



TC01345

Appeal number: TC/2011/00679

Penalty for late filing of company tax return under para 18(2)(a) Schedule 18 FA 1998 – no evidence to support Appellant’s contention that accounts had been submitted on time – whether reasonable excuse shown – no – appeal dismissed.

FIRST-TIER TRIBUNAL

TAX

GLOBALNET RESOURCES LTD

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 25 November 2010 and HMRC’s Statement of Case submitted on 23 February 2011. The Appellant did not file a Reply.

DECISION

1. This is an appeal against both the flat rate and tax-related penalties imposed by HMRC for the late filing of the Appellant's company tax return for the accounting period ending 30 November 2007.

2. The company's company tax return for the accounting period ending 30 November 2007 was due no later than 30 November 2008 but was not delivered until 24 June 2009; a period of default of 206 days. The return was therefore late according to the legislation at paragraph 14, Schedule 18 Finance Act (FA)1998.

3. An initial penalty of £100.00 was issued on 23 December 2008, increased to £200.00 on 17 March 2009. When the return was received on 24 June 2009 it showed the corporation tax liability to be £13,114.75. Accordingly, a tax-related penalty determination was issued on 20 July 2009 in the sum of £1,311.47 in accordance with paragraph 18(2)(a) Schedule 18 FA 1998 – the amount being 10% of the unpaid tax as the return was delivered within 2 years after the end of the period for which the return was required.

4. On 22 November 2009 the Appellant formally appealed the imposition of the penalties, saying that the return and draft accounts had been submitted to HMRC on time.

5. There was however no record of any return being received by HMRC for the accounting period ending 30 November 2007 before or by the due filing date and in fact, in correspondence with HMRC, the Appellant states that the company's accounts in draft together with tax computations and form CT600 was submitted to HMRC on 22 December 2008 and, again the Appellant says, by hand delivery to HMRC on 24 June 2009.

6. If the Appellant or its agent believed that the return had been successfully filed on time the first flat rate penalty notice issued on or shortly after 23 December 2008 and the second issued on or shortly after 17 March 2009 would have made them fully aware that this was not the case. However, a valid return was not received by HMRC until 24 June 2009.

7. The copy company accounts received by HMRC on 24 June 2009 clearly show, in the directions report and in the balance sheet, that they were approved by the company's board on 02 March 2009 and it is therefore reasonable to conclude that, if the accounts are a copy of those submitted as alleged by the agent earlier, then a valid return for the accounting period ending 30 November 2007 could not have been delivered to HMRC by the legislative due date of 30 November 2008, or on 22 December 2008 as stated by the Appellant's agent.

8. The documentary evidence before the Tribunal showed that the company tax return due on 30 November 2008 was received on 24 June 2009 as evidenced by the HMRC date stamp on the front page of the return and was logged by HMRC on 02 July 2009. If the Appellant believed that the return had been delivered on 22

December 2008, the fact that no acknowledgement was received should have alerted the Appellant and/or its agent to the fact that HMRC had not received the return. However, no contact was made with HMRC until the valid return was submitted on 24 June 2009.

5 9. Although the Appellant produced a copy of a letter dated 22 December 2008 to HMRC with draft accounts, draft tax computations and form CT600, there was no other evidence that the return and accompanying documentation had in fact been filed with HMRC on that date.

10 10. The Tribunal concluded that the Appellant had not filed its company tax return on time and had not shown a reasonable excuse for filing late, which existed throughout the whole period of default.

11. The Tribunal accordingly dismissed the appeal and confirmed the penalty determinations.

15 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)”
20 which accompanies and forms part of this decision notice.

MICHAEL S CONNELL

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**TRIBUNAL JUDGE
RELEASE DATE:25 JULY 2011**

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