



Neutral Citation: [2023] UKFTT 00108 (TC)

Case Number: TC08725

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2022/01058

CIS – Penalties – Monthly Returns – reliance on third party – multiple penalty notices – no action taken – appeal dismissed

**Heard on: 7 November 2022
Judgment date: 14 December 2022**

Before

**TRIBUNAL JUDGE JOHN MANUELL
MR CHRISTOPHER JENKINS**

Between

**(1) MR WILLIAM KEALEY
(2) MR PETER KEALEY**

Appellants

- and -

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

Representation:

For the Appellant: Mr Barry McLaughlin and Mr Shaun McElhinney

For the Respondents: Mr Ben Williams of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

1. With the consent of the parties, the form of the hearing was by video link using the Tax Video Platform. The Tribunal heard Mr Barry McLaughlin and Mr Shaun McElhinney for the Appellants and Mr Ben Williams for the Respondents. A face to face hearing was not held because of the travel which would otherwise have been required. The documents to which the Tribunal were referred consisted of the agreed bundle as prepared by HMRC in electronic form. There was also a bundle of authorities which included statutory materials. 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.

2. The appeal was brought against Contractor's Monthly Return late filing penalties as set out in the table below, totalling £8,300. It was accepted by the Appellants that the returns in question had all been filed late. There was no dispute that the penalties if due had been correctly calculated. The main issues were whether (a) the Appellants could show a reasonable excuse for their delay and (b) the facts disclosed any special circumstances. It should be noted for completeness that there were 14 other late filing penalties which HMRC cancelled prior to the appeal hearing.

Tax Month	Penalty Date	Legislation	Description	Amount (£)
5 August 2014	10 September 2015	Para 8, Sch. 55 FA 2009	12 month late filing penalty	300
5 May 2016	8 July 2016	Para 8, Sch. 55 FA 2009	Initial late filing penalty	100
5 May 2016	13 August 2016	Para 9, Sch. 55 FA 2009	2 months late filing penalty	200
5 May 2016	3 December 2016	Para 10, Sch. 55 FA 2009	6 month late filing penalty	300
5 May 2016	27 May 2017	Para 11, Sch. 55 FA 2009	12 month late filing penalty	300
5 June 2016	27 August 2016	Para 8, Sch. 55 FA 2009	2 months late filing penalty	200
5 June 2016	31 December 2016	Para 8, Sch. 55 FA 2009	6 month late filing penalty	300
5 June 2016	1 July 2017	Para 8, Sch. 55 FA 2009	12 month late filing penalty	300
5 July 2016	13 August	Para 8, Sch.	Initial late	100

	2016	55 FA 2009	filing penalty	
5 July 2016	1 October 2016	Para 8, Sch. 55 FA 2009	2 months late filing penalty	200
5 July 2016	28 January 2017	Para 8, Sch. 55 FA 2009	6 month late filing penalty	300
5 July 2016	29 July 2017	Para 8, Sch. 55 FA 2009	12 month late filing penalty	300
5 August 2016	27 August 2016	Para 8, Sch. 55 FA 2009	Initial late filing penalty	100
5 August 2016	29 October 2016	Para 8, Sch. 55 FA 2009	2 months late filing penalty	200
5 August 2016	4 March 2017	Para 8, Sch. 55 FA 2009	6 month late filing penalty	300
5 August 2016	2 September 2017	Para 8, Sch. 55 FA 2009	12 month late filing penalty	300
5 September 2016	1 October 2016	Para 8, Sch. 55 FA 2009	Initial late filing penalty	100
5 September 2016	3 December 2016	Para 8, Sch. 55 FA 2009	2 months late filing penalty	200
5 September 2016	1 April 2017	Para 8, Sch. 55 FA 2009	6 month late filing penalty	300
5 October 2016	29 October 2016	Para 8, Sch. 55 FA 2009	Initial late filing penalty	100
5 October 2016	31 December 2016	Para 8, Sch. 55 FA 2009	2 months late filing penalty	200
5 October 2016	29 April 2017	Para 8, Sch. 55 FA 2009	6 month late filing penalty	300
5 October 2016	28 October 2017	Para 8, Sch. 55 FA 2009	12 month late filing penalty	300
5 November 2016	3 December 2016	Para 8, Sch. 55 FA 2009	Initial late filing penalty	100
5 November 2016	28 January 2017	Para 8, Sch. 55 FA 2009	2 months late filing penalty	200
5 November 2016	27 May 2017	Para 8, Sch. 55 FA 2009	6 month late filing penalty	300

