



TC03508

Appeal number: TC/2013/02498

CORPORATION TAX - penalty for late submission of return – whether there was a “reasonable excuse” – yes in part only

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

SPRINGFIELD CHINA LIMITED

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY’S
REVENUE & CUSTOMS**

Respondents

TRIBUNAL: JUDGE JOANNA LYONS

The Tribunal determined the appeal on 14 January 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 05 April 2013, HMRC’s Statement of Case (with enclosures) acknowledged by the Tribunal on 01 May 2013 and the appellant’s response dated 23 May 2013.

DECISION

Introduction

- 5 1. This is an appeal against a penalty of £200 imposed for the late filing of the Corporation Tax return for the Accounting period ending 31 March 2011.
2. Mr P E Jones appeals on behalf of the appellant company (“the company”)

The issue

- 10 3. Mr Jones appeals on the grounds that there is a reasonable excuse for the late submission of the return. He also makes a claim for costs and compensation against HMRC in the sum of £675.
4. HMRC oppose the appeal and the claim for compensation.

The law

Liability for the penalty

- 15 5. HMRC “may by notice require a company to deliver a return...of such information accounts, statements and reports .. as may be required by the notice”.
6. Paragraph 3 (1) Schedule 18 Finance Act 1998 (“FA”). “The return must be deliverednot later than the filing date”. Para 3(4) Schedule 18 FA.
7. Since 01 April 2011 there has been a requirement for returns to be filed electronically. The income and Corporation Taxes (Electronic Communications) Regulations 2003 as amended by SI 2009/3218. (“the regulations”)
- 20 8. Paragraph 17 Schedule 18 FA provides as follows :

“A company which is required to deliver a company tax return and fails to do so by the filing date is liable to a flat rate penalty ..

(2) The penalty is

- 25 (a) £100 if the return is delivered within three months after the filing date, and
- (b) £200 in any other case”

Reasonable excuse

- 30 9. The Tribunal can set aside a penalty if the company has a “reasonable excuse” for the late submission of the return throughout the default period, s118(2) Taxes Management Act 1970. (“TMA”)

10. In the case of *Rowland v HMRC [2006] STC (SCD) 536* it was decided that “reasonable excuse” was “a matter to be considered in the light of all the circumstances of the particular case”

Costs

- 5 11. Rule 10 of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 provides that the Tribunal may make an order for costs “if a party .. has acted unreasonably in bringing, defending or conducting the proceedings”

The facts

The agreed facts

10 12. The return for the accounting period ending (APE) 31 March 2011 was due to be filed online on 31 March 2012. The company made several attempts to file the return online before 31 March 2012 but were unable to do so due to technical difficulties.

15 13. The return was filed on paper on 30 March 2012. The company were advised that the return must be filed online and the filing date was extended to 30 June 2012.

14. The company again attempted to file the return online without success. On 18 June 2012 they were advised by HMRC that accounts had been filed in the wrong format. The return was filed electronically on 20 June 2012 via PDF attachment. However the return was rejected as the accounts were not in the correct format.

20 15. The return was not filed by the extended deadline of 30 June and on 17 July 2012 late filing penalty of £100 was imposed.

16. A paper return was submitted on 25 July 2012. This was refused by HMRC on 09 August as filing was required to be made electronically.

25 17. The electronic return had not been filed by 30 September 2012, within three months of the extended filing date and the late filing penalty was increased to £200 on 16 October 2012.

18. As at the date of the date of the statement of case, 01 May 2013, the return remained outstanding.

The contested facts

30 19. Mr Jones maintains that HMRC computer systems were not working correctly thereby making it impossible for them to file the return. In support of his case her refers to the fact that thirteen attempts were made to file the accounts and the return.

20. HMRC maintain that their computer system was working correctly and the problem originated from the operation of the company’s software.

The Arguments

The Appellant's case

21. Mr Jones maintains that the computer errors meant that they had no option but to file the return on paper. Mr Jones also makes a claim against HMRC for the costs
5 incurred in attempting to file the return.

The Respondent's case

22. HMRC do not accept that it was impossible for the electronic return to be filed. They consider that they acted reasonably in extending the due date for submission of the return by three months. They do not accept that they are liable to pay
10 compensation to the company.

Reasons for decision

Findings of fact

23. I am satisfied on the balance of probabilities that HMRC's Corporation tax online filing service was working correctly throughout the default period because
15 HMRC state that there were no reported problems during this time. Accordingly I find that any technical problems occurred within the computers operated by the company.

Liability for the penalty

24. I accept that the return was filed in paper form before the due date however the paper return was not an "approved form of electronic communication" as required by
20 the regulations. Accordingly I find that the return was not delivered by the due date and the penalty has been correctly imposed.

Reasonable excuse for the failure to submit the return by 30 June

25. I accept that the company made numerous attempts to comply with the online filing requirements before the due date including delivering the return by means of a PDF. However I find that HMRC took these difficulties into account and extended the
25 filing deadline to 30 June 2012.

26. I find that the company took active steps to resolve the problems before 25 July and filed the paper return in good faith.

Reasonable excuse for the failure to submit the return by 30 September

30 27. I find that on 09 August the company were aware that the paper return had been rejected and that they were required to resubmit the electronic return. I consider that the company could attempted to resolve the filing difficulties from 09 August onwards but failed to do so. In forming this view I take into account that the company

did not request any further assistance from HMRC nor did they attempt to resubmit the electronic return.

28. For these reasons I find that there is a reasonable excuse for failure to submit the return between 30 June and 09 August 2012 but there was no reasonable excuse for the continuing failure to file the return between 10 August and 30 September 2012.

Effect of the decision on the applicable penalty

29. Section 118(2) TMA above requires a taxpayer to establish a reasonable excuse for the late filing throughout the default period. I have found there to be a reasonable excuse for the late filing of the return for part of the default period between 30 June and 09 August 2012 but no reasonable excuse for the period between 10 August and 30 September. The effect of this decision is to reduce the default period before the penalty date from three months to seven weeks.

30. Accordingly the appropriate late filing penalty is reduced from £200 to £100 in accordance with Para 17(2) Schedule 18 FA (above).

Costs/compensation

31. Mr Jones applies for costs against HMRC for the inconvenience incurred in attempting to file the return. Rule 10 of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules provides that the Tribunal can make an order for costs if a party has behaved unreasonably in defending or conducting these proceedings. In view of my findings as set out above I do not find that HMRC have acted unreasonably and accordingly I have no power to make an order for costs.

32. The Tribunal has no jurisdiction to make an order for compensation.

Decision

33. There was a reasonable excuse for the failure to submit the return by the initial penalty date of 30 June 2012. The reasonable excuse continued until 09 August 2012.

34. There was no reasonable excuse for the continuing failure to file the return between 10 August and 30 September 2012.

35. The appeal against the penalty of £200 is allowed in part and the penalty is reduced to £100.

36. The application for costs and compensation against HMRC is dismissed.

Right of appeal

5 37. 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
10 “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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**JOANNA LYONS
TRIBUNAL JUDGE**

RELEASE DATE: 23 April 2014