



TC03512

Appeal number: TC/2013/06692

CORPORATION TAX - penalty for late submission of return – whether there was a “reasonable excuse” – no

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

HARRIS GREENLEES DESIGN LIMITED

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE JOANNA LYONS

The Tribunal determined the appeal on 02 April 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 20 September 2013, HMRC’s Statement of Case (with enclosures) acknowledged by the Tribunal on 30 January 2014 and the Appellant’s Reply dated 04 March 2014.

DECISION

Introduction

- 5 1. This is an appeal against a penalty of £200 imposed for the late filing of the Corporation tax return for the accounting period ending 31 March 2012.
2. Roger Hatherall & company accountants, (“the agents”) represent the appellant company (“the company”) and appeal on their behalf.

10 The issue

3. The appellant appeals on the grounds that there was a reasonable excuse for the late filing of the return. This is opposed by HMRC,

The Law

4. In so far as it is relevant to this appeal the relevant law is set out below.

15 *Obligation to file the return*

5. HMRC “may by notice require a company to deliver a return”. Paragraph 3(1) Schedule 18 Finance Act 1998 (“FA”). “The return must be deliverednot later than the filing date”. Para 3(4).

Imposition of flat rate penalty

- 20 6. Paragraph 17 Schedule 18 FA provides as follows :

“A company which is required to deliver a company tax return and fails to do so by the filing date is liable to a flat rate penalty ..

(2) The penalty is

- 25 (a) £100 if the return is delivered within three months after the filing date, and
- (b) £200 in any other case”

Powers of the Tribunal

- 30 7. The Tribunal can set aside the penalty if it has been incorrectly applied s100(1) Taxes Management Act 1970 (“TMA”).

Reasonable excuse

8. The Tribunal can set aside a penalty if the company has a “reasonable excuse” for the late submission of the return throughout the default period s118(2) TMA.

9. In the case of *Rowland v HMRC [2006] STC (SCD) 536* it was decided that “reasonable excuse” was “a matter to be considered in the light of all the circumstances of the particular case”

Delegation to a third party

5 10. The mere fact that responsibility had been delegated to a third party does not amount to a reasonable excuse. *Westbeach Apparel Uk Ltd v Her Majesty’s Revenue and Customs [2011] UKFTT 561*.

10 11. The Tribunal can look behind act of delegation in order to determine whether the third party, themselves, has a reasonable excuse. *Customs and Excise Commissioners v Steptoe [1992] STC 757*.

Burden of proof

12. HMRC has the burden of proving that the penalty has been incurred. The company has the burden of proving that there was a reasonable excuse. *Jussila v Finland 73053/01 [2006] ECHR GC*.

15 **The facts**

The agreed facts

13. The agents have been registered to file Corporation Tax returns online since 24 April 2011.

20 14. The company was required to file an online Corporation Tax return for the Accounting period ending (APE) 31 March 2012. HMRC sent the company a notice to file on 22 April 2012. The filing date for the return was 31 March 2013.

15. The return was not filed by the due date and an initial penalty of £100 was imposed on 17 April 2013.

25 16. The return remained outstanding on 31 July 2013, three months after the due date, and a late filing flat rate penalty of £200 was imposed on 08 August 2013. The Corporation tax return remains outstanding.

The contested facts

30 17. The agents attempted to activate the online authorisation on behalf of the company before and after the due date without success. This was unusual as they were able to activate the online registration for other clients appearing on their client list. In support of their case they have provided a client printout showing authorisation failed dated 21 March 2013.

18. They contacted HMRC to investigate but were informed that an authorisation form 64-8 was required. They attempted to file the return on paper but this was rejected.

5 19. HMRC state that they received a request for assistance via the helpdesk on 12 March 2013. The authorisation form 64-8 was received on 06 April and the agents could have submitted the return on or after that date. They do not accept that the company were unable to file the return after 06 April 2013. In support of their case they have provided a computer record dated 06 April 2013 displaying the agents details.

10 **The arguments**

20. The agents submit that authorisation errors prevented them from filing the return online both before and after the due date.

15 21. HMRC submit that the agents were not prevented from filing online and were properly registered to file online from 06 April 2013. They state that the agents did not contact them to try to resolve the problems despite being properly authorised to do so.

Reasons for decision

Findings of fact

20 22. I accept that the agents attempted to resolve the problems associated with agent authorisation on 12 March and 21 March 2013, before the due date, as they have provided documentary evidence in support of their case.

23. I am satisfied that HMRC authorised the agents to act for the company on 06 April 2013 as this information is shown in the computer record provided in support of their case.

25 *Reasonable excuse*

30 24. I accept that the company delegated the task of filing the return to their agents. However the mere act of delegation does not provide a reasonable excuse unless the agent can show that they took all reasonable steps to avoid the failure. In this case there is no evidence to show that the company took steps to monitor the actions of their agents.

25. I accept that the agents experienced difficulties in online registration on behalf of the company. However in the event that they were not authorised to communicate with HMRC it would have been reasonable for them to have obtained the necessary authorisation from the company before the due date.

35 26. I note that these issues appear to have arisen on 21 March 2013, close to the due date. However the notice to file was issued twelve months earlier on 22 April 2012

and it would have been reasonable for the agents to have addressed any online filing difficulties in advance of the deadline.

27. I am not satisfied that there was a good reason for the continuing failure to file the return from 06 April 2013 as I have found as a fact that the agents were properly
5 authorised to act for the company from that date.

28. For these reasons I do not find that there was a reasonable excuse for the late submission of the return throughout the period of the default.

Decision

29. There was no reasonable excuse for the failure to submit the Corporation Tax
10 return throughout the period of the default.

30. The appeal against the late filing penalty of £200 is dismissed.

Right of appeal

31. This document contains full findings of fact and reasons for the decision. Any
15 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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**JOANNA LYONS
TRIBUNAL JUDGE**

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RELEASE DATE: 23 April 2014