



Neutral Citation: [2022] UKFTT 345 (TC)

Case Number: TC08601

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2021/02754

Corporation tax – late filing penalty - whether reasonable excuse

Heard on: 1 September 2022

Judgment date: 09 September 2022

Before

**TRIBUNAL JUDGE HOWARD WATKINSON
CHRISTOPHER JENKINS**

Between

T. PA ACCOUNTANCY SERVICES LIMITED

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mrs. Ravinder Soor, employee of the Appellant, Mr. Theodoros Pastou,
Director of the Appellant

For the Respondents: Mr. Kieran Gargan, litigator of HM Revenue and Customs’ Solicitor’s
Office

DECISION

INTRODUCTION

1. With the consent of the parties, the form of the hearing was by video. The documents to which we were referred were: a bundle of documents running to 80 pps., HMRC's Statement of Reasons, and a bundle of legislation and authorities.
2. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.
3. This is an appeal by the Appellant against a late filing penalty in relation to Corporation Tax ("CT") for the accounting period ending ("APE") 30.9.18 in the sum of £4,343.70 charged to it under Paragraph 18(2)(b) of Schedule 18 to the Finance Act 1998 ("FA98") and issued on 29.1.21.
4. The issue on this appeal is whether the Appellant has a reasonable excuse for failing to file the return.

THE RELEVANT LAW

Under Paragraph 3 of Schedule 18 to FA98, where an officer of Revenue and Customs by notice requires a company to deliver a CT return it must do so by no later than the specified filing date. Where the return is not filed by the filing date the company is liable under Paragraph 17 of Schedule 18 FA98 to a flat-rate penalty of £100 where the return is up to 3 months after the filing date, and £200 in any other case. Where the return is not filed within 18 months of the end of the relevant accounting period the company is additionally liable to a tax-related penalty under Paragraph 18 of Schedule 18 FA98 which is 10% of the unpaid tax if the return is delivered within 2 years after the end of the accounting period, and 20% of the unpaid tax in any other case. "Unpaid tax" is defined at Paragraph 18(3) of Schedule 18 FA98 and means the amount of tax payable by the Company for the accounting period for which the return was required which remains unpaid on the date when the liability to the penalty arises.

5. Section 118(2) of the Taxes Management Act 1970 ("TMA") provides statutory protection from a penalty if the Company had a reasonable excuse for failing to file their return on time.

6. There is no statutory definition of "reasonable excuse". In *Rowland v Revenue & Customs Commissioners* [2006] STC (SCD) 536 the Tribunal noted at [19] that the issue was to be considered in the light of all the circumstances of the particular case. The Respondents also referred the Tribunal to *The Clean Car Company Ltd v The Commissioners of Customs and Excise* [1991] VATTR 234 in which Judge Medd QC set out that the test is an objective one, where the Tribunal must ask itself: "was what the taxpayer did a reasonable thing for a responsible trader conscious of and intending to comply with his obligations regarding tax, but having the experience and other relevant attributes of the taxpayer and placed in the situation that the taxpayer found himself at the relevant time, a reasonable thing to do?"

7. Finally, the Respondents referred the Tribunal to *Christine Perrin v The Commissioners for Her Majesty's Revenue and Customs* [2018] UKUT 156 (TC) where at [81] the Upper Tribunal set out a useful approach that the First-tier Tribunal can take in considering the issue of reasonable excuse.

"81. When considering a "reasonable excuse" defence, therefore, in our view the FTT can usefully approach matters in the following way:

(1) First, establish what facts the taxpayer asserts give rise to a reasonable excuse (this may include the belief, acts or omissions of the taxpayer or any other person, the taxpayer's own experience or relevant attributes, the situation of the taxpayer at any relevant time and any other relevant external facts).

(2) Second, decide which of those facts are proven.

(3) Third, decide whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In doing so, it should take into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times. It might assist the FTT, in this context, to ask itself the question "was what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?"

