



TC01344

Appeal number: TC/2010/07624

Penalty for late submission of monthly CIS returns – Appellant claimed postal delays – no evidence of post – whether reasonable excuse throughout the period of default – no – appeal dismissed.

FIRST-TIER TRIBUNAL

TAX

TONY BACON DECORATORS

Appellant

- and -

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

Respondents

TRIBUNAL: MICHAEL S CONNELL (TRIBUNAL JUDGE)

The Tribunal determined the appeal on 28 April 2011 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 17 September 2010, HMRC's Statement of Case submitted on 29 October 2010 and the Appellant's Reply dated 05 November 2010.

DECISION

1. This an appeal against the penalty imposed for the late submission of the monthly Construction Industry Scheme (CIS) return for the period ended 05 June 2010.
- 5 2. Regulation 4 of the Income Tax (CIS) Regulations 2005 stipulates that a contractor must send a completed CIS return for each monthly return period to reach HMRC by the 19th of the month (the filing date) in which the return period ended. A return period runs from the 6th of one month to the 5th of the next. If a return is received after this date it will be treated as being late. If a contractor has not paid any
10 sub-contractors during the month, a 'nil' return is still required.
3. The Appellant has traded within the new Construction Industry Scheme (CIS) and engaged sub-contractors since the scheme began on 06 April 2007. Prior to this, the Appellant traded within the old CIS since 06 April 2000.
- 15 4. The Appellant's CIS monthly return due for the period 06 May 2010 to 05 June 2010 was not received by HMRC until Wednesday 23 June 2010. The return should have been received no later than Saturday 19 June 2010. The period of default is therefore 4 days.
- 20 5. If a return is not received by the filing date the contractor will be liable to a late penalty for that period and any subsequent month, or part of a month, the return is still not received. Penalties are chargeable for each outstanding return at £100.00 a month per return.
6. HMRC issued a £100.00 penalty notice on 06 July 2010 for the late submission of the Appellant's monthly CIS return for the period ended 05 June 2010.
- 25 7. The Appellant submitted an appeal on 14 July 2010, saying that firstly the return had been submitted on time and that it had been posted using a large letter stamped envelope. The Appellant says he was unaware that he needed to produce evidence of proof of postage. He says that both he and his wife work long hours and that it would be difficult to get to the Post Office during opening hours to obtain proof of postage. The Appellant usually posts his return at a post box on his way to and from work.
30 The Appellant also says that he has never submitted his CIS returns late, he is aware of the penalty for late filing and cannot afford the penalties. He also says that his CIS return is always blank as he has not employed anyone for a long time and that it can be seen therefore that he is not trying to avoid payment. He feels that the penalty is unfair, particularly in respect of a 'nil' return.
- 35 8. Under the Income Tax (CIS) Regulations 2005, regulation 4, the contractor is legally bound to ensure that HMRC has received their return by the 19th of the month. HMRC contends that this is not the first occasion on which the issue of a late return has arisen. HMRC say that they upheld appeals against penalties imposed where postal delays had been given as a reason for the late returns for the months ended 05
40 June 2008, 05 December 2009 and 05 January 2010.

9. HMRC had issued an 'education letter' in February 2010 following a previous late submission of a CIS monthly return, reminding the Appellant of his responsibilities and legal obligations, including posting returns on time. The letter advised the Appellant that, if any future appeals against late filing penalties were on the basis of postal delays, evidence of posting would be required.

10. The Appellant says he had not employed sub-contractors for some time but had continued to complete 'nil' returns in case it was necessary to employ a sub-contractor.

11. Contractors who do not anticipate making any payments to sub-contractors can set periods of inactivity for periods of 6 months at a time and they can do this by notifying HMRC either by telephone or when completing the CIS return. Once a period of inactivity has been set, HMRC do not expect any further returns until the period ends or is extended by the contractor. The Appellant could therefore have arranged for his obligation to make 'nil' returns to be suspended until such time as it was necessary to resume the submission of returns.

12. The Appellant was clearly experienced in the CIS and conversant with the requirements of the CIS regulations to submit monthly returns on time. It was the Appellant's responsibility to ensure that the CIS monthly return was filed on time. The appeal does not contain any grounds which show a reasonable excuse as to why the return was received by HMRC late. The Appellant had not produced any evidence to show that the return was posted in time to reach HMRC no later than 19.06.10. There was nothing exceptional which prevented the Appellant from submitting his return on time and, given the previous instances when postal delays were cited as the reason for late submission, he should have obtained proof of posting to show that the return had been posted in good time.

13. In all the circumstances the Tribunal found that there was no reasonable excuse throughout the period of default for submission of the monthly return. Accordingly, the appeal was dismissed and the penalty of £100 confirmed.

14. 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.

MICHAEL S CONNELL

TRIBUNAL JUDGE
RELEASE DATE: 25 JULY 2011