



TC01795

Appeal number: TC/2011/05190

Schedule 18 Finance Act 1998 - successive failures to file company tax return – whether shortage of funds to pay agent reasonable excuse – no – whether proportionality to be taken into account by Tribunal – no – appeal dismissed

FIRST-TIER TRIBUNAL

TAX

TORBENS RICHARD LIMITED

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE AND CUSTOMS**

Respondents

TRIBUNAL: MICHAEL S CONNELL (TRIBUNAL JUDGE)

The Tribunal determined the appeal on 9 November 2011 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 7 July 2011, HMRC's Statement of Case submitted on 13 September 2011.

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DECISION

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1. This is an appeal by TorbensRichard Limited against penalties imposed for the late filing of the company's tax returns for the accounting periods ending 30 November 2007, 30 November 2008 and 30 November 2009.
2. Under paragraph 3 of Schedule 18 of the Finance Act (FA) 1998, a company is legally bound to deliver a company tax return by the filing date as detailed in paragraph 14 of Schedule 18 FA 1998.
3. Paragraph 17(2) FA 1998 provides for flat rate penalties of £100.00 and £200.00 where a return is delivered within 3 months and paragraph 17(3) provides for the flat rate penalties to be increased to £500.00 and £1,000.00 respectively for a third successive late return.
4. Paragraph 18(2) provides for tax-related penalties of 10% if the return is delivered more than 18 months after, but within 2 years from, the end of the accounting period and 20% if the return is later than 2 years.
5. The company was legally bound to deliver its corporation tax for the accounting period ending (APE) 30 November 2007 by 30 November 2008. It was not delivered until 18 February 2010 and the period of default was therefore 445 days.
6. Because this was a third successive failure, the flat rate penalty of £1,000.00 was imposed on 17 March 2009.
7. A tax-related penalty was also imposed in the sum of £10.60 based on the corporation tax liability.
8. The company was legally bound to deliver a company tax return for the APE 30 November 2008 by 30 November 2009. The return was filed on 07 October 2010 and was therefore 311 days late.
9. Because this was again a third successive failure, the flat rate penalty of £1,000.00 was imposed on 16 March 2010 and a tax-related penalty was also imposed of £57.61 based on the corporation tax liability.
10. The company was legally bound to file a company tax return for the APE 2009 by 30 November 2010. At the date of the appeal the failure continued and therefore HMRC calculated the period of default up to 12 September 2011, being 287 days.

11. As this was again a third successive failure, the flat rate penalty of £1,000.00 was imposed and a 10% tax-related penalty was also imposed of £630.00 based on a Revenue determination estimating corporation tax at £6,300.00.

Appeal

5 12. On 13 October 2010 the Appellant's agent, Crowthers (Ripponden) Limited, appealed the penalties imposed for the years ending 30 November 2007 and 30 November 2008.

10 13. A company does not have a right of appeal against a Revenue determination but can supersede it with a self-assessment by making a return. The agent says that, with regard to the corporation tax return due for the APE 30 November 2009, the company has now supplied information to enable the agent to compile a set of accounts in order that a return can be made.

14. The agent's grounds of appeal on behalf of the Appellant company are :

15 (i) the Appellant company has not had the funds to pay the agent for compiling the accounts. The company's profits are very low. Cash flow is a constant problem and the company's overdraft limit is consistently exceeded. Indications are that, in respect of the APE 2009, a small loss has been made.

20 (ii) the agent also says that the director of the Appellant company is Danish and has difficulty understanding how the UK tax system works. The agent submits that the penalties are excessive and disproportionate to the amount of tax owed.

HMRC's Contentions

25 15. A company is expected to arrange its affairs to allow time to ensure that both its tax returns and all other relevant payments are made by the legislative due dates. The responsibility cannot be transferred or removed by the engaging of an agent and, although HMRC sympathises with the difficulties experienced by the Appellant in the current financial climate, this does not relieve the company of its obligation to file returns on time. A return can be made to the best of a taxpayer's knowledge if final figures are not available. This would have satisfied the company's filing obligation, ensuring that it would not become liable to a late filing penalty.

35 16. HMRC says there is no evidence that the company made any attempt to contact HMRC before the statutory filing dates to advise of any difficulties with regard to the filing of company tax returns, nor that the company made any request for an extension of the filing date under s.118(2) Taxes Management Act 1970.

17. HMRC says it can only act in accordance with legislation and that the penalties have been correctly charged. There is no provision within legislation to allow HMRC to take proportionality into account.

5 18. The company has been filing late returns and receiving late filing penalties since the accounting period ending 30 November 2004 and therefore HMRC argue it is reasonable to conclude that the Appellant is well aware of the requirement to deliver corporation tax returns and the consequences and penalties for late filing.

10 19. As at 30 September 2011 (being the date of HMRC's statement of case) the company tax return for the APE 30 November 2009 was still outstanding.

Conclusion

15 20. Penalties may only be set aside if they have been imposed incorrectly or the Appellant has a reasonable excuse for the failure. In this case, the penalties had been imposed correctly. 'Reasonable excuse' is not defined in legislation and therefore is given its normal everyday meaning. It would include something exceptional or out of the taxpayer's control which prevented the company's tax returns being filed. Ignorance of the legislation or shortage of funds to pay an agent to prepare returns cannot be deemed a 'reasonable excuse'.

20 21. Taking all the circumstances into account the Tribunal concludes that the Appellant has not shown a reasonable excuse existed throughout the period of default. Accordingly, the appeal was dismissed and the penalty determination confirmed.

25 22. 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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35 **MICHAEL S CONNELL**

TRIBUNAL JUDGE
RELEASE DATE: 31 January 2011

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