



**TC04373**

**Appeal number: TC/2014/06595**

*ANNUAL TAX ON ENVELOPED DWELLINGS– penalties for late submission of tax returns –ignorance of law - no reasonable excuse- alleged unfairness and proportionality cannot be considered - appeal disallowed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MONACO GROUP OF COMPANIES LIMITED                      Appellant**

**- and -**

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

**TRIBUNAL: JUDGE BARBARA KING**

**The Tribunal determined the appeal on 9 April 2015 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases) having having first read the Notice of Appeal dated 9 December 2014 (with enclosures), HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 9 February 2014 and the Appellant's Reply dated 5 March 2014 (with enclosures).**

## DECISION

### **The Issue**

- 5 1. This appeal concerns fixed penalties amounting to £1300 for the late submission of a tax return due by 10 May 2013.
2. The Annual Tax on Enveloped Dwellings (ATED) came into effect from 1 April 2013. It applies to high value residential property owned by companies, partnerships with companies as members and collective investment schemes. ATED  
10 is due in respect of dwellings valued at over £2 million on 1 April 2012 (or on acquisition, if later) and details of these properties must be included on ATED returns
3. The first returns for the tax year 1 April 2013 to 31 March 2014 were due to be filed by 1 October 2013. On acquisition of a new relevant property a return must be filed within 30 days and thereafter returns must be submitted by 30 April each year in  
15 respect of all relevant residential properties owned.
4. A large number of reliefs apply, but these reliefs must be claimed and a tax return must be completed to claim those reliefs.

### **The facts.**

5. On 10 April 2013 the appellant company (“Monaco”) acquired a property at 8  
20 South End London, which was potentially subject to ATED.
6. On 25 September 2013 Monaco completed an ATED return stating that this was to cover the period 1 April 2012 to 31 March 2013. They gave details in that return of a property in Gloucester Square London which they had acquired in August 2011 and then sold in September 2012. The return referred only to the one property in  
25 Gloucester Square.
7. On 30 September 2013 HMRC acknowledged receipt of this ATED return.
8. HMRC did not receive an ATED return from Monaco which referred to the South End property until 7 April 2014, by which time the return was over six months late.

### **The Law**

9. Under schedule 55 of the Finance Act 2009 a tax payer is liable to a fixed penalty of £100 for failing to deliver a return by the filing date. A further penalty of £10 per day is due for each day that the failure continues during the period of 90 days thereafter. If the failure continues after the end of six months then the penalty is the  
35 greater of ‘5% of any tax due’ or £300.

10. A penalty is not due if the tax payer can show that they had reasonable excuse for the failure.

### **The appellants arguments**

5 11. Accura Accountants Limited (“Accura”), on behalf of the appellant have submitted that

- (1) The appellant has reasonable excuse for its delay
- (2) The penalty is unfair and should therefore be quashed
- (3) The penalty is disproportionate as there is no tax due as the appellant was able to claim full relief.

### 10 **Discussion and Findings**

12. The appellant has the obligation of satisfying the Tribunal on a balance of probabilities that the appellant has a reasonable excuse for not filing the returns on time.

15 13. In considering a reasonable excuse the Tribunal examines the actions of the appellant from the perspective of prudent tax payers exercising reasonable foresight and due diligence and having regard for their responsibilities under the Tax Acts.

20 14. The Tribunal has limited jurisdiction in penalty appeals which reflects the purpose of the legislation which is to ensure that persons file their returns and pay their tax on time. The Tribunal has no power to reduce or mitigate the penalty. The Tribunal can confirm the penalty or quash it if satisfied that the appellant had reasonable excuse.

15. The only evidence put forward by Monaco as to why they were late is via the letters from Accura.

25 16. In their letter of 22 July 2014 Accura stated that when the director of Monaco, Mr Z Ziv had completed the ATED return on 25 September 2013, this was the first time he had completed such a return and was not therefore acquainted with the procedure. He had mistakenly believed that the first returns due, were to be completed in respect of the year 1 April 2012 to 31 March 2013 because of references on the form about the value of properties as at 1 April 2012.

30 17. The notes on the front of the form make mention of ....

“Complete this form for your property if... ..your property is

- Valued at more than £2 million on 1 April 2012, or at acquisition if later.”

35 18. Ignorance of the law does not by itself provide a reasonable excuse. There has to be some other reason as to why the party was ignorant and an assessment as to why that ignorance could be said to be reasonable.

19. These notes may have contributed to Mr Ziv entering the wrong tax year on the form but they mention the need for a form to be completed if a property is acquired later than 1 April 2012. I would have expected this to alert Mr Ziv that a further tax return was due in respect of the property at 8 South End. He made no enquiry about whether a further form needed to be completed for the tax year in which the property at 8 South End was purchased. I find that it was not reasonable for Mr Ziv to believe that the only property which needed to be mentioned on a tax return being completed on 25 September 2013 was a property which his company had sold a year earlier.

20. I find that any delay by HMRC in acknowledging the incorrect tax return completed on 25 September 2013 did not lead to the ignorance of Mr Ziv about the dates when property needed to be included on tax returns.

21. I find that Mr Ziv’s mistaken belief that no return was required in respect of the property at South End until April 2014 was not reasonably held.

22. On a balance of probabilities I find that it has not been shown that Monaco have a reasonable excuse throughout the period of its delay.

23. Where no reasonable excuse is found, then the penalties must be applied in accordance with the law. The Tribunal has no power to substitute an amount other than the correct amount. The cases of *HMRC v Hok* [2012] UKUT 363 and *Bosher* [2013] UKUT 0579 (TCC) have held that it is not open to a first tier tribunal to adjust a penalty because it is felt to be unfair.

24. The question of proportionality, such as raised in the cases of *Total Technology (Engineering) Limited* [2012] UKUT 418 (TCC) and *Trinity Mirror PLC* [2014] UKFTT 355 (TC) related to the question of penalties based on percentages of VAT. Proportionality is not a matter which can be considered in relation to United Kingdom fixed penalties for the late filing of tax returns. See *Hok*.

**Decision**

25. The appeal is dismissed and the penalty of £1,300 is confirmed

26. 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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**BARBARA KING  
TRIBUNAL JUDGE  
RELEASE DATE: 27 April 2015**