



TC01383

Appeal number: TC/2011/02478

Penalty for late submission of corporation tax return – whether reasonable excuse – no – whether another reason to vacate the penalty – no – appeal dismissed.

FIRST-TIER TRIBUNAL

TAX

GR8GREEN LIMITED

Appellant

- and -

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

Respondents

TRIBUNAL: ANNE REDSTON (PRESIDING MEMBER)

The Tribunal determined the appeal on 28 July 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 29 March 2011, HMRC's Statement of Case submitted on 4 May 2011 and the Appellant's reply submitted on 24 May 2011.

DECISION

1. This is the appeal by Gr8green Limited (“the company”) against a penalty of £200 for the late filing of the company’s corporation tax (“CT”) return for the accounting period ended 31 May 2009.

2. There was no dispute that the return was filed late. The issues before the Tribunal are whether the taxpayer had a reasonable excuse, and if not, whether the Tribunal should vacate the penalty for one or more of the other reasons put forward on the company’s behalf.

10 **The law**

3. 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 Finance Act 1998 (“FA 1998”), Sch 18, para 17, which so far as relevant to this decision reads as follows:

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.”

4. FA 1998, Sch 18, para 19 provides an excuse for the late delivery of a return. It says:

“A company is not liable to a penalty under paragraph 17 (flat rate penalty) if—

25 (a) the period for which the return is required is one for which the company is required to deliver accounts under the Companies Act 2006, and

(b) the return is delivered no later than the last day for the delivery of those accounts to the registrar of companies.”

5. The provisions dealing with an extension of time to file the return, and with reasonable excuse, are set out in Taxes Management Act 1970 (“TMA”) s 118(2):

35 “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; 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.”

6. There is no definition in the legislation of a “reasonable excuse”. It has recently been held by this Tribunal that “an excuse is likely to be reasonable where the taxpayer acts in the same way someone who seriously intends to honour their tax liabilities and obligations would act.” *B&J Shopfitting Services v R&C Commrs* [2010] UKFTT 78 (TC).

7. In the case of *Dunk v General Commissioners for Havant (Dunk)* [1976] STC 460, *per* Goulding J, it was held that a taxpayer who is unable to deliver a completely correct return may submit it on an estimated basis and indicate this on the face of the return.

10 **The evidence**

8. The evidence provided to the Tribunal consisted of correspondence between the parties, together with:

- (1) The company’s accounts for the period ended 31 May 2009.
- (2) A copy of the company’s certificate of incorporation.
- 15 (3) A copy of Companies House Form 10 showing the company’s proposed first registered office.
- (4) A copy of Companies House Form 12, confirming the first registered office of the company, signed by Mr Portelli and dated 19 March 2007.
- 20 (5) A copy of Companies House Form AD01 changing the company’s registered office, received by Companies House on 26 May 2011.
- (6) A sample Notice to deliver a CT return.
- (7) HMRC’s record of the sending out to the company the Notice to file a CT return for the period ending 31 May 2009.
- 25 (8) The CT600 Guidance Notes.

The facts of the case

9. From that evidence I find the following facts.

10. The company was incorporated on 2 May 2007. Its year end was 31 May.

11. On 5 July 2009 HMRC issued a notice for the company to deliver the CT return for the accounting period ended 31 May 2009; it was sent to the company’s registered office at 192 Regent’s Park Road.

12. On 26 February 2010 the company filed its statutory accounts with Companies House. These showed turnover of £62.50 and losses of £461.

13. The CT return was due to be filed on 31 May 2010. It was not submitted, and so a flat rate penalty of £100 was issued on 23 June 2010. This was sent to the same registered office.

14. The company's registered office had changed on 26 May 2010 to 156 Regents Park Road, but HMRC were only informed of the change on 21 July 2010.

15. On 16 September a further penalty notice was issued, increasing the penalty to £200. This was sent to the new registered office.

