



TC05277

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Appeal number: TC/2016/02260

*National Insurance Contributions – late submission of Employer’s Annual Return
P11D(b) – whether reasonable excuse for late submission of return - No.*

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**FIRST-TIER TRIBUNAL
TAX CHAMBER**

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ANGLESEY FINE HOMES LIMITED

Appellant

- and -

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

Respondents

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

**The Tribunal determined the appeal on 18 July 2016 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 18 April 2016, and HMRC’s Statement of Case with enclosures
received by the Tribunal on 28 April 2016. The Tribunal wrote to the Appellant
on 9 May 2016 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

Introduction

1. This considers an appeal against penalties totalling £1,200 imposed by the respondents (HMRC) under Regulation 81 (2)(a) of the Social Security (Contributions) Regulations 2001 for the late filing by the appellant of its Employer's Annual Return (form P11D(b) for the tax year 2013 – 2014.

Legislation

2. Income Tax (PAYE) Regulations 2003, in particular Regulations,85 and 86.
- 10 Social Security (Contributions) Regulations 2001 (SI 2001/1004) in particular Regulations 80 and 81.

Case law

- Rowland v HMRC* [2006] STC (SCD) 536
- 15 *Anthony Wood trading as Propave v HMRC* (2011 UKFTT 136 TC 001010).

Facts

3. Where an employer provides expenses and benefits to directors, or to employees earning at a rate of £8,500 or more a year; the employer must make a return on form P11D, to HMRC of those expenses and benefits not administered through the company's payroll system. Examples would be a company car, mileage allowances and health insurance. The P11D must be filed for each employee affected before 7 July following the end of the tax year to which it relates in accordance with Regulation 85 of the Income Tax (Pay As You Earn) Regulations 2003.
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4. In addition to the P11D the employer must also file a return on form P11D(b) where Class 1A National Insurance Contributions are payable, by 6 July following the end of the year to which the return relates, in accordance with Regulation 80 (1) of the Social Security (Contributions) Regulations 2001.
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5. Form P11D(b) is a dual purpose return. It is a declaration that all the P11Ds are correct and complete, and it is also the return of Class 1A National Insurance Contributions due.
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6. Where the employer does not file its P11D(b) form on time they will be charged a penalty in accordance with Regulation 81 (2) of the Social Security Regulations 2001. Fixed penalties of £100 per month (or part month) for each batch (or part batch) of 50 earners for whom Class 1A is payable are charged for the first 12 months the return is late.
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7. In accordance with Regulation 81 (9) of the Social Security (Contributions) Regulations a penalty will not be chargeable if the employer has reasonable excuse for filing their P11D(b) return late.

8. HMRC consider that a reasonable excuse is normally an unexpected or unusual event that is either unforeseeable or beyond the employer's control, and which prevents the employer from complying with their obligation to file on time.

5 9. The appellant was required to file a form P11D(b) as Class 1A National Insurance Contributions were payable for the year 2013-2014. The filing date was 6 July 2014.

10. HMRC sent a reminder to all employers in June 2014 to remind them to send in completed 2013-2014 forms P11D and P11D(b) by 6 July 2014 and to pay any Class 1A National Insurance contributions by 19 July (if paying by cheque) or 22 July (if paying electronically).

10 11. On 27 August 2014 HMRC issued a P11D(b) interim penalty letter to the appellant. because they had not filed the 2013-2014 P11D(b). The letter advised that to avoid further penalties arising a completed form should be submitted before September 2014.

15 12. On 16 September 2014 the Appellants sent a short e-mail to their accountants. It states

“Just to keep you updated, the P11D's were posted on 19/06/14 and the Class 1A NI Contributions of £261.38 were paid by BACS on 22/07/14. I have called them, they have received the payment but not the P11D's so have resent them with a covering letter.”

20 13. On 10 November 2014 HMRC sent the appellant a late filing penalty notice for £400 for the period 7 July 2014 to 6 November 2014.

14. On 25 November 2014 the appellant wrote to HMRC as follows:

25 “We would like to appeal the above penalty charge as were posted back to HMRC on the 19/06/14 and the amount of £261.38 was paid by BACS on the 22/07/14.

30 15. On the 27/08/14 we received a letter from HMRC stating that the expenses & benefit forms P11D & P11D(b) were outstanding. Our office manager rang up and advised that the forms had been completed and returned on the 19/06/14. The payment made on 22/07/14 was confirmed, but there was no confirmation of the forms being received and was asked to re send them. Photo copies of all the forms were re sent on 16/09/14 with a covering complement slip explaining why they were photo copies, as the originals had already been posted on 19/06/2014. On doing this I emailed our accountant to advise what we had done.

35 16. We feel this penalty is very unfair that through no fault of our doing the forms were not received when originally sent or when resent. Please could you reconsider in this instant?”

17. On 8 January 2015 HMRC wrote to the appellant advising the result of their appeal That letter did not accept the appeal and included:

“You did not successfully submit your return of Class 1A National Insurance Contributions P11D(b) by the due date of 6th July 2014; the return has still not been received.....”.

5 18. On 13 July 2015 HMRC sent the appellant a late filing penalty notice for £800 for the period 7 November 2014 to 6 July 2015.

19. On 20 July 2015 the appellant wrote a letter to HMRC it included:

“We would like to appeal the above penalty charge as the documentation has been posted to the HMRC twice now as follows:

10 • 19/06/14 the original documents were posted back to HMRC and the amount of £261.38 was paid by BACS on the 22/07/14.

• 16/09/14 photo copies of the original documents and a copy of the BACS payment were posted to HMRC as the originals had not been received when sent on 19/06/14, but the payment had been.

15 A penalty charge of £400 was paid (by cheque.....on 07/05/15 and was cashed on 20/05/15) because our 1st appeal was rejected for the grounds that we cited.

