



**TC03516**

**Appeal number: TC/2013/06690**

*CORPORATION TAX - penalties for late submission of return – whether the company was liable for the penalties – no in part - whether there was a “reasonable excuse” – no*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MINT BUSINESS SOLUTIONS LIMITED**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE JOANNA LYONS**

**The Tribunal determined the appeal on 02 April 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 20 September 2013, HMRC’s Statement of Case (with enclosures) acknowledged by the Tribunal on 30 January 2014 and the Appellant’s Reply dated 04 March 2014.**

## DECISION

### Introduction

- 5 1. This is an appeal against the following penalties imposed for the late filing of the appellant's Corporation tax return:
- (1) A flat rate penalty of £200 and a tax-related penalty of £559.30 for the late filing of the return for the specified period ending 30 April 2011.
- 10 (2) A flat rate penalty of £1,000 for the late filing of the return for the specified period ending 30 April 2012.
2. Roger Hatherall & Company accountants, ("the agent") represent the appellant company ("the company") and appeal on their behalf.

### The issues

- 15 3. The issues to be considered in this appeal are :
- (1) Whether the appellant is liable for the penalties
- (2) Whether the appellant has a reasonable excuse for the late return.

### The facts

#### *The agreed facts*

- 20 4. The agents have been registered for online filing of Corporation Tax returns since 24 April 2011.

#### *(a) Period ending April 2011*

- 25 5. The company was required to file an online Corporation Tax return for the specified period ending 30 April 2011. HMRC sent the company a notice to file on 23 May 2011. The filing date for the return was 30 April 2012.
6. The return was not filed by the due date and an initial penalty of £100 was imposed on 16 May 2011. The return remained outstanding on 31 July 2011, three months after the due date, and the penalty was subsequently increased to £200.
7. The return remained outstanding 18 months after the due date. HMRC issued a revenue determination on 14 November 2012 estimating the Corporation tax to be £13,596.58. A tax related penalty of 10% was issued on the same date. The return remained outstanding two years after the due date and the tax related penalty was increased to £559.30, being 20% of the estimated tax liability.
- 30 8. The Corporation tax return remains outstanding.

*(b) Period ending April 2012*

9. The company was required to file a Corporation Tax return for the specified period ending 30 April 2012. HMRC sent the company a notice to file on 20 May 2012. The filing date for the return was 30 April 2013.

5 10. The return was not filed by the due date. As this was deemed to be the third successive failure and the flat rate penalties were increased to £500 and £1,000 respectively. An initial penalty of £500 was imposed on 16 May 2013. The return remained outstanding three months after the due date and the penalty was increased to £1,000.

10 11. The return remains outstanding.

*The contested facts*

12. The agents state that they unsuccessfully attempted to activate their client's online authorisation code before and after the due date.

15 13. They contacted HMRC to investigate but were informed that they did not have the relevant authorisation from their client. The agents sent the authorisation form "64-8" to HMRC but this does not appear to have been processed. They attempted to file the return on paper but this was rejected. They contend that it was not possible for them to file the return online. In support of their case they have provided a printout showing authorisation failed dated 21 March 2013.

20 14. HMRC state that they did not receive the 64-8 authorisation form. Their records show that the agents did not attempt to contact the helpdesk for assistance from 01 January 2013 to the date of the appeal.

*Findings of fact*

25 15. I accept that the agents attempted to obtain the authorisation code on 21 March 2013 as they have provided evidence in support of their case.

16. I accept that the agents sent the form 64-8 to HMRC before the due date. However I am not satisfied that the form was received by HMRC as the agents have not provided any proof of posting and HMRC have no evidence of receipt.

**Liability for the penalty**

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*The law*

17. HMRC "may by notice require a company to deliver a return". Paragraph 3 (1). Schedule 18 Finance Act 1998 ("FA"). "The return must be delivered ....not later than the filing date". Para 3(4) Schedule 18 FA.

18. Since 01 April 2011 returns are required to be filed electronically. The income and Corporation Taxes (Electronic Communications) Regulations 2003 as amended by SI 2009/3218.

19. Paragraph 17 Schedule 18 FA provides as follows :

5                    “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

(a) £100 if the return is delivered within three months after the filing date, and

10                   (b) £200 in any other case”

(3) The amounts are increased to £500 and £1,000 for a third successive failure, that is where

(a) the company is within the charge to corporation tax for three consecutive accounting periods..

