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TC04494

Appeal number: TC/2015/02174

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

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**FIRST-TIER TRIBUNAL
TAX CHAMBER**

I D CONSULTANCY SYSTEMS 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 12 June 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 10 March 2015 , and HMRC's Statement of Case submitted on 10 April 2015 with attachments. The Tribunal wrote to the Appellant on 16 April 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 £100 (total £200) levied by HMRC under the terms of paragraph 17 of Schedule 18 of the Finance Act 1998 for the late submission by the appellant of its corporation tax returns for the accounting period ended 31 August 2013.

2. Legislation

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 and correspondence with HMRC.

Following the issue of the first penalty notice which was on or around 16 September 2014 the appellant wrote to HMRC.

On 7 November 2014 Carolyn Gray, Corporation Tax Officer of HMRC replied saying

“.....Thank you for your letter received by us on 23/10/14

I see you have tried to submit your accounts via Companies House. HMRC will not accept abbreviated accounts and sometimes it does not filter through to us if such accounts are submitted. We have no relationship with Companies House so I can't intervene or help you with already accepted accounts.

In order to deal with your penalty please submit the CT600, full company accounts and tax computations on HMRC online services. You have done this successfully in the past so there is no reason to suppose there will be any difficulties. Once you have submitted them to HMRC then we can review the penalty. You can attach a penalty appeal letter to your submission if you like.....”

5. In a letter dated 6 January 2015 to HMRC the Iain Duncan, managing director, for the appellant wrote:

“I wish to appeal against the penalty determination

Using the online process I successfully filed the accounts in February 2013 and was sent an e-mail in return to say they had been received. According to your website the

accounts would be filed at Companies House and HMRC. So I was a little shocked to receive your first letter to say that you have not received my accounts

I assume something has gone wrong at your end as the normal process posts them to Companies House and then to HMRC.....

.....I have had communication with various people from your office both on the phone and by letter who said it was easy enough and once I got on the computer the options they suggested were not there . The option to post just to HMRC looked promising but after following it for a few screens it simply went back to the joint filing option.....”

6. On 2 February 2015 HMRC wrote to the appellant and said that they did not agree that the online filing difficulties experienced by the appellant established a reasonable excuse for the late filling of the return. The letter included

“You have been written to on 4 occasions now advising that HMRC do not accept abbreviated accounts and advising you of HMRC helplines/ website location and telephone numbers and you keep submitting them. We still have not received a CT600, full company accounts and tax computations for Account period ending 31/08/13. You have previously e-filed.

The letter offered a review

7. On 6 February 2015 the appellant submitted a request for review. This repeated some of the points set out above in previous letters.

8. On 24 February 2015 HMRC wrote to the appellant saying that the conclusion of the review was that the decision to charge a penalty was correct.

HMRC state that

“The Income and Corporation Taxes (Electronic Communications) Regulations 2003 as amended states that Companies must submit their CT returns online for any accounting period ending after 31 March 2010. Furthermore if they have to prepare accounts under Companies Act 2006, they must submit their accounts and computations in a set format.....”

They say “It is not enough to have a willingness to file a return a company must ensure that it has in place the necessary systems and processes to ensure its filing obligation is adhered to. To that end it must exercise due diligence and foresight.”

They say that it is “the responsibility of the company to ensure their tax affairs are up to date, returns are submitted and taxes paid over by the due date.”

HMRC point out that the joint filing service can be used to submit full statutory accounts to both HMRC and Companies House.

They say “a Corporation Tax return includes a set of accounts which must be the full statutory accounts required by law and not the abbreviated accounts some companies are allowed to file with Companies House.”

