



TC03694

Appeal number: TC/2013/07895

Construction Industry Scheme – return received two days late – previously advised to obtain proof of postage – no proof offered – no reasonable excuse

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

R P WOODS

Appellant

- and -

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

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 7 November 2013 (with enclosures) and HMRC's Statement of Case submitted on 16 December 2013 (with enclosures).

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DECISION

- 5 1. The Appellant is appealing against a late filing penalty of £100.00 in respect of the July 2013 monthly return under the Construction Industry Scheme due to be filed by 19 August 2013 but received by HMRC on 21 August 2013.
2. The Appellant claims that he was on holiday until 21 August and filed the return as soon as he returned home.
- 10 3. Upon review by HMRC, the Review Officer reminded the Appellant that he was sent guidance letters on 25 November 2010 and 21 January 2013 which reminded him of his obligations as a contractor and that he needed to have appropriate measures in place to ensure the monthly returns were filed by the 19th of each month regardless of weekends or holidays.
- 15 4. The Appellant also advised HMRC that his cash flow balance was delicate and the penalty would make a lot of difference to him.
5. HMRC contend that the penalty may only be set aside if the Appellant had a reasonable excuse. As it was possible for the Appellant to submit returns for up to three periods in the future there was no reason why he could not have submitted the return before he went on holiday.
- 20 6. A previous return had been submitted late as the Appellant had been working away from home. HMRC accepted on that occasion that the Appellant had a reasonable excuse but advised him that in future all returns should be filed on time.
- 25 7. HMRC further contends that it is the responsibility of the Appellant to ensure the regulations are followed. This appeal does not contain anything which shows that something unexpected or unusual prevented the Appellant submitting the return on time or before he went on holiday.
- 30 8. 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 disproportionate.
- 35 9. The Tribunal agrees with the views of Judge Colin Bishopp in the First Tier Tribunal case of *Energys Holdings UK Limited* [2010] UKFTT 20 that 'it seems unlikely that a delay of only a day might ever, without more, amount to a reasonable excuse'.

10. Following the decision of the Upper Tier Tribunal in Hok Ltd the Tribunal has no jurisdiction to discharge or adjust a fixed penalty which is properly due because it thinks it is unfair.

5 11. Accordingly the appeal is dismissed and the penalty of £100.00 remains due for payment.

10 12. 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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