



TC06886

Appeal number: TC/2018/02891

Corporation tax - penalties for late filing of Corporation Tax return and late payment of Corporation Tax - Appellant delegated preparation and submission of return to accountant who failed to submit the accounts on time - payment by Appellant of tax to incorrect account (PAYE rather than CT) with HMRC - error by HMRC in not identifying erroneous allocation - whether reasonable excuse - no - appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

NISBET MARINE SERVICES LIMITED

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE MICHAEL CONNELL

The Tribunal determined the appeal on 29 August 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 28 April 2018 and HMRC's Statement of Case received by the Tribunal on 12 June 2018. The Tribunal wrote to the Appellant on 20 June 2018 stating that if it wished to reply to HMRC's Statement of Case it should do so within 30 days. No reply was received.

DECISION

Appeal

1. This is an appeal by Nisbet Marine Services Limited ('the Appellant') against both flat-rate and tax-related penalties, totalling £1,369.24 imposed by the Respondents ('HMRC') for the late filing of the Appellant Company's corporation tax return for the accounting period ending ('APE') 31 October 2015.

Background

2. The Company was incorporated on 23 October 2013. Its main business activities are described as 'repair and maintenance of ships and boats; sea and coastal passenger water transport, tour operator activities'. Its sole director is Barry David Nisbet.
3. The legislation at Paragraph 3 Schedule 18 Finance Act ('FA') 1998 requires a Company to deliver a corporation tax ('CT') return. Paragraph 14 Schedule 18 FA 1998 stipulates a date 'the filing date' by which the return should be filed.
4. Where the CT return is not filed by the filing date, the Company will be charged a flat-rate penalty in accordance with Paragraph 17 Schedule 18 FA 1998.
5. The penalty is £100 where the return is up to 3 months after the filing date and £500 for persistent failure, that is a third successive failure. If the return is delivered more than 3 months after the filing date the penalty is again £100, and again a further £500 for persistent failure.
6. If the Company fails to file a return within 18 months after the end of the accounting period, or the filing date if later than that, they are liable to a tax-related penalty in accordance with Paragraph 18 Schedule 18 FA 1998.
7. The penalty is 10% of the unpaid tax, if the return is delivered within 2 years after the end of the period for which the return is required, or 20% of the unpaid tax in any other case.
8. "Unpaid tax" is defined at Paragraph 18(3) Schedule 18 FA 1998 and means the amount of tax payable by the Company for the accounting period for which the return was required which remains unpaid on the date when the liability to the penalty arises.

Reasonable excuse

9. Section 118(2) Taxes Management Act ('TMA') 1970 provides statutory protection from a penalty if the Company had a reasonable excuse for failing to file their return on time.
10. The FA 2009 Schedule 56 paragraph 16 and Schedule 55 paragraph 23 specify that reliance upon another person to do anything is not a reasonable excuse, unless the person took reasonable care to avoid the failure.
11. There is no statutory definition of "reasonable excuse". Whether or not a person had a reasonable excuse is an objective test and "is a matter to be considered in the

light of all the circumstances of the particular case” (*Rowland V HMRC* (2006) STC (SCD) 536 at paragraph 18).

12. HMRC’s view is that the actions of the taxpayer should be considered from the perspective of a prudent person, exercising reasonable foresight and due diligence,
5 having proper regard for their responsibilities under the Tax Acts. The decision depends upon the particular circumstances in which the failure occurred and the particular circumstances and abilities of the person who failed to file their return on time.

13. The test is to determine what a reasonable taxpayer, in the position of the
10 taxpayer, would have done in those circumstances and by reference to that test to determine whether the conduct of the taxpayer can be regarded as conforming to that standard. If there is a reasonable excuse it must exist throughout the failure period.

14. The onus of proof is for HMRC to show that the penalties have been correctly
15 calculated. The burden then shifts to the Appellant to demonstrate that a reasonable excuse exists for the default.

APE-31 October 2015

15. HMRC sent the Appellant a notice to file a CT return for the APE 31 October
2015 on 22 November 2015. The return was due to be filed no later than 31 October
2016.

20 16. The CT return was filed online on 24 November 2017. This is 389 days late.

17. As the return was not received by the filing date or within the following 3 months,
HMRC charged the Appellant a late filing flat-rate penalty on 16 February 2017 of
£200 in accordance with paragraph 17(2)(b) Schedule 18 FA1998.

