



TC03692

Appeal number: TC/2012/06483

Construction Industry Scheme – return received one day late – previously advised to obtain proof of postage – no proof offered – no reasonable excuse

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MIDLANDS ELECTRICAL CONTRACTORS LIMITED Appellant

- and -

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

TRIBUNAL: JUDGE ALASTAIR J RANKIN

The Tribunal determined the appeal on 22 May 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 14 June 2012 (with enclosures) and HMRC's Statement of Case submitted on 10 February 2014 (with enclosures).

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DECISION

1. The Appellant company is appealing against a late filing penalty of £100.00 in respect of the December 2011 monthly return under the Construction Industry Scheme due to be filed by 19 January 2012 but received by HMRC on 20 January 2012.
2. The Appellant company claims that the return for December 2011 was posted using the large letter postage stamp on 12 January 2012 and that it should not have taken eight days to reach HMRC.
3. Upon review by HMRC, the Appeal Review Officer reminded the Appellant company that it was advised by letter dated 16 May 2011 that if any future appeals against late filing penalties mention postal delays HMRC will require evidence of postage with the appeal.
4. The Appellant company by letter dated 10 May 2012 claimed that when they post any letter it is out of their hands and down to Royal Mail to deliver as paid for in the cost of the stamp. Eight days was above normal delivery times in its experience.
5. HMRC contend that the penalty may only be set aside if the Appellant company had a reasonable excuse. Although the company states that they recorded the date they posted the return no evidence has been provided to date.
6. HMRC further contends that it is the responsibility of the Appellant company to ensure the regulations are followed. This appeal does not contain anything which shows that something unexpected or unusual prevented the Appellant company submitting the return on time.
7. In the case of *The Commissioners for Her Majesty's Revenue and Customs and Anthony Boshier* [2013] UKUT 0549 (TCC) the Upper Tier Tribunal held that the scheme of the legislation coupled with the right to apply for judicial review does not infringe a taxpayer's rights under the European Convention on Human Rights and the Human Rights Act 1998. The Tribunal also held that the penalties (subject to mitigation in any particular case) imposed by the regime in general are not disproportionate.
8. The Tribunal agrees with the views of Judge Colin Bishopp in the First Tier Tribunal case of *Energys Holdings UK Limited* [2010] UKFTT 20 that 'it seems unlikely that a delay of only a day might ever, without more, amount to a reasonable excuse'.
9. Following the decision of the Upper Tier Tribunal in *Hok Ltd* the Tribunal has no jurisdiction to discharge or adjust a fixed penalty which is properly due because it thinks it is unfair.
10. Accordingly the appeal is dismissed and the penalty of £100.00 remains due for payment.

11. 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

RELEASE DATE: 06 June 2014

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