



**TC03648**

**Appeal number: TC/2012/08829**

**Construction Industry Scheme – late filing penalties – failure by employee – tax payers liable**

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**STEPHEN & EILEEN SAVAGE t/a SAVAGE ELECTRICS      Appellant**

**- and -**

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

**TRIBUNAL: JUDGE ALASTAIR J RANKIN  
MISS PATRICIA GORDON**

**Sitting in public at Tribunals Unit, 3<sup>rd</sup> floor, Bedford House, 16-22 Bedford Street, Belfast, BT2 7DS on 21 May 2014**

**Mr Brendan Corr of Corr & Corr Chartered Accountants for the Appellant**

**Mr Paul O'Reilly for the Respondents**

## DECISION

5 1. The Appellants incurred late filing penalties totalling £3,100.00 for late filing of returns under the Construction Industry Scheme. The first late return was due on 19 August 2008 and the last late return was due on 19 May 2012.

10 2. Mr O'Reilly confirmed that a notice concerning each penalty was sent to the only address maintained by HMRC for the Appellants. Mr Savage in his oral evidence to the Tribunal confirmed that the address given by HMRC was correct and that there had been no change in address during this period.

15 3. Mr O'Reilly informed the Tribunal that previous penalties totalling £1,600.00 had been paid by the Appellants in 2008 and referred to a letter dated 14 March 2008 from Anthony Loughran, on behalf of the Appellants and also to a copy bank statement showing a cheque for £1,600.00 clearing through the Appellant's bank account on 28 April 2008. The letter and bank statement had been submitted by Mr Corr as part of the Appellant's written evidence to the Tribunal.

20 4. Mr Savage informed the Tribunal that he had no knowledge of the letter dated 14 March 2008. He confirmed that he and his wife were the sole signatories on the bank account. Mrs Savage informed the Tribunal that Mr Loughran must have advised them that the cheque was for some sort of tax when he asked one of them to sign it.

25 5. Mr and Mrs Savage both advised the Tribunal that they had no knowledge of any arrears at any time. They first became aware of a problem when they received a visit from HMRC in 2012 concerning unpaid tax when they immediately instructed Mr Corr.

6. Mr Savage confirmed to the Tribunal that, until he realised there was a problem, his practice had been to hand any correspondence from HMRC unopened to his then accountant Mr Loughran.

30 7. On 25 May 2012 Mr Brendan Corr wrote to HMRC on behalf of the Appellants appealing against the penalty notices on the basis that Mr Loughran had handled all official post and failed to inform the Appellants of the penalties. HMRC wrote to the Appellants on 3 July 2012 advising them that for their appeal to succeed they needed to demonstrate a reasonable excuse – an exceptional event beyond the control of the Appellants. HMRC could not accept the reasons offered by Mr Corr as being  
35 reasonable.

40 8. On 21 July 2012 Mr Corr wrote to HMRC requesting a review of the decision to impose penalties on the basis that the Appellants were unaware of the penalties when issued. By letter dated 30 August 2012 HMRC advised the Appellants that upon completion of the review the penalties were upheld as no reasonable excuse had been offered. HMRC further informed the Appellants that under the legislation it is the

responsibility of the Appellants to ensure all returns are sent in by the due dates and that responsibility cannot be transferred to an agent or other third party.

5 9. Mr O'Reilly advised the Tribunal that HMRC had no record of any of the penalty notices having been returned by the postal authorities. All penalty notices are automatically sent to the taxpayer. The Tribunal must therefore accept that all the penalty notices had been validly served.

10 10. Mr Corr was asked by the Tribunal whether he could identify any individual penalty notice which had been incorrectly issued. After a short adjournment Mr Corr was unable to identify any incorrect Notices. He did however state that if HMRC had taken enforcement action earlier rather than let the penalties remain outstanding for a lengthy period his clients would have become aware of the problem sooner.

15 11. As the legislation clearly puts the obligation of filing the returns on time on the taxpayer the Tribunal finds that the penalty notices were correctly issued by HMRC. The Appellants cannot pass responsibility to Mr Loughran especially when Mr Savage advised the Tribunal that he did not open correspondence from HMRC.

12. Despite the delays by HMRC and the poorly presented case before the Tribunal, the appeal is dismissed and the penalties totalling £3,100.00 remain.

20 13. 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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**ALASTAIR J RANKIN  
TRIBUNAL JUDGE**

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**RELEASE DATE: 27 May 2014**