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**TC04450**

**Appeal number: TC/2015/00563**

10 *Construction Industry Scheme – Whether reasonable excuse for late submission of Contractor’s monthly return -no.*

15 **FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**DARREN PRICE (D J PIPEWORKS)**

**Appellant**

**- and -**

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

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**TRIBUNAL: PRESIDING MEMBER  
PETER R. SHEPPARD FCIS FCIB CTA  
AIIT**

25 **The Tribunal determined the appeal on 27 May 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 first read the Notice of  
Appeal dated 4 January 2015, and HMRC’s Statement of Case submitted on 10  
30 March 2015 with enclosures. The Tribunal wrote to the Appellant on 11 March  
2015 indicating that if they wished to reply to HMRC’s Statement of Case they  
should do so within 30 days. No reply was received.**

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## DECISION

### 1. Introduction

5 This considers an appeal dated 4 January 2015 against a penalty of £100 levied on the Appellant by HMRC for the late filing of the Appellant's Contractor's monthly return CIS 300 under the Construction Industry Scheme (CIS) for the period ending 5 September 2014. The penalty was imposed under Paragraph 8 of Schedule 55 of the Finance Act 2009.

### 10 2. Legislation

Finance Act 2009 Schedule 55 particularly paragraphs 1,8 and 23  
Finance Act 2004 particularly Sections 58,59,60,61 and 70  
Income Tax (Construction Industry Scheme) Regulations 2005. S.I.2005 No. 2045 particularly Regulation 4

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### 3. Authorities

Rowland v HMRC [2006] STC (SCD) 536  
Anthony Wood trading as Propave v HMRC [2011] UKFTT 136 TC 001010

### 20 4. Facts

Under the CIS the contractor is required to send a return of payments they have made to contractors for each tax month to reach HMRC not later than 14 days after the end of every tax month; that is by the 19<sup>th</sup> day of the calendar month. A tax month runs from the 6<sup>th</sup> of one month to the 5<sup>th</sup> of the next.

25 Nil returns are required

If a return is received after the deadline it will be treated as being late.

The Appellant was required to file a Contractor Monthly return for the period ended 5 September 2014. The filing date for the return was 19 September 2014

The Contractors monthly return was filed on 25 September 2014.

30 As the return was not received by the filing date HMRC sent the appellant a late filing penalty notice on 4 October 2014 for £100

### 5. Appellant's submissions and correspondence with HMRC.

On 16 October 2014 the appellant wrote a letter to HMRC appealing this decision saying

35 "I have received a late penalty notice, my bank statement shows a payment sent to you for sum of £347.70 on 18 September 2014 via Bank Transfer. Please confirm you

have received this as money has left my account before the due date, so I would expect this penalty notice to be withdrawn.”

5 HMRC replied to the appellant’s letter of 16 October 2014 on 28 October 2014 stating that the penalty would not be withdrawn because it was for the late submission of the return not for late payment of the amount due on it. The letter offered a review of the decision.

6. On 31 October 2014 the appellant submitted to HMRC a Form SA634 Request for Review of decision. He stated “With regards to supposedly late submission form mentioned, I disagree with the way this appeal has been dealt with. I have no control  
10 over submission forms arriving to you. All my forms are sent on time 5 days before 19<sup>th</sup> of each month. Your charges for this also is a disgrace and very unfair. I will require you to accept submission from other means i.e. electronic email to me each month so I am not ripped off like this.”

15 HMRC advise the conclusion of their review on 16 December 2014. They confirmed the penalty.

However the reply contained two misleading statements:

20 Firstly HMRC said that the monthly return was received on 27 September 2014 but the papers sent to the Tribunal showed it was recorded as received on 25 September 2014. Secondly they said that on 23 January 2014 HMRC had cancelled a late filing penalty for the period ended 5 December 2013 whereas it was a late payment penalty that was cancelled.

7. In the Notice of Appeal the Appellant states:-

“Appeal against Penalty. CIS300 end 5<sup>th</sup> Sept 2014

25 My appeal has been dismissed on basis of late filing which is unfair. Payment of Tax was paid on time. I have no control over postal services and was unaware I would be fined £100 for late filing only payment so feel this decision should be dropped . My payment was made on time and CIS300 sent before 19<sup>th</sup> Sept so won’t pay. Fine on this basis is unjust.

30 The Notice contains further similar comments repeating the above. It also contains comments concerning the inaccuracies mentioned above in the result of the review.

## 8. HMRC Submissions

35 HMRC state the Appellant “registered for CIS on 1 September 2012 and has been filing returns since 5 October 2012. There has been one other instance where the monthly return has been filed late. HMRC accepted Darren Price’s grounds of appeal that he had filed the paperwork in plenty of time”

On 23 January 2014 HMRC upheld a penalty for the period ending 5 December 2013. An educational letter was issued to Mr.Price advising that any future appeals against

late filing penalties mentioned postal delays HMRC would require evidence of posting with the appeal. This evidence has not been provided.

In their review HMRC state that they do not consider that the Appellant has reasonable excuse for the failure to make payment by the due date.

- 5 HMRC say they have considered Special Reduction (Paragraph 16 Schedule 55 Finance Act 2009) but consider there are no special circumstances which would allow them to reduce the penalty.

HMRC submit that they have levied the penalties in accordance with legislation.

### **The Tribunals Observations**

- 10 The level of the penalties has been laid down by parliament and the legislation relating to penalties has been properly and accurately applied by HMRC. The only other consideration that falls within the jurisdiction of the First-tier Tribunal is whether or not the appellant has reasonable excuse for the late submission of the return for the period ended 5 September 2014.

- 15 9. The Tribunal has considered whether the appellant has established that it had a reasonable excuse for the failure. The appellant states that it posted the return 5 days before the due date.

- 20 10. However in view of previous difficulties the appellant had been given clear advice by HMRC in a letter dated 23 January 2014 that in future it would not accept postal delays as a reasonable excuse unless provided with evidence of posting. If this advice had been followed it would have resulted in the appellant being able to demonstrate the date of posting of the return. It appears that the appellant did not follow this advice, and therefore has not proved it had a reasonable excuse for the failure.

- 25 11. In respect of the inaccuracies in the review letter whilst these are unfortunate even if the correct and earlier date of receipt of the form had been stated the return would still have been received late. Had the other statement been expressed more accurately as a late payment penalty it would have made no difference to the penalty now being levied for the late submission of the form.

- 30 12. Paragraph 16 of Schedule 55 of the Finance Act 2009 (Special Reduction) provides HMRC with discretion to reduce any penalty if they think it right to do so because of special circumstances. On the information held in this case HMRC did not consider there were any special circumstances which would allow them to reduce the penalty. The Tribunal sees no special circumstances that would apply to enable it to overturn HMRC's decision.

- 35 13. HMRC have applied the legislation correctly and assessed a penalty in the sum of £100 as detailed in paragraph 4.above. In the Tribunal's view the appellant has not established a reasonable excuse and there are no special circumstances. Therefore the appeal is dismissed and the late payment penalty of £100 is confirmed.

14. 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.

**PETER R. SHEPPARD**  
**TRIBUNAL JUDGE**

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**RELEASE DATE: 2 JUNE 2015**