We have now received another penalty charge for £800 because HMRC state that the documents yet again still have not been received? But HMRC has received them they were re sent with our appeal letter and that was received because HMRC sent a rejection letter back.

20 We find it rather strange that the documents have not been received by HMRC but the penalty payment cheque for £400 was as was the appeal letter?

We feel this penalty is very unfair that through no fault of our doing the forms were not received when originally sent. Please could you reconsider in this instance?

25 Enclosed are copies of emails and the compliment slip to back up our explanation as above. We have also for the third time enclosed copies of the documents that were originally submitted on 19/06/14.”

20. On 19 August 2015 HMRC wrote to the appellant in respect of this appeal. The letter included:

30 “We have considered your reasons for disagreeing with our decision to charge you a penalty. However, we are unable to accept these reasons as a ‘reasonable excuse’ because we advised in our letter dated 08/01/2015 that the penalty was issued for the non submission of the P11D(b) return for the 2013-2014 tax year. The copies of the P11D forms and payment of Class 1A which you sent us are
35 separate to the P11D(b) return which was due by 6th July 2014.”

21. The letter also advised that if the appellant disagreed it could request a review.

22. The form P11D(b) was filed on 1 September 2015.

23. The appellant did request a review but provided no further information.

24. On 21 March 2016 HMRC wrote to the appellant advising the result of the requested review. The conclusion was that the decision to charge penalties was correct. The letter included the following:

“Your e-mail to your accountant on 16 September 2014makes no reference to the expenses and benefits 2013-14 P11D(b) end of year declaration.”

“The copies of the documentation sent on 16 September 2014 only include the following documentation.

•P11D’s for 5 employees

•13/14 P11D(b) interim penalty letter dated 27 August 2014

•Payment of Class 1A NIC and bank payment of Class 1A NIC made on 22 July 2014.”

“HMRC’s records show receipt of the 2013-14 P11D(b) on 1 September 2015, 1 year 2 months after the due date of 6 July 2014 and 8 months after HMRC advised you in their letter dated 8 January 2015 that the P11D(b) had not been received.....”

25. The letter advised that if the appellant disagreed with the conclusion of the review they could appeal to The First-tier Tribunal.

Appellant’s submissions

26. In the Notice of Appeal to the First-tier Tribunal dated 18 April 2016 the appellant makes the following points:

“The grounds for our appeal are set out in our letter of the 20 July 2015. We believe we sent all the documents to HMRC within the timescale requested. We feel we are being charged a penalty for HMRC not properly dealing with the documents sent to them and claiming that they did not receive them.”

Respondent’s submissions

27. HMRC point out that the appellant had submitted P11D and P11D(b) forms in 2012-2013 so were familiar with the system.

28. HMRC maintain that in July 2014 they received five P11D forms and payment of £261.38 Class 1A National Insurance contributions. They have no record of receiving form P11D(b) until 1 September 2015. The copy documents sent by the appellant were copies of the P11D forms already received. No copy of a P11D(b) form was received.

29. They say that they sent numerous correspondence to the appellant advising that the P11D(b) form had not been received.

30. HMRC say the amount of the penalties have been calculated in accordance with legislation.

5 The Tribunal's observations

31. The Tribunal has considered these submissions and comments as follows:

32. The decision of the Upper Tribunal in the case of *Hok Ltd.* considered whether the jurisdiction of the First-tier Tribunal includes the ability to discharge a penalty on the grounds of unfairness. At paragraph 36 of that decision it states "...the statutory provision relevant here, namely TMA s 100b, permits the tribunal to set aside a penalty which has not in fact been incurred, or to correct a penalty which has been incurred but has been imposed in an incorrect amount, but it goes no further. ...it is plain that the First-tier Tribunal has no *statutory* power to discharge, or adjust a penalty because of a perception that it is unfair."

33. The level of the penalties has been laid down by parliament. 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 Social Security Regulations 2001 Regulation 81 (9).

34. The due date for filing the P11D(b) form was 6 July 2014. The completed form P11D(b) was not received by HMRC until 1 September 2015.

35. A form P11D Expenses and benefits 2013-2014 is required for a director, or an employee who earned at a rate of £8,500 or more a year during the year to 5 April 2014. On the 19 June 2014 the appellant sent HMRC five completed forms P11D occupying ten pages. An amount of £261.38 was paid by BACS on 22 July 2014 to cover the amount due on form P11D(b). A completed form P11D(b) 'Return of Class 1A National Insurance contributions due Return of expenses and benefits – Employer declaration' is also required. Unfortunately for the appellant it appears that they omitted to include the form P11D(b) with the five forms P11D.

36. When on 16 September 2014 they sent copies of what they had sent to HMRC on 19 June 2014, they sent copies of the five forms P11D and a copy of the bank giro credit for £261.38. A copy of a form P11D(b) was not included.

37. Unfortunately for the appellant whilst there is ample evidence to show that they submitted five forms P11D and copies thereof there is no evidence to show that in any of their letters to HMRC in the period 19 June 2014 to 6 July 2015 they included a completed form P11D(b) 'Return of Class 1A National Insurance contributions due Return of expenses and benefits –Employer declaration', or a copy thereof.

38. The appellant has not put forward any submissions to explain why they did not submit a Form P11D(b) until 1 September 2015. Therefore the appellant has not established a reasonable excuse for the late submission of the Employer's Annual

Return Form P11D(b). HMRC has applied the legislation correctly and calculated the amount of the penalties accurately for the periods 7 July 2014 to 6 November 2014 (£400); and 7 November 2014 to 6 July 2015 (£800). Therefore the appeal is dismissed.

- 5 39. 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
10 “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

RELEASE DATE: 27 JULY 2016