25 18. As the return was not filed within 18 months after the end of the accounting
period [31 March 2017] a tax related penalty is chargeable under Paragraph 18(2)
where any tax is unpaid.

19. HMRC sent the Appellant a revenue determination on 25 July 2017 estimating the
CT charge at £9,000 and a 10% tax related penalty of £900 was issued at the same
time.

30 20. HMRC sent the Appellant a notice of further penalty determination on 16
November 2017 increasing the 10% tax-related penalty of £900 to a 20% penalty of
£1,800 in accordance with Paragraph 18(2) (b) Schedule 18 FA 1998.

35 21. When the return was received on 24 November 2017 a charge of £6,898.40
replaced the original estimated amount. As the CT liability was less than the revenue
determination, the tax-related penalty was revised accordingly, the amended penalty
notice being issued on 29 November 2017, reducing the penalty to £1,379.68.

22. On 8 December 2017 a charge of £5,846.20 replaced the previously reduced CT
charge (carried back losses) and the penalty was reduced to £1,169.24.

The Appeal

23. On 11 December 2017 the Appellant's agent, Paul F Eyles, appealed against the tax geared penalties, on the grounds that the CT for the year to 31 October 2015 was paid in April 2017 and was not outstanding.
- 5 24. He said that the amount of £7,200 was paid at that time and remained unallocated in HMRC's account for the Company.
25. HMRC sent the Appellant a decision letter on 7 February 2018 rejecting the appeal and offering a review.
- 10 26. On 5 March 2018 the Appellant's agent requested a review of HMRC's decision, saying that payment of tax for the accounting period 31 October 2015 was made before the penalties were raised: therefore no tax was outstanding at the time penalties were raised.
27. HMRC carried out a review and issued their review conclusion on 5 April 2018. The outcome of the review was that HMRC's decision should be upheld.
- 15 28. On 28 April 2018 the Appellant's agent notified an appeal to the Tribunal, giving the grounds as, "all Company accounts for the period up to 31 October 2015 were delivered to the accountant in July 2016. The agent filed the tax return by the due date of 31 July 2016, however HMRC's system failed to log the return and the Appellant and the agent have been trying since November 2016 to file the return".
- 20 29. The Appellant disputes HMRC's claim that the tax remained unpaid after 18 months, saying that a payment of £7,500 had been made to HMRC on 12 May 2017 as HMRC had not notified the tax due for the period 2014-15 until 29 November 2017 sent a tax bill for this accounting period.
- 25 30. The Appellant asked for the penalty charge to be cancelled and HMRC to acknowledge that they held £7,500 paid on account for over 12 months. The Appellant also asked for a £1,654 overpayment to be repaid and some recognition of the distress and inconvenience caused.

HMRC view

- 30 31. This appeal is not concerned with specialist or obscure areas of tax law. It is concerned with the ordinary every day responsibilities of the Appellant to ensure that their CT returns were filed by the legislative due date.
- 35 32. A Company's obligation to file a Company tax return is not automatic. It has to be imposed by a notice to file specifying a period for which the Company must make a return. Usually this specified period corresponds with the Company's accounting period it must send in a Company tax return for that return period.
33. Under Paragraph 3 Schedule 18 FA 1998 a Company is required to file with HMRC a complete Company tax return on or before its filing date. A complete return needs to be correctly submitted and received by HMRC before it is deemed to have been

validly delivered and the Company's filing obligation met. Under Paragraph 4 Schedule 18 FA 1998 a CT return is not deemed to have been delivered if any component is missing, incomplete or in an incorrect format.

5 34. The Income and Corporation Taxes (Electronic Communications) Regulations 2003 as amended by SI 2009/3218 states that from 1 April 2011 onwards companies must submit their CT returns online for any accounting period ending after 31 March 2010. Furthermore if they have to prepare accounts under the Companies Act 2006, they must submit their accounts and computations in a set format — Inline extensible Business Reporting Language (iXBRL).

10 35. Information about corporation tax, the requirement to file an electronic return, the completion of electronic returns, what is required to accompany the return, enrolling for CT online filing, penalties etc., is well within the public domain and widely available via the internet including HMRC's website and the Online Services Helpdesk.

15 36. All entities that are sent a notice to deliver a CT return are required to file that return online. Also, any organisation that is within the charge to CT must pay that tax (and any related payments, such as interest on tax paid late) electronically.

