



TC01949

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Appeal number: TC/2011/07542

10 *Corporation tax – Notice to File and fixed rate penalties sent to the company’s former registered office - whether validly served – no – tax-related penalty validly served – whether reasonable excuse – yes – whether penalty charged for failure to notify – no – appeal allowed and penalties set aside*

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**FIRST-TIER TRIBUNAL
TAX CHAMBER**

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PARTITO MEDIA SERVICES LIMITED

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY’S Respondents
REVENUE & CUSTOMS**

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The Tribunal determined the appeal on 7 February 2012 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 September 2011 (with enclosures), HMRC’s Statement of Case submitted on 8 November 2011 (with enclosures) and the Appellant’s Reply dated November 30 2011.

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DECISION

- 5 1. Partito Media Services Limited (“the company”) is a one-person company. Its director is Mr Nicholas Hill.
2. This is the company’s appeal against:
- (1) A fixed penalty of £200 for late filing of the corporation tax (“CT”) return for the accounting period ended (“APE”) 31 August 2007.
 - (2) A tax-geared penalty of £312.96 for the late filing of the same return.
 - 10 (3) A fixed penalty of £100 for late filing of the CT return for APE 31 August 2008.
3. The Tribunal originally provided a summary decision to the parties, which was issued on 16 February 2012. Under Rule 35(4) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, either party is entitled to ask for a full written
15 findings of fact and reasons for the decision (a “full decision”).
4. On behalf of the company, Mr Hill has asked for this full decision.

The law

5. The Taxes Management Act 1970 (“TMA”) s 115 reads as follows:

Delivery and service of documents

- 20 (1) A notice or form which is to be served under the Taxes Acts on a person may be either delivered to him or left at his usual or last known place of residence.
- (2) Any notice or other document to be given, sent, served or delivered under the Taxes Acts may be served by post, and, if to be given, sent,
25 served or delivered to or on any person by HMRC may be so served addressed to that person—
- (a) at his usual or last known place of residence, or his place of business or employment, or
 - 30 (b) in the case of a company, at any other prescribed place and, in the case of a liquidator of a company, at his address for the purposes of the liquidation or any other prescribed place.
- (3) In subsection (2) above “prescribed” means prescribed by regulations made by the Board, and the power of making regulations for the purposes of that subsection shall be exercisable by statutory
35 instrument subject to annulment in pursuance of a resolution of the House of Commons.

6. Companies Act 2006 (“CA 2006”), s 1139(1) states that “a document may be validly served on a company registered under this Act by leaving it at, or sending it by

post to, the company's registered office." A company registered under CA 2006 includes one formed and registered under Companies Act 1985 (CA 2006, s 1(1)(b)).

7. The provisions relating to a company's corporation tax filing obligations are in Finance Act 1998 ("FA 1998"), Sch 18. Paragraph 2 reads as follows

5 **Duty to give notice of chargeability**

- (1) A company which—
- (a) is chargeable to tax for an accounting period, and
 - (b) has not received a notice requiring a company tax return,
- 10 must give notice to [an officer of Revenue and Customs] that it is so chargeable.
- (2) The notice must be given within twelve months from the end of the accounting period.
- (3) A company which fails to comply with this paragraph is liable to a penalty not exceeding the amount of tax payable for the accounting period in question that remains unpaid twelve months after the end of the period.
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8. The legislation requiring a company to deliver a corporation tax return is at FA 1998, Sch 18, para 3:

- (1) [an officer of Revenue and Customs] may by notice require a
- 20 company to deliver a return (a "company tax return") of such information, accounts, statements and reports—
- (a) relevant to the tax liability of the company, or
 - (b) otherwise relevant to the application of the Corporation Tax Acts to the company,
- 25 as may reasonably be required by the notice.
- (2) Different information, accounts, statements and reports may be required from different descriptions of company.
- (3) A company tax return must include a declaration by the person
- 30 making the return that the return is to the best of his knowledge correct and complete.
- (4) The return must be delivered to the officer of the Board by whom the notice was issued not later than the filing date.

9. The filing date for a corporation tax return is prescribed in FA 1998, Sch 18, para 14 as follows:

- 35 (1) The filing date for a company tax return is the last day of whichever of the following periods is the last to end—
- (a) twelve months from the end of the period for which the return is made;

(b) if the company's relevant period of account is no longer than 18 months, twelve months from the end of that period;

(c) if the company's relevant period of account is longer than 18 months, 30 months from the beginning of that period;

5 (d) three months from the date on which the notice requiring the return was served.

