



TC01556

Appeal number TC/2011/03815

Penalties for late filing of CT 600 company tax return and delivery of year end accounts; “reasonable excuse”; s.118(2) Taxes Management Act 1970 exceptional circumstances-meaning

FIRST-TIER TRIBUNAL

TAX

WORLD OF ENTERPRISE LIMITED

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY’S
REVENUE AND CUSTOMS (VAT)**

Respondents

TRIBUNAL: CHRISTOPHER HACKING (TRIBUNAL JUDGE)

Determined without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 (default papers cases) having first read the Notice of Appeal dated 13 May 2011, HMRC’s Statement of Case submitted on 24 June 2011 and the Appellant’s Reply dated 22 July 2011

DECISION

Background

1. This was an appeal against both flat rate and tax-related penalties imposed for the late filing of the appellant's Company Tax return for the accounting period ending 31 October 2008. The appellant requested and was granted a review of the decision by HMRC. By a letter dated 13 April 2011 HMRC confirmed that it had completed its review and had come to the conclusion that its decision concerning the imposition of penalties as set out in its letter of 16 February 2011 was correct.

2. The return was due to have been filed by no later than 31 October 2009 but was not delivered until 15 November 2010, 308 days late.

3. HMRC's statement of Case rehearses the relevant provisions of the tax legislation requiring a return to be submitted by companies and in particular the provisions of Paragraphs 3 and 14 of Schedule 18 Finance Act 1998 dealing respectively with the taxpayer's duty to file and the relevant filing date.

4. HMRC also draws attention in its Statement of case to the requirement placed on companies not only to file in a timely way the Form CT600 tax return but also to prepare and deliver annual accounts approved by the company's board and signed by a director. (s.394 and 414 Companies Act 2006). Again there is no dispute concerning this requirement as a matter of law.

5. A fixed penalty of £200 was imposed under Paragraph 17 Schedule 18 Finance Act 1998 together with a tax-related penalty of £7,432.14 calculated in accordance with Paragraphs 17 and 18 of the same act. The calculation of these penalties is not disputed. Their imposition is.

The appellants appeal

6. The appellant contends that there were circumstances concerning the appellant's company tax return and accounts for the year ending 31 October 2008 such as to provide a "reasonable excuse" for their late filing. It is this matter which the tribunal was required to address by the parties.

7. For an appeal to succeed a company would need to demonstrate a "reasonable excuse" which prevented it from meeting its legal obligation to ensure that its company tax return and associated accounts were filed on time. (s 118(2) Taxes Management Act 1970). What amounts to a "reasonable excuse" is not stated. HMRC's view is that this must involve exceptional circumstances beyond the taxpayer's reasonable control. Furthermore it must be established that the circumstances on which reliance is placed continued to provide a "reasonable excuse" throughout the entire period of the default.

8. The circumstances on which the appellant relies can be summarised as follows.

9. First the Appellant says through its agents that it changed its accountants at the end of the accounting period to 31 October 2008 as it had not been satisfied with the

service it was receiving. Its new accountants and agents Layton Lee say that they received assurances from the former accountants that all was in order concerning the filing of the CT600 and accounts for the year end.

5 10. Second the agents complain that when it did become apparent to them that the CT600 had not been filed as they thought was the case HMRC did not make clear that the company's accounts for the year ending 31 October 2008 had not been delivered thereby occasioning further delay.

10 11. The appellant says that it was let down by a former director of the company who was also its company secretary, one Mr Alan Pratt, in that he had failed to pass on to his co-director information concerning the company's tax affairs. Mr Pratt it seems had suffered a number of personal and health related problems which had distracted him from his duties. Unhappily it was Mr Pratt's home address that was the main contact address for the company in its communications with HMRC. By reason of these facts the remaining director was unaware of the problem concerning the filing of its return and accounts.