20 37. It is not enough to have a willingness to file a return; a Company must ensure that it has in place the necessary systems and processes to ensure its filing obligation is met. To that end it must exercise due diligence and foresight. In this case it is evident that the Company has not demonstrated the due level of prudence and diligence necessary to adhere to its filing obligation.

25 38. HMRC consider the actions of the Company from the perspective of a prudent Company exercising reasonable foresight and due diligence, having proper regard for its responsibilities under the Tax Acts. If there is a reasonable excuse it must exist throughout the period of default. HMRC also take into consideration the time period between the events occurrence and whether that time period was sufficient to allow alternative steps to be taken or arrangements to be made.

30 39. A Company does not discharge the responsibility to submit a return merely by seeking in good faith to submit a return online if the return is not received by the HMRC computer system.

35 40. Company accounts for the APE 31 October 2015 were submitted to Companies House on 31 July 2016. This is not the due date for the CT return to be filed with HMRC and does not relieve a Company from submitting a complete and valid CT return to HMRC. HMRC held no record of any attempts to submit a CT return on or prior to the filing date and no evidence of any attempted submissions had been provided by the Appellant or its agent.

40 41. As the CT return was not received by the filing date of 31 October 2016, HMRC issued an estimated determination of CT payable of £9,000 on 25 July 2017. There is no avenue to appeal such a determination, but it can be superseded with self-

assessment by making a return within the time limits under Paragraph 40 Schedule 18 FA 1998.

42. The Appellant was required to deliver a CT return for the accounting period ending 31 October 2015 on or before the filing deadline of 31 October 2016. As the
5 Appellant failed to do so within 2 years after the end of that period then the Appellant Company was liable to a tax related penalty under Paragraph 18 Schedule 18 FA 1998.

43. HMRC will not issue a paper reminder when payment is due. A Company is expected to keep up to date with its tax affairs and to check the 'CT Online View
10 Liabilities and Payments' to see when a payment is due. A Company has a responsibility to inform HMRC of any tax liability within 12 months of the end of an accounting period.

44. Corporation Tax must be paid not later than 9 months and 1 day after the end of the accounting period. The CT for the accounting period ending 31 October 2015 was
15 due on or before 1 August 2016. The CT return was due on or before 31 October 2016.

45. The agent telephoned HMRC on 2 November 2017 regarding a payment of £7,200 which he said was made for the APE 31 October 2015. HMRC were unable to trace this payment and therefore wrote to the Appellant requesting further information
20 regarding this payment.

46. The payment of £7,500 had a reference of 475NB05679 which is the PAYE Employer Reference and was therefore allocated to that record and not the Company CT record. As there was no tax outstanding on the PAYE Employer record the payment was recorded as an unidentified payment of £7,500 and was held in HMRC's
25 Overpayments and Accounting Summary account, which temporarily hold payments that cannot be allocated to a specific taxpayer record.

47. The funds had been allocated by the Appellant and/or the agent, to the Company's PAYE record. HMRC could not change the allocation until it was asked to do so by the Company in December 2017. Only when Mr Nisbet, Director of the Appellant
30 Company, faxed details of the payment of £7,500 to HMRC on 5 December 2017, were HMRC able to trace the payment to the PAYE Employer record for the Appellant and the amount was reallocated to the CT record on 14 December 2017.

48. On 29 November 2017 a reduction of the revenue determination was made reducing the tax due from £9,000 to £6,898.40 in accordance with the CT return and accounts submitted and a revised penalty determination was issued showing a tax
35 related penalty of £1,379.68 being 20% of the amount of CT now due of £6,898.40.

49. On 7 December 2017 an amount of tax carried back as a result of trading losses for the APE 31 October 2016 was allocated to APE 31 October 2015 of £1,052.20 reducing the tax due to £5,846.20 and a further revised penalty determination was
40 issued showing the tax related penalty reduced to £1,169.24.

50. No payment of £7,200 had been made by the Appellant to HMRC. This error, on the part of the agent, caused delays in tracing the payment of £7,500 which had account details relating to the PAYE Employer record and showed year 2014-15 for the Company instead of the Corporation Tax Unique Taxpayer Reference (UTR) and accounting period ending 31 October 2015.

51. The previous agent was still on HMRC records until 2 March 2017 when the Appellant notified HMRC of a new agent acting. HMRC will only update their records when advised by a customer to do so.