(2) In sub-paragraph (1) "relevant period of account" means, in relation to a return for an accounting period, the period of account of the company in which the last day of that accounting period falls.

10 10. 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 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.

11. The provisions relating to a tax-geared penalty are at FA 1998, Sch 18, para 18:

(1) A company which is required to deliver a company tax return for an accounting period and fails to do so—

25 (a) within 18 months after the end of that period, or

(b) if the filing date is later than that, by the filing date,

is liable to a tax-related penalty under this paragraph.

This is in addition to any flat-rate penalty under paragraph 17.

(2) The penalty is—

30 (a) 10% of the unpaid tax, if the return is delivered within two years after the end of the period for which the return is required, and

(b) 20% of the unpaid tax, in any other case.

35 (3) The "unpaid tax" means the amount of tax payable by the company for the accounting period for which the return was required which remains unpaid on the date when the liability to the penalty arises under sub-paragraph (1)...

12. The provisions dealing with reasonable excuse are at TMA s 118(2):

“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.”

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The facts

13. The company previously used an agent. In spring 2007 the agent said it could no longer carry out work for the company “because of changes in the law”, but did not tell the company that it needed to file a CT return.

10 14. On 24 September 2007, HMRC issued the company with a Notice to File the CT return for APE 31 August 2007. This Notice was sent to the company’s then registered office, the address of the agent.

15. Mr Hill says, and I accept, that the Notice to File was not forwarded by the agent.

15 16. On 25 April 2008 the company’s registered office was changed to Mr Hill’s home address.

17. On 22 September 2008, as confirmed by HMRC’s penalty record, a fixed penalty for late filing of £100 was “made”, and this was “issued” on 23 September 2008. There is a dispute as to the place to which the penalty notice was sent, and I discuss this below.

20 18. On the same day, 22 September 2008, HMRC also issued a Notice to File the CT return for APE ended 31 August 2008. HMRC’s document, headed “Display Specified Period Notice” shows that it was sent to the address of the agent.

19. On 16 December 2008, a second penalty Notice increased the fixed penalty to £200. There is a dispute about where this was sent.

25 20. On 14 September 2009, HMRC issued a determination of the tax due for APE 31 August 2007, estimating the corporation tax at £10,500; as the return had not been delivered, a tax related penalty of £2,100 was issued at the same time. Both were sent to the company’s new registered office.

30 21. On 23 September 2009, HMRC issued a fixed rate penalty of £100 for APE 31 August 2008. This was sent to the new registered office.

22. By letter dated 12 October 2009, Mr Hill appealed the penalties for APE 31 August 2007 on behalf of the company.

35 23. On 13 October 2009 the CT return for APE 31 August 2007 was received by HMRC, together with the tax due. The company’s estimated liability was replaced by that shown on the return, so that the tax-related penalty was reduced to £312.96.

24. By letter dated 20 October 2009, Mr Hill appealed the £100 penalty for APE 31 August 2008 on behalf of the company.

25. On 22 October 2009, HMRC received the CT return for APE 31 August 2008, and the tax was paid in full on 26 October 2009.

26. Mr Hill's two letters of appeal, dated 12 and 20 October 2009, were sent to HMRC at Euston Tower, but were mislaid. Mr Hill was subsequently visited by a Ms Cook, from HMRC's Debt Management and Banking department. Mr Hill explained that he had appealed the penalties, and was told that this would be looked into. Mr Hill subsequently tried to call Euston Tower on over 30 occasions but failed to get through. He tried to make contact to establish the status of his appeals by calling other HMRC offices but they were unable to help. He looked on the internet for other telephone numbers, but did not succeed in finding out what had happened to his appeals.

27. Finally Mr Hill received a letter from HMRC's Warrington office, to which he replied on 8 May 2010. He explained that he had appealed the penalties, and set out the steps he had subsequently taken to try and sort this out.

28. His letter was forwarded to HMRC in Brighton, who replied (the Tribunal was not provided with a copy of the HMRC letter).

29. On 24 June 2010 Mr Hill wrote back to the Brighton office, asking why HMRC had not replied to his questions about the appeals. On 6 July 2010 HMRC's Brighton office wrote back to Mr Hill, asking for copies of his appeal letters, which Mr Hill supplied. He subsequently accepted HMRC's offer of a statutory review, which confirmed the penalties.

