no obligation on HMRC to remind or notify Employers that their annual returns have not been received; the filing of returns on time was not dependent on the Appellant receiving a reminder or a Penalty Notice.

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Conclusion

(1) The appeal is dismissed. The Tribunal is satisfied from the evidence produced by HMRC that there was no malfunction or
15 disruption of the online filing system. There was no evidence that the computer system prevented the Appellant from filing their

returns. This is not to say that the Appellant did not try to file their returns on time. One would have expected the Agents to have received confirmation that their forms had been successfully filed rather than simply providing evidence of unsuccessful filing. It must be remembered that the obligation on the taxpayer to “deliver” a return to HMRC and this would have required confirmation from the online filing system that the returns had in fact been delivered to the correct party with the appropriate data.

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(2) It is hard to imagine an Appellant making successful filing and not have received a notification that this had been done from the online filing system.

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(3) Further if the Appellant had difficulty using the online filing system then he could have contacted the Customer Support

which is both a helpline and an email address provided by
HMRC, where taxpayers are seeking assistance.

(4) The Tribunal accepts that the primary obligation on the taxpayer

5 to file their returns and HMRC has a responsibility to provide

Online filing facilities which work. There is nothing to

show the online filing system did not work properly when the

Appellant made their online filings.

10 (5) If the taxpayer had sought customer support from HMRC and

indicated that they had received no confirmation of their filings,

then this appeal may have been decided differently. The Tribunal

understands the frustrations of taxpayers using an online filing

system this can be quite overbearing. However, it is necessary to

15 exhaust all channels making online filings including using the

Helpline and Customer Support where one has experienced

difficulties or had not received confirmation that their filings
have been successful.

5 (6) In the circumstances, the appeal is dismissed.

(7) This document contains full findings of facts and reasons for the
decision. Any party dissatisfied with the decision has a right to
appeal for permission to appeal against it pursuant to Rule 39 of
10 the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules
2009. The application must be received by this tribunal not later
than fifty six days after this decision is sent to that party. The
parties are referred to “Guideline to accompany a Decision from
the First-tier Tribunal (Tax Chamber)” which accompanies and
15 forms part of this decision notice.

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**TRIBUNAL JUDGE
K KHAN
RELEASE DATE: 17 NOVEMBER 2015**