5 16. On 5 October the company appealed the penalty, but was advised that the appeal could not be accepted until the return was filed. The return was then submitted on 22 November 2010. It showed losses of £464.19.

A preliminary issue

10 17. Before setting out the parties' submissions I deal with a preliminary point. Mr Portelli says that in September 1998, HMRC gave advice to another company with which he was involved, Regents Property Agents Limited. He says:

“A full tribunal hearing never took place which in turn makes the HMRC in breach of the European Convention on human rights.”

15 18. This Tribunal has no jurisdiction to consider any earlier dispute between Regent Property Agents Limited and HMRC, except to the extent that this earlier dispute forms part of Mr Portelli's reasonable excuse defence, which I discuss below.

Mr Portelli's submissions on behalf of the company

20 19. Mr Portelli states that the dispute between HMRC and Regents Property Agents Limited caused him significant stress and financial difficulty; he therefore has to work “up to fourteen hours a day, seven days a week” and that as a result he has “little time for paperwork”. In consequence the CT return was late.

20. He also says that:

25 (1) had HMRC been informed before the due date of his reasons for needing more time, he is confident an extension of time for filing his return would have been granted;

(2) the fine was excessive in the context of the company's turnover;

(3) the first penalty was delivered to the wrong address and “this constitutes non-delivery”, and “if the first penalty was not delivered then the second penalty cannot be raised”; and

30 (4) if the company return is delivered within time to Companies House, then the CT return is deemed to be delivered on time.

21. He also asks whether other penalty appeals have been allowed on similar facts to his own, and submits that, if this is the case, his should be allowed.

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22. Finally, he says that HMRC must prove that he does not have a reasonable excuse, and they cannot simply refuse to vacate the penalty because of:

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“the economic decline of the British economy and the associated cost cutting measures adopted by such public organisations as the HMRC and Companies House.”

HMRC’s submissions

23. HMRC say that:

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(1) The problems with Regent Property Agents Limited, which Mr Portelli states were caused by HMRC, related to that company and do not constitute a reasonable excuse for the late filing of this company’s CT return.

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(2) Pressure of work also does not constitute a reasonable excuse: those responsible for the tax affairs of a company are expected to arrange its affairs to allow sufficient time to complete and submit its tax return by the due date.

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(3) If Mr Portelli could not complete all the details of the return by the due date, it is acceptable to use estimates, see the case of *Dunk*.

(4) Alternatively he could have contacted HMRC to advise of any difficulties and to ask for help and advice, before the due date had passed; Mr Portelli made no contact with them.

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(5) Submitting the return on the due date is a legal obligation.

(6) The CT return form advises that there will be a penalty if it is sent in late, and this advice is also in the CT600 guidance.

(7) The company’s CT return was over three months late, and the penalty for this is stipulated in the legislation.

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(8) The notice to file was delivered to the company’s registered office, and so the company was aware of its obligation.

(9) The first penalty notice was delivered to the same address; HMRC were not informed until after the date of delivery that the registered office had changed. The penalty is not thereby invalidated.

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(10) Current legislation allows CT returns to be delivered jointly with the submission of accounts to Companies House. In the case of this company, the accounts had to be delivered by 28 February 2010 (nine months after 31 May 2009, the company’s accounting date) and were in fact filed on 26 February 2010. The CT return was not submitted at that time; nothing was received until the paper CT return was submitted in November 2010.

24. HMRC also provided Mr Portelli with a non-exhaustive list of circumstances where HMRC might accept a reasonable excuse existed.

Discussion and decision

25. The concept of “reasonable excuse” is not defined in legislation, but the approach of this Tribunal in *B&J Shopfitting Services* set out earlier in this decision provides helpful guidance.

5 26. I thus consider whether Mr Portelli, on the company’s behalf, behaved “in the same way someone who seriously intends to honour their tax liabilities and obligations would act.”