30. On 25 September 2011, Mr Hill appealed to the Tribunal.

The issues

31. The issues before the Tribunal are:

- (1) Whether the Notices to File the CT returns were validly served?
- (2) Whether the company's CT returns for APE 31 August 2007 and/or APE 31 August 2008 were filed within the time limits required by FA 1998, Sch 18 para 14?
- (3) If the returns for APE 31 August 2007 and/or APE 31 August 2008 were late, were the fixed rate penalty notices validly served?
- (4) If the return for APE 31 August 2007 was late, was the tax-related penalty notice validly served by HMRC?
- (5) If one or more of the penalty notices were not served, were the penalties nevertheless correctly charged because notice of chargeability was not given by the company as required by FA 1998, Sch 18, para 2?
- (6) If one or more penalties was chargeable, did the company have a reasonable excuse, so as to vacate the penalty?

The first issue: whether the Notices to File were validly served

What constitutes service?

32. CA 2006 s 1139 says that a document is validly served on a company if sent to its registered office.

5 33. TMA s 115(2)(b) states that a Notice can be validly served if it is addressed to a company “at any other prescribed place”. TMA s 115(3) says that “prescribed” means “prescribed by regulations made by the Board”. No regulations have been made under TMA s 115(2) and for the purposes of this case this provision can thus be disregarded.

10 34. Under TMA s 115(2)(a) a Notice is validly served if delivered to a person at “at his usual or last known place of residence, or his place of business”. In *Spring Salmon & Seafood Ltd v R&C Comrs* [2005] STC (SCD) 830 (“*Spring Salmon*”), a decision of the Scottish Court of Session, it was found at [27] that that this subsection can apply to a company, so that a notice sent to a company’s place of business is validly served.

15 35. I identified no case law authority on whether the phrase “usual or last known place of residence” can properly be applied to a company. Although companies have a “residence”, this is normally interpreted as referring to the country in which they are resident, and not to their street address. They have a residence, but not a “*place of residence*”.

20 36. In my view the phrase “usual or last known place of residence” is apposite for natural persons, who have a “place of residence”. It thus includes sole traders and partners, but not companies.

25 37. Finally, it has been held (in *Spring Salmon* at [33] and [37]) that TMA s 115 was not prescriptive, so HMRC can validly serve notice by another means, such as by handing the Notice to a director in person, or by giving it to the company’s agent – provided HMRC had thereby carried out “effective intimation” of the content of the Notice to the person. This is in line with *Hastie & Jenkerson v McMahan* [1990] 1 WLR 1575, where the Court of Appeal held that the purpose of serving any document was to ensure that its contents were available to the recipient.

30 38. In summary, it is possible validly to serve a Notice by delivering it to the company’s registered office, to its place of business, or by effectively communicating the Notice in some other way. In my judgment a Notice is not served on a company merely by delivering it to its “last known” registered office.

Applying these tests

35 39. The Notice to File the CT return for APE August 31 2007 was issued to the company’s then registered office, the address of its agent, on 24 September 2007. Even though the agent did not forward the Notice to Mr Hill, it was validly served on the company under CA 2006, s 1139.

40 40. The Notice to File the CT return for APE ended 31 August 2008 was issued on 22 September 2008. HMRC have supplied the Tribunal with a document headed

“Display Specified Period Notice”. This shows that it was sent to the address of the agent.

41. The agent’s address was no longer the company’s registered office, so the Notice was not served under CA 2006, s 1139. As the agent’s office was also not the company’s “place of business”, that test is also failed. It is clear that Mr Hill was unaware of the Notice, so there has been no “effective intimation” by a different route.

42. This leaves the possibility that the Notice was validly served by being delivered to the company’s “last known” registered office. As stated above, in my judgment this does not constitute valid service.

43. However, in view of the lack of judicial authority, I have considered what the position would be, were I to be wrong. If a company does have a “place of residence” then in my judgment this is its registered office, and service on the company’s “last known” registered office would, under this interpretation, be valid.

44. The company notified Companies House of its change of registered office, and Companies House amended its records on 25 April 2008. HMRC submit that they were not notified of this change by Companies House until 23 September 2008, the day after they sent out the Notice to File.

