



**TC04366**

**Appeal number: TC/2014/014844**

***CORPORATION TAX – penalties for late submission of return – whether there was a “reasonable excuse” – no – appeal dismissed***

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**HAMPSHIRE DISTRIBUTORS LTD**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE AMANDA BROWN  
MRS JANET WILKINS**

**Sitting in public at Fox Court, 14 Grays Inn Road, London WC1X 8HN on 2 April 2015.**

**Mr Martin Rudling, Accountant of Castle Accounting and Tax Advisors Ltd, for the Appellant**

**Ms Glynis Millward, Officer of HM Revenue and Customs, for the Respondents**

## DECISION

5 1. This is an appeal against the following penalties imposed for the late filing of the Appellant's corporation tax returns:

(1) A flat rate penalty of £200 and a tax related penalty of £2044.30 for the late filing of the return for the specified period ending 10 September 2007;

(2) A flat rate penalty of £200 and a tax related penalty of £57.68 for the late filing of the return for the specified period ending 30 September 2007;

10 (3) A flat rate penalty of £500 and a tax related penalty of £1087.09 for the late filing of the return for the specified period ending 30 September 2008;

(4) A flat rate penalty of £1000 and a tax related penalty of £2281.06 for the late filing of the return for the specified period ending 30 September 2009; and

15 (5) A flat rate penalty of £1000 and a tax related penalty of £2246.66 for the late filing of the return for the specified period ending 30 September 2010.

### **Legislation**

2. By virtue of paragraph 3(1) Schedule 18 Finance Act 1998 HMRC "may by notice  
20 require a company to deliver a return". That return, by virtue of paragraph 3(4) must be delivered "not later than the filing date"

3. Paragraphs 17 and 18 Schedule 18 Finance Act 1998 provides the penalty regime applicable where a company fails to deliver a company tax return by the filing date.

4. Section 118(2) Taxes Management Act 1970 provides "For the purposes of this  
25 Act, ... where a person had a reasonable excuse for not doing anything required to be done he shall be deemed not to have failed to do it if he did it without unreasonable delay after the excuse ceased".

### **The issue**

5. The issues to be considered in this appeal are limited to whether there existed for  
30 any of the periods a reasonable excuse for the late return. It was expressly accepted by the Appellant's representative that, absent, a reasonable excuse the Appellant was liable to the penalties as specified in the penalty notices and as set out in paragraph 1 above.

### **The facts**

35 6. The Appellant has one director (Mr Philip McGoldrick) and a company secretary (Mrs Cheryl McGoldrick) who are husband and wife. Neither appeared before the tribunal to give evidence but we were told that Mr McGoldrick is primarily

responsible for the trading operations of the business with Mrs McGoldrick being responsible for the administration of the business including filing of tax returns.

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8. The tribunal was told by Mr Rudling that Mrs McGoldrick was the matriarch of the family having lost both her parents and elder siblings. In her early 30s Mrs McGoldrick's sister had been diagnosed with early onset Alzheimer's. Mr Rudling was unable to provide the tribunal with even an approximate date for the diagnosis. He explained that, in the early stages, the sister was able to manage relatively independently, however, as the disease progressed she became more and more dependent on Mrs McGoldrick though it appears that the sister never lived with Mr and Mrs McGoldrick. Mr Rudling stated in the hearing that approximately 4 years ago Mrs McGoldrick's sister was admitted to a long term care facility; this statement was inconsistent with the correspondence which indicated in 2014 that she was admitted 1-2 years previously.

9. Unfortunately for the tribunal, there was no direct evidence given from Mr or Mrs McGoldrick accordingly, the tribunal was unable to determine the extent of the impact of Mrs McGoldrick's sister's illness on Mrs McGoldrick's ability to fulfil her role as company secretary in any or all of the periods under consideration.

10. Again it is claimed in correspondence that the Appellant believed that "everything was up to date". The tribunal finds these claims incredible in all the circumstances and discounts them. Whilst the Appellant had, we understand it, requested that correspondence be sent to their trading address rather than their registered address (c/o Castle Associates) we find that Castle Associates was their accountant and/or tax advisor at all material times and that all correspondence was received by Castle Associates. Mr Rudling believed that all correspondence received would have been forwarded to the Appellant. The tribunal therefore finds that the Appellant should have been aware both that it had not filed its corporation tax returns by the due date and that it had thus rendered itself liable to penalty.

11. Consistent with Mr Rudling's acceptance that the Appellant was liable to the penalties unless it could establish that it had a reasonable excuse, the tribunal finds that all of the returns giving rise to the penalties under appeal were filed late and, on the basis of undisputed evidence the tribunal finds that the returns for specified periods ending 30 September 2011 and 30 September 2012 were also filed late.

### **The arguments**

12. Simply put, the Appellant contends that it has a reasonable excuse for each of the penalties identified in paragraph 1 above by virtue of the impact on Mrs McGoldrick of the illness of her sister placing profound stress on her and preventing her from effective performance of her statutory obligations.

13. By the Notice of Appeal and in correspondence, the Appellant also raised a number of issues regarding fairness, equal treatment and lack of sympathy together with administrative issues regarding HMRC's failure to recognise contact made by the Appellant in which it was claimed that their situation was explained. These latter arguments were not pursued before the tribunal. They are not, in any event, matters over which the tribunal has any jurisdiction.

14. HMRC contend that there were two officers of the company both of whom should have been alive to the statutory requirements placed on the company regarding the filing of tax returns; as a reasonably prudent taxpayer it was the obligation of the directors to ensure that these obligations were met. HMRC submit that the directors have consistently failed to give the necessary importance to their tax filing obligations is evidenced by the continued failure to make timely filings post the period after which Mrs McGoldrick's sister was admitted to a long term care facility.

15. HMRC consider that the period of delay between the filing date and actual filing of the return cannot, in any instance under consideration, be considered to have been due to Mrs McGoldrick's sister's illness and a reasonable excuse is required to subsist for the entire period of the delay.

### **Reasons for the decision**

16. It is accepted by the Appellant that its actions gave rise to liability to a penalty unless the Appellant could show that there was a reasonable excuse having the effect of deeming it not to have failed to render its returns by the due filing date.

17. The tribunal has considered the material available to it and takes the view that whilst the pressures placed on Mrs McGoldrick as a consequence of her sister's illness might have constituted a reasonable excuse for any individual specified period the tribunal is unable to accept that a reasonable excuse is established in this case.

18. The tribunal has been provided with no evidence concerning diagnosis or duration of the sister's dependency on Mrs McGoldrick, nor was the tribunal provided with any detail of the nature of the pressures placed upon Mrs McGoldrick other than in the most general of senses.

19. Further, the tribunal considers that as conscientious business people consistent of their basic statutory duties vis a vis tax, the directors should have recognised the seriousness of the failure of the Appellant to file its returns by the due date and despite the other pressures identified some mechanism to ensure that the duties were complied with. The periods of delay range from 2 months and 14 days through to 1 year 8 months and 29 days, averaging across the 5 returns at approximately 12 months late. In the tribunal's view these periods are too prolonged for there to be a reasonable excuse for the whole of any period of delay as is required. Even if a reasonable excuse had been established for any period of delay, which the tribunal could not determine in the absence of more detailed evidence from the Appellant, the tribunal considers that there ceased to be a reasonable excuse once sufficient time had passed for the Appellant to make suitable arrangements to ensure returns were filed on time

### **Decision**

20. There was no reasonable excuse established for any of the penalties and the appeal against each penalty is dismissed.

21. 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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**Amanda Brown**

**TRIBUNAL JUDGE**

**RELEASE DATE: 23 April 2015**

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