



**TC06659**

**Appeal number: TC/2018/00918**

***CONSTRUCTION INDUSTRY SCHEME – late return – amounts paid on  
time – whether reasonable excuse - no***

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**GORDON WEIR**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE ANNE FAIRPO**

**The Tribunal determined the appeal on 27 June 2018 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 31 January 2018 (with enclosures), HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 16 March 2018.**

## DECISION

1. This is an appeal against a penalty of £100 for late filing of a Contractor's  
5 Monthly return (CIS300) required under the Construction Industry Scheme for the period ended 5 October 2017.

2. Regulation 4 of the Income Tax (CIS) Regulations 2005 requires that a return  
under the Construction Industry Scheme (CIS) rules must be made to HMRC in an  
approved form no later than 14 days after the end of each tax month. A tax month  
10 runs from the 6<sup>th</sup> of one month to the 5<sup>th</sup> of the following month and so a return is due  
by the 19<sup>th</sup> of each month.

3. The filing deadline for the return for the period ended 5 October 2017 was  
therefore 19 October 2017. It is not disputed that the return was filed online on 20  
October 2017.

### 15 **Appellant's submissions**

4. In his grounds of appeal, the appellant (Mr Weir) stated that he uses SAGE  
payroll software which generates a CIS report each month when he sends PAYE  
information to HMRC. He confirms in his grounds of appeal that the relevant return  
was sent on 20 October 2017 at 12:39.

20 5. Mr Weir states that the amount due was £367.52, but that he had paid £694.20  
in error and so had overpaid £326.68.

6. He explains that he does not "understand the problem with this as it was paid,  
sent and a receipt issued on time".

7. Mr Weir's earlier appeal to HMRC, on 20 December 2017, gives an alternative  
25 ground for appeal, that the return was a nil return.

### **HMRC submissions**

8. HMRC, in summary, submit that:

(1) It is Mr Weir's responsibility, as a contractor within CIS, to ensure that  
the Regulations are followed.

30 (2) Mr Weir registered for CIS on 31 October 2016 and has been filing  
returns since then; some of these returns have been filed late. When he  
registered for CIS, he received a contractor pack with all the relevant  
information required to operate CIS, including filing deadlines and penalty  
charges together with the CIS Helpline phone number.

35 (3) A letter was also sent to Mr Weir on 10 February 2017 confirming that  
monthly returns should be sent by the 19<sup>th</sup> of each month.

(4) The return for the period ended 5 October 2017 was not a nil return, as stated in Mr Weir’s original appeal to HMRC and this is demonstrated in his grounds of appeal.

9. HMRC consider that there is no reasonable excuse presented for the late filing.  
5 They have considered whether there are any special circumstances which would allow a reduction of the penalty and have concluded that there are no such special circumstances in this case.

### **Discussion**

10. It is agreed that the return for the period ended 5 October 2017 was filed on 20  
10 October 2017, as Mr Weir has confirmed this in his grounds of appeal. The return was therefore filed late.

11. Mr Weir’s grounds of appeal also state that the return “was ... sent ... ontime  
(sic)”. I have taken it, therefore, that he is appealing on the basis that the return was  
not late. Mr Weir does not say why he considers that the return was sent on time given  
15 that he states that it was sent on 20 October 2017.

12. I have taken Mr Weir’s earlier grounds of appeal to HMRC, that the return was  
a nil return, to be an error as Mr Weir’s appeal to this tribunal makes it clear that the  
return was not a nil return.

13. It is clear from the legislation and from HMRC material sent to Mr Weir and  
20 also publicly available that the deadline for filing a CIS monthly return is the 19<sup>th</sup> of  
the month and not the 20<sup>th</sup> of the month (or, indeed, later than the 20<sup>th</sup>).

14. I find, therefore, that Mr Weir has misunderstood the deadline for filing the  
return. The penalty will apply unless he can be said to have a reasonable excuse for  
that misunderstanding which led to the late filing. No explanation has been given for  
25 his statement that the return was filed on time on 20 October 2017 and so Mr Weir  
cannot be said to have a reasonable excuse for the late filing of the return.

### **Decision**

15. The appeal is dismissed and the penalty of £100 confirmed.

16. This document contains full findings of fact and reasons for the decision. Any  
30 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)”  
35 which accompanies and forms part of this decision notice.

**ANNE FAIRPO**

5

**TRIBUNAL JUDGE**  
**RELEASE DATE: 9 August 2018**