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**TC04452**

**Appeal number: TC/2015/00650**

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*Corporation Tax – Whether reasonable excuse for late submission of returns - No.–*

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**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**BRANFORD PROPERTIES LIMITED.**

**Appellant**

**- and -**

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

**Respondents**

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

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**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 letter incorrectly dated 31 January 2014 , and HMRC's Statement of Case dated 4 March 2015 with attachments. 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 by the Tribunal.**

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## DECISION

### **1. Introduction**

This considers an appeal against two corporation tax flat rate penalties each for £200 for the late submission by the appellant of its corporation tax returns for the accounting periods ended 31 May 2012 and 31 May 2013.

### **2. Statutory Framework**

The Finance Act 1998 Schedule 18 Paragraphs 3, 14, 17 and 18(3).

The Income and Corporation Taxes (Electronic Communications) Regulations 2003  
Taxes Management Act 1970 Section 118(2)

### **3. Case law**

Rowland v HMRC [2006] STC (SCD) 536

Anthony Wood t/as Propave v HMRC [2011] UK FTT 136 (TC)

### **4. The appellant's submissions.**

In a letter dated 27 June 2014 to HMRC the appellant wrote:

“We write further to your notice of penalty determination dated 17 June 2014.

We wish to apply for a review/ appeal against this determination.

We have tried on several occasions to obtain an activation code to enable us to use the online filing system for filing our NIL return. However, your systems have, for some reason that you have been unable to explain, stopped you sending out this code.

Accordingly we do not believe that it is right that you should charge a penalty as it is your system that is stopping us filing the return.”

### **5. In the Notice of Appeal the Appellant states**

“The company does not trade and simply holds a lease.

We have been unable to file the Corporation Tax returns on line due to the fact that HMRC have been unable to provide the activation code that is required to enable online filing due to a block of some sort being placed on our file which HMRC cannot explain but have been unable to remove.

There is no tax due so the assessment is wrong and we should not be penalised for deficiencies in the HMRC online filing processes.”

### **6. HMRC Submissions**

In their statement of case HMRC state that on 17 June 2012 they sent the Appellant a notice to file a corporation tax return for the period 1 June 2011 to 31 May 2012. The filing date for the return was 31 May 2013.

As the return was not received by the filing date or within the following 3 months HMRC charged the appellant a late filing flat rate penalty of £200 in accordance with paragraph 17 (2)(b) Schedule 18 Finance Act 1998

An initial notice of penalty determination was issued to the appellant on or shortly after 18 June 2013 with a notice of further penalty determination increasing the penalty to £200 issued on or shortly after 17 September 2013.

7. In their statement of case HMRC state that on 23 June 2013 they sent the Appellant a notice to file a corporation tax return for the period 1 June 2012 to 31 May 2013. The filing date for the return was 31 May 2014.

As the return was not received by the filing date or within the following 3 months HMRC charged the appellant a late filing flat rate penalty of £200 in accordance with paragraph 17 (2)(b) Schedule 18 Finance Act 1998.

An initial notice of penalty determination was issued to the appellant on or shortly after 17 June 2014 with a notice of further penalty determination increasing the penalty to £200 issued on or shortly after 16 September 2014.

8. HMRC note that at the date of their statement of case (4 March 2015) complete and satisfactory returns for the accounting periods ending 31 May 2012 and 31 May 2013 the appellant had not been filed by the appellant.

9.. HMRC say that the notices to file a return issued to the appellant on 17 June 2012 and 23 June 2013 both warned that penalties would be charged if return was filed late.

HMRC state that the notices were sent to the last known registered office of the company. HMRC records confirm that the appellant had not advised Companies House of any new registered office and despite several attempts from 28 June 2012 HMRC were unable to obtain a new registered office until 14 July 2014.

HMRC Digital Services have confirmed that the Appellant contacted the Online Services Helpdesk on 29 August 2014 to advise that numerous activation codes had been requested but none received. HMRC records show that the Appellant enrolled for the CT online service on 18 February 2013 and several requests for activation codes were made between the periods 18 February 2013 and 29 January 2015. However as neither the company or their agent had provided HMRC with a new registered office address the activation codes were sent to the previous registered office and therefore not received.

A further activation code was requested and issued on 30 January 15. The appellant successfully activated the CT online services on 15 February 2015, however the CT returns for the periods ending 31 May 2012 and 31 May 2013 were still outstanding at the date of the statement of case, 4 March 2015.

## **10. The Tribunal's observations**

It appears that the difficulties all arose because the appellant and/or its agent had failed to notify HMRC of the change of address of the registered office. They had also not notified Companies House of the change. It is therefore understandable that HMRC sent the activation codes and notices of penalty to the last known registered address. Although HMRC did make attempts to ascertain the new address from the appellant and its agent these were unsuccessful. Neither the appellant nor its agent has explained why it did not reply.

11. It is not an excuse to argue that the first penalty notice was not received because the registered office had changed. Whilst it is true that attempts to obtain an activation code commenced ahead of this date in February 2013. Any problem should and could have been resolved within a few weeks even if by the simple method of writing a letter to HMRC. It was not until both returns were late and a penalty determination received that the Appellant wrote to HMRC on 27 June 2014.

12. In fact it took until February 2015 for the appellant to get an activation code. The Tribunal cannot accept that the blame for this delay for the whole period falls at the feet of HMRC. It was in the appellant's power to write or telephone HMRC to explain the difficulty well before 27 June 2014.

13. Even when the activation codes were received by the appellant they have not acted promptly to put right the omission as complete returns remained outstanding at 4 March 2015.

14. The appellant has not submitted on time its corporation tax returns for the periods ended 31 May 2012 and 31 May 2013. The appellant has not established a reasonable excuse for either of the late returns. This is particularly so in respect of the return for the period ended 31 May 2012 which was due by 31 May 2013. In respect of each failure HMRC have issued the penalty notices in accordance with the legislation. Therefore the appeal is dismissed and the penalties totalling £400 stand.

15.. 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**

**RELEASE DATE: 2 JUNE 2014**