52. The imposition of a tax geared penalty is determined solely by legislation at Paragraph 18(1) Schedule 16 FA 1998, if a Company does not file a return within 18 months after the end of the accounting period or if the filing date is later than that, by the filing date.

53. The Appellant was required to deliver a CT return for the APE 31 October 2015 by 31 October 2016. The return was not received by HMRC's computer system until 24 November 2017, which is over two years after the end of the accounting period.

54. Therefore the Appellant was liable to a tax-related penalty under the above paragraph. This is in addition to any flat-rate penalty under paragraph 17. The penalty is 10% of the unpaid tax, if the return is delivered within two years after the end of the period for which the return is required. However, as the return was not submitted until 24 November 2017 a penalty charge at 20% of the unpaid tax was made.

55. HMRC contend that even if the payment of £7,500 had shown the correct details to be allocated to the CT account for the Appellant on the 12 May 2017, a tax related penalty would still be chargeable as the return was more than 2 years late and the amount of unpaid tax was still due at the time the liability to the penalty arose within 18 months after the end of the accounting period which was 30 April 2017.

56. CT legislation places the primary and sole responsibility of awareness of the Company's filing obligation and ensuring adherence to that obligation upon the Company. This obligation cannot be transferred to another person/body. Even if the Company engages someone to assist with that obligation, the responsibility for submitting and ensuring the returns are filed on time rest squarely on the shoulders of the Company.

57. Although an accountant may have been tasked by the Appellant to complete the return, successful submission of the return remains the responsibility of the Appellant at all times. It is also the responsibility of that Company to ensure their tax affairs are up to date, returns submitted and tax paid over by the due date.

58. In this case, it was the Appellant's choice to employ an agent to complete the Company accounts and file the CT return on the Company's behalf. Nevertheless the Appellant remained responsible for ensuring that a CT return and accompanying documentation was received by the relevant deadline and was liable to the automatic penalty if it is not.

59. If the Appellant feels that its agent has failed in his professional capacity or not followed specific instructions, then the Company should seek redress directly from the agent via its appropriate regulatory authority.

5 60. HMRC contend that no evidence has been provided by the Appellant or the agent, that any attempts to submit the return were made before 24 November 2017, and that the payment of £7,500 was sent to HMRC with the incorrect reference number and therefore could not be allocated to the CT account.

61. There is no record held with HMRC of any contact made by the Appellant or the agent to report any difficulties in submitting the CT return.

10 62. Failure to submit a CT return on time gives rise to an initial penalty of £100, increasing by a further £100 after three months. After six months a further penalty equal to 10% of the estimated tax is raised and after 12 months a further 10%.

15 63. Tax related penalties are charged if a Company fails to submit a return on or before 18 months after the end of the accounting period. Therefore the tax related penalty charged of £1,169.24 is due and payable as the return for the accounting period ending 31 October 2015 was not received until 24 November 2017, which is more than 24 months after the end of the period.

Relevant statutory provisions

Taxes Management Act 1970 Section 118(2)

20 (2) For the purposes of this Act, a person shall be deemed not to have failed to do anything required to be done within a limited time if he did it within such further time, if any, as the Board or the tribunal or officer concerned may have allowed; and where a person had a reasonable excuse for not doing anything required to be done he shall be deemed not to have failed to do it unless the excuse ceased and, after the excuse ceased, he shall be deemed not to have failed to do it if he did it without unreasonable delay after the excuse had ceased.

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Finance Act 1998, Parts I & II

Schedule 18

Paragraph 2 - Duty to give notice of chargeability

(1) A Company which-

30 (A) is chargeable to tax for an accounting period, and
(b) Has not received a notice requiring a Company tax return, must give notice to [an officer of Revenue and Customs] that it is so chargeable.

(2) The notice must be given within twelve months from the end of the accounting period.

35 (3) A Company which fails to comply with this paragraph is liable to a penalty not exceeding the amount of tax payable for the accounting period in question that remains unpaid twelve months after the end of the period.

(4) In computing the amount of unpaid tax for this purpose, no account shall be taken of any relief under [section 458 of the Corporation Tax Act 2010] (relief in respect of repayment, etc. of loan) which is deferred under [subsection (5)] of that section.

Paragraph 3 -Company tax return

5 (1) An officer of Revenue and Customs may by notice require a Company to deliver a return (a "Company tax return") of such information, accounts, statements and reports–

(A) Relevant to the tax liability of the Company, or

(b) Otherwise relevant to the application of the Corporation Tax Acts to the Company, as may reasonably be required by the notice.