15 12. HMRC states that these matters do not amount in its view to a "reasonable excuse". Its view, as stated in the appeal review letter of 13 April 2011, is that a reasonable excuse is to be found where exceptional circumstances beyond one's control exist for a relevant period of time that prevented the fulfilment of obligations.

20 *The Tribunal's findings*

25 13. The tribunal has noted a number of First-tier decisions which adopt different approaches to the question of whether an excuse for late filing can properly be considered "reasonable". By way of example in HMD Response International and HMRC [2011] UKFTT 472(TC) it is suggested that the inclusion of a requirement that the circumstances must be "exceptional" goes beyond the plain and ordinary meaning of the words "reasonable excuse". Similarly it can no doubt be contended that the need to establish that the reason asserted for the delay was beyond the control of the taxpayer is also unsupported by the legislative language used in s.118(2) TMA.

30 14. The tribunal accepts that the words "reasonable excuse" should be given their plain and ordinary meaning without unnecessary embellishment. That is not inconsistent with the view that one would expect any such excuse to be exceptional in the sense that such excuse would be unlikely to be "ordinary". The tribunal does not read into the views expressed by HMRC anything more than that. Equally it would be unusual, in the view of this tribunal, that an excuse for failure to file on time might be found "reasonable" where that failure lay within the control of the taxpayer. It is with these considerations in mind that the tribunal has considered each of the above matters.

35 40 15. The present accountants were, in the finding of the tribunal, well aware of the appellant's dissatisfaction with its former accountants and were therefore, together with their client, on enquiry as to the precise state of affairs concerning both the filing of the CT 600 return and the preparation and delivery of year end accounts. It is

difficult to understand how they were satisfied with assurances as to these matters without having copies for their files. In particular it seems inconceivable that they did not receive year end accounts even perhaps in draft form from their predecessors. That they apparently relied on verbal assurances cannot, the tribunal finds, amount to a reasonable excuse for the failures.

16. Mr Pratt's failures are equally unfortunate but again cannot properly found a reasonable excuse for the company's failure to prepare and deliver its return and accounts. Whilst there is no statutory exclusion of reliance on another person such as is to be found in the VAT legislation it will, in the finding of the tribunal, be a rare occasion on which such reliance can be said to displace the statutory obligations concerning filing. It cannot have escaped the notice of Mr Mathew Watson the other principal director of the appellant that his colleague had problems. It may be that communications between them were so distant that Mr Watson had not realised that there was a problem. The duty to file the company's tax return and to deliver accounts in a timely manner is one which is placed on the company rather than a specified individual although as a matter of internal management these duties may be assigned to a particular person within the company; a manager or a director. There was no evidence as to the interaction between Mr Watson and Mr Pratt, how they operated and in what circumstances it might have been reasonable for Mr Watson to assume that all was well. Without this context the tribunal is not able to conclude that such reliance on Mr Pratt provides a "reasonable excuse" for the delays in filing.

17. The tribunal was not impressed by the agent's complaint concerning the fact that they were not made aware following their filing of the CT 600 of the company's failure to deliver accounts for the year ending 30 October 2008. In this respect we refer to the observations made at paragraph 15 above. As professional accountants with the responsibility to ensure compliance with the legislative requirements it was incumbent on them to have ascertained the position concerning delivery of the accounts and to have rectified the position if found unsatisfactory.

18. Layton Lee in apparent support of a generalised contention that HMRC make mistakes, exhibited a number of papers to their Reply concerning a quite different client from the appellant. The relevance of this is questionable. The tribunal does not doubt the fallibility of HMRC. It is an organisation which employs people and from time to time despite their best efforts, or sometimes because of them, people make mistakes. In the matter of this appeal however it is the tribunal's finding that both Mr Watson and Layton Lee made mistakes. Those mistakes cannot, the tribunal finds, reasonably be considered as excuses for the failures and accordingly the fixed and tax-related penalties are confirmed.

19. The appeal is dismissed

20. 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

CHRISTOPHER HACKING

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TRIBUNAL JUDGE
RELEASE DATE: 9 November 2011

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