



TC04920

Appeal number: TC/2015/7026

VAT – penalty for late notification – sch 41 FA 2008 - appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

THE GREEN BUNGALOW SETTLEMENT

Appellant

- and -

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

Respondents

**TRIBUNAL: Judge Peter Kempster
Mr Terence Bayliss**

Sitting in public at Centre City Tower, Birmingham on 24 February 2016

The Appellant did not appear and was not represented

Ms Sharon Hancox (HMRC Appeals Unit) for the Respondents

DECISION

1. The Appellant (“the Trust”) appeals against a penalty in the amount of £1,705.00 levied by the Respondents (“HMRC”) pursuant to sch 41 Finance Act 2008 for late notification of liability to register for VAT.

2. On the evening before the hearing the Trust’s representative sent a letter by email to the Tribunal explaining the Trust’s case, and apologising for the lateness of the submissions. Prior to commencement of the hearing the Tribunal’s clerk telephoned the Trust’s representative and was informed that the representative was on a telephone meeting. The Tribunal took it that neither the Trust nor its representative (both of whom were some distance from the hearing venue) intended to attend, and that the letter (together with earlier correspondence) constituted the case they wished to put to the Tribunal. The Tribunal was satisfied that reasonable steps had been taken to notify the Appellant of the hearing and considered that it was in the interests of justice to proceed with the hearing, pursuant to Tribunal Procedure Rule 33.

Background

3. On 1 October 2014 the Trust submitted a VAT registration application (Form VAT1) to HMRC for registration with effect from 1 June 2013. The Trust was registered accordingly. On 27 November 2014 HMRC notified the Trust that the notification was late and a penalty under sch 41 FA 2008 was under consideration; a standard form reply slip was to be completed and returned to HMRC by 29 December 2014. No reply was made and a penalty notice was issued on 26 January 2015. The reply slip was returned on 9 February 2015 and a revised penalty notice was issued on 18 February 2015. The penalty was formally assessed on 27 April 2015. On 12 August 2015 the Trust’s representative requested a formal review of the penalty decision, which was accepted by HMRC although it was out of time. The formal review was issued on 15 October 2015 and upheld the penalty decision. On 2 December 2015 the Trust’s representative appealed to the Tribunal, noting that the appeal was also out of time.

Late Appeal

4. The appeal is out of time, having been filed after the deadline of 14 November 2015 (s 83G VATA 1994 refers). Having considered the reasons provided in the notice of appeal for the lateness of the notice, we admit the appeal late (s 83G(6) VATA 1994 refers).

Law

5. Schedule 41 FA 2008 provides (inter alia) for penalties for late notification of liability to register for VAT.

6. In summary:

(1) Distinction is drawn between failures which are (i) deliberate and concealed; (ii) deliberate but not concealed; and (iii) other (para 6).

5 (2) For “other” failures the standard penalty is 30% of the potential lost revenue (para 6).

(3) Where the taxpayer discloses the failure then the penalty may be reduced, and a further distinction is drawn between disclosures which are prompted and unprompted (para 12).

(4) For unprompted disclosures the minimum penalty is (para 13):

10 (a) If HMRC become aware of the failure within twelve months: 0%.

(b) Otherwise: 10%.

Appellant’s case

7. The Trust contends:

15 (1) There was some technical complexity around the issue of whether the Trust was liable to register for VAT in relation to the letting of holiday accommodation, and expert advice had been taken. As soon as the correct position was realised, a voluntary notification of liability to register had been filed.

20 (2) The penalty should be reduced to nil because the Trust had notified promptly on becoming aware of the liability. The penalty regime should be primarily directed at taxpayers who deliberately avoid their responsibilities, not for those such as the Trust who make a genuine mistake and voluntarily disclose their mistake to HMRC. This had been the approach of the Tribunal in *James Hillis v HMRC* [2013] UKFTT 196 (TC).

25 (3) Alternatively, the penalty should be reduced below the level assessed by HMRC because a reduction of only 15% (out of a maximum of 30%) had been allowed in relation to “telling”, and a reduction of only 20% (out of a maximum of 40%) had been allowed in relation to “helping”. The maximum reductions were not given because the information requested by HMRC had not been
30 provided by the deadline. That failure was because the request had been placed in a bag of records for completion of the first VAT return and handed to the accountants who had not actioned it until preparing that return.

Respondents’ case

8. Ms Wilcox for HMRC submitted as follows:

35 (1) HMRC accepted that the failure was not deliberate and that its disclosure was unprompted. The interpretation of the twelve month rule in para 13 sch 41 had been clarified by the Tribunal in *Taste of Thai Ltd v HMRC* [2013] UKFTT 318 (TC); on the chronology of the current appeal it was clear that the failure

was notified outside the twelve month period. Thus the range of penalty provided by the legislation was 10% - 30%.

5 (2) In relation to the alleged technical complexity of the Trust's VAT position, different explanations had been provided at different times. In earlier correspondence it had been claimed that it had been thought that supplies were exempt, whereas in the latest letter it was claimed that it was the turnover limit that was in doubt because of connected persons being involved. Without an opportunity to question the Trust on this, HMRC could not accept that there was a reasonable excuse (within para 20 sch 41) for the failure to notify.

10 (3) As stated in the formal review letter, HMRC had considered the possibility of a special reduction under para 14 sch 41 but concluded that there were no special circumstances. HMRC considered that the relevant part of the *James Hillis* decision was incorrect. The conclusion in the review letter was in accordance with HMRC's published views on this point.

15 (4) In relation to the reduction in penalty given for the quality of the disclosure, the review letter explained HMRC's rationale. Without an opportunity to question the Trust on the admitted late provision of information, HMRC could not accept that there was any reason to change the rationale of the penalty reduction calculation.

20 **Consideration and Conclusions**

Minimum and maximum levels of penalty

9. We agree with the Tribunal's conclusions in *Taste of Thai* concerning the correct interpretation of the twelve month rule in para 13 sch 41. We agree with HMRC that, on the chronology of the current appeal, the failure was notified outside
25 the twelve month period. Accordingly, the minimum penalty is 10% of the potential lost revenue, and the maximum penalty is 30% of the potential lost revenue.

Reason for failure to notify

10. The onus is on the Trust to show that there was a reasonable excuse (within para 20 sch 41) for the failure. We accept that the Trust took professional advice at some
30 point but the information available to us does not state clearly the identity of the advisers involved, or when the advice was requested and given, or what the advice was. We also note the provisions in para 21 sch 41 concerning failures by agents. We conclude that there was not a reasonable excuse (within para 20 sch 41) for the failure.

35 *Special reduction*

11. We do not agree with the reasoning of the Tribunal in *James Hillis* on this point (at [23-26]). Schedule 41 makes a clear distinction between deliberate and non-deliberate failures. The former are penalised more heavily than the latter, but non-deliberate failures are still penalised. We note the Tribunal's comments on the

perceived policy behind sch 41 (at [26]) but we do not think that the special circumstances provision in para 14 can be interpreted as the Tribunal stated there.

Reduction for quality of disclosure

5 12. Having carefully considered HMRC's explanation of the calculation contained in the review letter and the Trust's explanation of why there was a delay in providing information to HMRC, we do not consider the calculation of the reduction should be amended.

Conclusion

10 13. For the reasons given above, we will not adjust the penalty assessed and accordingly we dismiss the appeal.

Decision

14. The appeal is DISMISSED.

15 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.

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**PETER KEMPSTER
TRIBUNAL JUDGE**

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RELEASE DATE: 25 FEBRUARY 2016