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(2) Different information, accounts, statements and reports may be required from different descriptions of Company.

(3) A Company tax return must include a declaration by the person making the return that the return is to the best of his knowledge correct and complete.

15 (4) The return must be delivered to the officer of the Board by whom the notice was issued not later than the filing date.

(5) Sub-paragraph (1)(b) has effect as if the reference to the Corporation Tax Acts included a reference to sections 911, 912, 914 and 915 of the Income Tax Act 2007.

Paragraph 4 - Meaning of delivery of return

20 References in this Schedule to the delivery of a Company tax return are to the delivery of all the information, accounts, statements and reports required to comply with the notice requiring the return.

Paragraph 5 - Period for which return required

25 (1) A notice requiring a Company tax return must specify the period to which the notice relates.

(2) If an accounting period of the Company ended during (or at the end of) the specified period, a return is required for that accounting period.

If there is more than one, a separate Company tax return is required for each, of them.

30 (3) If sub-paragraph (2) does not apply but an accounting period of the Company began during the specified period, a Company tax return is required for the part of the specified period before the accounting period began.

(4) If the Company was outside the charge to corporation tax for the whole of the specified period, a Company tax return is required for the whole of the specified period.

35 (5) If none of the above provisions applies, no Company tax return is required in response to the notice.

Paragraph 14 - Filing date

(1) The filing date for a Company tax return is the last day of whichever of the following periods is the last to end-

- (a) twelve months from the end of the period for which the return is made;
- 5 (b) if the Company's relevant period of account is no longer than 18 months, twelve months from the end of that period;
- (c) if the Company's relevant period of account is longer than 18 months, 30 months from the beginning of that period;
- (d) three months from the date on which the notice requiring the return was served.

10 (2) In sub-paragraph (1) "relevant period of account" means, in relation to a return for an accounting period, the period of account of the Company in which the last day of that accounting period falls.

Paragraph 17 -Failure to deliver return: flat-rate penalty

15 (1) 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 under this paragraph.

It may also be liable to a tax-related penalty under paragraph 18.

(2) The penalty is-

- (a) £100, if the return is delivered within three months after the filing date, and
- 20 (b) £200, in any other case.

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

- 25 (a) the Company is within the charge to corporation tax for three consecutive accounting periods (and at no time between the beginning of the first of those periods and the end of the last is it outside the charge to corporation tax), -
- (b) a Company tax return is required for each of those accounting periods,
- (c) the Company was liable to a penalty under this paragraph in respect of each of the first two of those periods, and
- 30 (d) the Company is again liable to a penalty under this paragraph in respect of the third period.

(4) The first or second period mentioned in sub-paragraph (3) may be a period ending before the self-assessment appointed day, in relation to which-

- 35 (a) the reference in paragraph (b) to a Company tax return shall be construed as a reference to a return under section 11 of the Taxes Management Act 1970, and
- (b) the references in paragraphs (c) and (d) to a penalty under this paragraph shall be construed as a reference to a penalty under section 94 of that Act.

Paragraph 18 - Failure to deliver return: tax-related penalty.

40 (1) A Company which is required to deliver a Company tax return for an accounting period and fails to do so-

- (a) within 18 months after the end of that period, or
- (b) if the filing date is later than that, by the filing date,

Is liable to a tax-related penalty under this paragraph.
This is in addition to any flat-rate penalty under paragraph 17.

(2) The penalty is-

- 5 (a) 10% of the unpaid tax, if the return is delivered within two years after the end of the period for which the return is required, and
(b) 20% of the unpaid tax, in any other case.

10 (3) The "unpaid tax" means the amount of tax payable by the Company for the accounting period for which the return was required which remains unpaid on the date when the liability to the penalty arises under sub-paragraph (1).

(4) In determining that amount no account shall be taken of any relief under section 419(4) of the Taxes Act 1988 (relief in respect of repayment, etc. of loan) which is deferred under subsection (4A) of that section.

15 **Finance Act 2009**

Schedule 55

Paragraph 23 Reasonable excuse [returns]

20 (1) Liability to a penalty under any paragraph of this Schedule does not arise in relation to a failure to make a return if P satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that there is a reasonable excuse for the failure.

