



TC04718

Appeal number: TC/2015/03595

Income tax – late filing of Company Tax return received Notice stating successful submission – whether reasonable excuse – yes – appeal allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

	ACTIVITIES DISPLAY COMPANY LTD	Appellant
	- and -	
	Her Majesty's Revenue and Customs	
		Respondents

TRIBUNAL: JUDGE DR K KHAN

The Tribunal determined this appeal on 6 October 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 20 March 2015 HMRC's Statement of Case submitted on 21 July 2015.

DECISION

Introduction

- 5 1. This is an appeal against a flat rate penalty determination for the late
filing of the Company Tax (CT) Return for the accounting period ending 30
November 2013.

Legislation

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- (1) The legislation is contained in Paragraph 3 Schedule 18 Finance
Act (FA) 1998 which requires a company to deliver a return by
the appropriate filing date. The Income and Corporation Taxes
(Electronic Communication) Regulations 2003 as amended by SI
15 2009 /3218 states that from 1 April 2011 onwards companies
must submit their CT returns online for any accounting period
ending 31 March 2010. These accounts together with accounts to
Companies House must be submitted in a set format which uses a
certain business reporting language called iXBRL.

(2) Where the CT return is not filed by the filing date the company will be charged a flat rate penalty in accordance with Paragraph 17 Schedule 18 FA 1998. The penalty is £100 if the return is filed within three months after the filing date or £200 in any other case. This penalty increases if there are successive failures or it may be calculated as a percentage of the unpaid tax where the return is delivered within two years after the end of the period for which the return is required.

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(3) Section 118(2) Taxes Management Act (TMA) 1970 provides statutory protection from a penalty if the company has a reasonable excuse for failing to file their return on time. A reasonable excuse is not defined in law but is considered normally as an unexpected or unusual event that is either unforeseeable or beyond the companies control. In looking at

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whether or not there is a reasonable excuse the Tribunal would look at all surrounding facts from the perspective of a prudent person, exercising reasonable foresight and due diligence and having proper regard to their responsibilities under the Taxes Acts.

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Relevant facts

- (1) The Company was incorporated on 5 October 2010 and was required to file a CT return for 30 November 2013.
- (2) The company received the requisite Notice to file for the specified period on 22 December 2013.
- (3) The CT return has never been received. The return for 30 November 2013 was due not later than 30 November 2014 but there is no record of it having been filed.

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(4) In the initial Penalty Notice for £500 was issued on or shortly after 16 January 2015.

5 (5) On 30 January 2015 the Appellant appealed against the penalty on the grounds that the CT return had been filed many times. They explained that on three occasions the Company's Agent waited 30 minutes on the 'phone to speak to HMRC but unfortunately never got through".

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(6) HMRC sent the Appellant a decision letter on 5 March 2015 rejecting their appeal and offering a review. A request review form dated 5 March 2015 was received by HMRC on 2 April 2015. It explained that the CT Return had been submitted ahead of schedule and the HMRC system had accepted the filing. It was

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explained that they were unaware that the CT Return had to be submitted via iXBRL software, which they did not have.

- (7) The Appellant had sought help after the company was advised that the software used did not have iXBRL capability and that without that software their submission was not possible.

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- (8) HMRC carried out a review and issued their conclusions on 5 May 2015 which upheld the grounds upon which the original decision to oppose a penalty was based.

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- (9) On 2 June 2015 the Appellant appealed to the Tribunal.

Appellant's submission

- (1) The Appellant says that they submitted their returns on time via the SAGE software, which appeared to be successful and there

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was never an issue using that software until iXBRL was introduced. They had difficulties with that software. From their experience of the filing it appeared that their CT600 was submitted successfully with a reference number provided and the date of 11/04/2013. There was a further submission with a similar message and a successful submission date of 09/06/2014.

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- (2) The Appellant tried to contact HMRC directly via phone but were unsuccessful.

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- (3) The Appellant says that the new software, iXBRL, meant that the accounts submitted did not reach HMRC.

