



TC03513

Appeal number: TC/2013/06694

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

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ONESMART SOLUTIONS 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) dated 28 January 2014 and the Appellant’s Reply dated 04 March 2014.

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DECISION

Introduction

- 5 1. This is an appeal against a flat rate 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*.

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 company was required to file a Corporation Tax return (“the return”) for the accounting period ending 31 March 2012. HMRC sent the company a notice to file on 20 May 2012. The filing date for the return was 31 March 2013. The return was required to be filed online.

14. The return was not filed by the due date and an initial penalty of £100 was imposed on 17 April 2013. The return remained outstanding three months after the due date and a late filing flat rate penalty of £200 was imposed on 05 August 2013.

15. The return remains outstanding.

25 *The contested facts*

16. The agents they have acted for the company since April 2007 during which time they submitted paper returns.

17. They registered for online filing and the company’s name appeared on their client page. They attempted to activate the online authorisation code 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 list.

18. They contacted HMRC to investigate but were informed that they did not have the relevant authorisation from their client. They duly sent the paper authorisation 64-8 to HMRC but this was not acted upon. The company name has now been removed

from their site. They contend that it has not been possible for them to file the return. In support of their case they have provided a client printout showing “authorisation failed” dated 21 March 2013.

19. HMRC state that the agents were registered for online filing from April 2011.
5 The agents attempted to obtain “online agent authorisation” (“OAA”) on 21 March but this was refused. The company telephoned HMRC on 22 April 2013 chasing the OAA. The company was advised to ask their agent to contact the online helpdesk. They have no record of any contact by the agents and did not receive the authorisation form 64-8.

10 **The arguments**

20. The appellant submits that they have been effectively prevented from filing the return online both before and after the due date due to authorisation errors. They maintain that HMRC have not assisted them in their attempt to resolve these problems.
- 15 21. HMRC submit that the agents were not prevented from filing online and indeed they were properly registered to file online from 06 April 2013. The agents did not contact them to try to resolve the problems.

Reasons for decision

Findings of fact

- 20 22. I accept that the agent authorisation was requested on 21 March before the due date as this information is not disputed. However I do not find that there were any further attempts made to resolve the issue of authorisation because the agents have not provided any evidence in support of their assertion and HMRC have no record of any such contact.
- 25 23. I accept that the company contacted HMRC on 22 April as this does not appear to be disputed. I also accept that the agents sent the authorisation form 64-8 to HMRC. However in the absence of proof of posting or confirmation of receipt I am not satisfied that the form was successfully received by HMRC.

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.
- 35 25. I accept that the agents experienced difficulties in online registration however it would have been reasonable in the circumstances for the agents to have contacted HMRC both before and after the due date in an attempt to resolve the problems and

there is no evidence to suggest that they did so. In view of my findings of fact (above) I do not find that the actions of HMRC prevented the agents from filing the return either before or after the due date.

5 26. 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

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

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

10 **Right of appeal**

15 29. 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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**JOANNA LYONS
TRIBUNAL JUDGE**

RELEASE DATE: 23 April 2014

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