



TC02073

Appeal number:TC/2011/04148

Section 98A(2)(a) TMA 1970 – late submission of CIS Monthly return – oversight by Appellant’s agent – whether reasonable excuse - no

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MR S R & MRS C E ILES **Appellant**
t/a PURBECK PLUMBING HEATING & DRAINAGE

- and -

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

TRIBUNAL: JUDGE MICHAEL S CONNELL

The Tribunal determined the appeal on 9 January 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 1 June 2011 and HMRC’s Statement of Case submitted on 8 July 2011

DECISION

1. This is an appeal against a penalty imposed under s 98A(2)(a) TMA 1970 for the late submission of a monthly Construction Industry Scheme (“CIS”) return for the period ending 5 December 2010 which was received by HMRC on 9 January 2011.
2. As required under statutory instrument 2005 No. 2045, The Income Tax (Construction Industry Scheme) Part 2 Regulation 4, the CIS monthly return for the period ending 5 December 2010 was due to be filed by 19th of the month (“the filing date”) in which the return period ended – that is by 19 December 2010.
3. There is a legal obligation placed on a contractor to submit to HMRC a return for each monthly period. The return must be completed with details of, and payments made to, each sub-contractor within the Construction Industry Scheme for that period. A return period runs from the 6th of one month to the 5th of the next. If a contractor has not paid any sub-contractors during the month, a “nil” return is still required, which can be filed over the telephone with the CIS helpline.
4. If a return is received after the filing date the contractor will be liable to a late filing penalty, which is chargeable for each month for each outstanding return at £100.00 per month per return.
5. The Appellants have been filing their returns since 2007 and have been filing returns on-line since 10 June 2010. The Appellants did not file the monthly return for the period ending 5 December 2010 until 19 January 2011, when the return was filed on-line. A late filing penalty was imposed on 30 December 2010.
6. The Appellants’ agent, Mr A R Thomas, appealed the penalty on 4 March 2011. There was no copy of the Appellants’ appeal letter with the appeal papers but the grounds, as stated by HMRC before the appeal, are that the 19 December 2010 return was not filed until 19 January 2011 simply because of an “oversight”. Mr Thomas says he was convinced that he had prepared the December 2010 return “on-line” and processed it in time. He says that unfortunately not everyone can grasp HMRC’s new systems immediately, particularly those who are getting towards the end of their careers. He says that a penalty of £100.00 is extremely harsh and that a single instance of straightforward human error should be excused.
7. HMRC reviewed, but did not revise, their decision and notified the Appellants accordingly on 26 May 2011.
8. On 1 June 2011 the Appellants appealed to the Tribunal on the basis that the late filing of the December 2010 return was a simple human error and that there had been no loss of tax as the return was a “nil” return.

Conclusion

9. The Appellants accept that the return was filed late and do not say that they were unaware of the consequences of late filing.
10. The filing of a CIS monthly return by a contractor on or before the due filing date is a legal obligation, in respect of which legislation places the primary and sole responsibility for filing with the Appellant.
11. Information regarding the CIS, including contractors' obligations to file returns and the late filing penalties, is well within the public domain, together with the consequences of filing late returns.
12. An appeal against a penalty will only be successful where the Appellant can show there has been a reasonable excuse for the late filing of the return and that the excuse has existed throughout the entire period of the default. "Reasonable excuse" is not defined in legislation but is normally regarded as having its normal everyday meaning – that is some exceptional event beyond the taxpayer's control which prevented the return from being filed by the due date.
13. A contractor's filing responsibility in ensuring adherence to his legal obligations cannot be transferred to another person. Even if the contractor engages someone to assist with that obligation, the responsibility for submitting and ensuring that returns are filed on time remains with the contractor.
14. HMRC say that they have previously accepted the Appellants' grounds of appeal on seven separate previous occasions when late returns have been submitted. It is therefore not unreasonable to have expected the Appellants to put in place adequate systems or processes to ensure future compliance with their filing obligations.
15. The Tribunal has considered the Appellants' grounds of appeal and concluded that they do not show that a reasonable excuse existed for the delay in submitting the return. The period of default for the return was 31 days and the Appellants have not shown that anything exceptional prevented them, during this period, from submitting the return on or before the filing date of 19 December 2010.
16. In the circumstances the Tribunal dismisses the appeal and confirms the penalty determination of £100.00.

17. 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 S CONNELL
TRIBUNAL JUDGE

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RELEASE DATE: 13 June 2012