



TC02024

Appeal number: TC/2011/9363

**CORPORATION TAX – PENALTY FOR LATE FILING OF
COMPANY’S TAX RETURN – *Whether Appellant had reasonable excuse
for default – No – Appeal dismissed.***

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ST LOAN RILSKY CHUDOTWOREC LIMITED

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE MICHAEL TILDESLEY OBE

The Tribunal determined the appeal on 8 May 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 3 November 2011, HMRC’s Statement of Case submitted on 12 January 2012 and the Appellant’s reply to the statement of case dated 20 March 2012.

DECISION

1. The Appellant appeals against the imposition of a fixed penalty in the sum of £200 for the late filing of the company tax return for the accounting period ending 17 August 2007.
2. The Tribunal finds the following facts:
- (1) The Appellant was incorporated 11 August 2005.
 - (2) On 24 September 2007 HMRC issued the Appellant with a notice to file a company's return for the specific period 25 February 2007 to 17 August 2007.
 - (3) The filing date for the return was 17 August 2008.
 - (4) On 20 November 2008 HMRC issued a fixed penalty for £200 for the Appellant's failure to lodge the return by three months after the filing date.
 - (5) On 17 February 2009 the Appellant delivered electronically a return for the period 18 August 2006 to 17 August 2007, which was 184 days late.
3. The Appellant put forward three defences to the imposition of the penalty which were:
- (1) The Appellant had no obligation to file a return for the period 25 February 2007 to 17 August 2007 because it did not correspond to the correct accounting period, which was 18 August 2006 to 17 August 2007.
 - (2) In the alternative the Appellant argued that the penalty determination was invalid because HMRC's assumption about the return period turned out to be incorrect.
 - (3) In the alternative the Appellant was unable to file a return because HMRC's system did not display a return to be filed when the Appellant interrogated the system on 22 August 2008.

No obligation to file a return for the period 25 February 2007 to 17 August 2007

4. The Tribunal finds the Appellant's contention wrong in law and in fact. Paragraph 5(2) schedule 18 of the Finance Act 1998 requires the Appellant to file a return for an accounting period if the accounting period of the company ended during or at the end of the period specified in the notice to file. In this case the notice to file specified a period ending 17 August 2007. The Appellant accepted that it was required to file a return ending 17 August 2007 albeit commencing 18 August 2006. Thus the fact that the notice to file specified a start date of 25 February 2007 did not affect the Appellant's legal obligation to file a return for a period ending on 17 August 2007. Paragraph 5(2) places a duty to file a return for an accounting period which ended before or on the end date specified in the notice to file. The Appellant did not file the return ending on 17 August 2007 by the filing date of 17 August 2008 or within three months of that date, and was, therefore, liable to pay a penalty of £200.

An Invalid Penalty Determination

5. The Appellant's proposition was derived from the wording of HMRC's internal advice **COM101120** which according to the Appellant declared that penalty determinations were invalid if the accounting period specified on the notice turned out to be incorrect. The period specified in the penalty notice for this Appeal was 25 February 2007 to 17 August 2007.

6. The Appellant has misread the wording of **COM101120**, which states that

“.....determinations will not be invalid if your assumptions (*HMRC's Officers*) about the return period or periods turn out to be incorrect”.

7. The wording of **COM101120** says the complete opposite to what the Appellant asserted, namely a penalty determination will not be invalid if it states the wrong accounting period.

8. HMRC's internal advice is, in any event, not determinative of the law. The correct legal position is set out in paragraph 5(2) schedule 18 of the 1998 Act which has been dealt with above. The Appellant was obliged to file a return for a period ending 17 August 2007. It did not do so by the specified dates. The penalty determination was, therefore, valid.

HMRC's system did not display a return

9. The Appellant in its appeal notice produced a print-out which showed as at 22 August 2008 that no return was available on HMRC's computer system to fill out. HMRC in its statement of case contended that it had not seen a copy of the print-out, and that there was no evidence that the Appellant had made any contact with HMRC about these difficulties or make a request for an extension of the filing date. The Appellant in its response produced a copy of the print-out with a date of 22 August 2008 which showed that no return was available to complete. Further the Appellant supplied a letter addressed to HMRC at Gateway House, London citing the correct unique tax reference. The letter was faxed to HMRC on 22 August 2008 at 15:17 hours with a reminder posted on 31 October 2008. The letter said:

“We've recently tried to file on-line our CT return for the next accounting period 17 August 2008. However, there is no designated period to complete on our account with HMRC database website as per enclosed print-out. Will you be so kind to correct that technical irregularity and provide us a reasonable time to file it”.

10. 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 returns on time

11. The statute provides no definition of reasonable excuse except that inability to pay the tax shall not be regarded as an excuse. 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 her responsibilities under the Taxes Acts.

12. The Appellant's reason for not filing the return on time was that there was no return displayed on the HMRC system which it could file, and that it contacted HMRC about the error in the system. The correspondence, however, produced by the Appellant did not relate to the period in question but the accounting period for the following year.

13. The Appellant did not explain what enquires it made of the HMRC website before the filing date of 17 August 2008. The Appellant argued that it was still within time when it enquired of the website on the 22 August 2008 because of a seven day concession given by HMRC for the filing of the returns. The Tribunal is not convinced on the evidence that the Appellant's enquiry on 22 August 2008 was connected to the disputed return. Even if the Tribunal is wrong on that point a prudent tax payer would not await until after the end of the filing date before attempting to submit its return. A reason to constitute a reasonable excuse has to be present throughout the period of the default. The Appellant was able to file a return for the disputed period on 17 February 2009 which suggests that the relevant return was available at some time on the HMRC system. The Appellant has adduced no evidence of when it discovered the existence of the return on the system. The Tribunal is satisfied that the circumstances relating to the purported non-existence of the disputed return on the HMRC system as at 22 August 2008 did not constitute a reasonable excuse.

14. The Tribunal finds that

(1) The Appellant was legally obliged to file a return within an accounting period ending on 17 August 2007 by 17 August 2008.

(2) The Appellant filed the return on 17 February 2009 which was more than three months after the filing date.

(3) The Appellant had no reasonable excuse for its failure to file the return by the specified date.

15. The Tribunal, therefore, dismisses the Appeal and upholds the penalty in the sum of £200.

16. 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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**MICHAEL TILDESLEY OBE
TRIBUNAL JUDGE**

RELEASE DATE: 15 May 2012

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