



**TC03691**

**Appeal number: TC/2012/05940**

*Construction Industry Scheme – late filing – four late returns – no proof of posting  
– no excuses offered by Appellant- penalties upheld*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**CHRISTOPHER CUNNINGHAM  
t/a CUNNINGHAM CONSTRUCTION**

**Appellant**

**- and -**

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

**Respondents**

**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 22 May 2012 (with enclosures) and HMRC's Statement of Case submitted on 11 March 2014 (with enclosures).**

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## DECISION

1. The Appellant is appealing against the imposition of late filing penalties under the Construction Industry Scheme for the periods commencing 5 October 2009, 5  
5 May 2010, 5 August 2010 and 5 January 2011. The penalties total £2,700.00 but were reduced under the mitigation process to £1,700.00.

2. The Appellant when asking HMRC to carry out a review confirmed that the monthly returns had been submitted through the post within the deadline. He further stated that it was not his fault that the returns were not received by HMRC.

10 3. HMRC wrote to the Appellant on 6 January 2012 advising that the returns for the periods ending 5 August 2010 and 5 January 2011 were both received on 26 October 2011.

15 4. By letter dated 19 May 2011 the Appellant confirmed that he had no proof of posting and that all the proof he should need was the postage stamp he placed on the envelope. However under the legislation it is the Appellant's responsibility to ensure the monthly returns are received by HMRC by the due date of the 19<sup>th</sup> of each month.

20 5. The penalties in relation to this appeal span a period of 15 months. The fact that two returns were received on the same date has not been addressed by the Appellant in his Notice of Appeal nor has any supporting evidence been produced concerning the date of posting each return.

6. HMRC has no record of the Appellant contacting the Construction Industry Scheme helpline for guidance and advice if problems were being encountered in the submission of returns.

25 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  
30 disproportionate.

8. Accordingly in the absence of any proof of posting by the Appellant and of any reasonable excuse the appeal is dismissed.

9. The penalties reduced to £1,700.00 remain due for payment.

35 10. 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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