45. HMRC have provided the Tribunal with a printout of a webpage headed “reporting changes to HMRC - Businesses”. This says “if your registered office has changed, you must let Companies House know and then inform your Corporation Tax Office.” At the end, HMRC have provided the Tribunal with a link to a further webpage¹ headed “changing your business details for corporation tax”. This states:

Limited companies - changes to a registered company name and/or address

If you want to change the registered name and/or the registered office address of your limited company you must tell Companies House. You can inform Companies House online at the Companies House website. As soon as Companies House have updated their records they'll advise HMRC about the change automatically. You don't need to tell HMRC separately.

46. There is thus conflicting guidance on whether companies should directly inform HMRC of a change of registered office. However, it is clear that HMRC are automatically told about a change of registered office by Companies House “as soon as” the latter has updated its records.

47. On the balance of probabilities, I find that HMRC were told of the company’s change of registered office before 23 September 2008, almost five months after it was logged on the Companies House site, even if, for whatever reason, that information

¹ At <http://www.hmrc.gov.uk/qct/change/business-details.htm>

did not find its way onto the company's CT records, and despite the fact that Mr Hill did not inform them of the change of registered office.

48. Thus, even if service can be effected by sending a Notice to a company's "last known" registered office (which in my view is not the case), I find that HMRC knew
5 of the change to the company's registered office before they sent out the Notice. As a result the new registered office (Mr Hill's house) was the company's "last known" residence. Sending the Notice to its former agent did not constitute service.

49. As a result of the foregoing, the Notice to file for APE 31 August 2007 was
10 validly served because it was sent to the company's registered office. However, the Notice to file for APE 31 August 2008 was not validly served.

The second issue: whether the returns were late

50. A company only has to file its return by the filing date if it has been served with a Notice to File (FA 1998, Sch 18, para 3). It does not have a free-standing obligation to file a return. Therefore, the return for APE 31 August 2008 cannot be late.

15 51. The second issue is thus relevant only for the return for APE 31 August 2007.

52. Mr Hill says in his Reply to the HMRC Statement of Case that his reading of FA 1998, Sch 18, para 14 is that the filing date for that year is the latest of:

- (1) August 31 2009 (twelve months after the end of the accounting period);
- 20 (2) December 22 2009 (three months after the Notice to deliver the return was served on him); and
- (3) February 1 2010 (eighteen months after the end of the accounting period).

53. As the company's return was sent in on 13 October 2009, he submits that it was not late.

25 54. HMRC assert that the returns were late, but do not deal directly with Mr Hill's interpretation of FA 1998, Sch 18, para 14.

Discussion and decision on the second issue

55. Mr Hill says in his Reply that he has calculated his dates in relation to the accounting period beginning 1 September 2006. Twelve months after the end of that period would be 31 August 31 2008 (not 2009)².

30 56. Mr Hill's second date would be correct, if the Notice to deliver a CT return had not been served on the company until September 21 2009. However, as set out above, the Notice to File the CT return for APE August 31 2007 was served on the company's then registered office, the address of his agent, on 24 September 2007 and was thus validly served. As a result, the second date would be three months later, 24

² In his letter of October 20, 2009, the analysis and the dates relate to APE 31 August 2008, and for that period the first date, of 31 August 2009, would be correct.

December 2007. As this is earlier than 31 August 2008, it is disregarded for the purposes of this section.

57. The third date only applies “if the company’s period of account is longer than 18 months”. Here, the period of account was the same as the accounting period, namely
5 twelve months, so this date is not relevant.

58. As a result, the latest due date when the return for APE 31 August 2007 could have been filed without being late was 31 August 2008. Since the CT return was not filed until 13 October 2009, it was late.

The third issue: were the fixed penalties validly served?

10 59. As set out under the second issue, because the Notice to File for APE 31 August 2008 was not validly served, the return for that period was not late. As a result no penalty can be charged for late filing. The fixed penalty of £100 is thus set aside.

15 60. In relation to the fixed penalties for APE 31 August 2007, HMRC say that the penalty notices were served on the company’s new registered office and so were “delivered” within the meaning of TMA s 115(2).

20 61. They provide the Tribunal with a document which gives the company’s new registered office address, and at the bottom of the document are the words “the above details are those applicable at the date the determination was issued.” They have also provided the Tribunal with their “penalty record” which, under the heading “latest reissue” has the date 07/09/2011.

25 62. Mr Hill denies receiving the penalty Notices. He says he has written repeatedly to HMRC seeking to appeal. His appeal letters were mislaid and he variously sought information and help from HMRC offices in Warrington, Brighton and Euston Tower. He has made over 30 calls to Euston Tower but failed to get through: he says “I do not have much confidence in Euston Tower actually existing.”