27. I find that a person who was seriously intending to honour his tax obligations would, despite other calls on his time, complete the tax return and submit it by the due date. It is of course true that this is not always possible – for example, a person may be too ill, or suffer a bereavement, or have records destroyed shortly before the filing date – and it is then that the reasonable excuse defence applies. But it is not enough simply to have “little time for paperwork”, even when, as here, the cause of that shortage of time is said to be overwork as a result of HMRC’s previous actions.

15 28. I recognise that Mr Portelli is aggrieved following his earlier experiences with Regent Property Agents Limited, and that he sees HMRC’s advice at that time as putting him in a position where he now has to work very hard. However, this does not allow him to delay compliance with filing obligations imposed by law on a completely separate company.

20 29. Although I agree with HMRC that it would have been possible for Mr Portelli to have met the company’s filing obligations by submitting estimated numbers (following the case of *Dunk* referred to above), I note that the CT return contains a single number - losses of £464.19.

25 30. This is the same figure as appears in the accounts of the company which were filed with Companies House on 26 February 2010. The completion of the CT return was therefore extremely straightforward and far from an onerous obligation

31. I thus find that the company did not have a reasonable excuse for not filing the return by the due date.

32. I have also considered Mr Portelli’s other submissions on the company’s behalf:

30 (1) Mr Portelli is of course correct to say that if HMRC had given him more time to submit the return, no penalty would have been incurred. This is the effect of the first part of TMA s 118(2) set out earlier in this decision. Whether HMRC would have given extra time seems to me extremely doubtful, given the evidence before the Tribunal. But as a question of fact no such request was made, and no extra time was given. There is no room in TMA s 118(2) for hypothesis. As no extra time was given, Mr Portelli can only seek to rely on the “reasonable excuse” defence set out in the second part of that subsection, and as discussed above, this does not succeed.

5 (2) Mr Portelli complains that the fine is excessive in the context of the company's turnover. However, the amount of the penalty is fixed by statute – the relevant provisions, FA 1998, Sch 18 para 17, are set out earlier in this decision. Neither HMRC nor this Tribunal have discretion to vary that amount.

10 (3) Mr Portelli also seeks to argue that HMRC's delivery of the penalty to the company's former registered office both invalidates that penalty and makes it impossible to increase it by a further £100. Neither of these submissions is correct. The penalty was levied on the company for not filing the return by the due date. Liability to the penalty is not affected by a failure to deliver a notice informing the company of that penalty. In any event, HMRC were not informed of the change of registered office until after the first penalty notice was sent out, and so could not have acted any differently.

15 (4) Mr Portelli also reads FA 1998, Sch 18, para 19 as providing the company with an excuse for not sending in the return on time. To benefit from this paragraph a company has to send in the CT return "no later than the last day for the delivery of those accounts to the registrar of companies". This company's CT return would therefore have had to be filed on or before 9 months after 31 May 2009, ie by 28 February 2010. In fact it was not filed until 22 November 2010. The company therefore cannot access the excuse provided by FA 1998, Sch 18, para 19.

25 33. Mr Portelli asked for more information about when HMRC accept a "reasonable excuse" defence. This was provided in the very comprehensive and clear letter from Ms Janet Wilkes of HMRC dated 5 January 2011; it was also set out in similarly straightforward fashion in the letter from Miss Slaughter, the HMRC Review Officer, dated 10 January 2011.

30 34. In conclusion, I dismiss both the company's reasonable excuse defence and the other reasons put forward by Mr Portelli on the company's behalf. I confirm the penalty of £200.

35 35. Finally, Mr Portelli seeks assurances that HMRC's refusal to vacate the penalty was not simply caused by the straitened economic times faced by the UK and/or because of the spending cuts suffered by HMRC and Companies House.

36. On the basis of the evidence provided and in accordance with the statutory provisions, HMRC's earlier decision to refuse to vacate the penalty has now been confirmed by this independent Tribunal. Perhaps this will provide Mr Portelli with the reassurance he is seeking.

40 37. 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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Anne Redston

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**TRIBUNAL PRESIDING MEMBER
RELEASE DATE: 8 AUGUST 2011**