(4) Fourth, having decided when any reasonable excuse ceased, decide whether the taxpayer remedied the failure without unreasonable delay after that time (unless, exceptionally, the failure was remedied before the reasonable excuse ceased). In doing so, the FTT should again decide the matter objectively, but taking into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times."

FINDINGS OF FACT

8. From the HMRC records produced to us, and from what the Appellant said at the hearing, we find the following facts.

9. The Appellant's CT return for APE 30.9.17 was filed late and a late filing penalty charged. The Appellant accepted at the hearing that this had happened.

10. On 21.10.18 HMRC issued a notice to file a CT return to the Appellant for APE 30.9.18 with a filing date of 30.9.19 to the Appellant's registered address. The Appellant did not dispute that the notice to file was issued.

11. On 6.11.19 the Appellant filed, electronically, a CT return for APE 30.9.19, not APE 30.9.18.

12. On 5.10.20 the Appellant checked the HMRC gateway and seeing that the APE 30.9.18 CT return was not showing on it, wrote to HMRC in relation to the submission.

13. On 8.1.21 HMRC calculated the penalty based on 20% of the tax due, being £23,974.01, as £4,794.80. In a letter of 8.1.21 HMRC replied to the letter of 5.10.20 and informed the Appellant that the return submitted on 6.11.19 related to APE 30.9.19 and that the APE 30.9.18 return remained outstanding.

14. On 13.1.21 the Appellant's CT return for APE 30.9.18 was filed electronically. The return was therefore 836 days late.

15. A revised penalty of £4,343.70, based on the tax then unpaid of £21,718.52, was then issued by HMRC on 29.1.21.

16. On 19.1.21 the Appellant appealed the penalty to HMRC saying:

"There seems to be some sort of clerical issue as the return for the year ended 30.9.18 was originally submitted on 6.11.2019. A confirmation has been enclosed for submission of this account.

I would like to inform you that I had written to HMRC Corporation tax on 5th October 2020 regarding the Corporation tax for 30.9.2018 which was not showing on the Agents gateway. A response was received 3 months later, obviously delayed due to the Pandemic.

Even though the tax was not showing, I had made payments to clear the Corporation tax amount of £21,718 so that I could start paying off the tax for 30.9.2018. From the gateway I can see that you have allocated all payments of tax to 30.9.2019 which is incorrect.

Furthermore the penalty imposed is extremely unfair and I would be grateful if you could cancel it as no tax remains unpaid for 30.9.2018 and from our end all required accounts have been submitted on time.”

17. On 6.5.21 HMRC informed the Appellant that it did not consider that the Appellant had a reasonable excuse for the late filing of the CT return for APE 30.9.18 because in fact the submission receipt for 6.11.19 (which would still have been late) properly related to APE 30.9.19.

18. On 1.6.21 the Appellant requested a review of the decision to issue the penalty. HMRC upheld the decision on review, dated 22.7.21.

19. The Appellant’s Grounds of Appeal, lodged on 30.7.21, said:

“We had originally contacted HMRC regarding the 2018 CT600 submission as it was not showing on the gateway. Even though we pursued this matter, HMRC did not respond. Had we received a response earlier we could’ve looked into the matter sooner. We had a submission report and confirmation from HMRC gateway for what we thought was the 2018 accounts. Only after receiving such a hefty penalty, we checked our records and looked into our accounts program, IRIS, we could see that the system had picked the wrong year for submission. This was either a clerical or system error which we are now being penalised for. On the assumption that the CT600 was submitted, the tax payments were also made. The submission on 6.11.2019 should have been the 31.10.2018 CT600 and we know this would’ve been at least one month late as I, the director Theodoros Pastou was off sick. As a company all taxes and returns are made timely. As a firm of accountants where we advise our clients to pay and submit accounts on time, there is no reason why we would not be submitting returns.”