Discussion and decision on the fixed penalties for APE 31 August 2007

63. In relation to the first fixed penalty notice:

30 (1) This was “made” on 22 September 2008, the same day the Notice to File for the following accounting period was sent to the old registered office.

(2) Although the address sheet attached to the penalty notice document says that “the details are those applicable at the date the determination was issued”, the Notice was reissued on 7 September 2011. It is therefore possible that the “date the determination was issued” refers to the reissue, rather than the original issue.

35 (3) Mr Hill denies receiving the penalty notice. Having read his extensive correspondence with HMRC I find him to be an honest and straightforward man, and I accept that he did not receive the notice.

64. On the balance of probabilities, and in particular taking into account the fact that the penalty notice was sent on the same day that the Notice to File was sent to the old registered office, I find that it was also issued to that office, and so was not validly served.

5 65. One of the consequences of this finding is that the “date the determination was issued” must refer to the *reissue* of that notice and not the original issue.

66. HMRC produce similar documentation for the second fixed penalty notice, increasing the penalty to £200. On the basis of the foregoing, I find that the “date the determination was issued” was also the reissue date, and on the balance of
10 probabilities, taking into account Mr Hill’s evidence, I find that it was also delivered to the old registered office and was not served on the company.

The fourth issue: was the tax-related penalty notice validly served?

67. On 14 September 2009, a tax related penalty of £2,100 was issued. There is no reissue date. The attached document shows the company’s new registered office. It
15 was delivered to the correct registered office and so was validly served.

The fifth issue: notification of chargeability

68. HMRC argue that, even if the Notices to File were not validly served, the company is liable to the penalty because it is required to notify chargeability if it has not received a Notice within twelve months from the end of the accounting period.
20 The company should have notified chargeability by 31 August 2009, and it did not do so.

69. It is correct that HMRC have the power to impose a penalty for failing to notify chargeability. However, no such penalty has been imposed. If a flat-rate penalty for late filing is found to be invalid, it does not transmute into a penalty for failure to
25 notify chargeability.

The sixth issue: reasonable excuse

70. Of the four penalties charged, one (the £100 fixed penalty for APE 31 August 2008) has been found to be invalid because the Notice to File was not validly served, and two (the fixed penalties for APE 31 August 2007) were invalid because the
30 penalty notices were not validly served. However, the tax-related penalty was served on the company at its registered office and received by Mr Hill.

71. This penalty can only be levied, under Finance Act 1998, Sch 18, para 18, if the tax return is outstanding for more than eighteen months. Since the return was outstanding for more than eighteen months after the Notice to File was validly issued
35 to the agent, the penalty was chargeable.

72. HMRC say that the company does not have a reasonable excuse. Their arguments are founded largely on their submission that all the penalty notices, as well as the Notices to File, were sent to the company’s correct registered office.

73. TMA s 118(2) applies where there is a reasonable excuse “for not doing anything required to be done”. In the context of this tax-related penalty, the company was required to file the return before the eighteen month point. It failed to do this.

5 74. However, the tax-related penalty is normally preceded by the two fixed penalty notices, neither of which was served on the company. In the light of all the circumstances of the case, I find that the company had a reasonable excuse for not filing the return before the eighteen month trigger point for this penalty, and I set it aside.

Decision

10 75. As a result of the foregoing the appeals are allowed and the penalties set aside as follows:

(1) The fixed rate penalties for APE 31 August 2007 are set aside as they were not validly served.

15 (2) The tax-gearred penalty for APE 31 August 2007 is set aside because the company had a reasonable excuse.

(3) The fixed rate penalty for APE 31 August 2008 is set aside because the Notice to File the CT return was not validly served.

Complaints

20 76. Mr Hill is very aggrieved at the amount of time and effort it has taken him to sort out these appeals. He says “HMRC impose penalties on me for not responding but there is no compensation when they don’t reply to me. This seems very one-sided.”

25 77. This Tribunal does not have the jurisdiction to consider complaints about the administration of HMRC. If, having succeeded in this appeal, Mr Hill still wishes to complain, he should do so by writing in the first instance to HMRC and heading his letter “complaint”; if necessary he can subsequently appeal to the HMRC Adjudicator.

30 78. 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.

35 **Anne Redston**

TRIBUNAL PRESIDING MEMBER

RELEASE DATE: 10 April 2012