5 January 2017	28 January 2017	Para 8, Sch. 55 FA 2009	Initial late filing penalty	100
5 January 2017	1 April 2017	Para 8, Sch. 55 FA 2009	2 months late filing penalty	200
5 January 2017	29 July 2017	Para 8, Sch. 55 FA 2009	6 month late filing penalty	300
5 February 2017	4 March 2017	Para 8, Sch. 55 FA 2009	Initial late filing penalty	100
5 February 2017	29 April 2017	Para 8, Sch. 55 FA 2009	2 months late filing penalty	200
5 February 2017	2 September 2017	Para 8, Sch. 55 FA 2009	6 month late filing penalty	300
5 March 2017	1 April 2017	Para 8, Sch. 55 FA 2009	Initial late filing penalty	100
5 March 2017	27 May 2017	Para 8, Sch. 55 FA 2009	2 months late filing penalty	200
5 March 2017	30 September 2017	Para 8, Sch. 55 FA 2009	6 month late filing penalty	300
5 April 2017	29 April 2017	Para 8, Sch. 55 FA 2009	Initial late filing penalty	100
5 April 2017	1 July 2017	Para 8, Sch. 55 FA 2009	2 months late filing penalty	200
5 April 2017	28 October 2017	Para 8, Sch. 55 FA 2009	6 month late filing penalty	300
			Total:	£8,300

3. The relevant law was set out in HMRC's Statement of Case and includes in particular Regulations 2 and 4 of the Construction Industry Scheme Regulations 2005.

The penalties for failing to file a return by the due date are set out in the Finance Act 2009, schedule 55, paragraphs 1 to 6.

The provisions concerning reasonable excuse are set out in the Finance Act 2009, schedule 55, paragraph 23.

The circumstances in which a special reduction because of special circumstances may be applied are set out in the Finance Act 2009, schedule 55, paragraph 16;

The Tribunal's powers on such appeals are set out in the Finance Act 2009, schedule 55, paragraph 22.

Full copies of the relevant legislation were included in HMRC's bundle and were provided to the Appellant. The legislation is familiar, no issue concerning legislation or case law arose and so it need not be set out here.

4. According to their Notice of Appeal, the Appellants had relied on their previous accountant to prepare and submit their monthly CIS returns. They believed he had done so. Their previous accountant died in November 2019. That accountant's negligence had caused the delay. The Appellants had taken reasonable care. They produced examples of text messages exchanged between them and their late accountant. The penalties should all be discharged.

5. No additional evidence was filed by the Appellants, neither of whom provided a witness statement or attended the remote hearing to give evidence.

6. Mr McLaughlin for the Appellants relied on the Notice of Appeal and reiterated that the Appellants had taken reasonable care. They were father and son, a groundworking partnership. They had depended on their late accountant and could not now get redress from him. Mr McLaughlin accepted that the penalty notices had been sent to the Appellants' address. They were not the only people affected by the accountant's default.

7. Mr Williams for HMRC relied on the Statement of Case. He submitted that that the Appellants were unable to show a reasonable excuse for their delay nor any special circumstances applicable to them. Had they received just a few penalty notices perhaps they could have shown that they had been misled by their former accountant, but it was clear that they had received at least 32 penalty notices which must have alerted them to a serious problem. The text messages they produced between them and their accountant were casual and did not show proper attention to the filing of the monthly returns. In any event, some of the texts produced related to VAT returns and were not relevant. There were no witness statements or live evidence. The appeal should be dismissed.

8. In reply, Mr McLaughlin submitted that the text messages produced were examples of the pattern of the client relationship. The Appellants had believed that matters were in hand.

9. The great difficulty with the Appellants' case is that they received a stream of penalty notices from HMRC, 52 in total. The Tribunal so finds. That alerted them to a serious and potentially costly problem with their monthly CIS returns. It is irrelevant that 14 of the notices were later cancelled by HMRC, because that cancellation was based on lateness of penalty notice grounds making them unenforceable, not because any of the overdue monthly returns had in fact been filed at that stage. While it may be thought reasonable that the Appellants accepted the assurances given to them by their former accountant for the first few penalty notices, after that alarm bells should have begun ringing loudly. This was a crucial compliance issue for their business. Correspondence from HMRC should not have been ignored. It remained the Appellants' responsibility to ensure that returns were filed, "nil" returns if appropriate.

10. The Tribunal finds that the Appellants have failed to show that they exercised reasonable care to ensure that their monthly CIS returns (those subject to penalties) were filed by the due dates. To the Appellants' credit, they did eventually put matters right, but that was far too late and long after they had been given repeated warnings by HMR. They failed to act promptly as they should have done as responsible taxpayers.

11. There was no evidence to support a finding that special circumstances existed which might have led to a special reduction. This is unfortunately a situation caused by the Appellant's own lack of supervision and it has to be said could have been avoided by them. The succession of penalty notices, as has already been observed above, had put them on alert. The amount of the penalties was fixed by parliament and while the Appellants may consider them harsh, it is clear that the penalties are incremental and that they relate directly to the policy objective in question, i.e., timely filing of CIS monthly returns. The penalties cannot be regarded as disproportionate. It follows that the appeal must be dismissed.

12. 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.

TRIBUNAL JUDGE MANUELL

RELEASE DATE: 14 December 2022