



TC05730

Appeal number: TC/2016/07314

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Construction Industry Scheme – Whether reasonable excuse for late submission of Contractor’s monthly returns - no.

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**FIRST-TIER TRIBUNAL
TAX CHAMBER**

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HILLS PAINTING & DECORATING LIMITED Appellant

- and -

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

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

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The Tribunal determined the appeal on 28 March 2017 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 9 December 2016, and HMRC’s Statement of Case received on 6 February 2017 with enclosures. The Tribunal wrote to the Appellant on 8 February 2017 indicating that if they wished to reply to HMRC’s Statement of Case they should do so within 30 days. No reply was received.

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DECISION

1. Introduction

5 This considers an appeal dated 9 December 2016 against five penalties totalling £700
levied on the Appellant by HMRC for the late filing of the Appellant's Contractor's
monthly return CIS 300 under the Construction Industry Scheme (CIS) for periods
ending 5 January 2016, 5 February 2016 and 5 April 2016. The penalties were
imposed under Paragraphs 8 and 9 (2) of Schedule 55 of the Finance Act 2009.
10 The details of the penalties are as follows

A penalty of £100 imposed under Paragraph 8 of Schedule 55 of the Finance Act
2009 for the late filing of the appellant's contractor's monthly return for the period
ending 5 January 2016.

15 A penalty of £200 imposed under Paragraph 9(2) of Schedule 55 of the Finance Act
2009 for the late filing by over 2 months of the appellant's contractor's monthly
return for the period ending 5 January 2016.

A penalty of £100 imposed under Paragraph 8 of Schedule 55 of the Finance Act
2009 for the late filing of the appellant's contractor's monthly return for the period
ending 5 February 2016.

20 A penalty of £200 imposed under Paragraph 9(2) of Schedule 55 of the Finance Act
2009 for the late filing by over 2 months of the appellant's contractor's monthly
return for the period ending 5 February 2016.

25 A penalty of £100 imposed under Paragraph 8 of Schedule 55 of the Finance Act
2009 for the late filing of the appellant's contractor's monthly return for the period
ending 5 April 2016.

The Tribunal notes that the return for the period to 5 March 2016 is not mentioned in
the bundle of papers before it, nor is there reference to any penalty for that period.
The Tribunal is therefore unable to make any finding or comment in respect of that
period

30 The appeal includes an application by the appellant to appeal out of time and this is
unopposed by HMRC.

The Tribunal has therefore allowed the appeal to be made out of time and has
proceeded to consider the appeal.

2. Legislation

35 Finance Act 2009 Schedule 55 particularly paragraphs 1,8, 9,10,11,16,20,22, and 23
Finance Act 2004 particularly Sections 57,58,59,60,61 and 70
Income Tax (Construction Industry Scheme) Regulations 2005. S.I. 2005 No. 2045

3. Authorities

Rowland v HMRC [2006] STC (SCD) 536

Anthony Wood trading as Propave v HMRC [2011] UKFTT 136 TC 001010

Crabtree v Hinchliffe

5 Clarks of Hove Ltd. v Bakers' Union

4. Facts

The appellant registered for CIS on 13 May 2016, but the effective start date of the business was 6 December 2015. Under the CIS the contractor is required to send a return of payments they have made to contractors for each tax month to reach HMRC not later than 14 days after the end of every tax month; that is by the 19th day of the calendar month. A tax month runs from the 6th of one month to the 5th of the next.

The Income Tax (Construction Industry Scheme) Regulations 2005 Regulations 4 (10) and (11) state:

15 *“(10) If a contractor who has made a return, or should have made a return, under this regulation makes no payments under construction contracts in the tax month following that return, the contractor must make a nil return not later than 14 days after the end of that tax month. This is subject to paragraph (11).*

20 *(11) Paragraph (10) does not apply if the contractor has notified the Commissioners for Her Majesty's Revenue & Customs that the contractor will make no further payments under construction contracts within the following six months.”*

If a return is received after the deadline it will be treated as being late.

The Appellant was required to file Contractor Monthly returns for the periods ended 5 January 2016, 5 February 2016, and 5 April 2016. The filing dates for the returns was 25 19 January 2016, 19 February 2016, and 19 April 2016 respectively.

All of these returns were submitted online by the appellant's agent on 13 May 2016.

As the returns were not received by the filing dates HMRC sent the appellant late filing penalty notices on or around 12 July 2016 in amounts totalling £700 as detailed above in paragraph 1. A letter dated 10 November 2016 from HMRC to the appellant 30 gave details of the penalties and saying the notices were dated 8 July 2016.

5. Appellant's submissions.

In the Notice of Appeal the Appellant states:-

“The penalty notices are dated 12 July 2016, not 8 July 2016 as stated in the letter.”

Copies of the notices were included in the bundle provided to the Tribunal and they 35 are clearly dated 12 July 2016.

The Appellant continued

“the penalty notices were not received until 27 July, the day I forwarded them to Taxassist Accountants. This did not leave an adequate time to make the appeal. The Appeal was made on 12 August 2016.

