



TC01720

Appeal number: TC/2011/6585

CONSTRUCTION & INDUSTRY SCHEME – *Penalties for filing late returns – whether reasonable excuse – no – Appeal dismissed*

FIRST-TIER TRIBUNAL

TAX

JOHN REGAN

Appellant

- and -

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

Respondents

TRIBUNAL: MICHAEL TILDESLEY OBE (TRIBUNAL JUDGE)

The Tribunal determined the appeal on 12 December 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 16 August 2011 and HMRC's Statement of Case submitted on 24 September 2011. The Appellant did not provide a reply.

DECISION

1. The Appellant appeals against three penalties of £100 each for the late submission of the monthly Construction Industry Scheme (CIS) return for the months ending 5 February, 5 April and 5 June 2011.

2. The Appellant argued that he posted the returns by first class post on either 15 or 16 of the month which allowed sufficient time for them to be received by HMRC by the due date. The Appellant stated that he had been following this routine for the past four years without any problems. He had only encountered problems in the last seven months, and considers he is not responsible for inefficiencies in the postal system

3. The Tribunal finds that

(1) The due date for receipt of the returns was the 19 February, 19 April and 19 June 2011 respectively.

(2) HMRC received the returns on 22 February, 21 April and 21 June 2011 respectively. The periods of default were either two or three days.

(3) The Appellant held no record to corroborate his assertion that the returns were posted on the dates stated.

(4) The Appellant's statement that he sent the returns on either the 15 or 16 of the month was contradicted by his statement in the letter to HMRC dated 2 April 2011 when he said that he sent the February return on 17 February 2011.

(5) The Appellant did not use recorded delivery for the returns because of the cost and inconvenience. He had only recently discovered that he could obtain a proof of postage from his local Post Office.

(6) Prior to the present defaults the Appellant's return has been received by HMRC late on four previous occasions. HMRC waived the penalties against the late returns for September and October 2007 because it was the first occasion that the returns had been late. The Appellant's appeal against the January 2009 cited postal problems, which was accepted by HMRC. Finally in respect of the penalty for June 2010 the Appellant asserted that he had sent it on time. HMRC decided not to enforce the penalty but to educate the Appellant by issuing him with a letter dated 26 October 2010 on his responsibilities as a contractor within the CIS scheme.

(7) The letter of 26 October 2010 advised the Appellant that returns should be sent using the large letter postage rate, ordinary first class post was insufficient. HMRC warned that if any future appeals against late filing penalties mention postal delays, HMRC would require evidence of postage with the Appeal.

4. The Tribunal has limited jurisdiction in penalty Appeals which reflects the purpose of the legislation of ensuring that tax payers file their returns on time. The Tribunal has no power to mitigate the penalty. The Tribunal can either confirm the penalty or quash it if satisfied that the Appellant has a reasonable excuse for his failure. If there is a reasonable excuse it must exist throughout the period of default.

The Appellant has the obligation of satisfying the Tribunal on a balance of probabilities that he has a reasonable excuse for not filing the return on time.

5. Reasonable excuse is not defined by statute. In considering a reasonable excuse the Tribunal examines the actions of the Appellant from the perspective of a prudent tax payer exercising reasonable foresight and due diligence and having proper regard for his responsibilities under the Taxes Acts.

6. The Appellant was aware of his responsibilities to file the returns by the 19th day of each month and of the consequences if he failed to meet the deadline. The Appellant's history of compliance showed that this was not the first time that he has pleaded problems with the postal system for the late receipt of returns. Further he was advised by HMRC to produce proof of posting in any subsequent appeals citing postal delays. The Appellant has not heeded that advice. Finally the Appellant has provided contradictory accounts as to when he posted the returns. Given these facts the Tribunal does not believe the Appellant's assertions that he posted the returns in sufficient time for them to be received by HMRC by the due date. The more likely explanation is that the Appellant posted the returns late.

7. The Tribunal holds that the Appellant does not have a reasonable excuse for filing late the CIS returns for the months ending 5 February, 5 April and 5 June 2011. The Tribunal dismisses the Appeal and confirms the penalties in the total sum of £300.

8. 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 TILDESLEY OBE
TRIBUNAL JUDGE
RELEASE DATE: 5 January 2012