HMRC state that their records show that previous CT returns and accounts have been filed on line successfully before which would indicate there should be no issues with filing online for this accounting period. Therefore as the company has not provided a reasonable excuse for failing to file the CT return on time the penalty for late filing of the return has been correctly charged

9. In the Notice of Appeal the Appellant states

“ I am well aware of my legal obligations as HMRC keep reminding me but they are not looking at it from my point of view. I posted my accounts as usual (as I have done for several years) using the joint filing process with Companies House. I received an email from Companies House to say my accounts had been accepted and I assumed this was the end of it. However, HMRC software rejected my accounts but did not inform me of this and the first I heard of it was when HMRC sent me a letter to tell me that my accounts were overdue. I have since tried to file just to HMRC but this does not appear to be possible. After much time-consuming work I did manage to find a link to post just to HMRC but after following this for several screens it just went into the joint filing option. I have also tried to file my accounts again but it gets rejected by Companies House – I assume because they have already been accepted. My point is that I have no choice in the matter. Once the accounts are finished and ready to file there is only one option which is to post to Companies House and then to HMRC. In a letter from HMRC Carolyn Gray states that sometimes the accounts do not filter down to HMRC. The general public are not advised of this and there is no feedback from HMRC that accounts can be submitted to HMRC or the joint filing process can be used. However, only the joint filing process is an option when following this route as the option to file just to HMRC disappears.”

10. HMRC Submissions

HMRC say that a complete tax return is not just the CT600 form, it is also such information that is required by legislation ie full company accounts, directors' report, balance sheet etc. and a return is not deemed to have been delivered if any component is missing, incomplete or in an incorrect format.

11. HMRC say that from 1 April 2011 companies must submit their corporation tax returns online for any accounting period ending after 31 March 2010.

A complete Corporation Tax return is therefore not deemed to have been delivered to HMRC until received (electronically for accounting periods after 31 March 2010) and logged by the CT system confirming that all components have been submitted in the correct/approved format.

12. HMRC accept that the appellant forwarded a paper CT return and abbreviated accounts but these were returned as the full statutory accounts were not included neither were any computations to support the return. The paper return was returned with instructions to file online and providing Online Services helpdesk details for professional advice on how to file online. HMRC say they have no record of any contact by the appellant with the Online Services helpdesk. HMRC say that the

appellant's Corporation tax return and accompanying accounts and computations were successfully filed online for the accounting period ending 31 August 2012.

13. In their statement of case HMRC state that where the corporation tax return is not filed by the filing date the company will be charged a flat-rate penalty in accordance with Paragraph 17 Schedule 18 of Finance Act 1998

The penalty is £100 if the return is filed within 3 months after the filing date or £200 in any other case; however the amounts are increased to £500 and £1,000 respectively for a third successive failure.

Therefore on or shortly after 16 September 2014 HMRC issued a first penalty determination in the sum of £100. A notice of further penalty determination was issued on or shortly after 16 December 2014 increasing the penalty by a further £100 to a total of £200.

14. The Tribunal's observations

It is clear that by the date HMRC submitted their statement of case 10 April 2015 the appellant had not filed the required full statutory accounts for the period ended 31 August 2013. The appellant's corporation tax return for that period is therefore incomplete and not deemed to have been delivered.

The appellant is therefore liable to a late return penalty unless he can establish that he had reasonable excuse for the failure.

In all of his responses Mr. Duncan for the appellant makes no comment about why in the light of his experience of filing in previous years and the advice given from HMRC in respect of the year to 31 August 2013 the appellant has persisted in attempting to file abbreviated accounts rather than the required full statutory accounts. HMRC say they have advised the appellant on 4 occasions that full statutory accounts are required yet to the date HMRC submitted their statement of case these had not been provided.

The difficulties the appellant has had in filing appear to be solely because full statutory accounts have not been submitted. In the absence of any explanation as to why full statutory accounts have not been provided the Tribunal cannot accept that the appellant has a reasonable excuse for the failure to submit a return on time.

15. The appellant has not submitted on time its corporation tax return for the period ended 31 August 2013. The appellant has not established a reasonable excuse for the late return. In respect of the failure HMRC have issued penalty notices in accordance with the legislation. Therefore the appeal is dismissed and the penalties totalling £200 stand.

16. 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: 22 June 2015