5 I registered for CIS to ensure that I complied with my responsibilities , but at no time during the process did HMRC check whether I needed to register yet. As I had made no payments to subcontractors I did not know that I still needed to submit returns.

10 When my accountants realised that returns had not been made they submitted the returns on my behalf on 13 May 2016. They have been submitting my returns regularly since then. The returns on which penalties have been raised were all nil returns.

15 HMRC did not apparently receive the appeal dated 12 August 2016. My accountants rang HMRC when I received a debt management letter dated 23 September 2016. They then sent HMRC a copy of the original appeal. My excuse is that (1) The penalty notices were very late arriving, and (2) an appeal was sent but not received by HMRC – A matter over which I have no control. As the relevant were nil returns and HMRC have suffered no loss as a result of the error penalties totalling £700 are excessive.”

20 The Tribunal observes that there are two appeals which the appellant is referring to. Firstly there is the appeal to HMRC by the appellant’s agent dated 12 August 2016. On 10 November 2016 HMRC wrote to the appellant rejecting the appeal as it was out of time not being within 30 days of the date of the penalty which they took as 8 July 2016. In fact the date of the penalty was 12 July 2016 but as the penalty notice was not received until 27 July 2016 it is understandable why the appeal to HMRC against the penalty was dated 12 August 2016. Unfortunately this letter was not
25 received by HMRC.

The letter states:

“Please be advised that our client came to us unfortunately with little knowledge of what he needed to do having registered for the CIS scheme.

30 When he became our client we got all outstanding submissions up to date and took over the running of the CIS/payroll on the client’s behalf.

With this in mind we feel on this occasion that it is unfair to penalise our client for his lack of knowledge and would be grateful if you would waive the fines.”

Secondly there is an appeal dated 9 December 2016 by the appellant to the First-tier Tax Tribunal which is the subject of this decision.

35 6. **HMRC Submissions**

HMRC state that Regulation 4 of the Income Tax (CIS) Regulations 2005 stipulates that a monthly return must be made (including a nil return) to HMRC. Section

98A(2)(a) Taxes Management Act 1970 provides for penalties to be charged where a contractor fails to submit a tax return by the due date.

5 They say that it is the appellant's responsibility, as a contractor trading within the CIS, to ensure the regulations are followed. They say that those responsible for the tax affairs of a company are expected to arrange their affairs to allow sufficient time to complete and submit tax returns by the due date.

HMRC say that the filing of CIS contractor monthly returns by a contractor on or before their filing dates is a legal obligation.

10 HMRC say "the generation and issue of CIS contractor monthly returns is an automatic process. On or about the 29th of the month returns are issued to ensure they are received by the 5th of the following month.

HMRC say that in those months where a Nil return has been made the penalties have been cancelled. Their records show that penalties have only been charged for the months where tax has been deducted.

15 HMRC say that a reasonable excuse is normally an unexpected or unusual event that is either unforeseeable or beyond the person's control. They say the appeal does not contain anything which shows that something exceptional prevented the appellant from operating the scheme correctly and submitting the appropriate returns.

20 HMRC state that they do not consider that the Appellant has reasonable excuse for the failure to make payment by the due date.

HMRC say they have considered Special Reduction (Paragraph 16 Schedule 55 Finance Act 2009) but consider there are no special circumstances which would allow them to reduce the penalty.

HMRC submit that they have levied the penalties in accordance with legislation.

25 **7. The Tribunals Observations**

30 The level of the penalties has been laid down by parliament and the legislation relating to penalties has been properly and accurately applied by HMRC resulting in penalties of £700 being assessed. The only other consideration that falls within the jurisdiction of the First-tier Tribunal is whether or not the appellant has reasonable excuse for the late submission of the nil returns for the periods ended 5 January 2016, 5 February 2016 and 5 April 2016.

35 8. The Tribunal has considered whether the appellant has established that it had a reasonable excuse for the failures. The Tribunal notes that in their statement of case HMRC say "the appellant registered for CIS on 13 May 2016 but the effective start date of the business was 6 December 2015". It follows from that registration date that the appellant would not have automatically received from HMRC the contractor monthly returns for the periods ended 5 January 2016, 5 February 2016 and 5 April 2016. In addition the appellant would not have received the contractor packs issued

to new contractors at that time. This supports the submissions that that the appellant had little knowledge of the scheme. However the appellant would have known that he had entered into arrangements in January 2016, and later periods where tax had been deducted and so he should have done something about CIS registration before May
5 2016. The appellant appears to be mistaken in thinking that the periods for which he was penalised were nil returns.

9. Paragraph 16 of Schedule 55 of the Finance Act 2009 (Special Reduction) provides HMRC with discretion to reduce any penalty if they think it right to do so because of special circumstances. On the information held in this case HMRC did not
10 consider there were any special circumstances which would allow them to reduce the penalty. The Tribunal sees no special circumstances that would apply to enable it to overturn HMRC's decision.

10. In the Tribunal's view the appellant has not established a reasonable excuse for failing to submit returns on time. Therefore the appeal is dismissed.

15 11. 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
20 "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 R. SHEPPARD
TRIBUNAL PRESIDING MEMBER

RELEASE DATE: 31 MARCH 2017