



**TC02302**

**Appeal number: TC/2012/03255**

*Late filing of Company Tax Returns – reasonable excuse – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**TAMAR ENTERPRISES LTD**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE J. BLEWITT**

**The Tribunal determined the appeal on 9 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 16 February 2012 and HMRC's Statement of Case submitted on 26 March 2012.**

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## DECISION

1. This is an appeal against five flat-rate penalties for the late filing of the Company's Tax returns for the accounting periods ending 30 June 2005, 30 June 2006, 30 June 2007, 30 June 2008 and 30 June 2009.

### 2. **Background**

3. The Appellant Company was incorporated on 21 June 2002.

#### 4. Accounting period ending 30 June 2005

5. A notice to file for the period 1 July 2004 to 30 June 2005 was issued on 18 April 2011; the filing date was 25 July 2011.

6. The Company's Tax return for the accounting period ending 30 June 2005 was due no later than 25 July 2011. It was received on 22 August 2011.

7. A flat rate penalty of £100 was imposed on 10 August 2011, in accordance with Paragraph 17 (2) (a) Schedule 18 Finance Act 1998.

#### 8. Accounting period ending 30 June 2006

9. A notice to file for the period 1 July 2005 to 30 June 2006 was issued on 18 April 2011; the filing date was 25 July 2011.

10. The Company's Tax return for the accounting period ending 30 June 2006 was due no later than 25 July 2011. It was received on 22 August 2011.

11. A flat rate penalty of £100 was imposed on 10 August 2011, in accordance with Paragraph 17 (2) (a) Schedule 18 Finance Act 1998.

#### 12. Accounting period ending 30 June 2007

13. A notice to file for the period 1 July 2006 to 30 June 2007 was issued on 18 April 2011; the filing date was 25 July 2011.

14. The Company's Tax return for the accounting period ending 30 June 2007 was due no later than 25 July 2011. It was received on 22 August 2011.

15. A flat rate penalty of £500 was imposed on 10 August 2011, in accordance with Paragraph 17 (3) Schedule 18 Finance Act 1998. The rate increased due to the fact that this was the third successive failure to deliver the return on time.

#### 16. Accounting period ending 30 June 2009

17. A notice to file for the period 1 July 2008 to 30 June 2009 was issued on 18 April 2011; the filing date was 25 July 2011.

18. The Company's Tax return for the accounting period ending 30 June 2009 was due no later than 25 July 2011. It was received on 22 August 2011.

19. A flat rate penalty of £500 was imposed on 10 August 2011, in accordance with Paragraph 17 (3) Schedule 18 Finance Act 1998.

20. A flat rate penalty of £500 was imposed on 10 August 2011, in accordance with Paragraph 17 (3) Schedule 18 Finance Act 1998.

21. **Appeal**

22. The Appellant appealed the penalties to HMRC on 13 September 2011. The Appellant stated:

23. *“Given that the company is small and that no tax is payable for the years these penalties seem harsh. In some of the years the penalties exceed the turnover. The company told you on 25 March that tax was payable for 2010, paid the tax, and sent in accounts which showed the figures for 2007, 2008 and 2009, clearly showing no tax was due. Our only fault appears to be that we overlooked the forms you sent out on 18 April. It seems particularly harsh that you have higher fines for the 3 later years. Presumably this is because of successive failures. But this is clearly aimed at someone who over a period over years fails to make returns within the period, not someone who fails to file 5 returns all issued on the same day.”*

24. In a letter dated 17 November 2011 the Appellant stated:

25. *“As you will appreciate on looking at the company's balance sheet these penalties take up most of the company's net assets. The present position surely cannot be what Parliament intended, or what any rational observer would describe as just.”*

26. Following an independent review, HMRC upheld the decision to impose penalties and notified the Appellant by letter dated 20 January 2012.

27. By Notice of Appeal dated 16 February 2012, the Appellant appealed to the Tribunal. The grounds of appeal are stated as:

28. We have a reasonable excuse for the delay reducing the penalties to nil; or

29. During the year to 30/06/06 the company was not trading nor had it any other income, it had no stock, sales or purchases. The only expenditure was £9.07 bank fee, and a payment of £117.50 in respect of a trademark obtained in the previous year. It was not therefore within the charge to corporation tax accordingly the penalty for 2006 should be nil and the penalties for 2007 and 2008 reduced to £100 each.

30. HMRC submit in response that that the Appellant was required to deliver a return by the filing date as set out in Paragraph 3 Schedule 18 Finance Act 1998. The notices to the Appellant to file the returns were correctly issued and as such the Appellant was legally bound to deliver its returns by the legislative deadline.

31. The late submission of the returns triggered the penalties which are set by statute.

32. The fact that the Appellant Company is small or had no tax liability does not relieve the Appellant of its obligation to file the returns within the deadline. HMRC refer to Paragraph 5 (4) Schedule 18 Finance Act 1998 which provides that: "if the company was outside the charge to corporation tax for the whole of the specified period, a company tax return is required for the whole of the specified period." As the notice to file for the accounting period ending 30 June 2006 was issued on 18 April 2011 and related to the specific period 1 July 2005 to 30 June 2006, irrespective of whether or not the Appellant was within the charge to corporation tax, the Company was legally bound to deliver a return for the whole of that specified period by virtue of Paragraph 5 (4) Schedule 18 Finance Act 1998.

33. HMRC submit that the penalties are set by statute and were correctly charged. It is submitted that there is no provision within the legislation to allow HMRC to consider the issue of proportionality, although the issue of mitigation is considered by HMRC once all appeal rights have been exhausted.

34. **Discussion**

35. All of the submissions made by the Appellant were considered carefully and I will address each in turn.

36. HMRC do not dispute that no tax was payable for the relevant years and that, in respect of some years, the penalties exceed the Company's turnover. Whilst I am sympathetic to these points, the issue to be decided by me is whether the penalties were correctly charged and whether the Appellant has a reasonable excuse for the late delivery of its returns.

37. In respect of all of the years under appeal, once the Notices to file were issued to the Appellant, it was legally obliged to file the returns by the deadline set by statute. The fact that the Appellant was outside the charge to corporation tax does not, under the legislation, relieve it of its obligation to file the returns.

38. The oversight by the Appellant in filing the returns in respect of all years under appeal does not, in my view, provide it with a reasonable excuse for failing to meet its statutory obligations.

39. The penalties are set by statute and the Tribunal has no discretion to interfere with the amount unless it finds that there was a reasonable excuse. On the facts before me, I do not find that there was a reasonable excuse.

40. This Tribunal has no jurisdiction over the exercise by HMRC of its discretion to mitigate the penalties and it is entirely for HMRC whether this discretion should be exercised in this case. However, I note that the circumstances in which the late submission of the returns arose, and the fact that the penalties take up a significant part of the Company's net assets in this case are matters which could properly be taken into consideration by HMRC in the exercise of its discretion.

41. The appeal is dismissed.

42. 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.

**J. BLEWITT**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 8 October 2012**