(2) For the purposes of sub-paragraph (1)-

- 25 (a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside P's control,
(b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and
(c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

30 Schedule 56

Paragraph 16 Reasonable excuse [payment]

(1) If P satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that there is a reasonable excuse for a failure to make a payment-

- 35 (a) liability to a penalty under any paragraph of this Schedule does not arise in relation to that failure, and
(b) the failure does not count as a default for the purposes of paragraphs 6, 8B, 8C, 8G and 8H.

(2) For the purposes of sub-paragraph (1)-

- 40 (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P's control,

(b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and

(c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

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Conclusion

64. When a person appeals against a penalty they are required to have a reasonable excuse which existed for the whole period of the default. There is no definition in law of reasonable excuse, which is a matter to be considered in the light of all the circumstances of the particular case.

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65. A reasonable excuse is normally an unexpected or unusual event, either unforeseeable or beyond the person's control, which prevents him or her from complying with an obligation which otherwise they would have complied with.

66. CT legislation places the primary and sole responsibility of awareness of the Company's filing obligation and ensuring adherence to that obligation upon the Company. It cannot transfer this obligation to another. Even if it engages someone to assist with that obligation, the responsibility for submitting and ensuring the returns are filed on time rest squarely on the shoulders of the Company.

15

67. HMRC say that a Company must ensure that it has in place the necessary systems and processes to ensure its filing obligation is met. To that end, it must exercise due diligence and foresight.

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68. The filing date for the CT return for APE 31 October 2015 was 31 October 2016. The Appellant did not successfully submit its CT return until 24 November 2017. The payment of the total amount of CT due (at that time) was £6,898.40, which the Company should have paid in full no later than 9 months 1 day after the end of the accounting period (1 August 2016).

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69. As the return and payment of the tax due were both late, HMRC charged a tax-gearred penalty. Tax unpaid is the amount of tax payable by the Company for the APE for which the return was required, remaining unpaid on the date when the liability to the penalty arises.

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70. No evidence has been provided by the Appellant or the agent, that any attempts to submit the return were made before 24 November 2017, or that the payment of £7,500 was sent to HMRC with the correct reference number.

71. The due date for payment of APE 31 October 2015 was 1 August 2016. The Appellant made a payment of £7,500 and the effective date of payment was 19 May 2017. The payment was therefore late.

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72. No payment of £7,200 had been made by the Appellant as initially asserted by the agent. This was an error on the part of the agent and caused delays in tracing and allocating the payment of £7,500. The payment also referred to the Appellant's PAYE Employer record with HMRC.

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5 73. Even if the payment of £7,500 had shown the correct details to be allocated to the CT account on the 12 May 2017, a tax related penalty would still be chargeable as the return was more than 2 years late and the amount of unpaid tax was still due at the time the liability to the penalty arose within 18 months after the end of the accounting period which was 30 April 2017.

74. The amount of tax due was initially £6,898.40, but at the time HMRC issued the tax-geared penalty on 8 December 2017, it was £5,846.20. The amount of tax unpaid after 18 months and over 2 years after the filing date was £5,846.20. HMRC imposed the penalty at 20% of that amount equalling £1,169.24.

10 75. The Tribunal has some sympathy with the proprietor of the Appellant Company. However, although an agent may have been instructed by the Appellant to complete the return, its successful submission remains the responsibility of the Appellant. Similarly the Appellant bears responsibility for payment of the Company's CT on time.

15 76. Under Schedule 56 Paragraph 16 and Schedule 55 Paragraph 23 FA 2009 reliance on another person cannot be considered as grounds to support a reasonable excuse unless the taxpayer, that is the Appellant, took reasonable care to avoid the failure and where the taxpayer had a reasonable excuse for the failure but the excuse has ceased, the taxpayer is to be treated as having continued to have the excuse if the failure is
20 remedied without unreasonable delay after the excuse ceased. There is no evidence that the proprietor of the Appellant Company took any steps to verify that the Company's return had been made on time and the CT paid on time. If the Appellant considers that its agent has failed in his professional capacity or not followed specific instructions, then the Appellant may seek redress directly from the agent via the
25 appropriate regulatory authority.

77. In those circumstances the appeal must be refused and the penalties totalling £1,369.24 are confirmed.

30 78. 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 a Company a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

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**MICHAEL CONNELL
TRIBUNAL JUDGE**

RELEASE DATE: 19 DECEMBER 2018

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