



TC03574

Appeal number: TC/2013/09680

*MACHINE GAMING DUTY - penalty for late submission of return –
whether there was a “reasonable excuse” - yes – appeal allowed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**FU JINXIN LTD
t/a KINGS ARMS**

Appellant

- and -

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

TRIBUNAL: JUDGE JOANNA LYONS

The Tribunal determined the appeal on 11 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 December 2013 and HMRC’s Statement of Case (with enclosures) acknowledged by the Tribunal on 12 February 2014.

DECISION

Introduction

- 5 1. This is an appeal against a penalty of £100 imposed for the late filing of the Machine Gaming Duty Return for the three month period ending 31 July 2013. The penalty was imposed in accordance with Paragraph 13 Schedule 55 Finance Act 2009.
2. Mr Xue Ling Weng appeals on behalf of the appellant company (“the company”).

10 The issue

3. Mr Weng appeals on the grounds that he has a reasonable excuse for the late filing of the return. This is opposed by HMRC.

Law

4. In so far as it is relevant to this appeal the relevant law is set out below.

15 *Obligation to file the return*

5. A registered person (“RP”) has an obligation to provide HMRC with a Machine Games Duty return 30 days after the end of the accounting period, Paragraph 12 (1) Machine Games Duty Regulations 2012.

Imposition of penalty

- 20 6. If the return is not filed by the due date a penalty of £100 is payable in accordance with paragraph 13 Schedule 55 Finance Act 2009 (“FA”).

Reasonable excuse

7. Paragraph 23(1) FA provides that “Liability to a penalty does not arise ... if the person satisfies the Tribunal that there is a reasonable excuse for the failure”.
- 25 8. Paragraph 23 (2) (c) provides “Where a person had a reasonable excuse for the failure but the excuse ceased he is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased”
9. There is no statutory definition of the term “reasonable excuse”. Case law has established that a reasonable excuse “is a matter to be considered in the light of all the
- 30 circumstances of the particular case”. *Rowland v HMRC* [2006] STC (SCD) 536.

Burden of proof

10. HMRC has the burden of proving that the penalty has been incurred. The taxpayer has the burden of proving that there was a reasonable excuse. *Jussila v Finland (75053/01) [2006] ECHR 996*.

5 **The facts**

The agreed facts

11. The requirement for registered persons to file Machine Gaming Duty Returns was introduced on 01 February 2013 in accordance with the Machine Gaming Duty Regulations 2012 (“the regulations”).

10 12. The company was designated as a “registered person” in accordance with the regulations. It is not clear from the evidence whether the company were required file a return for the period 01 February to 30 April 2013 and if so whether the return was submitted on time. The collections history shows that the first collection was made on 06 May 2013.

15 13. HMRC exercised their discretion not to impose penalties for the first set of returns due on 30 May 2013. They have not provided any evidence to show that they exercised this discretion in relation to the company.

14. The company were required to file a Machine Gaming Duty Return for the period 01 May to 31 July 2013. The due date for delivery of the return and payment of the tax was 30 August 2013. The return was received on 02 September 2013 together with a cheque for £624.

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15. On 07 September HMRC issued the company with a penalty in the sum of £100 for the late filing of the return. They did not impose a penalty for the late payment of the tax due but issued a letter or warning.

25 *The contested facts*

16. Mr Weng states that his first return was due for the period ending 31 July. He was unfamiliar with the format of the return and required assistance from his supplier in completing it. He sent the return to HMRC on 20 August together with a cheque dated 24 August. The cheque and payment were sent to HMRC in the correct envelope and he cannot account for the delay in receipt which he attributes to postal delays.

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17. HMRC do not accept that the return was sent on 20 August as Mr Weng has not provided proof of posting and the date is inconsistent with the date on the cheque.

The arguments

The appellant's case

18. Mr Weng submits that he has a reasonable excuse for the late return as he sent the return on 20 August in good time for it to be delivered for 30 August.

5 *The Respondent's case*

19. HMRC do not accept that there is a reasonable excuse due to postal delays for the reasons given above.

Reasons for decision

Findings of fact

10 20. I am satisfied that this was the company's first default in accordance with the regulations because HMRC have not provided any evidence of a default for the period ending 30 April and this explanation is consistent with the agreed collections history. In addition HMRC issued a warning for the late payment of the tax due for the period ending 31 July and it is unlikely that they would have issued such a warning had this
15 been a second late payment.

21. I do not find that the date on the cheque is inconsistent with the date of posting. Indeed it would have been reasonable for Mr Weng to have assumed that the return would be received on or before 24 August and to have dated the cheque accordingly.

20 22. I accept that Mr Weng has not provided proof of posting. However I do not find that this undermines Mr Weng's evidence as to the date of posting because he appears to have been unfamiliar with filing such returns and may not have appreciated the need to send the return by recorded delivery.

23. For these reasons I am satisfied on the balance of probabilities that the return was posted on 20 August 2013.

25 *Reasonable excuse*

24. I am satisfied that Mr Weng posted the return in sufficient time to it to be received by HMRC before the due date. In forming this view I take into account that the return was posted on 20 August leaving sufficient time for it to be received on time and that it was received by HMRC only two days after the due date.

30 25. I take into account that this was the company's first Machine Gaming Duty Return and Mr Weng was unfamiliar with the filing process.

26. For these reasons I find that there was a reasonable excuse for the late filing of the return.

Decision

27. There was a reasonable excuse for the late filing of the return

28. The appeal against the penalty of £100 is allowed.

Right of appeal

5 29. 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
10 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**

RELEASE DATE: 7 May 2014

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