



TC05178

Appeal number: TC/2015/06721

PAYE – late filing of Employer’s Annual Return Form P11D – whether reasonable excuse – no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

GREGG WESTWOOD LTD

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE DR K KHAN

The Tribunal determined this Appeal on 22 March 2016 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 12 November 2015 and HMRC’s Statement of Case submitted on 21 December 2015.

DECISION

Introduction

5 1. This is an appeal against penalties of £400 imposed under Regulation 81(2) (a) of the Social Security Regulations 2001 (SI 2001/1004) for the late filing of the P11D (b) form for the year 2013-2014.

10 2. The P11D form must be filed by 6 July of the tax year to which it relates and in addition, the employer must also file a return on form P11D(b) where Class 1A National Insurance contributions are payable. This form must be filed by 6 July following the end of the year to which the return relates.

15 3. The form P11D (b) is a dual purpose return. It is a declaration that all the P11D forms are complete and correct and it is also the return of Class 1A National Insurance Contributions due.

20 4. Where the employer does not file the P11D (b) form on time they will be charged a penalty. A fixed penalty of £100 per month (or part) for each batch (or part batch) of 50 employees for whom Class 1 A National Insurance is payable. The total penalty payable must not exceed the total amount of Class 1A due for that year.

25 5. In accordance with Regulation 81(9) of the Social Security Regulations 2001 the penalty will not be chargeable if the employer has a reasonable excuse for filing the P11D(b) return late.

Background facts

30 6. The Appellant was required to file a form P11D (b) by 6 July 2014 and to pay any Class 1A National Insurance Contributions by 19 July 2014 (if paying by cheque) or 22 July (if paying electronically).

35 7. The Appellant was sent three late filing penalties. The first Penalty Notice was on 10 November 2014 for £400 for the period 7 July 2014 – 6 November 2014. The second late filing Penalty Notice was on 9 March 2015 for £400 for the period 7 November 2014 – 6 March 2015. The third late filing Penalty Notice was on 13 July 2015 for £400 for the period 7 March 2015 – 6 July 2015.

40 8. The P11D (b) form for 2013-2014 is still outstanding at the date of this appeal.

9. This appeal is in respect of the initial £400 penalty on 10 November 2014 though the penalties collectively now stand at £1200.

45 10. On 18 September 2015 HMRC received an appeal from the Appellant appealing the penalty on the ground that the P11D was completed via the internet on 19 November 2014 and the amount due plus penalty was paid.

11. On 28 September 2015 the Appellant requested a review of HMRC's decision and on 21 October the review upheld HMRC's decision.

5 .12. On 12 November 2015 the Appellant appealed to the Tribunal stating that they had recently moved accountants and they believed that the previous accountants had submitted the form by the due date.

Appellant's submissions

10 1. The Appellant's say that the forms were filed by the deadline date.

2. They adhered to their obligations to ensure that the tax returns were filed by the due date and that they were advised that their account was in order and showed a slight overpayment to HMRC.

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HMRC's submissions

1. The form P11D (b) in respect of the 2013 – 2014 period have never been received. The Appellant's were advised of this position by HMRC in letters dated 2 September 2015 and 21 October 2015.

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2. The Appellants are experienced filers and fully aware of the deadlines for filing the P11D (b) return and the penalties. The HMRC accept that payments were made on time.

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3. The Appellants are responsible primarily for filing their returns and those obligations cannot be transferred to a third party. Further, the Appellants did not take reasonable care to avoid the failure to file despite reminders from the HMRC.

Conclusion

14. The Taxpayer has a primary responsibility for dealing and adhering to their obligations under the Taxes Acts. If that task is given to an advisor such as an accountant then the person with the primary responsibility must ensure that the appointed advisor carries out the task on time. They cannot claim to have a reasonable excuse simply by delegating the task to a third party and the third party failing to complete the task. It is incumbent on the person with the primary responsibility to take reasonable care to ensure that the third party whether an advisor or other, meets the deadlines for making returns or payments to HMRC. In this respect they must both explain to the third party their obligations and remind the third party of the deadlines for payment and returns. Further they must make regular checks on the progress in meeting those obligations. In other words, the Taxpayer must check the work of the advisor and take reasonable care to ensure that all the work was carried out and the obligations in law have been met. Sadly in this case, there is no reasonable excuse.

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15. The delegation of the responsibility to the advisor is not a reasonable excuse and it was not reasonable for the Taxpayer to rely on the third party to complete the task.

16. The appeal is therefore dismissed and the penalties are upheld.

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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 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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**DR K KHAN
TTRIBUNAL JUDGE**

RELEASE DATE: 16 JUNE 2016

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