



TC03778

Appeal number: TC/2011/08618

Form P11D – penalties for late submission – former accountant disappeared – two reminders issued by HMRC – second reminder to wrong address – no attempt by Appellant to contact HMRC – no reasonable excuse for most of period covered by penalties

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

RUELLA JAMES LTD

Appellant

- and -

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

TRIBUNAL: JUDGE ALASTAIR J RANKIN

The Tribunal determined the appeal on 2 July 2014 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 24 October 2011 (with enclosures) and HMRC's Statement of Case submitted on 5 December 2011 (with enclosures)

DECISION

5 1. The Appellant company (Ruella) is appealing against penalties issued by HMRC of £400.00 issued on 15 November 2010 and £300.00 issued on 15 February 2011 for failure to file form P11Db for the tax year 2009/10.

2. Ruella's former accountant ceased acting for the company in July 2010. Ruella's new agent in the Notice of Appeal indicated the former accountant had disappeared. In a letter dated 15 December 2010 the new agent stated that the directors of Ruella
10 had been unable to contact the former agent to ascertain what information had been submitted to HMRC.

3. HMRC claims to have issued a reminder notice to Ruella on 20 June 2010.

4. Ruella signed form 64-8 authorising its new accountant to act as its agent in respect of Corporation Tax, Employer PAYE scheme and VAT. HMRC appears to
15 have processed the form with regard to Corporation Tax and VAT but not with regard to Employer PAYE scheme until after 11 March 2011.

5. HMRC issued a reminder notice to Ruella in November 2010 for the tax year 2011/12. This letter was issued from the Lothians Area office which had been vacated. Accordingly the new agent when appealing the initial penalty notice dated 15
20 November 2010 wrote to Lothians Area office on 15 December 2010. As no reply had been received the new agent wrote to the same office on 1 August 2011. This letter was returned by the Post Office on 23 August 2011 and the new agent immediately wrote to the correct HMRC office.

6. Although HMRC by letter dated 17 October 2011 addressed to the new agent
25 indicated that the appeal was out of time no issue now appears to be taken on this point by HMRC in its Paper hearing submission. Accordingly the Tribunal is prepared to proceed with the appeal.

7. HMRC does not consider that reliance on a dilatory agent is a reasonable excuse. If the directors of Ruella were unable to ascertain from their former agent what forms
30 had been filed they could have approached HMRC direct. This seems to the Tribunal to be an obvious course of action.

8. HMRC has accepted that due to the wrong office address appearing on the November 2010 reminder notice, Ruella had a reasonable excuse from 15 December 2010, although form P11D(b) was not submitted until 19 January 2011.

35 **The Law**

9. Regulations 71(2) and 80(1) of the Social Security (Contributions) Regulations 2001 require an employer to deliver a completed return not later than 6 July following the end of the tax year.

10. Regulation 81(2) provides for the imposition of a fixed penalty of £100.00 for each month or part month the return is late.

5 Section 118(2) of the 1970 Act provides statutory protection from a penalty if the employer had a reasonable excuse for failing to file their return on time. There is no statutory definition of reasonable excuse.

The Decision

11. There is no statutory obligation on HMRC to advise employers that they have failed to file their P11D(b) form on time. It is necessary that HMRC is seen to be consistent in its approach.

10 12. In order to have the penalty assessments set aside it is necessary for Ruella to show a reasonable excuse.

13. The Tribunal finds that no reasonable excuse has been submitted by Ruella for the failure to file for the period 7 July 2010 to 15 December 2010.

15 14. Following the decision of the Upper Tier Tribunal in Hok Ltd the Tribunal has no jurisdiction to discharge or adjust a fixed penalty which is properly due because it thinks it is unfair.

15. The appeal for the period 7 July 2010 to 15 December 2010 is therefore dismissed but the appeal for the period 16 December 2010 to 19 January 2011 is allowed. The penalty payable by Ruella is reduced to £600.00.

20 16. 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
25 “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

30 **ALASTAIR J RANKIN**
TRIBUNAL JUDGE

RELEASE DATE: 4 July 2014