15                   (b) a company tax return is required for each of those periods,

(c) the company was liable to a penalty .. in respect of each of the first two [consecutive accounting periods] and

(d) the company is again liable to a penalty.. in respect of the third period”

20                   20. If the return is not filed 18 months after the due date the company becomes liable to a tax related penalty. Para 18, Schedule 18 FA.

“ (1) A company which is required to deliver a company tax return for an accounting period and fails to do so within 18 months of that period.. ..is liable to a tax related penalty”.

25                   (2) The penalty is

(a) 10% of the outstanding tax if the return is delivered within two years” of the end of the accounting period. And

(b) 20 % of the outstanding tax in any other case”

30                   21. HMRC has the burden of proving that the penalty has been incurred. *Jussila v Finland* 73053/01 [2006] ECHR Grand Chamber.

22. The Tribunal can set aside the penalty if it has been incorrectly applied. s100(1) Taxes Management Act 1970. (“TMA”)

*The arguments*

35                   23. The agents submit that they filed the return on paper as they were unable to file online. HMRC submit that company were required to file the return online and are liable for the penalties outlined above due to the length of the default.

*Reasons for decision*

24. I find that HMRC have discharged the burden of proving the penalties for the period ending 30 April 2011. The return was not delivered electronically within three months of the due date and the penalty of £200 is applicable in accordance with Para  
5 17(2) (b) Schedule 18 FA above. The tax related penalties were due as the return was not delivered electronically within two years of the due date. Para 18 (2) FA above.

25. For the period ending 30 April 2012, HMRC imposed the higher penalty as they deemed this to be the third successive late return.

26. The legislation defines a third successive failure as one in which there has been  
10 a charge to Corporation tax for three consecutive accounting periods and a liability for a penalty in two of the preceding periods. Paragraph 17 (3) (a) – (c) Schedule 18 FA above.

27. In this case there appears to have been a single accounting period in which penalties had been incurred namely the period 30 April 2011. HMRC have not  
15 established that there was a penalty imposed for the previous consecutive accounting period ending April 2010.

28. I am not satisfied that this was a third successive failure within the meaning of Para 17 (3) above and accordingly I am not satisfied that the company is liable to pay the higher penalty of £1,000. The effect of this decision is that the applicable penalty  
20 is reduced from £1,000 to £200.

**Reasonable excuse**

*The law*

29. 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) TMA.

25 30. 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”

31. The mere fact that responsibility had been delegated to a third party does not amount to a reasonable excuse. *Westbeach Apparel Uk Ltd v Her Majesty’s Revenue and Customs [2011] UKFTT 561*.  
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32. The Tribunal can look behind act of delegation in order to determine whether the third party, themselves, has a reasonable excuse. *Customs and Excise Commissioners v Steptoe [1992] STC 757*.

*The arguments*

33. The appellant submits that they have been effectively prevented from filing the return online due to authorisation errors beyond their control which prevented them from filing online.

- 5 34. HMRC submit that the agents have had numerous opportunities to resolve these problems before the due date but have failed to do so. They point out that the agents did not contact them to try to resolve any problems encountered in online filing. HMRC accept that the agents attempted to file the returns on paper but submit that this does not amount to an acceptable form of filing in accordance with the regulations.
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*Reasons for decision*

35. I accept that the company delegated the task of filing the return to their agents. However the mere act of delegation does not provide a reasonable excuse unless the agent can show that they took all reasonable steps to avoid the failure. In this case there is no evidence to show that the company took steps to monitor the actions of their agents.
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36. I accept that the agents experienced difficulties in online registration. However I am not satisfied that the agents took active steps to overcome these difficulties despite the lengthy default period. In making these findings I note that the agents had the opportunity to contact HMRC for advice regarding online filing but do not appear to have done so.
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37. I accept that an attempt was made to file the return on paper. However HMRC acted correctly in rejecting the return as the regulations require that the return is filed online.

- 25 38. For these reasons I do not find that there was a reasonable excuse for the late submission of the return throughout the period of the default.

**Decision**

39. The penalty of £1,000 imposed for the late filing of the return for the period ending 30 April 2012 has been incorrectly applied and the penalty is reduced to £200.

- 30 40. There was no reasonable excuse for the failure to submit the Corporation Tax return in relation to the periods ending 30 April 2011 and 30 April 2012.

41. The appeal against the penalties is allowed in part and the overall penalty is reduced from £1,759.30 to £959.30.

**Right of appeal**

42. 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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**JOANNA LYONS  
TRIBUNAL JUDGE**

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**RELEASE DATE: 23 April 2014**