20. We were also shown screen prints of the IRIS software system which shows that for creating a submission to HMRC the period end date is shown on screen.

THE APPELLANT’S ACCOUNT AT THE HEARING

21. Mrs. Noor told the Tribunal at the hearing that she was responsible for the CT returns, but that she would not file them without the director signing off on them, and that she had written the Grounds of Appeal in the Appellant’s Notice of Appeal.

22. Mrs. Noor said that it was in 2017 that Mr. Pastou was not well, hence the late submission that year resulting in the late filing penalty referred to at [9] above, and that in relation to the submission on 6.11.2019 Mr. Pastou was off work in the week commencing 18.10.10 due to a family bereavement. Mrs. Noor’s account was therefore not that same as that in the Grounds of Appeal. We note that the Grounds of Appeal claiming on behalf of the Appellant that: “*all taxes and returns are made timely*” cannot be right. Firstly, there had been a previous late filing in 2017 as the Appellant knew, and secondly, the submission on 6.11.2019 was itself over a month late.

23. Mrs. Noor also told us that after the 2017 late filing she had prepared a spreadsheet with filing dates on it to check that the accounts were submitted on time. Mrs. Noor could not explain why the accounts for APE 30.9.18 were, she claims to have thought, being filed on 6.11.19, more than a month late, if she had such a system in place. Nor could Mrs. Noor explain how Mr. Pastou being off work in mid-October explained the APE 30.9.18 accounts not being filed by the filing date.

24. Mrs. Noor claimed that the Appellant had sent five letters to HMRC about the submission but had received no response. That assertion was not matched by the correspondence in the bundle as set out in the findings of fact above.

25. As a result of the matters set out in the above three paragraphs we did not find that what the Tribunal was being told by Mrs. Noor was credible.

26. Mrs. Noor also told us that the IRIS system had selected the correct year to submit to Companies House in June 2019, and the system had never previously made the wrong assumption about which returns to submit. Mrs. Noor said that someone might have clicked on the wrong button.

27. Mrs. Noor also told us that the Appellant had, prior to 6.11.19, experience of an issue with the IRIS software selecting the wrong year of accounts to file for a client.

28. We find that the most likely explanation here for what occurred in relation to the filing on 6.11.19 was that Mrs. Noor did indeed “click on the wrong button”, selected the wrong year’s documents to file, and did not check the position until some 11 months later on 5.10.20. As Mrs. Noor was, on her account, aware of a potential problem with IRIS selecting the documents for the wrong year for submission, she should have checked after the filing that HMRC had received the correct documents.

DISCUSSION

29. We find that the Respondents have proved that the Notice to File was sent to the Appellant. We find that the Appellant received it. We find that the Appellant’s CT return for APE 30.9.18 was submitted 836 days late. We find that the Respondents have proved that the Appellant was liable to the penalty.

30. The Tribunal does not accept the Appellant’s essential assertion that this was due to computer, rather than human error. The Tribunal does not accept that on 6.11.19 the IRIS system in fact selected the wrong year of accounts when it had previously selected the correct year for filing with Companies House. The Tribunal finds that Mrs. Noor would have seen the APE date for which the IRIS system was filing the return. The Tribunal finds that Mrs. Noor selected the wrong APE year for submission, and thereafter did not check for nearly a year that HMRC had received the documents for the correct year, despite being on notice of the potential risk of such errors being made, and of the risk of late filing penalties for late submission of the CT return.

31. We do not accept that Mrs. Noor’s clerical error provides an objectively reasonable excuse for this Appellant. The Appellant is a firm of accountants. It was, on its own account, aware of the risks of filing the wrong documents. It should have checked that the correct documents had been sent, and it should have done so far more timeously than it did so.

DECISION

32. For the above reasons the appeal is dismissed and the penalty is upheld.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

33. 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.

**HOWARD WATKINSON
TRIBUNAL JUDGE**

Release date: 09TH SEPTEMBER 2022