- (4) It was the understanding of the Appellant that they had made a successful submission. They later asked HMRC for training on the new software package.

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HMRC's submission

- (1) HMRC says that the CT600 Tax Return was submitted on 9 June
5 2014 but was logged as unsatisfactory on 4 November 2014
because the accounts were abbreviated and in a PDF format. The
Appellant's were asked to submit the returns online again and
advised that any accounts must be in the iXBRL format and until
this had been achieved the company had not met its obligations.
10 The filing date was extended from the original date of 30
November 2014 to 31 December 2014 to allow the company
further time to submit the CT Return in the correct format.
- (2) A director of the plaintiff company wrote to HMRC on 31
15 December 2014 with a copy of the accounts but no CT600 Tax
Return as the company had difficulty filing online. It was

rejected as unacceptable on 22 January 2015 and the accounts were returned with a covering letter referring the company to the online service helpdesk.

5 (3) The Appellant say they telephoned HMRC several times but HMRC have no record of these calls.

(4) HMRC says that in submitting the returns in an incorrect format presented a problem in understanding the accounts and for their submission. The CT Return was therefore deemed not to have been received by HMRC.

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(5) The HMRC say that since the company incorporated on 5 November 2010, the first accounting period for the company was 5 November 2010 to 4 November 2011. It was required by law that from 1 April 2011 onwards companies must submit their CT

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Return online for any accounting period ending after 31 March 2010 and the accounts must be prepared in a set format using the iXBRL. They therefore say that the iXBRL had been in use since the Appellant's first accounts were due and their compliance record is poor.

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Conclusion

- (1) It is clear that the Appellant had made reasonable efforts to comply with their obligations and it is unfortunate that HMRC sought to reject their CT return which had been submitted online but not in the correct format. HMRC had offered a two year transitional period when taxpayers faced genuine obstacles to filing online using the new software.

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(2) The iXBRL is a way of embedding and displaying accounting/ financial information in an HTML document, the universal language for web browsers. It allows data to be read intelligently by a computer and also presented in a human readable form either in screen or in printed output.

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(3) HMRC had allowed a transitional period for taxpayers adjusting to the new software. The transitional arrangements lasted for approximately 21 months from April 1 2011. It was clear that this arrangement was made for dealing with taxpayers who were unable to file their accounts due to an event beyond their control which is to say the introduction of the new software with which they were unfamiliar.

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(4) It seems therefore to the Tribunal that the taxpayer in this case had to complete their filings by 2014 so outside the transitional

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period for the introduction of the new software. It is clear that a reasonable attempt was made to comply with a taxpayers filing obligations and there was a reasonable belief by the taxpayer that they had filed a return by the filing date.

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- (5) The taxpayer faced genuine obstacles to filing online and based on the facts of this case the Tribunal is sympathetic to those difficulties. They tried to meet their filing obligations in sending in a hard copy of the accounts and tried to contact HMRC to resolve the filing issues.

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- (6) In the circumstances and on the balance of probabilities the Tribunal will allow this appeal given that the taxpayer believed they had filed their accounts and on finding out that they had not done so thought to post their accounts to HMRC in an effort to meet their deadlines and filing obligations.

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(7) The taxpayer also made, through their Agents, numerous phone calls to HMRC to try and sort the matter out but was unsuccessful in reaching an Agent to discuss the matter.

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(8) The question is can a penalty arise where a company's tax return is rejected because the format is wrong? It seems to the Tribunal that if reasonable efforts have been made to comply with their filing obligations and there's a reasonable belief that the return had been properly filed online then the Tribunal would be sympathetic to the taxpayer in such cases. The granting of a two year transitional period for taxpayers to familiarise themselves with the new software suggest that there were some problems at the start. This case was very much decided on the facts presented to the Tribunal and accordingly the appeal is allowed.

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(9) This document contains full findings of facts and reasons for the decision. Any party dissatisfied with the 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 fifty six days after this decision is sent to that party. The parties are referred to “Guideline to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

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**TRIBUNAL JUDGE
K KHAN
RELEASE DATE: 17 NOVEMBER 2015**