



TC02231

Appeal number: TC/2012/03968

Corporation Tax – late filing of return – penalty – reasonable excuse - no

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

COTHELSTONE PROPERTY LIMITED

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE ALISON MCKENNA

The Tribunal determined the appeal on 6 August 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 7 March 2012 (with enclosures), HMRC's Statement of Case submitted on 28 March 2012 (with enclosures) and the Appellant's Reply dated 27 April 2012.

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DECISION

1. This appeal concerns a fixed penalty of £200 imposed on the Appellant
5 company for the late filing of its Corporation Tax return for the accounting period to
30 April 2010.

The Facts

2. The company was incorporated on 5 September 2008. HMRC issued a notice to
file a return for the period 1 April 2010 to 30 September 2010 on 18 October 2010.
10 However, on 13 August 2010 the company had changed its accounting period at
Companies House to 30 April 2010, with the result that the Corporation Tax return
was due no later than 30 April 2011.

3. On 7 October 2011 a valid Corporation Tax return for the period 1 October
2009 to 30 April 2010 was delivered to HMRC. On 8 November 2011 HMRC
15 imposed a flat rate penalty of £200 as the return had been made more than three
months after the filing date.

The Law

4. Paragraph 3 of Schedule 18 to the Finance Act 1998 requires a company to
deliver a return by the date set in paragraph 14. The penalty for late filing is
20 calculated in accordance with paragraph 17 of the Schedule.

5. An appeal against the imposition of a penalty may succeed where the Tribunal
is satisfied that there was a reasonable excuse for the late filing of the return. A
reasonable excuse is generally interpreted to mean one involving circumstances
outside the tax payer's control.

The Grounds of Appeal

6. The company's representative appealed against the penalty on the basis that the
notice to submit the Corporation Tax return contained the wrong dates; a return was
submitted but rejected as invalid; HMRC's website did not list the correct return date
and so a return could not be submitted on-line; when a notice with amended dates was
30 issued the original notice should have been withdrawn; and that it was unreasonable
to issue a penalty in respect of a notice which was incorrect.

7. In the Notice of Appeal the Appellant's representative argues that the return was
delayed by a six week problem with e-filing due to the wrong accounting period dates
being shown on HMRC's website. Also that he was informed that no further returns
35 were required. In the circumstances he submits that HMRC should have acted more
promptly and advised that further filing was required and asks for the penalty to be
withdrawn.

8. In the Reply to HMRC's Statement of Case, the company's representative submitted that penalties usually arose as a result of non-compliance with a notice rather than in relation to the legislation cited and that this was HMRC's practice, which he had reasonably relied upon. He submitted that it had always been the intention of the tax payer to comply with the legal obligations and that it had tried to do so but been prevented by HMRC's own systems which rejected the return when made.

HMRC's Response

9. HMRC rejected the Appellant's arguments on review and upheld the penalty by letter dated 8 February 2012.

10. In its Statement of Case, HMRC submitted that a company is expected to arrange its affairs to allow sufficient time to ensure that its returns and any payments due are made by the dates set out in legislation.

11. In this case, it submitted that the return for the accounting period ending 30 April 2010 was not filed by the date required in the legislation and the penalty was therefore triggered. It further submitted that the Appellant had not shown that there was a reasonable excuse for the late filing.

12. In respect of the Appellant's arguments about the notice issued, HMRC stated that the specified period in a notice may not always coincide with the company's accounting period and that paragraph 5 (2) of Schedule 18 to the Finance Act 1998 makes clear that if the period shown in the notice is not an accounting period then a return is required for each accounting period that ended during or at the end of the period specified in the notice. As the company's accounting period ended within the period specified in the notice there was therefore no requirement to issue the notice or issue a fresh notice and the company had a legal obligation to file by April 2011 whereas it did not do so until October 2011. Furthermore, HMRC submits that the Appellant failed to inform it of the changed accounting period when it informed Companies House, which is why the on-line return was originally rejected; however, this is not capable of amounting to a reasonable excuse for the late filing because a reasonably diligent company would have ensured that HMRC's records were updated and therefore these are matters which are reasonably within the Appellant's control.

Conclusion

13. I have considered the matters raised in this appeal carefully and conclude that I am not satisfied that there was a reasonable excuse for the late filing of the return. The company's obligations are clearly set out in legislation and I find that there was no obligation on HMRC to issue an amended notice in view of the change of the company's accounting period. Accordingly, I do not find that its failure to do so constitutes a reasonable excuse for the late filing by the company.

14. I also find that if the company had informed HMRC of its change of accounting period it would not have encountered the difficulties with e-filing that it has

described. I note that the e-filing problems occurred after the legal obligation to file had already been missed in any event. I therefore do not find that the e-filing problems constitute a reasonable excuse for the late filing.

15. In all the circumstances I dismiss this appeal and confirm the £200 penalty.

5 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
10 “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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**ALISON MCKENNA
TRIBUNAL JUDGE**

RELEASE DATE: 29 August 2012

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